



Neutral Citation Number: [2024] EWHC 1731 (Admin)

Case No: AC-2023-LON-002122

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

Friday, 5 July 2024

Before:
FORDHAM J

Between:
HARITH ALSIWAN ALTEMIMI **Appellant**
- and -
GENERAL MEDICAL COUNCIL **Respondent**

Richard Wilson KC (by direct access) for the **Appellant**
Peter Mant (instructed by GMC) for the **Respondent**

Hearing dates: 22.5.24, 24.5.24
Draft judgment: 25.6.24

Approved Judgment

FORDHAM J

FORDHAM J:

PART 1: INTRODUCTION

Overview

1. The Appellant was appointed Consultant in Acute Medicine at the King's Lynn NHS Foundation Trust in 2012, based at the Queen Elizabeth Hospital. In April 2023, a case brought against him by the GMC was the subject of a 7 day oral hearing before a 3-member panel of the Medical Practitioners Tribunal, culminating in a 45 page Determination on the Facts ("the Determination"). In summary, what was alleged by the GMC was that, between 2017 and 2020, the Appellant behaved inappropriately and unprofessionally towards four work colleagues in making "sexualised" comments, that the conduct was "sexually motivated", and that it amounted to "sexual harassment". The four colleagues have been anonymised throughout as Ms A, Ms B, Ms C and Ms D. Some aspects of the Allegation (§2 below) were found by the Tribunal not to be proved (§7 below). Those aspects that were found proved (§6 below) are the subject of this appeal. After further hearings, the Tribunal went on to find that, by reason of its findings on the facts, the Appellant's fitness to practise was impaired because of his misconduct. On that basis, it imposed the sanction of a 6-month suspension. There is no separate appeal against findings of impairment or sanction. The challenge to those aspects stands or falls with the challenge to the Determination. The 6-month suspension has not taken effect, pending the outcome of this appeal. The appeal is comprehensive and sustained and I am grateful to both Counsel for their careful assistance.

The Allegation

2. The Allegation was as follows, with contents which I am labelling Paragraphs (1) to (5b):

Ms A: (1) Between 2017 and 2020 you behaved inappropriately and/or unprofessionally towards a colleague Ms A, whilst at work with her, in that you made sexualised comments to her in that: (1a) whilst Ms A was standing outside a room waiting to be interviewed, you made comments to Ms A about her clothing and her personal appearance; (1b) on a date in 2020, whilst Ms A was talking to a student nurse, as you walked past you said 'don't take her away [Ms A]' or words to that effect.

Ms B: (2) Between 2018 and 2020 you behaved inappropriately and/or unprofessionally towards a colleague Ms B whilst at work with her, in that on one or more occasion you made sexualised comments to her, including: (2a) you asked to take Ms B out for drinks or words to that effect; (2b) when the work team found out that Ms B was in a new personal relationship, you said to Ms B 'Why have you got a partner? You should break up with him' or words to that effect; (2c) from September 2019 onwards, you made comments to Ms B on her personal appearance and stated how attractive she was or words to that effect; (2d) from September 2019 onwards, in the presence of other colleagues you said to Ms B words to the effect of: (2di) 'turn around so I can take a proper look at you'; (2dii) 'turn around....you are beautiful'. (2e) on or around 26 November 2020 after the work team won an award at an awards night, you leant into Ms B and said to her on one or more occasion words to the effect of 'we should be celebrating this in a jacuzzi together'.

Ms C: (3) Between 2019 and 2020 you behaved inappropriately and/or unprofessionally towards a colleague Ms C whilst at work with her, in that on one or more occasion you made sexualised comments to her, including: (3a) on a date in 2019 when alone with Ms C you said to her 'you should come and work with acute medicine; we are really fun, we are a bit naughty if you know what I mean' or words to that effect; (3b) you said to Ms C 'come for a drink with

me; no one will find out' or words to that effect; (3c) you said to Ms C 'shall we go for a drink...just you and me' or words to that effect; (3d) you made comments to a colleague about Ms C's appearance in Ms C's presence in a sexually suggestive manner whilst looking Ms C up and down; (3e) you said to Ms C 'you are looking lovely' or words to that effect, whilst looking her up and down; (3f) you asked Ms C to walk in front of you so that you could look at her bottom; (3g) on a date in November 2019, before the work team attended a presentation skills course at an hotel, you asked Ms C not to wear a bra at that course or words to that effect; (3h) you said to Ms C 'I want to fuck you' or 'I am going to fuck you' or words to that effect; (3i) you said to Ms C 'I want to fuck you. I'm big and thick, it will be great' or words to that effect.

Ms D: (4) On or around 5 December 2020 you behaved inappropriately and /or unprofessionally towards a colleague Ms D whilst at work with her, in that you behaved in the following sexualised manner and/or made the following sexualised comments to Ms D, in that you: (4a) said to Ms D 'come next door for a chat' or words to that effect; (4b) took Ms D with you into an unoccupied hospital ward medical room and closed the door behind her; (4c) took off your surgical mask and said 'this is what I look like' or words to that effect; (4d) asked Ms D to take off her surgical mask or words to that effect; (4e) asked Ms D how old she was or words to that effect; (4f) said to Ms D 'tell me all about you' or words to that effect; (4g) said to Ms D that the work team went on nights out and that 'we are wild if you know what I mean' or words to that effect; (4h) said 'Oh you're the middle child, you must be naughty' or words to that effect when Ms D told you about her family; (4i) on one or more occasion said to Ms D 'are you naughty?' or words to that effect; (4j) said to Ms D 'how naughty are you out of 10? I'm a 9.5 out of 10' or words to that effect; (4k) opened the door and said to Ms D that she could go or words to that effect.

(5) Your conduct as described at paragraphs (1) to (4): (5a) was sexually motivated; (5b) amounted to sexual harassment pursuant to s.26 Equality Act 2010 in that you engaged in unwanted conduct of a sexual nature, which had the purpose or effect of violating the dignity of Ms A, Ms B, Ms C and Ms D, or creating an intimidating, hostile, degrading, humiliating or offensive environment for them.

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

Sexualised

3. As to the meaning of “sexualised” in Paragraphs (1) to (4) of the Allegation, it was agreed in oral submissions before the Tribunal by Counsel for the GMC (Mr Fish) and Counsel for the Appellant (Mr Mahmood), that “sexualised” means “to make something sexual in character”.

Sexually Motivated

4. As to the meaning of “sexually motivated” in Paragraph (5a) of the Allegation, the Tribunal said this in the Determination:

In reaching its determination on sexual motivation, the Tribunal applied the case of Basson v GMC [2018] EWHC 505 (Admin). The guidance from Justice Mostyn indicates that a sexual motive means that the conduct was done either in pursuit of sexual gratification or in pursuit of a future sexual relationship. The Tribunal took into account the case of Professional Standards Authority v Health and Care Professions Council (HCPC) and Leonard Ren-Yi Yong [2021] EWHC 52 (Admin) which considered sexual motivation and harassment where physical contact was not present for almost all of the allegations, and the conduct was in relation to colleagues rather than patients. The Tribunal also had regard to the case of Arunkalaivanan v General Medical Council [2014] EWHC 873 (Admin) which notes that it is important not to equate inappropriate conduct with sexually motivated conduct and that the Tribunal should consider whether there could be any other explanation for inappropriate conduct.

My attention was drawn to Sait v GMC [2019] EWHC 3279 (Admin) at §§9-19. In Sait, Mostyn J explained (at §10):

Although acting with a “sexual motivation” is not referenced word-for-word in the GMC Sanctions Guidance it is squarely covered by paras 142-144 (abuse of professional position), paras 147-148 (predatory behaviour) and paras 149-150 (sexual misconduct), all of which are aggravating features warranting an enhanced sanction.

Sexual Harassment

5. As to the meaning of “sexual harassment” in Paragraph (5b) of the Allegation, the GMC made clear that it was alleging conduct under s.26(2) of the Equality Act 2010. The Allegation was Paragraph (5b) (§2 above), that the Appellant engaged in unwanted conduct of a sexual nature, which had the purpose or effect of violating the dignity of the colleague or creating an intimidating, hostile, degrading, humiliating or offensive environment for them. The Tribunal set out these relevant provisions of s.26(1), (2) and (4):

(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). ... (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.

The Tribunal explained that it had taken into account the cases of Pemberton v Inwood [2018] ICR 1291 (CA) and Richmond Pharmacology v Dhaliwal [2009] ICR 724 (EAT) as referred to by Mr Mahmood in his submissions. Before me, reliance was placed on Reed v Stedman [1999] IRLR 299 (§§29-30 below). In Pemberton, Underhill LJ said this (at §88):

In order to decide whether any conduct ... has either of the proscribed effects under subparagraph (1)(b), a tribunal must consider both (by reason of subsection (4)(a)) whether the putative victim perceives themselves to have suffered the effect in question (the subjective question) and (by reason of subsection (4)(c)) whether it was reasonable for the conduct to be regarded as having that effect (the objective question). It must also, of course, take into account all the other circumstances – subsection (4)(b). The relevance of the subjective question is that if the claimant does not perceive their dignity to have been violated, or an adverse environment created, then the conduct should not be found to have had that effect. The relevance of the objective question is that if it was not reasonable for the conduct to be regarded as violating the claimant's dignity or creating an adverse environment for him or her, then it should not be found to have done so.

What the Tribunal Found Proved

6. These are the Paragraphs of the Allegation which the Tribunal found proved:

Ms C: (3) Between 2019 and 2020 you behaved inappropriately and/or unprofessionally towards a colleague Ms C whilst at work with her, in that on one or more occasion you made sexualised comments to her, including: (3a) on a date in 2019 when alone with Ms C you said to her ‘you should come and work with acute medicine; we are really fun, we are a bit naughty if you know what I mean’ or words to that effect; (3b) you said to Ms C ‘come for a drink with me; no one will find out’ or words to that effect; (3c) you said to Ms C ‘shall we go for a drink...just you and me’ or words to that effect; ... (3h) you said to Ms C ‘I want to fuck you’

or ‘I am going to fuck you’ or words to that effect; (3i) you said to Ms C ‘I want to fuck you. I’m big and thick, it will be great’ or words to that effect.

Ms D: (4) On or around 5 December 2020 you behaved inappropriately and /or unprofessionally towards a colleague Ms D whilst at work with her, in that you behaved in the following sexualised manner and/or made the following sexualised comments to Ms D, in that you: (4a) said to Ms D ‘come next door for a chat’ or words to that effect; ... (4c) took off your surgical mask and said ‘this is what I look like’ or words to that effect; ... (4e) asked Ms D how old she was or words to that effect; (4f) said to Ms D ‘tell me all about you’ or words to that effect; (4g) said to Ms D that the work team went on nights out and that ‘we are wild if you know what I mean’ or words to that effect; (4h) said ‘Oh you’re the middle child, you must be naughty’ or words to that effect when Ms D told you about her family; (4i) on one or more occasion said to Ms D ‘are you naughty?’ or words to that effect; (4j) said to Ms D ‘how naughty are you out of 10? I’m a 9.5 out of 10’ or words to that effect; ...

(5) Your conduct as described [above] at paragraphs (3) and (4): (5a) was sexually motivated; (5b) amounted to sexual harassment pursuant to s.26 Equality Act 2010 in that you engaged in unwanted conduct of a sexual nature, which had the purpose or effect of violating the dignity of ... Ms C and Ms D, or creating an intimidating, hostile, degrading, humiliating or offensive environment for them.

What the Tribunal Found Not Proved

7. The remaining Paragraphs of the Allegation (§2 above) were found not to be proved. That is, Paragraph (1), in its entirety; Paragraph (2) in its entirety; Paragraphs (3) and (5), so far as they concerned Paragraph (3d), (3e), (3f) and (3g); and Paragraph (4) and (5), so far as they concerned (4b), (4d) and (4k). As to Paragraph (1a), the Tribunal found that this comment to Ms A was “you look smart, good luck”, which was not sexualised. As to Paragraph (1b), the Tribunal found that this comment to Ms A (which the Appellant admitted) was about recruitment and retention, which was not sexualised. As to Paragraph (2a), the Tribunal found that this comment to Ms B was referring to coffee at the Hospital’s on-site coffee shop, which was not sexualised. As to Paragraphs (2b) and (2c), the Tribunal found no persuasive evidence that the Appellant made such comments to Ms B, and no evidence that any such comment was sexualised. As to Paragraph (2d), the Tribunal found Ms B’s evidence not to be plausible. As to Paragraph (2e), the Tribunal found Ms B and Ms C’s evidence to be unreliable: see §32 below. As to Paragraphs (3d), (3e), (3f) and (3g), see §34 below. As to Paragraphs (4b), (4d) and (4k), see §21 below.

