



Neutral Citation Number: [2023] EWHC 2659 (Admin)

Case No: CO/1052/2023
AC/2023/LON/000222

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25/10/2023

Before :

MR JUSTICE CALVER

Between :

Dr Ravish Roy

Appellant

- and -

The General Medical Council

Respondent

Selva Ramasamy KC (instructed by Weightmans LLP) for the Appellant
Ivan Hare KC (instructed by GMC Legal) for the Respondent

Hearing dates: Tuesday 17 October 2023

Approved Judgment

This judgment was handed down remotely at 11:30am on 25 October 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Mr Justice Calver :

The appeal

1. By way of an Appellant's Notice dated 22 March 2023 Dr Roy ("Dr Roy") appeals as of right under s. 40 of the Medical Act 1983 ("the Act") against the determination of the Medical Practitioners Tribunal ("the Tribunal") on 21 February 2023 to erase his name from the register. The Respondent ("the GMC") is responsible for decisions of the Tribunal. The hearing before the Tribunal took place between 6-23 February 2023.

The nature of the allegations made against Dr Roy

2. The Tribunal summarised the allegations in the following terms in their Determination of Facts [2]-[3]:

"The Allegation that has led to Dr Roy's hearing relates to Dr Roy's contact with Ms A, between October 2001 and October 2007, at a time when she was vulnerable due to being between 10 and 15 years old.

It is alleged that Dr Roy developed a relationship with Ms A when she was approximately 12 years old initially via MSN Messenger. It is alleged that the relationship developed and went on to include sexual activity, falling short of sexual intercourse, but included simulated sex, intimate sexual contact and oral sex. It is the GMC's case that Dr Roy pursued an improper emotional relationship with Ms A, and that his actions were inappropriate and sexually motivated."

3. The relevant circumstances of the case can be summarised a little more fully as follows:
 - a) Dr Roy was born on 11 November 1982. He is a General Practitioner who qualified in 2007. The complainant ("Ms A") was born on 10 October 1991. Dr Roy is therefore approximately 9 years older than Ms A. Both come from a relatively close-knit community of Indian Bihari doctors living in the UK, and their families came to know each other through this connection.
 - b) From c.2001-2007 (with Ms A being under 16 years old for the period concerned, being between 10 and 15 years' old) Dr Roy was alleged to have had an inappropriate and sexually motivated relationship with Ms A. Dr Roy was a medical student for part of the period concerned.
 - c) In late 2011, Dr Roy and Ms A went on to have a short-lived full sexual relationship when Ms A was in her early 20s. That relationship ended in 2012, and they had very little contact after that.

- d) Ms A made her complaint to the GMC in June 2018 (i.e. approximately 6 years after her relationship with Dr Roy had ended, and approximately 11 years after the last events set out in the allegations). The police were subsequently informed, albeit not by Ms A. The police conducted an investigation (including taking an account from Ms A and interviewing Dr Roy), but in February 2020 they decided not to bring any criminal charges.
- e) In the proceedings before the Tribunal, the GMC's case against Dr Roy was based upon (i) the account of Ms A (in which she described inappropriate and/or sexual encounters and activity with Dr Roy when she was under 16); (ii) admissions by Dr Roy and inconsistencies in his evidence; and (iii) contemporaneous emails and text messages, including poems and rap song lyrics sent by Dr Roy to Ms A when she was under 16 years of age, some of which contained sexual language.
- f) Ms A described, in particular:
 - i) in November 2005 (when she was 14), Dr Roy kissing her on the lips (which she describes as "my first kiss") and groping her breasts under her bra;
 - ii) in December 2005 (when she was 14) Dr Roy climbing on top of her and simulating sex by thrusting his hips against her and licking her breasts;
 - iii) in or around December 2005 (when she was 14), Dr Roy digitally penetrating her vagina when they shared a bed, when Ms A's evidence was that "I had never put anything inside my vagina before" and, later that same day when in a car, digitally penetrating her vagina while sucking her breasts;
 - iv) in February 2006 (when she was 14) Dr Roy touching her vagina and putting her hand on his penis;
 - v) in July 2006 (when she was 14), Dr Roy climbing on top of her in sexual positions, moving her hands to his penis and asking her to perform oral sex;
 - vi) in January 2007 (when she was 15), performing oral sex on Dr Roy at his request, three times in one night.
- g) Dr Roy served a statement for the proceedings before the Tribunal. He also gave evidence. He accepted that the content of some of his communications with Ms A was inappropriate, but he denied any sexual activity with Ms A when she was under 16 and he denied the allegation that his conduct was sexually motivated.

