The First-tier Tribunal
(Health, Education and Social Care Chamber)
Primary Health Lists

Appeal Number: **PHL 15173**

In the matter of THE NATIONAL HEALTH SERVICE ACTS
And in the matter of THE NATIONAL HEALTH SERVICE (PERFORMERS LIST) REGULATIONS 2004

Before :
Siobhan Goodrich
Dr Howard Freeman
Mrs Jenny Purkis

Hearing: 2nd, 3rd, 14th ,15th, 17th February, 29th, 30th March, 11th April, 5th, 6th May , 6th and 10th June 2011
At the Care Standards Tribunal
Pocock Street

Between

Dr NAVIN ZALA
(GMC Registration Number 2266446)

Appellant

and

WEST KENT PRIMARY CARE TRUST

Respondent

DECISION AND REASONS

Representation: Martin Forde QC for the Appellant, instructed by Eastwoods
Richard Booth for the Respondent, instructed by Capsticks.

The Appeal proceedings

1. Dr Zala appeals against the decision of the Respondent made on 27th May 2009 to remove his name from its Performers List. The decision, made under the National Health Service (Performers' List) Regulations 2004 ("the Regulations") was that the continued inclusion of Dr Zala's name in the Performers' List would be prejudicial to the efficiency of the services that those in the relevant list perform and that he was also unsuitable to be included therein.

The Interlocutory decisions.

2. The first decision dated 8th March 2010 dealt with the scope and ambit of the appeal. The second dealt with abuse of process and related matters and resulted in a lengthy determination dated 23rd June 2011. We have reminded ourselves throughout this hearing of the general legal principles concerning the fair hearing of stale allegations and will return to this aspect later.

The overview of the appeal

3. This nature of this appeal is that it is a rehearing in the full sense. It is open to the Tribunal to make any decision that the PCT panel could have made.

4. The Respondent's core case that the Appellant is unsuitable to be included in its performers list by reason of his behaviour towards some 7 female patients. Broadly speaking, the PCT case is that Dr Zala's behaviour towards each of these patients amounted to sexualised behaviour and that he is therefore unsuitable to be included in its list. Alternatively, it is alleged that Dr Zala is inefficient in his practice. It is alleged that the same background allegations also indicate poor communication, poor standards of practice, and inadequate history taking.

5. Dr Zala vigorously denies that he acted in the manner alleged by any of these witnesses. In so far as he carried out any examinations of the patients concerned he acted in accordance with acceptable practice at the time. In general terms the patients are either mistaken or lying or otherwise unreliable. He denies any sexual motivation. He contends that he has been prejudiced in his ability to deal with all of the allegations save that of SC. He accepts that his record keeping could be improved. In so far as this or any other criticisms of his practice are justifiable he contends that his practice is remediable as evidenced by his efforts to improve.

The Appeal hearing.

6. We had before us the following bundles:
   1, 2 and 3
   These consisted of the background material to the history of the complaints, the witness statements, the medical records and Dr Cranfield's first report dated 1st April 2009. For ease of reference we will refer only to the page numbers when necessary.
   4. The supplementary expert report of Dr Cranfield dated 31st January 2011.
   5. The "green bundle" ("GB") which included Dr Zala's witness statement dated 26th March 2010 as well as other documents to which we will refer as necessary

7. We refer to all patients by their initials in this determination. We mean no discourtesy by not using a prefix. Where reference is to friends or relatives of patients we have used their initials only so as to avoid identification of the patients.

8. We heard oral evidence from patients in the following sequence: HK, LF, PH, PP, KEC, SC, and KS. We also heard evidence from PT, the partner of SC, as well as Dr Jessell, Dr Hall and Mrs Solley. Where a witness statement had been served but its

maker was not called we ignored that evidence. We were assisted by the transcripts of evidence obtained in relation to the evidence of PH, PP, KC, SC and PT. The Tribunal Judge made a manuscript note of the proceedings and the evidence of all witnesses.

The Hearing and the adjournment request.

9. The hearing dates in this appeal were fixed over a number of months with the consent of the parties. In the event the original 15 days estimate proved to be pessimistic. The PCT closed its case on 30th March 2011 and it was envisaged that the oral evidence of Dr Zala would be heard and completed on 11th, 12th and 13th April. In the event Dr Zala did not attend the hearing on 11th April 2011 and some evidence was provided as to this. It was necessary to adjourn the hearing and give directions as to the evidence required in the event that a further adjournment was sought on grounds of psychiatric ill health.
10. No further adjournment was sought but the Tribunal received the report of Dr Denman, consultant psychiatrist, dated 27th April 2010. We bore fully in mind his advice that Dr Zala might become tired and we took frequent breaks when hearing his evidence.

11. On 10th June 2010 we received written and oral submissions from both parties. At the end of the hearing we reserved our decision and reasons which we now give.

The Standard of Proof.

12. The Respondent bears the burden of proof in relation to the facts alleged. In the interlocutory decision we rejected the submission made that the criminal standard of proof should be applied. Given the gravity of the allegations, and the antiquity of the vast majority of them, it is appropriate to repeat the principles that we consider must guide us.

13. We considered **In re B (Children) [2008] UKHL 35** and **In re D [2008] UKHL 33**.

14. In **In re B (Children)** Lord Hoffman, said this:

"*Some confusion has been caused by dicta which suggest that the standard of proof may vary with the gravity of the misconduct alleged or even the seriousness of the consequences for the person concerned"*.

His Lordhip's conclusion was:

a. "*The time has come to say, once and for all, that there is only one civil standard of proof and that is proof that the fact in issue more probably occurred than not".*

b. In both the decisions of their lordships had considered the judgement in **In re H (Minors) (Sexual Abuse: Standard of Proof) [1996] AC 563,** *586 D-H* Lord Nicholls said:

"the court will have in mind as a factor, <u>to whatever extent is appropriate in the particular case</u> that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability".

In relation to Lord Nicholls' comments in *In re H*, Lord Hoffman said:

"I wish to lay some stress upon the words I have [underlined]. Lord Nicholls was not

laying down any rule of law. There is only one rule of law, namely that the occurrence of the fact in issue must be proved to have been more probable than not. Common sense, not law, requires that in deciding this question, regard should be had, to whatever extent appropriate, to inherent probabilities. If a child alleges sexual abuse by a parent, it is common sense to start with the assumption that most parents do not abuse their children. But this assumption may be swiftly dispelled by other compelling evidence of the relationship between parent and child or parent and other children. It would be absurd to suggest that the Tribunal must in all cases assume that serious conduct is unlikely to have occurred. In many cases, the other evidence will show that it was all too likely".

15. Baroness Hale said this at paragraph 70:

"I would go further and announce loud and clear that the standard of proof in finding the facts necessary to establish the threshold under section 31(2) or the welfare considerations in section 1 of the 1989 Act is the simple balance of probabilities, neither more nor less. Neither the seriousness of the allegation nor the seriousness of the consequences should make any difference to the standard of proof to be applied in determining the facts. The inherent probabilities are simply something to be taken into account, where relevant, in deciding where the truth lies. As to the seriousness of the consequences, they are serious either way….As to the seriousness of the allegation, there is no logical or necessary connection between seriousness and probability"

16. In **In re D [2008] UKHL 33** Lord Carswell considered **In re H** and **R (N) v Mental Health Review Tribunal (Northern Region) [2005] EWCA Civ 1605** and said this:

"*in some contexts a Court or Tribunal has to look at the facts more critically or more anxiously than in others before it can be satisfied to the requisite standard. The standard itself is, however, finite and unvarying. Situations which might make heightened examination necessary may be the inherent unlikelihood of the occurrence taking place (Lord Hoffman's example of the animal seen in Regent's Park), the seriousness of the allegation to be proved or, in some cases, the consequences which could follow from acceptance of proof of the relevant fact. The seriousness of the allegation requires no elaboration: a Tribunal of fact will look closely into the facts grounding an allegation of fraud before accepting that it has been established. The seriousness of consequences is another facet of the same proposition: if it is alleged that a bank manager has committed a minor peculation, that could entail very serious consequences for his career, so making it the less likely that he would risk doing such a thing. These are all matters of ordinary experience, requiring the application of good sense on the part of those who have to decide such issues. They do not require a different standard of proof or a specially cogent standard of evidence, merely appropriately careful consideration by the Tribunal before it is satisfied of the matter which has to be established".*

17. We have borne all these matters fully in mind when deciding whether the Respondent has discharged the burden of proof in relation to the disputed allegations.

18. It is convenient to deal with an overarching point made by Mr Forde in his final submissions. The Appellant contends that the standard of proof can only be discharged if the evidence was "compelling and consistent". Whilst we agree that consistency can be described as a subset characteristic of clear or cogent or compelling evidence we do not agree that the presence of any inconsistency in a

particular aspect of the evidence necessarily means that the evidence as a whole is automatically rendered less cogent. In our experience it would be surprising (and, indeed, alarming) if the evidence of each of the witnesses had been completely consistent on all matters given the detailed scrutiny to which it has been subjected. Much depends upon the significance of any inconsistency in the overall context of all the evidence and this calls for very careful assessment given the gravity of the allegations. Leaving aside the words that might be used to describe the quality of any evidence the issue, as we see it, is whether, after appropriately anxious scrutiny and self direction, the civil standard of proof concerning the alleged facts has or has not been discharged by the Respondent.

Some neutral background and the broad time line.

19. The following can be discerned from the documents before us.

20. On 16. 07. 2007 SC wrote a letter of complaint about Dr Zala addressed to the Kent Local Medical Committee. Seemingly coincidentally, a complaint was made shortly afterwards by PP which included an allegation about inappropriate breast examinations and behaviour on the part of Dr Zala.

21. On 21.08. 2007 Dr Zala made a statement which he submitted to the PCT with reference to the pending decision as to whether or not he should be suspended from the list pending its investigation in the exercise of its powers under the NHS regulations.

22. On 12.10.07 the police were informed of the allegations of SC and PP by the PCT.

23. In the course of the police investigation a statement dated 24th January 2008 was taken from KS. She is a witness as to "recent complaint" in respect of SC's allegations and also alleges that she was assaulted by Dr Zala many years before.

24. On 14.01.08 Dr Zala was arrested on suspicion of indecent assault and sexual assault in relation to SC and PP. He produced 2 written statements when interviewed that day in relation to each complainant.

25. On 28.03.08 when answering bail Dr Zala was arrested on suspicion of assault on KS. He was interviewed and produced a statement in this regard.

26. On 12.08.08 Dr Zala was informed by the police that no further action would be taken by the police in respect of all matters.

27. With the agreement of Dr Zala we have been provided with the police summary of DC McCann concerning the 2007-2008 investigation. Part of the police summary is headed " Bad Character Evidence" and relates to the historic allegations of LF, HK and another patient, MF, who, in 1992, complained to the health authorities about inappropriate examinations/behaviour on the part of Dr Zala. (We should say that MF is not a witness in this appeal).

28. HK and LF gave evidence and were cross examined at committal proceedings at Dartford Medway and Gravesham Magistrates Court on 14th July 1993**.** Dr Zala was committed for trial to Maidstone Crown Court and we have seen the indictment drafted by counsel dated 1stSeptember 1993.

29. There is no formal record as to the date that the trial actually took place. There is no transcript of any of the crown court proceedings available to us.

30. The police summary states that Dr Zala faced trial at Maidstone CC in May 1994 in relation to 8 counts of indecent assault on LF, HK and MF between January 1989 and August 1992. The "potted history" of Jacqui Coates made from memory and unspecified information in August 2007 also records the same date (GB page 47).

31. So far as the substance of the trial is concerned the charges concerning LF were said by the police to have been "dropped due to insufficient evidence" but, on the basis of the evidence we heard, LF gave evidence and it would appear that a "not guilty" verdict was entered in relation to the counts that related to her evidence. This left 6 counts in relation to the allegations made by HK and MF. It was said that the trial judge ordered a retrial of the HK and MF allegations because the jury had heard the evidence of LF. We understand that it was directed that the retrial be heard at the Old Bailey.

32. The general background appears to be that the trial Judge at Maidstone was critical of the fact that a meeting had been convened by David Robertson (the then District Manager of the Kent F. H. S. A. in Gravesend) on 18th September 1992 (hereafter the 1992 meeting") during which LF, HK and MF had disclosed their allegations to each other. We will return to the 1992 meeting when we consider the evidence of HK and LF.

33. It is common ground that the retrial at the Old Bailey was not held. We were informed that at some stage acquittals were directed but there is no transcript.

34. KC went to the police in 1993 and made a statement because she read an article in the newspaper about Dr Zala. She was never called to give evidence at any trial.

35. PH made a statement to the police dated 15th May 1994 and gave evidence on old style committal proceedings at the Dartford Magistrates Court on 6th October 1994. We were informed that Dr Zala was committed to the Crown court to stand trial at the Old Bailey in respect of her allegations but that the trial did not take place. It is not known whether it was intended that her evidence would be heard with that of HK and MF in the retrial or on its own.

36. There was another trial concerning a patient (DR) with whose complaint we are not concerned in or about 1996. We mention this particular complainant because, in his submissions on his client's behalf, Mr Forde places reliance on the fact that in that trial Dr Zala gave evidence and was acquitted of all charges: thus illustrating the ease with which false charges may be laid against a doctor.

Our approach to the evidence and self direction.

37. Although this appeal is a civil proceeding we decided that in the context of the grave issues in this appeal we could derive some general assistance from those directions that would be given to a jury in a Crown Court.

Good Character.

38. The parties agreed a direction concerning how we should approach the issue of good character which, (less "jury" explanation), is as follows. Good character is relevant to credibility as well as to propensity. Dr Zala is a man in his middle years who has never been convicted of a criminal offence. Good character is not a defence to the allegations but it is relevant to our consideration of the case in two ways. Firstly, Dr Zala's previous good character is a positive feature which we should take into account when considering whether we accept what he told us. Secondly, the fact that the doctor has not had proven against him any criminal matter or allegations such as these, (after the giving of evidence in the past), may make it less likely that he acted as is now alleged against him.

The antiquity of the allegations/delay

39. Fundamentally the issues involved in this appeal concern the assessment of the credibility and reliability of all the witnesses of fact in the context of allegations which, with the obvious exception of SC, nearly all involve allegations about Dr Zala's behaviour towards women going back to some twenty to thirty years ago. We reminded ourselves that it is known that witnesses can make up and maintain false stories and doctors can be particularly vulnerable to such allegations, not least when the vast majority of the allegations made relate to events so long ago, and at a time when chaperoning arrangements in relation to intimate examinations were not in place as a matter of ordinary practice.

40. We have given earnest consideration to the risk of the Appellant having been caused real prejudice in the conduct of his case by reason of the passage of time. We have considered why some of these allegations had not been made earlier and why some allegations, which had been made, have not been the subject of any determination on the merits. We directed ourselves that we must make allowances for the fact that memory fades with the passage of time and, further, that the passage of time may play tricks on memory. We directed ourselves that we should make allowances for the fact that the passage of time may have placed the Appellant at a real disadvantage in putting forward his case and that this factor should be taken fully into account when deciding whether the PCT had satisfied us that he acted in the way alleged by each of the patients from whom we heard evidence. We also took into account the fact that documents and medical records which are no longer available may have assisted Dr Zala in his case.

Contamination.

41. In any case concerning allegations are made by a number of female patients against a local general practitioner the potential for the contamination of evidence arises. The fact that Dr Zala had been committed to stand trial on a number of occasions and a number of trials took place (including that re DR) meant that there was extensive publicity. Indeed it was press coverage that prompted KEC to go to the police in 1993. It is also safe to assume that, irrespective of the detail and extent of the publicity, the overall circumstances were such that there was very probably a great deal of gossip in the locality. PH came to make a statement to the police in 1994 because her husband told her that Dr Zala faced allegations in court about his conduct towards women patients.

42. Quite apart from the risk of actual contamination we also bore in mind that where witnesses know that there are others who are making allegations, the risk of a degree of subconscious contamination or influence may arise. We recognise too that any of the witnesses may well have gained strength from the knowledge that she is not the only person to make a claim about the manner in which she was examined.

43. Moreover in this case there is evidence of actual discussion between KS and SC prior to their complaints being made to the authorities. Further, as noted above, a meeting was organised by the Health Authority and attended by HK and LF and another patient in September 1992 which led to the abandonment of the criminal prosecution on the basis of contamination.

44. The issue of actual and potential contamination as well as the antiquity of the nearly all of the allegations has been uppermost in our minds throughout this appeal given the gravity of the allegations. In this particular context it will be convenient in this

case to consider the evidence of the patients in the order in which the allegations became the subject of the Respondent's 2008 investigation.

Separate consideration

45. The Respondent invited the Tribunal to conclude that the central allegations made by each female complainant in this case are true. The Respondent submits that independent people do not generally make up like, false allegations against the same person. It was accepted that we should first look at the evidence of each complainant individually and separately when assessing its strength and the weight to be attached to it. It was submitted that the Tribunal is then entitled to go on to consider whether, where there are independent similar complaints made by different patients against the Appellant, each similar complaint makes each other similar complaint the more likely: **R v Chopra [2007] 1 Cr.App.R. 16, CA** (cited at Archbold 2011, 13-63a, pp. 1473-4). We return to this below.

"Bad Character"

46. The Respondent submitted that the Tribunal would be entitled, when determining whether an individual allegation is proved, to have regard to evidence relating to any other allegation or any other "bad character" evidence, provided that such evidence is relevant and admissible: **R v Freeman; R v Crawford [2009] 1 Cr.App.R. 15, CA** (cited at Archbold 2011, 13-63a, pp.1473-4).

47. We have considered all these authorities with care. In the context of the gravity of the issues involved, the antiquity of the allegations, and the actual and potential contamination involved, we resolved to consider the matters alleged by each complainant who gave oral evidence separately. We also decided that it would be potentially unfair to take into account evidence as to "bad character" even if we were to make any adverse findings.

General points.

48. Given the gravity of the allegations, we attached no weight at all to any hearsay evidence as evidence of the truth of its contents.

49. The Respondent had provided a statement of case in order that the Appellant might know the case that he had to meet in respect of the overarching claim of unsuitability and/or inefficiency. This was replicated in the PCT skeleton opening. It was agreed by both parties that it was not necessary to deal with each and every particular of allegation in the manner of a pleading or an indictment. In the light of that agreement the reasoning in this determination will reflect our findings about the true gravamen of the case against Dr Zala. The statement of case, as set out in the skeleton, is to be treated as appended to this determination and at the conclusion of our findings of fact we will indicate briefly which particulars were or were not proven.

50. It was accepted by Mr Forde that the Tribunal is entitled to take into account evidence relevant to the assessment of credibility, even if such evidence did not, of itself, form part of a discrete particularised allegation.

51. As explained to the parties at the conclusion of the hearing we cannot, in this determination, seek to deal with each and every point that has been advanced on either side. We have considered the written and oral evidence and submissions carefully in the overall context of the appeal. It should not be assumed that any omission indicates that any matter has been overlooked and did not receive our attention.

52. Finally, we will not repeat all the self direction set out above when considering the

allegations made.

