Neutral Citation Number: [2024] EWHC 3343 (Admin)

Case No: AC-2024-LON-001856

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/12/2024

Before :

MR JUSTICE CALVER

- -

Between :

DR THOMAS PLIMMER	**Claimant**
- and -	
GENERAL MEDICAL COUNCIL	**Defendant**

- -
- -

Tom Day (instructed by **MDDUS**) for the **Claimant**
Peter Mant (instructed by **GMC Legal**) for the **Defendant**

Hearing dates: 03 December 2024

- -

JUDGMENT

This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 14:00 on Friday 20 December 2024.

Mr Justice Calver :

Findings of the Tribunal under challenge

1. On 30 April 2024 after a 25 day hearing, a Medical Practitioners Tribunal ("the Tribunal") directed that the name of Dr Thomas Matthew Plimmer ("the appellant") be erased from the medical register on grounds of misconduct. The misconduct included: (a) non-consensual sexual contact with a colleague (Miss A) (placing her hand on his erect penis over clothes); (b) showing Miss A an unsolicited video of him engaging in sexual intercourse with another woman; (c) sending sexually explicit photos and videos to Miss A when he knew she was vulnerable; (d) sending a different woman (Miss E) unsolicited pictures of his penis; (e) engaging in oral sex and sexual intercourse with two women (Miss B and Miss C) at work during working hours; and (f) stating that he would slit the throat of another woman (Miss F) if she took him to the GMC. The Tribunal also found that the appellant's fitness to practice was impaired on grounds of adverse mental health. The diagnoses included Compulsive Sexual Behavior Disorder ("CSBD").

2. The Appellant seeks to challenge the Tribunal's findings of fact on three of the allegations which were found proved against him, namely 1, 4 and 15, as well as its determination on impairment and sanction (the erasure of the appellant's name from the medical register).

The factual background

3. Since the background facts are, by and large, not in dispute between the parties I take the factual background below largely from the Respondent's skeleton argument.

4. The appellant is a general practitioner. Following completion of his training, he worked as a salaried GP at Priory Fields Surgery in Huntingdon between 2011 and 2014. He was dismissed from that position for watching pornography on a work computer. Around the same time, he sought help for sex addiction and attended Sex Addicts Anonymous ("SAA"). After his dismissal from Priory Fields, he took various volunteer and administrative roles.

5. In January 2016, a Medical Practitioners Tribunal found that, whilst working at Priory Fields Surgery in 2011 and 2012, the appellant prescribed drugs to a woman with whom he was in a relationship. It found that the appellant's fitness to practise was not impaired by reason of this misconduct. However, it was impaired on health grounds. The diagnoses included: *"Mild Depressive Episode – now in remission; personality difficulties related to lack of judgment"*. The Tribunal imposed conditions for a period of 12 months.

6. In or around July 2016 the appellant secured a position as a salaried GP at the surgery with which this case is concerned ("the Surgery"). He was dismissed from that position in November 2021.

The allegations

7. The allegations which are the subject of the present appeal relate to the period between May 2018 and March 2021 when the appellant was working at the Surgery. The allegations are set out in paragraph 242 of the record of determination.

8. During the first (fact finding) stage of the proceedings, the Tribunal heard oral evidence from two witnesses on behalf of the GMC, Miss A and Miss D. Other statements and reports on which the GMC relied were admitted and the witnesses were not called. The Tribunal also heard oral evidence from the appellant.

Miss A

9. The first set of allegations concern the appellant's conduct towards Miss A who worked at the Surgery. It was common ground that between May 2018 and September 2019, they had a sexual relationship which involved sexual acts at the Surgery during working hours. They also exchanged sexually explicit images and videos.

10. Miss A first raised concerns about the appellant's conduct in 2019. These concerns were investigated by the Surgery. Miss A (i) was interviewed on 30 September 2019 and (ii) attended a meeting with her RCN representative in October 2019. The Surgery investigation did not uphold Miss A's allegations. A second investigation was undertaken by Great Western Hospitals NHS Foundation Trust ("the Trust") in 2021 after allegations against the appellant were received from other women, as set out below. Miss A was interviewed once again as part of the second investigation on 13 August 2021 and on other unknown dates around this time.

11. As well as Miss A's interviews, the evidence before the Tribunal included a large volume of written messages exchanged between the appellant and Miss A on the Surgery's Instant Messenger Service ("IMS") in the period 15 February 2018 to 20 September 2019.

12. So far as Miss A is concerned, several allegations were found not to be proved. Those allegations which were proved, and found to constitute serious misconduct, were as follows:

> *Allegation 1. In or around May 2018 you showed Miss A an unsolicited video of you engaging in sexual intercourse with another woman, whilst at work;*
>
> *Allegation 2. On one or more occasions between May and August 2018 whilst at work you:*
> *c. approached Miss A with your trousers undone;*
> *d. masturbated in front of Miss A (admitted).*
>
> *Allegation 4a. In or around February 2019, whilst at work you told Miss A that you had something that would cheer her up before taking her hand, without consent, and putting it on your erect penis over your clothes;*
>
> *Allegation 7. Between May 2018 and September 2019, you:*
> *a. sent photos and/or videos to Miss A, of you:*
> *i. engaging in sexual intercourse with other women;*
> *ii. masturbating.*

13. The Tribunal found that after 17 December 2018 the appellant knew that Miss A was vulnerable because she was escaping an abusive relationship (Allegation 8). It held that the conduct in allegation 7 amounted to misconduct from this date only.

Miss B; Miss C and Miss E

14. The appellant also *admitted* allegations concerning his conduct with other women which in each case the Tribunal found to constitute serious misconduct:

> *Miss B*
>
> *Allegation 9. On 3 January 2020 you engaged in oral sex with Miss B in your GP surgery during working hours.*
>
> *Miss C*
>
> *Allegation 10. In May 2020 you engaged in sexual intercourse with Miss C in your GP surgery during working hours.*
>
> *Miss E*
>
> *Allegation 14. You sent Miss E an unsolicited photo of your penis, taken whilst at work, on:*
> *a. 1 February 2021;*
> *b. 11 February 2021.*

Miss D and Miss F

15. The appellant faced further allegations, relating to his conduct with Miss D, which he denied. Those allegations were withdrawn after Miss D absented herself from the hearing part way through cross examination. However, one allegation (on which Miss D had already been cross examined) was maintained by the GMC and upheld by the Tribunal. That allegation concerned a statement that the appellant made to Miss D about what he would do if another woman, Miss F (with whom Miss D had been corresponding about the appellant's lies and infidelity) took him to the GMC. The allegation, allegation 15, was found proved and was found to constitute serious misconduct:

> "*Allegation 15. Between 20 February 2021 and 7 March 2021 in a conversation with Miss D you threatened Miss F saying "if that cunt takes me to the GMC I'll slit her throat. I know where she lives" or words to that effect.*"

16. The Tribunal determined, in its Determination on Impairment dated 26 April 2023, that "the acts of serious misconduct constitute a course of conduct and a pattern of behaviour that took place over a lengthy period of time between May 2018 and February 2021".

17. The appellant also faced health allegations which he admitted and were found proved. The health allegations were based on assessments undertaken by two consultant psychiatrists on 30 May 2022 and 31 May 2022 respectively (allegations 17 and 18):

a. The first assessor, Dr Peter Wood, diagnosed the appellant with: (a) CSBD; and (b) Excessive Sexual Drive;

b. The second assessor, Dr Izabela Jurewicz, diagnosed the appellant with: (a) Recurrent depressive disorder, currently in remission; and (b) CSBD.

18. As the Tribunal noted at paragraph 142 of its Determination on Impairment, the conditions are lifelong and chronic. Dr Wood stated that the CSBD was currently in remission. Both assessors identified a risk of relapse and advised – from a health perspective – that he was fit to practise only with restrictions. Indeed, as the Tribunal itself recorded at paragraph 120 of its Determination On Impairment, "Dr Plimmer accepted in his oral evidence that, in his view, he was currently impaired and that he would need support and conditions in order to practise."

Grounds of appeal

19. The grounds of appeal are as follows:

> "*1. The Tribunal's findings of fact on allegation 4 was wrong.*
>
> *2. The Tribunal's findings of fact on allegation 1 was wrong.*
>
> *3. The Tribunal's findings of fact on allegation 15 was wrong.*
>
> *4. The Tribunal's determination on impairment and sanction were based on these findings of fact; if grounds 1, 2 or 3 are allowed these determinations cannot stand.*
>
> *5. Further, and in the alternative, the Tribunal's determination on impairment wrongly considered irrelevant matters.*
>
> *6. Further, and in the alternative, the Tribunal wrongly determined that all four limbs of Dame Janet Smith's test for impairment in the fifth Shipman Inquiry were engaged.*
>
> *7. The Tribunal's determination on sanction was based on its findings at the impairment stage; if grounds 5 or 6 are allowed, the determination on sanction cannot stand.*
>
> *8. Further, and in the alternative, the Tribunal's determination on sanction that the misconduct was fundamentally incompatible with continued registration was wrong and it ought to have imposed an order for suspension.*"

The legal and statutory framework

20. Before analysing the grounds of appeal it is necessary to set out the legal and statutory framework governing this appeal.

21. Section 40 of the Medical Act 1983 ("the Act") provides a right of appeal to the High Court against a sanction imposed by the MPT. Section 40 of the Act provides, so far as material, that:

> "*(1) The following decisions are appealable decisions for the purposes of this section, that is to say—*
>
> > *(a) a decision of a Medical Practitioners Tribunal … giving a direction for erasure, for suspension or for conditional registration or varying the conditions imposed by a direction for conditional registration;*
>
> …
>
> *(7) On an appeal under this section from a Medical Practitioners Tribunal, the court may—*
>
> > *(a) dismiss the appeal;*
> >
> > *(b) allow the appeal and quash the direction or variation appealed against;*
> >
> > *(c) substitute for the direction or variation appealed against any other direction or variation which could have been given or made by a Medical Practitioners Tribunal; or*
> >
> > *(d) remit the case to the MPTS for them to arrange for a Medical Practitioners Tribunal to dispose of the case in accordance with the directions of the court,*
> >
> > *and may make such order as to costs (or, in Scotland, expenses) as it thinks fit.*"

22. By section 1(1A) of the Act, the over-arching objective of the Respondent in exercising its functions is the protection of the public.

23. By section 1(1B) of the Act, the pursuit by the Respondent of its over-arching objective consists of the following aims—

> (a) to protect, promote and maintain the health, safety and well-being of the public,
> (b) to promote and maintain public confidence in the medical profession, and
> (c) to promote and maintain proper professional standards and conduct for members of that profession[1].

24. Furthermore, by virtue of paragraph 19.1 of *CPR PD52D*, an appeal under section 40 of the Act is by way of re-hearing[2]. Applying *CPR r.52.21*, the court should allow

[1] In this case, the Tribunal was particularly concerned with aims (b) and (c) of paragraph 23 above. As it stated in paragraph 64 of its Determination on Sanction dated 30 April 2023, "… erasure is necessary in Dr Plimmer's case to maintain public confidence in the profession. It determined that Dr Plimmer, through his actions, had brought the profession into disrepute and given the nature of his chronic health condition, it could not be guaranteed that he would not do so again in the future."

[2] The Court is fully entitled to substitute its own decision for that of the MPT (see *Ghosh v GMC* [2001] 1 WLR 1915 per Lord Millett at [33])."*It is a re-hearing without hearing again the evidence*": see Foskett J in *Fish v General Medical Council [2012] EWHC 1269 (Admin)* (para.28).

the appeal if the decision of the MPT was wrong or unjust because of serious procedural or other irregularity in its proceedings[3].

