



Neutral Citation Number: [2024] EWHC 2651 (Admin)

Case No: AC-2023-LON-001826
CO/2177/2023

KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25 October 2024

Before :

THE HONOURABLE MR JUSTICE MURRAY

Between :

(1) GENERAL MEDICAL COUNCIL

**(2) PROFESSIONAL STANDARDS AUTHORITY
FOR HEALTH AND SOCIAL CARE**

Appellants

- and -

MAXWELL DUGBOYELE

Respondent

Jenni Richards KC (instructed by **GMC Legal**) for the **First Appellant**
Fenella Morris KC (instructed by **Hill Dickinson**) for the **Second Appellant**
The **Respondent** appeared in person.

Hearing date: 24 April 2024

Approved Judgment

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

.....

Approved Judgment**Mr Justice Murray:**

1. This is an appeal by the General Medical Council (“GMC”) under section 40A of the Medical Act 1983 (“the 1983 Act”) against the decision of a Medical Practitioners Tribunal (“the Tribunal”) made on 16 May 2023 that Dr Maxwell Dugboyele’s fitness to practise was not impaired by reason of the misconduct that the Tribunal had found on 12 May 2023 to have been proven against him.
2. The Professional Standards Authority for Health and Social Care (“the Authority”) has joined the appeal as an additional appellant pursuant to section 40B of the 1983 Act.
3. The GMC appeals on the following grounds:
 - i) When considering impairment, the Tribunal gave excessive weight to remediation and/or failed properly to consider or address in its reasoning the impact of no finding of impairment on (a) public confidence in the medical profession and/or (b) proper professional standards and conduct (“Ground One”).
 - ii) The Tribunal failed to have regard to the guidance in the Sanctions Guidance published by the GMC and the Medical Practitioners Tribunal Service (MPTS) (“the SG”) on the seriousness of sexual harassment, sexual misconduct and abuse of power and/or failed to consider, or give adequate reasons for rejecting, the GMC’s submissions on the SG (“Ground Two”).
 - iii) The Tribunal’s conclusion, that a finding of impairment was not necessary to uphold the overarching objective, was wrong (“Ground Three”).
4. The Authority supports the GMC’s appeal on the foregoing grounds and advances the following further grounds:
 - i) The Tribunal wrongly failed to address the evidence of Dr Dugboyele’s motive for his misconduct, consequently failing to consider its significance for the issue of impairment of fitness to practise and, in turn, the appropriate sanction (“Ground Four”).
 - ii) The Tribunal failed to give adequate reasons for its decision (“Ground Five”).
5. Having read the relevant documents prepared for the appeal hearing by the appellants and Dr Dugboyele, including their respective skeleton arguments, and having heard oral submissions from counsel for the appellants and from Dr Dugboyele, at the end of the hearing, I allowed the GMC’s appeal and the Authority’s appeal. I indicated that my written reasons would be provided at a later date. These are my written reasons for allowing the appeals.
6. At the end of this judgment, I set out my decision on the consequences of allowing the appeals.

Factual background

7. Dr Dugboyele qualified as a doctor in Ghana in 1995. In 1997, he moved to the United Kingdom to pursue specialist training in obstetrics and gynaecology. In March 2008,

Approved Judgment

he began working for the Harrogate and District NHS Foundation Trust (“the Harrogate Trust”) as a specialty grade doctor in obstetrics and gynaecology.

8. Dr Dugboyele’s misconduct occurred during his employment with the Harrogate Trust, which ended in March 2021. The allegations that led to the Harrogate Trust’s referral of Dr Dugboyele to the GMC and his appearance before the Tribunal, resulting in a finding of serious professional misconduct against him, related to incidents that occurred over a period that extended from May 2017 to September 2020, during which he sexually harassed several female colleagues at the Harrogate Trust. He kissed, stroked, hugged, and touched junior female colleagues in the workplace, even when they repeatedly made clear to him that this behaviour was not welcome.
9. In March 2018, a senior colleague of Dr Dugboyele gave him a written warning admonishing him for “over-familiarity” with junior female colleagues. Dr Dugboyele was specifically warned not to place his arm around staff members, and he was directed to avoid standing too close to colleagues and causing them discomfort. Nonetheless, Dr Dugboyele’s behaviour, which led to the allegations against him, continued.
10. Complaints made by Dr Dugboyele’s female colleagues varied from small annoyances, such as moving a colleague’s pen while she was attempting to write or getting in her way in a corridor, to seriously inappropriate physical interactions, such as putting his arms around her or stroking her. In one incident, he hugged a female colleague so closely that she could feel the contact of his genitals through his clothing. On another occasion, he kissed a female colleague on the neck, wrapping his arms around her chest from behind.
11. In or around September 2020, one of Dr Dugboyele’s colleagues, a student midwife, Ms G, made a complaint about Dr Dugboyele to her superiors. Six more of Dr Dugboyele’s midwife colleagues then notified the Harrogate Trust of similar concerns.
12. In the Autumn of 2020, the Harrogate Trust commenced internal disciplinary proceedings against Dr Dugboyele. Ms G complained of two significant incidents:
 - i) in January 2020, Dr Dugboyele approached Ms G from behind while she was washing up and wrapped his arms around her chest, squeezing her, touching her hair, and kissing the side of her neck; and
 - ii) in September 2020, Dr Dugboyele touched, played with, and plaited her hair against her express wishes.