Witnesses and Documents

8. The Tribunal listed the witness evidence. Witnesses who gave oral evidence had also made witness statements. The GMC called the following (all by video link): Ms A; Ms B; Ms C; Ms D; Dr Rajaratnam Mathialagan, a Consultant Physician and Gastroenterologist at the Hospital; Ms Judith Selwood, an Associate Practitioner at the Hospital; Ms D’s Mother; and Ms Andrea Bhogall, the Development Manager for Clinical Bands 1 to 4 at the Hospital. Oral evidence was given by the Appellant (in person), and he called: Ms April Vargeson, a Clinical Site Matron at the Hospital (by video link); Dr Saba Al-Juboori, the Appellant’s wife (in person); Dr Ee Thong Lim, a doctor at the Hospital (in person); Ms Lyndsay Brown, a nursing sister at the Hospital (by video link); and Dr Liga Ermane, a doctor at the Hospital (video link). The Appellant also relied on a witness statement from Dr Smita Gunda, a Consultant Nephrologist at the Hospital. The documentary evidence, which included notes of interviews undertaken by the Trust in its own disciplinary proceedings, was listed by

the Tribunal as follows: handwritten statement of Ms D (5.12.20); email from Ms D to Ms Bhogall (8.12.20); Summary Note of Trust interview of Ms D (30.12.20); email from Jeanette Stennett to Ms B (8.1.21); Summary Note of Trust interview of Ms B (12.1.21); email from Jeanette Stennett to Ms C (8.1.21); Summary Note of Trust interview of Ms C (12.1.21); email from Ms C to Jeanette Stennett (19.1.21); Summary Note of Trust interview of Ms C (21.1.21); email from Raj Shekhar to Ms A (10.2.21); email from Nigel Youngman to Ms A (10.2.21); Summary Note of Trust telephone interview of Ms A (11.2.21); Summary Note of Trust interview of Ms Selwood (22.1.21); email from Ms Bhogall to Ms D (9.12.21); Summary Note of Trust interview of Ms Bhogall (4.1.21); Summary Note of Trust telephone interview of Ms D's Mother (4.2.21); Summary Note of Trust interview of Dr Mathialagan (4.2.21); Summary Notes of Trust interviews of the Appellant (5.1.21, 25.1.21 and 27.1.21); Appellant's Case Statement (27.4.21); transcript of Trust's disciplinary hearing (28.4.21); supporting evidence for the Trust's disciplinary hearing (27.4.21); various photographs; and various letters of support for the Appellant.

The Appeal

9. This appeal to the High Court is pursuant to s.40 of the Medical Act 1983 and Civil Procedure Rules r.52.21. The appeal challenges the Tribunal's decision – and reasons – as to aspects of primary and secondary facts, findings as to actions being “sexualised”, “sexually motivated” and constituted “sexual harassment”. There are comprehensive Grounds of Appeal (4.7.23). These were developed by Mr Wilson KC in a 59-page Skeleton Argument – adopted at the hearing as if read out in full – and in oral submissions. One Ground [16A] was added by amendment (30.4.24). One Ground [G1b] was dropped. One Ground [G1c] was previously deleted but resurrected. A new argument about Dr Mathialagan's evidence, not in the Grounds or Skeleton Argument, was developed orally (§50 below). I have considered all of the points that were made, in writing and orally. When I come to my analysis, I am going to focus on identifying the essence of the key arguments, as I saw it, on each key aspect of the case.
10. Here are the comprehensive Grounds of Appeal:

(1) Grounds [G1]-[G4]. Ms C: Paragraphs (3a) and (5) of the Allegation.

[G1] The Tribunal was wrong to find that the Appellant had said to Ms C on a day in 2019 that “you are a bit naughty, if you know what I mean” and that the comment was sexualised in that: [G1a] There was no evidence corroborating Ms C's statement that the Appellant had ever said “if you know what I mean”, in the sentence “we are a bit naughty, if you know what I mean.” [G1c] Further or alternatively, the Tribunal was wrong in that it failed to give any, or any sufficient, reasons as to why it did not find that the Appellant had said to Ms C that “we are a really friendly team and we have social nights out and we are having one this week and you should come along”, which is what Ms C had told the internal hospital investigation when she was first interviewed about the matter in January 2021. [G1d] There was no, or no sufficient evidence, in terms of context or circumstances in which the alleged statement was made that warranted or justifies the Tribunal's finding that the Appellant's comment was sexualised. [G2] Alternatively, the Tribunal was wrong to find that the comment it attributed to the Appellant (“we are a bit naughty, if you know what I mean”) were uttered by the Appellant with a sexual motive towards Ms C. [G3] The Tribunal was wrong to find that when he said the words it attributed to him (“we are a bit naughty, if you know what I mean”) that the Appellant said those words with a sexual motivation towards Ms C. There was no, or no sufficient, warrant for that conclusion. [G3A] The Tribunal wrongly failed to subject the words “if you know what I mean” that it attributed to Dr A to proper scrutiny by asking itself whether Ms C's lack of reaction to the alleged words was plausible. [G4] In the premises, the Tribunal was wrong to

find that any of the words spoken by (or attributed to) the Appellant when inviting Ms C to join his staff team (of which she was a new member) to a social night out amounted to sexual harassment within the meaning of the Equality Act 2010, in that the Appellant's conduct: [G4a] was not unwanted, and/or [G4b] was not conduct of a sexual nature, and/or [G4c] did not have the purpose or effect of violating Ms C's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for Ms C.

(2) Grounds [G5]-[G8]. Ms C: Paragraphs (3b), (3c) and (5) of the Allegation.

[G5] The Tribunal was wrong to find that when the Appellant invited Ms C for a "drink" that he was referring to taking Ms C to a bar or other establishment off hospital premises in that there was strong evidence from other work colleagues that whenever the Appellant invited them for a "drink" it was always with reference to the coffee shop on hospital premises. [G6] The Tribunal was wrong to find that when the Appellant invited Ms C for a "drink" that his invitations were sexualised as alleged, or at all. There was no, or no sufficient evidence, to warrant a conclusion that the Appellant's invitation for a drink were sexualised. [G7] The Tribunal was wrong to find that the Appellant had invited Ms C for a drink saying " 'no one will find out' or words to that effect" and/or " 'just you and me' or words to that effect"; as there was no, or no sufficient, evidence to warrant such a finding in the light of the Appellant's denial of the words alleged. [G7A] The Tribunal was wrong to find that Dr A was sexually motivated when he invited Ms C for drinks, whether such invitation was for a drink or drinks on or off hospital premises. [G8] The Tribunal was wrong to find that the Appellant's invitation to Ms C to join him for a drink amounted, in the circumstances, to sexual harassment within the meaning of s.26 of the Equality Act 2010, in that the Appellant's conduct: [G8a] was not unwanted, and/or [G8b] was not conduct of a sexual nature, and/or [G8c] did not have the purpose or effect of violating Ms C's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for Ms C.

(3) Grounds [G9]-[G13]. Ms C: Paragraphs (3h), (3i) and (5) of the Allegation.

[G9] The Tribunal was wrong to find that the Appellant had told Ms C " 'I want to fuck you' or 'I am going to fuck you' or words to that effect" and " 'I want to fuck you. I'm big and thick, it will be great' or words to that effect.", in that the Tribunal failed to have any or any sufficient regard for the implausibility of the Appellant speaking to Ms C in the way alleged, especially when at least one other doctor and possibly two other doctors were in the same room with Ms C and the Appellant and just a few feet away. [G10] The Tribunal was wrong to find that the Appellant had spoken the words alleged by Ms C given the fact Ms C was an unsatisfactory and inconsistent witness whose testimony in several other respects the Tribunal had not accepted. [G11] The Tribunal was wrong and/or committed a serious procedural irregularity and their finding was unjust in that the Tribunal failed to provide any, or any adequate, reasons as to why it accepted Ms C's allegations on this matter over the Appellant's denials: see Southall v General Medical Council [2010] EWCA Civ 407; [2010] 2 FLR 1550 at §§55-56. [G12] The Tribunal was wrong to find that the words Ms C said were spoken to her amounted to sexual harassment given her own testimony and/or other evidence that she openly smiled and/or laughed when the alleged statements were made by Appellant, and that she would engage in a jokey back and forth with the Appellant on other occasions. [G13] In the premises, the Tribunal was wrong to find that the comments alleged at paragraph (3h) and (3i) of the Allegation amounted to sexual harassment within the meaning of the s.26 of Equality Act 2010, in that the Appellant's conduct: [G13a] was not unwanted, and/or [G13b] did not have the purpose or effect of violating Ms C's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for Ms C.

(4) Grounds [G14]-[G16]. Ms D: Paragraphs (4) and (5) of the Allegation.

[G14] The Tribunal was wrong to find that the Appellant had behaved in a sexualised manner and/or made sexualised comments to Ms D by saying to her that the work team went on nights out and that "we are wild if you know what I mean" or words to that effect;" in that: [G14a] The comment ("we are wild, if you know what I mean") was not a sexualised comment. [G14b] The Appellant at no time behaved in a sexualised manner towards Ms D. [G14c] The comment

to Ms D about being a middle child and therefore probably being the “naughty” one, was not a sexualised comment and did not permissibly permit the Tribunal to extrapolate use of the term “naughty” to a conclusion that the Appellant had sexualised that word or the word “wild” when he referred to the work team’s social evenings out. [15] The Tribunal was wrong to find that the Appellant’s reference to the work team having social evenings out as a group amounted to the Appellant having a sexual motivation towards Ms D. The evidence was entirely consistent with the Appellant simply wishing to encourage Ms D to join his work team and be retained by the hospital given the difficulties it was experiencing or had experienced in recruiting and retaining staff. [G16] The Tribunal was wrong to find that the Appellant’s use of words to the effect of ‘we are wild if you know what I mean’ amounted, in the circumstances, to sexual harassment within the meaning of s. 26 of the Equality Act 2010, in that the Appellant’s conduct: [G16a] was not unwanted, and/or [G16b] was not conduct of a sexual nature, and/or [G16c] did not have the purpose or effect of violating Ms D’s dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for Ms D.

(5) Ground [G16A]. Ms C and Ms D: Paragraphs (3a)-(3c), (3h)-(3i), (4g), (5a)-(5b) of the Allegation (“words to that effect”).

*[G16A] The Tribunal was wrong to find Paragraphs (3a); (3b), (3c); and (3h), (3i) (Ms C) and Paragraphs (4g) (Ms D) proven as each allegation contained the alternative clause “... or words to that effect” (the “alternative clause”): [G16A(a)] The effect of the alternative clause is that the words attributed to the Appellant were not proven on the balance of probabilities in that the exact words alleged in the main clauses might not have been spoken by the Appellant, but other unidentified words to “that effect” might have been spoken by him instead. So, on the balance of probabilities, it was equally possible that the Appellant had uttered some other unidentified words, and not the words alleged in the main clauses. [G16A(b)] Accordingly, the Tribunal failed to make any finding on the preponderance of probabilities as to the words actually spoken by the Appellant given that the Tribunal found that other unidentified words might have been spoken. [G16A(c)] An allegation of professional misconduct must be adequately particularised so as to give the registrant a fair opportunity to prepare their defence: see *Squier v. GMC* [2015] EWHC 299 (Admin) at §55; *Hutchinson v. General Dental Council* [2009] EWHC 2896 (Admin) at §§18-19. [G16A(d)] It was unfair on Dr A, and contrary to his Article 6 ECHR rights, for him to have been found to have uttered words never specifically identified to him (i.e. the alternative clause), which meant that he had no opportunity to contend that such other unidentified words (i.e. the “words to that effect”) should be interpreted or contextualised in a way that was not consistent with a sexualised meaning, or his being sexually motivated or which amounted to sex discrimination within the meaning of s.26 of the Equality Act 2010.*

“Words to that Effect”

11. I am going to start with Ground [G16A]. These are various arguments about the implications of using the phrase “or words to that effect” within the Allegation. They had not featured in Mr Wilson KC’s original Grounds of Appeal (4.7.23). In his Amended Grounds of Appeal (30.4.24), they featured across the board. In his Skeleton Argument (9.5.24), they were developed specifically in the context of Ms D and Paragraph (4g). I am unable to accept any of the Ground [16A] arguments. The language of “that effect” did not involve any deficiency or introduce any defect. That language simply allowed for the substantive content to have unmistakably been the same as the quoted words alleged. That was the case against the Appellant, to be found proved or not proved by the Tribunal; including as to whether conduct was sexualised, sexually motivated and constituted sexual harassment. The Appellant, and the Tribunal, were well able to address the possibility of the quoted and other words, the unmistakable substantive content, and benign nature. The ways in which the Allegation was framed (including “words to that effect”) caused no unfairness and no difficulty, in the Appellant knowing what was being alleged; in his being able to admit

or deny that he used those words or words to “that” effect; and in being able to make his defence as to why comments were not sexualised, were not sexually motivated and did not constitute sexual harassment. At no stage during the hearings was it suggested on his behalf that there was any difficulty; still less any unfairness. There was no lack of specificity producing an unfair hearing (cf. McDermott v HCPC [2017] EWHC 2899 (Admin) at §22). I am therefore unable to accept Grounds [G16A(a)] to [G16A(d)]. I can focus on the other Grounds.

The Law: The Tribunal’s Approach

12. It is not said on this appeal that the Tribunal misdirected itself in the identification of the correct approach in law to its fact-finding function. In my judgment, Mr Wilson KC is right not to suggest that there was anything materially incorrect or incomplete in the Tribunal’s legal understanding. I can start with what was said in the Determination:

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

10. The Legally Qualified Chair (LQC) reminded the Tribunal that (i) it is entitled to draw proper inferences from the evidence, but it must not speculate. It should only draw an inference if it can safely exclude other possibilities as confirmed in Soni v GMC [2015] EWHC 364 (Admin) [at §61]. (ii) A serious allegation will require careful analysis of the evidence taking account of inherent probabilities or improbabilities of an event happening. However, there is no different standard of proof or especially cogent type of evidence required: Byrne v General Medical Council [2021] EWHC 2237 (Admin) [at §22].

Cross-admissibility. 11. Mr Fish submitted that the allegations of all four women are cross-admissible and that this is a case that justifies consideration of both the propensity and coincidence approach to cross-admissibility. He referred the tribunal to part 13 of the Crown Court Compendium, which provides guidance as to how cross-admissibility should be approached. The issue of cross-admissibility or the unlikelihood of coincidence arises in this case (Freeman v Crawford [2008] EWCA Crim 1863). 12. The LQC advised the Tribunal that it must consider each count separately and, for cross-admissibility, referred the Tribunal to the direction set out in example 3, page 13-7 of the Crown Court Compendium Part 1 (June 2022).