25. In *Azzam v GMC* [2008] EWHC 2711 (Admin) at [25]-[26] McCombe J explained that the principles governing the approach to this type of appeal are as follows:

> *"25. …..(1) The panel is concerned with the reputation and standing of the medical profession, rather than with the punishment of doctors;*
>
> *(2) The judgment of the panel deserves respect as the body best qualified to judge what the profession expects of its members in matters of practice and the measure necessary to maintain the standards and reputation of the profession;*
>
> *(3) The panel's judgment should be afforded particular respect concerning standards of professional practice and treatment;*
>
> *(4) The court's function is not limited to a review of the panel decision but it will not interfere with a decision unless persuaded that it was wrong. The court will, therefore, exercise a secondary judgment as to the application of the principles to the facts of the case before it."*
>
> *26. To this list one can also add that the Panel is entitled and bound to consider aspects of the public interest that arise in any case: R (Harry) v GMC [2006] EWHC 2050 (Admin.)."*

26. In *Yassin v the General Medical Council* [2015] EWHC 2955 (Admin), Cranston J considered the scope of an appeal under section 40 in the following terms [32]:

> "*… The authorities establish the following propositions:*
> *i) The Panel's decision is correct unless and until the contrary is shown: Siddiqui v. General Medical Council [2015] EWHC 1996 (Admin) , per Hickinbottom J, citing Laws LJ in Subesh v. Secretary of State for the Home Department [2004] EWCA Civ 56 at [44];*
>
> *ii) The court must have in mind and must give such weight as appropriate in that the Panel is a specialist tribunal whose understanding of what the medical profession expects of its members in matters of medical practice deserves respect: Gosalakkal v. General Medical Council [2015] EWHC 2445 (Admin) ;*
>
> *iii) The Panel has the benefit of hearing and seeing the witnesses on both sides, which the Court of Appeal does not;*

[3] *Sastry v General Medical* [2021] EWHCA Civ 623 at [98]. An expert Tribunal is afforded a wide margin of discretion and the court will only interfere where the decision of the Tribunal is wrong: see Laws LJ at §18-20 in *R(Fatnani) v General Medical Council* [2007] EWCA Civ 46.

iv) The questions of primary and secondary facts and the overall value judgment made by the Panel, especially the last, are akin to jury questions to which there may reasonably be different answers: Meadows v. General Medical Council [197], per Auld LJ;

v) 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: Assucurazioni Generali SpA v. Arab Insurance Group [2003] 1 WLR 577 , [197], per Ward LJ;

vi) Findings of primary fact, particularly founded upon an assessment of the credibility of witnesses, will be virtually unassailable: Southall v. General Medical Council [2010] EWCA Civ 407 , [47] per Leveson LJ with whom Waller and Dyson LJJ agreed[4]*;*

vii) If the court is asked to draw an inference, or question any secondary finding of fact, it will give significant deference to the decision of the Panel, and will only find it to be wrong if there are objective grounds for that conclusion: Siddiqui , paragraph [30](iii).

viii) Reasons in straightforward cases will generally be sufficient in setting out the facts to be proved and finding them proved or not; with exceptional cases, while a lengthy judgment is not required, the reasons will need to contain a few sentences dealing with the salient issues: Southall v. General Medical Council [2010] EWCA Civ 407 , [55]-[56].

ix) A principal purpose of the Panel's jurisdiction in relation to sanctions is the preservation and maintenance of public confidence in the medical profession so particular force is given to the need to accord special respect to its judgment: Fatnani and Raschid v. General Medical Council [2007] EWCA Civ 46 , [19], per Laws LJ."

27. Proposition ix) above may be slightly overstating the position, as in *Ghosh* Lord Millett stated at [34] that "*the [Court] will accord an appropriate measure of respect to the judgment of the committee whether the practitioner's failings amount to serious professional misconduct and on the measures necessary to maintain professional standards and provide adequate protection to the public. But the [Court] will not defer to the committee's judgment more than is warranted in the circumstances*" (emphasis added). Nicola Davies LJ similarly stated in *Sastry v General Medical* [2021] EWHCA Civ 623 at [102(iv)] that *"the appellate court will not defer to the judgment of the Tribunal more than is warranted in the circumstances*."

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[4] But this is not to be read as meaning that it is "practically impossible" to challenge them: *Byrne v GMC* [2021] EWHC 2237 (Admin) at [14], citing *R (Dutta) v General Medical Council* [2020] EWHC 1974 (Admin) at [22].

28. On the issue of witnesses' credibility, as Leveson LJ stated in *Southall v GMC* [2010] EWCA Civ 407 at [47]:

> "*First as a matter of general law, it is very well established that findings of primary fact, particularly if founded upon an assessment of the credibility of witnesses, are virtually unassailable... in Gupta v General Medical Council [2002] 1 WLR 1691, Lord Rodger put the matter this way (at [10]…):*
>
> *"In all such cases the appeal court readily acknowledges that the first instance body enjoys an advantage which the appeal court does not have, precisely because that body is in a better position to judge the credibility and reliability of the evidence given by the witnesses. In some appeals that advantage may not be significant since the witnesses' credibility and reliability are not in issue. But in many cases the advantage is very significant and the appeal court recognises that it should accordingly be slow to interfere with the decisions on matters of fact taken by the first instance body. This reluctance to interfere is not due to any lack of jurisdiction to do so. Rather, in exercising its full jurisdiction, the appeal court acknowledges that, if the first instance body has observed the witnesses and weighed their evidence, its decision on such matters is more likely to be correct than any decision of a court which cannot deploy those factors when assessing the position.*"

29. In *General Medical Council v Jagjivan and Another* [2017] 1 WLR 4438, Sharp LJ re-emphasised these points as follows at [40]:

> "*In summary:*
>
> *(i) Proceedings under section 40A of the 1983 Act are appeals and are governed by CPR Pt 52. A court will allow an appeal under CPR Pt 52.21(3) if it is 'wrong' or 'unjust because of a serious procedural or other irregularity in the proceedings in the lower court'.*
>
> *(ii) It is not appropriate to add any qualification to the test in CPR Pt 52 that decisions are 'clearly wrong': see Raschid's case at para 21 and Meadow's case at paras 125–128.*
>
> *(iii) The court will correct material errors of fact and of law: see Raschid's case at para 20. Any appeal court must however be extremely cautious about upsetting a conclusion of primary fact, particularly where the findings depend upon the assessment of the credibility of the witnesses, who the Tribunal, unlike the appellate court, has had the advantage of seeing and hearing: see Assicurazioni Generali SpA v Arab Insurance Group (Practice Note) [2003] 1 WLR 577, paras 15–17, cited with*

approval in Datec Electronics Holdings Ltd v United Parcels Service Ltd [2007] 1 WLR 1325, para 46, and Southall's case at para 47.

(iv) When the question is what inferences are to be drawn from specific facts, an appellate court is under less of a disadvantage. The court may draw any inferences of fact which it considers are justified on the evidence: see CPR Pt 52.11(4).

(v) In regulatory proceedings the appellate court will not have the professional expertise of the Tribunal of fact. As a consequence, the appellate court will approach Tribunal determinations about whether conduct is serious misconduct or impairs a person's fitness to practise, and what is necessary to maintain public confidence and proper standards in the profession and sanctions, with diffidence: see Raschid's case at para 16; and Khan v General Pharmaceutical Council [2017] 1 WLR 169, para 36.

(vi) However there may be matters, such as dishonesty or sexual misconduct, where the court 'is likely to feel that it can assess what is needed to protect the public or maintain the reputation of the profession more easily for itself and thus attach less weight to the expertise of the Tribunal …': see Council for the Regulation of Healthcare Professionals v General Medical Council and Southall [2005] EWHC 579 (Admin) at [11], and Khan's case at para 36[5]*. As Lord Millett observed in Ghosh v General Medical Council [2001] 1 WLR 1915, para 34, the appellate court 'will accord an appropriate measure of respect to the judgment of the committee … But the [appellate court] will not defer to the committee's judgment more than is warranted by the circumstances'.*

(vii) Matters of mitigation are likely to be of considerably less significance in regulatory proceedings than to a court imposing retributive justice, because the overarching concern of the professional regulator is the protection of the public."

30. Points (v), (vi) and (vii) are particularly relevant to the present case.

31. So far as the sanction imposed is concerned, as Nicola Davies LJ stated in *Sastry v General Medical* [2021] EWHCA Civ 623 at [102]:

> "*v. The appellate court must conduct an analysis as to whether the sanction imposed was wrong; that is, whether it was appropriate and necessary in the public interest or excessive and disproportionate;*
>
> *vi. In the latter event, the appellate court should substitute some other penalty or remit the case to the Tribunal for reconsideration.*"

[5] Nichola Davies LJ adopted these observations in *Sastry* (infra) at [106] and [113].

32. In *Farquharson v BSB* [2022] EWHC 1128 (Admin), Heather Williams J stated at [§63]:

> "*In relation to an appeal against sanction, it is well-established that whilst considerable respect should be paid to the sentencing decision of the Disciplinary Tribunal, the Court would interfere when satisfied that the sanction imposed was "clearly inappropriate": Salsbury v Law Society [2008] EWCA Civ 1285; [2009] 1 WLR 1286 per Jackson LJ at para 30*".

33. In assessing the appropriate sanction in a case such as the present, as Popplewell J (as he then was) stated in *Fuglers LLP v. Solicitors Regulation Authority* [2014] EWHC 179 (Admin) at [28]:

> "*The first stage is to assess the seriousness of the misconduct. The second stage is to keep in mind the purpose for which sanctions are imposed by such a tribunal. The third stage is to choose a sanction which most appropriately fulfils that purpose for the seriousness of the conduct in question.*"

34. In assessing the sanction, the courts attach particular importance to the honesty and integrity of persons working in the healthcare professions. In *Nkomo v General Medical* Council [2019] EWHC 2625 (Admin) at [35], Knowles J stated:

> "*Misconduct involving personal integrity that impacts on the reputation of the profession is harder to remediate than poor clinical performance: Yeong v General Medical Council [2009] EWHC 1923, [50]; General Medical Council v Patel [2018] EWHC 171 (Admin) at [64]; In such cases, personal mitigation should be given limited weight, as the reputation of the profession is more important than the fortunes of an individual member: Bolton v Law Society [1994] 1 WLR 512 at 519; General Medical Council v Stone [2017] EWHC 2534 (Admin) at [34], supra, [47].*"

35. The sanction imposed in the case of a doctor's sexual misconduct which undermines public confidence in the integrity of his profession is likely to be more severe than that imposed in a case of clinical negligence. The reason for this was explained by Sir Thomas Bingham MR in *Bolton v Law Society* [1994] 1 WLR 512, and which was considered in *GMC v Chandra* [2018] EWCA Civ 1898 at [54]ff per King LJ:

> *54. The paradigm case in relation to solicitors is Bolton and, in particular, the judgment of Sir Thomas Bingham MR at p518C:*
>
> > *"Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal. Lapses from the required high standard may, of course, take different forms and be of varying degrees. The most serious involves proven dishonesty, whether or not leading to criminal proceedings and criminal penalties. In such cases the tribunal has almost invariably, no*

matter how strong the mitigation advanced for the solicitor, ordered that he be struck off the Roll of Solicitors. Only infrequently, particularly in recent years, has it been willing to order the restoration to the Roll of a solicitor against whom serious dishonesty had been established, even after a passage of years, and even where the solicitor had made every effort to re-establish himself and redeem his reputation. If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends upon trust…"

55. *The Master of the Rolls continued at p 519H:*

"The second purpose is the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied re-admission. If a member of the public sells his house, very often his largest asset, and entrusts the proceeds to his solicitor, pending re-investment in another house, he is ordinarily entitled to expect that the solicitor will be a person whose trustworthiness is not, and never has been, seriously in question. Otherwise, the whole profession, and the public as a whole, is injured. A profession's most valuable asset is its collective reputation and the confidence which that inspires.

