Neutral Citation Number: [2025] EWHC 318 (Admin)

Case No: AC-2024-LON-000403

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14/02/2025

Before:

MR JUSTICE MACDONALD

- -

Between :

Professional Standards Authority for Health and Social Care	**Appellant**
- and -	
The General Medical Council	**First Respondent**
-and -	
Dr Neill Charles Garrard	**Second Respondent**

- -

Ms Fenella Morris KC (instructed by **Hill Dickinson LLP**) for the **Appellant**
The First Respondent did not appear and was not represented
Mr Michael Rawlinson (instructed by **Weightmans**) for the **Second Respondent**

Hearing dates: 28 January 2025

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Approved Judgment

This judgment was handed down remotely at 10.30am on 14 February 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE MACDONALD

Mr Justice MacDonald:

INTRODUCTION

1. This is a statutory appeal by the Professional Standards Authority for Health and Social Care (hereafter "the Authority"), brought pursuant to s.29 of the National Health Service Reform and Health Care Professionals Act 2002 (hereafter, "the 2002 Act"), against a decision of the First Respondent, The General Medical Council (hereafter "the GMC") through its Medical Practitioners Tribunal (hereafter "the Tribunal") on 13 December 2024. By that decision, it was found that the fitness to practice of the Second Respondent, Dr Neill Garrard (hereafter "the Registrant"), was not impaired.

2. The Authority relies on two grounds of appeal, centred on the treatment by the Tribunal of the issue of cross-admissibility of evidence. Namely:

    i) The Tribunal wrongly directed itself as to the test for the cross-admissibility of evidence.

    ii) The Tribunal wrongly interpreted and / or applied the legal test for cross admissibility.

3. The Authority is represented by Ms Fenella Morris of King's Counsel. The First Respondent, the GMC, by convention, does not appear and is not represented. The Registrant is represented by Mr Michael Rawlinson of counsel. In determining this appeal, I have been assisted by an appeal bundle and comprehensive and erudite written and oral submissions from Ms Morris and Mr Rawlinson. I reserved judgment and now set out my decision and the reasons for it.

BACKGROUND

4. The GMC brought proceedings before the Medical Practitioners Tribunal following allegations that the Registrant had behaved in an inappropriate manner towards two vulnerable female patients in separate hospitals in March 2021 and December 2021, whilst working as a locum registrar in Accident and Emergency. His inappropriate behaviour was alleged to have included behaviour that was sexually motivated.

5. At the hearing on 13 December 2024, the Tribunal heard from each patient. The patients were not related and had no prior connection through which there could have been collusion or contamination of their evidence. Each described being treated at an Accident and Emergency Department for a mental disorder. Each patient thereafter described the Registrant behaving during his treatment of them in a manner that was inappropriate and sexually motivated. Patient A asserted as follows:

    i) As at 27 March 2021, she was suffering from a functional neurological disorder and migraines.

    ii) She was being treated for her conditions with pregabalin, co-codamol, duloxetine and diazepam.

    iii) During the consultation at Accident and Emergency on 27 March 2021, having been taken to hospital by ambulance suffering from a severe headache / migraine and two witnessed episodes of loss of consciousness, the Registrant proceeded

to engage in "hypnosis style chanting" that was "really repetitive and telling me that when I wake up I'll be like doing this". The Registrant said to her "when you wake up you will have no headache. Patient A further averred that the Registrant had said to her that she would "lust for me" and "love me and kiss me..."

iv) The Registrant initially asked her to remove her outer clothing and squeezed her shoulder before looking at and later touching her breasts, including at one point lifting her top and squeezing her nipple.

v) She was shocked and did not know what to do, so decided not to do or say anything that might provoke the Registrant.

6. Patient A made an immediate complaint to staff at the hospital and to the police. This resulted in the Registrant being interviewed under caution by the police. Subsequently, the police decided to take no further action. On 28 March 2021, Patient A's husband filed an online complaint form with the GMC on her behalf.

7. When giving evidence before the Tribunal, Patient B stated as follows with respect to the incident that occurred on a different date and in a different Accident and Emergency Department:

i) As at December 2021, she was suffering from anxiety and depression and had been experiencing a number of episodes of anxiety, loss of balance, elevated heart rate and sleepwalking.

ii) She was being treated for her conditions with sertraline.

iii) During the consultation in the Urgent Care Centre, following her contacting 111 after a relative became concerned about her symptoms interfering with her medication, the Registrant told her to close her eyes and started speaking used a "soothing voice" the tone of which was "weird". After he had given her instructions as to what to do, he clicked his fingers and told her it was her boyfriend who was causing her not to sleep and not to trust him (an account corroborated by a contemporaneous text sent by Patient B to a friend). The Registrant had later, and again after asking her to close her eyes, told her to wait at a bus top for him where he would pick her up and take her home (an account again corroborated in a contemporaneous text from Patient B to a friend). Patient B stated that the Registrant repeated this behaviour, being more insistent that he wait for her at the bus stop.

iv) The Registrant initially asked her to remove her outer clothing, then her vest and sports bra three times, then her trousers and underwear. During the latter occasion he asked her to close her eyes and spoke in a different tone.

8. Patient B reported the Registrant's alleged conduct proximate to its occurrence, emailing the hospital the following day after speaking with her boyfriend. A Deputy Chief Nurse contacted Patient B and provided her with options for pursuing her complaint. Patient B decided not to contact the police in circumstances where she considered her complaint was being dealt with appropriately by the hospital. On 29 December 2021 Patient B told her GP about the actions of the Registrant, her GP notes

recording that "patient has appropriately reported Dr to PALS (Patient Advice and Liaison Services) because of these behaviours - asked her to go to shop for water and by (*sic*) him a coffee, asked for her to remove bra for BP, asked her to take off her bottoms as part of examination." Patient B gave interviews as part of the Trust investigation on 23 February 2022 and 17 February 2022. The Registrant self-reported the allegation to the GMC.

9. The Registrant denied, and continues to deny, the allegations made against him and adduced evidence before the Tribunal that Patient A and Patient B were each unreliable witnesses by reason of their respective mental disorders and / or the effect of the medication that had been prescribed to each of them to treat those disorders.