Good character. 13. The Tribunal had in mind that Dr Altemimi was a man of good character in that he has no history of criminal convictions or cautions or adverse regulatory findings, and that he also provided testimonial evidence of his positive good character. This is not a defence, but it supports his credibility and it is relevant to the issue of whether he would have acted as alleged, especially in a case in which sexual misconduct is alleged.

As to inferences and what was “confirmed in Soni” (Determination §10), this is what Holroyde J said in Soni at §61:

Although this was not a criminal charge against Mr Soni, and the GMC only needed to prove its allegation on the balance of probabilities and not to the higher criminal standard, the principle must nonetheless apply that before an inference could properly be drawn, the Panel had to be able safely to exclude, as less than probable, other possible explanations for Mr Soni’s conduct.

13. Turning to what the LQC had “reminded the Tribunal” (Determination §10), the LQC’s “advice on record” had included this (transcript, Day 7). It picked up on the submissions, written and oral, which had been made by the Appellant’s advocate (Mr Mahmood). The LQC told the Tribunal this:

Helpfully again – I’m referring mainly to Mr Mahmood, but as he set it out he’s referred to the case of Dutta v GMC [2020] EWHC 1974 (Admin) – in that case and also in the case of Khan v GMC tribunals were set out some very useful reminders of how evidence should be evaluated when considering the facts and, in particular, caution to be applied when considering the confidence and demeanour of a witness. I’ll give the following sort of helpful points from those two cases. In any approach to the fact finding stage care must be taken to avoid considering each part of the evidence in isolation. The Tribunal should consider the reliability of the evidence as a global picture and not in isolation.

Witness evidence is only one part of the evidence. Objective evidence, for example contemporaneous documents, should be considered first. Importantly, we often all of us believe that memories are much more faithful than they are. Two common errors are to suppose that the stronger and more vivid the recollection the more likely it is to be accurate; and the second error, the more confident a person is in their recollection the more likely it is to be accurate. They are fundamental errors that are untrue; that memories are not very reliable when it comes to oral evidence.

The confident delivery and demeanour of a witness’s evidence is not a reliable guide as to whether it’s the truth. The important question is whether the witness is reliable, not whether they are credible. In coming to credibility – a tribunal should not assess a witness’s credibility exclusively on their demeanour when giving evidence. They should consider all of the evidence before them before coming to a conclusion about a witness’s credibility and this could include conflicts in evidence with other witnesses, denials of the allegations and reasons why they could not be true. It is open to a tribunal not to rule out the whole of a witness’s evidence based on credibility. Credibility is divisible.

14. As to the “very useful reminders” to which the LQC referred, my attention was drawn to Dutta at §39, where there is a discussion of key points from the “considerable body of authority setting out the lessons of experience and of science in relation to the judicial determination of facts”. On the topic of the credibility of witnesses and corroborating evidence, my attention was also drawn to what Morris J said in Byrne, including this at §§17-20 (with citations removed):

17. First, the credibility of witnesses must take account of the unreliability of memory and should be considered and tested by reference to objective facts, and in particular as shown in contemporaneous documents. Where possible, factual findings should be based on objective facts as shown by contemporaneous documents. 18. Secondly, nevertheless, in assessing the reliability and credibility of witnesses, whilst there are different schools of thought, I consider that, if relevant, demeanour might in an appropriate case be a significant factor and the lower court is best placed to assess demeanour. 19. Thirdly, corroborating documentary evidence is not always required or indeed available. There may not be much or any such documentary evidence. In a case where the evidence consists of conflicting oral accounts, the court may properly place substantial reliance upon the oral evidence of the complainant (in preference to that of the defendant/appellant). There is no rule that corroboration of a ... complainant’s evidence is required. 20. Fourthly, in a case where the complainant provides an oral account, and there is a flat denial from the other person concerned, and little or no independent evidence, it is commonplace for there to be inconsistency and confusion in some of the detail. Nevertheless the task of the court below is to consider whether the core allegations are true.

The Law: The High Court’s Approach

15. It was common ground on this appeal that relevant general principles for the purposes of this section 40 appeal are set out in Dutta at §21, from which I take the following (with citations removed):

21. (1) The appeal is not a re-hearing in the sense that the appeal court starts afresh, without 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 intensive process than a review. 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. The Court will have regard to the decision of the lower court and give it “the weight that it deserves”. (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. (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. (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. (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. (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 given are not satisfactory, or because it unmistakably so appears from the evidence. 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”.

My attention was also invited, in particular, to Byrne at §§11-16 and 21-27; and Shabir v GMC [2023] EWHC 1772 (Admin) at §§10-18.

16. As to the approach of the High Court and findings of “sexual motivation”, I was referred to Sait at §14 (for the observation that the High Court may be “as well-placed as the Tribunal to decide whether it is proper to draw an inference that actions were sexually motivated”, as a “careful weighing of the primary facts and an analysis of whether that leads to [that] conclusion”) and §17 (for the observation that where “the evaluation of the facts which led to a finding of sexual motivation was heavily influenced by the Tribunal’s assessment of the appellant’s credibility then ... the appeal should not be allowed unless it can be shown clearly that the finding is wholly contrary to the weight of the evidence or that there was some fault in the decision-making process that renders the finding unsafe”).
17. As to the High Court’s approach to the adequacy of the Tribunal’s reasons, I take these points from Shabir §18 (citations removed):

(i) The purpose of a duty to give reasons is to enable the losing party to know why they have lost and to allow them to consider whether to appeal. (ii) It will be satisfied if, having regard to the issues and the nature and content of the evidence, reasons for the decision are apparent, either because they are set out in terms or because they can readily be inferred from the overall form and content of the decision. (iii) There is no duty on a tribunal, in giving reasons, to deal with every argument made in submissions. (iv) In a straightforward case, setting out the facts to be proved and finding them proved or not will generally be sufficient both to demonstrate to the parties why they have won or lost and to explain to any appellate tribunal the facts found. (v) Where the case is not straightforward and can properly be described as “exceptional”, the position will be different: a few sentences dealing with “salient issues” may be essential. (vi) Specific reasons for disbelieving a practitioner are not required in every case that is not straightforward. (vii) Where a Tribunal’s stated reasons are not clear, the court should look at the underlying materials to seek to understand its reasoning and to identify reasons which cogently justify the decision. An appeal should not be allowed on grounds of inadequacy of reasons unless, even with the benefit of knowledge of the evidence and submissions made below, it is not possible for the appeal court to understand why the tribunal reach the decision it did.

PART 2: REGARDING MS D

18. In the Determination, in introducing its analysis of the evidence and findings, the Tribunal explained that it had “considered the Allegation in relation to Ms D first”. It said this:

16. The Tribunal has considered each outstanding paragraph of the Allegation separately and has evaluated the evidence in order to make its findings on the facts. 17. The Tribunal was mindful that this Allegation stemmed from a complaint made by Ms D. Other matters arose in the course of the investigation which predated the complaint made by Ms D. This led to the paragraphs in the Allegation relating to Ms A, Ms B, and Ms C. The Tribunal considered the Allegation in relation to Ms D first. It then considered the cross-admissibility of this matter in relation to the other paragraphs of the Allegation. The Tribunal also considered the cross-admissibility of other matters. It has however, followed the usual format for a determination and recorded its decision on each paragraph in the order of the Allegation.

There has been no challenge on this appeal to the Tribunal having taken this approach. I agree with Mr Mant that it makes best sense on this appeal to start with Ms D.

Primary Facts (Proved): Ms D and Paragraphs (4a), (4c), (4e)-(4j)

19. Ms D was a 22-year-old student nurse who on 5 December 2020 was working on the Terrington Ward at the Hospital, watching patients. There was then a conversation between Ms D and the Appellant in the corridor, which was continued in a hospital ward medical room. The following primary facts of Paragraphs (4a), (4c), (4e)-(4j) of the Allegation were found by the Tribunal to be proved:

(4) ... you: (4a) said to Ms D ‘come next door for a chat’ or words to that effect; ... (4c) took off your surgical mask and said ‘this is what I look like’ or words to that effect; ... (4e) asked Ms D how old she was or words to that effect; (4f) said to Ms D ‘tell me all about you’ or words to that effect; (4g) said to Ms D that the work team went on nights out and that ‘we are wild if you know what I mean’ or words to that effect; (4h) said ‘Oh you’re the middle child, you must be naughty’ or words to that effect when Ms D told you about her family; (4i) on one or more occasion said to Ms D ‘are you naughty?’ or words to that effect; (4j) said to Ms D ‘how naughty are you out of 10? I’m a 9.5 out of 10’ or words to that effect

20. The Appellant advances no argument on this appeal challenging any of the primary facts in Paragraphs (4a), (4c), (4e) to (4j). At the hearing before the Tribunal, the Appellant accepted all of those primary facts, with the exception of Paragraph (4g). He also accepted the following: that the events took place on 5 December 2020; that Ms D was a colleague; that they were both working at the time; and that the second part of the conversation took place, at the Appellant’s suggestion, behind a closed door in an unoccupied hospital ward medical room. At the hearing in the Tribunal, in relation to Paragraph (4g), the Appellant denied saying “we are wild if you know what I mean”. As to that primary fact, the Tribunal found: Ms D was unequivocal about the words used; she had made a note soon after the incident; the note recorded the Appellant as having used this phrase; most of the content of that note was accepted by the Appellant to have been accurate; Ms D had discussed the interaction with others before writing the note; but it was unlikely that this would have influenced her recollection of what was said; there was no reason in the circumstances to doubt Ms D’s recollection; and so it was more likely than not that the Appellant did say “we are wild if you know what I mean” or words to that effect. The Appellant accepts that there is no basis, on this appeal, for impugning that finding or reasoning.

Primary Facts (Not Proved): Ms D and Paragraphs (4b), (4d) and (4k)

21. The following primary facts of the Allegation relating to Ms D were denied by the Appellant and were found not proved by the Tribunal:

4. ... you: b. took Ms D with you into an unoccupied hospital ward medical room and closed the door behind her; ... d. asked Ms D to take off her surgical mask or words to that effect; ... k. opened the door and said to Ms D that she could go or words to that effect.

The Tribunal explained why these were found not proved. As to Paragraph (4b), Ms D accepted in cross-examination that – although the Appellant took her into an unoccupied hospital ward medical room and the door closed behind her – it could have been a self-closing fire door, as the Appellant said and as was shown in photographs which he produced. As to Paragraph (4d), Ms D’s written and oral evidence was that she took her mask off, not that the Appellant asked her to take it off. As to Paragraph (4k), Ms D’s written and oral evidence was that she left the room, not that the Appellant said she could go. It was for these reasons that the primary facts alleged by the GMC in these Paragraphs were found not proved.

Sexualised: Ms D and Paragraphs (4a), (4c), (4e)-(4j)

22. On the basis of its findings of the primary facts proved – Paragraphs (4a), (4c), (4e)-(4j) – the Tribunal went on to find it proved under Paragraph (4) that the Appellant’s behaviour and comments towards Ms D was sexualised. This was the Tribunal’s reasoning:

109. The Tribunal next considered the matters admitted and proved, individually and collectively, in relation to Dr Altemimi’s interaction with Ms D. In summary Dr Altemimi approached Ms D whilst she was on duty observing patients. He had a brief conversation with her in a corridor and then asked her into a room on their own to continue the conversation. When in the room he briefly lowered his mask to show his face and she responded by briefly lowering her mask. Dr Altemimi and Ms D sat 2m apart and there was no physical contact between them. Dr Altemimi asked Ms D how old she was. He then asked Ms D to tell him all about her. Dr Altemimi told Ms D that the work team went on nights out and that we are wild if you know what I mean, or words to that effect. In response to Ms B saying that she had siblings, Dr Altemimi responded by saying that as a middle child she must be naughty. He repeated the word ‘naughty’ on more than one occasion, asked Ms B to grade herself on a scale of 1:10 on how naughty she was, and then told Ms D that he graded himself as 9.5. At this stage Ms D left.

110. In his case summary for the disciplinary hearing, Dr Altemimi explained, “the use of the word naughty was in the context of the “middle child” always being “naughty” in a mischievous way, and absolutely not in a sexual context. The middle child is often stereotyped as being naughty in my culture and this is also from my personal experience of having 2 siblings and being the father of 3 boys. However, thinking about the conversation from SS’s perspective, I realised how the word “naughty” may have come across to her and been misconstrued as having a sexual meaning. I am sincerely sorry. I am devastated, as I never intended to make anyone feel unsafe or at unease at work.”

111. The Tribunal had regard to Ms D’s GMC statement: “...he said, ‘Oh you’re the middle child, you must be naughty’. I was totally shocked and laughed out. He kept asking me if I was naughty and to tell him how naughty I was on a scale of one to ten, so I answered six and Dr A said he was a nine point five. Dr A then asked if I needed help or had any questions. I made my excuses and left. I think Dr A could tell that I was uncomfortable and wanted to leave. I was really embarrassed and shocked and didn’t know what to think. It was totally unexpected. I had never been spoken to like this by any doctor.”

112. The Tribunal considered the use of the word ‘naughty’ and the context in which it was used. The Tribunal did not accept that ... Dr Altemimi’s use of the word ‘naughty’ used in other context as given in evidence by some witnesses is was [sic] transferable to this specific situation. His use of the word ‘naughty’ when referring to failing to complete notes was a completely different situation. Nor did the Tribunal accept that Dr Altemimi’s used the word ‘naughty’ to his children is applicable to this situation. Ms D was a student nurse. Dr Altemimi was a person in a position of authority who had asked Ms B into a room without a chaperone. The Tribunal did not find it plausible that Dr Altemimi did not know that his repeated questioning of a nurse about how naughty she was, was not a sexualised conversation.

