

**IN THE MATTER OF AN APPEAL UNDER THE NATIONAL HEALTH SERVICE
(PERFORMERS' LIST) REGULATION 2004**

Miss Siobhan Goodrich: Legal Chair
Dr Howard Freeman: Professional Member
Mrs Linda Thurlow: General Member

Heard at: Napier House, High Holborn
On 7th, 8th, 10th, 11th, 14th, 15th and 16th April 2008

BETWEEN:

Dr Dhanraj Aggarwal

Appellant

and

South East Essex Primary Care Trust

Respondent

Representation

For the Appellant: Mr Huw Lloyd, Counsel, instructed by Berrymans Lace
Mawer
For the Respondent: Mr Richard Booth, Counsel, instructed by Capsticks

DETERMINATION

The Appeal

1. By Notice of Appeal dated 12 October 2007 [A/7] Dr Dhanraj Aggarwal (General Medical Council Registration Number 3645633) appeals against the decision of the Respondent made on 14 September 2007 to remove his name from the PCT Performers' List. The decision, made under paragraph 10 (4) (a) and (c) of the National Health Service (Performers' List) Regulations 2004 ("the Regulations"), was that the continued inclusion of Dr Aggarwal'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 PCT Decision.

2. The executive decision was based upon the recommendation of a Panel established by the PCT who had conducted a hearing to consider the written representations from Dr Aggarwal and the report of the Essex Performance Advisory Group ('the PAG'). Although Dr Aggarwal had a right to attend that meeting and request representation, by letter dated 20 August 2007 Berrymans Lace Mawer confirmed that he did not intend to submit oral representations to the Panel but relied upon his written representations of 30 April 2007 [B237]. These included a bare denial of the allegations.
3. The minutes of the hearing are set out at B223-230. The core findings of fact made by the PCT panel in respect of each patient are set out below with minimal adaptation:
Patient One
On 28 January 2003 during a consultation Dr Aggarwal took hold of Patient One's breast and squeezed both breasts simultaneously 3 times in a manner which caused her to feel uneasy. During the consultation Dr Aggarwal kissed her on her lips.

- (a) *The touching of her breasts served no clinical purpose.*
- (b) *He touched her breasts without her consent.*
- (c) *He examined her eyes without her consent.*
- (d) *He touched her on the lips with his lips.*
- (e) *His actions in touching her breast and/or kissing her on the lips amounted to inappropriate sexualised behaviour.*
- (f) *He failed to offer her the security of having a chaperone present during this intimate examination contrary to good medical practice.*

Patient Two

On 28 July 2005 Dr Aggarwal carried out an intimate examination of Patient Two who presented with irregular bleeding and who was then 18 years old. He examined her abdomen requiring her to loosen her outer clothing and failed to offer her a chaperone. The Panel found that Dr Aggarwal failed to offer her the security of having a chaperone present during this intimate examination contrary to good medical practice.

On 5 August 2005 Dr Aggarwal had a consultation with Patient Two. During that consultation he kissed and/or touched her on the lips.

- (a) *Dr Aggarwal kissed and/or touched Patient Two without her consent.*
- (b) *His actions amounted to sexualised behaviour.*

Patient Three

On 4 July 2005 during a consultation with Patient Three Dr Aggarwal took hold of her left breast with his right hand over her clothes and held it for about 30 seconds.

- (a) *His actions served no clinical purpose.*
- (b) *He touched her in this way without her informed consent.*
- (c) *His actions amounted to inappropriate sexualised behaviour.*
- (d) *He failed to offer her the security of having a chaperone present during this intimate examination contrary to good medical practice.*

Patient Four

On a date in 2004 Dr Aggarwal called at the home of Patient Four on the pretext of providing her with some leaflets about massage. He carried out a massage on Patient Four during the visit. During the massage he was in physical contact with Patient Four. She could feel his erect penis pressing against her. She felt the massage was sexual in nature.

- (a) *He attempted to kiss her on her lips but she turned her face causing his kiss to be made instead on her cheek.*
- (b) *The massage carried out was not therapeutic.*
- (c) *He became sexually aroused while carrying out the massage.*
- (d) *Patient Four did not give informed consent to the full body massage that he carried out.*
- (e) *His actions in carrying out the massage and/or attempting to kiss her on the lips amounted to inappropriate sexualised behaviour.*
- (f) *He failed to offer her the security of having a chaperone present during this intimate examination contrary to good medical practice.*

Pre hearing Decisions and Directions

4. Directions were given on 5th December 2007, 20th December 2007, 28th and 29th February 2008 and further telephone directions were given by the Chair.
5. In February 2008 the panel were informed that Dr Aggarwal did not intend to give evidence. In the written decision dated 29th February 2008 the Chair advised Dr Aggarwal of the potential implications of his decision and made it clear that the panel would not regard his decision as irrevocable if he were to change his mind.
6. It was agreed by both parties that each side should be permitted to rely upon the expert evidence of a general practitioner independently instructed. In the event the

Appellant did not rely on expert evidence from a GP and did not challenge the report or evidence of Dr Frances Cranfield called by the Respondent.

7. Because of the nature of the allegations it was directed that whilst the statements were before us we should hear the evidence of each witness in chief. It was directed that the evidence of all witnesses would be given on oath and that the names of the patients concerned should be anonymized by reference to number so as to respect their private lives. We directed that the actual names of the witnesses were to be preserved confidentially. The proceedings were held in public except for a very brief part of the evidence of Ms 3.

The Documentation

8. The following paginated and indexed bundles were before us:
 - A The documents and witness statements adduced by the Appellant
 - B The Respondents bundle.
 - C The transcript of proceedings in respect of the trial of Dr Aggarwal at Basildon Crown Court between 3rd and 7th July 2006
 - D The medical records of patients 1 to 4
 - E A composite bundle of relevant witness statements and documents

Further documents were received during the hearing which were given exhibit numbers.

The Hearing

9. As to the facts we heard oral evidence from all four patients
10. At the start of the Appellant's case it was made clear by Mr Lloyd that he was not calling Dr Aggarwal. Dr Aggarwal was advised by the Chair that whilst it was entirely a matter for him to decide he should be aware that the potential disadvantage in not giving evidence was that he forwent the opportunity to challenge the evidence of other witnesses by his own sworn evidence. In general terms the fact that evidence is in written form and has not been subject to cross examination may mean that less weight will be attached to it. He was also advised that adverse inferences might be drawn from the fact that he chose not to give evidence. We rose early that morning in order that Dr Aggarwal would have the opportunity to consider his decision. After the extended luncheon adjournment the Appellant was granted more time to this end. He decided not to give evidence
11. We received written and oral submissions from Mr Booth for the PCT and oral submissions from Mr Lloyd on behalf of the Appellant. Mr Lloyd referred in detail to the Appellant's CV, the evidence that was given on oath in the Crown Court Trial including the Appellant's own evidence and all the statements of witnesses in these proceedings as well as other documents relied on by Dr Aggarwal. Dr Aggarwal also relied on the expert reports of Mr H El- Kasaby, consultant ophthalmologist, dated 26th June 2006 and Mr William Soutter, Honorary Clinical senior Lecturer in Gynaecological Oncology, dated 26th May 2006. Mr Soutter also gave evidence. We have considered all the documentary evidence.

Our approach to the evidence

12. This appeal hearing is a civil proceeding and the procedures are governed by the Family Health Services Appeal Authority (Procedure) Rules 2001 ("the Rules"). It was agreed by both parties that the nature of the appeal is by way of redetermination. We have decided that in this appeal we should redetermine the facts as found by the PCT rather than the wider allegations that had originally been made in the PAG report.

The Burden and Standard of Proof.

13. We directed ourselves that the PCT bore the burden of proof. Dr Aggarwal was not required to prove that he had not committed the alleged acts. It was agreed that the facts should be determined by applying the civil standard of proof subject to

qualification. We were referred to a number of authorities including **Doshi v Southend on Sea PCT [2007] EWCH 1361(Admin)**.

In **In Re H [1996] AC 563**, Lord Nicholls stated as follows (pages 586C-587E):

“When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in the particular case, 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.....Built into the preponderance of probability standard is a generous degree of flexibility in respect of the seriousness of the allegation. Although the result is much the same, this does not mean that where a serious allegation is in issue the standard of proof required is higher. It means only that the inherent probability or improbability of an event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred. The more improbable the event, the stronger must be the evidence that it did occur before, on the balance of probability, its occurrence will be established.”

In **Secretary of State for the Home Department v Rehman [2003] 1 AC 153** Lord Hoffman said: *“It would need more cogent evidence to satisfy one that the creature seen walking in Regent’s Park was more likely than not to have been a lioness than to be satisfied to the same standard of probability that it was an Alsatian. On this basis, cogent evidence is generally required to satisfy a civil tribunal that a person has been fraudulent or behaved in some other reprehensible manner. But the question is always whether the Tribunal thinks it more probable than not.”*

In **R (on the application of AN) v The Mental Health Review Tribunal (Northern Region) [2005] EWCA Civ 1605** Lord Justice Richards said: *“Although there is a single civil standard of proof on the balance of probabilities, it is flexible in its application. In particular, the more serious the allegation or the more serious the consequences if the allegation is proved, the stronger must be the evidence before a court will find the allegation proved on the balance of probabilities. Thus the flexibility of the standard lies not in any adjustment to the degree of probability required for an allegation to be proved (such that a more serious allegation has to be proved to a higher degree of probability), but in the strength or quality of the evidence that will in practice be required for an allegation to be proved on the balance of probabilities.”*

We have applied these principles throughout when determining the facts.

14. Whilst these are civil proceedings we decided that in the interests of fairness we should have regard to the directions that would be given in a criminal trial. In particular we directed ourselves as set out below.

Character.

15. Throughout our consideration of the allegations made by each patient we reminded ourselves that Dr. Aggarwal has no convictions recorded against him. In 1997 he was sent a warning letter by the GMC. This concerned a name error on a death certificate completed by him which he frankly admitted. We regard his professional record as effectively unblemished. We read the statements of a number of witnesses including a patient and a very wide range of professional colleagues with whom he has worked with over many years all of whom spoke highly of his positive qualities including his professionalism and integrity. A number of witnesses including Anne Packenas, Joanne Richardson, Denise Morgan and Julie Molton and Pamela Wickham wrote in very complementary terms and expressed their disbelief concerning the allegations made against him. In short, Dr. Aggarwal enjoys the reputation of being an honest, competent, kind, considerate, and compassionate general practitioner who conducts himself appropriately at all times.

16. Good character cannot, of itself, provide a defence to the allegations faced by Dr Aggarwal. It is, however, powerful evidence that should be taken into account in the following ways. Firstly the fact of Dr Aggarwal's good character supports the credibility of the evidence that he gave in the Crown Court proceedings and, further should be taken into account when considering the representations made on his behalf in the context of all the evidence before us. Secondly, we directed ourselves that the fact of his good character was relevant to the issue of propensity in that his character might mean that he was less likely to have committed the acts alleged against him. We considered that in the circumstances of this case, not least the Appellant's age, that we should give significant weight to his good character when deciding whether the PCT had satisfied us to the appropriate standard that he had committed the alleged acts.
17. A further factor arose relevant to the issue of character when considering the evidence of Patient 2. She had been reprimanded and warned by the police for two separate offences under the Theft Act 1968 in 2002 and 2003. We decided that it was fair that this should be taken into account when considering her credibility.

Evidence in relation to complaints made.