The expert evidence.

53. The allegations inevitably called for some expert evidence, not least concerning the historic standards of practice. The Tribunal was assisted by the evidence of Dr Cranfield who was called by the PCT. She was well placed to give such evidence. She, like Dr Zala, undertook her own General Practitioner training between 1978 and 1981 and started in practice in 1981. She obtained the post graduate certificate in Obstetrics and Gynaecology (DRCOG) and the certificate in Family Planning at about the same time as Dr Zala. She, like Dr Zala, had undertaken hospital posts, one of which was in obstetrics and gynaecology.
54. Dr Cranfield was a conspicuously fair witness who, in lengthy and well researched reports, had painstakingly considered the development of changes in general practice over the decades involved. In the event there was little challenge to the evidence that she gave and we will deal with the main matters that were explored with her when weighing her evidence with all the evidence in the case as necessary.
55. We should say that, in general terms, we consider that Dr Cranfield was an impressive witness who demonstrated her independence, objectivity and balance both in her written and oral evidence. We recognise, as did she, that allowance has to be made for the fact that consideration of matters that touch upon ordinary or expected practice so many years ago is necessarily not an exact science. Practice has evolved and there will inevitably be a time lag. We reminded ourselves throughout the hearing and our deliberations of the significance of delay and the general difficulties faced by a doctor in seeking to meet the substance of any criticisms as to why and how he conducted examinations so long ago, not least when his own records are relatively brief.
56. Although Dr Cranfield's evidence has generally assisted us in interpreting the evidence, it is for us to decide whether, having assessed the weight and content of all the evidence (including that of Dr Cranfield), whether we prefer the evidence of Dr Zala or that of each of the various patients from whom we heard in relation to the alleged facts.

SC

57. This is not a case in which any complaint of delay is made although we bore fully in mind that the oral evidence before us concerned events alleged to have taken place nearly four years before. The evidence in this case was far more extensive than that available in relation to other allegations and consisted of the evidence of SC, PT, KS, Mrs Solley, Dr Jessell and Dr Zala as well as the contemporaneous medical records. It was not suggested in the case of SC that any documents were missing although towards the end of his evidence *we* heard about a record that Dr Zala had actually seen on the computer screen which is not before us. We will return to this.

The PCT case re SC.

58. In a nutshell the PCT case is that on 6th July 2007 SC attended Dr Zala with her son, HT, who had a chesty cough. She also wanted Dr Zala to look at a lump in her caesarian scar. The PCT case is that Dr Zala examined her scar and then looked at her bottom area. Dr Zala then came to the front of SC and touched her breasts. After some discussion with Dr Zala , and then with the receptionist, concerning her 6 week post natal check, SC left the surgery and, in a state of distress, made a complaint to her partner PT who was waiting outside in the car. She and PT then went to visit her friend KS to whom SC related what had happened and identified Dr Zala as the doctor. KS then disclosed to SC that she had been improperly examined by Dr Zala years before when she had consulted him about a sore throat.

Dr Zala's case re SC.

59. Dr Zala vigorously denies that he touched SC's breast(s) or behaved inappropriately in the consultation. He contends that SC is not a witness of truth or is mistaken about what she claims occurred. His case is that if the events of which she complains occurred at all, it was on 6th June when she consulted a Dr Pillarasetti. He relies in particular on the fact that SC initially said that the relevant consultation occurred in about mid June and her partner PT said that it happened in June. Dr Zala also relies on the fact that the physical description of the doctor concerned given by SC in February 2008 chimes with that given by KS (page 894). He contends that, by reason of her discussions with KS, SC has wrongly named him as the doctor concerned. SC's evidence comes about because she was shown the medical records and has reconstructed events having been convinced by her friend that a doctor called Zala has a propensity to treat patients inappropriately. His case is that with the help of the police, and having seen her records, SC has transposed events from the 6th June consultation to that on 6th July. She has become more and more convinced of her erroneous account over time reinforced by her discussion with her friend. Mr Forde submitted that a detailed analysis of the transcripts and the witness statements made at time indicates such a degree of inconsistency such that this matter cannot be proved on the balance of probabilities.

60. We noted that it has always been Dr Zala's position that he examined HT as well as SC on 6th July 2007 in the manner described by him in his statement dated 21st August 2007. Dr Zala's case before us is that if there was an inappropriate examination this must have occurred on 6th June 2007 when the records show that HT and SC were seen by another doctor. Dr Zala relies particularly on the fact that in her November 2007 statement SC had described Dr Zala as being an Indian male, mid 50s, small build and height with quite thin short black hair. It is common ground that Dr Zala has a bald pate and such hair as he now has to the sides and base of his head is grey/white. Thus Dr Zala contends that, even allowing for the passage of four years on his hairloss, this is a clear case of mistaken date and mistaken identity. He claims that he has been pretty much bald for some 15 years.

61. It might follow that there is no significant challenge to the credibility of SC's account of what actually happened to her: the real challenge being directed to the date of the consultation and the identity of the perpetrator. However, as set out above, Dr Zala's case is that SC's account is the product of contamination and it is this that has caused her to transpose some of the events that she claims happened to her on 6th June to 6th July 2007. He also contends that she is not a truthful witness.

62. Mr Forde asked us to take particular care in examining the first statement of SC because this was inconsistent with the evidence now given. In our view evaluation of any inconsistencies requires that we examine the detail of all of that which SC did or said after she left the surgery in sequence.

Our consideration of all the evidence re SC's allegations.

63. In his statement to the police made on 11th January 2008 PT said that in June 2007 he had driven SC and H to the surgery and waited in his car. When SC returned to the car where he was waiting she was quiet. He asked her if everything was alright and she said "I feel dirty". He asked why and SC said that Dr Zala knelt in front of her and pulled down her knickers to look at her. Dr Zala then went behind her and pulled down the back of her skirt. SC said that Dr Zala then came around to the front of her, lifted up her top and checked her breasts. He said that SC did not explain how the doctor had examined her breasts but he assumed that this was by touching. When SC told him her account she looked worried and confused. She had a teary look and her voice sounded upset.

64. In her statement dated January 2008 KS set out that which SC told her when she saw her the same day. We will return to this in due course.

65. According to her November 2007 statement SC decided the next day to telephone her midwife Andrea Tyler at her surgery at Dartford to see if the way that Dr Zala had examined her was normal. She could not speak to Andrea Tyler but spoke to someone called Kim. She explained her concerns and Kim said "Oh No, not him again" Kim said that she would discuss it with Andrea and ring back. Kim phoned back and advised her to write to Dr Jessell with her concerns.

66. According to the statement of Mrs Lesley Solley dated 14th March 2008 (page 679) she spoke to SC when the latter phoned asking to speak to her midwife, Andrea Tyler. Andrea Tyler was no longer a community midwife so Mrs Solley asked if she could help. SC said that she had been for her post natal check up and felt that the GP had behaved inappropriately. As she knew that Andrea Tyler was formerly from the Marling Way surgery, Mrs Solley asked if she was talking about Dr Zala. SC confirmed this and Mrs Solley said something like it's not the first time we were aware of something like this. She said to SC that as a woman she would personally take it further and pursue a complaint. She did not, however, explain to SC what procedures to follow or who to contact. She did, however, tell Andrea Tyler what SC had said. Mrs Solley did not know what Andrea Tyler did with that information.

67. The record made by Andrea Tyler dated 14th August 2007 (page 882) states that fortuitously she was working on Aspen Ward when the community midwives were contacted by SC wishing to make a complaint about inappropriate behaviour by her GP. As she could not recall the correct channels she advised the Community Office to advise her to telephone the LMC (Local Medical Committee) and they would advise her of the correct action to take. Ms Tyler's brief record does not identify the person whom she asked to speak to SC but it is apparent that somebody advised SC to write to the LMC. Mrs Solley's evidence was that she did not give this specific advice.

68. SC's written complaint was made by letter dated 16th July 2007 addressed to the LMC. It was written with reference "to a complaint against Dr Zala" (see page 107). It is a signal fact that SC omitted to state the date that she alleged that Dr Zala examined her in a way that made her feel uncomfortable. It is startling that no record had been made as to what SC had said on the telephone. Further no one enquired as to or recorded that which she alleged, or even when she claimed that the incident had occurred. This is, to say the least, highly regrettable.

69. Be that as it may, in her letter of 16th July 2007 SC stated that:

"I made an appointment firstly for my newly born son H – once in the surgery I asked if it was also possible to see the Dr as I had a lump appear near to my caesarian scar. The receptionist said that that was okay. Once in the surgery & he had looked at H, he then said that he would take a look, he examined the lump and then proceeded to pull down the top part of my knickers, had another look, went to the rear of my body, again proceeded to pull down the top part of my skirt & knickers together, not explaining anything! The Dr. came and knelt in front of me & lifted my top and felt my breasts, again without explanation, said take it easy and the lump was nothing to worry about. These actions did not feel right and have made me uneasy and upset.

As I was leaving the surgery I asked if I could see the nurse for my six week check

since the doctor made me feel anxious, she spoke to the doctor and he said that I had to go back to him, this I wasn't happy about. I cannot understand why he did not explain what and why he was looking & feeling at parts of my anatomy like he was and without a female being present, if there wasn't one available I would rather have been reappointed or be sent elsewhere….

I have now changed my doctor because of this incident which is something that I should not have to do."

70. It is common ground that the police were not contacted by the Respondent until October 2007. For reasons that are not clear to us a statement was not taken from SC by the police until 30th November 2007 (page 102.) At this time SC was not shown her medical records. On the basis of her memory alone, she said that:

    i. The incident occurred in mid June when she consulted Dr Zala because her son H, (who was born on 29th May 2007 by lower segment caesarean section), had a chesty cough.
    ii. She asked the receptionist if the doctor could fit her in as well because she had a lump above her C section scar that she thought might be infected. The receptionist checked with the doctor and told her that he would see her as well.
    iii. Dr Zala examined her scar whilst kneeling down in front of her. He then stood up and walked around behind her. He pulled down the top of her skirt and pants so that they were resting just above the top of her bottom. He then examined the top half of her bottom area. Having come around to the front of her, he lifted up her T shirt and put his right open palm down the front of her left breast inside her bra. He kept moving his open hand over her breast and nipple. The examination of her breast lasted seconds. She felt really uncomfortable. She had not had her breasts examined before.
    iv. Dr Zala advised her that there was no infection and she was bound to be a bit sore as she had had a c section and they had had to cut through 4 layers of skin.
    v. She told Dr Zala that she had her post natal 6 week check the following Tuesday. Dr Zala said that he would rather that she came to him before the check up, instead of the nurse, to see if the lump had gone. He wanted to see her in another 2 weeks time. To SC this meant that that she would be two weeks late for her six week check but she accepted what he said.
    vi. She explained to the receptionist what Dr Zala had said and the latter went to Dr Zala to check this. She thought she remembered the receptionist saying that the nurse was on holiday. The receptionist booked the appointment and SC left. She really did not want to go back to Dr Zala.
    vii. She went back to the car where her partner, PT, was waiting for her. She was tearful and felt very emotional. PT asked her what was wrong and she said she felt dirty. She explained what Dr Zala had done to her. PT asked her why she did not have a nurse with her and was angry. He wanted to go and speak to Dr Zala but she just wanted to leave.
    viii. She and PT went to the home of her friend KS and told her what had happened. KS asked her what the name of her doctor and, when she told her, KS said that when she was about 16 years old the same thing had happened to her when she consulted Dr Zala with a sore throat.
    ix. The next morning SC decided to telephone her midwife Andrea Tyler at her surgery in Dartford but spoke with the receptionist called Kim (who called back and advised her to write to Dr Jessell.
    x. On the Monday she went to the surgery at Whinfell Way and registered herself and HT there that day.

71. In a further police statement dated 6th February 2008 SC dealt with further aspects. Amongst other matters she was asked if she saw a Dr Visionuser on 6th June 2007

but she could not recall a doctor of this name.

72. It is obvious from the February 2008 statement that DC McCann was looking to see if SC's diary assisted about the date of the consultation of which SC complained. Instead of looking for the contemporaneous record of the date that SC changed surgery within the GP records she asked SC to look at her own diary entries and the health visitor/ midwifery records. These did not assist.

73. It appears that the police were not aware that there was a separate *manuscript* record made by a Dr Pillarisetti on 6th June 2007 in HT's records. We consider that this manuscript record provided the clue as to what "Dr Visionuser" in the computerised record really meant. It is simply the default mechanism that comes into play when the user does not use a log in identity.

74. It appears from the interview with Dr Zala conducted under PACE conditions on 28th March 2008 that the police still believed that the entry made in the computerised record under the heading "Dr Visionuser" on 6th June 2007 actually referred to a doctor with that name. There was discussion with Dr Zala in that interview about how this name of "Dr Visionuser" should be pronounced. The interview was then terminated at Dr Zala's request. If it was continued at any stage the record is not before us. We note from the police summary (at page 7) that it was said that Dr Zala declined to answer questions about Dr Visionuser but that his solicitors said that the information would be made available. DC McCann went on to state that the information that Dr Visionuser was, in fact, Dr Pillarisetti was provided by Eastwoods on 10th April 2008.

75. There is no evidence that the police considered whether it might be advisable to see whether SC recollected an earlier consultation with Dr Pillarisetti as now identified.

76. We mention all these matters because it has been suggested that the CPS decided not to prosecute Dr Zala because they considered that SC's account about the date of the consultation rendered her evidence unreliable. In fact, the reasons recorded by DC McCann are set out in two short paragraphs on page 7 of the police summary and include the fact KS and SC had discussed their allegations. It was also said that the police could not ignore the fact that it was because of contamination of witnesses that the 1992 case was discontinued.

77. We should say that we attach little or no weight to the fact that the police and/or CPS decided not to prosecute SC's complaint. The understanding of the police as to what the medical records contained or their potential significance was incomplete in a number of respects. We noted also that the decision not to prosecute was apparently also made without the benefit of any expert opinion. Finally, it is well known that the decision would have been made having regard to the prospects of securing a conviction applying the criminal standard of proof.

78. We have considered all of the evidence of SC, PT and KS (but only in so far as it is relevant to the issue of "recent complaint"), Mrs Solley, Dr Zala and Dr Cranfield.

79. In assessing Dr Zala's evidence we have taken into account the fact that he is a man of good character which is a factor that we take into account when assessing the credibility of his evidence and well as the likelihood that he would behave in the manner alleged by SC.

80. In answer to SC's complaint dated 16th July 2007, Dr Zala provided a statement dated 21st August 2007 to the PCT in which he stated that "having had the

opportunity to see the computerised medical records I do recall the consultation." (page 988)

His medical record (page 742) was as follows:

> *"06/07/2007 Surgery Consultation Dr Navin Zala*
> *Scar painful. lscs, well otherwise, reassured.*

81. Dr Zala went on set out a number of matters that he recalled and we will return to this below. Amongst other matters, he asserted that he repeatedly asked SC whether his palpation of her scar caused her any pain or tenderness. He also specifically asserted that he had examined the renal angle to exclude the possibility of cystitis. In his statement he apologised to SC for any misunderstanding that may have arisen from his lack of a full explanation. He vigorously denied that he had touched SC's breast or that he knelt in front of her when examining her scar.

82. We note that when this statement was made, the only material available to Dr Zala was the complaint letter dated 16th July 2007, the computerised records, and a brief record by Andrea Tyler dated 14th August 2007. Dr Zala set out a number of matters that he said he recalled. We noted that a number of these were not referred to in SC's letter of complaint or his records. These include that: HT sat in SC's lap; SC had a baby carrier; SC was already standing when she asked Dr Zala to look at her scar; he examined SC's abdomen after examining her scar: in so doing he asked her to turn slightly to one side and he recalled using his right hand to push up her upper garment when examining the abdomen. He did not move her lower garments in any way as there was no need to do so: the relevant area was exposed.

83. Dr Zala went on to say that he wished to exclude the possibility of cystitis and therefore wished to check for renal tenderness. He asked SC to turn around so that her back was towards him. She did so. He remained in his chair. We noted that this account is different to that described by SC in the complaint letter which suggests that in this too Dr Zala was setting out his actual recollection. He said in his statement that he wished to examine the renal angle which is slightly higher than the umbilicus. He said he recalled using his right hand to move SC's upper garment slightly higher to expose the renal angle. He said that he told SC that he would press on the right and the left and asked her if this cause any pain or tenderness. It was not necessary for her skirt and knickers to be lowered and he did not move them.

84. Dr Zala specifically said at paragraph 22 that he sat in his chair throughout the whole of the examination and that SC was standing throughout.

85. In summary, Dr Zala described in some detail the examination which, save in relation to the claimed breast examination, accords with the broad sequence set out in the letter of complaint but he provides a great deal more detail. On the face of it, his clinical note itself contains no symptoms that would indicate the need for an examination of the renal angle. There is no explicit record that any examination was performed. The overall level of detail contained in the August 2007 statement is perhaps surprising for a consultation by a relatively busy doctor with a patient who he does not know well and where, on his case, nothing remarkable occurred. Dr Zala's explanation in his oral evidence was that he was able to recall some aspects of the consultation because it was relatively unusual for someone to present with an LSCS scar. We will return to this in due course.

86. It is not entirely clear to us when it was that Dr Zala decided that the consultation that SC had described must have taken place on 6th June rather than 6th July 2007. This aspect formed no part of his statement to the PCT, the police or even his witness

statement in these proceedings dated 10th March 2010, even though the latter was provided after full disclosure of the HT and SC records. We recognise that the fact that a forensic challenge may emerge late in the day does not prevent it being a good one. We noted that Dr Zala's statement made in March 2010 effectively transposed and adopted the August 2007 statement to the PCT save that Dr Zala said that he no longer recalls the consultation on 6th July 2007. We recognise, of course, that every potential witness may well suffer from the effect of the lapse of time on his/her memory when he/she makes a later statement and/or gives evidence. Be that as it may, we find that as at 21st August 2007 Dr Zala was able to give a detailed account by reference to his brief note and, in many respects, by reference to his actual memory.

87. Dr Zala's account about his examination of SC's renal angle is of potential relevance in deciding what happened that day. There is no note of any urinary or other symptoms such as pyrexia that might have prompted such an examination nor was it suggested to SC that she had given such a history. One reading of Dr Zala's record "well otherwise" suggests that SC had not complained of any symptoms other than the painful scar. Dr Zala's evidence on this was that when he wrote "well otherwise" it reflected his findings in relation to the examination he had perfomed. When it was suggested to him that "well otherwise" did not indicate that there was a history given of urinary symptoms that may have prompted an examination of the renal angle, he said that "well otherwise" reflected both the history and his findings on examination.

88. It is accepted that if SC's breasts or breast were touched in the manner described in her letter of complaint or as in her witness statement, then this can only be categorised as inappropriate sexual behaviour. It is accepted that her accounts about the touching of her breast(s), if true, cannot be attributed to a mistake about a legitimate examination undertaken for justifiable medical reason. In this regard, the issue is therefore whether in the light of all the evidence we prefer the evidence of Dr Zala to that of SC.