Ms G also raised further allegations of other instances of inappropriate rubbing, stroking, and touching, all of which she had vocally objected to.

13. Following its internal investigation, the Harrogate Trust found sufficient evidence to find Dr Dugboyele guilty of gross misconduct. The Harrogate Trust convened a disciplinary meeting with Dr Dugboyele in October 2020, but it did not proceed as Dr Dugboyele gave notice on the previous day that he was resigning his post. He carried on working for the Harrogate Trust until March 2021. The Harrogate Trust’s investigation report produced in December 2020 observed that Dr Dugboyele’s “overfamiliarity” with female colleagues had been a concern for some time.

Approved Judgment

14. After his departure from the Harrogate Trust in March 2021, Dr Dugboyele commenced work as a middle grade doctor in obstetrics and gynaecology at the Airedale NHS Trust (“the Airedale Trust”), which was where he was working at the time of the hearing in May 2023 before the Tribunal.
15. On 26 March 2021, the Harrogate Trust’s Responsible Officer referred Dr Dugboyele to the GMC on the grounds that an accusation of inappropriate approaches to, and contact with, young female “non-doctor” staff members had been made.

The hearing before the Tribunal and the Record of Determinations

16. The hearing before the Tribunal took place over six days between 9 and 17 May 2023. The GMC was represented by counsel, Ms Jennifer Devans-Tamakloe. Dr Dugboyele represented himself.
17. The Tribunal was comprised of a legally qualified chair, a lay tribunal member, and a medical tribunal member and assisted by a tribunal clerk. In accordance with Rule 41 of the General Medical Council (Fitness to Practise) Rules 2004, the hearing was held in public.
18. The judgment of the Tribunal following the hearing is set out in its Record of Determinations, which was sent to Dr Dugboyele on 18 May 2023, the day following the end of the hearing.
19. The Tribunal considered the allegation of misconduct against Dr Dugboyele (“the Allegation”), which was comprised of a minimum of 45 specific instances of alleged misconduct against seven complainants, each of whom was a midwife or student midwife, each of whom was anonymised, including Ms G.
20. Most of the instances of Dr Dugboyele’s misconduct were alleged to have occurred on “one or more occasions”. The total time span encompassing all of the alleged misconduct was from 2016 to September 2020.
21. The specific instances of alleged misconduct were set out in 11 numbered paragraphs in the Allegation.
22. Paragraph 12 of the Allegation alleged that these instances were an abuse of Dr Dugboyele’s professional position in that his junior female colleagues did not feel able to challenge his behaviour, did not feel able to prevent his actions, and did not feel able to report his actions.
23. Dr Dugboyele admitted a large number of the allegations. He disputed the remainder. All of the disputed incidents of misconduct were found by the Tribunal to have been proved against him. The Allegation, together with the Tribunal’s finding in relation to each specific instance of alleged misconduct, as set out in paragraph 92 of the Tribunal’s Record of Determinations, is reproduced in the Annex to this judgment.
24. The final numbered paragraph of the Allegation, paragraph 13, reads as follows:

“Your actions were unlawful sexual harassment related to sex by virtue of Section 26 of the Equality Act 2010, in that you engaged in unwanted conduct related to sex which had the