18. On the PCT case Ms 1 and Ms 2 made complaints on the very same day that they consulted Dr Aggarwal. Ms 3 told her friend within a relatively short period and Ms 4 told her partner and Br Basu of her allegations within at most two weeks. Whilst we heard no live evidence from any witness to whom the patients complained we received some evidence from third parties as to what was said when complaints were made. We reminded ourselves that any evidence in relation to a complaint previously made does not prove that the complaint was true. The fact that a complaint was made is relevant, however, to the issue of consistency.

Separate consideration of the allegations.

19. We heard submissions on the law from the Respondent in relation to similar fact evidence with which the Appellant did not disagree. Whilst there were features of the evidence that were capable of being described as similar our approach was to look at each allegation in respect of each complainant separately.
20. Although we considered the specimen directions on the context of criminal proceedings we decided not to draw any adverse inference from the fact that Dr Aggarwal did not give evidence. We took full account of the evidence that he gave on oath at the criminal trial in context. We accepted that considerable weight should be attached to the very positive evidence as to his good character in the witness statements before us. When assessing other documents we bore in mind the usual caution in respect of the weight to be attached to evidence in written form which has not been otherwise tested.
21. We turn to the evidence and submissions in respect of the allegations made by each patient. When setting our findings with regard to each patient we will not repeat the directions referred to above.

The Background concerning Ms 1

22. It is common ground that Ms 1 consulted Dr Aggarwal on 28th January 2003. His clinical record is as follows:-

*'Pain (left) lower chest. Pain (left) leg. Cough.
Worse on breathing.
Pulse - 84/min.
BP 117/74.
Chest tender (left) wall.
(No) pleuritic rub.
(No) DVT. No PE.
Retina - (normal).
Pleuritic chest pain.*

Rx Voltarol 75 mg bd 2/52.
Amoxicillin 250 mg tds 1/7.'

23. A note in the margin stated:-
'Works in McDonalds standing all the time and that the patient smoked 5 cigarettes a day.'
24. By letter dated 1 February 2003 Mr 1 wrote to the Practice Manager. Material parts of his letter are as follows:-

'My wife attended surgery alone with a productive cough, pain in the lower left chest and sore breasts. Here is my attempt to explain her experience. Dr Aggarwal commenced the consultation by listening to (her) chest with her pullover raised then asking her to remove her pullover and lying with her back down. The Doctor examined her lower rib cage around the location of the pain and then the same the other side, he then asked her to stand and remove her bra. He then started a breast examination during which he squeezed each breast in a way that my wife describes as making her feel uneasy. He then asked her to sit and proceeded to take her blood pressure. The Doctor then examined each eye with an ophthalmoscope in a manner that caused his lips and nose to touch with hers. (Ms 1) was sufficiently alarmed by this to pull away. During this time she describes the Doctor as shaking slightly and looking "unusual". (Ms 1) was clearly upset by the incident when I collected her from work later that day.

I was open-minded enough to believe that this could all have happened unintentionally and the Doctor's actions were misinterpreted, however upon consultation with my own company nurse the next day I was told that such contact is unnecessary and can be avoided by viewing left eye with left eye/swapping sides etc. Also I understand a female "chaperone" is now mandatory during a breast examination. ... I have written this in the hope that you will contact us for an interview as soon as possible so that this matter can be settled with the minimum of worry. (Ms 1) is Filipino but has an excellent understanding of English.'

25. A meeting was arranged by the Practice and took place on 6 February. On 7 February Mr 1 brought a letter into the surgery addressed to Dr Aggarwal which stated:-
'My wife and I are terribly sorry for bringing a complaint against you. We wish to completely retract any apparent accusations of malpractice and we hope that this event has not caused your career, reputation or psyche any damage. Both you and Dr Sen were most apologetic about this misunderstanding when it is I who should be apologising, for my wife is quite naïve and consequentially I am over-protective and reactionary I suppose. We could see that you were as unsettled about the whole thing as us and both wish, as a token of trust, to see you again if this is acceptable when either of us needs to visit the surgery again. ...'

The oral evidence of Ms 1

26. In her oral evidence Ms1 adopted her witness statement dated 30 June 2006. In chief she said that her husband arranged for her to be registered with Dr Sen after her arrival from the Philippines in 2000. She had a history of chest pain and was always coughing with a lot of phlegm and a sore breast on the left side. Dr Sen had referred her to hospital in relation to problems with her chest and breathing. She described an examination performed by Dr Sen. Before she got undressed Dr Sen called the nurse or the practice manager. Dr Sen asked her to lie down on the couch and examined her armpit and lower ribs. He examined the breasts on both sides on the outer part of the breast. When he couldn't find anything wrong he referred her to hospital.
27. Whilst waiting for the hospital appointment she still had pain so an appointment was made and she saw Dr Aggarwal on 28 January 2003. She had seen Dr Aggarwal before. She told him she had a problem on the left side down her ribs and pain in her chest. Dr Aggarwal said that he needed to examine her and he listened to her

breathing with a stethoscope. He then asked her to take her top off which she did and she lay down on the couch with her bra on. Dr Aggarwal then asked her to stand up and take her bra off which she did.

28. Ms I said that Dr Aggarwal stood facing her about 2 feet away. She demonstrated that Dr Aggarwal cupped and squeezed her breasts with both hands. When asked to describe it she said it was 'like when your tits are squeezed'. He examined one side and then the other side and then squeezed both breasts together twice. Dr Aggarwal had not offered a chaperone and did not explain what he was doing. She felt uncomfortable because she had seen doctors in her own country and had seen Dr Sen in the United Kingdom and no one had examined her in this way before.
29. Ms1 said that Dr Aggarwal then looked in her left eye with an instrument. At this stage they were both still standing and she was still undressed. Dr Aggarwal did not explain what he was doing and did not say why the examination was needed. She said he bent his head forward to examine the left eye and touched her nose and lips. She said that she could see that the Doctor was not himself. Asked to clarify this she said that he looked like 'when you have done something wrong. He was looking at me in a wrong way'. She couldn't remember which eye he was examining when he touched her nose and lips. His face was close to hers and his lips were pursed "like when a man is going to kiss you." When he made contact with her nose and lips she pulled back. Dr Aggarwal then told her to get dressed. She was in a hurry to leave because she was panicking. Dr Aggarwal went back and sat at his desk and asked her to sit down. She notice that he was 'shivering' by which she meant that he was moving his foot. Dr Aggarwal did not look at her anymore. He did not explain the purpose of the eye examination. She said that she was not prescribed any treatment.
30. Ms 1 said that she left the surgery and went back to work but was upset. She told her husband and he wrote a letter of complaint. Her husband had asked her to describe what happened and asked for a meeting which took place on 6 February with Linda, the Practice Manager, Dr Sen and Dr Aggarwal. At the meeting Dr Sen asked her what had happened and she explained. Dr Sen said Dr Aggarwal was a family man and then called Dr Aggarwal into the room. Dr Sen explained to Dr Aggarwal what she had said but she could not now remember the details. She did recall that Dr Sen had said words to Dr Aggarwal words to the effect that he needed to be careful with Asian ladies because they might take things the wrong way. Ms 1 said that she had been asked to repeat what she had said to Dr Sen. She could not remember if Dr Aggarwal gave any explanation in the meeting. Dr Aggarwal did not say sorry. She and her husband then left. She wanted to forget about what had happened and wanted to move on. She was aware that her husband had written to Dr Aggarwal and the letter was read to her at the time. She could not remember her husband writing it. Asked about Dr Sen she said that he was a lovely man and a good doctor and that they were friends.
31. In cross-examination Ms 1 said that Peter Greenwood had written down her answers as she gave them and her statement contained her expressions. After the incident occurred she had never seen Dr Aggarwal again. She was then taken to a number of entries in the medical records which suggested that she saw Dr Aggarwal on 8 occasions with a variety of complaints. She said that she did not deny that those consultations took place but she could not remember them although she thought that her memory was good. After the incident she did not go to the practice without her husband.
32. With reference to the subsequent meeting Ms 1 said she and her husband respected Dr Sen and wanted to forget everything. When it was pointed out that her husband's letter said that she would be happy to see Dr Aggarwal again she said that she always asked to have a nurse after the incident. She agreed that she complained of a pain in her left leg as the consultation on 28 January. It was put to her that she also mentioned pain in her knees: she thought that this was on a previous consultation. She thought that she was still working at EDL and not at McDonalds at the time.

33. Ms1 said that Dr Sen had examined her breasts about 4 or 5 times and a nurse had performed another examination on her own on another occasion.
34. Ms1 was taken to a referral letter with regard to her complaint of recurrent cough and pain in the right lower chest written on 17 March 2003 by Dr Aggarwal [D33] and then agreed that she should correct her evidence that Dr Sen had referred her. According to the records she had been seen by Dr Aggarwal on 19 February and 26 February with regard to chest problems which culminated in the referral by Dr Aggarwal. She said she did not remember seeing him at all after her complaint was made.
35. With reference to the letter written by her husband she said that Dr Aggarwal had written to them before the meeting had taken place on 6 February. It was suggested to her that when she came out of the meeting she was quite happy that it had all been a mistake. She said she was happy to go home and not talk about it anymore. It was suggested to her that Dr Sen and Dr Aggarwal had tried to explain why she was mistaken. Ms 1 said that all she could remember was Dr Sen saying that Dr Aggarwal was a family man.
36. Ms1 confirmed that the pain in her chest on 28 January was on the left side and that she had complained of sore breasts. It was put to her that in chief she had only referred to breast in the singular. She said that to her "chest" and "breast" was the same. After her pulse and blood pressure had been taken Dr Aggarwal had examined her chest with a stethoscope over her top. He then asked her to lie down. Asked by Mr Lloyd she described in detail the relative positions of the door, the doctor's desk, the window and couch. When she took off her top and bra she was behind a screen. She took her top off first and lay down on the couch and it was at that stage that Dr Aggarwal examined her left chest to see if there was tenderness in the left breast. She was asked if he placed his hand underneath her breast whilst she was lying down and she said that he did. When asked again she said that Dr Aggarwal asked her to remove her top and to stand up. She then again demonstrated how Dr Aggarwal had held her breasts with both hands over the breast tissue. It was put to her that Dr Aggarwal had carried out a test for chest expansion by putting both hands underneath her breasts at the bottom of the ribcage and asking her to breathe in and out. Ms 1 disagreed.
37. So far as the eye examination was concerned it was suggested that Dr Aggarwal then invited her to sit down for the eye examination. She said she was standing up. He had not explained what he was doing when he squeezed her breasts. He asked her to stand up, put one hand to the left breast, one hand to the other side and then squeezed both breasts with both hands twice. It was put to her that in paragraph 17 of her statement she said *'I cannot now remember whether I lay on the couch again or whether I was still standing but Dr Aggarwal took hold of each of my breasts at the same time, his left hand holding my right breast and his right hand holding my left breast. He squeezed each of my breasts simultaneously on 3 separate occasions and I could feel his fingers and palms squeezing my breasts.'* She said that she was upset at the time the statement was made and she wanted to try and forget matters. I
38. In answer to Mr Lloyd Ms 1 described again the eye examination. She said that Dr Aggarwal was standing in front of her and demonstrated how he bent his head touching her nose and lips and that his lips were pursed. She said that when Dr Sen had examined her eyes he had always stood at the side. When Dr Aggarwal shone the light it was into her right eye and he was looking at her. He didn't ask her to look into the distance.
39. The proceedings were then adjourned so that cross-examination could be continued with the benefit of an ophthalmoscope. The following morning Ms 1 confirmed her evidence that she was standing up and beside the couch with her top and bra off when the eye examination was performed. She said that Dr Aggarwal was looking at her with both his eyes. The end of the instrument was 3 to 4 inches from her eyeball.