Because orders made by the tribunal are not primarily punitive, it follows that considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of this jurisdiction than on the ordinary run of sentences imposed in criminal cases. It often happens that a solicitor appearing before the tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often he will say, convincingly, that he has learned his lesson and will not offend again. On applying for restoration after striking off, all these points may be made, and the former solicitor may also be able to point to real efforts made to re-establish himself and redeem his reputation. All these matters are relevant and should be considered. But none of them touches the essential issue, which is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness. Thus it can never be an objection to an order of suspension in an appropriate case that the solicitor may be unable to re-establish his practice when the period of suspension is past. If that proves, or appears likely, to be so the consequence for the individual and his family may be deeply unfortunate and unintended. But it does not make suspension the wrong order if it

> *is otherwise right. The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price.*

56. The Privy Council has, on two occasions, subsequently adopted the words of the Master of the Rolls in Bolton when considering sanction cases in respect of doctors who had been guilty of serious professional misconduct.

57. In Gupta v General Medical Council [2002] 1 WLR 1691, Lord Rodger referred [21] to Lord Bingham's judgment in Bolton as "set(ting) out the general approach which has to be adopted". A little later in Patel v The General Medical Council, Privy Council Appeal No. 48 of 2002, Lord Steyn said:

> *"Their Lordships consider that the Professional Conduct Committee was right to be guided by the judgment in Bolton v Law Society…It is true that in that case misconduct of a solicitor was at stake. But the approach there outlined applies to all professional men. There can be no lower standard applied to doctors: Gupta v General Medical Council…For all professional persons including doctors a finding of dishonesty lies at the top end in the spectrum of gravity of misconduct…"*

58. Finally, as recently as this year in General Medical Council v Bawa-Garba [2018] EWHC 76 (Admin), [2018] 4 WLT 44; Ouseley J said in a sanctions case in relation to clinical negligence:

> *10…contrary to a suggestion from Mr Larkin QC for Dr Bawa-Garba, [that] the comments of Sir Thomas Bingham MR in Bolton apply to doctors as much as to solicitors".*

59. In my judgment not only do the Bolton principles apply equally to doctors as solicitors, but the same principles and approach apply equally to both sanctions and restoration…

60. … the approach is likely to be different (and may be completely different) in clinical error/negligence cases as opposed to those cases in which the offending behaviour is central to the function of the applicant as a doctor, such as in cases of dishonesty or sexual misconduct."

36. Consistently with the foregoing, the *GMC Sanctions Guidance* which applies to this case (in effect from 6 February 2018) provides as follows:

> "*Sexual misconduct*
>
> *149 This encompasses a wide range of conduct from criminal convictions for sexual assault and sexual abuse of children*

> *(including child sex abuse materials) to sexual misconduct with patients, colleagues, patients' relatives or others…*
>
> *150 Sexual misconduct seriously undermines public trust in the profession. The misconduct is particularly serious where there is an abuse of the special position of trust a doctor occupies, or where a doctor has been required to register as a sex offender. More serious action, such as erasure, is likely to be appropriate in such cases.*"

37. The Tribunal also took note at paragraph [109] in its Determination on Impairment of *Good Medical Practice*, which is issued by the GMC and sets out the standards of care and behaviour expected of all medical professionals, as follows:

> "*1 Patients need good doctors. Good doctors make the care of their patients their first concern: they are competent, keep their knowledge and skills up to date, establish and maintain good relationships with patients and colleagues, are honest and trustworthy, and act with integrity and within the law'*
>
> *'36 You must treat colleagues fairly and with respect.'*
>
> *'37 You must be aware of how your behaviour may influence others within and outside the team'*
>
> *'65 You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession.*"

Submissions of Dr Plimmer

38. I turn next to analyse Dr Plimmer's submissions in respect of his grounds of appeal. He was ably represented on this appeal by Mr. Tom Day of counsel.

Was the Tribunal's approach to the evidence flawed?

39. At the outset, Mr. Day made a strong attack on the initial approach of the Tribunal to Miss A's evidence, and in particular to its assessment of her credibility at [25]-[28] of its Determination on the Facts. He pointed out that the Tribunal stated at [25] that "*she came across as a witness wanting to give a true and full account of the relationship and how it had affected her. She was sure of her view of the facts and the extent of their relationship*." Yet, Mr. Day submits, the Tribunal identified two areas that impacted on her credibility in its general preamble but did not appear to apply these concerns to their assessment of her credibility in relation to contested allegations 1 and 4, which relied solely upon her account. Those two areas were that:

a. Miss A refused to accept that the IMS messages revealed sexual related comments and sought to suggest that the messages, "particularly those which undermined her account, should be interpreted literally."

b. Miss A originally denied in evidence on Day 2 having been in contact with another witness, Miss D, but on Day 4 conceded that she had been.

40. Mr. Day points out that at [28] the Tribunal found that Ms A was "*reliable when describing the facts of the relationship, but it determined it could not rely on her evidence so far as the nature of the relationship was concerned.*" He submits that this conclusion is untenable, not only in light of the areas the Tribunal had identified where Miss A had given misleading evidence but also given their findings on allegations where her reliability as to facts, not perception, was found wanting.

41. Mr. Day submits that the Tribunal fell into error by initially setting out its finding that Ms A was reliable on the facts; then considering the individual allegations in respect of which it rejected certain aspects of her evidence; but not then going back to its initial assessment that she was reliable on the facts and correcting it in the light of all of the evidence.

42. I do not accept Mr. Day's criticism. I consider that the Tribunal's assessment of Ms A's evidence was careful and balanced. It is clear that at [23]-[32], under the heading "Approach to witness evidence" the Tribunal began its analysis by setting out its "approach to the credibility and reliability of the witness and the Doctor." The Tribunal expressly recognised at [25] that whilst Ms A was sure of her view of the facts, the Tribunal was concerned about her evidence in two broad areas. First, she would not or could not bring herself to accept that any of the messages at all were of a sexual nature, when they clearly were. Second, she was reluctant to confirm that she had been in contact with Miss D during the course of her evidence when she had, albeit that she said that this contact concerned the practicalities of the hearing.

43. It follows that in assessing her evidence in relation to each of the allegations, the Tribunal plainly had these two points in mind as it expressly adverted to them. But the fact that the Tribunal had these two broad concerns about her evidence plainly did not mean that it was obliged to reject her evidence as a matter of course in respect of each individual allegation. Indeed, the Tribunal expressly stated in [28] that *"[d]espite these issues, the Tribunal did not dismiss Miss A's evidence in its entirety. It found that she was reliable when describing the facts of the relationship, but it determined that it could not rely on her evidence so far as the nature of their relationship was concerned*." The Tribunal is not intending to say here that it accepted every single aspect of Ms A's evidence on every allegation. Indeed it went on carefully and fairly to assess every individual allegation. It is simply saying that it found her to be reliable when describing the facts of the relationship (but not its nature). The fact that, despite Miss A's evidence, the Tribunal did not find certain of the allegations to be proved does not undermine this general finding.

44. The Tribunal also recorded at [29] the fact that Dr Plimmer admitted to the Tribunal that he had consistently lied to other women and those lies were elaborate and detailed. He was an accomplished liar and this in some part went to his credibility. It follows that there were credibility issues with both Miss A and Dr Plimmer.

45. It follows that there was no fundamental error of approach in the Tribunal's reasoning process in this case, as alleged by Dr Plimmer. Nor was the Tribunal's assessment of Ms A's credibility based largely if not exclusively on her demeanour, as he alleges. Indeed, the Tribunal was at pains to state in [30] that it "*did not judge the credibility of Miss A or Dr Plimmer exclusively on their demeanour when giving evidence*" and it applied the case of *Dutta v GMC* [2020] EWHC 1974 (Admin). By that, it meant that it tested Miss A's evidence against the contemporaneous IMS messages and against

the notes of her interviews when her memory would have been fresher. The Tribunal analysed the consistencies and inconsistencies in Ms A's accounts in interview and it explained that it had taken account of the fact that the accounts that Miss A gave over time described a more sinister relationship than portrayed in the IMS messages. The benefit of hindsight influenced how she perceived the relationship. This was very far from the Tribunal accepting wholesale the evidence of Ms A, whether based upon her demeanour or otherwise.

46. This is accordingly a case where the Tribunal had a significant advantage over this court in having been in a better position to judge the credibility and reliability of the oral evidence given by the witnesses, tested by reference to the contemporaneous messages and notes of interview. This court should accordingly be slow to interfere with the Tribunal's findings of fact on the individual allegations, in so far as those findings depended upon the Tribunal's assessment of all of the evidence, in circumstances where the Tribunal had the benefit, unlike this court, of observing the witnesses and weighing their evidence.

Ground of appeal 1: Allegation 4a

47. Dr Plimmer alleges that the Tribunal's findings of fact on allegation 4 were wrong.

48. I bear in mind the approach which the court should take in determining a ground of appeal of this sort, as summarised in *Yasin* (supra):

(1) The questions of primary and secondary facts and the overall value judgment made by the Panel, especially the last, are akin to jury questions to which there may reasonably be different answers;

(2) 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;

(3) Findings of primary fact, particularly founded upon an assessment of the credibility of witnesses, will be virtually unassailable (but not practically impossible).

49. Allegation 4a was that "*in or around February 2019, whilst at work you told Miss A that you had something that would cheer her up before taking her hand, without consent, and putting it on your erect penis over your clothes*".

50. The Tribunal addressed this allegation at [125]-[135]. The Tribunal noted as follows:

(1) The incident took place at a point in time when the sexual relationship between Miss A and Dr Plimmer had ended and there was a noticeable change in tone in the way that they communicated with each other in the IMS messages [126];

(2) Miss A's domestic situation had worsened to the point that she had left the family home. She was having counselling sessions with a Women's Aid

worker and was being assisted through the Multi Agency Risk Assessment Conference ("MARAC") [127];

(3) Miss A said in her statement that:

> *"I tried to leave my husband on 28 January 2019 and I had to live in someone's garage 40 miles from home. It was a very distressing and difficult time. I was a complete mess at that point. I was sat behind reception waiting to speak to my line manager, and Dr Plimmer came down to get some prescriptions and asked me how I was. I very clearly wasn't in a good place, so he put his arm around my shoulder and led me down the corridor into his room. He turned around and lent against his desk and asked if I was ok. I said that I wasn't and that I had left my husband and he was probably going to kill me. Dr Plimmer said my husband was a psycho and that he had something that would cheer me up. He stepped forwards towards me, took my hand and put it on his erect penis over his clothes."* (emphasis added) [126]

(4) Miss A confirmed this account in her oral evidence [127].

(5) The Tribunal considered earlier accounts that Miss A had given in her interviews. In particular it referred to an interview with the Surgery dated 30 September 2019 in which she said that she left home "Feb/March [2019]". She went on:

> "*I came to the reception desk and asked K where you were. She said you were with patients. I sat in reception and I was very closed and had a hoody on. TP walked out into reception and wasn't expecting to see me. He said oh hello, he said are you ok. I just turned around. I'd disclosed to him I wanted to die, and I just thought not today of all days. He came over and I was on a chair and gave me a hug and I remember having glimmer of a smile as he went on tip toes. In front of everyone he looked caring. I just wanted to say don't touch me but trying not to draw attention. I said I was going to come down to see Jo D and he said come and have a chat and put his arm around me and led me to his room. He said you know your husband is a psycho, I said it doesn't make any easier. I'm trying to remember the conversation. I was saying what was the point of anything, he said oh but your free now. I said no my whole life imploded, he said not helped either. As I turned to walk out, he came behind me to put his hands up my top so I moved his hands out, and as I turned around he said what about this, grabbed my hand and put that on his penis and said "oh that's something worth living for" then was laughing. He then led me out of his room.*" [128]

(6) Dr Plimmer accepted that from 17 December 2018 he knew that Miss A had a counsellor from Women's Aid and believed that she was a domestic abuse victim [130].