89. The first issue we have to decide is whether the relevant consultation took place on 6th June or on 6th July 2007. Our consideration included the following:
    a. At first blush it may not be surprising that without access to her medical records SC might make a mistake about the month in which the incident occurred when she gave her statement in November 2007. She said that it had occurred in mid June. If what she says is true about the relevant consultation it was a distressing event and she had recently had a baby by caesarean section. The difference between mid June and 6th July is only a matter of three weeks.

    b. We noted that SC said in February 2008:
        > "DC McCann has told me that my medical records show that I saw a Dr Visionuser on the 6th June 2007. I have no memory of this and cannot remember going. I cannot recall a Dr Visionuser. As far as I can recall the first time that I saw a doctor about my lump being possibly being infected was when I saw Dr Zala. *I had only had H a week and one day at this point and I cannot remember if I saw a doctor…" (our emphasis)*

        We consider that when the statement is read in full context this last sentence referred to 6th June and a consultation with "Dr Visionuser" which SC did not then remember.

    c. It is not surprising to us that PT did not recall the actual date of consultation

but he did recall that it was a Friday as did SC (see Tr SC p18). The 6th July was a Friday whereas the 6th June was a Wednesday.

d. SC said in the November 2007 statement, on the basis of her memory only, that on the Monday after the incident she registered with another surgery. The account she then gave is entirely supported by the records in front of us which show that the application to transfer SC, PT and HT from Dr Zala to the surgery at Whinfell Way was, indeed, made on 9th July 2007 which was a Monday and the first working day after 6th July.

e. If, as is suggested, the incident of which SC complains occurred on 6th June 2007 when SC and HT were seen by Dr Pillarisetti then it must follow that SC returned to the surgery for a consultation after the alleged incident. SC made it very clear both in her statement and on a number of occasions in her oral evidence that after the alleged incident she never went back to the surgery again and had changed doctors straightaway.

f. Moreover, SC has always consistently said that when the consultation took place she was due to undergo her six week check with a nurse the following Tuesday. She said so even when first interviewed by the police in November 2007 when she dated the relevant consultation in mid June. Indeed, her evidence was always that the six week check was an issue of concern for her because she was uncomfortable and upset at the end of the consultation and did not want to return to see Dr Zala. As a matter of fact HT was to be six weeks old on Tuesday 10th July 2007.

g. SC has always been consistent in her account that the reason she consulted the general practitioner on the relevant occasion was because her son had a "chesty cough". The only record that could relate to a chesty cough in H's records during the relevant period is the 6th July when "URTI" (upper respiratory tract infection) was noted by Dr Zala. From the fact that nasal drops were prescribed we infer that H had a cold. We do not ignore that the fact that a repeat prescription for a further Gaviscon were also provided on 6th July for HT but in our view the record itself makes it plain that the primary reason for the child's attendance was the symptoms that Dr Zala diagnosed as an URTI.

90. We consider that real clues as to the true date of SC's claimed experience were always contained within her November 2007 statement and cross reference to the records at the time would have revealed this to the police. Quite apart from the fact that SC made it clear that the claimed event occurred just a few days before she was due to undergo the six week post natal check she had always made it clear that she changed doctors immediately. This is entirely borne out by the contemporaneous records. We noted also that KS in her statement dated 24th January 2008 (page 892) had said that SC had spoken to her about her concern that her scar was sore about 4-6 weeks after SC had had H. She said that this conversation arose because another mother at the school had had an infection in her caesarean scar.

91. PT's evidence also illuminates the issue of the date of the relevant consultation. He was a completely straightforward and relaxed witness who plainly had no qualms or anxieties about relaying his account of events as he recalled them.

92. PT had said in his police witness statement in 11th January 2008 that he had met Dr Zala before the occasion of which SC complains, and at the time when H was newly born and sick with vomiting. When asked how he knew that it was Dr Zala on that

occasion he said that this was what SC told him before that appointment. In the presence of Dr Zala, and without any degree of self consciousness, he very confidently described the doctor on the occasion he attended with HT and SC as Indian with a full head of dark hair. Without any hesitation he said that the doctor who saw HT at this time diagnosed the baby's condition and prescribed medication to put in the baby's bottle.

93. The only relevant GP record of a consultation was when HT presented on 6th June 2007 at 11am with regurgitation of feeds and hiccoughs since birth. The plan made by the doctor on that occasion was infant Gaviscon, one "dose with feed" and was made by a Dr Pillarisetti (page 820). We noted also that there is no record of HT being seen at the GP surgery before 6th July 2007 although we noted that, thereafter, repeat prescriptions of Gaviscon were provided on a repeat basis and without any actual consultation with a doctor on 15th June 2006 and 25th June 2007 (see page 838). We accept PT's evidence that he was indeed present at this first GP consultation for HT on 6th June because he had recalled the occasion without reference to any records and in his oral evidence he immediately gave an accurate description of the presenting condition and the advice given by the doctor seen on that occasion. We consider that his evidence reflected his belief that he saw Dr Zala with SC but he was plainly wrong about the name of the doctor. We are not surprised that PT did not remember the name of the doctor on that occasion. It is apparent that he had had cause to be concerned about his newly born son. He was an involved father and this was his first child. He had taken H to the hospital A & E department on 1st June 2007 because he was worried about him because he had turned blue. We consider that PT had a good overall recall of events but not names or faces. This is understandable in the context that there had been many concerns about H's health in the first months of his life.

94. We do not consider that there is anything sinister or even remarkable about the fact that, when first asked about it in January 2008, PT dated the incident of which SC complains as being in June.

95. On PT's evidence he did not go into the surgery with SC on the occasion when she was upset about the conduct of the doctor. He had waited in the car because he did not want to get a parking ticket.

96. For all these reasons, we have concluded that, despite the fact that SC had originally dated the event in about mid June and PT had dated the event in June, the consultation of which SC complains took place on 6th July 2007.

97. As Dr Zala contends that SC has transposed some events from 6th July 2007 to 6th June 2007 it is necessary that we make findings about what happened when SC saw Dr Pillarisetti on the 6th June 2007. We find that on this occasion Dr Pillarisetti recorded that by way of post operative monitoring that SC had had a LSCS a week ago; the wound was a bit tender; there was no evidence of any infection. Dr Pillarisetti noted *"reassured, advised analgesia and review if any further concerns."* There is no explicit note that any physical examination was performed by Dr Pillarisetti but this is implied in the record made that there was *"no evidence of any infection."* Although Mr PT did not recall any physical examination of SC on 6th June it was SC's evidence that she was examined by the doctor on this occasion.

98. Whilst SC agreed in cross examination with the essential premise that on the occasion that her scar was palpated when she was standing, she was very clear in her evidence that in the "perfectly proper" consultation the doctor had not performed any examination whereby he had pressed his thumb in the area of her back near the

kidneys (TR SC 31 H). We are confident that PT was present at all times during the 6th June consultation. We noted that he did not recall any examination of his partner. We consider that the breast touching that SC described as happening when she was standing by the doctor's desk could not have possibly occurred on this date without PT noticing. We noted also that in answer to Mrs Purkis' questions SC said that in the examination where nothing happened to upset her, she recalled lying on the couch and the doctor pressing on her stomach where the scar was. We noted that this was consistent with Dr Cranfield's evidence as to how the abdomen should be examined in accordance with accepted practice. SC added that, to be honest, she could not recall being asked to go to the back and side but she did not have any problems with this examination. She did not feel as uneasy and uncomfortable as the last time that she went to see the doctor.

99. Unless SC has completely fabricated her evidence, acceptance of the Appellant's case appears to involve that:
    - Her breast or breasts were touched by Dr Pillarisetti on 6th June 2007 but she did not react to this and returned to the surgery
    - She decided on 6th July to make an allegation against the doctor that she saw that day and then either simulated or suffered distress about an event that had occurred a month earlier.

100. Acceptance of Dr Zala's case also seems to involve that he and Dr Pillarisetti performed the very same examinations including palpation of the abdomen and palpation of the renal angle so as to exclude cystitis/urinary infection, *whilst SC was standing.* However, this would involve unacceptable practice by two doctors which, on the face of it, would seem to be a remarkable coincidence. We accept the evidence of Dr Cranfield that, consistent with accepted practice, examination of the renal angle cannot be properly undertaken when the patient is standing as it requires the application of significant pressure to the kidneys. Further, as noted above, Dr Cranfield's evidence was that examination of the abdomen when a patient is standing would not accord with accepted or responsible practice because the abdominal muscles are not relaxed when standing and any tenderness could be missed.

101. The overall conclusion that we draw in the light of all the evidence is that the description of doctor's hair given by SC in the police statement of January 2008, whilst plainly erroneous, is not such as to make us doubt her evidence that the relevant consultation was on 6th July 2007. Indeed we consider that the evidence that the consultation of which SC complains was on 6th July 2007 is overwhelming.

102. We turn now to the events that SC describes in relation to 6th July 2007.

103. If, of course, Dr Zala is right in his account of his examination of the renal angle this might tend to suggest that SC's first detailed account about this was unreliable so casting doubt upon her evidence about the claimed breast examination. Dr Zala's case is that, having examined SC's caesarean scar and abdomen, he examined the renal angle by applying pressure to the kidneys from the back at a level above the umbilicus so as to exclude urinary infection. In her November 2007 statement SC said that after he pulled down the top of her skirt and pants, Dr Zala examined "the top of my bottom area." She thought that he touched her there with his hands but she remembered that it seemed to her that he was just looking at her bottom. He did not explain anything. In cross examination it was suggested that thumb pressure had been applied to the area of the kidneys. SC said firmly that this was not an examination that Dr Zala undertook. We noted also that Dr Zala effectively said in his August 2007 statement that the renal angle is located sufficiently above the waist that it would not usually be necessary to expose part of

the bottom in order to examine that area.

104. We noted that no history was given or symptoms recorded to suggest that SC might have a urinary infection. Dr Zala recorded "well otherwise". We noted that SC herself had thought that a urine sample might be requested but when asked about this it was clear to us that she, based on her past experience, she simply believed that such a test might assist in the diagnosis of infection in the scar. She made no mention of any urinary or related symptoms such as a high temperature in any of the statements that she made nearer to the events in question.

105. The general tenor of Dr Cranfield's evidence was that a careful doctor might wish to examine the renal angle even in the absence of any symptoms suggestive of urinary infection. The real issue is whether we think that this in fact took place? We accept Dr Cranfield's evidence that where urinary infection is suspected the first step would be to perform a urine dipstick test. Further, in circumstances where an examination of the renal angle was required it could only properly be performed on a couch because of the need to exert significant pressure against a sufficiently resistant surface. SC's case is that she was standing, as was Dr Zala (except when he knelt when examined her scar). We noted that in his very first statement Dr Zala had said that he had been sitting down throughout the entirety of his examination of SC (see para 15 on page 690 and para 22 on page 691) where he expressly said that "I did not go round to the rear of her body as SC describes, as I remained seated throughout this examination with (SC) standing."

106. We consider it unlikely that SC had complained of any symptoms that were suggestive of urinary infection or a temperature because if she had we consider it probable that she would have mentioned this, both during the consultation and in her letter of complaint. We do not believe Dr Zala's evidence that he examined the renal angle when sitting down or at all. We consider it likely that his account about his examination of the renal angle is a matter he constructed to seek to explain SC's account in her letter of complaint that, before feeling her breasts, he went to her rear and pulled down her skirt and knickers. We recognise, however, that this is not necessarily probative in relation to the alleged breast examination.

107. It is alleged that Dr Zala, having stood behind SC, then came around to the front, lifted her top and touched her breasts. It is suggested that the evidence of SC about the consultation on 6th July 2007 is not credible because it was contaminated by KS's account but this overlooks the evidence of PT who was the first person to whom SC spoke within minutes of leaving the surgery premises. We accept the evidence of PT about SC's distress when she came back to the car where he was waiting because we found him to be a wholly credible witness. We accept that he saw that SC was visibly upset when she got into the car and that she immediately told him that she felt "dirty". She told him that having examined her scar Dr Zala went behind her and pulled down the back of her skirt. SC then said that Dr Zala came around to the front of her again and lifted her top and checked her breasts. PT was exercised as to why there had not been a chaperone and wanted to go into the surgery and ask why. This evidence had the ring of truth.

108. We accept also the evidence of PT and KS that SC told KS what had happened to her before KS asked her the name of the doctor concerned. We accept SC's evidence that it was only after her own disclosure that KS disclosed her own claimed experience. We noted that the core account SC gave to PT and, thereafter, to KS was consistent and, further, that her account to us was broadly consistent with her written and oral evidence.

109. Mr Forde relies on inconsistencies in the evidence of SC. Amongst other matters she had previously claimed that Dr Zala had touched both her breasts but in her November 2007 statement and in her oral evidence referred to one breast only. She also said in evidence that the doctor asked lifted her top herself whereas she had previously said that he did this himself. Dr Zala also relies on the discrepancy/inconsistency of SC's description of him given that, on the basis of her account that he had knelt before her when examining her scar; she had full opportunity to observe his bald head.

110. Fundamentally we have to decide whether it is SC or Dr Zala who is telling the truth about what happened on 6th July. We reminded ourselves that sexual allegations can be easy to make and difficult to refute. We bore in mind that a witness may appear honest because he or she has convinced him or herself of the events that he or she relates. The fact that SC made a complaint to someone does not, if itself, go to the truth of the allegation. We reminded ourselves that Dr Zala is a man of good character which is relevant to both credibility and propensity.

111. There were several aspects of Dr Zala's evidence concerning SC that we found unsatisfactory.

a. We do not believe that he was able to recall the level of detail set out in his statement dated 21st August 2007 simply because it was relatively unusual for him to be called upon to examine a caesarean scar. We recognise that odd things can stick in people's memories for any number of unexplained reasons but we do not accept that Dr Zala recalled some of the detail he claimed in August 2007 for the reason he now gives.
b. We noted that in the statement he gave to the police dated 14th January 2008 Dr Zala sought to distance himself from the matters he said he had recalled in his August 2007 statement. He said that when he made the August statement he could not recall all the details of his consultation and that he made his statement "from a combination of his routine practice and his recollection" (page 694). We do not believe this because he made no specific reference to his usual practice at all in his 2007 statement but had asserted, that having seen the medical record, he recalled the consultation. Further his clinical note was so brief that it would hardly have acted as a prompt to as why he examined the renal angle as he claimed.
c. We noted that Dr Zala said in his March 2010 statement and in his oral evidence that he now had little recall of events concerning SC. We do not believe that, assisted as he was by the statement made on 21st August 2007, Dr Zala's recollection of what happened on 6th July 2007 is now quite as poor as he claims. We formed the clear impression from this and from his evidence generally that Dr Zala was highly selective when it came to his memory.

112. We accept Dr Cranfield's evidence that if a doctor has carried out an examination which revealed no abnormal findings it is normal practice to record OE NAD or something to that effect. Dr Zala originally said that "well otherwise" reflected that he found nothing of concern in his examinations (see page 695) As Dr Zala accepted, "well otherwise" is a known method for recording the absence of any symptoms when the history is taken. Dr Zala said that he used "well otherwise" to reflect his findings on examination and the history taken. His evidence in this regard was unsatisfactory. We gained the clear impression that Dr Zala was seeking to obscure the fact that there was no history of symptoms that might have prompted the need for an examination of the renal angle on 6th July.

113. Dr Zala's evidence about the issue of the six week examination deserves separate consideration. We noted that in his August 2007 statement Dr Zala said this

at paragraph 21.

"I recall that I mentioned to SC that her six week check was due and that she should make an appointment with the nurse. I understand that there was some subsequent confusion and in fact she made (via my receptionist) an appointment to see me, rather than the nurse."

The apparent implication of this was that, at his practice, the nurse would ordinarily perform the six week check and not a doctor. Indeed this was how the matter was explored with SC by Mr Forde (Tr. SC page 20A). Dr Cranfield had, however, pointed out in her report that the internal examination required at six weeks post delivery has to be performed by a doctor. In his evidence Dr Zala said that he had not meant to say in his statement that he would not be involved at all: an appointment would ordinarily be made with the nurse and he would simply be called in to deal with any physical examination required at six weeks. He still maintained that SC was mistaken or confused about the appointment.

114. In cross examination Dr Zala said for the very first time that after SC's complaint that he had actually interrogated the computer and seen a record that showed that on 6th July an appointment had been made for SC to attend him two weeks thereafter. We noted that this supports SC's evidence that an appointment was indeed specifically made for her to see Dr Zala. Mr Forde submitted that the fact that Dr Zala gave this evidence supported his credibility. We formed the very strong impression that Dr Zala only decided to reveal that he had actually seen this record because he might be asked about the fact that a computer record would have been made. This impression aside, what is significant is that Dr Zala had said in his August 2007 statement that it was SC who, via the receptionist, arranged that she see him in two weeks.

115. We noted that Dr Zala also said in his statement to the police on 14th January 2008 (sic) (page 695) that he would not have asked SC to see him two weeks later or said that he wanted to see her before she saw the nurse. Indeed, he said that he had encouraged SC to see the nurse. We consider that the effect of this statement was to seek to undermine SC's account in her complaint letter. We do not believe Dr Zala's account that he had not said that SC should return to see him in 2 weeks.

116. Notwithstanding SC's account of Dr Zala's appearance and/or the fact that her subsequent account differed in some respects, we consider that SC's core account about the examination on 6th July was credible and we prefer her evidence to that of Dr Zala. We consider it likely that when she wrote her letter of complaint on 16th July 2007 her memory of that both breasts were touched by Dr Zala was better. This was also consistent with what she said to PT and KS. We find that SC was a truthful witness who did her best to describe real events that actually happened to her when she consulted Dr Zala on 6th July 2007. We consider it very improbable indeed that SC transposed events from an earlier consultation. Having seen and heard her give evidence, we consider it quite incredible that she would have made up this account and simulated distress in the short time before she got to the car where her partner was waiting. In our view, notwithstanding any inconsistencies, the evidence that Dr Zala acted in the manner alleged in the statement of case is compelling. It was clear from her evidence that when she left the doctor's room she knew that she did not want to see him again and she tried to make sure that she saw the nurse. We accept her evidence that the receptionist went back to Dr Zala who confirmed that she was to see him in two weeks.

117. The Respondent had satisfied us on the balance of probabilities that the facts particularised in the statement of case took place. Although it is not necessary to so

we should say that we are, in fact, sure that Dr Zala acted in the way alleged. His account in his statements and his evidence was self serving and inconsistent. We do not believe his evidence about what happened on 6th July 2007.

118. We find that there was no possible legitimate medical reason that could account for the way in which SC's breasts were touched on 6th July 2007. We also find that Dr Zala looked SC's bottom area in a way that was not clinically appropriate. The plain and obvious inference is that Dr Zala's actions were sexually motivated and we so find.

119. As to the PCT statement of case we find that the allegations replicated at 10.5 a) to h) of the PCT skeleton are proven.

120. Having so found it might follow that we are entitled to take our findings re SC into account when deciding the other allegations. However in the overall context of this case, which includes the antiquity of the allegations, we maintained our resolve to consider the evidence of each patient separately and to take into account Dr Zala's good character at the time that each of the patients claimed that she was treated inappropriately by him.