Approved Judgment

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

- a. Ms A in respect of paragraph 1;
 - b. Ms B in respect of paragraph 2;
 - c. Ms C in respect of paragraph 3;
 - d. Ms D in respect of paragraph 4;
 - e. Ms E in respect of paragraph 5;
 - f. Ms F in respect of paragraphs 6-7;
 - g. Ms G in respect of paragraphs 8-11.”
25. Dr Dugboyele admitted this part of the Allegation, but only after the GMC clarified that it was not alleging that Dr Dugboyele’s conduct was sexually motivated. This was a surprising concession by the GMC given the nature of the conduct alleged and, in particular, given the nature of the disputed instances of misconduct, all of which were found by the Tribunal to have been proved against Dr Dugboyele.
26. The Tribunal had documentary evidence from all of the complainants as well as from three other witnesses at the Harrogate Trust. It was agreed that it was only necessary for Ms G to give oral evidence.
27. Dr Dugboyele provided his own witness statement and schedule of admissions. He made an opening statement and gave oral evidence at the hearing. Character references were also provided by two Directors of the Airedale Trust in relation to his conduct in their employment subsequent to his departure from the Harrogate Trust.
28. Other evidence included: written statements produced during the Harrogate Trust’s internal investigation into Dr Dugboyele’s conduct; the minutes of the interviews conducted during the investigation; an email dated 21 March 2018 from a senior consultant at the Harrogate Trust formally warning Dr Dugboyele about his conduct; Dr Dugboyele’s Rule 7 response; and feedback from colleagues about Dr Dugboyele.
29. The Tribunal reminded itself that the burden of proof rested on the GMC and that the standard of proof was the balance of probabilities. It also reminded itself of the need to give reasons for its findings on factual matters and that, where it rejected Dr Dugboyele’s evidence in favour of the evidence of a complainant, it should make clear why it has done so. It also reminded itself that Dr Dugboyele was of good character and that it had received two positive character references in relation to him.
30. The Tribunal then reviewed the factual evidence in some detail. In relation to each disputed instance of misconduct, the Tribunal preferred the evidence of the complainant to that of Dr Dugboyele. It found, in short, that all of the several dozen specific instances of misconduct alleged against him had been proved.

Approved Judgment

31. At paragraphs 148-153 of the Record of Determinations, the Tribunal made a number of observations about the misconduct that was proved against Dr Dugboyele:
- i) Dr Dugboyele had been asked by a number of colleagues to stop his “overfamiliar” and tactile behaviour towards them, but, despite these requests, he continued to behave in the manner complained of, which made some of his colleagues feel that they had to “put up” with it for the sake of the smooth running of the unit.
 - ii) Dr Dugboyele was warned about his behaviour by a supervising consultant at the Harrogate Trust both verbally and by email. Despite this warning, he continued to behave in the manner complained of.
 - iii) Dr Dugboyele’s behaviour was a course of conduct that continued over a long period of time and “impacted” a number of individuals.
 - iv) Fellow practitioners would find his behaviour deplorable.
 - v) His behaviour represented a significant departure from the principles set out in *Good Medical Practice* (“GMP”), the authoritative guidance published by the GMC describing the conduct and standards expected of all doctors registered with the GMC. In particular, his behaviour was inconsistent with the standards of behaviour set out in paragraphs 35, 36, 37 and 65 of GMP.
 - vi) The specific instances of misconduct against seven complainants set out in paragraphs 1-11 of the Allegation, together with paragraphs 12 and 13 of the Allegation, was conduct falling so far short of the expected standards that it amounted to serious professional misconduct.
32. The Tribunal then turned to its determination on the question of whether Dr Dugboyele’s fitness to practise had been impaired as a result of his proven misconduct.
33. At the impairment stage of the hearing, the Tribunal received further evidence in the form of oral evidence from Dr Dugboyele, a document prepared by him entitled “Reflection and Evidence of Remediation” dated 15 May 2023, and a statement dated 8 March 2023 from Dr Dugboyele’s Responsible Officer at the Airedale Trust.
34. The Tribunal heard submissions from the GMC and from Dr Dugboyele. At paragraphs 118-132 of its Record of Determinations, the Tribunal set out its understanding of the legal principles that apply to a determination of impairment. At paragraph 127, it noted that there is no statutory definition of “impairment” but that the Tribunal was assisted by the guidance provided by Dame Janet Smith in her Fifth Report from the Shipman Enquiry (9 December 2004) (“the Fifth Shipman Report”), as adopted by the Administrative Court in *Council for Healthcare Regulatory Excellence v Nursing and Midwifery Council and Grant* [2011] EWHC 927 (Admin).
35. In *Grant* at [76], Cox J referred to the Fifth Shipman Report, saying:
- “At paragraph 25.67 [of the Fifth Shipman Report] [Dame Janet Smith] identified the following as an appropriate test for panels

Approved Judgment

considering impairment of a doctor's fitness to practise, but in my view the test would be equally applicable to other practitioners governed by different regulatory schemes [including the regulatory scheme for nurses and midwives applicable in *Grant*].