The Tribunal's conclusions

- 4. The precise allegations against Dr Roy, as amended (being Allegations 2-16), are set out in paragraphs [7]-[17] of the Determination on Facts of the Tribunal. The Tribunal's detailed and careful Analysis of the evidence and its findings are set out at [32]-[175]. It concluded that:
 - a) one or more of Dr Roy's actions described in Allegations 2-4, which were found proved, were carried out for the purpose of pursuing an improper emotional relationship with Ms A when, in some cases, she was just 13 years old and Dr Roy was 21. This finding was based in part on admissions of Dr Roy that:
 - i) on one or more occasions between October 2001 and October 2007 he contacted Ms A via Microsoft Network Messenger ("MSN"), email and telephone;

- ii) during one or more of those communications Dr Roy called Ms A baby; honey; jaanu (“beloved”) and told her that he loved her.
- b) Allegations 2-16, which were also found proved, were:
- i) inappropriate because at all material times Ms A was vulnerable due to being between 10 and 15 years old, Dr Roy having admitted that Ms A was so vulnerable; and
 - ii) sexually motivated.
5. Allegations 4-16 which were found proved, concern an increasingly serious/inappropriate course of conduct on the part of Dr Roy over a period of time (which the GMC referred to as “grooming” behaviour) which, the Tribunal found, became increasingly sexualised towards Ms A despite the fact that she was only between 13-15 years of age¹ and which eventually led to sexual activity on a number of occasions (albeit short of full sexual intercourse) at a time when Dr Roy knew that Ms A was underage and by reason of her age, vulnerable. In particular the numerous relevant events took place:
- a) During 2003-2004, when communications took place via MSN;
 - b) Over a weekend in Cardiff in July 2005 when Ms A was still 13 years old at an event hosted by a medical association (“the Association”);
 - c) On or around 22 October 2005, when Ms A had just turned 14;
 - d) In November 2005 at a wedding reception, when Ms A was 14;
 - e) In December 2005 in Cardiff (Dr Roy admitted that he did meet Ms A in Cardiff), including at his house in Cardiff and then driving her back to Newcastle;
 - f) In December 2005 at Heathrow Airport (Dr Roy admitted that he did meet Ms A at Heathrow Airport) and then in his bedroom in Cardiff, Dr Roy having driven Ms A back there from the airport;
 - g) In December 2005 in Dr Roy’s car in London on the way back from Cardiff;
 - h) In February 2006 in Newcastle in Dr Roy’s car after Ms A left school;
 - i) In July 2006 at a weekend event run by the Association;
 - j) In July 2006 at Heathrow Airport;
 - k) In January 2007 in Regent Centre Metro Car Park
 - l) In telephone conversations from 2006.

The issue of credibility

6. In paragraph 28 of its Determination of Facts, the Tribunal explained as follows:

“28. At the outset of its deliberations the Tribunal recognised the irreconcilable differences between the evidence of Ms A and the evidence of Dr Roy who provided fundamentally

¹ Beginning with inappropriate language such as honey, baby and telling Ms A that he loved her; to telling her she was sexy, hugging and kissing her, telling her he wanted to have sex with her; to touching her breasts, simulating sex on top of her; licking her breasts; and then to digital penetration of her vagina, exposure of his penis, placing Ms A’s hands on his penis and asking her to suck his penis.

incompatible versions of events. In relation to the disputed paragraphs of the Allegation, the Tribunal recognised that there was no direct and specific corroborative evidence in relation to those disputed matters and that the issue of whether the GMC had discharged its burden of proof therefore crucially turned on the question of credibility and reliability of their respective evidence.”

Dr Roy’s ground of appeal

7. There is only one ground of appeal. It is that:

“The decision of the Tribunal was wrong because it made an erroneous assessment of the central matter of credibility – because it did not have available to it the important evidence of Ms B² (which affected the credibility and reliability of Ms A’s account).”