KS.

121. KS was interviewed by the police in January 2008 because SC had spoken to her about her consultation with Dr Zala on the day the incident occurred and, we infer, because SC had told the police that KS had told her that a similar incident had happened to her.

122. In her statement dated January 2008 KS stated that SC told her that her doctor had knelt in front of her to examine her caesarean scar and he had lifted up her bra and touched her breast. She (KS) asked SC the name of the doctor. When told it was Dr Zala she said that *"I don't believe this, I didn't think he was practising anymore"* and she told SC that something similar had happened to her in the past. She told SC that she had consulted Dr Zala for a sore throat and he had got down on his knees, lifted up her top and touched her breast.

123. We noted that in her police statement KS gave an account which was similar to that of SC but in the event she was to describe the incident of which she complained differently. In her oral evidence KS did not say that the doctor knelt in front of her. What she described was an examination by a doctor using a stethoscope to listen to her chest whilst at the same time touching her breast with the same fingers that were holding the stethoscope.

124. Even if we were to find that KS's breast was touched in the manner she described in her oral evidence, the main issue is whether her account of the circumstances and her identification of Dr Zala as the doctor concerned are reliable in all the circumstances.

125. We find that the account KC gave to SC was given after SC disclosed her experience and had named Dr Zala because we accept SC's evidence on this. It is our view that the risk of KC also identifying Dr Zala as the doctor involved after his name has been provided by SC is very significant, not least when the events that she then related to SC in July 2007 occurred some 16 years or more before.

126. The Respondent relies upon the fact that a consultation has been identified within the records for KS at the Kings Drive surgery on 5th September 1991. Kings Drive surgery was run by Dr Vasudaven and he and Dr Zala had an arrangement

about reciprocal cover. Mr Booth submits that Dr Zala has given different accounts of the extent to which he would have occasion to stand in for Dr Vasudaven at the Kings Drive Surgery. We noted that PH had said in her evidence that at about this time, she used to try to see Dr Vasudaven at the Marling Way surgery as he would be there on Tuesdays which also tends to suggest a regular arrangement existed at about that time. We agree that the accounts that Dr Zala has given about the arrangements with Dr Vasudaven at various times have been different but this must be considered in the context that this evidence bears on general practice arrangements, some of which came about for different reasons, some 20 years ago. At the time when he made a statement to the police which, on the face of it, is inconsistent with the evidence now given, he had not been provided with the records and no specific date had been identified by the police. The police disclosure then given consisted only of the bare allegation re KS and a time frame that involved some 2 or 3 years. We noted that Dr Zala did not take the opportunity to correct matters when he provided his statement in March 2010. Nonetheless we came to the view we consider that it would be unfair to place much weight, if any, upon the inconsistencies relied on in this particular regard.

127. It is disputed that the entry on which the PCT rely was made by Dr Zala. By reason of our earlier interlocutory ruling there is no handwriting evidence before us. It would, of course, be wrong to make a comparison between the disputed entry and others which Dr Zala does acknowledge to be in his own hand. Mr Booth however invited us to find that Dr Zala's own evidence about this entry is inconsistent and this undermines his credibility. We agree that Dr Zala's evidence about his degree of confidence that this was not his writing was inconsistent but we are cautious about the weight that we should attach to this. Reasonable allowance should be made for differences in the manner in which one expresses oneself under the pressure of giving evidence. Further, even if we were to find that Dr Zala's denial that this entry was written in his hand was a deliberate lie, it is not necessarily the case that such would illuminate the real issue which is the probability that Dr Zala was the doctor concerned. People can lie for reasons that are not necessarily probative.

128. KS told us that she had told a friend of her complaint at the time but this person has not been called. Moreover, she was unable to provide any particular reason why she was able to recognise that the actual name of the doctor given to her by SC chimed with her own independent memory. We noted that in her February 2008 statement KS described the doctor involved in similar terms to the description given by SC in her January 2008 statement which, given that the description is at variance with Dr Zala's appearance as at 2007, might tend to suggest that there had been some conversation between them as to what the doctor looked like at some stage. We should say that we do not consider that this has tainted the evidence of SC because we accept her evidence that she provided the name of the doctor she saw on 6th July to KS and this occurred before KS said anything about what had happened to her. She had also already told PT of her complaint before she spoke to KS.

129. We have considered all of the evidence that touches on this allegation made by KS in the round. We bear in mind that KS's evidence concerns the recollection of the name of the doctor involved in a single incident about 20 years ago. Notwithstanding that we find that Dr Zala worked in the Kings Drive surgery from time to time during the relevant period, we do not consider that it is safe or fair to conclude that it was Dr Zala who saw KS in or about September 1991. Further the account given by KS in her oral evidence leaves room for this having been a legitimate examination of the chest with a stethoscope which may have been misinterpreted.

130. For all these reasons we are not satisfied that the Respondent has discharged the burden of proving the allegations made in respect of KS on the balance of probabilities.

PP

The Background to the complaint.

131. On 16th August 2007 PP wrote a letter addressed "to whom it may concern" in which she complained about treatment provided to her mother by Dr Zala on 7th August 2007. She said that on 9th August 2007 her mother was rushed to hospital where the diagnosis of acute pancreatitis was made. The complaint was that Dr Zala had seen Mrs P two days before, had failed to examine her and had missed the true diagnosis. PP alleged that this was not the first time that Dr Zala had misdiagnosed her condition and related an incident in 2004 which concerned the diagnosis of a hernia when her mother in fact suffered from stage 4 Hodgkin's' lymphoma. Further concern was expressed about delay in testing her mother for diabetes.

132. At the end of the 16th August letter PP said this:
"*Briefly I would like to go back to a point I made regarding not attending patients alone. Dr Zala made us feel very uncomfortable, on numerous occasions he has carried out breast examinations with no female present and when the appointment has not called for an examination. No breast examination was necessary when my sister went to discuss her blood test results. I also believe that Dr Zala was inappropriate holding my 11 year old daughter close to him during my consultation, it made both my daughter and I very uncomfortable and I felt that it was not the behaviour of a professional." (page 1051).*

133. PP's evidence was that after she sent the letter she was contacted by Dr Jessell who spoke to her about her comments regarding how Dr Zala had made her feel and asked her to write a further letter explaining this. Dr Jessell also asked PP if she would agree to her details being passed to the police to which she agreed.

134. In an undated letter which bears a received stamp dated 25th September 2007 PP provided detail in her relation to her sister's concerns about unnecessary breast examinations. As to her own concerns she said that she could still vividly recall a few incidents that happened to her when she was about 15 years old. She said that a couple of times she went to see Dr Zala with abdominal pains and that once when lying on the examination table Dr Zala examined her stomach area going down to her groin and then felt her breasts, cupping each one in turn. She remembered feeling very upset but felt that she could not say anything to anyone. She tried not to go back but whenever she was ill her mother wanted her to see the doctor. Another time she went to see Dr Zala with a bad headache he stood behind her turning her head from side she could feel him pressing himself into her. She said *"I can recall going home and hiding in my room I was only a child but I felt dirty. I wish I had spoken up at the time but I was just a teenager, who would believe me over a respected doctor. When I moved back here Dr Zala was the only doctor's surgery that would take me and my children on so I had no choice".* She then set out an incident that she claimed had occurred the previous year (2006) when she consulted Dr Zala with bad headaches. She was unhappy because he put his arm around her daughter and pulled her close to him whilst using his other hand to turn her own head to the side facing away from her child. She snatched her daughter to her side as she did not want Dr Zala touching her. She was angry and upset.

135. PP made a lengthy statement to the police on 29th November 2007 in which she provided further detail. She repeated her complaint about her breasts being

cupped during an abdominal examination. She said that Dr Zala used his right hand to cup her breasts. He held each breast for a few seconds. She thought that it was over her bra. She thought to herself "why are you doing that I've got a stomach ache." She said that this had occurred on at least two more occasions between 1988 and 1989 when she was aged late 14 early 15.

136. So far as the headache incident was concerned she said that this happened around the same time. She complained of a headache with the pain on the left side of her head. She sitting sideways on a chair and Dr Zala stood up and walked behind her. Dr Zala pushed his whole lower body against her and that his groin was pushed against the back of her "neck, upper shoulder area". She did not remember Dr Zala having an erection as she would have been "totally freaked" by that. As Dr Zala pushed himself up against her he moved her head from side to side.

137. PP said that the incidents described above definitely occurred before she underwent a termination at the age of 15. Dr Zala remained her GP after this but she did not remember any further times when he made her feel violated. She moved to London in September 1992 to begin nursing studies at University College.

138. In December 2001 she moved back to Gravesend with her two daughters. The only surgery she could get into was Marling Way. She tried other surgeries around the local area but they were all full. During this time she had to have several chest examinations and Dr Zala would ask her to lift her top to examine her. He would examine the front of her chest with a stethoscope but not the back. He did not touch her breasts.

139. In the beginning of 2006 she took her daughter to see Dr Zala about ongoing sickness and her other daughter was also present. Whilst there PP mentioned that she had been suffering from headaches again. Whilst she was sat in the patients chair Dr Zala put his hand around her chin and turned her head to face away from him. As he did this she saw Dr Zala put his arm around C's waist and pulled her close to him. His hand was resting just above her daughter's pelvic bone. As this happened PP grabbed C and pulled her towards her. Dr Zala did not say anything and just gave her a prescription. Although she knew that what Dr Zala did to C was not against the law it still made her "skin crawl." For her that was enough and there was no way that she was going to allow Dr Zala to touch her daughters in the way he had touched her and made her feel. Thereafter she only took her daughters to see Dr Zala when absolutely necessary and would not take her eyes off them.

140. After Dr Zala's misdiagnosis of her mother's condition she wrote her letter of complaint. Her cousin who is a practice nurse gave her the contact details for the PCT. She had to wait for the PCT to find her another surgery.

Dr Zala's case re PP

141. Dr Zala denies that he acted inappropriately as alleged. He relies upon his usual practice as set out in his witness statement. The main thrust of the challenge to PP's credibility is that she did not complain at the time and remained a patient after the alleged events. It was suggested it is quite remarkable that PP sought the professional attention of the Appellant as a temporary visitor after she had left home and had registered in London. It is even more remarkable that she re-registered with the practice after her return from London after a period of 12 years and that she continued to see Dr Zala even after the alleged incident with her daughter. Mr Forde submitted that the initial complaint that was made related to the treatment of her mother and did not suggest, in the florid fashion now suggested, that Dr Zala behaved inappropriately. Mr Forde submits that the suggestion of inappropriate

behaviour in relation to her daughter is yet another indication of the exaggerated nature of this witness's evidence.

Our consideration of the evidence re PP.

142. We deal first with the suggestion that PP has elaborated upon her evidence. We consider that the matters raised in the August 2007 letter were those concerning unnecessary breast examinations and inappropriately holding her 11 year old daughter. It is plain from the use of the word "*briefly*" that PP did not intend to set out a detailed account in her letter. It seems that, but for the concern in relation to her mother's treatment, PP may never have raised the concerns that she had had both as an adolescent and more recently in the context of the occasion that she attended with her daughter. In our view the explanation as to why more detail was provided in the subsequent letter is simple. PP was asked to do so by Dr Jessell but we do not consider that there is anything sinister in this. In the September 2007 letter PP related the incident where she claimed Dr Zala stood behind her and, while examining her head, pressed himself against her.

143. In his oral submissions Mr Forde suggested that the statement taken by the police from PP in November 2007 was the best example of how suggestions are made to a witness which then become part of an elaborated case. In our view it is likely that questions were asked of PP by the police in order to make clear what she was saying and to draw out or clarify the circumstances. We consider that this is unremarkable: in our view the real significance is that the statement shows that PP was *not* susceptible to the proffered opportunity to say that Dr Zala had an erection during this claimed incident.

144. We noted also that at the time that her second police statement was taken in July 2008 PP was plainly being asked whether she could recall being examined by Dr Zala when she was pregnant. It is apparent that the police were trying to gather evidence to support the evidence of other patients who had made this particular complaint. PP said that she could not recall such examinations: this suggests to us that she was not susceptible to suggestions or prone to elaborate her case.

145. We do not consider that there is any real possibility that PP's account to this Tribunal is the product of suggestions made to her by the police and/or by Dr Jessell or by anyone else. There is no evidence that PP was in contact with any other witnesses but it is the case that she included in her very first letter the complaint of her sister concerning alleged unnecessary breast examinations performed upon her. We bore fully in mind the risk of actual or subconscious contamination by reason of her sister's complaints to her and also because of local gossip and press coverage.

146. The major attack to the credibility of PP was that she had not complained in 1988/1989 or even when the claimed incident with her daughter occurred in 2006. Moreover it was submitted that it was remarkable that PP continued as Dr Zala's patient after 1988/1989 and even chose to attend Dr Zala both as a temporary visitor when she returned home for visits. Indeed she reregistered with Dr Zala when she returned to Gravesend to live in 2001. Some considerable time was spent with PP on this topic. In our view the fact that PP saw Dr Zala as a patient after 1988/1989 is not so remarkable if we accept her evidence that she was a troubled teenager who had a poor relationship with her mother and did not confide in her about what had happened to her when seeing Dr Zala. Moreover, the fact that she continued to see Dr Zala is not remarkable if we accept her evidence that after she underwent a termination of pregnancy Dr Zala did not again examine her breasts or act in any way inappropriately. Against this background it might well be understandable that, as an adult, she was content to see Dr Zala as a temporary patient on limited occasions

when she visited her family in Gravesend.

147. What is striking was PP's account of her reaction to the claimed incident when Dr Zala put his hand on her daughter's hip and drew her close. Absent a past history, the doctor's claimed conduct might seem out of place but not unduly concerning in the context of a trusted family doctor. What struck us about PP's evidence was her account of the reaction that this had produced upon her at the time. It made her "skin crawl" and plainly provoked a strong maternal instinct to protect her daughter. It seems to us that she is either an accomplished liar (or a deluded fantasist) or was telling us about real events that had produced an immediate reaction upon her in the context of her past dealings with Dr Zala.

148. We examined all aspects of PP's evidence and that of Dr Zala carefully. We reminded ourselves of his good character. In the course of cross examination PP was taken to the map of other surgeries with which she might have registered. She told us that when she returned to live in Gravesend she had tried to register with a number of different surgeries but was told that the surgeries were full. It was suggested to her that this was improbable. In his oral evidence Dr Zala said that surgeries were not able to close their lists but this was inconsistent with his own statement where he had asserted that his own list was closed in 1994 and he had only recently reopened the list (GB page 5 para 18). Dr Zala's attempt to explain this inconsistency in cross examination was unsatisfactory.

149. One part of his general evidence illuminated the issue of Dr Zala's general credibility. In cross examination of some witnesses (including PP) a good deal of time was spent looking at why some of the patients had not moved practice after they claimed to have been assaulted by him. The thrust of the case advanced was there would have been no difficulty in patients so doing and the fact that some remained on his list rendered the accounts given incredible. Dr Zala gave evidence about the ease with which patients could change doctors. The Tribunal judge informed the parties in the presence of Dr Zala that Dr Freeman would explore this since his knowledge of the system for changing doctors was different. Before Dr Freeman had even described the past system as he understood it, Dr Zala volunteered that he now recalled that in order to register with a new GP the patient was required to obtain the signature of the registered GP as a form of permission to transfer. In our view it is remarkable that Dr Zala was suddenly able to recall this. We do not believe that this had come to him out of the blue. We bore fully in mind that none of the relevant witnesses spoke of this particular difficulty although PP spoke of the fact that a number of surgeries refused to register her when she requested. In our view Dr Zala's sudden recollection of a matter that had the potential to undermine the general point that he, by his counsel, had sought to make when challenging the evidence of some of the witnesses, damaged his general credibility.

150. Even before PP was taken to the map she was able to name surgeries with whom she had tried to register. Her account of her failed attempts to be accepted on the list of a number of named surgeries rang entirely true.

151. Because of the risk that PP was giving us an account of which she herself was convinced we looked carefully at the nature and quality of her evidence. If, as seems to be suggested PP was telling a pack of lies, or was reinterpreting innocent events because she had somehow devined the substance of other complaints, it is odd that her account has been consistent and so simple. Had PP been inspired by revenge or vindictiveness because of the treatment of her mother, or for any other reason, it would have been relatively easy to claim that even more incidents occurred or to dramatize her account. She alleges that Dr Zala cupping each of her breasts

over her bra when she was an adolescent on about three occasions when she complained of abdominal pain. We accept her evidence that this occurred on more than one occasion and that this behaviour stopped after the termination of pregnancy in 1989.

152. We noted that it was suggested to PP that Dr Zala could not have stood behind the chair in which she was seated because it was against the wall. We find that the usual position of the chair when a patient was consulting Dr Zala in the old surgery was that it was near to corner at the front of the desk where Dr Zala sat. We find there was sufficient room for Dr Zala to have stood behind it. We accept her evidence that Dr Zala pressed himself against her head when he stood behind her and examined her head. We have noted that PP resisted the opportunity to claim that Dr Zala was aroused. We accept that all these incidents she described occurred and this is why she reacted as she did when Dr Zala touched her daughter's hip and drew her close to him.

153. We consider that PP was a wholly credible witness and her evidence was cogent and compelling. We are satisfied on the balance of probabilities that the events of which PH complained took place. We are also satisfied that Dr Zala's behaviour to PP amounted to inappropriate and sexualised behaviour.

154. As to the PCT statement of case we find that allegations 12.5 a) to f) inclusive are proved as well as the allegations made at paragraphs 12.6, 12.7 and 12.8.

Matters affecting the evidence of HK and LF.

155. We now turn to consider the evidence of those witnesses who have previously given evidence in committal proceedings: HK, LF and PH and in a crown court trial (HK and LF only). Whilst we will consider the evidence of each witness separately there are background features which deserve comment on a collective basis. We bore fully in mind that each of these witnesses had given evidence before and this may have provided an advantage to them when giving evidence before us. As we understood Dr Zala's evidence to us, he had had the opportunity to read their section 9 statements at the time and give detailed instructions in the criminal proceedings. We were informed that the statements that Dr Zala had made had been destroyed in a fire in the warehouse where they were stored by Messrs Hempsons, the solicitors then instructed. A bundle of unused material had been retained from which Dr Zala was able to produce an extract of the appointments book relevant to HK. We bore fully in mind that Dr Zala was at a disadvantage in being unable to remind himself of his response to the evidence collated by the police as well as that given in the committal proceedings. We reminded ourselves also of all the general risks inherent in deciding such old allegations, not least when the medical records may be incomplete and when other material that existed is no longer available.

Dr Hall and the historic investigation of the allegations of HK and LF.

156. On 25th August 2002 Dr Janet Hall wrote to Mr Robertson of the Kent Family Health Services Authority in Gravesend stating:

> *"further to our recent telephone conversation the following patients of mine (HK and LF) have both said that they do not feel that they need any counselling help but that they would be happy to speak to you about the difficulties that they experienced with their last doctor if you wish" (GB 46).*

Dr Hall's evidence was in accord with her witness statement which is a matter of record. Additionally she said she had made notes of the accounts of some former patients of Dr Zala's who joined her list and that these had been destroyed a few

years later. She told us of her recollection of what HK and LF had said.