He was holding the instrument in his right hand and holding down her left lid with his left finger. His face about a foot away when he shone the light into her eye. She thought that he examined her left eye first and that it was when he examined the right eye that he touched her nose and lips. He used both his eyes to perform the examination.

40. Ms 1 was then shown the ophthalmoscope and she agreed that this was the instrument used. She couldn't really remember if he was holding it in his right hand but she thought that it was. It was again put to her that he examined the left eye whilst holding the instrument in his right hand. She said that Dr Aggarwal's eye was about 4 to 6 inches away. He had to bend and when he checked the right side he touched her lips and nose. She then demonstrated how Dr Aggarwal moved his face towards hers pursing his lips.
41. Asked about the letter dated 7th February signed by herself and her husband Ms 1 said that they respected Dr Sen a lot and wanted to put the matter behind them. She agreed that her state of mind was that she did not want to see Dr Aggarwal again. She agreed that the letter was one of apology and said that her husband was a very kind person who will always apologise. So far as the meeting was concerned she had told Dr Sen what had happened and he had apologised. He had then called Dr Aggarwal in but she could not remember him saying anything. She and her husband were listening to Dr Sen. Her husband wrote the letter so that she could move on. She just wanted to forget the matter because she was generally poorly. She felt sure that she had not seen Dr Aggarwal again but if she had it was always with someone else.
42. She was asked about the note that Dr Aggarwal made in relation to the pain in her left leg. She said that her pain went from the side of the breast down to the knee area. She agreed that she had pain in her knees and that she couldn't stand on her leg properly because it hurt when she walked or stood up. She agreed that he examined her left leg.
43. In re-examination she said that she had arrived in the United Kingdom in May 2000 and since that time her English had improved. She had not had any say in the words used by her husband in the letter of apology. So far as the eye examination was concerned she only remembered that he moved his head towards her head and touched her nose and lips. Dr Aggarwal was looking at her. He did not explain why he was doing the examination and did not mention a blood clot. When Dr Aggarwal's nose and lips touched hers his glasses touched her on the forehead. His nose touched her nose and his lips touched her lips. She was not denying that she saw Dr Aggarwal subsequently but she could only remember seeing him on that occasion. When asked in detail of her employment she said that she worked in McDonalds from September 2002. After 28 January 2003 she had always attended the practice with her husband because she didn't want to go on her own anymore. Asked what she meant when she had said that she and her husband respected Dr Sen she said that she respected the surgery and they were worried about damaging Dr Sen's name.
44. In answer to Dr Freeman Ms1 said that appointments were made by telephone and she was always told who she was going to see. Dr Aggarwal used a stethoscope when examining her chest wall on 28 January. The breast examination by Dr Aggarwal was different to the breast examinations carried out by Dr Sen. When Dr Sen examined her he did so when she was lying down and he felt her breast by pressure of fingers all around it. So far as the eye examination was concerned she was looking towards the wall and the skeleton drawing. The ophthalmoscope was right up against her eye when he bent his head and touched her. The examination of her leg was performed while she was sitting in the chair. Dr Aggarwal felt her knee joint and tested her reflexes.
45. Mrs Thurlow asked Ms1 to explain what she meant by her suggested that Dr Aggarwal had looked at her 'in the wrong way'. She said it was like when a man

wants to kiss you. So far as her breast examination was concerned it felt different to other examinations she had undergone.

46. In answer to the Chair she said that Dr Aggarwal only examined her left leg and didn't ask her about her right leg at all. He did not ask whether the left leg was red or hot. She thought that he did ask if the left leg was swollen but she said no. She said that Dr Aggarwal had asked her about whether there was a family history of TB. So far as the letter from Dr Aggarwal was concerned she thought that this arrived after the meeting. She did not read it herself. She did not read the letter written by her husband. Dr Aggarwal had said nothing at the meeting. Dr Sen had said that Dr Aggarwal was a family man. His explanation was that because she was Asian she had taken the examination the wrong way. She trusted Dr Sen.
47. In further questions from Mr Lloyd she said that Dr Aggarwal's glasses had touched her on the forehead at the same time as he touched her nose and lips.

Dr Aggarwal's case in respect of Ms 1.

48. Dr Aggarwal's account of the consultation is set out in an undated letter written in response to the letter of complaint written by Mr 1 on 1 February 2003. It states as follows:
- "First of all may I apologise that my examination of (Ms 1) has caused her distress. As you know your wife came to see me on the 28/1/2003 with pain in the left lower chest wall and a cough, pain which was worse with breathing. My initial impression was of a chest infection but when (Ms 1) mentioned that she was getting a pain in her left leg and worked in a job which involved standing for most of the time, my suspicions were diverted to a blood clot her leg and possibly in her lung. I therefore proceeded to do a thorough examination. Again, I apologise sincerely that I did not explain my intentions fully... but my main concern was to rule out the life threatening condition of a blood clot on the lung.*
- I palpated the left chest wall and her left breast with the palm of my hand only, essentially to rule out muscular pain, there was tenderness in the left breast. I did not examine her right breast at all. I was concerned about the thrombosis and during the procedure of examination, I did not call in a chaperone as my attention was drawn to my clinical diagnosis and I am mindful of the rule of Doctor/Patient confidentiality.*
- When (Ms 1) states that I squeezed her breasts, I have tried hard to think what she meant and have come to the conclusion that it is a misunderstanding. When I was examining her for lung expansion, I placed my hands on her chest and asked her to breathe to check that the lungs expanded equally.*
- Examining with an Ophthalmoscope is a difficult examination, in a hospital I would dilate the pupils with special drops but in the surgery I ask the patient to look at a distant object. This was difficult with (Ms 1) as the intensity of the light caused her eyes to water and as she flinched my glasses touched her nose. I apologised at that juncture. Again I apologise unreservedly if I caused her anxiety. I was trying to exclude signs of a clot. Fortunately, I was able to rule out my suspicions of thrombosis. I diagnosed pleuritic chest pain and prescribed necessary treatment. I have seen (Ms 1) on a previous occasion and treated her, but at that time her condition did not warrant a thorough examination.*
- Regarding myself personally, I have been working as a locum in this practice for nearly 10 years and as a salaried GP since last year. I provide locum cover for another practice, where a chaperone is not always possible. I am confident to say that all my patient's respect me and I have never knowingly caused any patient anxiety nor distress. I am happily married and a deeply religious man with 3 young children, in fact one of my daughters is almost the same age as (Ms 1) she is disabled and in a wheelchair and has to attend hospital appointments very frequently. My personal experience of being on the other side of the table and the apprehension and anxiety exhibited by the patients makes me even more aware of treating my patients with respect and care. Besides working in general practice I am a consultant*

in Rehabilitation and Intermediate Care Medicine with a special interest in Strokes, where I come into contact with many young women. From my personal and professional experience, I fully appreciate and understand the modesty and embarrassment felt by my patients. Recently I had to look after a twenty two year girl who had a clot in her lung and brain and because of that I am very thorough in my history and examination of such patients. It was definitely not my intention to cause (Ms 1) further anxiety and I am extremely sorry if my actions have been misinterpreted.

I wish to assure you both of my willingness to meet with you both and answer any questions you may have.

Our findings in respect of Ms 1

49. Mr Lloyd submitted Mr and Ms 1 had fully retracted the allegation in the letter written on 7th February 2005. It was incredible that Ms 1 had returned to the practice and consulted Dr Aggarwal on many occasions after the alleged assault if she had been assaulted as alleged. Her denial that she had done so was such that she could not be regarded as a credible witness.
50. We note that Ms 1's evidence as to whether she and her husband had received the undated letter from Dr Aggarwal before or after the meeting with Drs Sen and Aggarwal was inconsistent. We have considered the contemporaneous documents. We note that a letter was sent from the practice manager dated 4th February 2003 [E 1/8] in response to the complaint letter. The practice manager explained that Drs Sen and Aggarwal preferred to meet with Mr and Ms 1 to allow Dr Aggarwal to explain fully the reasons for this examination.
51. We find in view of the contents of the last line of his undated letter that Dr Aggarwal wrote his explanation in advance of the arranged meeting on 6th February. Firstly it would have made perfect sense to reply promptly to the letter of complaint. Secondly, Dr Aggarwal did not offer to meet with Mr and Ms 1 *again*.
52. The only evidence as to what was said at the meeting comes from Ms 1. We accept her evidence that Dr Aggarwal said nothing and that Dr Sen's explanation was that she, as an Asian lady, had taken things the wrong way. We accept that Dr Sen emphasised that Dr Aggarwal was a family man – a theme that Dr Aggarwal had himself stressed in his letter.
53. So far as Mr and Ms 1's letter of 7th February was concerned we find although signed by her she was aware of its content in very general terms. We noted that Ms L came from the Philippines in 2000 speaking little English. Although her English is now creditable we found that her ability to understand questions and express herself was understandably lacking in nuance.
54. In our view it is understandable that Mr 1 was disposed to accept the explanation tendered by Dr Sen (and, as we find, by Dr Aggarwal in his letter) that Ms 1 had misconstrued a proper examination. Dr Aggarwal had also said in his letter that contact in the eye examination had been accidental. We find that the letter was written in terms that would engage sympathy and compassion. We find that Ms 1 was not happy with the explanation given but was minded to follow her husband in the way that he thought it best to proceed. We find that Ms 1 also thought very highly of Dr Sen and did not want to harm the reputation of his practice. The inference we draw from her evidence is that she felt vulnerable in relation to her health generally and she did not want to do anything that would place her continued care at that practice in jeopardy.
55. We have considered the further letter written by the practice manager on 7th February [D1/11] which stated that Dr Aggarwal, Dr Sen were extremely happy that the matter was *concluded* to Mr and Ms 1's satisfaction. We note from the postscript that this was written before or as the letter from Mr and Ms 1 was received. We find it is very

likely that what was said at that meeting in the context of the letter written by Dr Aggarwal was influential in relation to Mr and Ms 1's response.