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

- a. has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or
- b. has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or
- c. has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or
- d. has in the past acted dishonestly and/or is liable to act dishonestly in the future.' "

36. Most relevant to this appeal, at the end of paragraph 132, the Record of Determinations reads:

"... As well as considering the features set out in *Grant*, the Tribunal must also determine whether the need to uphold professional standards and maintain public confidence would be undermined if current impairment were not found."

37. The crux of this appeal is that the Tribunal, despite setting out the principle that I have just quoted, failed to make that determination, and/or failed to give the issue adequate consideration, and/or failed to give adequate reasons for reaching the conclusion that it was not necessary to uphold professional standards and maintain public confidence to find that Dr Dugboyele's fitness to practise was impaired, despite the extent of the misconduct, including misconduct amounting to sexual harassment, that had been proved against him.
38. The Tribunal's analysis of the question of impairment is set out in paragraphs 154-168 of the Record of Determinations. Its conclusion at paragraph 169 was that Dr Dugboyele's fitness to practise was not impaired.
39. I will discuss the Tribunal's reasons in more detail when I consider the submissions of the parties, but the central contention of the appellants is that, in making its determination on impairment, the Tribunal focused solely or, at any rate, too much on the *Grant* questions in relation to future risk and the extent of Dr Dugboyele's remediation and failed to give proper consideration to the principle that the Tribunal itself had set out in paragraph 132, which I have quoted above.

Approved Judgment

40. Dr Dugboyele says that the Tribunal did properly consider the relevant aspects of his fitness to practise and came to a properly reasoned conclusion that was open to it that his fitness to practise was not impaired.
41. Having determined that Dr Dugboyele's fitness to practise was not impaired, the Tribunal noted that it could not impose a sanction on him. It went on to consider, in accordance with section 35D(3) of the 1983 Act, whether a formal warning was required. The Tribunal heard submissions from the GMC and Dr Dugboyele, considered the relevant legal principles, determined that a formal warning was necessary, and decided, therefore, that it would issue the warning in a form that is set out in paragraph 201 of the Record of Determinations.

Legal principles

42. Under section 40A of the 1983 Act, the GMC may appeal a decision of a Medical Practitioners Tribunal to the High Court if it considers that the decision is not sufficient, whether as to a finding or a penalty or both, for the protection of the public. The GMC may reach that view if it considers that the decision is not sufficient to protect the health, safety and well-being of the public, to maintain public confidence in the medical profession, or to maintain proper professional standards and conduct for members of the profession.
43. As I have already noted, section 40B of the 1983 Act permits the Authority to become a party to an appeal by the GMC under section 40A.
44. CPR Part 52 applies to an appeal by the GMC under section 40A of the 1983 Act. Under CPR r 52.21(3), this court will allow the appeal where it decides that the decision of the lower court was either wrong or unjust because of a serious procedural or other irregularity in the proceedings of the lower court. The Divisional Court has set out relevant principles applicable to an appeal under section 40A of the 1983 Act in *General Medical Council v Jagjivan* [2017] EWHC 1247 (Admin), [2017] 1 WLR 4438 (DC) at [40]. I have had regard to those principles.
45. Section 1A of the 1983 Act provides that the over-arching objective of the GMC in exercising its functions is the protection of the public. Section 1B makes clear that this objective has three limbs, namely:
 - “(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.”
46. At the beginning of its Record of Determinations, the Tribunal stated that throughout its decision-making it had borne in mind the over-arching objective set in “s1 [sic] Medical Act 1983”.

Approved Judgment*Discussion*

47. I will not attempt to summarise every point raised by counsel for the appellants and by Dr Dugboyele, but I will focus on what I consider to be the key submissions. I have, however, had regard to all of the submissions made. I consider that it should be sufficiently clear from what follows why I allowed the appeals.