The fresh evidence

8. The reference to Ms B is a reference to the fact that on 14 March 2023 an old school friend of Ms A, namely Ms B, made contact with Dr Roy’s solicitors, with information which Selva Ramasamy KC, counsel for Dr Roy, argues is of significant importance to the case. Ms B has provided the court with a witness statement dated 21 March 2023. In summary she gives evidence as follows:
- a) Ms B had learned about this case from press reports after the Tribunal’s decision. She made contact with Dr Roy’s former representatives, and by that route she has now made contact with Dr Roy’s current solicitors ([38]).
 - b) She met Ms A at school when they were 11 years old. She describes herself as having been Ms A’s “best friend”, saying they were very close throughout school. She knew Ms A throughout the period covered by the charges ([3]-[4]), although she moved to another school for 2 years at the end of year 9 (when Ms A was 14-15 years old).
 - c) Ms B says that she and Ms A had a sexual experience together when they were around 14, when they kissed and Ms A digitally penetrated Ms B ([5]).
 - d) She expresses concern about Ms A’s credibility and reliability, including that Ms A had “a tendency to lie, embellish and tell stories” ([6]).
 - e) When they were aged 14, she was aware that Ms A said Dr Roy “was her boyfriend” ([14]). She says Ms A was in love with Dr Roy, thought she would eventually marry him, and would call him and discuss sexual things with him in Ms B’s presence and laugh about it ([17]).
 - f) At around that time (age 14) she knew that Ms A voluntarily ran away from school to visit the Appellant in Cardiff ([19]). She told Ms B that Dr Roy had driven her back to her parents’ house that night and then slept on the floor of her lounge.
 - g) She says “*I don’t believe that Ms A and Dr Roy had any sexual contact until we were in sixth form when she told me they had kissed... the kiss would have been when she as 16 or more likely 17... I remember that the kiss was a major development in their relationship because she was excited about it. Some time after the kiss she told me that she had performed oral sex on Rav*” ([20])

² Anonymised by agreement between the parties

- h) She says that after the incident of Ms A going to Cardiff, she only saw Dr Roy at one or two family events where there was no opportunity for there to have been any sexual conduct ([21]).
- i) She is confident that “*if anything at all sexual*” had happened between Ms A and Dr Roy, she would have known about it because Ms A openly discussed her sexual relationships and her relationship with Dr Roy. She explains that they were both very open with each other about their relationships ([23]).
- j) She describes how Ms A would “stalk” Dr Roy’s account on Facebook and how Ms A would show her pictures of Dr Roy’s girlfriends and “trash” them [(26)].
- k) In a text message sent to Ms B in April 2018, Ms A described Dr Roy as “my Aladdin” and that “*I ran away to Cardiff for my Aladdin*” [(28)].
- l) Ms B says that Ms A contacted her in July 2018 to ask her to provide evidence to support her complaint that Dr Roy was “a paedophile”. Ms B was shocked by that, because Ms A had only ever spoken about Dr Roy in a positive light. Ms B refused to provide a statement. She has exhibited some screenshots of text messages which confirm this, and she has also exhibited text messages, showing other communications with Ms A about Dr Roy and this case, in which she makes it clear that she does not want to assist Ms A in her complaint ([29]-[30]).
- m) She describes Ms A as “*very much obsessed with [Dr Roy] throughout their relationship and after*”. She offers her opinion that “*It seems very questionable to me, as a highly intelligent individual, it took Ms A some 8/9 years and a discussion with a close family friend for her to come to the conclusion that she was a victim of paedophilia. I don’t think she genuinely believes that herself.*” She speculates that Ms A’s complaint was “*probably borne out of jealousy for [Dr Roy’s] new relationship. I understand he got engaged or married at some point and I believe that could have been a catalyst for her wanting to pursue this*”. She says she felt it was her duty to come forward, especially as she has been a close friend of Ms A both before and after her relationship with Dr Roy ([36]).

The issues for the court

- 9. The parties are agreed that the Court must determine:
 - a) whether Ms B’s statement constitutes fresh evidence which should be received by the Court; and
 - b) If so, whether the decision of the Tribunal was wrong because it made an erroneous assessment of the central matter of credibility - because it did not have available to it the important evidence of Ms B which affected the credibility and reliability of Ms A’s account.

The relevant legal issues

- 10. Section 40 of the Act provides (as relevant):
 - “(1) *The following decisions are appealable decisions for the purposes of this section, that is to say—*
 - (a) *a decision of a Medical Practitioners Tribunal under section 35D above giving a direction for erasure, for suspension or for conditional registration or varying the conditions imposed by a direction for conditional registration;*

...

(4) A person in respect of whom an appealable decision falling within subsection (1) has been taken may, before the end of the period of 28 days beginning with the date on which notification of the decision was served under section 35E(1) above, or section 41(10) below, appeal against the decision to the relevant court.

...

(5) In [subsection] (4) ... above, “the relevant court”—

...

(c) in the case of any other person ... means the High Court of Justice in

England and Wales.

...