(7) Whilst disputing the allegation, Dr Plimmer admitted in his statement that he saw Miss A in reception and noted she was low and upset. He hugged her in a friendly capacity and gave her a kiss on the cheek. He motioned for them to go into his room which they did [131].

(8) The Tribunal considered the IMS messages. It referred to the change in tone from December 2018 and to the fact that the messages show that Miss A was upset, for example on 28 January 2019 she asks why Dr Plimmer had not responded to one of her messages.

51. In the light of these features of the evidence, at [133] the Tribunal determined that Miss A had been consistent in her account in her interview with the Surgery, in her witness statement and in her oral evidence. The Tribunal stated that Dr Plimmer's version of the alleged incident partly corroborated Miss A's account in that he accepted that he had hugged Miss A, had used the words "cheer you up", and had interacted with her "in a purely friendly capacity".

52. At [134] the Tribunal, in finding the allegation proved, concluded:

> "*The Tribunal noted that Dr Plimmer denied putting her hand on his penis (over clothes) but concluded that it was more likely than not that he did. Bearing in mind the state of their relationship at this time, the Tribunal considered it unlikely that, after hugging and kissing her, he ushered her to his room in order to just be a friend. He knew that she was emotionally attached to him and was used to having encounters with her of a sexual nature, in private and in his room. She described that this movement took her by surprise and that she did not consent to it. The Tribunal decided that on the balance of probabilities Dr Plimmer had not taken any steps to ascertain consent, and that it was not reasonable for him to have believed that she would have consented at that time because she was unhappy, upset and waiting to see her manager.*"

53. Mr. Day submitted that the Tribunal's reasoning was "flawed". He argued that the IMS messages show that at this time, January 2019, the sexual relationship between Miss A and Dr Plimmer had paused. Accordingly, it is, he submits, entirely unexplained how the state of their relationship at the time provides any support for this allegation. If anything, it made it more unlikely that the conduct occurred.

54. I do not accept this criticism. It is plain from [134] of the Tribunal's Determination on the Facts that the Tribunal's reference to "the state of their relationship at this time" is a reference to the fact that, as it states in the very next sentence, Dr Plimmer "*knew that she was emotionally attached to him and was used to having encounters with her of a sexual nature, in private and in his room*."

55. Moreover, as Mr. Mant, counsel for the Respondent pointed out, Dr Plimmer himself stated in his witness statement that towards the end of 2018 Miss A developed feelings for him which led him to cool their relationship as he had only wanted a sexual relationship: see paragraphs 76-77. Despite this, "*we did still continue to have*

sexual contact but it was intermittent and far less than before; it was very much based around how A felt about this going on." Indeed, as Mr. Mant pointed out, the IMS messages around this time show that Dr Plimmer continued to exchange flirtatious IMS messages with Miss A. For example: (i) on 29 January 2019 at line 4102 Dr Plimmer stated "*I want to draw clear boundaries but that's hard when I still fancy you x*"; (ii) on 1 February 2019 at line 4115 he stated "*I'm really horny ... should have stayed in bed lol you?*"; and (iii) on 1 March 2019 there are a series of sexualised IMS messages passing between them both.

56. In the circumstances it was plainly open to the Tribunal to find that Miss A was emotionally attached to Dr Plimmer at this time; that he was used to having encounters with her of a sexual nature; and that the relationship was still flirtatious and sexualised to such a degree that it was unlikely that after hugging and kissing her, he ushered her to his room in order to just be a friend; and that it was more likely that her account was true and that Dr Plimmer took no steps to ascertain her consent to his actions. Certainly, the Tribunal's finding does not exceed the generous ambit within which reasonable disagreement about the conclusions to be drawn from the evidence is possible.

57. I also reject Mr. Day's submission that the Tribunal were wrong to have found that Dr Plimmer's account partially corroborated Miss A's account. It did indeed do so, in that it confirmed that he hugged her, kissed her on the cheek, had used the words "cheer you up" and was friendly to her, before leading her into his room. As Mr. Mant submitted, this was important context to finding that it was improbable, based upon the nature of the relationship, that Dr Plimmer would have led Miss A into his room in this way for a purely platonic purpose. In short, the Tribunal's reference to Dr. Plimmer's account "partly corroborating" Miss A's account comes nowhere near being a "fundamental and critical error in reasoning".

58. Mr. Day further submits that Miss A's account was not consistent as she had said in her interview with the Surgery that Dr Plimmer had groped her breasts and yet she did not subsequently mention that in her evidence or any other interview.

59. I do not accept this criticism. What Miss A in fact said was "*he came behind me to put his hands up my top so I moved his hands out"* before stating that he grabbed her hand and put it on his penis saying "*oh that's something worth living for*". Miss A did not say that he groped her breasts. She said that he came to put his hands up her top and she moved his hands out. It is true that that detail did not subsequently appear in her statement or in her evidence but that may very well be because it formed no part of the serious allegation ultimately levelled at Dr Plimmer (which concerned placing her hand on his erect penis over his clothes without her consent).

60. Mr. Day also submits that Miss A's account was inconsistent in that in her interview with Dr Stedman of the Trust, the notes record her as saying:

> "*So, I had gone in was waiting in the corridor for her, very distressed, my car packed full of stuff, left my family home, left my children. And he called me into his room, on the basis of, I don't know, being a friend. And then when I was in his room, had taken my hand put that on his groin and then taken out his penis, and said 'this will make you feel better'. Funnily enough*

> *it didn't. So, I left the room then and thought that I need to not work at Abbeymeads so much. I tried to speak to Jo Dolby at that point, as I was a little bit distressed, but she thought that I had lots going on. Obviously, I probably looked a mess with everything, so said that we would kind of discuss that at another time. (emphasis added).*"

61. This became allegation 4(b) which the Tribunal found not to have been proved as this was the only reference to Dr Plimmer having taken his penis out of his trousers; in her witness statement and at the hearing Miss A's evidence was that he put her hand over his penis with his clothes on top. Nor was she cross-examined as to whether Dr Plimmer had taken his penis out of his trousers.

62. I do not consider that there is an inconsistency or unreliability here which undermines Miss A's account in relation to allegation 4(a). It is simply the case that the Tribunal found 4(a) proved but were not willing to go as far as finding allegation 4(b) proved as there was insufficient evidence to go that far in their finding.

63. Once again the Tribunal's finding does not exceed the generous ambit within which reasonable disagreement about the conclusions to be drawn from the evidence is possible.

64. Mr. Day finally submits that there was an inconsistency in the evidence of Ms A as to when this incident happened, which the Tribunal failed to take into account. Miss A first said in an earlier interview that the incident took place on the day she left her husband, being 28 January 2019, and that she went into work that day in order to sign some paperwork with her line manager. In her witness statement she said that she tried to leave her husband on 28 January 2019 and "*I was sat behind reception waiting to speak to my line manger*" when Dr Plimmer approached her.

65. Mr. Day submits that in cross examination Miss A was shown the IMS messages for 28 January 2019 which revealed nothing that would suggest such an event had occurred and that she had not been at work that day. Indeed, there were no messages whatsoever in the days before and after to suggest such an incident had occurred. In re-examination the date of the incident was explored and Miss A suggested she had not been in work on the day the incident occurred. This matter was then explored further by the Appellant's counsel. It was established that on 28 January 2019 the instant messages revealed she had, in fact, been at work (her evidence had been that she was not at work on that day), culminating in the following exchange :

> *Q Can I – looking at those messages, do you think that your suggestion it happened on 28 January is incorrect in terms of the date?*
>
> *A Yes, I may have got the date incorrect which of the many times I tried to leave.*

66. Thereafter, the allegation was amended to say "In or around February 2019". In submissions, Dr Plimmer placed significant weight on the fact that the matter was explicitly said to have occurred on 28 January 2019 but, he maintained, the IMS messages showed no such incident occurred then or at any point in February 2019. The IMS messages did not suggest that Miss A left her husband on any date other

than 28 January 2019 and, having left her husband on that date, she remained at her friend's annex for the whole of February 2019.

67. Mr. Day accordingly submitted that in its determination on Allegation 4a the Tribunal failed to consider at all that Miss A had previously been adamant and specific that the behaviour had occurred on 28 January 2019 (by reference to the date she had left her husband) but was compelled by the evidence to accept that could not be correct and yet it described her account as "consistent". He argues that Miss A was clear in her evidence that she was not at work on 28 January 2019 and went into work only to sign some paperwork, whereas the IMS messages show that she was at work. The Tribunal failed to consider that there was no evidence that the incident had occurred in February 2019.

68. I do not accept this submission. Miss A was clearly uncertain about the date when this event occurred. But there was sufficient evidence before the Tribunal (as described above) for it to find that the event described in the allegation occurred. Indeed, Dr Plimmer himself stated in paragraphs 82-83 of his witness statement that:

> "*82. On the morning of 28th January 2019, A told me via Instant Messenger that she had left her husband and was currently staying with a friend. I recall seeing A sitting behind the reception desk at work when I went to collect some prescriptions. I remember asking A if she wanted to have a chat and I motioned for us to go into my room, which we did. I recall asking her how she was, and I can remember that she seemed low and upset; her voice was quiet and sombre in tone. I remember that A told me that she had voluntarily left her husband and that she was staying at her friend's house. She also said that she was upset as she had let her NMC registration expire so she would be suspended from work. I do not recall at any point A saying that her husband was going to kill her. I then remember hugging her and giving her a friendly kiss on the cheek and asking her if there was anything that I could do to cheer her up, in a purely friendly capacity. I categorically deny, as alleged in her Witness Statement that I took her hand and put it on my erect penis. This is a complete fabrication of events. I note from review of the Instant Messenger messages on 28th January 2019 that we exchanged a number of messages and there was no mention of any incident of this sort.*
>
> *83.A and I intermittently continued, as stated above, to have sexual contact in 2019…*"

69. Miss A's account in her witness statement is consistent with Dr Plimmer's account in that she states that "*I was sat behind reception waiting to speak to my line manager, and Dr Plimmer came down to get some prescriptions and asked me how I was… He asked if I was ok. I said that I wasn't and that I had left my husband …*".

70. It is no doubt for this reason that in its analysis at [126]-[134] the Tribunal set out the competing accounts and determined where the truth lay on the balance of probabilities.

71. As the Tribunal stated at [25], Miss A gave evidence over a long period of time and was distressed and emotional. It is not surprising in these circumstances that she may have been confused about dates. Miss A referred in her interviews to the "many times" that she tried to leave her husband. As Mr. Mant pointed out, the fact that the incident is not mentioned in the IMS messages of a vulnerable woman subject to domestic abuse does not mean that it did not happen, particularly as both witnesses agreed, with near identical accounts (save only as to the placing of Miss A's hand on his penis), that the event did take place.

72. Unlike this court, the Tribunal heard the witnesses give evidence. Its finding of primary fact on this allegation, founded as it was in particular upon an assessment of the credibility of the two witnesses (and against the background of the consistency of the two accounts in certain material respects) is in my judgment unassailable; and the Tribunal's finding of fact – that Dr Plimmer put Miss A's hand on his clothes over his erect penis – cannot be said to exceed the generous ambit within which reasonable disagreement about the conclusions to be drawn from the evidence is possible[6].

Ground of Appeal 2: Allegation 1

73. Dr Plimmer alleges that the Tribunal's findings of fact on allegation 1 were wrong.

74. I again bear in mind the approach which the court should take in determining a ground of appeal of this sort, as summarised in *Yasin* (supra).

75. Allegation 1 was that *"in or around May 2018 you showed Miss A an unsolicited video of you engaging in sexual intercourse with another woman, whilst at work*."