157. HK, LF and a patient whose initials are MF attended a meeting at the HA which was convened by Mr Robertson and took place on 18th September 1992. A file note about that meeting dated 22nd September 1992 is before us (GB Tab 9). Allusion is made in the file note to the "purpose of the gathering" but this is not otherwise explicitly explained other than it was then recorded that Carl Varns was present because *"it was thought it would be helpful to the women in describing their experiences as patients to Dr Zala and as a trained nurse and is midwife might be more sympathetic to women than a man might be."*

158. We infer that the author of the document was Mr Robertson because it was copied to Carol Varns who, on the basis of HK's evidence, was the only other person who attended apart from the three patients. The note records:
"(Mrs F) described her experiences as a patient of Dr Zala's of approximately 2 years previously. This involved kissing and unnecessary touching of her breasts by Dr Zala.

(Mrs K) described her experiences of approximately 1 and a half years previously which involved inappropriate touching during an internal examination and kissing by the doctor. …

(account given by MF - deleted in our copy) …

(Mrs K) reported that she had heard that incidents with other women had taken place up to four years ago with Dr Zala.

At approximately 11.15 the three women agreed that the correct course was for the police to be contacted. In the presence of all those at the meeting a telephone call was made …to Gravesend CID and sometime later WDC Haddaway arrived to listen to the women's complaints. At this point the conduct of the investigation was effectively handed over to the police. Mr Robertson cancelled arrangements to visit Dr Zala later that day accompanied by Dr Crick from the LMC and Dr Vasudaven."

(We should say that *"LMC" refers to the Local Medical Committee.* Dr Vasudaven was a GP in a nearby practice to that of Dr Zala who, as is apparent from other evidence, knew Dr Zala not least because they covered for each other in respect of some duties).

159. It may well be that the purpose of the meeting on 18th September was to encourage the women to agree to make statements to the police and to provide confidence to the patients that they would not be the only person making a complaint. The actual purpose Mr Robertson had in mind matters not. The real issue that we have to decide is whether the accounts given by either HK and/or LF are the product of such contamination or whether each witness in their evidence to this Tribunal was speaking of real events that had actually happened to her.

HK

160. The statement of HK was taken on 22nd September 1992 by WDC Haddaway. We will set out this statement fairly extensively because the manner and order in which the events were described may be significant.
In this first statement HK said that:

a) About 18 months before she had begun to have doubts about some of the examinations she had been having. She had since received some medical advice and decided to change doctors.
b) She had discovered she was pregnant by using a home pregnancy test. She

rang Dr Zala who suggested that she attend that evening as forms needed to be signed. The date was 4th March 1991. She estimated that she was about three weeks pregnant. Her period was seven days late.

c) When she had signed the forms Dr Zala told her that he would like to do an internal examination and told her to hop on the couch. He perfomed an internal using his hands and there appeared to be a lot of prodding and pushing and no explanation was given as to why the examination was necessary.

d) No urine sample was requested and she was never officially told that she was pregnant. As she left Dr Zala told her she was being referred and she thought "oh good" as she would not have to return for any further examinations.

e) A few weeks later she was having bad morning sickness and finally went to see Dr Zala. She was feeling absolutely ghastly with headaches and vomiting. Dr Zala said that he would examine her and she remembered feeling "oh no here we go again", but felt too ill to protest. Dr Zala proceeded to do an internal examination which was lengthy and rough. He said something like "Oh I can feel it now." He then refused to give her anything for her morning sickness.

f) Thinking back on it, she was given no advice and was puzzled as to why he examined her again. She was surprised that a professional person would comment on her wearing stockings and suspenders. As she drove home she cried. She felt so ill and felt that her doctor, a person who she trusted was possibly endangering her pregnancy with these internal investigations and lack of advice. When she got home she phoned a friend who was a midwife and she advised her to change doctors straightaway.

g) HK then said " *having discussed this matter I now feel that having an internal while standing was unusual and reminded me that about 2 and a half years ago Dr Zala did this to me. I can't remember the exact reasons why this was necessary; I believe it was while I was having a lot of smear tests. Even though on this occasion one wasn't done, as all the others were done whilst I was on the couch and occasionally by a nurse. On one occasion she asked Dr Zala to do a smear test on me, whilst she was present, this was the quickest I have ever been examined."*

h) At other times Dr Zala had frequently examined her "boobs" as he did the time that she thought she was pregnant. He wanted to look at the nipples to see if they had changed colour. This happened before the internal examination.

i) Dr Zala had done this at other times and once even when she went to him for a sore throat he insisted on doing a breast examination saying "while you are here". She felt like that was "being groped".

j) She has since been to St Guys due to breast cancer running in her family. At Guys the examination was done with the palm of the doctor's hand moving the weight around. Dr Zala always examines with his fingers grabbing at her breast, cupping it.

k) HK concluded this first statement by saying that she had felt uneasy about Dr Zala's examinations for some time but due to having a baby and other family matters she had not been able to do anything about it.

161. It would appear from the statement dated 21st January 1993 that the police had to return to Mrs King to obtain her consent to the inspection of her medical records. Two months later on 27th March 1993 another statement was taken by WDC Haddaway. In this HK stated that on the occasion that Dr Zala commented on her underwear she could remember that he asked her to remove her pants and get on the couch. She pulled her skirt up and Dr Zala stood at the bottom of the couch. She lay looking up at the ceiling trying to dissociate herself. From where he was standing

Dr Zala began to internally examine her and as he did so said "I see you are wearing stockings and suspenders". HK stated that she immediately looked at him in total surprise that he should comment on what she was wearing. She threw him a look of shock and he stared back at her raising his eyebrows. She waited for some kind of medical explanation but it wasn't forthcoming. He then continued to examine her and she assumed that there was some medical reason for what he did.

162. HK gave evidence in committal proceedings on 14th July 1993. In chief she gave evidence largely in accord with her statements. She also said:

a. She changed doctors when she was three months pregnant. She found she was pregnant after 17 years, (her daughter being 18). She was delighted as was her husband. She did a home pregnancy test on a Saturday and phoned the doctor on the Monday. He told her to come to the surgery that evening and gave her the impression it was just to sign forms. She was surprised when the receptionist said that Dr Zala wanted to see her.

b. He examined her internally and also her breasts. She was surprised that he asked to do an internal examination as she knew that she could not be more than three or four weeks pregnant and told Dr Zala that.

c. The examination took place on the couch. She removed her pants. She had stockings and suspenders on because she has just come from work. When he said "I see you are wearing stockings and suspenders she looked at him in a way to ask "Why are you asking". Dr Zala just raised his eyebrows and started doing a very long prolonged and rough examination with lots of pushing and prodding.

d. As to the breasts Dr Zala said that he wanted to look to see if her nipples had changed colour but he actually half pinched them.

e. Dr Zala took no blood or urine samples.

f. She was upset because she thought the examination was totally unnecessary.

g. This was not the first time that she had been upset by an internal examination. She could not recall the date. She had thrush and normally would just be prescribed something for it. On this occasion Dr Zala gave her an internal examination while she was standing up. She was clothed apart from her pants. Dr Zala said that there was no need to get on the couch. He asked her to put her leg on the chair. The examination did not take an excessively long time and there was nothing unusual about the nature of it.

h. Prior to her being pregnant Dr Zala would examine her breasts quite frequently, about three or four times a year. She had not gone to him complaining of breast problems. Dr Zala just got round to the subject of family planning or breast screening and would then examine her breasts.

i. Dr Zala used to use one hand to cup her breast underneath. He held the nipple between finger and thumb and semi pinched them. She felt that these examinations were unnecessary. She did not from any view about them really. She told her daughter about this but did not do anything about it. The breast examinations did not enrage her and in other areas she had no complaint about Dr Zala. She said *"It used to be a family joke "the breasts have come out again" or something similar and we would just laugh"*

j. There were other internal examination but these were in a different category than those she had described. Thereafter HK went on to describe the internal examination performed when she was 8 or 9 weeks pregnant and had morning sickness. She felt that he was putting her pregnancy in danger. She then spoke to her midwife friend and changed her doctor.

163. In cross examination during the committal proceedings HK said that:

a. The internal examination when she was standing up was about a year before she left the surgery
b. There were other times that she felt uncomfortable but she could not say when they were which was why she had not given details. She could not say what it was that made her feel uncomfortable, they were too numerous to detail. Dr Zala was too familiar on a couple of occasions and she gave some examples.
c. She agreed that the nurse at the surgery had examined her breasts. She had first been referred to Guys by Dr Breeze. She had been referred by the hospital for genetic counselling and her family history was something that concerned her.
d. She went with her daughters if they needed to see the doctor so she knew that there had been no problems with Dr Zala's behaviour.
e. The first time when Dr Zala examined her in her pregnancy she had come straight from work. The second time she had come from work but had been able to go home first. There was no comment about her clothing on the *second occasion* because she had changed on purpose.
f. She had found out that other people had made complaints about Dr Zala when she changed doctors in March 1991. Dr Hall told her that there were complaints about Dr Zala but did not tell her that they were complaints of a sexual nature.
g. She had told Dr Hall why she wanted to change doctors as she was very upset. She and Dr Hall sat and talked for ¾ of an hour. As she got up to leave after signing the forms to change doctors Dr Hall had said " you're not the first person to come to me from Dr Zala with this type of story" or words to that effect.
h. She did not want to give the name of her ex midwife friend as she did not want to involve her: she was a professional person who lived locally. HK said that she would give the name to the police if her arm was twisted.
i. The meeting with Mr Robertson was about two weeks after she spoke to Dr Hall. She had had a telephone call from Dr Hall and she may have had a letter. Dr Hall told her that a patient of Dr Zala's was having counselling as a result of what had happened and asked if she thought counselling was necessary for her. She declined but said that she would help in any way that she could. She said to Dr Hall that if she thought a discussion group would help she would be willing to attend. She told Dr Hall that she did not think that she had been mentally affected but she could understand that people could be and if Dr Hall felt she could offer help by telling her story then she would offer to do so.
j. She did not feel that she was asked to go to the meeting to help with counselling because she was not qualified: she felt that she was being asked to go because of how she felt: her feelings were of anger. She was never given the impression that a counsellor was to be at the meeting. She thought that she would be explaining her feelings to other women. Mr Robertson and three women, including herself, were there. A former midwife came later.
k. She did not really recount her experiences at the meeting but mainly listened to the other women. They were saying some of the things that had happened

to them but not in detail. She made a decision very early on in the meeting that she was going to make a statement to the police.

l. She did not know if Mr Robertson was making notes at the meeting because he was out of her eyeline. She thought that Mr Robertson brought the other lady in because this was a women's problem and (the women) might be embarrassed. He did offer to leave the room.

164. In re-examination in the committal proceedings HK said that:

a) The technique used by the practice nurse and Dr Breeze was similar to that used at Guys but different to that of Dr Zala.

b) During the first internal examination in her pregnancy she was worried that about the threat to the baby and also that Dr Zala had taken liberties with her again at a time when she was happy. She had it in her mind that a pregnancy could not be felt under six weeks.

c) On re- reading her statement in court HK clarified that she must have been just under three months pregnant when she changed doctors. It must have been March/ April 1991.

165. In her statement to the PCT dated 18th February 2009:

a. HK referred to examinations of her vaginal area because she had a skin tag. She did not recall an internal on these occasions. She described the internal examination she had had for thrush when she was standing up. She felt embarrassed as he bent down to do the examination and her crutch was directly in his eye line. The examination did not cause alarm bells to ring at the time.

b. In contrast to the breast examination performed by Guys or Dr Breeze, the breast examinations performed by Dr Zala were always when she was standing up and she was naked from the waist up.

c. After stating that the date of the consultation when she was newly pregnant was 4th March 1991 HK said that she had now been shown the records. She had not seen them during the criminal prosecution.

d. She sent on to say that she had recently been uncertain in her recollection whether she was wearing stockings and suspenders when she visited Dr Zala on 4th March 1991 or whether this was a few weeks later. This was partly because it was a long time ago and partly because in the committal proceedings the barrister had her going back and forth between these two consultations and it became confusing. She was now sure that it was on 4th March because she went to the doctor's straight from work. She did not tell her husband about what had happened because he would be angry and upset and this is not what she wanted.

e. After the internal examination when she had morning sickness she called her midwife friend Jenny who told her that it was not policy to do an internal examination at that stage in her pregnancy. She took her advice and moved to Dr Hall.

f. Having been shown her medical records she was surprised that there was no entry of an appointment with Dr Zala between 4th March 1991 and 25th March when she filled out the new patient check at Dr Hall's surgery. She knew that she went to see him and she was not cross examined about this in the criminal trial. She had been told by the police at the trial that Dr Zala had stated that the reason he examined her on this (second) occasion was

because she complained of stomach pains which she took to be an admission that he had seen her.

166. HK's oral evidence was essentially in accordance with the evidence set out above. We will set out some aspects of this when we make our findings. Additionally she said that:

a. She thought the Maidstone trial was after July 1993 but she could only say that it was in the summer. She only gave evidence once. She was asked to attend the old Bailey about a year or 18 months later but the day before the police rang to say that the trial was not going to happen. It was something about the other lady or ladies giving evidence. She went to the Old Bailey but did not stay and listen. She had never seen her records before she was shown them by the PCT.
b. In cross examination HK said that between about 1987 and 1991 she had mentioned things at home about Dr Zala's consultations that she did not feel were quite right. She told her husband but "not enough." The breast examinations were not the same as when she went to Guys Hospital. It wasn't just the manner of the examinations it was the frequency as well.
c. When she joined Dr Hall's practice she thought that it was only fair to tell her why she had moved. She told Dr Hall that she had felt like this for some time but now it had come to a head. She had spoken to her midwife friend, Jenny, who had told her that it was not common practice to give internals at 4 weeks. Jenny said that she should change her doctor as she could be at risk of losing the baby.
d. It was suggested to her that Dr Cranfield would say that it would not have been necessarily appropriate to carry out an ultrasound. HK replied with some vehemence that she had had an ultrasound at hospital in the pregnancy. At this stage in her evidence she asked rhetorically if it was normal to do an internal examination. She agreed that she was angry at the time and still is.
e. Her recollection about the 1992 meeting was that she listened for a few minutes and then said please don't let anyone else talk because she was going to contact the police. She agreed that Mr Robinson made the phone call but said that she had initiated this. She had said at the time that if they talked about things it might be said that they had colluded. She did not know the other two women involved. She had bumped into one of them later when there was another lady. They met at the Magistates Court
f. She had not moved surgery before because the concerns about the breast examinations she had were not paramount at that time. She agreed that it was what happened in her pregnancy that led the earlier concerns to come to the fore. She remembered Dr Breeze had said to her before that you can't feel a foetus under so many weeks.
g. HK denied that when Dr Zala had discussed abdominal pain and ectopic pregnancy when she attended with morning sickness.
h. She described the various internal examinations. Dr Zala was at the end of the couch and asked her to slide down. Her bottom was towards the end of the couch, he stayed at the end and she looked at the ceiling. He had one hand on her tummy and one hand inside. She had had the pregnancy test on the Saturday and had told her husband on the Monday. She knew that she just needed to sign forms and said this to the receptionist but she was put through to Dr Zala.
i. Dr Zala performed a rough and prolonged examination from the end of the couch. His fingers went repeatedly in and out in.
j. HK said that the stockings and suspenders comment had been made on the occasion that she went with morning sickness. She remembered that she did not have time to go home and change. She found his comment quite

inappropriate- both in tone content and manner.

k. When she got home she realised she had bled very slightly. She spoke to her husband who was upset and then spoke to Jenny about an hour later. What was on her mind was the fact that the examination was rough and she had had two in such a short time. She had not mentioned this before because she had not been asked. She was not concerned because it wasn't excessive. It was the result of a "nick" and she knew it wasn't significant for the pregnancy.
l. Mr Forde produced the appointment book for 18th September 1991 and suggested that this indicated that she had made an appointment which HK denied.
m. She did not think that there was a curtain. She denied that Dr Zala had pulled a curtain around. She was looking straight at him when he made the comment about her stockings and suspenders.

The Appellant's submission re HK.

167. We will return to consider the detail of Dr Zala's case but summarise here the key points. Mr Forde submitted that in 1992 HK was claiming a single incident of touching during an internal examination in about early 1991 and knowledge of allegations involving Dr Zala dating back to 1988. She also alleged an incident of kissing no longer pursued. These allegations were extremely vague and difficult to defend. She was clear about certain events which she claims occurred on 4 March and 18th of March 1991 but her initial recorded complaint was of a single inappropriate internal examination. Her motivation in making a complaint relates to her 1991 pregnancy. Her ex post facto concerns in relation to her previous alleged improper examinations have been exaggerated as a result of her firm belief that she was not appropriately treated at the time of her pregnancy in 1991. She was to state in cross-examination that she had concerns regarding her breast examinations from the middle 80s and suggested that the examinations were not the same as those which she had experienced at Guy's Hospital. This feeling of discomfort is not sufficient to establish any sexual motivation on part of Dr Zala relating as it does to events in the early 1980s. The allegation relating to a conversation about wearing stockings and suspenders has been given an unnecessarily sinister gloss. This should not be seen in terms of any inappropriate or sexually motivated behaviour in the context of her long history of psoriasis and thrush.

Our consideration of all the evidence re HK.

168. Mr Forde suggested that HK was inconsistent in her evidence about what had happened to her. A key point in Mr Forde's submissions is the record made of the meeting held on 18th September 1992 (GB tab 9).

169. It is an understatement to say that the decision to hold this meeting was a forensic mistake of considerable magnitude. It plainly caused or contributed to the collapse of trial at Maidstone Crown Court that involved the evidence of HK amongst others. We are aware that the criminal law in relation to the need for corroboration in relation to sexual offences changed in 1994 but it is pointless to consider the actual commencement date of this any further. Given the date of the indictment drafted by Counsel the trial may well have been in or about May 1994 but there is no firm record. Moreover there is no transcript before us as to the reasoning. What can be said with complete confidence is that the decision would have been made in the context of the criminal law concerning the burden and standard of proof. As noted above, Dr Zala was not called upon to give evidence in the Maidstone trial concerning HK, LF and MF. It appears that a not guilty verdict was entered in relation to the allegations made by LF. The retrial of the HK and MT allegations at the Old Bailey did not proceed.

170. We will address the issue of contamination between LF and HK in the context of the appeal before us in due course but we deal first with the weight that we attach to the file note. Mr Forde seeks to say that what is recorded therein is an accurate reflection of the essential complaint made by HK thus showing a material inconsistency in her evidence: the initial recorded complaint of HK was of a single inappropriate internal examination and an allegation of kissing which is not pursued.