10. On 13 December 2024, the Tribunal found the allegations against the Registrant not proved. The written reasons of the Tribunal begin by setting out the background of the matter, summarising the allegations with which it was concerned. The Tribunal summarised the GMC's allegation in respect of Patient A as being that the Registrant had "in four or five visits to her hospital bed in the early morning, touched Patient A in an inappropriate way, including touching her breasts and squeezing her nipple, and chanted to her in a hypnotic way." The Tribunal summarised the GMC's allegation in respect of Patient B as being that the Registrant had "asked Patient B to remove her clothes when it was not clinically indicated, made inappropriate comments, spoke to her in a hypnotic way, asked her to buy him a coffee, and asked her to wait at a bus stop where he would pick her up after his shift and take her home." Within this context, and having recounted the history of interlocutory applications, the Tribunal listed the charges as follows:

> "1. On or around 27 March 2021, whilst treating Patient A in the Accident and Emergency Department at Royal Hampshire County Hospital, you:
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> (a) dug your fingers into Patient A's shoulder;
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> (b) squeezed Patient A's fingers;
>
> (c) touched Patient A's breasts on one or more occasion;
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> (d) squeezed Patient A's nipple on more than one occasion;
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> (e) chanted to Patient A in a hypnotic way;
>
> (f) said to Patient A:
>
> (i) 'you will lust for me' or words to that effect;
>
> (ii) 'you will want to kiss me' or words to that effect;
>
> 2. Your actions as described at paragraph 1 a-d above amount to inappropriate physical contact with Patient A.
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> 3. On or around 27 December 2021, whilst treating Patient B at Lewisham Hospital you:
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> (a) Asked Patient B to remove her:

(i) vest on more than one occasion;

(ii) bra on more than one occasion;

(iii) trousers;

(iv) underwear;

when it was not clinically indicated;

(b) Told Patient B:

(i) to go to a nearby garage to buy some water for herself and some coffee for you;

(ii) that Patient B's boyfriend was causing her sleepwalking and anxiety and that Patient B was not to trust him or her parents;

(iii) that no one understood Patient B and her symptoms apart from you;

(iv) to wait at the bus stop and that you would pick Patient B up after your shift and take her home;

(c) Spoke to Patient B on one or more occasion in a hypnotic way.

4. Your actions set out at:

(a) paragraphs 1 a-e and 2 were carried out without Patient A's consent;

(b) paragraph 3c were carried out without Patient B's consent;

(c) paragraphs 1, 2, 3, 3a, 3b ii-iv and 3c;

were sexually motivated.

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

11. The Tribunal then went on in its written reasons to summarise the lay and expert witnesses before it and the documentary evidence available to it, before summarising the legal approach taken by the Tribunal, including the question of cross-admissibility.

12. As emphasised by Mr Rawlinson during his oral submissions, the account of the advice the Tribunal received from the Legally Qualified Chair (hereafter "LQC") on cross admissibility set out in its written reasons followed discussions between counsel and the LQC. During discussions at the hearing on 21 November 2023, the LQC indicated that he intended to quote from judgments on the question of cross-admissibility and, later, that he had drafted the section on cross-admissibility and would let counsel have sight of it. Within this context, at the conclusion of the evidence on 22 November 2023 and having seen the advice of the LQC, junior counsel for the GMC confirmed that he was content with the formulation with respect to cross-admissibility adopted by the

LQC and that "it would be the coincidence basis on which we would say certain charges are cross-admissible against each other". Mr Rawlinson also discussed the formulation with the chair on behalf of the Registrant. During those submissions, Mr Rawlinson referred to the need to distinguish between "evidence which is cross-admissible from evidence of propensity", although the latter is, in fact, one of the bases for the former.

13. The parties made written and oral closing submissions to the tribunal on 23 November 2023. The written closing submissions on behalf of the Registrant dated 23 November 2023 did not deal explicitly with the law on cross-admissibility. The written closing submissions on behalf of the GMC stated as follows with respect to the question of cross-admissibility (emphasis in the original):

> "16. This essentially concerns the scenario where the GMC invite you to draw upon evidence for one charge as being relevant and admissible in respect of another charge. There is no provision in the Act or Rules for this. R34(1) provides a wide discretion to introduce any evidence if fair or relevant.
>
> [See written direction by the LQC]: *R v BQC* [2021]. That provides that evidence on one charge may be admissible in respect of another:
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> 1) As showing propensity; or
>
> 2) Where there is more than one complainant, to rebut coincidence.
>
> 17. The second ground is advanced here, since the defence essentially invite you to conclude that both complainants are wrong and any similarities in their evidence is coincidental. The cross-admissibility principle thus allows the tribunal to consider the improbability of that– and to take account of A and B's evidence together as relevant to the credibility of their accounts.
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> 18. Drawing from Chapter 13-2 of the Crown Court Compendium:
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> The jury is not being invited to reason from propensity; *they are merely being asked to recognise that the evidence in relation to a particular offence on an indictment may appear stronger and more compelling when all the evidence, including evidence relating to other offences, is looked at as a whole*. In *H* Rix LJ observed: "the reality is that independent people do not make false allegations of a like nature against the same person, in the absence of collusion or contamination of their evidence.
>
> The jury will need to exclude collusion or contamination as an explanation for the similarity of the complainants' evidence before they can assess the force of the argument that they are unlikely to be the product of coincidence. *The jury is being invited to consider the improbability that the complaints are the product of mere coincidence or malice. The more independent sources of evidence, the less probable the coincidence*. That is so only if the sources are genuinely independent.
>
> 19. Once the tribunal is satisfied that A and B have not colluded, nor is their evidence motivated by malice– and there is no evidence to suggest either – it

> may conclude that the similarity in the charges cannot be put down to coincidence and therefore adds weight to the evidence in support of them."

14. Within the foregoing context, in making his oral submissions on cross-admissibility, junior counsel for the GMC informed the panel that:

> "It is suggested [by the Registrant] that is pure coincidence. In that scenario the cross-admissibility principle allows you to consider the improbability of that being, in relation to the particular charges to which it applies, the improbability of that being a pure coincidence and therefore to take account of both Patient A and B's evidence in respect of those charges in determining their credibility. I won't refer to the whole of it but in paragraph 18 I refer to chapter 13 of the Crown Court Compendium. What is set out there by way of explanation of the principle is that you are being invited to recognise that the evidence in relation to one offence may appear stronger and more compelling when all the evidence, including evidence related to other offences, was looked at as a whole."
>
> And:
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> "So again I emphasise that each charge must be considered individually, that evidence in respect of one will not necessarily be determinative of another, but, in order to properly consider these charges in context and to give them full and proper weight, it is important that those charges are considered together by way of being cross-admissible with each other."