56. Although on the face of it the letter written by the husband on 7th February retracted the allegation we find it amounted to no more than a written acceptance of the explanation tendered. We find that Ms 1 herself still thought that what had happened was not right but that she was influenced by the lead given by Dr Sen and her husband both of whom she trusted implicitly and she wanted to put the matter behind her.
57. We find that the essential features of her complaint in the account given to her husband and that given in her later witness statement and evidence were broadly consistent. She readily conceded facts that were in Dr Aggarwal's favour. She did not embellish or exaggerate her account in any material respect. We found Ms L's evidence was generally credible. A credible witness may, however, be mistaken. The defence presented by Dr Aggarwal's letter is that she misconstrued his proper examination and an accident occurred. We examine this below in the context of the letter written by Dr Aggarwal and the expert evidence.
58. We have considered Dr Aggarwal's letter which we have found was delivered to Mr and Ms 1 before the meeting on 6th February. We noted the following features from his letter:
- He did not examine the right breast at all but examined the left chest wall and left breast with the palm of his hand only. His explanation for the essential allegation that he squeezed her breasts is that this was a misunderstanding: the only (bilateral) examination that he performed was that he placed both hands on her chest to test for lung expansion.
 - He did not call in a chaperone as he was distracted by the clinical diagnosis and was mindful of confidentiality
 - He says that he was concerned about a history of a blood clot but did not explain this to the patient.
59. We do not accept Dr Aggarwal's explanation is credible for several reasons:
- i. We accept Dr Cranfield's evidence that a test for chest expansion involves placing hands flat against the lower chest wall beneath the breast tissue. We do not believe that Ms 1, who was culturally disposed to think well of the medical profession, would have mistaken such an examination as a repeated bilateral squeezing of her breasts.
 - ii. We find the reasons given by Dr Aggarwal for not calling a chaperone are implausible. A doctor's attention must presumably be always drawn to the diagnostic possibilities when he decides to examine a patient even in situations where he is concerned about the diagnosis. Further it is implausible to pray in aid patient confidentiality as an excuse for failure to adhere to standard practice. On the evidence of other witnesses adduced by Dr Aggarwal (and indeed his own in the crown court trial) he was well aware of the need for chaperones. There is no evidence that a chaperone could not have been easily arranged.
 - iii. If concerned about a blood clot it would be usual for a general practitioner to ask questions and to examine both legs and calves looking for tenderness and swelling. We accept Ms 1's evidence that she complained of pain from the left side of her chest to the knee and that no bilateral full leg examination was performed. We find that such leg examination as was performed was whilst she was seated and fully clothed and included the testing of knee reflex.
 - iv. In his letter Dr Aggarwal stated that he performed an eye examination because he was concerned to exclude a possible blood clot. Dr Cranfield discounted that an eye examination could reveal any useful diagnostic information concerning a possible blood clot. We accept that evidence.
 - v. We reject the suggestion that Dr Aggarwal's face accidentally collided with that of Ms 1. We consider that the length of the ophthalmoscope of about 6 inches would itself prevent any accidental contact between the person

looking through it and the face of the patient. We accept that Dr Aggarwal, along with many others, is right eye dominant but we do not consider that this explains how he made contact with Ms 1. Even if by some extraordinary mishap contact did occur it would not be to the area of the lips.

vi. Dr Aggarwal's defence involves acceptance that Ms 1 was mistaken about two central matters. First that she grossly misunderstood (or has grossly exaggerated or lied about) an innocent chest expansion test and secondly that when his glasses touched her nose she thought that his lips and nose touched hers in what amounted to an attempted kiss. We consider this combination of misunderstandings in one consultation to be inherently incredible. We accept her evidence that his lips were pursed.

vii. We consider that the contents of the last main paragraph of the letter with its reference to his personal family circumstances were wholly inappropriate. We find that the inclusion of this material was designed to engage the compassion of Mr and Ms 1 in order to dissuade them from pursuit of the complaint as, indeed, it did. We find that the letter as a whole was disingenuous, self serving and manipulative.

62. Despite all the evidence as to the Appellant's good character we do not believe the account given by Dr Aggarwal in his letter. We consider that the evidence of Ms 1 was cogent and compelling. If palpation of the left breast or, indeed, both breasts was legitimately required consent should have been obtained and a chaperone should have been offered. We find that under the pretext he was performing a legitimate examination that Dr Aggarwal squeezed her breasts twice whilst cupping them. We find that he attempted to kiss her whilst conducting an eye examination. In the light of these facts we consider that findings of the PCT panel were correct.

The Background in relation to Ms 2

63. Dr Aggarwal was charged on indictment at Basildon Crown Court in relation to sexual assault on Ms 2 and perverting the course of justice. He was found not guilty by the jury on both counts on 3rd July 2006. The evidence of Ms 2 before us is to be found in her statement to the police dated 8 August 2005, 16 August 2005 and 13 January 2006 as well as in her statement made to the PCT of 26 April 2006 and her statement made for the purpose of Fitness to Practice proceedings before the General Medical Council dated 26 June 2007.

The Oral Evidence of Ms 2

64. In chief Ms 2 confirmed that the contents of all those witness statements were true. She said that she was registered with Dr Shah until the summer of 2005. Towards the end of July she attended the practice and saw Dr Aggarwal for the first time. She was accompanied by a friend, Natalie, because she did not like going places alone. She was suffering from heavy bleeding and the contraceptive pill that she was taking was not slowing it down. She told Dr Aggarwal and he prescribed a different pill for her. No examination was performed. She felt uncomfortable in the consultation; Dr Aggarwal was asking her about her about her discharge and he seemed 'giggly'. The consultation lasted 5-10 minutes. Dr Aggarwal prescribed a different pill but it had no effect and the bleeding continued. Ms 2 told her mother who arranged another appointment which she attended on 8 August 2005 on her own.

65. On 8th August Ms 2 told Dr Aggarwal her bleeding had not stopped or slowed down. He asked her to lie down on the couch and said that he was going to feel her stomach. He did not offer her a chaperone. She lay down with her clothes on and Dr Aggarwal asked her to undo the top button of her jeans so that he could feel her tummy. She pulled her jeans down and he examined her lower stomach. He then asked if she ever checked her breasts and offered to show her how it was done. Dr Aggarwal asked her to lift her top up which she did to just above the nipples. He then placed a stethoscope to the right of her chest. He then felt underneath her breast using his fingers to touch the breast. He then asked her to take her top and bra off but she said no because she did not feel comfortable. He asked her to stand up which she did. Dr Aggarwal asked her to lift her bra higher which she did. She was in front of the couch

and Dr Aggarwal was in front of her. He then felt under her armpits and asked her to put her hands behind her head one at a time. He felt around the breasts and then cupped them with his fingers and palms. Dr Aggarwal then used his fingers to flick her nipples up and said words to the effect of 'Make sure they are out not in'.

66. Ms 2 said that when the examination was over she pulled her clothes back down and sat in the chair at the desk at which Dr Aggarwal was by then seated. He then asked her whether she suffered from headaches and she told him that the top of her eyes hurt. Dr Aggarwal said that he would check her eyes and leant across the desk. She was sitting at a right angle to him. He used a torch which she described as a long stick with a round thing at the end which shone a light into her right eye. To examine the left eye he asked her to stand up. She was facing towards the couch and the window was on the other side of the room. Dr Aggarwal stood up by the side of the desk and told her to look straight ahead at the eye chart on the wall. He was standing pretty close to one side and leant over her and looked into her left eye for what seemed like ages. He kept licking his lips. She felt nervous and kept moving her head. She was not looking straight ahead but he told her to do so. Dr Aggarwal got really close and she felt his lips touch her lips as if he was kissing her. His lips were puckered. She drew back suddenly and he said 'I'm sorry, I'm sorry'. She said 'What do you think you are doing?' He kept saying sorry. She sat down and Dr Aggarwal drew a picture of an eye on a post-it note and gave an explanation but she did not understand a word he said. She identified the drawing (D59). Dr Aggarwal kept saying he was sorry and was trying to explain. She got upset and scared and she burst into tears and left.
67. She left the surgery and went straight to her mother and told her what had happened. Her mother, Mrs Anne Dickinson phoned the police first and then rang Dr Shah's surgery. Dr Shah said they should come to the surgery. Ms 2 attended with her mother and saw Dr Shah and the practice manager, Peggy. Ms 2 could not recall what was said because she was upset. She subsequently made a statement to the police.
68. After 8 August Ms 2 did not see Dr Aggarwal as a patient again. She went back to see Dr Shah but did not feel comfortable and she changed GP practice. She was asked about her attendance at Accident and Emergency on 9 August 2005 (D/97) where it is recorded that she had attended having taken an overdose of a number of different tablets. She said in evidence that she had not realised that this had happened the day after. The consultation on 8 August had made her feel horrible because she had always thought that you could trust your doctor.
69. In cross-examination Ms 2 agreed that in the criminal trial where Dr Aggarwal faced an indictment which included a count of assault his defence had been that the breast examination did not take place and that the contact that had occurred during the eye examination was accidental. Dr Aggarwal had been acquitted by the jury. She agreed that the jury had not believed her.
70. Before us Ms 2 said that before she saw Dr Aggarwal she had been suffering heavy periods for a number of months. He had changed her pill and she had thought that she would see him after 6 months. He had said that he would prescribe a stronger contraceptive dose. She had not felt weak or tired. She had had the prescription dispensed and took one a day as prescribed but the bleeding got no better. It was still heavy and still giving cause for concern which is why she went back to the surgery on 8 August 2005. When she returned to the surgery she had been bleeding for about 3 weeks which caused her concern.
71. She made no complaint in respect of the abdominal examination carried out by Dr Aggarwal. She agreed that she was prescribed Norethisterone to stop the bleeding but could not remember at which point in the consultation this was prescribed. The prescription was dispensed by the pharmacist that day but she did not take it on 8 August because she was upset. The next day she took a number of the

Norethisterone tablets as well as others. She agreed that this was not the first occasion she had taken an overdose and that a psychiatrist had said that her previous overdose had been attention seeking behaviour.

72. Ms 2 said that following the overdose on 9 August 2005 she did not continue to bleed. It started to slow down and her period stopped a few days later. She was referred to various passages in the Crown Court transcript in relation to her evidence (C55G) where in answer to the question *'You were still bleeding after 8 August?'* she said *'Yes but not like constantly. I was coming on and off.* and also C57E where she had agreed with the proposition that she had been bleeding for a couple of weeks after 8 August. She said that she did not know why she had said that: she was not bleeding for 2 weeks after 8 August. When she had been asked that by the barrister at the Crown Court trial she had replied that she was bleeding a couple of days on and a couple of days off (C57G). The evidence she gave at the trial (C59D and F) was put to her. She agreed with Mr Lloyd's proposition that the extract she cited showed that her evidence at the Crown Court trial was that she was bleeding heavily for the next few weeks after 8 August. Her evidence to this Panel was that she did not think that she was.
73. Patient Two was referred to the entry of Dr Shah on 12 September 2005: *'LMP ? 5.8.05 EDD 11.5.065 weeks pregnant Home PT positive'*. Ms 2 did not recall giving the date of her last menstrual period as possibly 5 August and did not think that she would have said that because she was still bleeding on the 8th. Her estimated delivery date had then been calculated as 11 May 2006. Ms 2 said she could not have been 5 weeks pregnant as at 12 September because she was bleeding on 8 August. She denied that she had been lying to Dr Aggarwal about her heavy periods: she had been bleeding in the way she had described in this hearing. Her breasts had started aching and when she told her mother she told her to take a pregnancy test. She agreed that it had been put to her in the Crown Court trial that she had lied to Dr Aggarwal because she was an attention seeking young woman.
74. So far as the examination of the eyes was concerned she agreed that at the Crown Court trial she had said that she thought it might have been an accident at the time (C 1 44C & D). She did not think it was an accident because he puckered his lips and touched her lips. She agreed that the instrument used had come right up close to her eye. She said that Dr Aggarwal did not go from one eye to the other. She was not sitting down all the time. It was uncomfortable and she was moving her head. The touching occurred at the end of the examination.
75. Ms 2 said she had not thought at the time that there was anything untoward about the breast examination because she had never had one before. There was nothing about the breast examination that made her feel uncomfortable.
76. In relation to 9 August Ms 2 said that she took an overdose at about 2 pm and then went to work. Her mother phoned her and said that she had found packets and that she had better go to hospital. At the hospital she gave a history that she had taken 10 Norethisterone tablets, 10 Cefirizine, 6 Ibuprofen and 2 Sinutab. Ms 2 was asked about the psychiatric report of Dr Tym dated April 2003. She said that she was a rebellious teenager, used to smoke cannabis and had been horrible to her mother. She denied that her behaviour in August 2005 was attention seeking. It was suggested to her that she had made sure that the tablets were visible so as to attract her mother's attention. She said that the packets from which she had taken the tablets were in her bedroom but she could not remember where.
77. Asked again about the eye examination Ms 2 said that at the time she thought that it had been an accidental touching. She felt Dr Aggarwal touch her lips. Dr Aggarwal knew what he had done because he kept apologising. It was put to Ms 2 that no breast examination had been performed and that the touching of her face was accidental.