113. Having concluded that this aspect of the interaction was sexualised the Tribunal has then considered other aspects of the interaction in context. The Tribunal took into account the entirety of the interaction as set out in Ms D’s handwritten statement. In the Tribunal’s analysis, Ms D’s handwritten statement made it clear that there was a degree of persistence in Dr Altemimi’s focus on Ms D’s naughtiness. Although specific paragraphs of the Allegation such as asking Ms D how old she was may individually not be considered sexualised, the Tribunal finds that it was more likely than not that they take on a very different meaning when considered in totality.

114. The Tribunal having considered all of the evidence in context was of the view that Dr Altemimi’s behaviour towards Ms D was sexualised as were his comments.

23. On this part of the case, the relevant Grounds of Appeal are [G14a]-[G14c]. Mr Wilson KC submitted, in essence, as follows. The Tribunal was wrong to find any “sexualised” behaviour or comment. There were strong pointers in the opposite direction, which the Tribunal gave no or insufficient weight. The Tribunal needed to look at each alleged aspect of the conduct individually, since the various aspects of conduct were neither identical nor repeated, to test whether each aspect could be characterised as sexualised. The Appellant’s conduct had been misinterpreted by Ms D. This was the first contact between the Appellant and Ms D. The Appellant was a team leader in the unit where Ms D was temporarily posted as a student nurse. He had a friendly and jokey manner. He had developed that manner, after it was brought to his attention in 2016 that he was harsh and abrupt. His practice was to give a friendly welcome to new team members. He was also strongly motivated by recruiting to his team in difficult circumstances. He would use a scale of 1-10 for morale, to ask his team members about their level of happiness. He would also use “naughty”, for example in handovers with his team, to mean cutting corners and not going by the book. All of this was supported by evidence from colleagues. This was a 5 minute conversation with Ms D. It started in a busy corridor. The room suggested by the Appellant for continuing it was convenient and close at hand. The Appellant was being friendly and welcoming, showing an interest in Ms D, asking a series of questions including about her work placements and background. This was in the nature of an ‘informal interview’, to see whether Ms D was the sort of person who might be suitable for recruitment to the Appellant’s team. By the end of the conversation he had formed the view that she could be. At the end of the conversation, the Appellant was offering to help and to answer any questions. That was entirely appropriate, as was everything else done and said. But even if ill-advised, it was still not sexualised. There was no pressure; no physical contact; no movement towards Ms D; no request for contact details; no invitation; and no follow up. The Appellant did not shut the door, or ask Ms D to remove her mask, or tell her she could leave. There was no need for a “chaperone” (Determination §112). The Appellant was introducing himself and describing the team as being fun (“wild”) on social evenings out. The word “naughty” arose in the context of a middle sibling. It needed to be approached in a disciplined way. The starting point was the primary ordinary and natural meaning (ie. misbehaviour). Then, tested in context and in the circumstances,

there was no reason for giving “naughty” any other meaning or connotation. In terms of her reaction, Ms D was influenced by what was said by a number of people to whom she described the brief meeting. She was upset when she rang her mother that evening. Her mother’s evidence made clear that Ms D was upset because she was worried that she was going to “get into trouble”. When her mum asked in what way she thought she might get into trouble, Ms D’s answer was that she had been watching patients as part of her job, but had left her post when invited to go to the room by the Appellant, and had then removed her mask. These were things she was worried she should not have done. That is what was actually upsetting Ms D. There was a misapprehension on Ms D’s part. It was a misunderstanding. The finding of sexualised behaviour should not have been made, against the Appellant as a person of good character with strong testimonial support, from a number of witnesses who say they have never known him cross any professional line. Like the other aspects of alleged sexualised behaviour which were rejected, this should have been rejected too. There was no basis for finding that any of the conduct or words was sexualised. It follows that no question of sexual motivation or sexual harassment arises.

24. I am unable to accept these submissions. These were repeated, persistent references by a senior consultant to a student nurse – at a first encounter and in a private room – asking whether she was naughty, and how naughty. The references to team handovers – and “naughty” in the sense of cutting corners – did not plausibly transfer to this situation, as the Tribunal rightly recognised. The Tribunal had heard evidence from Dr Lim, that she (Dr Lim) had heard the Appellant use the word “naughty”, in “a jokey sense”, to mean “we are not actually following what we [are] supposed to do, because sometimes some doctors tend to just cut corners because of time constraints, but that is not to many people, it is not targeted to one person”. Dr Lim had given an example of this sort of “naughty”, as not writing everything in the patient’s “booklet”. However, as the Tribunal explained, this meaning of “naughty” did not plausibly transfer to this situation. Nor is there plausibility in the argument that the contents of this conversation were an ‘informal interview’ of suitability to join the team full-time. The repeated references to “naughty” were nothing of the kind. The Tribunal identified what, in the context and circumstances, was the ordinary and natural meaning of “naughty”. The repeated questioning of a nurse, about how “naughty” she was, was a sexualised conversation. And the Appellant knew it. That is what the Tribunal found. There was nothing inappropriate about the Tribunal making a point about no “chaperone”. The Appellant himself had claimed – in his Trust interview – that he always had someone with him, a “chaperone”, when he was welcoming new members to the department. The Tribunal heard Ms D cross-examined (Day 3), including about “the reason you were crying, the reason you were upset”. Ms D’s mother was also cross-examined (Day 4) regarding the conversation and why Ms D “thought she would be getting into trouble”. The Tribunal members were able to ask follow up questions of Ms D, and “about your embarrassment after you were asked how naughty you were out of ten”, and “how did you interpret the word ‘naughty’?” Ms D had told the Tribunal that she was “very embarrassed” and “shocked”, that she interpreted it “in a sexual way”; and – in further cross-examination that “the way the conversation went in the room it felt as if he was hinting it in a sexual way. That is how I interpreted it and I think as being a much older male for me, being 22 at the time, it was quite inappropriate. It didn’t seem that he was doing it in a jokey matter at all.” The Tribunal was careful, and right, to consider features of the conversation individually, and also collectively. The Tribunal sensibly looked in particular at “wild, if you know what I mean”; and then at the

repeated and persistent references to “naughty”. The Tribunal found the aspects of the interaction to be sexualised when considered in totality. In my judgment, the Tribunal was not wrong in its findings; nor in its approach; and nor was its reasoning inadequate. I cannot accept Grounds [G14a]-[G14c].

Sexually Motivated: Ms D and Paragraph (5a)

25. The Tribunal went on to find that the Appellant’s sexualised behaviour and comments towards Ms D were sexually motivated. This was the Tribunal’s reasoning:

119. Ms D’s evidence regarding her meeting with Dr Altemimi was to a large degree unchallenged. In her oral evidence she was unequivocal in her description of Dr Altemimi’s use of the word ‘naughty’ as sexual. Dr Altemimi has submitted that there was an innocent motive for his comments. It was possible that this was the case when the word was first used in relation to middle child; however, this possibility was stretched when the conversation continues with the word ‘naughty’ repeated on a number of occasions with Ms D being asked to grade herself on scale of one to ten and Dr Altemimi saying that he was 9.5. This evidence coupled with the circumstances in which the conversation took place led the Tribunal to the conclusion that it was more likely than not that Dr Altemimi had a sexual motivation in saying what he did. For the reasons outlined above, the Tribunal finds that regarding Paragraph (5a) of the allegation, Dr Altemimi’s conduct was sexually motivated as it related to Paragraph (4).

26. On this part of the case, the relevant Ground of Appeal is [G15]. Mr Wilson KC relied on all the points raised regarding whether the Appellant’s conduct and comments were “sexualised” (§23 above). He says that, even if characterised as sexualised, there was no justification for concluding that this was sexually motivated. That is a serious allegation. It was necessary – but it was not possible – to exclude the innocent explanations (Soni §61) of friendliness and approachability, of concern regarding recruitment and retention, and of action overcompensating for previous recognised harshness and abruptness. Sexual motivation was lightly, and wrongly, inferred. The Tribunal’s reasons did not identify which limb of Basson §14 was said to apply, or why. This Court is as well-placed as the Tribunal to decide whether such an inference was properly drawn (Sait §14); and in any event the finding was wholly contrary to the weight of the evidence, and/or there are faults in the decision-making process which render the finding unsafe (Sait §17).
27. I cannot accept these submissions. I have dealt with sexualisation (§24 above). The Tribunal had well in mind the recognised meaning of sexually motivated (§4 above), pursuit of sexual gratification or of a future sexual relationship (or both); that it was important not to equate inappropriate conduct with sexually motivated conduct; and that it should consider whether there could be any other explanation for inappropriate conduct. This was persistent sexualised questioning, of a 22 year old nurse, about how “naughty” she was, culminating in asking her to grade herself on a scale of one to ten, with the Appellant grading himself as 9.5. The circumstances had included going into the medical room, alone, on a first ever encounter, with a massive power imbalance between senior consultant and student nurse. It was sexualised, and the Appellant knew it. The Tribunal did consider all innocent explanations, and excluded them. It rejected the innocent motive said to be borne out of asking about being a middle child. It had rejected the suggestion that “naughty” was being used to mean cutting corners (not going by the book). The ‘informal interview’ narrative is, and was, implausible. In my judgment, the Tribunal was not wrong in its findings; nor in its approach; and nor were its reasons inadequate. I cannot accept Ground [G15].

Sexual Harassment: Ms D and Paragraph (5b)

28. The Tribunal went on to find that the Appellant's sexualised, and sexually motivated, behaviour and comments towards Ms D amounted to sexual harassment. It reasoned as follows:

130. Ms D's reaction to her Dr Altemimi's conduct was corroborated by Ms Selwood's evidence, who said in her witness statement, "I was in the side room caring for the patient for around 15 minutes and I was taking off my PPE in another room off the side room when [Ms D] came back onto the ward. She looked distraught and upset. Her face looked like it was in total shock. Once I'd washed my hands, I went up to her and asked if she was ok. I remember her saying, 'I can't believe what happened'."

131. In considering that effect Dr Altemimi's behaviour had on Ms D, the Tribunal took into account Ms D's perception of his conduct. The Tribunal referred again to her comment in her witness statement where she said, "He [Dr Altemimi] kept asking me if I was naughty and to tell him how naughty I was on a scale of one to ten, so I answered six and Dr A said he was a nine point five. Dr A then asked if I needed help or had any questions. I made my excuses and left. I think Dr A could tell that I was uncomfortable and wanted to leave. I was really embarrassed and shocked and didn't know what to think. It was totally unexpected. I had never been spoken to like this by any doctor."

132. The Tribunal has determined that Dr Altemimi's comments to Ms D were sexualised and that his motivation was sexual. It was clear from Ms D's evidence that Dr Altemimi's conduct was unwanted. The Tribunal was satisfied that Dr Altemimi engaged in unwanted conduct with Ms D and the conduct was of a sexual nature.

133. The Tribunal had regard to the fact that, when Ms D had reported Dr Altemimi's behaviour to Ms Bhogall during her meeting, she provided Ms Bhogall with her handwritten account of the incident. She also said, "During the meeting, I think I said that I wasn't comfortable coming back to work at the hospital. Andrea said it was a shame as I had done all my placements there. After this meeting Andrea told my ward that I would be having the rest of the day off work and that I wouldn't be back for my next shift that week. After speaking to Andrea on 10 December 2020, the decision was made for me to finish my placements at Norfolk & Norwich University Hospital. My last day of work at the hospital was 10 December 2020."

134. The Tribunal considered Ms D's evidence regarding her perception of Dr Altemimi's conduct.

135. The Tribunal considered that Dr Altemimi's conduct towards Ms D had left her so uncomfortable that she felt unable to continue to work in the same hospital as him. It was clear from her evidence that Ms D found Dr Altemimi's conduct embarrassing, shocking, unwanted and unacceptable. As a result of her interaction with Dr Altemimi she said was not comfortable coming back to the hospital to work. It was clear from this that Ms D perceived herself to have suffered from the effect of Dr Altemimi's conduct in that he had created an adverse environment for her, which was degrading, humiliating, and offensive for her.

136. The Tribunal took into account all of the circumstances of Ms D's interaction with Dr Altemimi and considered whether it was reasonable for Dr Altemimi's conduct to have that effect. The Tribunal concluded that it was reasonable for Ms D to consider that the effect of Dr Altemimi's conduct was to create an intimidating, hostile, degrading, humiliating or offensive environment for her.

137. Subsequently the Tribunal found Paragraph 5(b) of the Allegation proved in relation to Ms D.

29. On this part of the case, the relevant Grounds of Appeal are [G16a]-[G16c]. Mr Wilson KC relied on all the points he had raised regarding whether the Appellant’s conduct and comments were “sexualised”, and whether they were “sexually motivated”. He also says that, even if characterised as sexualised and sexually motivated, there was no justification for concluding that this was sexual harassment. He says the elements of sexual harassment are not met. This was not “unwanted”, because it was conduct “at the lower end of the scale”, so that Ms D needed to have “made it clear that she found such conduct unwelcome”: see Reed v Stedman [1999] IRLR 299 at §30. This was a five-minute, initial encounter. Ms D at no stage asked the Appellant to stop. She “laughed” when he asked the “naughty” middle child question. It was all just a bit of ‘joshing’ and there was no reason why it would ‘have an ordinary person in tears’. Ms D’s later reaction was influenced by the reaction of others to whom she spoke. Her discomfort and upset were really about being “in trouble” for leaving her post watching patients, and removing her mask. Objectively, it could not be concluded that the Appellant’s conduct had the effect of creating “an environment” which was for Ms D intimidating, hostile, humiliating or offensive. There is no reasoning at all – just a statement of conclusion – as to the reasonableness of any perception on Ms D’s part.
30. I cannot accept these submissions. I have dealt with sexualised and sexually motivated (§§24, 27 above). The Tribunal took into account the Pemberton and Dhaliwal cases, on which it had heard submissions. There was no misdirection in law. The right questions were asked and answered. The Appellant is not, in my judgment, assisted by the observations in Reed v Stedman at §30 (nor by subsequent cases in which Reed has been referred to). In Reed, the EAT was addressing the ideas of “unwanted” and “unwelcome” in the context of sexual harassment, and said (at §30):

As to whether the conduct is unwelcome, there may well be difficult factual issues to resolve. In general terms, some conduct, if not expressly invited, could properly be described as unwelcome. A woman does not, for example, have to make it clear in advance that she does not want to be touched in a sexual manner. At the lower end of the scale, a woman may appear, objectively, to be unduly sensitive to what might otherwise be regarded as unexceptional behaviour. But because it is for each person to define their own levels of acceptance, the question would then be whether by words or conduct she had made it clear that she found such conduct unwelcome.