15. At the hearing on 23 November 2023, following the written and oral closing submissions of counsel, the LQC stated as follows with respect to cross-admissibility, reading from a document that is also before this court:

> "I am going to read this so that my colleagues have the benefit of this advice. Let me give some advice on cross-admissibility, i.e. in what circumstances the evidence of misconduct alleged in one part of the allegation may be admissible in support of the allegation of misconduct in the second part of the allegation.
>
> In the case of *R v BQC*, the Court of Appeal (Criminal Division) helpfully summarised the position set out in the leading case of R v Freeman. It said:
>
> '[T]here are two main ways in which evidence of an offence charged on one count may be admissible in support of the allegation of an offence charged on another count. One is that that if the jury are sure that the conduct charged on one count took place, they may treat that conduct as showing a propensity to commit a particular type of offence or to behave in a particular way, so as to provide support for a conclusion of guilt on another count,"
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> and I add obviously in this case, the standard of proof is the balance of probabilities.
>
> Continuing what the Court of Appeal said:

> "[This] may apply to different counts relating to a single complainant, as well as to those involving different complainants. The other way in which evidence of one offence may be cross-admissible in support of another arises where there is more than one complainant. In such a case it may rebut coincidence because of the unlikelihood that separate and independent complainants would have made similar but untrue allegations against the defendant. Sometimes the evidence may be cross-admissible on both bases."
>
> Let me stress the following points. It is for the Tribunal to determine whether each separate paragraph of the allegation has been proved on the balance of probabilities. The Tribunal should reach a conclusion on each paragraph separately but is entitled, in determining whether each paragraph is found proved, to have regard to relevant evidence in regard to any other paragraph. It may consider the evidence in the round. Propensity, if found, is only one relevant factor and cannot be regarded as a satisfactory substitute for direct evidence."

16. The LQC's advice to the Tribunal on cross-admissibility is also reflected in the written reasons of the Tribunal dated 13 December 2024 under the heading "Cross Admissibility". The written reasons record the legal advice received from the LQC as follows:

> "[43] The LQC gave advice on cross admissibility, i.e. in what circumstances the evidence of misconduct alleged in one part of the Allegation may be admissible in support of the allegation of misconduct in a second part of the Allegation.
>
> [44] The LQC referred to the case of *R v BQC* [2021] EWCA Crim 1944 where the Court of Appeal Criminal Division helpfully summarised the position set out in the leading case of *R v Freeman* [2008] EWCA 1863. It said that:
>
> '...there are two main ways in which evidence of an offence charged on one count may be admissible in support of the allegation of an offence charged on another count. One is that if the jury are sure that the conduct charged on one count took place, they may treat that conduct as showing a propensity to commit a particular type of offence or to behave in a particular way, so as to provide support for a conclusion of guilt on another count. That may apply to different counts relating to a single complainant, as well as to those involving different complainants. The other way in which evidence of one offence may be cross-admissible in support of another arises where there is more than one complainant. In such a case it may rebut coincidence because of the unlikelihood that separate and independent complainants would have made similar but untrue allegations against the defendant. Sometimes the evidence may be cross-admissible on both bases.'
>
> [45] The LQC stressed the following points:
>
> - it was for the Tribunal to determine whether each separate paragraph of the Allegation had been proved on the balance of probabilities.

- The Tribunal should reach a conclusion on each paragraph separately but it was entitled, in determining whether each paragraph was found proved, to have regard to relevant evidence in regard to any other paragraph. It may consider the evidence in the round.

- Propensity, if found, was only one relevant factor and could not be regarded as a satisfactory substitute for direct evidence."

17. Having dealt with the legal directions, in their written reasons the Tribunal went on to evaluate the evidence in order to make its findings of fact in respect of the allegations.

18. In its written reasons, the Tribunal considered the allegations with respect to Patient A and Patient B separately. Within this context, prior to setting out its separate findings the Tribunal did not make reference to having considered the extent to which the allegations were similar, to having excluded collusion or contamination as an explanation for the similarity of the complainants' evidence, to having considered the allegations of the one patient when determining the findings in respect of the other patient or to having considered the improbability that the complaints were the product of mere coincidence or malice. Rather, the Tribunal dealt at the very end of its written reasons, and after reaching its conclusions with respect to the findings of fact, with the question of the relationship between evidence provided by Patient A and the evidence provided by Patient B. The Tribunal stated as follows with respect to those conclusions under the heading "Cross-admissibility / coincidence":

> "153. The Tribunal noted and gave careful consideration to the point raised by Mr Hamlet of the alleged similarities between the accounts of Patients A and B. He referred first to the hypnosis allegations. The Tribunal has considered these above. It has found on Patient B's own evidence that whilst she said that Dr Garrard had used a soothing voice, there was no chanting and she was not hypnotised. Patient A likewise said that she had not been hypnotised, and when asked about the chanting that she referred to in her witness statement, she alleged that Dr Garrard had been breathing heavily and had sexually chanted, making reference to lust and "you'll want to kiss me". Having found neither allegation of speaking or chanting in a hypnotic way to have been proved, it would not be correct to conclude that either allegation supported the credibility of the other. There were also significant differences in the descriptions of how Dr Garrard was alleged to have spoken or chanted. Furthermore, the content of the alleged wording used by Dr Garrard was very different in the case of Patient A and Patient B. In the case of Patient A, the alleged wording was of a clear sexual nature. In the case of Patient B, the alleged wording related to the ability to trust other people such as her parents and boyfriend, and the causes of her symptoms.
>
> 154. More generally, Mr Hamlet submitted that it was wholly unlikely, as was suggested, that two independent patients separated by time and location would make similar allegations against Dr Garrard as a product of a rare or uncommon side effect of their medication. He stated that the allegations of chanting and soft speaking, that were accompanied by the touching of breasts in Patient A's case and the removal of clothing in Patient B's case, were too similar to be attributed to coincidence.

> 155. In its overall examination of all of the evidence before it, the Tribunal found the two allegations to be insufficiently similar to find a pattern. The Tribunal acknowledged that Dr Garrard was alleged to have said and done something inappropriate and sexually motivated in both instances but there was nothing sufficiently distinctive to link what was allegedly said and done to Patient A and then to Patient B. Moreover, there was significant and credible expert evidence as to the effect of different medications in the two cases and very substantial differences in the accounts of Patients A and B."

19. In the foregoing context, the Tribunal concluded that none of the allegations made against the Registrant were proved and that, accordingly, the fitness to practise of the Registrant was not impaired.

GROUNDS OF APPEAL AND SUBMISSIONS

20. As noted, the Authority now advances two grounds of appeal with respect to the decision of the Tribunal on 13 December 2024:

    i) The Tribunal wrongly directed itself as to the test for the cross-admissibility of evidence.

    ii) The Tribunal wrongly interpreted and/or applied the legal test for cross-admissibility.