78. In re-examination Ms 2 confirmed that she could not remember being given any advice about barrier methods. So far as the eye examination was concerned her evidence to the jury had been that his lips had touched her lips and they were puckered up (C44F). When she heard about the not guilty verdict she felt terrible. She had come to give evidence to this Tribunal because she didn't think that what had happened was right and was concerned that it could happen to someone younger.
79. In answer to Dr Freeman, Ms 2 said that after her pill was changed to Yasmin in July she started taking it although not that very day. She took it every day but her periods did not slow down. She had expected her periods to slow down straightaway. Asked if she always took her contraceptive pills regularly she said that she sometimes missed a couple of days during the month. When she missed a day she would take 2 pills the following day. She thought she had taken Yasmin regularly. When the Norethisterone was prescribed she stopped taking the Yasmin. She took an overdose of the Norethisterone on 9 August but did not think that she went back to taking Norethisterone after the overdose. During the breast examination Dr Aggarwal had cupped her breast. He felt under the armpit. He felt one breast and then the next. He then flicked her nipples one after the other. She had never had a breast examination before or since. She had not spoken to anyone about their experience of breast examinations. She did not think that her mother had ever had one. Her diet was varied and she did not take vitamin supplements. Her daughter Madison was born on 18 May 2006 on the due date by scan. When scanned she had been told that she had conceived on 16 August. She did not think that she could have conceived until on or after 12 August because she had not seen her boyfriend. By this time her bleeding had stopped.

Dr Aggarwal's case in respect of Ms 2

80. In his letter dated 10th August 2005 Dr Shah quotes Dr Aggarwal's account with regard to Ms 2's complaint [E58]. In this he denied performing a breast examination and said that during the course of the eye examination his nose touched hers accidentally.
81. We have considered Dr Aggarwal's evidence in the trial [C day 3] He denied that he asked Ms 2 whether she examined her breasts. He said that doctors do not usually do breast examinations but he would do so if a patient complained of a lump or tenderness. He performed an abdominal examination on Ms 2 only [C66- 67]. If a breast examination is performed the patient has to remove both top and bra and the doctor has to feel under the axilla in the armpit for enlarged nodes [C 68].
82. Dr Aggarwal said at trial that having examined the abdomen he asked Ms 2 to sit down and asked her if she had any other problems. She said that she had sore eyes and gets headaches. He asked her questions about her headaches and whether she had earache, sore throat or sinus problems. He then palpated her forehead for tenderness and temporal (lobes) for inflammation of the arteries but found nothing wrong. He then felt he had to look at the back of the retina to see if there were any problems there because if someone has pressure in the brain there may be a blurred disc at the back of the retina or haemorrhage in the vitreous fluid may cause headaches[C 71]. He examined Ms 2 eyes with an ophthalmoscope. This is a very difficult examination even if done by a specialist . He used his right eye to examine both eyes of Ms 2. He said that to carry out the examination you have to be extremely close to the patient "*in fact cheek to cheek*" [C 74]. He examined the right eye without difficulty but when examining the left Ms 2 kept moving her head. He thought she found the light quite intense. When he was examining her left eye his face collided with hers. He said "*For me to examine I have to be quite steady and I was concentrating on looking at her eyes whereas she was moving around to try and look at the back of the face(sic)*".
83. He denied that he had kissed Ms 2 but said that he had an accident where his nose touched part of her face which could have been her lips [C day 3/52 D and 77 D and also 52 D]. The collision happened because she moved her face trying to look at the

light. He apologised sat down and drew a diagram to show her that he was trying to shine the light so that he could look at the disc which she seemed to understand. He then carried on with the examination of the left eye. He found nothing abnormal and so did not make a note of either the palpation of the head or the eye examination [C79] He said that there is nothing wrong with not making a note in these circumstances.

84. In cross examination at trial Dr Aggarwal made it clear that his case was that Ms 2 was lying about a breast examination ever having taken place. Such had not been medically indicated. The touching that occurred in the eye examination was accidental: the difficulty that Ms2 experienced was because he was obstructing her face by his body as he was examining with his dominant right eye. Asked if this had ever happened before he said *“No, the majority of the patients will look at a distant object and over the years there may have been one or accidents but when I see two or three eye patients a day doing an examinations and over the 18, 19 years. No I haven’t had a problem.”*

Our findings in respect of Ms 2

85. In his submissions Mr Lloyd relied heavily upon the acquittal in the crown court trial. He accepted that the acquittal did not preclude this panel forming a different view in these proceedings. We have considered carefully the entire transcript. The fact that Dr Aggarwal was acquitted by a jury after a short deliberation is a matter that we have carefully considered. The inference we draw is that the jury were not sure that the allegations made by Ms 2 were true on the basis of the evidence before them.
86. Key factors relied upon in the defence before the jury (and in part before us) were that:
- Ms 2 could not have been bleeding as she claimed when she consulted Dr Aggarwal on 8th august *because she was then pregnant* [C day 1 59-61 and C day 4 25 and 26]
 - Additionally, had she been bleeding for as long as claimed it is likely that she would have been anaemic and she was not -as demonstrated by blood results
 - These factors suggested that the Appellant had fabricated her history of bleeding in order to consult the doctor.
 - Ms 2 had a history of attention seeking behaviour. The suggestion made was that Ms 2 had fabricated a story about Doctor Aggarwal for this reason.
87. We have considered the inconsistencies between Ms 2’s evidence before us and that which she gave she gave at trial. It is apparent from the transcript that Ms 2 said *both* that she was bleeding heavily for two weeks after the consultation and also “on an off” thereafter for a few weeks. We note that she was cross examined on the history of her bleeding at some length. In our view the fact that her evidence on oath was not internally consistent at trial and was partly inconsistent with the evidence she gave before us does not necessarily mean that that her evidence about what happened during the consultation should be dismissed.
88. The defence at trial seems to us (at least in part) to have been premised on Ms 2’s acceptance that she was in fact pregnant as at 8th August and could therefore not have been bleeding. In our view this was entirely misconceived. The medical convention is to date a pregnancy from the date of the last period even though the actual date of conception must be later. We note that in his evidence at trial Dr Aggarwal appeared to perpetuate (or at least did not correct) the mistaken premise that Ms 2 must have been actually pregnant on 8th August [C day 3 85-86 and C day 3 108-109].
89. At trial parts of the evidence of Mr Soutter were agreed and were read to the jury including his view that Ms 2 conceived towards the end of August. We have had the advantage of hearing the evidence of Mr Soutter. He considered that the Appellant’s history of her menstrual cycle was quite as chaotic as Ms 2 claimed. He also

considered that the overall history given by Ms 2 was such that it was unlikely that she would have become pregnant. The fact is that she did. He told us that conception usually occurs about 14 days *after* the beginning of a period. We see no inconsistency in the Appellant's evidence at trial and *before us* that she was still bleeding as at 8th August and that this continued on and off after the consultation. We find in light of all the evidence before us, including the results of the scans performed, that Ms 2 conceived on or about 19th August 2005. We accept her evidence that following her overdose on 9th August 2005 she did not have intercourse until about 12th August because her boyfriend was away. We accept that it was highly unusual for her to have conceived at all given her contraceptive history but we do not consider this of real importance to the true issues.

90. We do not consider that the suggestion that Ms 2's normal haemoglobin result is a reason to doubt her overall credibility is well founded. Within the limits of his knowledge Mr Soutter agreed that in a young healthy female with a varied diet could have sufficient iron reserves. We consider that this point was always somewhat marginal at best.
91. We have carefully considered the evidence given by Dr Aggarwal on oath at the trial as well as the character evidence adduced on his behalf then and before us. We note that when cross examined in relation to the eye examination he did not tell the jury that the very same accident had occurred just 20 months before and had been similarly misconstrued as a kiss. We consider that his evidence in this regard was somewhat economical but given the circumstances we do not regard this as probative.
92. We considered all the evidence in relation to Ms 2's background history including the letter of Dr Tym. We noted that the matter that prompted her to complain to her mother and subsequently the police was not the breast examination: she did not then know that a breast examination was not medically justified at all. At trial she made it clear that it was not the breast examination that upset her. Even before us the breast examination was not the focus of her complaint. Save in respect of the flicking of the nipples her description of the main part of breast examination and the examination under the armpits was broadly consistent with a "proper" examination even though she had never had one performed before or since. She did not take the opportunity presented to complain about it or indeed the abdominal examination performed that day. She gave all her evidence in respect of the entire consultation in all respects in a wholly straightforward manner without embellishment or exaggeration. We consider that if it were the case that she had maliciously told a false story about Dr Aggarwal it is very unlikely that she would have maintained the level of consistency about the core of her account that she demonstrated before us. She complained of events in a state of distress immediately to her mother. Having heard her give evidence we consider that the suggestion that she invented the detailed account she gave to the police the very same day as some kind of bid to seek attention is fanciful.
93. We found Ms 2 to be a credible witness and the evidence she gave to us was cogent and compelling. We are satisfied to the appropriate standard that her account of the consultation on 8th August 2005 is true. We consider that the findings made by the PCT panel in respect of this consultation (wrongly dated in the findings) were wholly justified. We consider that the PCT's findings in relation to 28th July were not justified as no examination was performed at this consultation.

Consideration of Similar Fact

94. Having so found the facts as set out above it is strictly unnecessary to consider the similarity between the accounts given by Ms 1 and 2 but we do so for the sake of completeness. It was not suggested that either Ms 1 or Ms 2 knew each other. Both made their complaints immediately before there was any chance of collaboration or contamination. Each says that she underwent breast examination and an eye examination. Each alleges the Appellant touched the area of their lips with his face and that his lips were pursed. Since the Appellant's case was that Ms 2's evidence before us was a fabrication in respect of the breast examination it is right to record

our view that it is remarkable that Ms 2 should have hit upon the same story as was told by Ms 1, namely, that Dr Aggarwal examined both her breasts and her eyes during a consultation that left her distressed. Further we find that it is an incredible coincidence that both Ms 1 and Ms 2 should have been victim to an accidental touching during an eye examination with an ophthalmoscope. In our view the similarity of the accounts of both witnesses in relation to the Appellant touching them with his lips pursed rebuts the defence of accident. Given the degree of similarity between their accounts it would also be a remarkable coincidence if Ms. 2 hit upon the same lies or made the same mistakes as Ms 1 in relation to the pursing of his lips. We consider that it was not reasonably possible that two people independently making the similar accusations we have heard could both be mistaken or lying. We do not consider that Ms 2 may have been consciously or unconsciously influenced in making the accusation or in the detail of her evidence through hearing of the complaint of Ms 1. In our view it is an affront to common sense that two witnesses should both be either lying or mistaken about such similar matters.

The Background to the Complaint of Ms 3

95. It is common ground that Ms 3 read a newspaper report on about 12th October 2005 to the effect that Dr Aggarwal had been charged with molesting a female patient and was due to attend Southend Magistrates Court. The article contained no detail as to the precise acts alleged to have been committed. As a result of reading the article Ms 3 made a statement to the police on 15 October 2005 in which she alleged that Dr Aggarwal assaulted her during a consultation in February 2005. On 27 October 2005 she again attended the police station where she made a further statement in which she said that having checked her medical records she now knew that the date of the alleged assault was an appointment in July 2005. She made a further statement to the police on 27 October 2005 describing the effect of the incident upon her. She made a statement to the PCT on 24 April 2006 as well as a statement to the GMC on 19 July 2007.