Ground One

48. On behalf of the GMC I had written submissions prepared by Mr Rory Dunlop KC and oral submissions from Ms Jenni Richards KC. Ms Richards' principal submissions in support of Ground One were that where misconduct is particularly serious and not related to clinical competence, a finding of impairment is often necessary to uphold the overarching objective, even if the misconduct has been remediated, and there is no risk of repetition. Examples of such cases include *Yeong v General Medical Council* [2009] EWHC 1923 (Admin) and *General Medical Council v Chaudhary* [2017] EWHC 2561 (Admin). This, she submitted, is another such case. The Tribunal was wrong to focus its analysis almost exclusively on Dr Dugboyele's remediation and the risk of repetition.
49. Ms Richards reviewed the Tribunal's reasoning at paragraphs 156 to 168 to illustrate the GMC's principal submission in relation to Ground One. I found these submissions persuasive. I agree with the submission, for example, that in the second sentence of paragraph 167, the Tribunal appears to jump from the conclusion that there is a low risk of repetition to its finding of no impairment, namely, on the basis of the first of the three limbs of the over-arching objective. Similarly, I agree that the Tribunal in paragraph 168, addressing the second limb of the over-arching objective, appears to have conflated public confidence in the profession with public confidence in Dr Dugboyele's remediation. The Tribunal does not appear properly to have considered whether a finding of no impairment in these circumstances would leave the public with a sense that doctors can "get away with" years of sexually harassing their colleagues and/or that sexual harassment is not treated with sufficient seriousness by the Tribunal.
50. I agree with Ms Richards that nowhere in paragraphs 156 to 168 does the Tribunal properly consider the third limb of the over-arching objective. Ms Richards submitted that a decision that finds no impairment and imposes no sanction in the case of serious professional misconduct comprised of this many instances of misconduct against junior female colleagues, despite the protests of those colleagues over a number of years and after having been formally warned in relation to that conduct by a senior colleague, sends a signal to the profession that sexual harassment and abuse of power are not taken sufficiently seriously by the Tribunal. This, in turn, has a potentially damaging effect on standards and conduct in the profession. The Tribunal was therefore bound to consider the third limb, but did not do so properly. I accept these submissions.
51. Dr Dugboyele submitted that the facts of *Yeong* and of *Chaudhary* are different from his case. Each case needs to be considered on its own facts. These propositions are, of course, true, but each case reflects the principle that a finding of impairment may follow even where there has been adequate remediation and adequate reduction of future risk of repetition.

Approved Judgment

52. Dr Dugboyele submitted that the Tribunal had rightly reflected on his remediation, his development of insight into the effect of his conduct on his junior female colleagues and had given those factors appropriate weight. He submitted that the Tribunal had carefully explained its reasoning. Accordingly, he urged me to find that the Tribunal's determination that his fitness to practise was not impaired was neither wrong nor was it unjust because of a serious procedural or other irregularity.
53. None of Dr Dugboyele's submissions directly addresses the principal thrust of Ground One.
54. In my view, the Tribunal failed to give proper consideration to the second and third limbs of the over-arching objective and, therefore, failed to take into account factors that it should have taken into account. It should have taken into account in its considerations whether, given the serious professional misconduct it found in this case (involving sexual harassment of a number of junior female colleagues over many years, despite their protestations and a formal warning), a finding of impairment of fitness to practise was necessary, notwithstanding full remediation and no risk of repetition. It was necessary for it to take this factor into account in order properly to consider whether a finding of impairment was necessary in order to promote and maintain public confidence in the medical profession and proper professional standards and conduct for members of the profession. The Tribunal failed, however, to do so.
55. Accordingly, the GMC's appeal succeeds on Ground One.

Ground Two

56. In relation to Ground Two, Ms Richards submitted that the Tribunal erred by failing to have regard to the guidance in the SG, which had been relied on by counsel to the GMC in her submissions to the Tribunal. She submitted that *General Medical Council v Narayan* [2017] EWHC 2695 (Admin), among other cases, makes it clear that a decision of a Medical Practitioners Tribunal on sanction may be overturned if it fails to have adequate regard to the SG and/or fails to give adequate reasons for departing from it.
57. Ms Richards submitted that, although the SG was not directly applicable in this case as the question of sanction was never under consideration, it was still relevant. The SG underlines the serious nature of sexual harassment, sexual misconduct and abuse of power (in particular, at paragraphs 55, 138 and 150 of the SG). The SG illustrates why these are issues that the Tribunal should have been considering at the impairment stage.
58. Ms Richards submitted that because the Tribunal failed to address the GMC's submissions on the SG, the GMC does not know why it lost on this issue. In other words, the GMC does not know whether the Tribunal considered that the SG was irrelevant at the impairment stage and could be ignored or whether the Tribunal had considered the GMC's submissions on the SG but decided, nonetheless, that this case justified a departure from the norm.
59. Dr Dugboyele did not specifically address this ground in his submissions.
60. In my view, this ground does not add much to the GMC's appeal. It is well-established that a court or tribunal does not have to address expressly in its judgment or decision

Approved Judgment

every submission made to it by each party, provided that it has given adequate reasons for its decision. Had the Tribunal properly engaged in its reasoning with limbs two and three of the over-arching objective, then assuming, after doing so, that it made a determination of non-impairment, it would have been sufficiently clear that the Tribunal considered this case to be a departure from the norm, without its having explicitly engaged with the GMC's submissions on the SG.