21. The Registrant opposes the appeal, submitting that the Authority is now seeking to mount an impermissible collateral attack on the Tribunal's conclusions of fact, drawn in the context of the Tribunal having correctly directed itself on the law and fully considered all issues, including the issue of cross-admissibility, following which the Tribunal rejected the case primarily on the basis of the forensic inconsistencies in the evidence.

22. With respect to Ground 1, the Authority submits that the Tribunal should have directed itself in accordance with the decision of the Court of Appeal in *R v Freeman* [2008] EWCA 1863; [2009] 1 WLR 2723, a case concerning a defendant charged with sexual offences against two girls committed on separate occasions, and in particular that:

    i) The Tribunal could take one patient's evidence into account in relation to an allegation made concerning another patient.

    ii) That such an occasion might arise where the patients had made allegations of a like nature against the same person in the absence of collusion or contamination.

    iii) That the fact of two patients making such allegations reduces the likelihood of there being an innocent explanation for them, and/or more likely that the conduct occurred.

    iv) That in such circumstances, it may not always be helpful to concentrate on the concept of propensity.

    v) It is not necessary to find the evidence of one patient in relation to such an allegation to be proved before relying upon that evidence in support of the allegation concerning the other patient.

23. The Authority further submits that the Tribunal failed to direct itself in accordance with the law in that it did not direct itself to consider whether Patient A and Patient B had made allegations of a like nature against the Registrant, did not direct itself that such circumstances made it more likely that the allegations of the patients were true and directed itself that, since it had not found an allegation proved, it could not rely upon the evidence in relation to it in respect of the other allegation. Had the Tribunal correctly directed itself as to the test for cross-admissibility, the Authority submits that the Tribunal may have taken a different approach to the evidence before it and reached a different determination.

24. With respect to Ground 1, the Registrant submits that the Tribunal had the benefit of material which reflected the agreed position between all parties with respect to the advice to be given to the Tribunal by the LQC and the manner in which the Tribunal should direct itself. The Registrant contends that that material was correct in law, containing the correct specimen directions taken from the Crown Court Compendium and citing the leading cases on the issue. The Registrant further submits that the material made a clear distinction between the two mechanisms by which evidence may be cross-admissible, namely by way of propensity or to address the question of coincidence. In particular, the Registrant contends that nowhere in that material was it suggested that the Tribunal was in any way limited to a consideration of the evidence in terms of propensity alone or, that with respect to coincidence, an allegation must be found proved before it could provide support to another allegation. The Registrant contends that, in this context, the Tribunal properly took a holistic approach to the evidence as a whole, consistent with the approach taken in *R v Brennand* [2023] EWCA 1384 at [44], based on directions relevant to, and reflecting the circumstances of the case and having heard full argument as to the competing cases on similarity.

25. With respect to Ground 2, the Authority submits that the tribunal was wrong to interpret the law as to cross-admissibility as requiring something more than the similarities between the patients' respective allegations it relied on. In particular, the Authority submits that the Tribunal was wrong to rely on the differences in the patients' evidence as to how the Registrant had spoken to them as acting to exclude the admissibility of one patients' evidence in support of the other patient's allegations. The Authority further submits that the conclusion that the patients' evidence was insufficiently similar to ground a finding of a pattern of behaviour was irrational. In this context, the Authority contends that, had it directed itself correctly, the Tribunal would have appreciated that:

    i) The fact that Patient A and Patient B were both vulnerable and being treated with medication for mental disorders and that both Patient A and Patient B alleged against the Registrant sexually motivated inappropriate conduct in a clinical setting, encapsulated the "nature" of the allegations for the purposes of the test of cross-admissibility of evidence and rendered them alike.

    ii) There being two such allegations was of significance for the assessment of the unlikelihood of there being an innocent explanation for them and/or the likelihood of them being true.

    iii) It would be wrong to interpret the law as requiring the Tribunal to focus on whether both Patient A and Patient B were alleging "hypnosis" or something

similar or whether the content of the alleged wording used by the Registrant was similar.

iv) That to look for something "sufficiently distinctive to link" the allegations of Patient A and Patient B in order to be able to take each patient's evidence into account set the standard of similarity required for cross-admissibility too high.

26. The Authority further submits that even if approached from a more "granular level" than the "nature" of the allegations (i.e. that they were each incidences of sexually motivated inappropriate conduct in a clinical setting), there were sufficient similarities between the allegations of Patient A and Patient B to justify consideration of each patient's evidence in support of the allegations made by the other and that, accordingly, the Tribunals conclusion that the patients' evidence was insufficiently similar to be found to be indicative of a pattern of behaviour on behalf of the Registrant was irrational. In this regard, the Authority relies on:

i) The fact that both the account of Patient A and the account of Patient B included the unusual character of the Registrant's speech.

ii) The fact that both the account of Patient A and the account of Patient B included the removal of their clothing.

iii) The fact that both the account of Patient A and the account of Patient B included the making of controlling statements by him.

27. With respect to Ground 2, the Registrant submits that there is nothing in the written reasons to suggest that the Tribunal misdirected itself and that, given what Mr Rawlinson submits was the correctness of the initial advice, a subsequent misdirection explicitly contrary to that advice is inherently unlikely. The Registrant points to the "detailed, nuanced and structured nature of the reasons" as demonstrating that the Tribunal had a firm grasp of all issues and that, having regard to paragraphs [154] and [155], the Tribunal addressed the case advanced by the GMC on coincidence in the manner consistent with the specimen direction in the Crown Court Compendium at [13-16(6)].

28. On behalf of the Registrant, Mr Rawlinson further submits that, within this context, what similarities or dissimilarities they found as between the allegations, were matters of judgment for the Tribunal, bearing in mind issues such as the credibility and reliability of the witnesses, and consideration of the respective arguments, and as such should be accorded a degree of deference by the appellate court. Mr Rawlinson contends that the decision of the Tribunal not to treat the two allegations as mutually supportive was a matter entirely within their discretion and that, the test for irrationality being a high one, it cannot be sensibly argued that no other Tribunal could have reached the conclusion that the patients' evidence was insufficiently similar to be indicative of a pattern of behaviour, or reached the Tribunal's broader decision in terms of cross-admissibility.

29. Within the foregoing context, the Authority contends that had the Tribunal correctly interpreted and applied the law as to cross-admissibility it may have reached a different determination on the evidence before it. The Authority further submits that the decision of the Tribunal is insufficient for the protection of the public for the purposes of s.29(4)

of the 2002 Act. Should its appeal be successful, the Authority seeks the following relief from this court:

i) Quashing of the decision of 13 December 2024.

ii) Remitting of the matter to a differently constituted Tribunal with a direction to that Tribunal that it come to a fresh decision applying the correct legal test before it.

iii) An order for costs.