171. We have considered the file note and the circumstances in which it was made. In our view:

1) The file note made does not purport to be a either a minute or a contemporaneous record.
2) It was not written by HK or LF and was not read or signed by either of them.
3) It is unlikely that this file note reflects everything said at the meeting. It is brief to say the least.
4) We noted that HK was cross examined about the meeting in some detail in the committal proceedings. She could not say whether Mr Robertson took notes because he was not in her sight. The fact that he offered to leave the room might tend to suggest that making notes was not the principal purpose for his presence.
5) In our view a clear picture emerges from the evidence overall that it was probably the hope of Mr Robertson that the outcome of the meeting was that women concerned would give statements to the police – as indeed they did.

In short we do not agree that the file note made on 22nd September is a record that, of itself, carries the weight that the Appellant seeks to give to it.

172. In the file note HK is said to have complained of being kissed by Dr Zala but she says that this is not a complaint that she has ever made. There are at least two alternatives. One is that HK complained that she was kissed by Dr Zala but then did not mention this again in the police statement she made just four days later on 22nd September 1992, or in her subsequent police statements or in her detailed evidence at the committal proceedings, or in her detailed statement in this appeal or in her oral evidence to this Tribunal. The other is that HK did not say she had been kissed and the file note was inaccurate. Dr Hall's evidence has some bearing on this because she said that she thought that HK had told her that Dr Zala had kissed her. We will return to this below.

173. The other matter on which the Appellant relies is the fact that HK was said to have complained of a single internal examination. We will consider this below.

174. In our view the more reliable evidence on the issue of consistency is HK's first statement which was taken by WDC Haddaway. It could be said that this account was not clear in several respects. It reads more in the vein of a stream of consciousness than a structured sequential account. Several matters could have been clarified as they arose when the police statement was taken. We have to look at the evidence as a whole. In our view the account given in HK's first statement becomes far clearer when read in the light of her later police statements and the detailed evidence given in the committal proceedings. In our view, whatever the forensic deficiencies of this first statement, HK nonetheless made it clear that the matters of which she was complaining were:

a. two internal examinations in her last pregnancy,
b. frequent breast examinations in the context of breast screening
c. an internal examination for thrush about 18 months before.

The only matter that she did not mention until the committal proceedings was the

nipple examination in the context of the first pregnancy consultation.

175. In our view there are a number of general points that underpin our assessment of the general quality of the evidence of HK. She was a witness who not only had a good memory of life events but she remembered dates. She knew when giving her very first police statement and without any reference to medical records that the date that she saw Dr Zala was on 4th March 1991. She knew that she was pregnant before she went to Dr Zala because she had performed her home pregnancy test and the result was positive. She also knew that she conceived on Valentine's Day and was able to tell us why. The date that her child was born is consistent with her account. We accept that she did not see her records until shown them by the PCT in the course of making her statement in February 2009. The records showed that she was right about the date of the first consultation in her pregnancy. She told us that she had always remembered this date because it was the anniversary of the day she met her husband.

176. HK has always been consistent in her account that she saw Dr Zala a few weeks later because of morning sickness. When she made her statement to the PCT it was pointed out to her that there was no record to support a subsequent consultation but she maintained that her recollection was accurate. She knew that this appointment was a few weeks after her first consultation in pregnancy and was between 4th and 26th March because this was the day that she became a new patient of Dr Hall. Her insistence, in the face of the medical records, that she did indeed see Dr Zala on this second occasion in her last pregnancy has ultimately been proved correct. In the course of cross examination HK's evidence that she had not actually made an appointment was challenged. It was in this context that an extract from the reception diary was produced by Dr Zala which shows that HK did attend the surgery on 18th March 1991. We note in passing that the page itself consists of a list of patient names rather than a timed appointment system. The sequence in which HK's name was listed tends to support her evidence that she was seen towards the end of surgery.

177. We are mindful that the possession of a good memory about dates does not, if itself, provide the answer to the difficult issues we must decide. We remind ourselves that a witness who, for whatever reason, has convinced herself that she was inappropriately examined may be appear convincing, not least in circumstances where there is evidence that she was aware of the complaints of others.

178. Dr Zala robustly denies that he acted in any way inappropriately towards HK. He relies upon his usual practice. In summary:

a. If an internal examination was performed in the first consultation it would have been performed quite properly so as to confirm the pregnancy and/or to check for abnormalities. He may have visually inspected the nipples for similar reasons.
b. So far as the second examination in pregnancy is concerned the complaint of severe morning sickness may well have led him to examine HK internally so as to check that the pregnancy was normal.
c. He would not have performed any internal examination from the foot of the couch.
d. HK had a history of breast cancer in her family so there was a clinical justification examination of this patient's breasts. In so far as he performed any breast examinations as part of such screening he would have followed usual practice which is to examine each of the four quadrants of the breast with the flat of this hand. He denied that he behaved inappropriately. HK may

have mistaken his actions.

e. He would not have performed an internal vaginal examination for thrush. He would not have performed an internal examination for this or any other complaint when the patient was standing with one leg up on a chair.

179. We have considered the evidence of Dr Zala and bore in mind his good character as relevant to both credibility and propensity. There seems to be a measure of acceptance that an internal examination did take place on 4th March 1991 Amongst other matters we need to consider whether we accept Dr Zala's explanations as to why he did so**.** In other respects most of the matters in issue about involve straightforward conflicts of fact and/or evaluation of whether HK was mistaken in her evidence and/or exaggerating and or fabricating.

180. Making every reasonable allowance for the fact that he was giving evidence about his practice some 20 years ago, there were a number of aspects about Dr Zala's evidence as to his practice which we found very unsatisfactory. This can be illustrated by considering the first claimed examination in pregnancy. Indeed Dr Zala's contends that this is the very examination that has caused HK to view or reconstruct earlier and subsequent events in a negative light.

The internal examination on 4th March 1991 and the examination of the nipples as an aid to the diagnosis of pregnancy.

181. Dr Zala's record of his consultation on 4th March 1991 was as follows:
LMP – 28/1/91
*2 FTND (*i.e. full term normal deliveries): *18, 16*
Wt 61kg
*TCA (*to come again*) in 4/52 for HKB* (i.e. Mr Basu)

182. In his statement in March 2010 Dr Zala said that:

a) Given HK's age he would have undertaken a history and then undertaken an internal examination due to the fact that these symptoms (i.e. a missed period) could be due to fibroids or a number of other gynaecological pathologies that would require exclusion (see paragraph 66).
b) It appeared that by 7th March the pregnancy had been confirmed and that he therefore followed his "routine practice" of sending the patient to hospital for a pregnancy test and confirmation of the pregnancy (para 67).
c) It was his routine practice to explain the need to perform an internal examination. In HK's case he would have explained that she could be pregnant but given her age there could be another reason and he would therefore need to conduct an internal examination to confirm the position.

183. Mr Forde submits that Dr Zala's treatment is supported by Dr Cranfield who accepted that, historically, breast checks in pregnancy were regarded by some as an aid to diagnosis of the fact of pregnancy because it may be possible to detect a change in the nipples. He contends that as this was an unplanned pregnancy in 1991, when the patient was aged 42, Dr Cranfield does not criticize Dr Zala for carrying out a routine vaginal examination as part of the screening on booking. In our view one issue we must decide is whether the examination performed was for this purpose. If HK's recollection is accurate Dr Zala said that he could *date* the pregnancy in this way.

184. We noted Dr Cranfield's evidence about the available methods for diagnosing

or confirming a pregnancy in the 1990s. Dr Cranfield told us that commercial pregnancy tests were generally regarded as reliable at this time. If needed, a sample could be taken to send to the hospital. Another alternative was to refer the patient for ultrasound although Dr Cranfield considered that scans might not have been as easily available as they became in subsequent years.

185. Dr Zala accepted that pregnancy tests were generally reliable, that a urine sample could have been taken and that HK could have been referred for ultrasound if there was any doubt about dates.

186. Dr Cranfield did not support that a bimanual internal examination was an appropriate means *to date* a pregnancy which, according to HK, is the reason that Dr Zala gave to her. Dr Cranfield's evidence was that a pregnancy of less than eight weeks could not be dated by way of internal bimanual examination. All that visual inspection of the nipples might achieve was a possible confirmation of pregnancy but this would not give any information about the period of gestation.

187. We note that on the simple basis of the patient's date of her last menstrual period, (LMP), the foetus was only of about 3 weeks gestation and this was entirely consistent with the history that we find that HK was well able to give.

188. We reminded ourselves of the difficulties faced by Dr Zala explaining what he did and why some 20 years ago, other than by reference to his usual practice. We also reminded ourselves of the risk that the passage of time may have played tricks on HK's memory.

189. If HK's evidence is truthful and accurate:

i. She knew that she was pregnant because she had undergone a home pregnancy test which was positive.
ii. She had phoned the surgery to get the necessary forms and was asked by Dr Zala to come in for a booking letter. She was surprised that when she arrived Dr Zala said that he wanted to see her.
iii. She knew to the day when she conceived. She told us why.

As set out above, Dr Cranfield's evidence was that 1991 a vaginal examination was still considered a legitimate screening procedure to look for abnormality that could cause a problem in the pregnancy. Dr Zala had said in his March 2010 statement that he would have wanted to exclude fibroids or other pathology as the cause of the missed period but we consider that this would really only arise if a differential diagnosis was needed. Dr Zala sought to meet this in his evidence by saying that the importance of the examination may have been to enable consideration of any procedure that might be undertaken given that HK was 42 and this was an unplanned pregnancy. If we accept HK's evidence, there was no discussion or suggestion made by Dr Zala about the possibility of any procedure to terminate the pregnancy. We consider it very likely that she would have remembered this had it occurred.

190. Dr Zala's said that he may have wanted to make sure that that there were no abnormalities that could affect the pregnancy. However, as a matter of common sense, he was about to refer her to a consultant who would be in a far better position to examine, if necessary, and advise.

191. Dr Zala also said in his evidence that the examination may have helped him decide whether HK needed referral but, in our view, it was clear on 4th March 1991 that this 42 year old lady would require referral for booking. In our view the probabilities are that the date of the referral simply reflected the time it took for the letter to be typed up.

192. The content of referral letter written by Dr Zala to Dr Basu deserves consideration (page 122). If Dr Zala had examined HK so as to date the pregnancy and/or confirm it and/or to exclude abnormality it is strange that he did not tell the hospital that he had done so. The question we ask ourselves is this: what is the point of carrying out an invasive examination if the information gleaned is not relayed to the hospital? Dr Zala's letter made no reference to the fact that he had performed an internal examination. His clinical record did not record any examination at all.

193. So far as general breast examination in pregnancy is concerned Dr Cranfield countenanced that an examination of the nipples on one occasion antenatally later in pregnancy might have been considered appropriate with reference to detecting abnormality.

194. One question we have to decide is why Dr Zala looked at HK's breasts during the first pregnancy consultation. Dr Zala has suggested that this would have been an additional means to confirm the pregnancy. In our view there was no need to confirm the pregnancy: we accept HK's evidence that she had undertaken a home pregnancy test and knew that she was pregnant when she phoned the surgery in order to register that fact.

195. Whilst Dr Zala appears to accept that an internal examination occurred on 4th March there is one matter in HK's evidence that is clearly not accepted. HK said that she was in a position half way down the couch and that Dr Zala performed the examination standing at the foot of the bed. Dr Zala's case is that he would have been positioned to the side of the patient. Dr Cranfield's evidence was that a proper examination could only be performed with the doctor at the side of the patient at the level of her hips. It would be an entirely unacceptable intrusion on the privacy of a patient for the doctor to stand in the position described by HK. Her clear evidence was that the second internal performed when she attended with severe sickness was conducted from the same position.

196. It is common ground that the ordinary breast examinations (i.e. outside of pregnancy) and the internal examination for thrush could not be medically justified if performed in the manner alleged by HK.

197. Ultimately we have to decide whose evidence we prefer. Mr Forde asked us to place weight upon the 1992 meeting "file note" but we have already explained our views on this. We do not consider that this was ever intended to be the last word about HK's complaint and we do not consider that it is reliable evidence. The core account HK gave just four days later is, in our view, consistent with the detailed evidence that she gave in committal proceedings and in her evidence before us. We noted Dr Hall's evidence that she thought that HK has said that Dr Zala has kissed her. We noted that LF, whose did complain that Dr Zala kissed her, also transferred to Dr Hall's list and spoke to Dr Hall about Dr Zala. We are unable to decide whether Dr Hall's recollection as to what HK said is accurate. We do not consider that resolution of whether HK did or did not say that she had been kissed by Dr Zala, of itself, causes us to doubt that in her first police statement she set down all the matters that really troubled her.

198. We considered the account of HK in the context of the suggestion that her account was contaminated by what she heard at the meeting that took place in September 1992. Whilst it is true that LF's account at that meeting included her complaint that Dr Zala had unnecessarily touched her breasts we do not consider that this is the reason that HK also made this complaint.

199. The complaint about the internal examination for thrush whilst standing made by HK does not echo the evidence of LF or any other witness from whom we have heard evidence. No suggestion has ever been made by LF that she was examined internally in an inappropriate manner.

200. We considered also the fact that it was noted that HK said at the 1992 meeting that she had heard that incidents with other women had taken place up to four years ago with Dr Zala. HK told us that Dr Hall had told her only that other complaints had been made and provided no details. Having seen and heard Dr Hall we consider it most unlikely that she would have told HK the detail of any other complaints. We consider it very probable that she was circumspect in what she said. We recognise that the separate notes that she made, and subsequently destroyed when she moved from her surgery, may have assisted Dr Zala in his case but, in the overall context of the all evidence before us, (including that of Dr Zala), we do not consider that the loss of these notes has resulted in unfairness or the risk of a wrong conclusion being drawn. We do not consider that Dr Zala has been deprived of a meaningful defence or that the proceedings have been rendered unfair by reason of the lack of these or any other records. We recognise that HK's evidence may have been subconsciously strengthened by that fact that she knew she was not alone. We accept HK's evidence and find that, although aware of the complaints of HK and MF, she gave her own account of what she had experienced. We do not consider that the evidence that HK gave to us was the product of any information she received at any stage from LF, MF, Dr Hall, Dr Jessell or any person.

201. We agree with Mr Forde that, even 20 years on, HK remains angry that an internal examination in the early stages of her pregnancy could have caused that pregnancy to be jeopardised. We do not consider that her anger has caused her to fabricate or embellish her general account of what happened to her. In our view the probabilities are that the general breast examinations and the earlier internal examination when she attended with thrush were not matters about which she felt sufficiently concerned because she believed that they could be medically justified. She was not overtly disturbed in the overall context that she wanted to trust and believe that Dr Zala was generally a good doctor. Upset as she was by the internal examination on 4th March 1991 she still had it in her mind that what he had done was to date the pregnancy, although she could not really understand why this was necessary. We consider that this and earlier events assumed significance when, prompted by her distress about the second internal examination in pregnancy, she sought the advice of an ex midwife. She then had very real cause to doubt the propriety of Dr Zala's conduct in performing either internal examination in her pregnancy. She did not return to Dr Zala again and changed doctors. She came across as a sensible and reasonable person. We are wholly satisfied that the evidence she gave was an honest and reliable account of her own experiences.

202. We reject all of the explanations given by Dr Zala about the reasons that he may have examined HK on 4th March 1991. We have indicated the reasons why, having made every reasonable allowance for the difficulties in describing why he may have acted as he did, we do not consider Dr Zala's explanations to be credible. Whilst his explanation that he was acting in accordance with acceptable practice is superficially plausible, we do not believe that this was the real reason that he performed an internal examination or looked at HK's breasts on 4th March 1991. We accept HK's evidence that the internal examination was performed when Dr Zala was positioned at the foot of the couch and she was half way along it. We consider that this, in itself, gives the lie to Dr Zala's explanations as to why an internal examination was performed. An internal examination could not be properly performed to look for

any abnormality or even to confirm the pregnancy from this position. We find that his motivation was sexual.

203. We also prefer HK's account of the earlier breast examinations, the internal examination when she had thrush, and the second internal examination on 18th March 1991. We accept that her description of how her breasts were examined was reliable and find that there is no real possibility that she was mistaken.

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Conclusion re HK.

204. We accept that HK's evidence was reliable, credible and compelling. We find that she underwent:

a) an internal examination in her last pregnancy on 4th March 1981 which included an examination of her nipples.
b) a further internal examination when she attended on 18th March with severe morning sickness
c) breast examinations on the pretext of breast screening which were conducted in a wholly inappropriate manner
d) an internal examination for thrush about 18 months before the pregnancy when she was examined whilst standing up with one leg on a chair whilst Dr Zala crouched on the floor with his eyes at the level of her groin.

Further we accept that the examinations set out above were performed by Dr Zala in the manner described by her. In the light of all our findings above we conclude that Dr Zala's actions were sexually motivated.

205. We accept also that comment was made by Dr Zala about her wearing stockings and suspenders. There was some inconsistency in the evidence given in the committal proceedings about whether this was said on the first or second consultation in her last pregnancy. We consider that the account that she gave in her second police statement and nearer the time, makes it more likely that it was during the first internal examination in the pregnancy but, in our view, whether it happened on 4th March 1991 or 18th March 1991 is not significant in overall context. It is, of course, the case that patients who suffer from thrush or psoriasis are advised to try and avoid tight wearing clothing near to the area affected. We consider it probable that HK was wearing such garments for that very reason. We do not believe that the comment was made as a reflection of Dr Zala's medical approval about her wearing of stockings and suspenders. We accept HK's account that the comment shocked her because of the tone, manner and context in which this comment was made. She was lying on a couch in a vulnerable position. The comment was made in the context of an intimate "examination" which was, in any event, wholly improper.

206. We find the allegations contained in paragraph 5.4 to 5.7 of the PCT skeleton proved on the balance of probabilities.

LF

207. LF made her statement to WDC Haddaway on 18th September: the very same day of the 1992 meeting. In this she said that:

a) When she first found out she was pregnant in about April 1990 she would routinely see Dr Zala about once a month. Each time he would ask her to remove her blouse and undo her bra and would examine her breasts while she was seated or standing. He would place one hand full around her breast and dig his fingers in and then would do the same with the other breast. He said that this was to check for lumps.
b) Thinking back she could remember that when she went to see him thinking she was pregnant (but not knowing for sure) he had asked to look at her breasts. Dr Zala told her that she had white specks like goose bumps on her

nipples which were a sign that she was pregnant. This had happened even before her urine was analysed.

c) On other occasions during the pregnancy Dr Zala would always touch her breasts saying not always giving a reason saying “while you’re here let’s look at your breasts.”
d) On one occasion when she was about 6 months pregnant Dr Zala touched both breasts and squeezed her nipples very hard so she cried out in pain. She asked him why he said that she was checking to see if she could breast feed and that if milk had come out she would be able.
e) In between seeing Dr Zala every month she would see a midwife, Mary Glen, who would do other checks but would never touch her breasts.
f) On the last few occasions that she saw Dr Zala he began kissing her goodbye always on the cheek. Once she returned the kiss as she thought that he was just being a caring doctor and her father had recently died but after the second time she thought it was not right. It was then that she approached the midwife. She told her about the breast examination and Dr Zala kissing her goodbye. The midwife who told her that this wasn’t the correct procedure and suggested that she see a female doctor if she was not happy.
g) She was concerned about Dr Zala internally checking her after she had given birth and changed practice. She had since found out from her current doctor that these practices were not normal.
h) After she left Dr Zala’s surgery he phoned her to ask why. She was “a bit flummoxed” and said that she wanted to see a female doctor.