61. However, the Tribunal should properly have considered the GMC's submissions on the SG, and had it done so, it is likely that it would, at least to some extent, addressed those submissions in its reasoning or it would, at least, have been sufficiently clear from the Tribunal's reasons why the GMC's submissions on the SG had failed.
62. To that extent, the GMC's appeal on Ground Two succeeds.

Ground Three

63. Ms Richards submitted that the Tribunal's conclusion that a finding of impairment was not necessary to uphold the overarching objective was wrong in the sense that it was outside the range of responses open to the Tribunal. This is because:
 - i) the sexual harassment took place over a period of years, and continued despite the protestations of the seven individual victims, who were all junior female colleagues and each of whom was made to feel uncomfortable or anxious at work over a prolonged period;
 - ii) the sexual harassment continued even after a senior consultant had, in 2018, given a formal warning to Dr Dugboyele about his conduct towards his junior female colleagues;
 - iii) Dr Dugboyele's conduct was an abuse of his professional position;
 - iv) there is a strong public interest in making clear to the public and profession that sexual harassment of this type is treated seriously and cannot be ignored with impunity; and
 - v) Dr Dugboyele's good behaviour in the run-up to the hearing had been of comparatively short duration compared with the period covered by his proven misconduct.
64. Ms Richards submitted that the nature of the misconduct, namely, sexual harassment, was not technical or medical misconduct regarding which the Tribunal would have superior expertise relative to this court. Accordingly, this court does not need to accord a particularly high degree of deference to the Tribunal's assessment on impairment: see *Jagjivan* at [40(vi)].
65. Dr Dugboyele submitted that the Tribunal's decision on impairment was not wrong. Instead, it was a reasonable decision on the facts of this case, having regard, in particular, to his remediation and the Tribunal's assessment that he did not pose a future risk to junior female colleagues.
66. In my view, Ground Three is, in essence, a reformulation of Ground One. The Tribunal's conclusion on impairment was wrong for the reasons given in relation to

Approved Judgment

Ground One. I accept Ms Richards' submission that the degree of deference owed by this court to the Tribunal's finding on impairment, given its factual findings, is inherently less in relation to misconduct of this description. This court is just as well-placed as the Tribunal to judge the impact of Dr Dugboyele's serious professional misconduct on public confidence in the profession and on professional standards and conduct.

67. Accordingly, the GMC's appeal on Ground Three succeeds.

Ground Four

68. For the Authority, Ms Fenella Morris KC submitted in relation to Ground Four that the Tribunal failed properly to consider Dr Dugboyele's motive for his behaviour, which had been found to be serious professional misconduct. She submitted that there were strong grounds for concluding on the basis of the evidence before the Tribunal that his motivation was sexual, primarily in respect of his colleagues, Ms F and Ms G, but also in respect, arguably, of all of the complainants.
69. Dr Dugboyele submitted that his conduct was never intended to be more than a way of demonstrating friendliness. He never intended to violate the dignity of any colleague or to create an intimidating, hostile, degrading, or humiliating environment. He submitted that these interactions were "often reciprocated", which, given his lack of a motive to cause offence, meant that he failed to appreciate the effects of his behaviour on his colleagues.
70. Dr Dugboyele submitted that there was no sexual motivation to his interactions, and he considered that the evidence of a number of the complainants supported this. He gave examples from the investigative interviews with Ms A, Ms E, Ms F (apart from the incident where she could feel his genitals when he gave her a hug), and Ms G (in relation to interactions prior to January 2020).
71. In my view, Dr Dugboyele's assertion that all of his conduct was motivated purely by "friendliness" is simply not capable of belief given the factual findings of the Tribunal, and bearing in mind the many protestations by the complainants to Dr Dugboyele over a number of years and the official warning given to him by a senior colleague in 2018, all of which he ignored.
72. Dr Dugboyele's conduct towards Ms G included, on virtually every shift that she worked with him, inappropriate touching, including rubbing her shoulders, back, and hips. His conduct toward her included on various occasions: telling her that she was attractive; asking whether she had a boyfriend; on one occasion, wrapping his arms around her chest from behind, squeezing her, touching her hair, and kissing her neck; and, on another occasion, touching her hair, despite her telling him not to do so, pulling out her hair bobble, playing with her hair, and plaiting her hair. This is all patently sexually motivated conduct, which makes the GMC's concession at the hearing before the Tribunal that it was not alleging sexual motivation in relation to paragraph 13 of the Allegation more than somewhat surprising. Despite this concession, however, the Tribunal should have given, but failed to give, adequate consideration to Dr Dugboyele's motivation for his long course of misconduct reflecting in the Tribunal's factual findings.