RELEVANT LAW

30. The Authority is a body corporate established pursuant to s.25(1) of the 2002 Act. Pursuant to s.25(2) of the 2002 Act, the Authority has the following general functions. Namely, (a) to promote the interests of patients and other members of the public in relation to the performance of their functions by various regulatory bodies (including, pursuant to s.25(3) of the 2002 Act, the GMC) and by their committees and officers; (b) to promote best practice in the performance of those functions; (c) to formulate principles relating to good professional self-regulation and to encourage regulatory bodies to conform to them; and (d) to promote co-operation between regulatory bodies. Overarching these functions, and the reason the Authority was established, is the protection of the public (see *CRHP v (1) GMC (2) Ruscillo and CRHP v (1) NMC (2) Truscott* [2004] EWCA Civ 1356; [2005] 1 WLR 717 at [60]).

31. The decision of the Tribunal was a relevant decision for the purposes of ss.29(1)(c) and 29(2)(a) of the 2002 Act. Within the context of its foregoing functions, the Authority may refer a relevant decision to the High Court where it considers, pursuant to ss.29(4) and 29(4A) of the 2002 Act that the decision is not sufficient (whether as to a finding or a penalty or both) to protect the health, safety and well-being of the public, to maintain public confidence in the profession concerned and to maintain proper professional standards and conduct for members of that profession.

32. Where, as in this case, the Authority has referred a case to the High Court, the case falls to be treated as an appeal pursuant to s.29(7) of the 2002 Act, at which the High Court may dismiss the appeal, allow the appeal and quash the decision, substitute for the decision any other decision that could have been made by the Tribunal or remit the case to be reheard by the Tribunal in accordance with the directions of the High Court. The court may also make orders as to costs.

33. With respect to the test on appeal, in circumstances where an appeal pursuant to s.29 of the 2002 Act is governed by CPR Part 52 and r.52.21(3), the High Court may allow the appeal where it is satisfied that the decision of the Tribunal is wrong or there has been a serious procedural or other irregularity, such that it is not possible to determine whether the decision as to sanction is sufficient for the protection of the public.

34. In this case, as I have noted, the error that the Authority contends was made by the Tribunal centres on its treatment of the question of the cross-admissibility of evidence. That subject is substantially informed by jurisprudence from the criminal jurisdiction.

35. Evidence from one count or, in the present context, allegation, may be cross-admissible to another count or, in this case, allegation in the same proceedings where (a) it may establish propensity to commit that kind of conduct and/or (b) it may rebut coincidence (*Freeman* [2008] EWCA Crim 1863 at [14] and [15] and see *H* [2011] EWCA Crim 730 and *Sieudath* [2024] EWCA Crim 489). The choice between seeking to admit evidence to establish propensity and seeking to admit evidence to rebut coincidence has consequences for the manner in which it is proper for the fact finder to proceed.

36. For evidence in respect of one allegation to be cross-admissible against another allegation the evidence must, as with all admissible evidence, be relevant to the matter in issue. Whether the evidence will be considered relevant will depend on whether there is a sufficient connection and similarity between the facts of the allegations (see *Chopra* [2006] EWCA Crim 2133 at [16] and [21], which in *McCallister* [2008] EWCA Crim 1544 at [19] was described as "a case in which the prosecution sought to adduce the evidence of all the complaints to make good its reliance on 'the unlikelihood of coincidence'"). In *Hanson & Ors* [2005] EWCA Crim 824, the Court of Appeal deprecated, in the context of ss.98 to 113 of the Criminal Justice Act 2003, the use of the term "striking similarity" when comparing the facts of the allegations.

37. Once cross-admitted, the question of whether the evidence in fact establishes propensity or rebuts coincidence falls to be decided by the fact finder. How that is achieved differs depending on the ground under which the evidence has been admitted.

38. Where evidence is admitted to establish propensity, the fact finder can find that the relevant propensity has been established by being satisfied to the relevant standard of proof that conduct of the relevant kind was committed on one or more occasions (see *Adams* [2019] EWCA Crim 1363 at [14], relying on *Freeman*). In a case where there are only two similar allegations, this will require the fact finder to be satisfied to the relevant standard that the first allegation took place before relying on the evidence in respect of the first allegation to deduce propensity from the second allegation (see *R v Mitchell* [2016] UKSC at [43]).

39. Where evidence is admitted to rebut coincidence, there is no requirement to make a prior finding to the relevant standard before deciding whether coincidence has been rebutted (*Adams* at [15]). Rather, the fact finder must consider all the incidents together, holistically rather than sequentially (*Gabbai* [2019] EWCA Crim 2287 at [76]). In *Gabbai* at [76], citing *Wallace* [2007] EWCA Crim 1760, the Court of Appeal stated that the question is whether circumstantial evidence linking the defendant to the offences, when viewed as a whole, pointed to his participation in and guilt of each offence. A direction for such holistic reasoning must also take account of the defence explanation for coincidence (see *Tamiz* [2024] EWCA Crim 200). Where the evidence is admitted to rebut coincidence, the cogency of that evidence derives from the unlikelihood that a series of independent witnesses would make similar complaints.

40. As referred to above, in *Adams* at [14] and [15], the Court of Appeal articulated the overall position in relation to the grounds of cross-admissibility as follows:

> "[14]... As confirmed in the leading case of *R v Freeman* [2008] EWCA Crim 1863; [2009] 1 WLR 2723, there are two main ways in which, in a case of this kind, evidence of an offence allegedly committed on one occasion may be relevant to an allegation that the defendant committed an offence on

> another occasion, either against the same or against a different complainant. One way in which such evidence may be relevant is if it goes to establish a propensity to commit a particular kind of offence. The basic reasoning is that, if he has done similar things on other occasions, it is more likely that he did it on this occasion. For such reasoning to be legitimate the relevant propensity must first be established, which requires the jury to be sure that an offence of the relevant kind was committed on one or more occasions. They may then rely on those proven offences to support an inference that the defendant committed an offence of a similar type on another occasion.
>
> [15] The second main way in which evidence relating to one alleged offence may be relevant to the issue of whether the defendant committed another alleged offence is simply by reducing the likelihood of there being an innocent explanation for the allegations. So, for example, in a case such as the present one, where two individuals each make allegations that they have been sexually assaulted by the same person, provided there is no reason to think that their allegations are linked for some other reason - for example, because they had got together to concoct false stories, the evidence of each complainant may strengthen the case relating to the other. As Rix LJ observed in *R v H* [2011] EWCA Crim 2344, at paragraph 24, the reality is that independent people do not make false allegations of a like nature against the same person in the absence of collusion or contamination of their evidence. This form of reasoning does not require the jury to find one allegation independently proved before they may properly treat evidence relating to that allegation as relevant to other alleged offences."