(7) On an appeal under this section from a Medical Practitioners Tribunal, the court may—

(a) dismiss the appeal;

(b) allow the appeal and quash the direction or variation appealed against;

(c) substitute for the direction or variation appealed against any other direction or variation which could have been given or made by a Medical Practitioners Tribunal; or

(d) remit the case to MPTS for them to arrange for a Medical Practitioners Tribunal to dispose of the case in accordance with the directions of the court, and may make such order as to costs (or, in Scotland, expenses) as it thinks fit.

...

(9) On an appeal under this section from a Medical Practitioners Tribunal, the General Council may appear as respondent; and for the purpose of enabling directions to be given as to the costs of any such appeal the Council shall be deemed to be a party thereto, whether they appear on the hearing of the appeal or not.”

11. Appeals under s. 40 of the Act are governed by CPR 52.21 which provides:

“(2) Unless it orders otherwise, the appeal court will not receive—

(a) oral evidence; or

(b) evidence which was not before the lower court.

(3) The appeal court will allow an appeal where the decision of the lower court was –

(a) wrong...”

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

“25.(1) The panel is concerned with the reputation and standing of the medical profession, rather than with the punishment of doctors;

(2) The judgment of the panel deserves respect as the body best qualified to judge what the profession expects of its members in matters of practice and the measure necessary to maintain the standards and reputation of the profession;

(3) The panel’s judgment should be afforded particular respect concerning standards of professional practice and treatment;

(4) The court’s function is not limited to review of the panel decision but it will not interfere with a decision unless persuaded that it was wrong. The court will, therefore, exercise a secondary judgment as to the application of the principles to the facts of the case before it.

26. To this list one can also add that the Panel is entitled and bound to consider aspects of the public interest that arise in any case: R (Harry) v GMC [2006] EWHC 2050 (Admin.).”

13. The law on the admission of fresh evidence under CPR 52.21(2) in such a case as the present is also well established. In *General Medical Council v Adeogba* [2016] EWCA Civ 162 at [26], Sir Brian Leveson P described the test as follows:

*“It is common ground that fresh evidence (whether written or oral) cannot be admitted as a matter of course: CPR r 52.11(2) mandates an order of the court before it will receive oral evidence or evidence which was not before the lower court. Prior to the introduction of the CPR, after there had been a trial on the merits, this court and others exercising a similar appellate jurisdiction would only receive fresh evidence or order a new trial if three conditions were met. These were identified in *Ladd v Marshall* [1954] 1 WLR 1489, 1491, per Denning LJ as follows:*

“first, it must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial; secondly,

the evidence must be such that, if given, it would probably have an important influence on the result of the case, though it need not be decisive; thirdly, the evidence must be such as is presumably to be believed, or in other words, it must be apparently credible, though it need not be incontrovertible.”

The court did not consider that this approach required to be modified in the light of the application of the overriding objective in CPR r. 1.1(1).

14. In the present case, the GMC accepts that, applying the *Ladd v Marshall* test, Ms B’s evidence could not have been obtained with reasonable diligence for use before the Tribunal by Dr Roy and that it meets the low threshold of being “apparently credible”. I asked Mr. Ramasamy KC whether he was submitting that since the statement of Ms B was apparently credible, necessarily it would probably have an important influence on the result of a case where credibility is in issue. He replied that he was not going that far. He was only submitting that this fact took him “some way along the road” in submitting that Ms B’s evidence would probably have such an impact but that it was necessary to analyse it as a whole. The issue is, therefore, whether the evidence of Ms B would probably have an important influence on the result of the case (though it need not be decisive).

Application of the legal principles in the present case

15. In his skilful and thoughtful submissions, Mr. Ramasamy KC submits that Ms B’s statement constitutes fresh evidence which should be received by the Court because it undermines the credibility of Ms A, and the Tribunal’s decision turned on its finding that Ms A was a credible witness, whose evidence they preferred to Dr Roy’s. Thus, at [28] the Tribunal stated as follows:

“At the outset of its deliberations the Tribunal recognised the irreconcilable differences between the evidence of Ms A and the evidence of Dr Roy who provided fundamentally incompatible versions of events. In relation to the disputed paragraphs of the Allegation, the Tribunal recognised that there was no direct and specific corroborative evidence in relation to those disputed matters and that the issue of whether the GMC had discharged its burden of proof therefore crucially turned on the question of credibility and reliability of their respective evidence.”

That passage, says Mr. Ramasamy KC, makes it clear that this was a case in which assessment of credibility was “crucial”.