The Oral Evidence of Ms 3

96. In her evidence she confirmed that the contents of her statement to the PCT were true. Ms 3 said that she had been registered at the practice of Dr Shah for 21 years when she booked an appointment on 4 July 2005 in relation to 2 matters; treatment for her ongoing depression and further treatment in respect of a wart that Dr Aggarwal had been treating by way of freezing. She went to Dr Aggarwal rather than any doctor because it made sense because of earlier treatment. It was on this occasion that he placed his hand on her breast.
97. Ms 3 was prompted to make a complaint was that she read in a local newspaper about the charges against Dr Aggarwal. She went to the surgery to see if she could put her mind at rest but it wasn't open and she phoned the police. A few days later she made her first police statement. She told the police that the date of the alleged assault was in February 2005 but immediately after she left the police station she knew that this date was wrong. She phoned the police that day and was reassured that she could make a new statement. She recalled that on the occasion she was assaulted she had recently found out that her father had breast cancer and she had wanted to know whether this was something that she should mention if asked about family history of breast cancer. When she read the records she saw the record of 4th July 2005 that referred to her father's cancer and then knew this was the date.
98. So far as the incident was concerned Ms 3 said she told Dr Aggarwal that she was not feeling too good because she had heard that her father had breast cancer. She asked him if she needed to let other doctors know of the family history and he told her that she should. He asked her if she knew how to examine herself and she said that she did. He asked her if she ever self-examined. He then provided treatment in relation to the wart. Dr Aggarwal was sitting behind the desk and she sat in the chair at the side. After Dr Aggarwal treated the wart he moved the chair so that he was opposite her and face to face. He then put his right hand on her left breast with the full palm against the breast and with splayed fingers. There was no movement in the

hand. It felt firm. She was shocked. She thought that if he was not supposed to be doing this he wouldn't be looking at her. He was looking at her for a minute, a minute and a half. Dr Aggarwal didn't say anything and she didn't say anything. He then wrote the prescription for the anti-depressants. Dr Aggarwal had not asked if he could examine her. There was no discussion about her having a chaperone. What he did was nothing like a breast examination. She had undergone breast examinations before by Dr Shah because she had once found a lump and had been referred for biopsy.

99. Ms 3 said that she was in a daze when she left the surgery. She told her friend Victoria about it a few days later. She didn't tell her husband because she knew that he would feel protective and she didn't want him to feel that she had put herself into a position where someone had done that.
100. After the incident she consulted Dr Aggarwal again. Asked why she said she knew that what he had done was not appropriate but she wanted to see if it would happen again. She wanted to be more than 100% sure and if it did happen again she would take action.
101. She had been prescribed anti-depressants because of resurfacing difficulties due to the fact that she was abused as a child. She felt she needed help and that anti-depressants would help her get through a rough time. When she went back again there was a girl present in the room. No explanation was given and she assumed she was a medical student. She saw Dr Aggarwal on another occasion and there was another lady present who she had never seen before.
102. When Ms 3 saw the article in the newspaper concerning charges against Dr Aggarwal she phoned Victoria who came round and they sat down and told her husband. The surgery was closed and Ms 3 phoned the police. When she went to the surgery after going to the police she asked the receptionist if the newspaper article concerned the same Dr Aggarwal as in the surgery. The receptionist said that she couldn't comment. When Ms 3 told her that it had happened to her the receptionist led her into a room and sat her down and went to fetch Dr Shah. He asked why she had not mentioned it before. She said that Dr Aggarwal was her doctor and she would never ever question his actions. She had put her full trust in the doctor. Dr Shah asked her whether she had been examined before and what the procedure was. She said that she had said to Dr Shah that Peggy would always chaperone. Dr Shah asked her why she had not told him before. She said that she wanted to be more than sure because she didn't want to accuse someone without proving it to herself. She felt that Dr Shah treated her complaint appropriately.
103. In cross-examination Ms 3 said that she had had a history of depression and had been referred for psychiatric counselling years before. With reference to an entry by Dr Shah she explained that she was seeking counselling from the Dove Project which is for people who have been abused.
104. On 7 February 2005 she saw Dr Aggarwal for the first time when she was feeling stressed due to her work. They had a fairly lengthy conversation. He took a detailed history and prescribed an anti-depressant, Elexil.
105. On 14 February 2005 she again saw Dr Aggarwal complaining of side effects from the anti-depressants which included hot flushes, blurred vision and dizziness. She could not remember if there had been an eye examination. Her anti-depressant was changed to Cipramil. She found Dr Aggarwal very approachable and had no reason for any concern at all. She agreed that she had consulted Dr Aggarwal on 7 occasions between 7 February and 13 May 2005. He was in the surgery on Mondays which was her day off and she saw no reason to ask to see another doctor. After an appointment she would book another appointment and the receptionist would put her down for Dr Aggarwal.

106. Ms 3 said she had told Dr Aggarwal that she had been sexually abused as a child when she was first described anti-depressants because that was the reason that she went for help. She did not agree that she had mentioned any difficulties between herself and her husband nor had she mentioned any financial difficulties.
107. Ms 3 agreed that when she went to the police she had referred to the incident as having occurred in February. She had not told the police that the reason she had attended Dr Aggarwal was to do with her history of child abuse. When she went to make a statement to the GMC they had specifically asked her and this was the first time she had mentioned her history of child abuse to anybody except her doctor. She was sure that she had mentioned it to Dr Aggarwal.
108. Ms 3 was asked about paragraph 11 of her first police statement (E 91) in which having described the incident she had stated: *"I left the surgery and declined to mention the incident to any of the female staff. This is because I thought I may have overreacted as a result of the side effects of the medication and the lack of reaction of the doctor. I kept the incident to myself for about one week ... I then explained the incident to (Victoria) and again thought that it was a bit extreme but still normal practice in relation to a heart examination"*. She was asked whether it could have been in the context of the *"small heart examination"* (see paragraph 8 D 90) that the doctor placed his hand on her chest as part of normal practice. Ms 3 said that she did not believe that it was normal practice. She agreed that at the time she thought there might be some medical reason as to why he had done so: she had thought that she might have misconstrued his action. She knew that what had happened wasn't right but she hoped that she had got it wrong. She wasn't sure if what he had done was right or wrong. She said that she knew that it was not a heart examination. He had touched her breast at the consultation she had spoken about her father's cancer. She had had no contact with her father for some years but had been told by her brother that he was being treated for cancer in hospital between the appointments.
109. Ms 3 agreed that when she went to the police she had referred to the relevant appointment being in the middle of February. She did not keep a diary but the February date was written on her tablets. As soon as she came out of the police station she knew that the date she had given was wrong. She had recollected the conversation about her father's cancer. In February 2005 she had not known of that and that is how she knew that she had got the date wrong. She did not, however, know what the actual date was and that is why she wanted to look at her medical records. She could remember that it was the occasion when there had been a discussion about cancer because otherwise there was no reason for Dr Aggarwal to have asked about whether she checked her breasts. She agreed that she had not mentioned to the police about her father suffering from breast cancer or that Dr Aggarwal had asked her if she examined her breasts.
110. Ms 3 said that until giving evidence she had not realised how many appointments she had had after the incident. When she has seen the newspaper report she felt that she should have done something about what had happened straight away. It made her feel that somebody had had to go through what she had been through and that she had been a coward. It was put to her that if a doctor is checking the heart he could place his hand either above or below the breast. Ms 3 indicated that she would consider that to be a normal examination but Dr Aggarwal had touched her inappropriately: there was no chaperone.
111. In re-examination Ms 3 said that she did not really have any recollection of the heart examination in February and therefore felt that it must have been normal. She had found Dr Aggarwal to be approachable and had recommended her daughter to go and see him which she would not have done unless she had full faith in him. She was referred to D108 which she identified as a document in her hand writing setting out her account of events. It refers to an account of the consultation under the date 4.7.05. At the top of the page is written *"spoke to Dr Shah 14th Oct + Peggy"*. She had

forgotten all about the document until referred to it. She thought it was made about the time that she had spoken to Peggy.

112. In answer to questions from the Panel Ms 3 confirmed that she had first seen copies of her medical records after she first went to the police station. She had no means of working out when she was told of her father's breast cancer other than by reference to her records: it was by reference to the entry in respect of breast cancer that she had subsequently fixed the date of the incident. She also said that she had only seen Dr Aggarwal twice after the incident. With reference to her police statement [E 91] she could not say what had made her then relate the touching of her breast to the occasion when she had a heart examination. She was taken to the record of her consultation on 3rd May 2005 [D/104] when her presenting complaint was that she was sweaty, had hot flushes and had palpitations and it was noted that she was on Cipramil. She said she would imagine that the doctor had examined her for palpitations. She could remember going there to tell him about the side effects of the tablets. Having seen the record she accepted that she had had palpitations on 3 May. She was asked if the doctor had checked the heartbeat by placing his hand at the bottom of her heart on this occasion. She said that she did not think that the consultation in May 2005 was the one of which she complained because what he did was not a heart examination. She confirmed that Dr Aggarwal did not move his hand at all. She could not see what he would get out of his actions sexually but his hand was on her breast and there was no chaperone present and no explanation had been given.
113. In further questions from Mr Lloyd about D108 she could recall that she went to see Dr Shah and that Peggy photocopied her letter for her. At that time she did not have the records and did not know what the dates were. So far as the date of 14th October is concerned she thought that it was a mistake. She had phoned the police and told them that she had given the wrong date to the incident *before* she saw her medical records. She believed that the incident had happened in July because she had suggested that her daughter should consult Dr Aggarwal and she knew that she would not have done that if the incident had already occurred.

Dr Aggarwal's case in respect of Ms 3.

114. This is to be found in the interview conducted by the police on 2nd November 2005 [Exhibit A1] when Dr Aggarwal denied that that he had "grabbed hold" of Ms 2 's breast. Dr Aggarwal was not allowed to look at the medical records in the interview.
115. Mr Lloyd submitted that Ms 3's account was wholly unreliable and that in parts of her evidence she was not telling the truth. The police had decided not to bring a prosecution within an hour of the interview.

Our findings in respect of Ms 3

116. Ms 3 has given different accounts in relation to the date that the alleged incident occurred and has also described the incident in different factual contexts. We accept this arose because having made her initial complaint to the police she realised that the date she had given was incorrect. She obtained extracts of her medical records and then tried to piece together in her own mind the date of the consultation of which she complained. Applying common sense we consider that the first account of the *events* that she described is likely to be more accurate than any account which may have been influenced by reading the contents of the records. We note that the first account that Ms 3 gave was that Dr Aggarwal placed his hand on her breast in the context of a consultation when she complained of heart palpitations and underwent a "small heart examination." We find that her state of mind after the incident was that she was in a state of uncertainty as to whether what had happened was improper. She plainly gave Dr Aggarwal the benefit of the doubt and consulted him thereafter with her guard up. We note her evidence that she only consulted Dr Aggarwal on two occasions after the incident which if reliable would place the date of the incident in July. We consider however that we are unable to rely on the subsequent account that the incident occurred in the context of a different consultation in July 2005.