41. As has been acknowledged by the Court of Appeal, the question of cross-admissibility risks giving rise to confusion. In this context, in *Nicholson* [2012] EWCA Crim 1568 the Court of Appeal noted that when dealing with a case concerning the unlikelihood of coincidence, care needs to be taken before also giving a direction with respect to propensity. In *BQC* [2021] EWCA Crim 1944, the Court of Appeal emphasised the need for care when providing directions with respect to the issue of cross-admissibility given the risk, *inter alia*, of confusing the two bases of cross-admissibility. In these circumstances, in *Brennand* [2023] EWCA Crim 1384, the Court of Appeal emphasised the need for directions that are relevant to and reflect the particular circumstances in which questions of cross-admissibility arise in the case, not template directions without adaption.

DISCUSSION

42. Having listened carefully to the submissions, I am satisfied that the appeal must be allowed on both grounds. My reasons for so deciding are as follows.

Ground 1

43. I am satisfied that, in the context of the challenges presented by the question of cross-admissibility, the Tribunal wrongly directed itself on the issue of the cross-admissibility of evidence.

44. There are plainly challenges when applying the concept of cross-admissibility in proceedings before the Medical Practitioners Tribunal, not least because the concept of

cross-admissibility derives from, or touches on, other relatively complex evidential concepts such as bad character, similar fact evidence, coincidence and propensity, and because the majority of the development of the law on cross-admissibility now takes place in the context of a statute, namely the Criminal Justice Act 2003, that is not applicable in the current context. However, having regard to the authorities summarised above, the position with respect to cross-admissibility is tolerably clear in the present context.

45. In understanding the law in relation to cross-admissibility in the present context, a number of distinctions must be held in mind. First, the distinction between the different grounds of cross-admissibility, namely cross-admissibility on the ground of propensity and cross-admissibility on the ground of rebutting coincidence. The significance of this distinction is that, on the current authorities, the former ground requires a finding to have been made to the relevant standard as a precursor to attaching weight to the cross-admitted evidence, whilst the latter ground does not.

46. Second, a distinction also has to be drawn between admissibility and weight. To be admissible, evidence must be relevant. This will be equally true of evidence that is capable of cross-admissibility. For evidence in respect of one allegation to be cross-admissible in respect of the other allegation, it must be relevant to that latter allegation and its relevance will depend on whether there is a sufficient connection and similarity between the facts of the allegations. Once such evidence is admitted as being relevant, the question becomes one of weight. In deciding the weight to be attached to cross-admissible evidence, the approach will come back to the first distinction. Where the ground relied on is propensity, a finding to the relevant standard of proof is required before weight is attached to the cross-admitted evidence. Where the ground relied on concerns coincidence, i.e. the extent to which the cross-admitted evidence is capable of disproving coincidence, there is no requirement for a prior finding and the court is required to consider all the incidents together, holistically rather than sequentially and taking account of the defence explanation for coincidence, when deciding what weight can be attached to the cross-admitted evidence.

47. In the foregoing context, and having regard to the authorities summarised above, in determining an issue of cross-admissibility a Tribunal will need to bear in mind the following matters:

    i) There are two primary grounds on which evidence may be cross-admissible. Namely, (a) where it may establish propensity to commit that kind of conduct and/or (b) where it may rebut coincidence (*Freeman* [2008] EWCA Crim 1863 at [14] and [15]).

    ii) The Tribunal will need to decide on which ground or grounds it is being asked to cross admit the evidence and advise itself accordingly, in terms that are relevant to and reflect the particular circumstances in which the questions of cross-admissibility arise (*Brennand* [2023] EWCA Crim 1384).

    iii) The Tribunal will need to take care to distinguish clearly between the grounds and to not advise itself on the other ground if only one ground is applicable, in order to avoid confusion (*Nicholson* [2012] EWCA Crim 1568 and *BQC* [2021] EWCA Crim 1944).

iv) The Tribunal will need to consider whether the evidence in question is capable of being cross-admitted, by evaluating whether there is a sufficient connection and similarity between the facts of the allegations (*Chopra* [2006] EWCA Crim 2133).

v) Where the evidence is cross-admitted to prove propensity in a case involving two allegations, before attaching weight to the evidence the Tribunal will need to be satisfied to the required standard that the first allegation took place before relying on evidence in respect of the first allegation to deduce propensity from the second allegation (*Adams* [2019] EWCA Crim 1363 at [14] and *R v Mitchell* [2016] UKSC at [43])

vi) Where the evidence is admitted to rebut coincidence, before attaching weight to the evidence the Tribunal will need to advise itself that (a) it must exclude collusion or contamination as an explanation for the similarity of the complainants' evidence before it can assess the force of the argument that the allegations are unlikely to be the product of coincidence, (b) if collusion or contamination is excluded, considering the evidence as a whole, the fact of two patients making such allegations reduces the likelihood of there being an innocent explanation for them (*R v H* [2011] EWCA Crim 2344 at [24]) and (c) it is not necessary to find one allegation to be proved before relying upon the evidence in respect of that allegation in support of the other allegation concerning the other patient (*Adams* [2019] EWCA Crim 1363 at [15]).

48. On behalf of the Registrant, Mr Rawlinson submits that in the context of the assistance the Tribunal was given by counsel and by reading the Tribunal's written reasons as a whole, it is clear that the Tribunal directed itself correctly on the issue of cross-admissibility. Having regard to the account of the advice given in the transcript and in the written reasons of the Tribunal, I am not able to accept that submission. The discussions before, and the written material provided to, the Tribunal are nonetheless instructive.

49. It is clear from the transcript of the hearing that counsel for the GMC made plain, both at the hearing on 22 November 2023 in discussions with the LQC and during closing submissions on 23 November 2023 that the GMC sought to rely on the similarity of the allegations made by Patient A and Patient B as rebutting coincidence, rather than demonstrating a propensity on the part of the Registrant to act in a particular manner. This was not challenged by the Registrant. As I have noted, the written closing submissions of counsel for the GMC accordingly stated as follows:

> "17. The second ground is advanced here, since the defence essentially invite you to conclude that both complainants are wrong and any similarities in their evidence is coincidental. The cross-admissibility principle thus allows the tribunal to consider the improbability of that– and to take account of A and B's evidence together as relevant to the credibility of their accounts."