The reference in Reed to conduct at “the lower end of the scale” was to what would be, “objectively”, an “unduly sensitive” reaction to “unexceptional” behaviour. In the present case, there was nothing, objectively, unexceptional about the sexualised behaviour towards Ms D. And there was nothing, objectively, unduly sensitive in it being unwanted by Ms D. Here, the “factual issue” was “resolved”. The Tribunal heard and considered the evidence of Ms D – who was cross-examined – as to the experience for her and its implications. The Tribunal made a series of clear and cogent findings based on that evidence. That included after the cross-examination of Ms D and Ms D’s mother, about Ms D’s fear of getting into trouble (§24 above). The Tribunal found that the Appellant’s conduct towards Ms D had left her so uncomfortable that she felt unable to continue to work in the same hospital as him; that she found that conduct embarrassing, shocking, unwanted and unacceptable; that she perceived herself to have suffered from the effect of that conduct in that he had created an “adverse environment for her”, which was “degrading, humiliating, and offensive for her”. The Tribunal went on to find that it was “reasonable” for Ms D to consider that the effect of the Appellant’s conduct was to create an intimidating, hostile, degrading, humiliating or offensive environment for her. That conclusion was reached taking account, rightly, of

all the circumstances of the interaction. The Tribunal had described these already. As a first interaction, and with the massive power imbalance, a senior consultant approaches a young student nurse on duty watching her patients, asks her into a room on their own, then asks persistent sexualised questions, making her uncomfortable, until she left the room. This was not friendliness or an ‘informal interview’. It was not ‘joshing’. It was reasonable for her to perceive that it created for her an adverse environment, which was for her degrading, humiliating, and offensive. No further reasons were needed to understand this conclusion, which is not wrong. In my judgment, the Tribunal was not wrong in its findings; nor in its approach; and nor were its reasons inadequate. I cannot accept Grounds [G16a]-[G16c].

PART 3: REGARDING MS C

31. Ms C was a hospital manager. She rejoined the Trust in January 2019 as an Operational Manager, working at the Hospital but in a different area from that of the Appellant. After a restructure, from October 2019 to September 2020 she became Deputy Divisional General Manager for Acute Medicine and Emergency. That was the same area of work as the Appellant. From September 2020, Ms C was on secondment as Divisional General Manager for the Division of Medicine.

Primary Facts (Not Proved): Ms B and Paragraph (2e)

32. Before turning to the primary facts and the aspects of the Allegation relating to Ms C, it is appropriate to start with Paragraph (2e). That was part of the allegation which related directly to Ms B, but indirectly to Ms C because Ms C had given evidence. This was Paragraph (2e) of the Allegation:

Ms B: (2) Between 2018 and 2020 you behaved inappropriately and/or unprofessionally towards a colleague Ms B whilst at work with her, in that on one or more occasion you made sexualised comments to her, including: ... (2e) on or around 26 November 2020 after the work team won an award at an awards night, you leant into Ms B and said to her on one or more occasion words to the effect of ‘we should be celebrating this in a jacuzzi together’.

33. These primary facts were found by the Tribunal not proved. This is what the Tribunal said about this part of the case against the Appellant, including about Ms C’s evidence:

51. It was not disputed that Dr Altemimi sat behind Ms B at the Award ceremony. In her interview, Ms B stated, ‘Dr Altemimi sat behind me. Our team won an award and afterwards he leant in and whispered to me “We should be celebrating this in a Jacuzzi together”. There were several comments that evening along the same lines, mostly about celebrating in a Jacuzzi together.’

52. In her statement Ms B said, ‘Dr Altemimi was sitting behind me and just as everyone was getting up to leave, he leaned in towards me and whispered in my ear, ‘We should be celebrating this in a jacuzzi together’. Dr Altemimi repeated this a few times. No one overheard this. I ignored him and he didn’t have any reaction.’

53. The Tribunal reminded itself of the evidence of Ms Al-Juboori, that she watched the event on a WhatsApp video call from Dr Altemimi and, when questioned by the Tribunal, she stated that she saw nothing untoward and did not hear Dr Altemimi say the word “Jacuzzi.”

54. The Tribunal reminded itself of the statement of Ms C, “I clarify that I remember that (Ms B) told me about a comment Dr Altemimi made to her at an awards ceremony in November 2020. I was sitting next to (Ms B) at the ceremony, and I saw Dr Altemimi whisper in her ear as he was sitting behind her and I asked her what he had said and she told me that he said, ‘I wish

we could be celebrating in a jacuzzi'. I was (Ms B's) line manager at the time, so I did ask her whether she wanted to do anything about it and she said no as she was worried saying something would affect her role."

55. The Tribunal considered the photograph provided of the room where the award ceremony was watched, which was not disputed by the parties. This event took place during the Covid pandemic and individuals were required to wear masks and comply with social distancing rules. Alternate rows and columns of chairs had been removed to allow for social distancing. Ms B was sitting in the row in front of Dr Altemimi, but to his right-hand side and some distance away. Ms C was sitting in a row on the other side of the room.

56. The Tribunal was concerned by the evidence of Ms C, who said that she was sitting next to Ms B. This was not indicated by the agreed seating plan and although she said in her oral evidence that she may have moved during the evening, there was no evidence to corroborate this. In addition, Ms B did not say that Ms C was sitting next to her. In fact, she said nobody overheard what was said.

57. The Tribunal was concerned, as set out above, that Ms B and Ms C were friends and had discussed matters between themselves. The Tribunal considered the evidence of both Ms B and Ms C as unreliable with regard to events on the award evening. The Tribunal has considered all of the evidence before it and concludes that it was highly unlikely that Dr Altemimi was able to whisper in Ms B's ear on one occasion, let alone more than one occasion (as Ms B claimed in her interview and statement), given the social distancing of this event. Subsequently, the Tribunal found Paragraph 2(e) of the Allegation not proved.

Primary Facts (Not Proved): Ms C and Paragraphs (3d)-(3g)

34. Alongside Paragraph (2e) there are Paragraphs (3d) to (3g), relating directly to Ms C. These were also found by the Tribunal not proved. They were:

Ms C: (3) Between 2019 and 2020 you behaved inappropriately and/or unprofessionally towards a colleague Ms C whilst at work with her, in that on one or more occasion you made sexualised comments to her, including: ... (3d) you made comments to a colleague about Ms C's appearance in Ms C's presence in a sexually suggestive manner whilst looking Ms C up and down; (3e) you said to Ms C 'you are looking lovely' or words to that effect, whilst looking her up and down; (3f) you asked Ms C to walk in front of you so that you could look at her bottom; (3g) on a date in November 2019, before the work team attended a presentation skills course at an hotel, you asked Ms C not to wear a bra at that course or words to that effect;...

35. The Tribunal gave these reasons why Paragraphs (3d) to (3g) were not proved:

Paragraph (3d) and (3e):

71. In her interview, Ms C said: "...what didn't stop were the inappropriate comments about my appearance, sexually suggestive tones to the conversation." ... It was about a year ago this was going on. The initial event was Sept/Oct 2019 and the continued comments was around that time. Comments about my appearance but more about how it was said. "You are looking lovely" but looking you up and down in what I feel was an inappropriate way."

72. In her GMC statement, Ms C stated: "Dr Altemimi's inappropriate comments to me started quite soon after I started the Deputy DGM role in October 2019." ... "I didn't appreciate Dr Altemimi's comments. I was new to the role and would have to work closely with him. I didn't want to make things difficult. If Dr Altemimi made an inappropriate comment, I would laugh it off or make a joke of it...Alongside the comments, I would catch Dr Altemimi giving me seedy looks, smirking, and looking me up and down. It was very obvious to me that Dr Altemimi's eyes were going up and down my body."

73. *In his GMC statement, Dr Altemimi stated, “I would have made comments as I’ve described doing above with lots of colleagues about appearance, but I strongly deny having looked her up and down...”*

74. *The Tribunal has heard witnesses that say that the environment at the hospital was one where comments on colleagues’ appearances by clinicians and managers were commonplace and not objected to. Witnesses also say that such comments were not sexualised. The Tribunal did not accept that this practice was appropriate or professional, even though it was commonplace. Ms C’s comments that she would catch Dr Altemimi giving her seedy looks, smirking, and looking her up and down are very subjective and non-specific. The Tribunal accepts that Dr Altemimi most likely did comment on Ms C’s appearance, but there was insufficient evidence to support the allegation that comments were made in a sexually suggestive manner whilst looking Ms C up and down. The Tribunal found paragraphs (3d) and (3e) of the Allegation not proved.*

Paragraph (3f):

75. *In the interview, Ms C stated to Mr Youngman, “If we were walking to a meeting, he would ask me to walk in front of him. I said why and there would be a smirking look. I told him “I’m not walking in front of you so you can look at my bum”.*

76. *The Tribunal has taken into account that in her interview and in her statement, Ms C said that Dr Altemimi asked her to walk in front of him on many occasions. In her oral evidence, she described a single occasion, and when questioned by the Tribunal, she clarified that her statement about this occurring more than once was an error and it had in fact only occurred once.*

77. *The Tribunal had noted that, even by her own evidence, the word “bum” was only used by Ms C and not Dr Altemimi. There was no evidence to support the allegation that Dr Altemimi said that he wanted to ‘look at Ms C’s bottom’. The Tribunal was also not satisfied that Dr Altemimi asked Ms C to walk in front of him or that if he had that his motivation was to look at her bottom. The Tribunal found Paragraph (3f) of the Allegation not proved.*

Paragraph (3g):

78. *The Tribunal noted that the following was added as additional information following Ms C’s initial interview on 12 January 2021, “Dr Altemimi, myself and some other members of the Acute Medicine team attended a presentation skills course at the Duke’s Head Hotel in King’s Lynn, this was in November 2019. Before the course Dr Altemimi asked me not to wear a bra. I was really taken aback by the comment and tried to laugh it off.”*

79. *The Tribunal notes that Dr Altemimi denies this allegation.*

80. *The Tribunal drew no inference from the fact that this Allegation was added as a post-script to the notes of the second interview. However, the Tribunal was concerned that Ms C provided limited information about this allegation and did not refer to it in her statement. In the circumstances, and taking account of Dr Altemimi’s denial, the Tribunal did not conclude it was more likely than not that this happened.*

81. *The Tribunal therefore found Paragraph (3g) of the Allegation not proved.*

Ms C was an “inherently unreliable”; telling “lies”

36. I can deal first with Ground [G10]. Mr Wilson KC submits as follows. It follows from the evidence findings and reasoning in relation to Paragraphs (2e) (Ms B), and in relation to Paragraphs (3d), (3e), (3f) and (3g) (Ms C), that Ms C was an inconsistent and unsatisfactory witness; she was inherently unreliable; she had told lies. In particular, she was found – in relation to Paragraph (2e) – to have lied about the awards

ceremony on 26 November 2020: about where she was sitting; about what she observed; and about what was said between her and Ms B. She had also been found to have lied – in relation to Paragraph (3g) – about being asked by the Appellant not to wear a bra in November 2019. These cannot have been mistaken recollections. They can only have been deliberate untruths. There were also Paragraphs (3d), (3e) and (3f). In the light of these, it was quite impossible for the Tribunal to accept the reliability and truthfulness of Ms C’s evidence – as it did – on the primary facts which it found proved: Paragraphs (3b), (3c), (3h) and (3i). The Tribunal should have identified Ms C as an “inherently unreliable witness” in respect of whom it had become “clear” that she had “made a false complaint” and “lied”: cf. The Crown Court Compendium Part 1 (June 2023) §10-2 at §5(7). The Tribunal was wrong, in light of these other reasoned findings of unproved primary facts, to place any weight on Ms C’s evidence. It was bound to prefer the evidence of the Appellant.