117. The real issue is whether these inconsistencies are such that we should discount her evidence in its entirety. We found Ms 3 was completely consistent as to the act that made her feel uneasy. We find that she was an honest witness who, notwithstanding the difficulties about dates and context, was plainly doing her best to describe accurately what happened to her. She did not embellish or exaggerate her account that Dr Aggarwal placed his hand over her breast when she was clothed. She did not allege that he moved his hand or fingers. Her evidence was that firm pressure was applied. She did not feel that it was sexual in nature. She did not allege that Dr Aggarwal appeared to be sexually motivated: he held his hand over her breast for a period and then carried on as if everything was normal. Notwithstanding the inconsistencies as to date and context we found the core of her evidence to be cogent and compelling: we find that Dr Aggarwal placed his hand over her breast as she described.
118. We consider our findings in the context of those made by the PCT panel. We find that in or about May 2005 Dr Aggarwal placed his hand over the clothed breast of Ms 4. We are not, however, satisfied to the appropriate standard that his actions served no clinical purpose. We do not consider that his action amounted to inappropriate *sexualised behaviour*. We do not accept that it was necessary for Dr Aggarwal to have offered Ms 3 the security of having a chaperone present because we do not consider that this was an intimate examination. We are, however, satisfied to the appropriate standard that Dr Aggarwal examined Ms 3 in this way without her informed consent. Had he explained what he was seeking to achieve and obtained consent we consider that it is very unlikely that Ms 3 would have felt uncomfortable. In this respect his examination was inappropriate.

The Oral Evidence of Ms 4

119. The background to Ms 4's complaint is that on 27 October 2005 Mr Peter Greenwood of the PAG wrote to a number of General Practitioners requesting information as to whether there had been any complaints made to their practices concerning Dr Aggarwal. On 9 December 2005 Dr Basu wrote back confirming that Dr Aggarwal had provided locum cover at his surgery for 10-15 years and had been working 5 sessions a week since the beginning of the PMS contract. He confirmed that there had never been any formal complaints made to the practice about Dr Aggarwal. He went on to state:-

'However, in December 2004, a female patient made a verbal complaint about examinations and consultations that she had had with Dr Aggarwal which may have been carried out in an inappropriate manner and told me that she would prefer not to see him in future on the days that she was unable to see me. I took the precaution of telling this patient that it is important for her to follow up this matter by having a face to face consultation with Dr Aggarwal in the presence of a member of the practice staff and also a member of her family/friends. She elected to come in on her own and she had a consultation in the presence of my practice manager Heather Smart. As far as I am aware, Dr Aggarwal was able to reassure the patient that the examinations were carried out in the proper manner.'

120. After further correspondence contact was eventually made with Ms 4 and on 28 December 2006 Vivienne Barnes, the Associate Director of Corporate Governance and Andrew Stride, Corporate Services Manager took a statement from her. Although the draft was sent to her in early January 2007 it remained unsigned until January 2008 despite a number of telephone calls and messages from the PCT.
121. Ms 4 attended the hearing and gave evidence as follows. Following the birth of her daughter in December 2003 she suffered problems with her neck and back and consulted her General Practitioner. The pain she suffered was all along the neck from the base to the skull. She had had physiotherapy but she could not remember who had referred her. On one occasion she consulted Dr Aggarwal about other matters and mentioned her neck to him. Dr Aggarwal said that he would bring round some

leaflets and a prescription for her daughter who was unwell. The leaflets would help her with exercises/massage that she could do at home. Dr Aggarwal visited her at home at about 11.45 am the next day. When he arrived she took him into the front room where he opened his briefcase and took out the prescription and leaflets and handed them to her. He then showed her how to do the neck exercises. She may have asked him how the exercises were to be done. At the time her daughter was crawling and about 6 or 7 months old: she was over a year old by the time she walked.

122. Ms 4 said that she was standing up facing forward and that Dr Aggarwal stood to her side and massaged her neck. Dr Aggarwal said that it would not hurt if he used oil so as not to damage the skin. She gave him her daughter's baby oil and lay down on the floor although she could not remember how this came about. She thought that she was lying on her front to start off with. Dr Aggarwal was behind her or to the side of her and was kneeling on the floor. Her top was lifted up a bit and she was wearing trousers. She could not say if they were jeans. Dr Aggarwal massaged her back. When she turned onto her front the trousers came down a bit.
123. Asked if there was any conversation Ms 4 said that she couldn't remember save that Dr Aggarwal kept asking when her partner was due home. They spoke about other things but she couldn't really remember because it was so long ago. His hands were touching her. She felt his penis on her leg and it was hard. At this point in her evidence the witness became distressed and the hearing was adjourned for a short period.
124. When she resumed her evidence Ms 4 said that she was lying on her front and then she had lain on her back but she could not remember how this had come about. When she was lying on her back her top was up to her midriff and her trouser button was undone. The trousers were pulled down a bit. Asked how this came about she said that something was said by Dr Aggarwal but she couldn't remember what it was. She probably moved down her trousers to just below her navel. Dr Aggarwal was positioned in between her legs when massaging the top of her back. He said it was a massage that he had to do on his daughter because she had a problem. Ms 4 said that he worked down her back and massaged around the top of her thigh and leg. She could not remember if he was massaging under or over her trousers. It was like a full body massage. She did not know if she had her socks on or if she took them off.
125. Dr Aggarwal kept asking her when her partner would be home. She did not think that what he was doing was strange until she felt the penis on her leg that's She said it felt weird and like a partner was massaging her.
126. Ms 4 said that her daughter was crawling around the front room and that she crawled up and pushed at her. Her partner came in through the back door at about 12.45 pm and came straight into the front room. At this time she was still lying on the floor on her back and Dr Aggarwal was massaging her feet. The body massage had finished when her partner came in. Her partner said hello. Dr Aggarwal made a comment but she could not remember what it was. Dr Aggarwal stopped the massage asked whether he could wash his hands. She picked up her daughter and took Dr Aggarwal into the kitchen to show him where the washing up liquid was. Dr Aggarwal told her not to say anything to her partner. Dr Aggarwal leaned forward in order to kiss her. She turned her face and the kiss landed on the side of her face. He put his arms around her and her daughter whom he kissed. He again told her not to say anything to her partner and left. He had seemed anxious.
127. Subsequent to this visit Dr Aggarwal telephoned her a couple of times and on one occasion knocked at the door. Her partner had been present when he telephoned on one of the occasions. Dr Aggarwal said that he had phoned her because he thought that he had left something in the house. She told him that he hadn't left anything. Dr Aggarwal said to her on the phone that she should not tell anyone about what had happened. Her mother-in-law was present on another occasion when he telephoned. Basically Dr Aggarwal said the same thing - 'don't tell your partner or anyone'. Dr

Aggarwal also knocked at the door when her mother in law was there. Ms 4 could not say when this occurred :it may have been the next day. She didn't open the door because she could see it was him through the glass. She didn't want to go to the door because she felt really awkward and strange and she knew he hadn't left anything in the house.

128. Ms 4 said that she told her partner straight after the incident and told her mother-in-law later. They said that she should tell the practice. She eventually made an appointment with Dr Basu and when she went in told him that she needed to talk to him about something. Dr Basu said that he would make sure that she did not have to see Dr Aggarwal again. She was asked by Mr Booth if arrangements were made for another meeting at the surgery. Ms 4 said that she could not remember the detail but she was told on the telephone that she had to attend the surgery. She had thought it was for an appointment. At the surgery she saw Heather the Practice Manager who showed her into Dr Basu's room. Dr Aggarwal was sitting there. He apologised for what had happened. Ms 4 asked him why he had kissed her daughter because that was what was really bothering her. Dr Aggarwal had said that she reminded him of her daughter and that was why he felt the way he did. Heather Smart was present and said something but Ms 4 could not remember what it was. She felt awkward and came out of the appointment in tears. Heather Smart took her to a side door to calm her down and then sent her out the back of the surgery. Ms 4 said that she didn't feel that she had been believed and so she just left it.
129. Ms 4 said that on a later occasion Heather Smart spoke to her about a newspaper article concerning Dr Aggarwal and had said 'Why can't they just leave it'. At an even later stage she was asked to consent to the practice providing her name to the PCT. Her own attitude was that she just wanted to leave it. She wanted to blank it out and get on. She could not remember if the conversation she had about the newspaper article with Heather Smart was before or after the request for her consent to disclose her details.
130. Ms 4 said that she eventually met with Peter Greenwood and a woman and gave them details about what had happened. When asked how she felt now Ms 4 said that she had felt really ill for a while. She lost weight and had a lot on her mind. She said '*blanked it out - it's how I deal with things because it makes me ill*'.
131. In cross-examination Ms 4 was asked about her statement. She said that Mr Greenwood came to the surgery premises. They took down what she had said and sent a statement to her in draft form. She was reluctant to sign it because she didn't want to be part of these proceedings at all. The PCT had tried to contact her and there may have been a couple of times that she didn't answer the phone. It had been hard to remember events 4 years before. She had read the statement but had really flicked through it. She said '*I sort of know how I feel because some of it sort of sticks with you*'.
132. Ms 4 agreed that she pinpointed the incident in mid-2004 by reference to Brooke's age. She agreed that Dr Basu had referred her for physiotherapy but could not remember if she had been referred by the date of the incident. The leaflet that Dr Aggarwal had given her was about neck movements. She agreed that the second leaflet was probably about back exercises but she couldn't really remember.
133. Ms 4 was referred to numerous consultations with Drs Aggarwal and Basu between February 2004 and February 2005. She did not dispute the contents of her records. She agreed that she had recalled the incident as being in mid-2004 but did not disagree when it was put to her that it had taken place later in the year. So far as the visit to the surgery was concerned Ms 4 said that Dr Aggarwal had not then seen Brooke. She had told him what was wrong with Brooke and he had come to her house and brought antibiotics. Dr Aggarwal had said to her that the leaflets were about massage. In the house he had said that her partner needed to massage her every week. In the surgery he had said '*I'll bring you leaflets on massage technique*'.

She hadn't looked at the leaflets for ages. When it was put to her that Dr Aggarwal had seen her at the surgery on 13 December and made a home visit to Brooke the following day she said that she was not sure if the incident was in mid-2004 or later. She had not consulted Dr Aggarwal since. She could not remember Brooke being examined. She said that Dr Aggarwal just gave her a prescription for Brooke and gave her leaflets which he said were about massage techniques. So far as she could recall the leaflets were about exercises.