76. The Tribunal dealt with this allegation at [42]-[55] of its Determination on the Facts. It noted as follows:

(1) This happened at the very start of the relationship between Miss A and Dr Plimmer. The issue for the Tribunal was whether the showing of the video was unsolicited.
(2) Whilst there were some inconsistencies in her account regarding the wording used by Dr Plimmer and the room in which the video was shown, Miss A gave broadly consistent accounts of this incident in interviews and in her evidence to the Tribunal.
(3) Dr Plimmer gave evidence that a specific conversation had taken place between them and that the video was not unsolicited. He described a very transactional discussion with Miss A to obtain her consent. There were some inconsistencies regarding the words Dr Plimmer said he used.

[6] In paragraph 51 of Dr Plimmer's skeleton argument it was argued that the Tribunal failed to mention what weight, if any, it gave to Dr Plimmer's good character. Mr. Day did not pursue this point in his oral submissions. At [29] of its Determination on the Facts, the tribunal referred to the fact that Dr Plimmer was an accomplished liar, albeit of good character. It is plain that it had this fact in mind in assessing the merit of the Allegations and there is nothing in this complaint.

(4) The first IMS message that appeared to start the sexual innuendo style messages was from Miss A on 29 March 2018. After that date the messages became more flirtatious and sexual. By 31 May the idea of showing sexual videos had taken hold.

(5) As the messages progressed, Miss A and Dr Plimmer used the word "lunch" to connote a sexual act and "menu" to connote a list of sexual videos or sexual photographs to look at.

(6) On 29 May 2018 Dr Plimmer asked about a course that Miss A had been on, which corroborates her evidence that she was preparing a presentation for a university course at that time.

(7) Dr Plimmer's account of the transactional way that he obtained consent to show the video was not credible. On the balance of probabilities the first video was unsolicited and this paved the way for videos being shown to Miss A in the future.

(8) Dr Plimmer admitted sending unsolicited photographs of his penis to Miss E shortly after meeting her on a dating app. The circumstances were similar and probative. It showed he had a propensity to send unsolicited sexual material when commencing a relationship with a woman.

77. Mr. Day submitted that the IMS messages set out at paragraph 58 of Dr Plimmer's skeleton argument show that between 30 May and 1 June 2018 Miss A was expressing thanks for the showing of sexual photos and videos, and that she was encouraging Dr Plimmer to share them with her:

a. At line 1197 on 30/5/18 Miss A encourages him to share sexual photos/videos "*…the least you can do is share what was on the menu*." At line 1198 Dr Plimmer replies "*Haha, sharing is carin and i even take pictures and videos of the menus sometimes (with the bakery's consent of course*)". Mr. Day submitted that this "strongly suggests that this message was sent before Dr Plimmer showed Miss A a sexual video as he is here introducing that he does take videos of sexual activity".

b. At line 1203 on 30/5/18 Miss A encourages him to take a sexually explicit picture "*Off to the bakery ? i recommend pound cake. take a picture if you can.*" Mr. Day said that Miss A's evidence that this might have been a genuine request for a picture of a cake would be laughable if it did not reflect the serious issue that she was willing to mislead the Tribunal.

c. At line 1288 on 31/5/18 Miss A mentions that she "*might pop in to see a menu if im hungry.*" Mr. Day submitted that the Tribunal must have found this to be a reference to Miss A indicating, without invitation, that she might enter Dr Plimmer's room to look at a sexual image/video.

d. At line 1321 – 1323 on 1/6/18 Miss A thanks Dr Plimmer for the earlier help to which he replies, "*Blood test help or video of menu help*?" to which Miss A replies "*both to differing degrees nice to get some positive feedback*". Mr. Day submits that this is clearly a reference to the fact that Dr Plimmer had shown her a sexual video and is the first such message which demonstrates a video had been shown.

78. Crucially, however, the submission advanced by Mr. Day that Ms A solicited the first video from Dr Plimmer formed no part of Dr Plimmer's evidence before the Tribunal. His evidence was that he asked Miss A directly whether she would like to watch a

video of him performing sexual acts and she replied "yes" without peripheral discussion: see paragraph 54 of his witness statement, as confirmed in his oral evidence on 25 September 2023. This was the "transactional" account of Dr Plimmer to which the Tribunal referred. There was nothing in Dr Plimmer's evidence to suggest, as he now wishes to put his case on appeal, that there was instead an initial exchange of text messages followed by the first sharing of the video at Miss A's request.

79. In the circumstances I do not consider it is open to Dr Plimmer to re-cast his case in this way on appeal.

80. In any event, both Miss A and Dr Plimmer agreed that Ms A was shown an explicit video around May 2018. The Tribunal had the IMS messages well in mind as it referred at [53] to the fact that they showed that by 31 May 2018 (ie the end of that month) the idea of showing sexual videos had taken hold. That finding is not inconsistent with the first video sent to Ms A by Dr Plimmer (before that date) being unsolicited.

81. The Tribunal clearly preferred the evidence of Miss A to that of Dr Plimmer, as it was entitled to do, having heard the witnesses give evidence, unlike this court.

82. Mr. Day also argued that the similar fact evidence relied upon by the Tribunal was not at all similar and took place years after the incident which is subject to allegation 1. I do not agree. The sending of unsolicited photographs to Miss E at the start of her relationship with Dr Plimmer is some support for the Tribunal's conclusion. This was two years later, but there was no medical evidence before the Tribunal to suggest that Dr Plimmer's compulsive sexual behaviour disorder was any different in nature or severity at the two points in time.

83. In the circumstances, the Tribunal's finding of primary fact on this allegation, founded as it was in particular upon an assessment of the credibility of the two witnesses is in my judgment unassailable; and the Tribunal's finding of fact – that Dr Plimmer showed Miss A an unsolicited video of him having sexual intercourse with another woman – cannot be said to exceed the generous ambit within which reasonable disagreement about the conclusions to be drawn from the evidence is possible.

Ground of Appeal 3: Allegation 15

84. Dr Plimmer alleges that the Tribunal's findings of fact on allegation 15 were wrong.

85. I again bear in mind the approach which the court should take in determining a ground of appeal of this sort, as summarised in *Yasin* (supra).

86. Allegation 15 was that *"Between 20 February 2021 and 7 March 2021 in a conversation with Miss D you threatened Miss F saying "if that cunt takes me to the GMC I'll slit her throat. I know where she lives" or words to that effect."*

87. The Tribunal dealt with this allegation at [220]-[231] of its Determination on the Facts. It noted as follows, in particular:

(1) Dr Plimmer had been in a relationship with Miss D and had moved into her home. He had a previous relationship with Miss F and Miss F had contacted Miss D in February 2021 when she had seen Miss D and Dr Plimmer together on a website. Miss F told Miss D that she had recently been in a relationship with Dr Plimmer.

(2) Miss D in her witness statement described what Dr Plimmer had said[7]:
'*One evening, I asked Dr Plimmer what he would do if he had to go to the GMC again. He said [of Miss F] "if that cunt takes me to the GMC I'll slit her throat. I know where she lives". I immediately texted asking her if she lives alone because I believed Dr Plimmer was capable of killing her. She said yes. I then later told her what Dr Plimmer had said*.'

(3) Miss D gave evidence to the Tribunal about this allegation. She confirmed what he had said. She accepted that the term might have been a figure of speech. She also agreed that she had not informed Miss F immediately.

(4) Miss D had sent a WhatsApp message to Miss F on 7 March 2021 at 15:22 in the 'Cheaters Club' WhatsApp group, to warn her of Dr Plimmer's alleged threat and stated:
'*I need to tell you something. He told me if the gmc do anything to him, he will slit your throat and he knows where you live.'*

(5) Miss F said that she received the WhatsApp message from Miss D on 7 March 2021 and that she thought it not to be an empty threat and that she was concerned for her own safety. She contacted the police.

(6) The Tribunal noted that Dr Plimmer accepted that he had said some of the words. He did not accept that he said that he knew where Miss F lived, because he did not. He explained in his statement:
'*In the heat of the moment, I did say that I "could slit her throat". I did not say that I 'would' or 'will' slit her throat, and I did not mention where Miss F lived, as it had been months since I had seen her, and I no longer, to the best of my knowledge, had her address'.*

88. The Tribunal found (at [228]) that Miss D gave consistent evidence about this and that her account – that Dr Plimmer said he would slit Miss F's throat and that he knew where she lived - was consistent with her WhatsApp message to Ms F. The Tribunal accordingly found that it was more likely than not that Dr Plimmer said the words described by Miss D. This finding was plainly open to the Tribunal on the evidence. It was also based upon an assessment of the credibility of Miss D, whom the Tribunal found gave consistent evidence in respect of this (slit her throat/knew where Miss F lived) part of the allegation[8]. The fact that Dr Plimmer may himself have given a

[7] The undisputed evidence before the Tribunal had established that on 20 February 2021 Miss F and Miss D exchanged by WhatsApp multiple highly personal messages about Dr Plimmer's infidelity and lies that he had told them both. The messages included mention of possible GMC referral. Later on 20 February 2021 Miss F sent messages to Dr Plimmer first stating that she was minded to report him to the GMC, then stating that she had reported him to the GMC.

[8] Contrary to paragraph 65 of Dr Plimmer's skeleton argument, the fact that the tribunal recognised in Annex D, paragraph 35 of its Determination that in terms of the caselaw, Miss D was "a witness who may have had a reason to fabricate or exaggerate her evidence" is not inconsistent with the finding that her evidence in respect

consistent account does not mean that this finding was not open to the Tribunal. Accordingly I consider this finding of fact to be unassailable.

89. The Tribunal also determined (at [229]) that Miss D took the words seriously enough to inform Ms F, who in turn informed the police. It found that Dr Plimmer knew that Miss D and Miss F were in contact and the Tribunal found that it was likely that he thought that the words would be conveyed to Miss F. Whilst the Tribunal found that the act (slitting Miss F's throat) was not going to be literally carried out, the words used were sinister in nature and constituted a threat to Miss F.

90. Mr Day had two complaints concerning the approach of the Tribunal.

91. First, Mr Day submitted that it was never put to Dr Plimmer by the GMC or the Tribunal that he knew, intended or thought it likely that his words would be relayed to Miss F and that this was a "serious failing" amounting to procedural unfairness in the Tribunal's finding of fact. Unless that was his intention, Mr. Day submitted, how could Dr Plimmer threaten Miss F? He put this argument on a procedural unfairness basis, and referred to *Byrne v GMC* [2021] EWHC 2237 (Admin) in which Morris J stated at [21]:

> "*Where the court below is considering reaching a conclusion on a case theory, or basis of facts or a version of events, not based on the oral or documentary evidence before it and not put forward by either party, it must give the parties a reasonable opportunity to address that basis before reaching such a conclusion; and not to do so amounts to procedural unfairness: Dutta §§34 to 36*".