37. I cannot accept these submissions. I agree that the Tribunal was obliged to consider all aspects of the Allegation individually, but also collectively, to see the picture in the round. But I am satisfied that this is what the Tribunal did. I cannot agree that the Tribunal’s findings and reasoning in relation to Paragraphs (2e) and (3d), (3e), (3f) and (3g) of the Allegation required the Tribunal to reach a ‘blanket’ conclusion that Ms C was an inconsistent and unsatisfactory witness, who had made a false complaint, who was telling lies, whose evidence could not in any respect be relied on, so that the Appellant’s denials were to be preferred. I cannot accept Ground [G10]. The Tribunal did not find that Ms C had made a false allegation. It did not find that she had told lies. The Tribunal was scrutinising, in relation to each and all of the aspects of the Allegation, the nature and strength of the evidence, the manner in which it had emerged, the support, and the plausibility. It was testing each aspect of the case to see whether it was satisfied that a primary fact was more likely than not. Just because the evidence in relation to some primary facts, in the context and circumstances, did not support findings of “proved”, the same did not necessarily follow for all primary facts. Conversely, just because the evidence in relation to some primary facts, in the context and circumstances, did support a finding of “proved”, the same did not necessarily follow for all primary facts. The Appellant’s Counsel Mr Mahmood emphasised – in submissions to the Tribunal – that the Appellant’s case was that the various allegations were false, and had been made up by Ms C. But – while advancing that position – Mr Mahmood rightly reminded the Tribunal that finding facts unproved did not necessarily mean finding that witnesses had lied. He submitted as follows (Day 7):

Just before I leave these overarching points, there is one point that I think that I do need to just make, if I may. The point made by my learned friend [Mr Fish], again entirely understandably, when he was cross-examining my client was – he presented a binary position, “Are you suggesting Ms C is a liar; are you suggesting Ms B is a liar?” Of course Dr Altemimi didn’t agree with the comments and the corollary of that disagreement is that he does believe the allegations have been made up, particularly by Ms C. He does obviously – and I say this very openly – the allegations are false that have been made by Ms C, those graphic allegations; but that does not mean that this Tribunal must necessarily adopt a binary position in its approach to the evidence. There are three possibilities in these kinds of cases always. One is, you find the facts proven. The other is that you find the facts unproved. The third possibility is that you find the facts unproved and the witnesses lied. You don’t need to go to the third possibility. The GMC carry the burden of establishing their case. If you conclude that based on the submissions that I made that the evidence of Ms C is unreliable that is not necessarily the same as saying that you necessarily have found or must find that she lied. You can exercise mental gymnastics to say that the burden has not been satisfied. That’s the alternative way, perhaps even a more palatable way, but I mention that point as a possibility. Of course we maintain the

point that Ms C has not told the truth in relation to the serious allegations, but that doesn't mean that you have to accept what I say or adopt the binary position advocated by the GMC.

Ms C and Paragraphs (3a)-(3c), (3h)-(3i)

38. What the Tribunal found were proved in relation to Ms C were Paragraphs (3a), (3b), (3c), (3h) and (3i):

Ms C: (3) Between 2019 and 2020 you behaved inappropriately and/or unprofessionally towards a colleague Ms C whilst at work with her, in that on one or more occasion you made sexualised comments to her, including: (3a) on a date in 2019 when alone with Ms C you said to her 'you should come and work with acute medicine; we are really fun, we are a bit naughty if you know what I mean' or words to that effect; (3b) you said to Ms C 'come for a drink with me; no one will find out' or words to that effect; (3c) you said to Ms C 'shall we go for a drink...just you and me' or words to that effect; ... (3h) you said to Ms C 'I want to fuck you' or 'I am going to fuck you' or words to that effect; (3i) you said to Ms C 'I want to fuck you. I'm big and thick, it will be great' or words to that effect.

The Grounds of Appeal address Paragraph (3a); then (3b) and (3c) together; and finally (3h) and (3i) together. So will I.

Primary Facts (Proved): Ms C and Paragraph (3a)

39. This was the Tribunal's reasoning as to Paragraph (3a):

58. During her interview with Mr Youngman on 12 January 2021, Ms C stated "I know the details of the student nurse complaint as I am part of the divisional leadership team so was involved in receiving her concern. ...The reason I decided to speak up was because the detail in the letter rang true to a conversation with me. Almost identical to when I came back in 2019. I was either in the office or my own or in the quiet room. He said to me "You should come and work with acute medicine. We are really fun, we are a bit naughty if you know what I mean". I am sure that was the comment that rang true, along those lines."

59. The Tribunal reminded itself that Ms C was made aware of Ms D allegation, including the use of the word "naughty". In her statement, Ms C stated "The student nurse's statement was read out in the room. On hearing the words used by the student nurse it just struck a chord. I thought, 'I've heard those words before'. As with the student nurse, Dr Altemimi called her into a room on her own and asked her some questions and said that the team were 'a bit naughty, if you know what I mean'. This was exactly what he had said to me with a nod and a wink."

60. The Tribunal noted that there was no reference to a "nod and a wink" during the interview.

61. In his interview, Dr A stated that, had he used the word "naughty" it would not have been in a sexualised way. In his statement, Dr A stated, "I have no recollection of this, but I accept that I might have said to Ms C something like "you should come and work with acute medicine; we are really fun, we are a bit naughty". English is not my first language and one translation in Arabic, which was my understanding and intention at the time, is that a naughty person is a person who doesn't listen or is silly, with no sexual undertones. I've since stopped using this word having understood its common English meanings." Dr Altemimi denied using the words "if you know what I mean".

62. The Tribunal considered whether Ms C's evidence had been influenced by what she knew of Ms D's complaint. It was clear that Ms D's account triggered a memory in Ms C. That was acknowledged in her evidence. There was an inconsistency in her evidence regarding her comment about a nod and a wink, as this was not mentioned in her interview. The Tribunal did not consider this inconsistency to be material. Dr Altemimi accepted the possibility that he may

have said the word naughty. He did not accept that he said if you know what I mean or that his comment was sexualised.

63. The Tribunal considered the circumstances of Ms C, at the times that the words were used by Dr Altemimi. She was new to her job and in her probationary period. She said that she was in a room on her own with Dr Altemimi when he spoke with her. The Tribunal did consider the allegation made by Ms D and concluded that the situations of Ms C and Ms D were very similar. Having considered the evidence and the circumstances, the Tribunal concluded that it was more likely than not that Dr Altemimi said, “we are a bit naughty, if you know what I mean”, or words to that effect and that his comment in the particular context in which it was said were sexualised.

64. Accordingly, the Tribunal found Paragraph 3(a) of the Allegation proved.

40. As to the primary facts and (3a), Mr Wilson KC submits that the Tribunal was wrong to find it proved that the Appellant had said the word “naughty”, or the phrase “if you know what I mean”. On this part of the case, the relevant Grounds of Appeal are [G1a], [G1c] and [G3A]. Mr Wilson KC submitted, in essence, as follows. There was no evidence to support the finding that this word (“naughty”), or this phrase (“if you know what I mean”), were used. The word “naughty” was originally omitted, then added as an afterthought, in Ms C’s Trust interview (12.1.21). It was highly material that Ms C did not mention in her Trust interview “a nod and a wink”, which she added later. Added to which, there is the implausibility of Ms C’s lack of reaction. Ms C had been influenced by Ms D’s account of the conversation with repeated use of “naughty”. It was wrong for the Tribunal to treat the situations of Ms D and Ms C as “very similar”: Ms C was a senior manager; she was returning to the Trust; her evidence was ambiguous about whether she was “in a room on her own with Dr Altemimi”. She was, on other aspects of the case, an unreliable witness.
41. I am unable to accept these submissions. The Tribunal considered all the evidence it had received and heard, and all the submissions made. It considered whether this evidence had been influenced by the acknowledged trigger of what Ms D had described. It carefully considered the inconsistency about the inclusion of “a nod and a wink”. The phrase “if you know what I mean” was not omitted in the original Trust interview, then added as an afterthought. It was described by Ms C in that original interview, in the passage where this conversation was being described. It was not wrong to regard the situations, as regards Ms D and Ms C, being “very similar”. Ms C was describing a conversation when she first rejoined the Trust, in a new job, and was on her probationary period (Determination §58). There is an obvious typo: “in the office or my own” should read “in the office on my own”. Ms C’s GMC witness statement said:

On hearing the words used by the student nurse it just struck a chord. I thought, ‘I’ve heard those words before’. As with the student nurse, Dr Altemimi called her into a room on her own and asked her some questions and said that the team were ‘a bit naughty, if you know what I mean’. This was exactly what he had said to me with a nod and a wink. It made me think, ‘How many more people has Dr Altemimi had this conversation with?’ This made me feel uncomfortable as I hadn’t reported this and then someone else had a similar experience and they were brave enough to come forward.

The Tribunal was not wrong to draw the inference – with the benefit of oral evidence and cross-examination – that Ms C was describing a conversation while she was “in a room on her own with Dr Altemimi”. The phrase “when alone with Ms C” was an express part of Paragraph (3a) of the Allegation. The Appellant and his Counsel did not, successfully or otherwise, contest that aspect (“when alone with Ms C”) and Ms C

was not cross-examined about there being anyone else in the quiet room. The Tribunal considered the Appellant's own evidence that he may have said "naughty". The Tribunal had found that the Appellant had said "if you know what I mean" when describing his team (as "wild") to the newcomer Ms D, which had been supported by her note written later that same day. In my judgment, the Tribunal was not wrong in finding that the Appellant said "naughty", and in finding that he said "if you know what I mean" (or words to that effect). It was not wrong in its approach. Nor was its reasoning inadequate. I cannot accept Grounds [G1a] or [G1c].

Sexualised: Ms C and Paragraph (3a)

42. I have set out §63 of the Determination, in its context and setting (§39 above). On this part of the case, the relevant Ground of Appeal is [G1d], but it is linked to the point made in [G1c] and again in [G4]. Mr Wilson KC submits in essence, as follows. Even if the Appellant did say the word "naughty", and the phrase "if you know what I mean", it was wrong for the Tribunal to find it proved that what was said was "sexualised". In addition to the points made about the primary facts, he submits as follows. The Tribunal misunderstood this conversation. It was an invitation to a social gathering at the Poco Lounge with other members of the team, women and men, which took place on 26 September 2019. Ms C was a new team member. This is what Ms C was describing in her Trust interview, when she said (see Ground [G1c]):

When I first moved to the team Dr Altemimi said we are a really friendly team and we have social nights out and we are having one this week and you should come along.

The Tribunal failed to understand that this was the conversation where "naughty" and "if you know what I mean" were said by Ms C to have been used by the Appellant. Once the Poco Lounge context is understood, this was plainly a friendly, welcoming invitation, from a team leader interested in recruitment and retention, to a team social night out. The word "naughty" has – and in that context and those circumstances retained – its primary ordinary and natural meaning: mischievous; misbehaved. The phrase "if you know what I mean" does not undermine that. It was impossible for the Tribunal to exclude innocent, non-sexualised explanation, and the Tribunal gave no reasons for doing so.

43. I am unable to accept these submissions. They involve a clear misappreciation of the evidence which the Tribunal received and understood. It is right that Ms C described the Appellant saying "we are a really friendly team and we have social nights out and we are having one this week", which was "when I first moved to the team". That was the Poco Lounge on 26 September 2019 (Determination §65: see §44 below). But that was not what Ms C was describing here. She was describing a conversation "when I came back in 2019", which was "in my probationary period". That was early 2019. The Tribunal understood this (Determination §§59, 62). It is obvious, anyway, because the Appellant was saying she "should come and work with acute medicine". That would make no sense at all if she had already moved to acute medicine. The Tribunal understood all this. And this is why, as the Tribunal found, there was a close similarity with what Ms D had reported. A newcomer. A reference to the team. The phrase "if you know what I mean". The word "naughty". Moreover, as with Ms D, the evidence of colleagues and the use of "naughty" to mean cutting corners (not going by the book) does not transfer across. It does not make sense to speak of the team as "naughty" in the sense of cutting corners, as a way of making recruitment sound attractive. As Mr Mant

submits, “if you know what I mean” is classic innuendo. In the context and circumstances, as the Tribunal found them, “naughty” was sexualised. The Tribunal’s characterisation of the words as sexualised it not wrong. I cannot accept Ground [G1d].

Primary Facts (Proved): Ms C and Paragraphs (3b) and (3c)

44. This was the Tribunal’s reasoning:

65. In her interview with Mr Youngman, Ms C said, ‘When I first moved to the team Dr Altemimi said we are a really friendly team and we have social nights out and we are having one this week and you should come along. I was hesitant because when I am new to a team I try and keep my distance until I have worked people out. He was quite persistent about me coming to the team night out. On the day I said to him that I might not be able to make it. He said I should come it would be good to meet the team so I felt a bit of pressure to go. I was expecting a wide group nurses, managers and doctors and junior doctors to be there- a broad group. I got to the Poco Lounge in Kings Lynn and it was just Dr Altemimi and a few junior doctors. I felt quite uncomfortable as I can feel anxious in social situations with people I don’t know. All the juniors were really lovely and it was fine. After that Dr Altemimi kept saying “shall we go for a drink”. I asked who with-did he mean like last time? “No come and let’s go for a drink”. I kept saying no you’re married and I am not interested. That became quite persistent. It would normally happen at the end of our informal meetings. “Come for a drink with me. No one will find out.”’

66. In her GMC statement, Ms C stated that, following a social occasion in late 2019 when Dr Altemimi (and other colleagues) were present, “...Dr Altemimi made comments like, ‘Shall we go for a drink?’ I’d say, ‘I’m not interested. You’re married.’ I said, ‘What you mean for work drinks with everyone?’ and he would say, ‘No, just you and me.’ Dr Altemimi would say, ‘Come on. No one will find out’ in a jokey way and I’d say, ‘No. I have another meeting’ just to get away from him and the awkward situation. These comments were persistent and went on for a couple of months until I eventually had to say, ‘No. It’s not happening’.”

67. In his statement, Dr Altemimi stated, “I invited Ms C for drinks just as I did many other team members as described above, and I only ever meant for a coffee onsite. I would not have said “no-one will find out” because there was nothing for people to find out, and I would not have said “just you and me”.”

68. The Tribunal considered that the evidence to support the suggestion that Dr Altemimi was referring to drinks outside the hospital, rather than coffee when he talked about drinks [were] the particular words used were “no one will find out” and “just you and me” or words to that effect.