134. It was put to Ms 4 that after Brooke was examined Dr Aggarwal demonstrated how to do neck exercises as shown in the leaflet. She said that Dr Aggarwal gave her a full body massage more or less, massaging the top of her legs, her thighs, her calves and her shins to her feet with baby oil. Her trousers were pulled down below the waist. Asked how the legs had been massaged with baby oil if she was wearing her trousers Ms 4 said that it was probably under her trousers. She did not wear tight clothes. He massaged from the ankles up. Her jeans were taken down to mid-hip. She could not remember how Dr Aggarwal had put his hands through to her thighs. She could not remember if it was Dr Aggarwal or herself who took her socks off. Dr Aggarwal knelt between her thighs. Asked how to explain how he massaged her thighs if her trousers were only below her navel Ms 4 said that they must have been further down. She could not remember how he achieved the massage of the thigh and lower leg.
135. When it was suggested that the whole of the massage was a figment of her imagination Ms 4 said that she had been accused of lying before. She agreed that paragraph 12 of her statement said *'Dr Aggarwal asked me to turn over and lie on my back. He asked me to take my jeans down to just below my knees, which I agreed to do. At this point Dr Aggarwal was kneeling between my knees. He massaged my legs from my knees to my thighs. He also removed my socks and massaged my feet.'* She agreed that there was no reference in that paragraph to his massaging between her knees and feet. She confirmed that when her partner came home at about 12.45 pm he found her lying on the floor with her jeans down and the doctor kneeling beside her massaging her feet. She had not stopped Dr Aggarwal in the massage. She did not see it as that wrong because he said that he did it on his daughter. She thought it was a bit weird afterwards. She had put her trust in him. He had said that her neck pain was all to do with her muscles.
136. Ms 4 agreed that her partner was close by and could have walked into the kitchen at the time when Dr Aggarwal attempted to kiss her. Dr Aggarwal had kissed her daughter and that is what had upset her most. Asked again about the massage she said that it started around her neck and then went down all her back. She still had her top on and the massage was performed underneath her top. She had to put the straps down at the front. After Dr Aggarwal had massaged her back he did the tops of her legs and she then had to turn over. When massaging her neck Dr Aggarwal was standing behind her head. When she was lying down he was positioned to her side. He was positioned between her legs when he was massaging the top of her legs. Dr Aggarwal's position was to the side when he was massaging her back. He did not massage her breasts or stomach. To gain access to the front of her leg and knee he massaged up from her feet underneath her trousers. So far as the massage from the knees to the thighs was concerned she was sure that her trousers were just down a little. When massaging the back of the legs he talked about pressure points.
137. Ms 4 said that when her partner arrived home he had wondered what was going on. Her partner had told her that she should take a complaint forward. She had seen something about Dr Aggarwal in the paper. When she saw Mr Greenwood he waited to hear what she had to say and only told her about the other patients afterwards. He asked her questions which she answered and he wrote down what she said.
138. It was specifically put to Ms 4 that the reason that she had complained to Dr Basu about Dr Aggarwal's treatment was because she was upset that the referral for physiotherapy was taking a little while. She said that this had not really bothered her. She went to Dr Basu and said that she had a problem with one of the doctors. She

explained the problem to him and he said that he would see what he could do. She had told Dr Basu that Dr Aggarwal came round and dropped off a prescription for Brooke. She had told Dr Basu that Dr Aggarwal's treatment had been a bit inappropriate and he had said that Heather would call her.

139. When cross-examined about Dr Aggarwal's contact following the domiciliary visit Ms 4 said that he telephoned and said that he had left something behind. He had knocked at the door and had made 2 or 3 phone calls. He said something about leaving "a scope". He said that she should not tell anybody about what had happened because he could lose his job and it would get him into trouble.
140. Ms 4 said that at the surgery the previous day Dr Aggarwal had said that as he was going past he would see Brooke out of surgery. She told her partner what had happened as soon as Dr Aggarwal left and she told her mother-in-law. When she saw Dr Basu she had described what had happened and he said that it was not right. The practice arranged an appointment. When she was led in Dr Aggarwal was sitting on his own. She did not know what was going on. She felt awkward and nervous. Dr Aggarwal did apologise and said it was a misunderstanding and said that she reminded him of his daughter. She didn't challenge him about what he said because she was so upset. She knew that Dr Aggarwal's daughter was disabled because Dr Aggarwal had told her; he had said it many times when she had seen him in the surgery.
141. So far as her statement was concerned Ms 4 said she was happy with what it said but she had wanted to blank it out and was so frightened. She thought that it would all go away and she was frightened about having to give evidence. Heather and Dr Basu had not believed her but she felt that her complaint had been dealt with quite well.
142. Mr Lloyd suggested to Ms 4 that it had been no surprise to her that Dr Aggarwal had arranged to visit her because the practice policy was for elderly patients and young children to be seen on a home visit rather than in the surgery. She said that she had no experience of a home visit before but that she accepted what he said. In answer to further questions she said that no one else had ever seen Brooke at home. She did not know that the usual nature of home visits was such that one would not know which doctor was attending. She had known on this occasion that it was Dr Aggarwal who would be coming. The reason she knew that Dr Aggarwal had a disabled daughter was because he had told her and not because it was common knowledge.

Dr Aggarwal's' case in respect of Ms 4.

143. There is no record of any account by Dr Aggarwal save that recorded by Dr Basu in his letter. There is no record of any examination of Ms 4 on 14th December 2004.

Our findings in respect of Ms 4

144. Mr Lloyd submitted that Ms 4's account was wholly unbelievable. She was not consistent about how the massage had been performed or which parts of her body had been massaged. It was simply incredible that Dr Aggarwal, a man of good character and a respected GP, would have behaved in the way described. It was also incredible that the partner made no comment and that Dr Aggarwal attempted to kiss Ms 2 in the kitchen when he was nearby.
145. The essential thrust of the Appellant's case as advanced must be that after Dr Aggarwal had shown her consideration by bringing her leaflets to help with her neck problems and having simply demonstrated the simple neck exercises therein set out, Ms 4 has invented a wholly fictitious account of a massage. The alleged motive for this is she was unhappy that there had been delay in the provision of hospital physiotherapy. We note that Dr Basu made no reference to this as the subject of the complaint but referred to inappropriate examinations. We have considered all the evidence before us carefully.

146. Ms 4's initial evidence was that the incident had occurred in about July 2004 when her daughter was 6 months old. Ms 4's records show that she was seen by Dr Aggarwal on 13th December 2004 when she complained of a sore throat and was prescribed Amoxycillin. It was also noted that she was "awaiting physio." The records in respect of her daughter show an entry by Dr Aggarwal on 14th December 2004 and that he advised nasal drops. In the course of her evidence Ms 4 volunteered that she still had the leaflets given to her by Dr Aggarwal at home and could find them. On the next day she duly produced the leaflets given to her by Dr Aggarwal which are dated 13th December 2004. She readily accepted that she must have been mistaken as to the date that he came to her home. We consider that if this witness had been determined to tell a fabricated story the last thing she would have done would be to produce the very documents that undermined her reliability as to the date of the consultation: she could simply have said from the beginning that she had thrown them away or that she had not been able to find them.
147. We accept Ms 4's evidence that she complained to Dr Basu and that she told him what had happened. It transpires that she complained soon after the incident. She was then telephoned by Heather Smart and was asked to attend the surgery. We accept that expecting to see Dr Basu she was led into his office by Heather Smart but was shocked to see Dr Aggarwal seated there. We accept her evidence that Dr Aggarwal apologised to her and said that she reminded him of her daughter. We accept that she was wholly unprepared for this meeting and that, having left the room in tears, she was ushered out the back door by the practice manager. We heard no other evidence about this meeting nor was Ms 4's account positively challenged. The issue, therefore, is what took place on 14th December that required an apology from Dr Aggarwal. We note that according to Dr Basu's letter, so far as he was aware, Dr Aggarwal was able to reassure the patient that the examinations were carried out in the proper manner.
148. We found Ms 4's inability to describe how it was that Dr Aggarwal had managed to massage her thighs if her trousers were always only undone to mid tummy was of interest. It was not until an advanced stage of cross examination when she was taken to her statement that she said that her trousers must have been lower than she had remembered. We have considered whether this is because she was unable to fully describe events even though they occurred or whether she was caught out in a fictitious account. Having considered the evidence before us in the round we consider that her inability to explain such an obvious matter was a hallmark of her honesty. In this and other respects she was a conscientious witness and would not be drawn into saying that which she did not positively now remember.
149. The case advanced on Dr Aggarwal's behalf in cross examination was that he had attended Ms 4's home in order to see and examine the infant because it was practice policy that children and the elderly should be seen at home. We consider such a policy would be highly unusual because children are easily transportable. The clinical record in respect of Ms 4's child shows she was suffering from a cold and that nasal drops were advised. We draw the inference from all the evidence before us that the Appellant offered to bring around the leaflets and see the child at home as a means of seeing Ms 4.
150. We accept Ms 4's evidence that the Appellant asked her not to tell anyone about what had happened both on 14th December 2004 whilst in the kitchen and during subsequent telephone calls to her home. We accept also that he came to her house shortly after his visit.
151. In the light of the nature of the defence advanced it is relevant to say that we consider there was a complete absence of any malice or hostility from Ms 4 towards Dr Aggarwal. She was wholly reluctant to be giving evidence at all. On her own evidence when Heather Smart told her that the PCT wanted to interview her reaction was that she did not want to be involved. We note that in her witness statement she said that she actually agreed that with Heather Smart when the latter suggested that

as Dr Aggarwal had been proven innocent the PCT “*should just leave it.*” (E 126) Surprising though this is at first blush we believe this was truly her state of mind. Ms 4 was quiet and evidently embarrassed when giving her evidence. We consider that because of her experience when she complained to the practice she seemed resigned to the view that her account would not be preferred to that of a doctor. We found Ms 4 to be a patently honest witness who was doing her best to describe what had truly happened.

152. Having seen and heard Ms 4 give evidence we found her evidence to be cogent and compelling in relation to the core issues. We find that on 14th December 2004 during his visit to her home Dr Aggarwal carried out a massage on Ms 4 which was not medically justified and was sexual in nature. He also attempted to kiss Ms 4. His actions amounted to inappropriate sexualised behaviour.

DETERMINATION

153. We have found the allegations in respect of patients 1, 2 and 4 to the extent indicated above.
154. We have considered all relevant matters under paragraph 11 of the Regulations including the sexual nature of the acts proved, the length of time since they were committed and the overall effect of the incidents. In our view the allegations proved in respect of *any one* of patients 1, 2, and 4 would justify removal from the List on the grounds of unsuitability. The trust of each of these women, each of whom was vulnerable in their own way, was betrayed by the Appellant.
155. It is contended that the facts also amount to inefficiency. In view of our findings with regard to these patients it is unnecessary to consider this further in respect of patients 1, 2 and 4.
156. We recognise that an order for removal will have a profound effect upon the Appellant's personal, financial and professional interests. 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 respected general practitioner. In our view an order for removal from the Respondent's list is plainly necessary in the public interest.
157. The facts that we have found proved in relation to patient 3 are somewhat different. We consider it appropriate to say that *if* Ms. 3 had been the only complainant whose evidence we found proved, we may not have made an order for removal from the list because the facts proved re Ms 3 amount to an inappropriate examination and not sexualised behaviour. *Viewed alone* Dr Aggarwal's treatment in the context of this patient could have been characterised as one of inefficiency in respect of which a contingent removal might have been appropriate. In the circumstances it is unnecessary to examine this further.
158. 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.
159. Pursuant to paragraph 16 (2) of the Regulations and Rule 46 and 47(1) of the Family Health Services Appeal Authority (Procedure) Rules 2001 we direct that the Secretary of State, the Scottish Executive, the National Assembly of Wales, the Northern Ireland Executive and the Registrar of the General Medical Council shall be notified of this decision.
160. The attention of the parties is drawn to Rule 43 of the Rules.

161. Either party to these proceedings has the right to appeal this decision under and by virtue of Section 11 of the Tribunals and Inquiries Act 1992. Any appeal should be made by lodging a notice of appeal in the Royal Courts of Justice, The Strand, London WC2A 2LL within 28 days from the receipt of this decision.

National Disqualification

162. We did not hear submissions on this potential order pending our decision on the facts. We direct the parties to submit written representations within 35 days of receipt of this decision. If the parties so require, an oral hearing will be held on a date to be agreed. Both parties are directed to inform the FHSAA within 42 days from receipt of this decision whether they seek an oral hearing of this issue.

Siobhan Goodrich
Chair
3rd June 2008