92. However, as Mr. Mant submitted, in determining whether or not there was any procedural unfairness on the facts of this case, it is necessary to consider whether Dr Plimmer was deprived of putting forward relevant evidence on this issue. He was not. The charge was that he "threatened Miss F" by saying *"if that cunt takes me to the GMC I'll slit her throat. I know where she lives"* or words to that effect. He knew that he was accused of threatening Miss F. The charge necessarily implied that he knew that his threat would or might be conveyed to Miss F as she could not be threatened by Dr Plimmer if he knew or intended that his words would not be conveyed to her. It follows that Dr Plimmer knew the case that he had to meet and there was no procedural unfairness. Indeed, that he knew the case that he had to meet (that he intended to threaten Miss F via Miss D) is apparent from paragraph 155 of his witness statement in which he stated that "*I hugely regret using such language and I am very embarrassed by what I did. It was not a threat, but figurative language and I had no intention for Miss D to believe it or for her to relay it to Miss F.*"

93. Second, Mr. Day submitted that the date of the threat was not agreed. Dr Plimmer's evidence was that it was approximately two weeks before Miss F was informed of this comment on 7 March 2021 (i.e. around 21 February 2021). Miss D acknowledged in evidence that the comment was made within a week of 20 February 2021 and that she did not inform Miss D until 7 March 2021. It follows, Mr. Day submitted, that the comment was made at least 7 – 14 days before it was passed on to Miss F. For this

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of this part of the allegation was consistent. Indeed, it demonstrates that the Tribunal considered all relevant features of her evidence, including any potentially negative features, in determining whether or not it could safely rely upon it. That is a judgment which it is for the Tribunal to make.

reason, the GMC amended the charge from 7 March to between 20 February 2021 and 7 March 2021. At no point, submitted Mr. Day, did the Tribunal recognise that the likely date was 20 February 2021 because that was the date Dr Plimmer had been told of the referral to the GMC and thus it was inherently likely that it would have been a topic of conversation on that day. And yet, he submitted, it was not until 24 February 2021 that Dr Plimmer became aware that Miss D was relaying what he said to Miss F, because on that date Miss D sent to Miss F disparaging remarks which Dr Plimmer had made to Miss D about Miss F's appearance, which Miss F then forwarded to Dr Plimmer and he apologised for having made those remarks. It follows that Dr Plimmer could not have intended his (slit her throat) remarks to Miss D on 20 February to be relayed to Miss F.

94. However, as Mr. Mant pointed out in reply, Dr Plimmer's own witness statement made clear that he knew that Miss D and Miss F had been in contact with one another before 24 February. At [226]-[227] he stated as follows:

> "*226. In or around 2 February 2021 Miss D found out about me having dated Miss F and that I had had sex with her. As stated above, in February 2021 Miss D decided to look for a puppy; she used a website called PetsAtHome and posted a picture of us without my consent. Miss F messaged Miss D and said she had recently had a relationship with me. Miss D telephoned me to ask me about this. Initially I could not remember or recognise the name, but after having been shown a picture of Miss F I recalled that I had seen her around 3 times and that we had had sex. I told Miss D this but explained that Miss F and I were not in a relationship.*
>
> *227. As stated above, Miss D says that she asked me what I would do if I had to go to the GMC again. As stated above, Miss D says that I said if Miss F took me to the GMC, that I would slit her throat and I knew where she lived. In the heat of the moment, I did say that I "could slit her throat". I did not say that I would, and I did not mention where Miss F lived, as it had been months since I had seen her, and I no longer, to the best of my knowledge, had her address.*"

95. Dr Plimmer then stated at [228]:

> "*Miss F messaged me on 20 February 2021 after having found out I had lied to her and told me that she was going to report me to the GMC. I apologised to her for my behaviour.*"

96. It follows that Mr. Day's submission that 24 February 2021 was the first time that Dr Plimmer learned that Miss D and Miss F were in contact with each other is untenable on the facts; the Tribunal was fully entitled to conclude that it was considerably earlier than that.

97. Moreover, as Mr. Mant submitted, the messages passing between Miss D and Miss F on 20 February 2021 (set out in paragraph 48 of the GMC's skeleton argument) were extensive and intimate and so it was entirely open to the Tribunal on the evidence

before it to infer that, knowing that Miss D and Miss F had been in communication about his infidelity, Dr Plimmer would have thought it likely that his (slit her throat) comments would be passed on to Miss F by Miss D.

98. Mr Day also submitted that the Tribunal should have found that the (slit her throat) language was merely figurative language, hence why Miss D had not done anything about it for a fortnight. But the Tribunal expressly addressed this argument in [223] of its Determination on the Facts that Miss D accepted that the term might have been a figure of speech and that she had not informed Miss F immediately. Moreover the act suggested in the words was not going to be literally carried out ([230]). However, it found ([230]) that the words were sinister in nature and did constitute a threat to Miss F and it was likely that Dr Plimmer thought that the words would be conveyed to Miss F ([229]). On the evidence, this was a finding which it was open to the Tribunal to make having heard and seen the witnesses; it certainly does not exceed the generous ambit within which reasonable disagreement about the conclusion drawn from the evidence is possible.

99. In the circumstances, this ground of appeal fails.

Ground of Appeal 4

100. By this ground of appeal, Dr Plimmer argues that if the factual findings which are the subject matter of grounds of appeal 1, 2 and/or 3 fall away, then the Tribunal's decision on impairment and sanction must also fall away. Since each of grounds of appeal 1, 2 and 3 fail, it follows that this ground also fails. I should add that even if ground of appeal 3 had succeeded, I would still have found that the Tribunal's determinations on impairment and sanction, based upon its findings of sexual misconduct (as described below), were not wrong.

Impairment: Ground of Appeal 5 and Ground of Appeal 6

101. Ground 5 alleges that the Tribunal's decision on impairment wrongly considered irrelevant matters. Mr. Day argued Ground 5 together with Ground 6 which alleges that the Tribunal wrongly determined that all four limbs of Dame Janet Smith's test for impairment in the fifth Shipman Inquiry were engaged.

102. Rule 17(k) of the GMC (Fitness to Practise) Rules 2004 provides:

> "*the Medical Practitioners Tribunal shall receive further evidence and hear any further submissions from the parties as to whether, on the basis of any facts found proved, the practitioner's fitness to practise is impaired.*"

103. Section 35C(2) of the Medical Act 1983 provides:

> "*(2) A person's fitness to practise shall be regarded as "impaired" for the purposes of this Act by reason only of—*
>
> *(a) misconduct…*
>
> *(d) adverse physical or mental health…"*

(a) Impairment on grounds of misconduct

104. In its Determination on Impairment dated 26 April 2023 at [49] the Tribunal stated as follows:

> "*Whilst there is no statutory definition of impairment, the Tribunal is assisted by the guidance provided by Dame Janet Smith in the Fifth Shipman Report, as adopted by the High Court in CHRE v NMC & Grant [2011] EWHC 927 (Admin) ('Grant'). Dame Smith sets out some features that are likely to be present when impairment is found. These are where a doctor has in the past or is liable in the future to:*
>
> *a. act so as to put a patient or patients at unwarranted risk of harm.*
>
> *b. bring the medical profession into disrepute.*
>
> *c. breach one of the fundamental tenets of the medical profession;*
>
> *and/or*
>
> *d. have acted dishonestly and or is liable to do so in the future*".

105. Before the Tribunal, Dr Plimmer admitted:

(1) that his conduct amounts to misconduct [22];
(2) a finding of impairment is necessary in order to mark that conduct in order to declare and uphold proper standards and to declare and uphold public confidence in the profession and the regulator [22][9].
(3) misconduct and impairment, looking at the case as a whole [38].

106. At [57] of its Determination on Impairment, the Tribunal stated in particular as follows:

> "*The Tribunal must also determine whether the need to uphold professional standards and maintain public confidence would be undermined if a finding of impairment were not found. The case of Grant makes it clear that protecting the public and upholding proper standards and public confidence in the profession is a fundamental consideration. In the case of Cheatle v GMC [2009] EWHC 645 (admin) it was stated that a doctor's behaviour at a particular time maybe 'so egregious' that, looking forward, a Tribunal may be persuaded that a doctor is not fit to practise. It is crucial that the Tribunal is mindful at all times of the overarching objective set out in s1 of the Medical Act 1983 which requires the Tribunal to:*

[9] Before this court, Mr. Day confirmed that this meant that "both parties agreed limbs b and c were engaged in this case".

> *a. Protect, promote, and maintain the health, safety and well-being of the public,*
>
> *b. Promote and maintain public confidence in the medical profession, and*
>
> *c. Promote and maintain proper professional standards and conduct for members of that profession.*"

107. The Tribunal then went on to consider each individual allegation which was either proved or admitted in order to determine whether serious misconduct was proved or not in each case. It found that serious misconduct was established in respect of each of those allegations with an asterisk next to them below:

> ***Bold, black type = allegation denied but found proved;***
> ***Red type = findings found proved which are appealed against;***
> ***Green type = allegation admitted.***
> *Normal type = allegation not proved*
> ***----------***
> ****1 [May 2018 Dr Plimmer showed Miss A video of his having sex with another woman];***
>
> ****2c [May-August 2018 Dr Plimmer approached A at work with trousers undone (despite Plimmer denial) but Miss A not uncomfortable];***
>
> ****2d [Dr Plimmer admission – May - August 2018 he masturbated in front of Miss A at work with her consent];***
>
> *3a [May 2018- September 2019 penetration of Miss A with penis at work but with consent so not proven];*
>
> *3b [one act of penetration of Miss A with cucumber at work but with consent, so not proved];*
>
> ****4a [February 2019Dr Plimmer putting Miss A's hand on his penis over his clothes];***
>
> ***5c [September 2019 - futurama suicide booths – comment made to Miss A but not malicious – proved on that basis]; [not serious misconduct]***
>
> ***6a – Dr Plimmer knew Miss A vulnerable after 17.12.18 so proved in respect of allegations 4a and 5c];***
>
> ****7ai – Between May 2018 and September 2019 admission: Dr Plimmer sent video to Miss A of him engaging in sex with another woman; [only serious misconduct after 17.12.18]***
>
> ****7aii - May 2018 - September 2019 admission: Dr Plimmer sent video to Miss A of him masturbating over a woman; [only serious misconduct after 17.12.18]***

7aiii – May 2018 - September 2019 admission: Dr Plimmer sent a photo of him with head in a noose; [not serious misconduct]

8a [Dr Plimmer's actions in para 7aii carried out knowing A was vulnerable, sending video of his masturbating over a woman];

****9 – 3.1.2020: Dr Plimmer engaged in oral sex with Ms B in GP surgery during working hours;***

****10. – May 2020: Dr Plimmer engaged in sex with Ms C in GP surgery during working hours;***

12a – February 2021 – during a conversation with Ms D snatched a phone from her hand. [not serious misconduct]

****14a – Dr Plimmer sent Miss E unsolicited photo of his penis taken whilst at work on 1.2.21;***

****14b – Dr Plimmer sent Miss E unsolicited photo of his penis taken whilst at work on 11.2.21;***

****15 [Dr Plimmer threatens to slit throat of Miss F if she goes to GMC and says he knows where she lives;***

16 [actions in paras 1, 2c, 4a sexually motivated]; admitted that actions in 2d, 7a, 9, 10, 14a and 14b also all sexually motivated

108. I agree with Mr. Mant that in view of the totality of the allegations which were found proved and admitted a finding that Dr Plimmer's fitness to practise is impaired by reason of serious misconduct was inevitable. The misconduct over a three year period consisted of a number of sexually motivated allegations including (i) putting the hand of Miss A over his clothed penis without her consent when she was vulnerable; (ii) sharing unsolicited sexual images with 2 different women either at work or taken at work; (iii) committing sexual acts in the surgery during the working day with 3 different women[10].

109. The Tribunal's analysis that there was impairment by reason of misconduct is contained in paragraphs [124]-[148] of its Determination on Impairment. The Tribunal correctly considered first whether there was serious misconduct in relation to each of the individual allegations and then secondly, whether impairment was established. It found at [125] that "*limbs b and c of the test set out by Dame Janet Smith … were applicable in this case, in that Dr Plimmer had brought the medical profession into disrepute and had breached the fundamental tenets of the profession*." That finding is consistent with the admissions made by Dr Plimmer which I have referred to in paragraph 105 above. It follows that the Tribunal was fully entitled to make this finding and the challenge to its finding on impairment must fail.

[10] It should be noted that Dr Plimmer recognised that sexual encounters in his workplace was unacceptable and unprofessional and constitutes misconduct: Determination on Impairment at [33].