208. LF gave evidence at old style committal proceedings on 14th July 1993. In chief she said that she had changed doctor for a number of reasons:

a) The first thing that happened that was unusual was that the first time that she saw Dr Zala after her father died: he kissed her goodbye on the cheek. As she had been talking about her father she thought that he was reassuring her, trying to be the caring family doctor.
b) She thought that the next time was when she suspected she was pregnant in about April 1990. She went in to him for a pregnancy test. She had to take a sample of urine to the hospital i.e. Dr Zala didn’t do a test there and then. During that consultation Dr Zala patted her knee and said that it was an exciting time for her. She was a bit surprised by that. Dr Zala asked her to undo her blouse and undo her bra to check her breasts. He said that the sure way of knowing if she was pregnant was to look for white spots around the nipples and he had to look for them. She thought that he had touched her at that point. He said she had a few spots and that could indicate that she was pregnant.
c) After that she saw Dr Zala regularly. One month she would see Dr Zala and the next month his midwife. Every time that she saw Dr Zala he would examine her breasts but the midwife did not. While he was taking blood pressure, weight etc he would say “right let’s look at your breasts”
d) She would be either seated or standing up with her arms down. While he examined her breasts he would dig his fingers in, grab hold and pull around and pinch her nipples. It was painful. Once he pinched her so hard that she screamed out and asked why he did it. He said that he was checking to see if she could breast feed and checking to see if her milk was there and coming out of her nipple. She thought that this was the last incident before she decided to leave the surgery. She left in September. He had squeezed both her nipples but the left one hurt the most.
e) On one occasion that Dr Zala examined her breasts he said that he was checking for lumps.
f) She referred to another incident when Dr Zala kissed her while she was

pregnant. On the first occasion she did not kiss his cheek but might have gone up to him (demonstrated).

g) She changed doctor in September (1990). She knew that she would have to have a six week check. She had been speaking to friends who had all had problems with Dr Zala. He had given them internals for no reason and they were not done the correct way: she did not want to go through the pregnancy with the fear that he would have to touch her after the pregnancy.

209. In the course of cross examination in the committal proceedings LF essentially maintained the same account. She also said:

a. Her father died in 1989. He had had psychiatric problems admission to hospital. He died in distressing circumstances: he took his own life.
b. Her mother may have seen Dr Zala but she did not go to him for counselling. Dr Zala did try and help herself and her mother understand her father's illness: he was a manic depressive. Her mother's health lapsed terribly after her father's death. LF thought that she had pneumonia. Her mother was frightened to see Dr Zala with all the stories that they had heard about Dr Zala but she got worse and so had to go and see him.
c. LF said that when Dr Zala patted her on the knee when she thought she might be pregnant they were both sitting down, 2-3 feet away from each other. The room was not terribly small. Dr Zala did not need to be that close.
d. Although she had said that the first consultation in pregnancy was the first occasion that Dr Zala examined her breasts, on refection, he had examined her breasts when she used to go for family planning every six months.
e. In the ante natal appointments Dr Zala did all the routine checks but added a breast examination. As she had read books on ante natal care she knew the breast examination was not right and so asked the midwife.
f. She had learnt that other people might have complaints about Dr Zala when she queried with her friends what he did to her. They told her what had happened to herself and others. She had heard a lot of stories about Dr Zala.
g. She was kissed twice. It could have been three times but no more than that. The first time was when she and Dr Zala were talking about her father.

210. In re-examination in the committal proceedings LF said that:

a. When she had breast examination for family planning Dr Zala still put his fingers in and pulled but he did not squeeze the nipples. He said that he was checking for lumps.
b. When she changed surgery the new doctor never checked her breasts in the ante natal checks.

211. In her statement dated 19th February 2009 LF said that:

a. She noted that she had said in the magistrates Court that the first kiss was before she was pregnant but she now thought that it was when she was actually pregnant. It was when she was talking to Dr Zala about her father and she had become upset. Dr Zala was sympathetic and she thought he was being compassionate. When she got up to leave he put his arms around her and kissed her on the cheek.
b. One incident that sticks out in her memory was when she went to see Dr Zala because she had a discharge from one of her nipples. Having briefly looked at her medical records she thought that this was on 27th July 1990. She could not remember which nipple was worrying her. She remembered that he squeezed both nipples but when he did so the one that was troubling her caused her to shout out in pain. He said that he was just checking to see if there was any milk in order to find out if she could breast feed.

c. On this occasion Dr Zala proceeded to examine her breasts when she was standing up. The thought that he had one hand on her back and was using the other hand to feel her breast. He said that he was checking for lumps. He kneaded her breasts in a way that one would knead dough and squeezed them hard.
d. She vaguely recalled breast examinations when she was on the pill. It was the examinations in pregnancy that made her unhappy. Her husband told her to speak to the midwife and when she did the latter said it was absolutely not right. She was surprised by the midwife's response as she was expecting her to be loyal to Dr Zala. The midwife had demonstrated how an examination should be done with the flats of the hands.
e. When she joined Dr Hall's list she had to fill in a registration form. She did not want to put the reasons she had changed surgery as she was nervous about who would see the information. She thought that she told the midwife (at the new surgery) why she had left. She recalled that Dr Hall came to see her because of what she had told the midwife.

212. In her oral evidence before us LF gave evidence in broad accordance with her statements. She also said;

a) She could not recall being shown her medical records by the police.
b) She thought that the Crown Court trial took place when her daughter, who was born in June 1993, was very young baby. After she gave evidence that was the end of her involvement. She thought that it was considered at the end of the prosecution case that there was no case to answer. The next time she was asked about events was when the PCT solicitors contacted her to take a statement in these proceedings. In between she had not discussed the matter with anyone apart from her family. She did know one of the other women (WM) but did not speak to her.
c) When she first saw Dr Zala when she was pregnant she gave a urine sample. He wanted to examine her nipples and said that it was a sure sign of pregnancy.
d) She did not remember having a Cooperation card (i.e. concerning her antenatal care). She thought that she saw Dr Zala and the midwife on alternate occasions.
e) So far as the occasion when she was concerned about a discharge she could not recall if it was her right or left breast. It felt very painful and she had asked Dr Zala to check. He never asked her to squeeze the nipples herself. Dr Zala pinched her nipples using his thumb and middle finger around the areola. It wasn't just the tip of the nipples that were squeezed.
f) The breast examinations occurred every time that she saw Dr Zala in her pregnancy.
g) She had always had problems with inversion of one of her nipples but she did not think that Dr Zala had said anything about this.

213. In cross examination before us LF said:

1) Dr Zala had definitely looked at her breasts in the first pregnancy consultation but she could not now remember if there was an actual physical examination.
2) It was suggested to her that there would almost certainly have been a breast examination on the third occasion that she attended. With reference to the occasion when she had a discharge from her nipple she agreed that he had said that he needed to examine her.
3) In relation to the arrangements for the 1992 meeting Dr Hall had approached her and had told her that other people had made similar complaints. She did not know Mrs King.
4) Dr Zala carried out a breast check in pregnancy more than once. It was at

least twice.

5) It was suggested to LF that it was not until she had had conversations with friends and became aware of other complaints that she began to see what had happened to her in a sinister light. She denied this saying that she knew that what he did was not right. She was 25 and this was her first pregnancy. She was one of the first of her friends to have children. She trusted him but part of her was thinking that she did not feel comfortable with the examinations. She just trusted that he was doing the right thing. It was the fact that he did the examinations in a way that did not feel right. It wasn't with a flat hand: he was kneading, pulling and squeezing.
6) She knew of friends of her mother who had had problems with Dr Zala. She didn't get together with them to discuss this: it was just conversations that she had had with people.

Dr Zala's evidence.

214. Dr Zala entirely refutes any allegation of sexual impropriety. In his witness statement he countenanced the possibility of giving this patient a peck on the cheek as a friendly and reassuring farewell gesture at the end of a consultation (see para 79 at GB 17). So far as breast examinations during the course of pregnancy are concerned, he could confirm signs of pregnancy by breast examination (see para 84 GB 18). Any breast examination conducted by him would have been in accordance with his routine practice.

The Appellant's submissions re LF.

215. Mr Forde contends that:

a) The Tribunal should see Dr Zala's actions as having been misinterpreted by LF and should bear in mind that it was considered in the criminal proceedings that the evidence of LF had been contaminated by her presence at the September 1992 meeting.
b) Dr Zala's case is supported by Dr Cranfield in paragraph 4.28 of her supplementary report. She accepts that at the relevant time pregnancy could be confirmed in this way. She regarded as it as an inaccurate sign and was concerned the pregnancy test was being sent that day. It is submitted that this may be an indication of Dr Zala's professional isolation and failure to review and improve his practice and should not be seen as indicating sexual motivation.
c) Dr Cranfield considers that it would be normal and very common for an examination of the breasts to be carried out on one occasion during pregnancy, in particular to look for retracted nipples. She did not agree that a 20 week antenatal check would necessitate a breast examination, but if this occurred it could be seen as outdated practice.
d) So far as the squeezing of the nipple is concerned the medical notes revealed there was a complaint of a discharge at about the relevant time. Dr Cranfield countenances, in paragraph 4.29 of her report that in 1990 there would have been a tiny minority of competent general practitioners who would consider this appropriate although she believed this would be regarded as paternalistic management.

Dr Cranfield's evidence re LF.

216. We deal with this as a separate heading since Dr Cranfield's evidence was a little fuller. She considered that visual examination of the breasts to confirm pregnancy was inappropriate because it is an inaccurate sign and a pregnancy test was being sent that day. It was, however, accepted practice at that time for an examination of the breast to be undertaken on one occasion during the pregnancy to look for abnormality such as retracted nipples. Even in the mid 1970s it was expected

only to carry out an examination of the breasts at booking and not on further occasions, unless an abnormality was found or the woman had a new breast complaint at a later date. She did not consider that in 1990 there was any place for routine repeated breast examinations in pregnancy. She did not accept that it was usual practice to undertake such a breast examination at 20 weeks and said that as Dr Zala had not recorded that he carried out a breast examination at the first consultation it could be very difficult for him to recall on which patient he had performed a breast examination and on which occasion. So far as any nipple examination in the context of a complaint of discharge she emphasized that a record of both the fact of this intimate examination and any findings should have been made. Although a small minority of competent practitioners would have considered it appropriate to squeeze the patient's nipples themselves (with the consent of the patient) if a complaint of discharge was made, most practitioners would have regarded it as paternalistic management. She did not consider that the pincer movement required to squeeze the nipples with two fingers would look like cupping. The other fingers would not touch the rest of the breast. We accept her evidence.

Our consideration of the evidence re LF

217. Dr Zala contends that LF's evidence arises because of contamination. The issue is whether LF was so suggestible that she would have related matters that had not happened to her because she had heard this from HK or others. We noted also that LF had always said that she knew that friends of her mothers were unhappy about the internal examinations performed by Dr Zala. Even though she was given the opportunity to say that this had happened to her when she made a later witness statement to the police she did not take this up. Her account has been largely consistent despite examination in the committal proceedings and before us. It is relatively simple and concerns breast examinations in pregnancy and a kiss on two occasions. The first kiss she took to be an attempt to comfort her in her distress. The second made her feel uncomfortable.

218. We bore in mind that, had the Crown Court transcript been available, more light would have been shed upon the reasons that a "not guilty" plea was entered when the prosecution case had ended. We noted that for some reason that is not in evidence before us, the evidence of LF was treated differently in that "not guilty" pleas were directed in relation to the counts that concerned her evidence, whereas retrials were ordered in respect of HK and MF. Although this was not a matter advanced by Mr Forde, it seems to us that there may well have been some reason over and above the fact of the September 1992 meeting that rendered LF's evidence such that the trial Judge was satisfied that there was no case to answer. We have taken this into account as well as the risk of a wrong conclusion being drawn in these proceedings because evidence has been lost. If the transcript had been available Dr Zala might well have been able to point to inconsistencies in LF's evidence at that time.

219. In our view the core matter that underpins the propriety of any breast examination undertaken is the method used. It is common ground that if a GP undertakes a breast examination in order to look for lumps, whether in or outwith the context of pregnancy, he should use the flat of his hand and apply pressure in an even way to all four quadrants of the breast.

220. We consider that if what LF said in all her statements about how the breast examinations were conducted is true there is little or no room for mistake or misinterpretation. The real issue is whether LF or Dr Zala is telling the truth. We reminded ourselves of Dr Zala's good character. We considered why, in the light of the fact that LF knew that her evidence was considered insufficient in the trial, she

would agree to again give evidence and submit herself to cross examination so many years later - unless she believed that Dr Zala's actions were wrong. We reminded ourselves that she may have convinced herself that her account was true. We considered whether she had persuaded herself that her experience was as she claims because she had heard of the complaints of others, including HK and MF.

221. Our assessment of LF was that she a non assertive and quietly spoken witness who was not prone to exaggeration or embellishment. Although mindful of the risk of injustice to Dr Zala by reason of the passage of time and the unavailability of the transcripts, we consider that LF was a straightforward and credible witness and we prefer her account to that of Dr Zala. Her evidence about the manner in which the breast examinations were carried by Dr Zala was compelling. We accept that the events that she described took place.

222. We accept the tenor of LF's evidence that every time she saw Dr Zala in her pregnancy he, in contrast to the midwife, purported to examine her breasts on one pretext or another in the manner described by her and that this caused her to leave his practice. We accept that her description of how her breasts were examined was truthful and accurate. We do not consider that there is any real possibility that she has misinterpreted legitimate breast examinations. We do not consider that her evidence is the product of contamination. We accept that she told the midwife at Marling Way and also Dr Hall what had happened before she attended the meeting in September 1992. We are satisfied that in her evidence she spoke about real events that had happened to her.

223. It may well be that the consultation in July 1990 gave Dr Zala the legitimate opportunity to carry out an examination of the nipples. In the context of what we find to be a pattern of inappropriate "examinations" of LF's breasts in pregnancy we consider it probable that the motivation behind the nipple examination in July 1990 was sexual.

224. We find also that Dr Zala kissed LF on the cheek on two occasions as described by LF. The first kiss was at a time when she was very vulnerable. His actions were wholly inappropriate. Although the first kiss appeared to be innocent it is probable that this was linked to an attempt to lead LF that he was a kind family doctor who cared about her sorrow and distress.

225. We find the core allegations set out at paragraph 6.4 to 6.10 of the PCT skeleton proved.

PH

226. PH made a statement to the police in May 1994. The core account given by her then was that:

a) Everytime she went for antenatal care Dr Zala would touch her breasts. She told her friend PS who told her to ask if it was really necessary. This she did and he stopped.
b) Thereafter she felt uncomfortable when Dr Zala did smear tests which were normal in themselves but Dr Zala would maintain eye contact with her and touch her breasts under her clothing. She thought that it was just part of the examination.
c) About 6 or 7 years before she went to see him to ask for a referral letter to the Chelsea Women's Hospital. He examined her internally and at the same time touched her breast and stroked her leg. She knew what he was doing was wrong but did not know what to do. It really affected her and she felt like she had been raped.

d) From then on if she had to visit Dr Zala she took her husband.
e) She felt angry that she did not do anything and that nobody listened to her.

227. PH gave evidence at old style committal proceedings on 6th October 1994. In her evidence in chief she said that she did not think that she ever took her bra off in the antenatal examinations. She had had two children and didn't feel that what he was doing was normal. It stopped when she asked him if it was necessary. When she had thrush or needed smear tests Dr Zala would always examine her internally and touch her breasts. She then described the consultation when she wanted a referral letter to the Chelsea Women's Hospital where Dr Zala used his hand to touch her breasts at the same time as examining her internally and then moved from stroking her breast to touching her upper thigh. He phoned her during the day later that week and asked her how she was. She thought this strange. After this her husband used to come with her if she thought she might have to have an internal examination.

228. In cross examination on the committal; proceedings PH said amongst other matters that:
a) She had always told people what he had done but never found anyone to back her up- that he had done it to them.
b) After the really bad examination 5 or 6 years ago she had tried not to go
c) Other women thought that it was very odd that Dr Zala should telephone her. She never heard any gossip about Dr Zala. S complained that she was on the pill and used to touch her breasts.

229. In her oral evidence in chief before us she said that her recollection was that:
a. The day before the trial was due to take place at the Old Bailey the police phoned her up and told her that it was not going ahead. Some explanation was given but she could not remember what it was.
b. Dr Zala examined her internally with one hand whilst touching her breast with his other hand in a sort of pinching movement over her bra. She said that she did not ask him what he was doing and this still haunted her and upset her now. She just trusted him as her doctor. She assumed he was feeling for lumps.
c. Dr Zala phoned her after this and asked her if she was alright. Dr Zala did not tell her the purpose of the call but just asked her when she was coming in. She tried to see Dr Vasudaven thereafter because she knew that Tuesday was his day as a locum. There came a time when she had to see him when she had thrush and she went with her husband. Dr Zala performed an examination but nothing untoward occurred.
d. When she made her statement the police advised her to change doctors and put her in touch with the surgery of Dr Ali Khan where she registered in May 1994. She saw a lady doctor thereafter. She had not changed doctors before because she did not know that she could do so. She was referred for counselling. Apart from her discussions with the community mental health nurse and her new GP she did not speak to anyone else about what had happened to her at Dr Z's surgery thereafter.

230. In cross examination PH confirmed that there came a time when she had stopped seeing Dr Zala if she thought that would involve anything intimate. She considered that her evidence at the committal was more likely to be accurate as to the time frame of the consultations of which she complained and this was up to about 1988. When asked why six years had elapsed before she made a complaint to the police she said that in 1994 her husband was working in Marling Way. He came home and told her that Dr Zala had been in the Magistrates Court for assaulting women. She became hysterical and phoned her mother crying her eyes out. She

then phoned Maidstone Magistrates Court to tell them that it had happened to her and the police came to see her. PH said that she was almost relieved that she was not imagining it all.

231. What emerged clearly from cross examination is that PH was saying that it was not until the "awful examination" that she realised things were really wrong and this was when she started to try and avoid seeing Dr Zala. She did not have many friends and her sisters were in London. She could not recollect speaking to any of her sisters. She may have spoken to her mother but she could not check because her mother had since died. On one occasion she took her 12 year old daughter to see Dr Zala because she had thrush but she refused to let him examine her daughter. She also spoke to IM. S, the girlfriend of IM's son, had said that when she was prescribed the pill Dr Zala had touched her breasts.

232. PH said that her husband did not take her complaint seriously but he did so when it all came out.

233. PH then related that there was an occasion after the committal proceedings when she had requested a domiciliary visit when her son had an accident and Dr Zala attended. She also said that after she learnt that the trial was not to proceed she had inserted a newspaper article in the window of the shop she owned. She felt that she was on a "one woman mission" and was going to sort this out herself because no one was listening to her.