69. Ms C’s evidence was that Dr Altemimi first invited her to drinks with colleagues at the Poco Lounge in Kings Lynn and not the coffee shop in the hospital. The Poco Lounge is a bar and restaurant. Subsequent requests by Dr Altemimi to go for drinks were made following the drinks at the Poco Lounge. The Tribunal has heard from witnesses that Dr Altemimi and others frequently met in the coffee shop in the hospital. This was confirmed in the WhatsApp exchanges between Dr Altemimi and Ms C. However, the alleged comments were an entirely different situation and occurred at the start of Ms C’s work at the hospital. Ms C subsequently was a frequent participant in visits to the hospital coffee shop with Dr Altemimi and other colleagues and would not, in the Tribunal’s judgement, have mistaken invitations for coffee with drinks outside of the hospital. The Tribunal was satisfied that it was more likely than not that Dr Altemimi did invite Ms C for drinks outside of the hospital and that he did say “no one will find out” and “just you and me” or words to that effect. The Tribunal also finds that his comments were sexualised.

70. The Tribunal subsequently found Paragraphs (3b) and (3c) of the Allegation proved.

45. On this part of the case, the relevant Grounds of Appeal are [G5] and [G7]. Mr Wilson KC submits, in essence, as follows. The Tribunal was wrong to find that the Appellant had invited Ms C for drinks, saying “no one will find out”, and “just you and me”. There is no corroboration. Ms C and the Appellant did have drinks together, sometimes just the two of them. But that was always coffee in the on-site coffee bar. There was strong evidence from colleagues that the Appellant used the word “drinks” to mean an on-site “coffee”. This was an innocent, friendly aspect of working relationships. The Appellant does not drink alcohol. There are WhatsApp messages which evidence these on-site coffees, and which evidence the absence of any adverse reaction on Ms C’s part to having them with the Appellant. Ms C was shown, in other respects, to be an inconsistent and unreliable witness. The Tribunal elsewhere – in finding not proved the primary facts in Paragraph (2a) relating to Ms B – rightly recognised that references to “drinks” meant on-site coffee.
46. I am unable to accept these submissions. The Tribunal considered carefully the evidence about on-site coffees, including colleagues and the WhatsApp exchanges. The Tribunal heard the oral evidence, with cross-examination, of Ms C and of the Appellant, as to whether the important phrases were used: “no one will find out”, and “just you and me”. If made, they meant something different from on-site coffees, reflected in the WhatsApp messages, in the Hospital. Importantly, the Tribunal recognised the significance of Ms C having responded by saying “you’re married”. It was not disputed by the Appellant that Ms C did respond by saying “you’re married”. The Appellant’s explanation, on which he was cross-examined, was that “you are married” was said because Ms C was worried about rumours if people saw them “together on a regular basis” in the hospital. The Tribunal was in a position to evaluate this and all the evidence, and to distinguish the position with Ms B and Paragraph (2a). In my judgment, the Tribunal was not wrong in finding that the Appellant said “no one will find out” and “just you and me”, or words to that effect. The Tribunal was not wrong in its findings. Nor in its approach. Nor was its reasoning inadequate. I cannot accept Grounds [G5] and [G7].

Sexualised: Ms C and Paragraphs (3b) and (3c)

47. I have set out §69 of the Determination, in its context and setting (§44 above). On this part of the case, the relevant Ground of Appeal is [G6]. Mr Wilson submits, in essence, as follows. Even if the Appellant invited Ms C for drinks, saying “no one will find out” and “just you and me” (or words to that effect), it was wrong for the Tribunal to find it proved that what was said was “sexualised”. In addition to the points made in the context of the primary facts, there are these points. The Tribunal could not exclude alternative innocent explanations. Its conclusion was unreasoned. It was a finding inconsistent with the finding, as regards Ms B, that Paragraph (2a) was not proved. Even if the drinks being referred to were off-site, the words used were still not sexualised.
48. I cannot accept these submissions. I have addressed points made in relation to the primary facts and Paragraphs (3b) and (3c). The benign explanation – that the Appellant was simply inviting Ms C for coffees at the on-site coffee bar – was rejected by the Tribunal. There was evidence of persistence by the Appellant. There was the significance of “you’re married”, and the Appellant’s attempted explanation of that. These were drinks off-site. This was not the team’s social evenings out. There were the phrases “no one will find out” and “just you and me” (or words to that effect). The

Tribunal evaluated these features, and all the evidence, and was in a position to distinguish the position with Ms B and Paragraph (2a). In my judgment, the Tribunal was not wrong in finding that the comments were sexualised. It was not wrong in its approach. Nor was its reasoning inadequate. I cannot accept Ground [G6].

Primary Facts (Proved): Ms C and Paragraphs (3h) and (3i)

40. This was the Tribunal's reasoning as to Paragraphs (3h) and (3i):

82. In her subsequent interview with Mr Youngman on 21 January 2021, Ms C stated: "I didn't feel that I said everything I should at the last interview. I'm not good at talking, I tend to box things away. I feel I need to give additional information. ... Some comments that Dr Altemimi has said that made me feel uncomfortable. On more than one occasion he has whispered in my ear "I want to fuck you" or "I am going to fuck you. ... Because it made me feel so uncomfortable I would freeze and then try and laugh it off. Personally, when I feel really uncomfortable in a situation my default response is to try and make a joke to make me feel less uncomfortable. With Dr Altemimi it's always easier to try and laugh it off or make a joke of the comments as he can become quite difficult to work with when he is challenged.... One I can place because I remember where I was at the time. It was during the first wave of the pandemic last year.... This was around June last year. I was sitting at a desk doing some work, Dr Altemimi and Dr Mathi came in to see me. They were chatting and then another Consultant came in to talk to Dr Mathi and at that point, Dr Altemimi who was sitting in a chair whispered in my ear and said these things. The other times I think were in his office and mine ... it was similar saying "I want to fuck you, I'm big and thick it will be great."

83. In her GMC statement, Ms C stated, "... I was working over the weekend at the Covid operations centre and based in an office on my own. Dr Altemimi and Dr Mathi came in to say hello to me... Dr K then came into the office and spoke with Dr Mathi on the other side of the room. Dr Altemimi sat down next to me and kept getting closer and closer to me. I kept trying to move away and he was just talking generally about work and then out of the blue, he leaned right in and whispered into my ear, 'I want to fuck you' or something very similar. He repeated the same thing once more. My body language changed immediately, and I froze. I turned my head away. I was shocked and appalled. I didn't say anything. I'm not sure whether Dr K or Dr Mathi heard what Dr Altemimi had said to me as they were a little distance away and in the middle of their own conversation."

84. When this was put to Dr Altemimi by Mr Youngman, the doctor said, "This is a shock to me. Firstly I have no recall of that. This is becoming a bit weird. I do not talk in that kind of explicit language. It is an embarrassment. This is disgusting."

85. The Tribunal was assisted by the statement of Dr Mathialagan, "...I was standing in the doorway of the office and Ms C was on the other side of the office sitting at a desk, around five to six metres away. I saw Dr Altemimi lean in close to Ms C's ear and give her a hug but whatever he was saying to her she didn't seem upset and her body language did not show that she was upset on the outside. I was embarrassed at what I was seeing because Ms C smiled and moved away from Dr Altemimi. I wasn't sure what to make of it. ... I remember this particular incident as there were just the three of us in the room."

86. In his interview Dr Mathialagan said: "... [Ms C] was seated at the computer and suddenly Harith went from standing by the doorway and he went and spoke to her very closely and I think he gave her a hug. I didn't hear what he said. NY: Is that usual for him to give [Ms C] a hug? RM: I hadn't seen it before. It did feel a bit unusual as to how it happened. NY: Did you hear what he said to her? RM: No. We were talking openly before this happened. What he said close to her I did not hear. He was close to her ear. I couldn't hear it. NY Did [Ms C] seem surprised or upset by anything? RM: I was a bit embarrassed. Whether [Ms C] was upset I don't know."

87. The Tribunal reminded itself of the submissions of Mr Mahmood, “On 21.1.21 Ms C then attended a second interview and immediately launched into the most serious allegations, claiming that extremely graphic comments had been made to her on at least 4 occasions (3 in relation to “I want to fuck you”, etc and an earlier comment in 2019 about not wearing a bra). This was not a case of trying to “fully articulate her [previous] concerns” but the launching of brand new allegations of the most serious kind, which had never been made before despite numerous opportunities to do so.”

88. Mr Fish submitted, “The point is likely to be made (and it is accepted the Tribunal should consider this) that the most serious allegations did not emerge until the second trust interview. This is, of course, correct. Ms C dealt with and explained how difficult and embarrassing it was to discuss these matters. That is consistent with the trust interviews themselves when Ms C referred to not feeling comfortable talking about feelings or past experiences and the fear that she would not be believed... and how anxious she was about the whole process. Ms C also referred to trying to forget.”

89. The Tribunal has considered the reliability of Ms C’s evidence in light of the submissions made by Mr Mahmood. It has also considered whether her evidence was influenced in any way by her discussions with Ms B. The Tribunal accepted that Ms C would have found it difficult and embarrassing to discuss these matters and drew no inference from the fact that she asked for a second interview or from the reasons she gave in her email when she requested it. The Tribunal was mindful that Dr Altemimi was unequivocal in his denial of these allegations. The Tribunal recognises that in allegations such as this there was often little evidence except what was said by the parties involved. Ms C says that the words were whispered in her ear on more than one occasion. Although he did not hear what was said, Dr Mathialagan did say that in June 2020 he saw Dr Altemimi lean in close to Ms C’s ear and speak to her when they were in the COVID office. There are basic differences between his statement and his interview. When interviewed he did not say that Ms C smiled, nor did he say that Ms C was not upset. However, he did give evidence that he witnessed the interaction between Ms C and Dr Altemimi.

90. Having considered the evidence and the circumstances the Tribunal was satisfied that it was more likely than not that Dr Altemimi acted towards Ms C as set out in paragraphs 3(h) and 3(i) of the Allegation and that his comments were sexualised.

91. The Tribunal has determined that Paragraphs 3(h) and 3(i) of the Allegation are proved

49. As to the primary facts and paragraphs (3h) and (3i), the relevant Grounds of Appeal are [G9] and [G11]. Mr Wilson KC submits, in essence, as follows. The Tribunal was wrong to find it proved that the Appellant had said “I want to fuck you” or “I am going to fuck you”, or “I want to fuck you. I’m big and thick, it will be great” (or words to that effect). There was no sufficient evidence to find that the Appellant whispered such words to Ms C in the COVID office in around June 2020, in the presence of Dr Mathialagan, as Ms C alleged. There was no corroboration, Ms C and Dr Mathialagan agreed that Dr Mathialagan did not hear whatever words were whispered. It was implausible that the Appellant would have whispered these words in a room where two others – Dr Mathialagan and Dr K – were present, as Ms C described it, with the clear risk of such words being overheard. The evidence of Ms C’s reaction does not support the finding. Ms C said she froze and laughed it off; Dr Mathialagan says he saw her smile and move away. There was no sufficient evidence to find that the Appellant whispered such words on another occasion in the spring of 2020, as Ms C alleged. This was wholly unparticularised, which called for great caution. The Tribunal did not identify where or when this occurred. There was no evidence as to why the Appellant would have made such comments. It was implausible that he would have done so. The Appellant – a person of good character with strong testimonial support – strongly denied making these comments. The Tribunal failed to apply rigorous scrutiny. That included as to the incongruousness of Ms C’s reactions. Ms C says she laughed it off;

accepts that she never raised any complaint; accepts that she was a strong female well able to raise concerns; accepts that she had been able to raise an issue about the Appellant allegedly having a sexist attitude (in September 2020). Then there is the important fact that Ms C did not raise these very serious allegations in her first Trust interview. Added to which, there are the other respects in which Ms C was found to be an inconsistent and unreliable witness, as to aspects of the Allegation found not proved. These were serious allegations requiring cogent evidence. There was no documentary support. There was no corroboration. The Tribunal gave no reasons for preferring Ms C's allegations over the Appellant's denials.

50. On this part of the case, Mr Wilson KC also advanced a line of argument which was not in the original or amended Grounds of Appeal, or his Skeleton Argument. It was as follows. Dr Mathialagan's evidence was plainly unreliable. In the first place, there was an internal inconsistency: Dr Mathialagan's Trust interview (4.2.21) said whether Ms C was "upset I don't know"; his GMC witness statement (23.11.22) said Ms C's reaction was that she "smiled and moved away". In the second place, there were also several external inconsistencies. One is that Dr Mathialagan described only three people present – himself, Ms C and the Appellant – whereas Ms C's clear evidence was that Dr K was also present and was talking to Dr Mathialagan. Another is that Dr Mathialagan described the Appellant as standing next to Ms C, whereas Ms C's clear evidence was that the Appellant was sitting next to her. Another is that Dr Mathialagan described the Appellant as leaning over and giving Ms C a "hug", whereas Ms C's clear evidence was that there was no "hug". Given these features, the Tribunal was wrong to place any reliance at all on Dr Mathialagan's evidence.
51. I am unable to accept these submissions. The Tribunal considered carefully all of the evidence on this part of the case. The Tribunal specifically addressed the reliability of Ms C's evidence in light of Mr Mahmood's submissions on behalf of the Appellant. There was a specific focus on the fact that these allegations were not made at Ms C's initial Trust interview, and Ms C's explanation for that. That was a feature which was the subject of cross-examination, and submissions by Mr Mahmood and by Mr Fish on behalf of the GMC. It made a clear finding about that timing. It had the evidence of the interaction witnessed by Dr Mathialagan, which it saw as significant. It carefully identified the descriptions of that incident. Ms C and Dr Mathialagan each gave oral evidence and each was cross-examined, including on the very features on which reliance is placed, and submissions were made to the Tribunal by Mr Mahmood. The Tribunal specifically referred to differences between Dr Mathialagan's statement and his interview, specifically in his descriptions of Ms C's reaction. It was able to evaluate the evidence as to what was core – and what were aspects of detail – in the events described by Dr Mathialagan, and how all of this fitted with what Ms C had alleged. It had specifically in mind the Appellant's unequivocal denials. It was able to consider whether the Appellant could explain an act of reaching over and whispering in Ms C's ear, which could make Dr Mathialagan uncomfortable. In my judgment, the Tribunal was not wrong in finding the primary facts to be proved. It was not wrong in its approach. Nor was its reasoning inadequate. I cannot accept Grounds [G9] and [G11] or the new line of argument about reliance on Dr Mathialagan's evidence.