50. In the circumstances, the Tribunal was required to advise itself on the principles applicable where evidence is sought to be cross-admitted to rebut coincidence. To this end, counsel for the GMC drew the Tribunal's attention in his written submissions to the standard direction contained in Chapter 13-2 of the Crown Court Compendium:

> "The jury is not being invited to reason from propensity; they are merely being asked to recognise that the evidence in relation to a particular offence on an indictment may appear stronger and more compelling when all the evidence, including evidence relating to other offences, is looked at as a whole. In H Rix LJ observed: "the reality is that independent people do not make false allegations of a like nature against the same person, in the absence of collusion or contamination of their evidence.
>
> The jury will need to exclude collusion or contamination as an explanation for the similarity of the complainants' evidence before they can assess the force of the argument that they are unlikely to be the product of coincidence. The jury is being invited to consider the improbability that the complaints are the product of mere coincidence or malice. The more independent sources of evidence, the less probable the coincidence. That is so only if the sources are genuinely independent.
>
> Once the tribunal is satisfied that A and B have not colluded, nor is their evidence motivated by malice– and there is no evidence to suggest either – it may conclude that the similarity in the charges cannot be put down to coincidence and therefore adds weight to the evidence in support of them."

51. Notwithstanding the matters set out above, following closing submissions on 23 November 2023 and in its written reasons, the advice that the Tribunal gave itself concerned *both* bases for the cross-admission of the allegations. Further, I am satisfied that that advice risked conflating and confusing the two bases for cross admissibility in the minds of the Tribunal.

52. As I have noted, following the conclusion of counsels' closing submissions on 23 November 2023, the LQC recited the legal advice for the Tribunal with respect to the question of cross-admissibility as follows:

> "I am going to read this so that my colleagues have the benefit of this advice. Let me give some advice on cross-admissibility, i.e. in what circumstances the evidence of misconduct alleged in one part of the allegation may be admissible in support of the allegation of misconduct in the second part of the allegation.
>
> In the case of *R v BQC*, the Court of Appeal (Criminal Division) helpfully summarised the position set out in the leading case of R v Freeman. It said:
>
> '[T]here are two main ways in which evidence of an offence charged on one count may be admissible in support of the allegation of an offence charged on another count. One is that that if the jury are sure that the conduct charged on one count took place, they may treat that conduct as showing a propensity to commit a particular type of offence or to behave in a particular way, so as to provide support for a conclusion of guilt on another count,"
>
> and I add obviously in this case, the standard of proof is the balance of probabilities.
>
> Continuing what the Court of Appeal said:

> "[This] may apply to different counts relating to a single complainant, as well as to those involving different complainants. The other way in which evidence of one offence may be cross-admissible in support of another arises where there is more than one complainant. In such a case it may rebut coincidence because of the unlikelihood that separate and independent complainants would have made similar but untrue allegations against the defendant. Sometimes the evidence may be cross-admissible on both bases."
>
> Let me stress the following points. It is for the Tribunal to determine whether each separate paragraph of the allegation has been proved on the balance of probabilities. The Tribunal should reach a conclusion on each paragraph separately but is entitled, in determining whether each paragraph is found proved, to have regard to relevant evidence in regard to any other paragraph. It may consider the evidence in the round. Propensity, if found, is only one relevant factor and cannot be regarded as a satisfactory substitute for direct evidence."

53. As also noted above, thereafter, the written reasons of the Tribunal reflected the advice set out above as follows:

> "[43] The LQC gave advice on cross-admissibility, i.e. in what circumstances the evidence of misconduct alleged in one part of the Allegation may be admissible in support of the allegation of misconduct in a second part of the Allegation.
>
> [44] The LQC referred to the case of *R v BQC* [2021] EWCA Crim 1944 where the Court of Appeal Criminal Division helpfully summarised the position set out in the leading case of *R v Freeman* [2008] EWCA 1863. It said that:
>
> '...there are two main ways in which evidence of an offence charged on one count may be admissible in support of the allegation of an offence charged on another count. One is that if the jury are sure that the conduct charged on one count took place, they may treat that conduct as showing a propensity to commit a particular type of offence or to behave in a particular way, so as to provide support for a conclusion of guilt on another count. That may apply to different counts relating to a single complainant, as well as to those involving different complainants. The other way in which evidence of one offence may be cross-admissible in support of another arises where there is more than one complainant. In such a case it may rebut coincidence because of the unlikelihood that separate and independent complainants would have made similar but untrue allegations against the defendant. Sometimes the evidence may be cross-admissible on both bases.'
>
> [45] The LQC stressed the following points:
>
> - it was for the Tribunal to determine whether each separate paragraph of the Allegation had been proved on the balance of probabilities.
>
> - The Tribunal should reach a conclusion on each paragraph separately but it was entitled, in determining whether each paragraph was found proved,

to have regard to relevant evidence in regard to any other paragraph. It may consider the evidence in the round.

- Propensity, if found, was only one relevant factor and could not be regarded as a satisfactory substitute for direct evidence."

54. As set out above, the Court of Appeal has emphasised the need for care when providing directions with respect to the issue of cross-admissibility, given the risk of confusing the bases of cross-admissibility, and the care that needs to be taken before also giving a direction as to propensity when dealing with a case concerning only the unlikelihood of coincidence. In these circumstances, the Court of Appeal has further emphasised the need for directions on cross- admissibility that are relevant to and reflect the particular circumstances that arise in the case. The direction given to the Tribunal in this case is, unfortunately, an example of the difficulties that can and do arise where the direction given seeks to cover both grounds of cross-admissibility where only one ground is relied on and is not tailored to the particular circumstances of the case.

55. First, the advice makes no clear reference to the test for cross-admissibility. Namely, whether the evidence is relevant by reason of a sufficient connection and similarity between the facts of the allegation made by Patient A and the allegation made by Patient B. Second, whilst the advice does distinguish between propensity and coincidence as grounds for cross-admissibility, the points latterly emphasised by the LQC concentrate on the propensity ground and, in particular, the proof of an allegation as a precursor to cross-admissibility. Whilst the second bullet point contains some of the principles applicable to cross-admissibility to rebut coincidence, these are conflated with the question of proving individual allegations. Third, and within that context, there is no clear articulation of the principle that it is not necessary to find one allegation to be proved before relying upon the evidence in respect of that allegation in support of the other allegation. Finally, nowhere is it stated that where the Tribunal has excluded collusion or contamination as an explanation for the similarity of the evidence of Patient A and Patient B, the fact of two patients making such allegations reduces the likelihood of there being an innocent explanation for them.