Approved Judgment

73. While it is possible that the incident where Dr Dugboyele hugged Ms F and she could feel Dr Dugboyele's genitals was accidental (not as to the hug, of course, but as to the genitals touching her through their respective clothing), the whole course of Dr Dugboyele's conduct against junior female colleagues over many years, despite the numerous protestations of the recipients of his unwanted intentions and an official warning in 2018, makes it probable that the hug itself was sexually motivated, at a minimum as an expression of sexual attraction. It is no less sexual harassment simply because he had no intention to take matters further. Dr Dugboyele's whole course of conduct over a number of years against more than half a dozen junior female colleagues makes it more likely than not that most, if not all, of the other instances of Dr Dugboyele's serious professional misconduct found by the Tribunal were sexually motivated.
74. There is, in short, no credible innocent explanation of Dr Dugboyele's conduct, given the factual findings of the Tribunal. The Tribunal was either wrong not to include a proper consideration of his motive in its deliberations and/or, by virtue of that omission's constituting a serious procedural irregularity, reached an unjust result, namely, that Dr Dugboyele's fitness to practise was not impaired.
75. Accordingly, the Authority's appeal on Ground Four succeeds.

Ground Five

76. In my view, Ground Five does not add much to the principal grounds, namely, Grounds One, Two and Four, all of which have succeeded. The inadequacy of the Tribunal's reasons for its finding of non-impairment despite Dr Dugboyele's sexual misconduct is, in particular, an important aspect of Ground One.
77. Dr Dugboyele submitted that the Tribunal gave adequate reasons, but he failed to show how the Tribunal provided adequate reasons in relation to the key question as to why his sexual misconduct, notwithstanding remediation and lack of future risk, did not justify a finding of non-impairment.
78. As far as it goes, the Authority's appeal on Ground Five succeeds.

Conclusion

79. These are my reasons for having found that the GMC's appeal succeeds and that the Authority's appeal succeeds.
80. I therefore quash the Tribunal's decision on impairment. The Tribunal's decision to issue a warning to Dr Dugboyele followed from its decision that his fitness to practise was not impaired. Therefore, I must also quash the decision to issue a warning.
81. In my judgment, for the reasons I have given, the Tribunal's decision that Dr Dugboyele's fitness to practise was not impaired is unsustainable in light of its factual findings and its lack of adequate reasons for the decision it reached on impairment, having regard to Dr Dugboyele's serious professional misconduct and the second and third limbs of the over-arching objective.

Approved Judgment

82. I have the power to substitute a finding that Dr Dugboyele's fitness to practise was impaired by his serious professional misconduct. I do so.
83. This case will now be remitted to a differently constituted Medical Practitioners Tribunal for it to consider the question of sanction.

ANNEX

The Allegation and the Tribunal's findings

as set out at paragraph 92 of the Tribunal's Record of Determinations

- “1. On one or more occasions between May 2017 and 15 September 2020, you behaved inappropriately whilst at work towards your colleague Ms A in that you:
 - a. hugged her; **Admitted and found proved**
 - b. put your arm around her:
 - i. shoulders; **Admitted and found proved**
 - ii. waist; **Admitted and found proved**
 - c. held onto her wrist to prevent her walking away; **Admitted and found proved**
 - d. deliberately stood in her way in the corridor; **Admitted and found proved**
 - e. failed to stop your behaviour when Ms A asked you to stop touching her or words to that effect. **Admitted and found proved**
2. On one or more occasions between 2016 and 15 September 2020, you behaved inappropriately whilst at work towards your colleague Ms B in that you:
 - a. hugged her; **Admitted and found proved**
 - b. continued to hug her when asked to stop; **Admitted and found proved**
 - c. held her hand; **Admitted and found proved**
 - d. blocked doorways causing her to brush past you. **Admitted and found proved**
3. On one or more occasions between 2016 and July 2019, you behaved inappropriately whilst at work towards your colleague Ms C in that you hugged her. **Admitted and found proved**
4. On one or more occasions between January 2019 and 15 September 2020, you behaved inappropriately whilst at work towards your colleague Ms D in that you:
 - a. put your arm around her:
 - i. waist; **Admitted and found proved**
 - ii. shoulders; **Admitted and found proved**
 - b. blocked her path into the staff room by standing in the doorway with your arm across; **Admitted and found proved**
 - c. held her hand; **Admitted and found proved**
 - d. tickled her waist. **Admitted and found proved**