110. This conclusion is not undermined by the fact that the Tribunal went on also to consider whether limbs a) and d) of Dame Janet's test were engaged. This was an additional finding which does not undermine the finding of impairment relating to limbs b) and c). Whilst the Tribunal found that limbs a) and d) were engaged to a "lesser extent", it went on to make its finding of impairment (and subsequently, sanction) based upon on limbs b) and c) of the test set out by Dame Janet Smith, as it stated at paragraphs [144]-[145] of its Determination on Impairment as follows:

> "*The Tribunal considered the seriousness of the misconduct. There is a pattern of sexually motivated behaviour that took place over almost three years involving a number of women. The Tribunal decided that this behaviour taken both separately and together brings the medical profession in disrepute and breaches fundamental tenets of the medical profession.*
>
> *The Tribunal considered its overarching objective. It determined that Dr Plimmer's misconduct could undermine the public's confidence in the medical profession and is below the proper professional standards and conduct expected of members of the profession.*
>
> *The Tribunal decided that Dr Plimmer's misconduct is so serious that public confidence in the medical profession would be undermined if a finding of impairment were not made*."
>
> (emphasis added)

111. This is also confirmed by its Determination on Sanction. For example, at [53] the Tribunal states that:

> "*imposing conditions on Dr Plimmer's registration would not sufficiently mark the seriousness of the misconduct in this case. Conditions would not be appropriate as they would not be sufficient to maintain public confidence in the profession and uphold proper professional standards.*"

112. The Tribunal adopted a similar approach at [59] in stating that a period of suspension "*would not be sufficient to maintain public confidence in the profession, nor promote and maintain proper professional standards and conduct for members of the profession*." And, finally and importantly, it concludes at [65] that:

> "*erasure in this case is necessary in order to maintain public confidence in the medical profession, and to uphold proper professional standards and conduct for members of the profession.*"

113. Mr. Day raised a series of further arguments by which he sought to reduce the significance of the Tribunal's finding of impairment, none of which I accept.

114. First, Mr. Day's suggestion that the Tribunal imported an irrelevant and improper consideration at [140] wherein it noted that "[*Dr Plimmer*] *accepted that he had a long history of multiple sexual relationships with people who had expected monogamy*" is unfounded. The Tribunal did not "focus significantly upon" Dr

Plimmer's infidelity at the impairment stage. It mentioned this in passing at [140] in discussing the fact that his health conditions were "longstanding and deep seated".

115. Second and separately, Mr. Day advanced a case in his skeleton argument at paragraphs 81-87 that Allegations 7ai, 7aii and 8 – sending sexual photos/videos to Miss A after Dr Plimmer knew that she was vulnerable and a victim of domestic violence – should not have been found by the Tribunal to amount to misconduct.

116. I do not accept Mr. Day's submission. At [76]-[77] of its Determination on Impairment the Tribunal found as follows:
"76. The Tribunal secondly considered the occasion when Dr Plimmer sent the photos/videos after 17 December 2018. From this time onwards, the Tribunal decided that Dr Plimmer knew that Miss A was vulnerable. At this time, he knew that she was escaping from an abusive domestic relationship and was seeing a Women's Aid counsellor. Dr Plimmer accepted that he knew that she 'most likely a domestic violence victim', and the Tribunal noted that she continued in this vulnerable state during this period of time when she moved back into the marital home to care for her husband.
77. Again, the Tribunal acknowledged and considered Mr Day's submission that it cannot be the case that a professional should end a sexual relationship if they subsequently discover that the other party to the relationship is vulnerable. However, Dr Plimmer had explained that the relationship with Miss A was a transactional one, not a romantic one. He was aware that she was struggling to cope with their relationship during this period of time, as evidenced by the IMS messages. The Tribunal decided that treating Miss A in this way was morally culpable, as Dr Plimmer had witnessed her distress on an earlier occasion yet continued the sexually motivated and inappropriate conduct. The Tribunal determined that continuing in this way breached GMP, in that it was a serious failure to treat colleagues with respect."

117. Mr. Day submitted that the entirety of the Tribunal's reasoning on this issue stems from the fact that in December 2018/January 2019 Miss A had expressed her upset at feeling rejected by Dr Plimmer, who had chosen another woman over her. The Tribunal essentially found, he argued, that a doctor continuing a purely sexual relationship with a consenting adult who had previously expressed feelings for the doctor was serious misconduct. Mr. Day contended that not only is this an impermissible encroachment on a doctor's private life but it was not part of the allegations.

118. Moreover, Mr. Day submitted, it was a decision made in the face of clear, compelling evidence that in January 2019 and then into Spring/Summer 2019 the IMS messages that Miss A sent prompted the sexual interactions, that Miss A had repeatedly expressed that she wished to return to an uncomplicated sexual relationship, and had requested sexual videos after Dr Plimmer had stopped their sexual interactions as a result of Miss A's expression of feelings for him at the Christmas party.

119. I do not accept these submissions. As the court stated in *Beckwith v Solicitors Regulation Authority* [2020] EWHC 3231 (Admin) at [54]:

> "*There can be no hard and fast rule either that regulation under the [Solicitors'] Handbook may never be directed to the regulated person's private life, or that any/every aspect of her*

> *private life is liable to scrutiny. But Principle 2[11] or Principle 6[12] may reach into private life only when conduct that is part of a person's private life realistically touches on her practise of the profession (Principle 2) or the standing of the profession (Principle 6). Any such conduct must be qualitatively relevant. It must, in a way that is demonstrably relevant, engage one or other of the standards of behaviour which are set out in or necessarily implicit from the Handbook. In this way, the required fair balance is properly struck between the right to respect to private life and the public interest in the regulation of the solicitor's profession...*"

120. In my judgment the Tribunal was fully entitled to find that a doctor sending a work colleague photographs/videos of him engaging in sexual intercourse with another woman or of him masturbating after he learned that that work colleague was vulnerable and struggling to cope, being a victim of domestic violence and seeing a Women's Aid counsellor, amounts to serious misconduct. It is not at all comparable with a straightforward case of a consensual sexual relationship with an individual who was previously a victim of domestic violence for the reasons which the Tribunal gave, namely the relationship with Miss A was a transactional one, not a romantic one and Dr Plimmer was aware that she was struggling to cope with their relationship during this period of time.

121. This behaviour – which the Tribunal found as a fact was transactional (i.e. purely to satisfy his sexual needs) - both touches on his practise of the profession, affecting as it does a vulnerable work colleague, and also touches upon the standing of the profession and public trust in it, as many would consider it to be morally reprehensible conduct for a doctor to behave in this manner. His conduct affects the collective reputation of his profession.

122. Nor is it appropriate for this court, which has not heard or seen the witnesses give evidence, to second-guess the Tribunal's factual findings based upon a selection of the IMS messages, as Dr Plimmer invites it to do in paragraph 85 of his skeleton argument.

123. Finally, in his skeleton argument at [96]-[99], Mr Day criticises the Tribunal for allegedly failing to engage with the submissions that sexual misconduct in the GMC Sanctions Guidance referred to sexual acts that were "inherently improper".

124. I reject this submission. Dr Plimmer recognised himself that sexual encounters in his workplace were unacceptable and unprofessional and constitute misconduct: Determination on Impairment at [33]. It follows that this argument is academic. But in any event, I consider it to be without foundation. The Sanctions Guidance is drafted broadly. Paragraphs 149-150 provide as follows:

> "*Sexual misconduct*

[11] You must act with integrity.

[12] You must behave in a way that maintains the trust the public places in you and in the provision of legal services.

> *149 This encompasses a wide range of conduct from criminal convictions for sexual assault and sexual abuse of children (including child sex abuse materials) to sexual misconduct with patients, colleagues, patients' relatives or others…*
>
> *150 Sexual misconduct seriously undermines public trust in the profession…*"

125. The Guidance does not just concern sexual conduct which, as Mr. Day argued, is "inherently improper", whatever that may mean. Any sexual misconduct which undermines public trust in the profession – which includes Dr Plimmer's misconduct in this case – is covered by the Sanctions Guidance (including, as here, sexual misconduct with colleagues). Contrary to paragraph 96 of his skeleton argument, as I have stated, Dr Plimmer recognised himself that having sexual encounters in his workplace constitutes misconduct.

126. Moreover, contrary to Dr Plimmer's submission, the sexual misconduct in this case amounted to a *pattern* of sexual misconduct over three years, as the Tribunal found at [144]. During this period, Dr Plimmer engaged in a series of inappropriate sexual acts which were all connected to his practice/workplace in various ways: (i) sexual acts in the workplace with colleagues, including a non-consensual act; (ii) showing an unsolicited sexual video in the workplace to a colleague; (iii) sending sexual images to a colleague in the workplace after learning that she was vulnerable and a victim of domestic abuse; (iv) taking sexual photographs of himself in the workplace and then sending them, unsolicited, to other women. The Tribunal was fully entitled to find that taken both separately and together this pattern of misconduct brings the medical profession into disrepute and breaches fundamental tenets of the medical profession.

(b) Impairment on grounds of adverse mental health

127. In addition to the allegations of misconduct, allegations 17 and 18 concerning Dr Plimmer's health were admitted and found proved as follows:

> "*17: On 30 May 2022, you were medically examined by Dr G who diagnosed you as suffering from a medical condition, the nature of which is set out in Schedule 3*[13].
>
> *18. On 31 May 2022, you were medically examined by Dr H who diagnosed you as suffering from a medical condition, the nature of which is set out in Schedule 4.*"

128. Dr Plimmer accepted in his evidence that he was currently impaired and would need support and conditions in order to practise [Determination on Impairment, [120]. The Tribunal unsurprisingly determined at [123] and [147] that Dr Plimmer's fitness to practise is also impaired by reason of adverse physical or mental health and its decision in that respect cannot possibly be said to be wrong.

[13] The court was not provided with the schedules to the Determination but it is apparent from [117]-[119] of the Tribunal's Determination on impairment that Dr G diagnosed Compulsive Sexual Behaviour Disorder ("CSBD") and Excessive Sexual Drive. Dr H diagnosed Recurrent depressive disorder, currently in remission and CSBD.

129. Mr. Day argued, in paragraphs 88-92 of his skeleton argument, that the Tribunal failed to deal adequately with Dr Plimmer's health. There is no merit in this suggestion. The Tribunal dealt fully and fairly with the issue of his health in its Determination on Impairment at [24]-[26], [31], [39], [47], [53]-[55], [114]-[123], [137]-[143] and [147]. Dr Plimmer and the two medical experts confirmed that his health condition is chronic and the monitoring and managing of it was "lifelong": [127]. Mr Day criticises the Tribunal for stating that there is a high risk of harm posed to others if there is a relapse in Dr Plimmer's mental health condition. But that was an evaluation which it was fully entitled to reach on its factual findings in this case together with the medical evidence (see in particular [138]) and indeed Mr. Plimmer's own evidence. As the Tribunal noted itself ([141]): (i) in 2014 Dr Plimmer attended Sex Addicts Anonymous for 12 months and attended a 12 step programme, but it did not work and he relapsed; (ii) in 2016 a different Tribunal had also found that Dr Plimmer's fitness to practise was impaired by reason of his health, which included "*personality difficulties related to lack of judgment*" (this was before his CSBD diagnosis); and (iii) the misconduct in this case began in May 2018. The Tribunal records the fact that (at [142]) "*Dr Plimmer told the Tribunal that he has strategies to manage his behaviour now, and the public would be beholden to Dr Plimmer to manage his conditions so as not to expose them to harm*."