234. So far as the touching of her breast was concerned she had originally thought that Dr Zala was doing so for a medical reason.

235. So far as her knowledge of the other complaints was concerned she had heard that other women had "done this" and there was a court case. Asked whether hearing about the other women had made her put a sinister interpretation on matters she denied this, saying that it just acknowledged what she had "felt all this time, it was like a realisation." She had felt uneasy but it was only when Dr Zala did what he did when she asked for the referral letter that she realised.

236. Asked why she did not take the opportunity to change her surgery when she moved house in 1984 when her son was only 3 months old she said that with hindsight she wished she had. She said that she still feels bad because it haunts her now that she was not strong enough and did not look after herself.

Dr Zala's case re PH.

237. Amongst other matters Mr Forde submitted that PH: was somewhat bizarre in her presentation; did not have good recall of events; was unreliable and inconsistent. Her suggestion that she was sufficiently concerned that she placed a photograph in her shop window gives an indication of a rather unstable and hysterical personality. We will examine the main thrust of the Appellant's case this below.

Our consideration of the evidence re PH.

238. We consider that, on the face of it, PH's police statement and the record of her detailed evidence in the committal proceedings are more likely to be reliable than her oral evidence as to dates and sequence of the allegations she has made. Our impression of Ms PH is that she was still extremely angry and emotional about what she thought had happened to her. The question is whether her evidence as a whole is credible and reliable.

239. We do not consider that the fact that PH did not take the opportunity to

change doctors when she moved in 1994 is a matter that, of itself, undermines her account. We say this because her account was that she was unsure that the touching of her breasts was not medically justified. Having spoken to her neighbour when she was pregnant she was given the confidence to ask if the breast examination was necessary. Dr Zala desisted from examination on that occasion and did not examine her breasts again during the rest of the pregnancy.

240. The core of PH's evidence is that she had had growing doubts about the propriety of Dr Zala's internal examinations thereafter. Events came to a head when Dr Zala performed an internal examination whilst also touching her breast at the same time. PH dated this to the time that she had requested a referral letter to the Chelsea Women's Hospital in 1988. She said after that date she avoided seeing Dr Zala for any matter that might involve an internal examination. She tried to make sure she saw a nurse or Dr Mrs Zala. She would also try to see Dr Vasudaven who worked there as a locum sometimes. After she had an abnormal smear result she tried to keep going to the hospital. She said that she was relieved to be referred by Dr (Mrs) Joshi Zala for follow up at the Hospital colposcopy in July 1990 when there were evident problems obtaining smears for sound anatomical reasons. She said that there was an occasion when she had really bad thrush and when she could not stand it any longer she went to the surgery but took her husband with her.

241. We consider that PH's account as to how she came to learn that Dr Zala was the subject of criminal proceedings in the Magistrates Court and her emotional response to this news appeared to bear the ring of truth.

242. We consider that if it is true that PH refused to allow Dr Zala to examine her daughter when she had thrush this is a matter that is capable of illuminating her state of mind. Further if it is true that, after she learnt that the Old Bailey trial was not to proceed, she put up a newspaper article about Dr Zala in her window as a warning to other women, this indicates a level of anger against Dr Zala which is capable of illuminating the issues we have to decide.

243. It is difficult to see why a woman would behave in the way that PH behaved unless she honestly believed that Dr Zala had behaved improperly towards her, unless perhaps she is an attention seeker, or disturbed or psychiatrically unwell to the extent of being paranoid or delusional. Mothers of young girls who are suffering from thrush do not usually refuse to allow doctors to examine their daughters. It is unusual for someone to put up an article about a medical practitioner in a shop window as a form of warning or protest. We consider it unlikely that anyone would do so unless she honestly believed that she had been the victim of a sexual assault by that doctor. We consider that the probable source of PH's mistrust and anger after she was told that the trial would not proceed was that she felt that she had not been listened to and Dr Zala "had got away with it." The question we ask ourselves is why would she think that unless she honestly believed that Dr Zala had examined her improperly?

244. We noted that Dr Zala in his evidence had difficulty recalling the incident when he attended PH's home in order to see her son but did not actively dispute that this occurred. Even though this occurred at some stage in about 1994/1995 his apparent lack of memory surprised us given that this must have been a highly unusual event. He had after all been called to attend the child of a woman who was due to give evidence against him at the Old Bailey and at a time when he was on bail. According to PH, there was an angry scene when he did attend and he was refused entry. Dr Zala gave the impression that he recalled very little of the event. We did not believe that Dr Zala's recollection of this incident was as poor as he

claimed but were mindful that this, in itself, might not be probative.

245. We have considered the evidence of Dr Zala and borne in mind his good character. In summary his position is that the evidence of PH is unreliable and untrue. He does not advance any case in respect of the possibility of PH being mistaken about the nature of the examinations undertaken.

246. The suggestion is that, in the context of the knowledge that other women had complained, PH has reinterpreted innocent events. We consider this very unlikely not least because the key event (the "awful examination") that caused her to realise that she should avoid seeing Dr Zala alone for any matter that might involve an examination, was not a complaint that was echoed in the evidence of other witnesses from whom we have heard. We have considered whether PH may have learnt of a similar allegation from other women whose evidence is not before us but we consider this unlikely. PH was very open about the earlier conversations that she did have with her neighbour, IM, and S (the girlfriend of IM's son) and at the school gates. We find that these conversations were initiated by her precisely because she felt that there was something wrong with Dr Zala's actions and motivation but she lacked knowledge and the confidence to challenge him. We accept that PH did not talk to any of the other women patients who had already complained before she herself contacted the Magistrates Court in 1994 or, indeed, to any other women patients then or thereafter. We consider that PH was an honest witness who was doing her best to describe accurately the events that had actually happened to her. We consider that her core account is accurate and reliable and is not the product of any wish to identify with other women who had also complained, or the product of any discussions with other people, witnesses or patients, or the product of any newspaper reports, or a fertile imagination.

247. It is common ground that if a breast examination is to be undertaken for legitimate medical reasons it would not involve pinching the breast over a bra. It is also odd that a witness who is said to be untruthful would say that the examinations were *over* her bra.

248. It is common ground that there are no circumstances in which it would ever be appropriate for a GP to examine a woman internally whilst at the same time touching her breast and then touching her thigh.

249. We prefer the evidence of PH to that of Dr Zala because, notwithstanding some confusion in her oral evidence, we found her to be a credible, reliable and compelling witness who spoke of real events that had happened to her.

250. We are satisfied on the balance of probabilities that the core events of which PH complained took place. We find the allegations at 7.8 a) to h) of the PCT skeleton proved.

KEC

251. KC made a police statement dated 7th August 1993. She said that she had consulted Dr Zala because she had a water infection and also for a further contraceptive prescription. He asked her to take all her clothes off. She had done this before when obtaining a contraceptive prescription from him. She alleged that on this occasion Dr Zala stood in front of her and rubbed her back and lower back. She claimed that he asked her to lie down on the couch and then performed a vaginal examination. She was lying on her back. He was examining her with his fingers and asked her to move her hips up and more to the side so that she was almost on her side. By now she was facing the wall with her bottom half at an angle and she

remembered thinking "why am I in this position?" As she lay there she heard this noise which she recognised to be a zip. She immediately moved her eyes towards him and at the same time he was pulling her towards him by her hips. She quickly said “no”. She wasn’t sure what was happening: she couldn’t believe it and thought he was going to get his penis out. She got up immediately and went towards her clothes and hurriedly got dressed. When she again heard this zip noise she thought “Oh my God he has got his trousers off.” She turned round and he still had his trousers on and they were done up. She wanted to leave but needed her prescription for her honeymoon. She waited by the door and Dr Zala hurriedly wrote out the prescription. As she left she remembered thinking that she hoped that the eight or nine year old girl who was waiting with her father did not go in alone. She told her husband to be what had happened. The next week she found that the prescription was only for one month rather than the six usually prescribed. Her husband to be telephoned and picked up a new prescription. She never returned to see Dr Zala after that occasion and realised the differences between Dr Zala’s conduct of a consultation and that of other doctors.

252. In her oral evidence before us KEC said that, amongst other matters, she had told her family about what had happened. The police did not interview her husband as he was there when she saw them. The police did not tell her anything about the other cases. She had read something in the press and came forward to make a statement.

253. Dr Zala had manoeuvred her body her body to go to the edge of the couch and she thought this is not right and she jumped up and said “No”. She sat up and shot off the couch. She was fully naked although she could not recall how it was that she came to take the bottom half of her clothes off. She heard the zip noise when she had her back to the doctor and was putting her clothes on. She could only now recall hearing the zip noise once when she was putting her clothes on. It was suggested to her that she could have made a complaint and she said “Only if you are in the know of how to do it, want to do it, and think you have a good case because it’s is a two way situation. It is my opinion against the doctor’s opinion.” She agreed that she could have gone to the police but she felt that it was not a strong enough case on its own. When she went to the police she gained strength from the knowledge that there might be other complainants although she did not know any of them.

254. In reexamination KEC confirmed that on 5th August 2008 her Nan had been run over. She was getting married on 3rd September and moving house.

255. In answer to Dr Freeman KEC confirmed that when Dr Zala performed the internal examination he was at the foot of the couch, reaching in between her legs. Dr Zala was looking along her length. She was in a raised position with her legs bent. When Dr Zala was internally examining her he was at the end of the couch. When he ceased to examine her internally he came round to the side and started to feel her tummy. In further answer to Mr Forde KEC agreed that it was possible that the Dr was at the foot end of the couch but to one side of her but from her perspective it felt like it was at the very end.

Dr Zala’s case re KEC

256. Mr Forde submitted that KEC’s evidence is bizarre and she is simply not telling the truth. We will deal with the points made in submissions below.

Our consideration of the evidence re KEC.

257. It is fair to say that at the beginning of her evidence KEC spoke at such

length that the initial impression was that the level of detail she recalled about events so long ago was surprising. If what she says is true Dr Zala's behaviour was indeed bizarre because no doctor could begin to justify putting his arms around a young woman in a state of either complete or even near nakedness. The longer KEC was cross examined the greater the opportunity we had to assess her as a witness and to gauge whether she was talking about real events.

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258. Mr Forde submitted that KEC was prone to exaggerate her evidence as illustrated by her "bizarre" evidence in relation to the involvement of a male patient and his little girl. He contends that there is no rational basis for such concern and that her evidence for this reason alone that should be rejected. In our view, if KEC is telling the truth about what happened to her, it was entirely rational that she would be concerned about the risk that the young girl she saw waiting was the patient and that she might go into the surgery without her father. In our view this evidence, if true, is significant in relation to KEC's state of mind when she left Dr Zala's consulting room.

259. Mr Forde further contends that it is utterly bizarre that KEC claims only to have thought that her evidence formed background evidence than itself being a criminal matter. We do not consider that this is bizarre at all. The thrust of KEC's evidence was that she thought that her evidence might assist in the police investigation. The implicit suggestion made is that the police did not take her allegations seriously. We resist the temptation to second guess why the police did not decide to prosecute Dr Zala or call KEC as a witness in another trial. Apart from the fact that we simply do not have any information as to the reasoning in this regard, any decision would have been made in the context of the criminal law and the criminal standard of proof.

260. Mr Forde relied upon a number of inconsistencies in relation to KEC's account of whether she was completely naked when standing up (as she said in her statement) or whether she was partially clothed (as she said in evidence). In our view this arose was because KEC was conscientious in telling us only that which she could now remember. She could not positively assert that she now remembered being fully naked when standing in the middle of the surgery. She could only now remember that she had nothing on the top half of her body. We do not consider that the fact that she could not now remember how she went from semi-naked to naked [see page 20 of the transcript] is a matter that materially undermines her credibility. If anything it tended to enhance it precisely because she did not pretend to now remember all that she had said before.

261. It is also submitted that there was exaggerated elaboration in relation to the hearing of a zip. We consider that the evidence that KEC gave on this point has always been consistent. She does not and has never pretended to have seen Dr Zala undo or do up his fly zip. The thrust of her evidence is that she thought she heard a zip. It is not necessary for us to make a finding as to whether she was right or wrong about that. We accept that this is what she honestly thought she heard.

262. KEC's recollection in 1993 was that only one month's prescription had been supplied on 5th August 1988 rather than the usual six months supply. This was borne out by the medical records in relation to 5th August 1988 which, in contrast to earlier prescriptions of the contraceptive pill by Dr Zala, do not specify the number of months supply (see pages 287, and 285a).

263. It is also suggested that KEC was narcissistic because she had wondered if the doctor was impressed by her "all over tan". In our view the evidence needs to be considered in proper context. What KEC said in her statement was that when she

was standing in front of Dr Zala naked she wondered if he might not be "turned on" but then thought that doctors must be used to this type of thing and so "turn off." We do not considered it surprising that this would cross the mind of an attractive young woman when being examined by a male doctor in the circumstances she described in her statement. We do not consider that this is remotely narcissistic.

264. Fundamentally this case requires us to decide who is telling the truth. We have considered Dr Zala's evidence which is a robust denial. We have borne in mind his good character. In short his position is that the evidence of KEC is simply untrue. It is not suggested that there could be any medical justification for the events that KEC describes.

265. We consider that KEC was a very impressive witness whose evidence was characterised by complete openness. She was conscientious in saying only that which she could actually now recall. There was a complete absence of any animosity or anger towards Dr Zala. She appeared very largely unaffected by the events she described. In short the tone and quality of her evidence was such that she struck us as a robust individual who was plainly able to look after herself at the age of 21 and had been able to put the matter into perspective. Her wedding was imminent. She did not think that her account would be believed. She took practical action by making sure that the fact that only one month's supply of the contraceptive pill had been prescribed was remedied: her fiancé went to pick up the corrected prescription to cover 6 months supply for the honeymoon and beyond. She never returned to the surgery again. She was to marry and therefore change address. She told her mother and sister what had happened. She went to the police in 1993 when she read that Dr Zala was the subject of investigation. We find that she plainly had no axe to grind: she did so because she felt that it was her civic duty. She provided the police with her statement but did not concern herself with the use that was made of it. She came across as an utterly straightforward person. Her evidence was credible, reliable and compelling. We have no hesitation in accepting her account.

266. We are satisfied on the balance of probabilities that the core events of which KEC spoke took place. We find the allegations as set out in paragraph 7.4 a) to f) of the skeleton proved.

Suitability

267. The issue of whether the facts we have found proved requires us to make a conclusion as to Dr Zala's suitability to be included in the NHS performers list of the Respondent. This is an issue of judgement rather than fact. The Respondent bears the burden of persuasion on this issue. If it is concluded that Dr Zala is unsuitable there can, as a matter of law, be no question of contingent removal.

268. Mr Forde realistically conceded on behalf of his client that if the evidence of any of the women from whom we have heard evidence was to be accepted then the inevitable conclusion was that Dr Zala was unsuitable to be a general practitioner included in the Respondent's list. In answer to the Tribunal Mr Forde accepted that even if only the allegation in respect of SC were to be found proved, a finding of unsuitability must inevitably follow. We have nonetheless made our own decision.

269. We have considered all relevant matters under paragraph 11 of the Regulations including the sexual nature of any acts proved, the length of time since such were committed and the overall effect of the incidents.

270. The allegation in relation to SC is the most recent. In our own view that the findings we have made in respect of SC alone are sufficient to lead to the conclusion

that Dr Zala is unsuitable to be included in the list maintained by the Respondent.

271. For the avoidance of any doubt we would add that by reason of our findings in respect of the complaints of PP, HK, LF, PH and KEC, whether viewed individually or cumulatively, Dr Zala is unsuitable to remain on the list maintained by the Respondent.

272. At this stage of the proceedings we draw conclusions in the light of all the facts we have found when we looked at the allegations separately. The findings reveal a pattern of behaviour by Dr Zala towards each of these women that was abusive, exploitative and sexually motivated over a period of many years. With the exception of HK, all of the women from whom we heard evidence were young at the time. The significance of this is that the younger the patient the less experience she may have as to how a GP should conduct examinations and the less confidence she may have to questions the conduct of a professional person. The natural instinct of most of these patients was that they did not want to believe that their doctor had abused their trust. Many of the women were pregnant. Many of the women were vulnerable. Some suffered from low self esteem and confidence issues and were, in our view, less likely to think that anyone would believe their account rather than that of a doctor. We have little doubt that Dr Zala's method was to carefully select the women on whom he performed "examinations" in a superficially quasi medical manner so as to avoid confrontation, complaint and detection. His actions were sexually motivated.

273. The lack of confidence that nearly all these patients prospectively felt about complaining to anyone in authority does not ring at all hollow when one considers what actually happened on those occasions when the concerns of some patients were brought to the attention of other health professionals, the Health Authority, the Local Medical Committee, the police, and the General Medical Council. Any systemic issues arising are not, of course, our concern.

Inefficiency

274. It is contended that the facts also amount to inefficiency. In view of our findings of fact in relation to these patients and our view as to suitability it is unnecessary to consider this further.

Disposal in the light of our finding of unsuitability

275. We recognise that our conclusion that Dr Zala is unsuitable to be included in the Respondent's list will have a profound effect upon his personal, financial and professional interests and we have taken this fully into account. We have balanced his interests against the public interest and have also taken account of the Appellant's hitherto unblemished record and long service as a general practitioner. In our view an order for removal from the Respondent's list is plainly necessary, just and proportionate on the basis of the facts in relation to SC alone.

Conclusion on the Appeal.

276. The appeal is dismissed. We direct that the Appellant's name is removed from the performers list of the Respondent PCT under paragraph 10 (4) (c) of the Regulations on the grounds that the Appellant is unsuitable to be included therein.

277. We direct that, pursuant to regulation 16 of the 2004 Regulations the PCT shall notify the Secretary of State, the Scottish Executive, the National Assembly of Wales, the Northern Ireland Executive and the Registrar of the General Medical Council of this decision.

Rights of Review and/or Appeal.

278. The parties are hereby notified of the right to appeal this decision under section 11 of the Tribunals Courts and Enforcement Act 2007. The parties also have the right to seek a review under section 9 of the Act. Pursuant to paragraph 46 of the Tribunal Procedure (First- tier Tribunal) Health, Education and Social Care Chamber) Rules 2008 (SI 2008/2699) a person seeking permission to appeal must make a written application to the Tribunal no later than 28 days after the date that this decision was sent to the person making the application for review and/or permission to appeal.

National Disqualification

279. We did not hear submissions on this potential order pending our decision on the facts. As a matter of law the power to make such an order arises independently of any application by the Respondent. Obviously the Appellant is entitled to make representations.

280. The Tribunal expresses the preliminary view that, in the light of the overriding objective, an oral hearing is not necessary to consider the issue of national disqualification. The parties are hereby directed to submit written representations within 14 days of the receipt of this decision setting out all matters on which each wishes to rely:

- if it is contended that an oral hearing should be held and
- in any event, in relation to the issue of national disqualification.

281. If either of the parties were to request an oral hearing a case management decision will then be made in this regard by the tribunal judge.

Siobhan Goodrich

Judge of the First-tier Tribunal

10th August 2010