Approved Judgment

5. On one or more occasions between June 2016 and 15 September 2020, you behaved inappropriately whilst at work towards your colleague Ms E in that you:
 - a. put your arm around her; **Admitted and found proved**
 - b. hugged her; **Admitted and found proved**
 - c. held her hand; **Admitted and found proved**
 - d. stroked the back of her hand. **Admitted and found proved**
6. On one or more occasions between 2016 and 15 September 2020, you behaved inappropriately whilst at work towards your colleague Ms F in that you:
 - a. hugged her; **Admitted and found proved**
 - b. held her hand; **Admitted and found proved**
 - c. touched her:
 - i. waist; **Admitted and found proved**
 - ii. hips; **Admitted and found proved**
 - iii. abdomen; **Admitted and found proved**
 - d. kissed her cheek. **Determined and found proved**
7. On a date in or around 2017 you behaved inappropriately whilst at work towards your colleague Ms F in that you gave her a close hug and pressed your hips towards her so that your genitals made contact with her. **Determined and found proved**
8. On one or more occasions between April 2018 and January 2020, you behaved inappropriately whilst at work towards your colleague Ms G in that you:
 - a. touched her:
 - i. shoulders; **Admitted and found proved**
 - ii. back; **Admitted and found proved**
 - iii. hips; **Admitted and found proved**
 - b. said Ms G was very attractive, or words to that effect; **Determined and found proved**
 - c. asked her if she had a boyfriend. **Determined and found proved**
9. On a date in January 2020, you behaved inappropriately whilst at work towards your colleague Ms G in that you:
 - a. wrapped your arms around her chest from behind; **Determined and found proved**
 - b. squeezed her; **Determined and found proved**

Approved Judgment

- c. touched her hair; **Determined and found proved**
 - d. kissed the side of her neck. **Determined and found proved**
10. On one or more occasions between January and September 2020, you behaved inappropriately whilst at work towards your colleague Ms G in that you:
- a. rubbed her shoulders; **Admitted and found proved**
 - b. stroked her lower back; **Determined and found proved**
 - c. held her hips; **Determined and found proved**
 - d. attempted to trap her against a wall; **Admitted and found proved**
 - e. failed to stop your behaviour when Ms G asked you not to touch her or words to that effect. **Determined and found proved**
11. On or around 8 September 2020, you behaved inappropriately whilst at work towards your colleague Ms G in that, despite Ms G telling you not to touch her hair, you:
- a. pulled out her hair bobble; **Determined and found proved**
 - b. touched her hair; **Admitted and found proved**
 - c. played with her hair; **Admitted and found proved**
 - d. plaited her hair. **Admitted and found proved**
12. Your actions as described at paragraphs 1 – 11 were an abuse of your professional position in that your female colleagues did not feel able to:
- a. challenge your behaviour; **Admitted and found proved**
 - b. prevent your actions; **Admitted and found proved**
 - c. report your actions. **Admitted and found proved**
13. Yours [sic] actions were unlawful sexual harassment related to sex by virtue of Section 26 of the Equality Act 2010, in that you engaged in unwanted conduct related to sex which had the purpose or effect of violating the dignity of or creating an intimidating, hostile, degrading, humiliating or offensive environment for:
- a. Ms A in respect of paragraph 1; **Admitted and found proved**
 - b. Ms B in respect of paragraph 2; **Admitted and found proved**
 - c. Ms C in respect of paragraph 3; **Admitted and found proved**
 - d. Ms D in respect of paragraph 4; **Admitted and found proved**
 - e. Ms E in respect of paragraph 5; **Admitted and found proved**
 - f. Ms F in respect of paragraphs 6 – 7; **Admitted and found proved**

Approved Judgment

- g. Ms G in respect of paragraphs 8 – 11. **Admitted and found proved”**