130. In paragraphs 93-95 of his skeleton argument Mr Day also criticised the Tribunal's finding at [142] that:

> "*Notably, the misconduct starts from May 2018, yet Dr Plimmer only sought help after a complaint had been made to the Trust and the GMC in February and March 2021. The Tribunal is concerned that Dr Plimmer knew what he was doing was wrong. He explained this by describing 'selfish compulsive behaviours, stronger than the will to resist.' However, he also described being able to manage some boundaries, such as the doctor/patient relationship which seems to conflict with this explanation. The Tribunal found this difficult to reconcile with the evidence he gave about compulsive behaviours.*"

131. However, the criticisms amount to nothing more than Dr Plimmer asserting that the Tribunal should have come to a different conclusion on the evidence about his health condition. It was perfectly open to the Tribunal on the evidence to find (at [143]) that, notwithstanding Dr Plimmer's insight and attempts to remediate, in view of the prior history of Dr Plimmer's behaviour and the medical evidence, there was a considerable risk of his relapsing and a repetition of his misconduct, particularly when under stress, in light of the chronicity and nature of his disorder. It was also open to the Tribunal on the evidence to find that (at [142]) Dr Plimmer knew what he was doing was wrong and that he was able to manage some boundaries and curtail his behaviour, such as in the case of the doctor/patient relationship. This was not at all a perverse finding as Mr Day asserts. In any event, whether Dr Plimmer knew what he was doing was wrong was a matter which went to mitigation, and as the court explained in *Jagjivan* (supra), matters of mitigation are likely to be of considerably less significance in regulatory proceedings than to a court imposing retributive justice, because the overarching concern of the professional regulator is the protection of the public.

132. In all the circumstances, I find that Grounds of appeal 5 and 6 fail.

133. I would add that in any event, regardless of these (unfounded) criticisms of the Tribunal's reasoning, impairment was *admitted* by Dr Plimmer and the real issue is accordingly whether the sanction of erasure was appropriate and necessary in the public interest. The Tribunal found that it was. I turn to that issue next, which is the final issue for the court's determination.

Sanction: Grounds of Appeal 7 and 8

134. By grounds 7 and 8, Dr Plimmer argues that:

> "*7. The Tribunal's determination on sanction was based on its findings at the impairment stage; if grounds 5 or 6 are allowed, the determination on sanction cannot stand.*
>
> *8. Further, and in the alternative, the Tribunal's determination on sanction that the misconduct was fundamentally incompatible with continued registration was wrong and it ought to have imposed an order for suspension.*"

135. Ground 7 falls away as I have rejected grounds 5 and 6.

136. In order to determine whether ground 8 is made out, in accordance with *Sastry*, the court must conduct an analysis as to whether the sanction imposed was wrong; that is, whether it was appropriate and necessary in the public interest or excessive and disproportionate. In the latter event, the appellate court should substitute some other penalty or remit the case to the Tribunal for reconsideration. The sanction must be shown to have been clearly inappropriate.

137. The Tribunal's analysis in determining the appropriate sanction, contained in its Determination on Sanction dated 30 April 2023 was logical and principled:

(1) It started by observing that the sanction was a matter for it, exercising its own judgment [24];
(2) It took into account the Sanction Guidance, which meant considering the least restrictive sanction first and moving through the options in ascending severity [25];
(3) It reminded itself that the purpose of a sanction is not punitive but to protect patients and the wider public interest [26];
(4) It stated that the sanction must be appropriate and proportionate. The reputation of the profession as a whole is more important than the fortunes of any individual member [26];
(5) It noted that Dr Plimmer's fitness to practice is currently impaired due both to his misconduct and health. It follows that the full range of sanctions in the Sanctions Guidance apply [27];
(6) It recognised that even if there is a strong link between the misconduct and the health problems, the Tribunal must nevertheless address the misconduct to ensure that public confidence is maintained: *Crabbie v GMC [2002] 1 WLR 310* and *Sreenath v GMC* [2002] UKPC 56 [28];
(7) It took into account Dr Plimmer's good character [29];

(8) It also took account of, and first bore in mind the overarching objective of the GMC set out in section 1 of the Medical Act 1983 to (a) protect, promote, and maintain the health, safety, and well-being of the public; (b) promote and maintain public confidence in the medical profession, and (c) promote and maintain proper professional standards and conduct for members of that profession [30];

(9) It then took account of the aggravating features of the case by reference to paragraphs 50-59 of the Sanctions Guidance [34]-[38], followed by the mitigating factors by reference to paragraphs 25(a)-(e) of the Sanctions Guidance [39]-[44].

(10) It then referred to the aggravating and mitigating factors specific to the circumstances of the case ([45]-[48]), before moving through the sanction options in ascending order of severity in the light of its factual findings [49]-[66] and then finally concluding that erasure was necessary in Dr Plimmer's case to maintain public confidence in the profession ([64]).

138. I consider that the sanction of erasure was appropriate; it was certainly not clearly inappropriate. This is a case where the Tribunal has made numerous findings of sexual misconduct which were connected to Dr Plimmer's practice as a doctor in the ways described above. The misconduct in issue concerns his personal integrity (or rather lack thereof) that impacts on the reputation of the profession. It undermines public trust in the profession. It is accordingly harder to remediate than poor clinical performance. In such a case mitigation is given limited weight, as the reputation of the profession is more important than the fortunes of the individual member.

139. I consider that Dr Plimmer's criticisms of the Tribunal's reasoning on sanction are unjustified.

140. First, Mr. Day submitted that the Tribunal should have imposed a period of suspension rather than erasure. He referred to paragraph 97(f) and (g) of the Sanctions Guidance which states that "*some or all of the following (7) factors being present (this list is not exhaustive) would indicate suspension may be appropriate ... f) no evidence of repetition of similar behaviour since incident .. g) the tribunal is satisfied the doctor has insight and does not pose a significant risk of repeating behaviour.*"

141. However, the Tribunal expressly took these two features of the case into account in considering whether suspension was the appropriate sanction: see [56], but it also took account of paragraph 92 of the Sanctions Guidance at [57] which states that "*a period of suspension will be appropriate for conduct that is serious but falls short of being fundamentally incompatible with continued registration (ie for which erasure is more likely to be the appropriate sanction ... to protect the reputation of the profession)*".

142. The Tribunal referred to the fact that Dr Plimmer accepted that his actions constituted misconduct; that they were sexually motivated; prolonged; involved a number of women; and that he breached good medical practice in a number respects. It concluded that a period of suspension would not be sufficient to maintain public confidence in the profession, nor promote and maintain proper professional standards and conduct for members of the profession [59]. Accordingly erasure was necessary in Dr Plimmer's case to protect the reputation of the profession. He had brought the profession into disrepute and given his chronic health condition it could not be

guaranteed that he would not do so again in the future. The Tribunal weighed up the aggravating and mitigating factors in this case but it considered that the number of women affected, the impact on them, and the seriousness of his actions meant that erasure was the proportionate response [64].

143. In my judgment the Tribunal's approach to sanction cannot be faulted and this was an evaluative judgment which it was fully entitled to reach on the evidence. It assessed the seriousness of the misconduct and found that it was serious. It kept in mind the purpose for which sanctions are imposed by the Tribunal (to protect the reputation of the profession). It then chose a sanction, erasure, which most appropriately fulfilled the purpose for the seriousness of the conduct in question. In doing so, it bore in mind that misconduct involving personal integrity that impacts on the reputation of the profession is harder to remediate than poor clinical performance and in such cases, personal mitigation should be given limited weight, as the reputation of the profession is more important than the fortunes of an individual member[14]. It follows that matters of mitigation such as the fact that Dr Plimmer had some insight into his offending, apologised for it, and that his misconduct was, at least in part, linked to his health condition (although the Tribunal found that he knew what he was doing was wrong and he was able to manage some boundaries) only provided limited support for the argument that the sanction should have been a lesser sanction than erasure. As I have already explained, the Tribunal conducted a thorough and careful assessment of Dr Plimmer's health condition and considered its impact upon his misconduct.

144. The Tribunal also referred in its Determination on Sanction to paragraph 109(a) and (b) of the Sanctions Guidance (at [62]). That paragraph of the guidance provides that "*Any of the following factors may indicate erasure is appropriate (the list is not exhaustive) ... (a) A particularly serious departure from the principles set out in Good medical practice where the behaviour is fundamentally incompatible with being a doctor; (b) A deliberate or reckless disregard for the principles set out in Good medical practice and/or patient safety*". This is, of course, only guidance with illustrative examples of when erasure *may* be appropriate if one or more of these factors is present.

145. Dr Plimmer attacks the Tribunal's reasoning on factor (b) in paragraph 101 of his skeleton argument. However, the Tribunal justifiably found that factor (a) was present in this case and Dr Plimmer does not attack that finding. That was itself sufficient to justify erasure. In any event, it was open to the Tribunal to find that his disregard for the principles set out in Good Medical Practice was deliberate or reckless (factor (b)), and to reject the suggestion that he was not responsible at all for his actions because of his health condition, in light of its finding that Dr Plimmer knew that his actions were wrong and that he was able to draw ethical lines when he chose to do so. This is not to put Dr Plimmer into a "catch 22 situation" at all; the Tribunal was simply making the obvious point that Dr Plimmer did have some control over his actions in that he had not transgressed any doctor/patient boundaries.

146. Finally, none of the other criticisms made by Dr Plimmer in paragraphs 102-106 of Mr. Day's skeleton argument afford any reason for the court to overturn the

[14] Paragraph 108 of the Sanctions Guidance provides that "erasure may be appropriate even where the doctor does not present a risk to patient safety, but where this action is necessary to maintain public confidence in the profession."

Tribunal's finding of erasure:

(1) The Tribunal's reference (at [40]) to the lies which Dr Plimmer told in his private life were referred to by the Tribunal in the context of mitigation, namely that he expressed remorse and shame for the lies (which he did) and his misconduct. This was a point in his favour in mitigation.

(2) The Tribunal's reference to the number of women affected by Dr Plimmer's conduct in [47] was it taking account of the fact that the sexual misconduct was not a one-off but rather a course of conduct; it had taken place repeatedly over a three year period with four different women. There is nothing in this criticism.

(3) The Tribunal stated at [61] that "it accepted that" the risk to patient safety was low. In other words, that did not form part of its reasoning for the justification of the sanction of erasure, which rather was based upon bringing the profession into disrepute by undermining the confidence in the profession (at [64]). There is nothing in this criticism.

(4) The Tribunal's reference in [64] to the fact that "*it could not be guaranteed that [Dr Plimmer] would not do so again*" (that is, bring the profession into disrepute) was not inappropriate and the Tribunal did, contrary to [105] of Mr Day's skeleton argument, make a determination of the likelihood of a risk of relapse. The Tribunal had already found in [143] of its Determination on Impairment that "*there remains a considerable risk of repetition of his misconduct.*" It was agreed that Dr Plimmer's conditions are "lifelong and chronic" and so the "Tribunal remains concerned about the risk of repetition" (ibid, [142]). This is why it stated in [64] of its Determination on Sanction that "*given the nature of his chronic health condition, it could not be guaranteed that he would not do so again in the future.*" The Tribunal was not imposing an "impossible condition" that unless relapse could be guaranteed not to occur, then it rendered Dr Plimmer liable to erasure. It is clear what the Tribunal was saying, namely that there was a real risk that Dr Plimmer would repeat his sexual misconduct in the future.

(5) Contrary to paragraph 106 of Dr Plimmer's skeleton argument, the Tribunal did make clear the relevance of the previous finding of impairment against him. The previous finding of impairment concerned a depressive disorder, see [141] of the Determination on Impairment. That diagnosis was made *before* CSBD was recognised in 2022. In the present case Dr H also diagnosed Dr Plimmer with "*Recurrent depressive disorder, currently in remission*", coupled with CSBD (ibid, [119]). The risk of relapse concerned both related conditions. It follows that the previous finding of impairment in 2016 did indeed "evidence the ongoing risk of repetition of misconduct in Dr Plimmer's case" ([36] of the Determination on Sanction).

Conclusion

147. The appeal is dismissed. The Tribunal's determination that Dr Plimmer's name be erased from the medical register has not been shown to be wrong. Indeed, I consider it to be fully justified in all the circumstances.