Sexualised: Ms C and Paragraphs (3h) and (3i)

52. Mr Wilson KC does not contest that – if the Tribunal was right to find it proved that the Appellant had said "I want to fuck you" or "I am going to fuck you" (or words to that

effect); and had said “I want to fuck you. I’m big and thick, it will be great” (or words to that effect) – then the Tribunal was right to find that these were “sexualised” comments.

Sexual Motivation: Ms C and Paragraph (5a)

53. This is what the Tribunal said (I have struck-through an erroneous reference to (3g)):

118. Dr Altemimi accepted that he may have used the word ‘naughty’ when talking with Ms C. He denies other words and denies sexual motivation. The Tribunal has found that Dr Altemimi’s comments as set out in paragraphs (3a), (3b), (3c), ~~(3g)~~, (3h), and (3i) of the Allegation were sexualised. The comments were covert in that they were not said in front of others, or they were whispered in her ear so that others could not hear. This evidence, coupled with the circumstances in which the conversations took place, led the Tribunal to the conclusion that it was more likely than not that Dr Altemimi had a sexual motivation in saying what he did. For the reasons outlined above, the Tribunal found that Dr Altemimi’s conduct was sexually motivated as it related to Paragraph (3).

54. Mr Wilson KC does not contest that – if the Tribunal was right in relation to Paragraphs (3h) and (3i) to find it proved that the Appellant had said “I want to fuck you” or “I am going to fuck you” (or words to that effect); or that he had said “I want to fuck you. I’m big and thick, it will be great” (or words to that effect) – then the Tribunal was right to find that this conduct was “sexually motivated”.

55. As to each of Paragraphs (3a) to (3c) on the other hand, Mr Wilson KC submits that – even if the Tribunal was right to find the primary facts proved and even if the Tribunal was right to find this conduct to have been “sexualised” – the Tribunal was wrong to find that this conduct was “sexually motivated”. On this part of the case, the relevant Grounds of Appeal are [G2], [G3] and [G7A]. Mr Wilson KC submits, in essence, as follows. The High Court is as well-placed as the Tribunal to decide whether such inferences were properly drawn (Sait §14). In any event, the finding was wholly contrary to the weight of the evidence, or faults in the decision-making process render the finding unsafe (Sait §17). Reliance is placed on all of the points advanced as to the primary facts and as to whether conduct was sexualised. Individualised consideration of Paragraphs (3a), (3b) and (3c) was necessary. Regarding Paragraph (3a), even if “we are a bit naughty if you know what I mean” was “sexualised”, it does not follow that there was sexual “motivation”. There was no basis for finding that this comment – about the team – was either (Basson §14) for sexual gratification or in pursuit of a sexual relationship. The Tribunal did not grapple with which of those was said to apply, or why. This aspect was not “covert”. It was said in the context of socialising, and in the context of recruiting to the team, in a friendly and jokey way. It was impossible to exclude alternative inference. As to each of Paragraphs (3b) and (3c), even if “come for a drink with me; no one will find out” and “shall we go out for a drink ... just you are me” were “sexualised”, it did not follow that there was sexual “motivation”. These were a simple request, in a jokey way, which Ms C laughed off. There was no basis for finding that this was sexual gratification or pursuit of a sexual relationship, with which – again – the Tribunal’s reasons did not grapple. Again, it was impossible to exclude alternative inference.

56. I am unable to accept these submissions. As with Ms D, the Tribunal had well in mind the recognised meaning of sexually motivated (§4 above), pursuit of sexual gratification or of a future sexual relationship (or both); that it was important not to

equate inappropriate conduct with sexually motivated conduct; and that it should consider whether there could be any other explanation for inappropriate conduct. The Tribunal had already found the primary facts proved. It had already found that the comments were “sexualised”. I have dealt with that (§§43, 48). The Appellant’s innocent explanations stand rejected: that Paragraph (3a) was a social invitation to a team social evening at the Poco Lounge; that “naughty” meant cutting corners (not going by the book), or being mischievous; that “drinks” were the on-site coffee bar; that the Appellant never said “no one will find out” or “just you are me”; that the Appellant never said “I want to fuck you” or “I am going to fuck you” or “I want to fuck you. I’m big and thick, it will be great”. The Tribunal excluded other explanations – like joking – in finding that “it was more likely than not” that the Appellant had a sexual motivation. This could be sexual gratification or sexual pursuit or both. The Tribunal was right – and certainly entitled – to consider Paragraphs (3a) to (3c), (3h) and (3i) together. It was not required to look at Paragraphs (3a), (3b) and (3c) in isolation. It is rightly accepted that Paragraphs (3h) and (3i) – once found as to the primary facts – were unassailably found to be sexually motivated. The Tribunal was right to recognise a common theme of these sexualised comments: “not said in front of others”, or “whispered in [Ms C’s] ear so that others could not hear”. There was no evidence that “we are a bit naughty if you know what I mean”, or “come for a drink with me; no one will find out”, or “shall we go out for a drink ... just you are me” were said in front of others. There was no evidence that “I want to fuck you” or “I am going to fuck you” and “I want to fuck you. I’m big and thick, it will be great” were heard by others. Paragraph (3a) was a sexualised comment, in the context of suggesting Ms C join the team; Paragraphs (3b) and (3c) were sexualised comments about Ms C having off-site drinks alone (“just you and me”) with the Appellant, covertly (“no one will find out”), which led to “but you’re married”; and Paragraphs (3h) and (3i) were explicitly about the Appellant having sex with Ms C. The Tribunal had, and considered, all the other evidence about “the circumstances” and had identified the relevant aspects of the evidence in its “reasons outlined above”. In my judgment, the Tribunal was not wrong in its conclusion; nor in its approach; nor are its reasons inadequate. I cannot accept Grounds [G2], [G3] or [G7A].

Sexual Harassment: Ms C and Paragraph (5b)

57. This is what the Tribunal said in the Determination:

122. The Tribunal has determined that Dr Altemimi’s comments to Ms C were sexualised and that his motivation was sexual. In her interview Ms C said: ‘After that Dr Altemimi kept saying “shall we go for a drink”. I asked who with – did he mean like last time? “No come and let’s go for a drink”. I kept saying no you’re married and I am not interested...That became quite persistent. It would normally happen at the end of our informal meetings. “Come for a drink with me. No one will find out.” You never know how to handle it. Laugh it off or make a joke. The first few times it was saying no in a jokey way. It got to a point where I had to say I’m not interested and it’s not going to happen. After that the persistence did stop but what didn’t stop were the inappropriate comments about my appearance, sexually suggestive tones to the conversation. Some comments that Dr Altemimi has said that made me feel uncomfortable. On more than one occasion he has whispered in my ear “I want to fuck you” or “I am going to fuck you.” Because it made me feel so uncomfortable I would freeze and then try and laugh it off. Personally, when I feel really uncomfortable in a situation my default response is to try and make a joke to make me feel less uncomfortable. With Dr Altemimi it’s always easier to try and laugh it off or make a joke of the comments as he can become quite difficult to work with when he is challenged. Q. When he whispered in your ear, how close was he? Could you feel his

breath? A. Yes he was so close I could feel his breath. When I was in the COVID room I tried to turn my head away but he kept coming closer to whisper in my ear.'

123. In her statement Ms C said "My responses may not have been serious enough for Dr Altemimi to understand that I didn't like these comments and didn't want them, but this was my way of dealing with them. Again, Dr Altemimi was very persistent with this. It didn't seem that he could understand why I would say no to him."

124. The Tribunal considered whether from her words and behaviour, Ms C had indicated to Dr Altemimi that his conduct was unwanted. The Tribunal was mindful that individuals react in different ways to unwanted behaviour. It was possible that by trying to laugh off and make a joke of Dr Altemimi's behaviour, Ms C did not make it clear to him that it was unwanted. However, her response to his repeated requests to go for drinks was an indication that his behaviour was unwanted and she wanted it to stop. In addition, her physical response to his whispering in her ear by trying to turn her head away was another indication that his behaviour was unwanted.

125. Having considered the evidence and the circumstances, the Tribunal was satisfied that Dr Altemimi engaged in unwanted conduct with Ms D and the conduct was of a sexual nature.

126. The Tribunal considered Ms C's evidence regarding her perception of Dr Altemimi's conduct. In her interview Ms C said 'If I'm honest I will feel really let down by the process if he continues to work here as it means the organisation thinks this behaviour is acceptable. Why should anyone come to work to be leached at and made to feel like an object?'

127. It was clear from Ms C's interviews that she had long perceived herself to have been suffering from the effect of Dr Altemimi's conduct in that he had created an adverse environment for her, which was degrading, humiliating, and offensive for her.

128. The Tribunal took into account all of the circumstances of Ms C's interactions with Dr Altemimi and considered whether it was reasonable for Dr Altemimi's conduct to have that effect. The Tribunal concluded that it was reasonable for Ms C to consider that the effect of Dr Altemimi's conduct was to create an intimidating, hostile, degrading, humiliating or offensive environment for her.

129. Subsequently the Tribunal found Paragraph (5b) of the Allegation proved in relation to Ms C.

58. On this part of the case, the relevant Grounds of Appeal are [G4], [G8], [G12] and [G13]. Mr Wilson KC submits, in essence, as follows. "Sexual harassment" required individualised consideration and separate findings in relation to each of Paragraphs (3a), (3b), (3c), (3h) and (3i). It was wrong for the Tribunal to consider them together and as a whole. Also, it was necessary for the Tribunal to address the elements of sexual harassment and make specific findings, but the Tribunal did not do so. The elements were not made out. Paragraph (3a) – even if sexualised and sexually motivated – cannot have been sexual harassment. It was a single comment about the team, in the context of inviting Ms C to a team social event (the Poco Lounge), which was not unwanted; nor did it have the necessary purpose or effect, whether as to perception or reasonableness. Neither Paragraph (3b) or (3c) – even if sexualised and sexually motivated, and even if "persistent" – constituted sexual harassment. Ms C's response, on the evidence, was to treat these drinks invitations as jokey and laugh them off. On the evidence, Ms C eventually – who had said "but you're married" – had said she was "not interested" and it wasn't going to "happen", and the Appellant "stopped". That was the point at which it was "unwanted". But that was also the point at which it stopped, so there can have been no sexual harassment. The same is true of Paragraphs (3h) and (3i). Again, on the evidence, Ms C laughed these off. She accepted that hers

was not a sufficiently serious response. All of the conduct needs to be seen alongside the cordial messaging between Ms C and the Appellant, seen in the WhatsApp messages. Ms C admitted that the Appellant would not have realised that she felt uncomfortable. She also accepted that she was a strong woman, able to put forward a complaint as she did (in September 2020) in relation to sexism. This was not conduct which had the purpose or effect of violating Ms C's dignity, or of creating for her an environment which was intimidating, hostile, degrading, humiliating or offensive; whether as to her perception; or as to the reasonableness of such perception.

59. I am unable to accept these submissions. I have dealt with sexualised and sexually motivated (§§43, 48, 56 above). The Tribunal was not wrong to look at sexual harassment by considering the relevant allegations individually, but ultimately as a whole. The Tribunal was right not to “carve up the case into a series of specific incidents”, as it was put in Reed (at §28). The Tribunal did not find sexual harassment as a consequence of the Paragraph (3a) conduct. As I have explained, that was not the Poco Lounge invitation, as a new team member, but was a sexualised comment made about joining the team, after Ms C's return to the Trust and during her probation period. Reading the Determination fairly, the finding of sexual harassment was plainly referable to the ongoing comments, about going for drinks and about having sex. The Tribunal asked and answered the statutory questions. The Tribunal addressed the evidence as to nature and implications, impact, perception, response and reasonableness. The Tribunal referred to all the key evidence. It specifically addressed “whether from her words and behaviour, Ms C had indicated to Dr Altemimi that his conduct was unwanted”, accepting that it was “possible” that by “trying to laugh off and make a joke of” the Appellant's behaviour, Ms C “did not make it clear to him that it was unwanted”. But the Tribunal then specifically found, in Ms C's response to the drinks invitations, and in turning her head away when the comments were made about having sex, indications that the behaviour was unwanted. It found that the Appellant engaged in unwanted conduct, on the basis of all the evidence and in all the circumstances. Alongside its findings about the sexualised nature of the conduct, and about the Appellant's sexual motivation, it found the conduct was of a sexual nature. Taking into account all of the circumstances of the case, it found a “clear” perception of Ms C that the Appellant's conduct had created an adverse environment for her. It was for her “degrading, humiliating and offensive” (not “intimidating” or “hostile”). It was “reasonable” for the Appellant's conduct to have that effect. Once again, the Tribunal was not wrong in its conclusions; nor in its approach; nor were its reasons inadequate. I cannot accept Grounds [G4], [G8], [G12] or [G13].

PART 4: CONCLUSIONS

60. For these reasons, and in these circumstances, I will dismiss the appeal. The Tribunal was aware of the relevant law (§§12-14 above) and followed it. Based on the law applicable to this Court's appellate function (§§15-17 above), none of the grounds of appeal succeeds, in this comprehensive challenge to the Tribunal's findings, approach and reasons. Having circulated this judgment, the terms of the order in the light of it were agreed: (1) The appeal is dismissed. (2) The Appellant shall pay the GMC's costs, by 25.7.24, in the agreed sum of £25,000.