56. In these circumstances, the Tribunal did not clearly direct itself that, in this case, it was not being invited by the GMC to reason from propensity but merely being asked by the GMC to recognise that the evidence in relation to the allegations made by Patient A and Patient B may appear stronger and more compelling when all the evidence, including evidence relating to the other patient, was looked at as a whole. Further, the Tribunal did not receive clear direction as to the proper approach in that context. Namely:

i) That in determining cross-admissibility it needed to consider whether the evidence was relevant by reason of a sufficient connection and similarity between the facts of the allegation made by Patient A and the facts of the allegation made by Patient B.

ii) That where it was being invited by the GMC to consider the improbability that the complaints of Patient A and Patient B were the product of mere coincidence or malice, and in circumstances where the more independent sources of evidence the less probable the coincidence and that is so only if the sources are genuinely independent, it would need to exclude collusion or contamination as an explanation for the similarity of the evidence of Patient A and Patient B before

it could assess the force of the GMC's argument that they are unlikely to be the product of coincidence.

iii) If the Tribunal was satisfied that Patient A and Patient B had not colluded, nor was their evidence motivated by malice, it was open to the Tribunal to conclude that the similarity in the allegations of Patient A and Patient B could not be put down to coincidence and therefore added weight to the evidence in support of each allegation in circumstances where "the reality is that independent people do not make false allegations of a like nature against the same person, in the absence of collusion or contamination of their evidence".

57. Accordingly, I am satisfied that the Tribunal did not direct itself correctly with respect to the principles governing cross-admissibility of the allegations made by Patient A and Patient B. I acknowledge, of course, that deference should ordinarily be accorded to the reasons given by the Tribunal in circumstances where the Tribunal has expertise on medical matters. However, the issue that brings the matter before this court is not a medical issue but rather a legal one. In the circumstances, this court is not disadvantaged as compared to the Tribunal when it comes to evaluating the correctness or otherwise of the approach taken to the issue of cross admissibility in this case and the deference that would ordinarily be accorded to the Tribunal's reasons is thus reduced.

Ground 2

58. Having concluded that the Tribunal did not direct itself correctly with respect to the principles governing cross-admissibility of evidence, I am further satisfied that the Tribunal wrongly interpreted and applied the law with respect to cross-admissibility in this case.

59. Structurally, the written reasons deal separately with the allegation of Patient A (paragraphs 48 to 98) and the allegation of Patient B (paragraphs 99 to 152). In the circumstances, the Tribunal made findings with respect to the allegations made by Patient A and those made by Patient B individually and without first addressing the issue of whether the Tribunal could take into account the evidence in relation to the allegations made by Patient A and Patient B as a whole when deciding whether the allegations made by Patient A and Patient B were made out. I accept that the Tribunal did eventually come, in the last paragraphs of its written reasons, to the question of cross-admissibility. However, there are a number of difficulties with those paragraphs.

60. First, whilst the GMC clearly grounded its case on cross-admissibility on rebutting of coincidence, the analysis adopted by the Tribunal at paragraph 153 proceeds on the basis that its findings prevent the evidence in relation the allegation made by Patient A being considered in relation to the allegation made by Patient B and vice versa. Had the GMC advanced its case on the basis of propensity, the Tribunal's statement that "Having found neither allegation of speaking or chanting in a hypnotic way to have been proved, it would not be correct to conclude that either allegation supported the credibility of the other" would have been uncontroversial. However, the Tribunal was not being invited by the GMC to reason from propensity, but merely being asked by the GMC to recognise that the evidence in relation to the allegations made by Patient A and Patient B may appear stronger and more compelling when all the evidence, including evidence relating to other, was looked at as a whole.

61. Second, whilst at paragraphs 154 and 155 the Tribunal got somewhat closer to the correct approach in circumstances where the GMC placed its case squarely on rebutting coincidence, with respect to the question of relevance based on similarity between the allegations of Patient A and Patient B (dealt with in the final paragraph of the written reasons such that the test for cross-admissibility is not reached until the *very* end of the Tribunal's decision), the Tribunal adopted three different formulations in addressing that issue. All of which had the effect of elevating the test beyond that which in fact applies. Namely "insufficiently similar to find a pattern", "sufficiently distinctive to link what was allegedly said" and the presence of what the Tribunal termed "very substantial differences". None of those formulations reflect the position set out in the case law, which requires the fact finder to consider whether there is sufficient connection and similarity between the facts of the allegations (per *Chopra*).

62. In the circumstances set out above, I am satisfied that the Tribunal wrongly interpreted and applied the law with respect to cross-admissibility in this case. In the context of my conclusions with respect to Ground 1 and Ground 2, I am further satisfied that had the Tribunal not fallen into error in these respects, it might have made a different decision.

63. Having regard to the evidence it is difficult see how, properly directing itself as to the law, the Tribunal could have reached any other conclusion than that there was sufficient connection and similarity between the facts of the allegations made by Patient A and the allegations made by Patient B for the evidence in respect of each allegation to be cross admissible. Both patients alleged that the Registrant acted towards them in an inappropriate manner in a clinical setting. On a more granular level, both complainants were vulnerable, female, and patients. Both had attended Accident & Emergency in the context of neurological or mental health difficulties. Both Patient A and Patient B alleged that the Registrant spoke to them in a distinctive repetitive manner (whilst the Tribunal consistently referred to "hypnosis", neither patient had alleged this). Both Patient A and Patient B alleged the Registrant made them undress to an inappropriate extent and both alleged he behaved in a way that was sexually motivated. Both described controlling behaviour. It is likewise difficult to see on the face of it how, in circumstances where it was dealing with allegations from two patients attending different hospitals on different dates, who did not know each other and had never met, the Tribunal could have reached any other conclusion than that collusion or contamination was excluded as an explanation for the allegations made by Patient A and Patient B.

64. In these circumstances, had the Tribunal directed itself correctly on the issue of cross-admissibility I am satisfied that it may have reached a different conclusions on whether, in determining the allegations before the Tribunal, it should consider the evidence as a whole, whether the fact of two patients making allegations against the Registrant strengthened the case relating to the other and reduced the likelihood of there being an innocent explanation for them and whether the allegations relied on by the GMC were made out.

CONCLUSION

65. In conclusion, for the reasons set out above, I am satisfied that the appeal must be allowed on both grounds. Regrettably, this means that the decision of the Tribunal of 13 December 2024 must be quashed and the matter remitted for hearing by a differently

constituted Tribunal, with a direction that the Tribunal come to a fresh decision applying the correct legal approach to cross-admissibility. I will ask leading and junior counsel to draw an order accordingly.