16. He further points out that in its determination, the Tribunal repeatedly returned to the topic of its assessment of credibility. It is plain that on each occasion where it had to assess credibility, it did so in favour of Ms A. See for example [35]: “*The Tribunal considered Ms A to be credible and reliable. It did not consider her evidence was prone to embellishment or exaggeration.*” He argues that the Tribunal repeated the approach which it took, which was essentially: “*The Tribunal therefore concluded*

that the evidence of Ms A was credible and reliable... and was preferred to that of Dr Roy.”

17. Mr. Ramasamy KC also observes that Ms B refused to assist Ms A when she asked for her help, but then came forward voluntarily after reading about the outcome of the case before the Tribunal. She was not a witness whom Dr Roy set out to find himself. This, he suggests, makes her a particularly credible witness.
18. The next stage of Mr. Ramasamy KC’s analysis is that (he suggests) Ms B’s account contradicts the account of Ms A. The Tribunal found that Ms A’s evidence was not prone to embellishment or exaggeration, whereas Ms B’s witness statement suggests that Ms A did indeed embellish and exaggerate her evidence before the Tribunal. He relies upon a number of different paragraphs in Ms B’s statement for this submission.
19. In particular, he refers first to the fact that Ms B was unaware of any sexual activity between Ms A and Dr Roy prior to Ms A’s 16th birthday. That on its own, he contends, is striking, given the close nature of the relationship between Ms A and Ms B and this significantly undermines the credibility of Ms A’s claims that she and Dr Roy were having sexual contact prior to her 16th birthday. It is submitted that the particularly close nature of their friendship and their open and frank discussions make it almost inevitable that Ms A would have spoken openly about any sexual contact with the Appellant when she was under 16, had it happened. The lack of any such conversations undermines the credibility of Ms A’s evidence that there was sexual contact with the Appellant before she was 16.
20. Second, Mr. Ramasamy KC argues that “even more strikingly”, Ms B’s evidence is that when Ms A was in sixth form (i.e. after Ms A was 16) she spoke excitedly about kissing Dr Roy, and that this was “a major development in their relationship”. This, he argues, further powerful evidence which significantly undermines the credibility of Ms A’s claims that she and Dr Roy were having far more extensive sexual contact prior to her 16th birthday. Put simply, why is Ms A acting as if a kiss is exciting and a major development if prior to that kiss she and Dr Roy had been engaging in much greater sexual activity, including digital penetration and oral sex, as Ms A alleges?
21. Third, Ms A said in her witness statement before the Tribunal that when she visited him in Cardiff in December 2005:

“Dr Roy asked me to tell my family that I had depression and wanted to run away; he told me under no circumstances was I to say that I had visited him as he was my boyfriend. I was not depressed and I thought this suggestion was strange However Dr Roy did not want anyone to know that we were romantically involved. He told me he would get into a lot of trouble if I didn’t spin this narrative, so I was happy to follow his instructions.”
22. However, Mr. Ramasamy KC points out that Ms B states in paragraph 19 of her witness statement that Ms A told her about her visit to Dr Roy in Cardiff; that she went voluntarily and that he had driven her back to her parent’s house soon after she arrived and that he had slept on the floor in their lounge.

23. Fourth, Mr. Ramasamy KC referred me to the exchange between Ms A and Ms B on MSN Messenger on 13 April 2018. This exchange is explained as follows by Ms B in her witness statement:

“27. In April 2018 I sent [Ms A] a picture of ‘Alauddin Sweets’ in Whitechapel. The picture was a reference to an old boyfriend I’d had and been speaking to on MSN messenger [Exhibit Ms B2]. He’d called himself Alan but he was actually called Alauddin, and we joked about him being my first love.

28. In the messages [Ms A] and I joked about him being my first love and me changing my surname to his on my maths book. She replied “it’s fine I ran away to Cardiff for my Aladdin”. She was referring to [Dr Roy]”.

Yet only two months later, in June 2018, Ms A brought her complaint to the GMC against Dr Roy. Mr. Ramasamy KC contends that Ms A’s jokey response about her “Aladdin” undermines her credibility in respect of her allegation that Dr Roy had behaved inappropriately with her when she was under 16 years of age (“the Aladdin point”). He is her Aladdin, not a villain.

24. In short, Mr. Ramasamy concludes that the Tribunal only had the Appellant’s account and Ms A’s account. It knew nothing of what Ms B had to say. In those circumstances, this fresh evidence from Ms B would “probably have an important influence on the result of the case” and should be admitted.

Discussion

25. Attractively as Dr Roy’s case was put, I do not consider that Ms B’s evidence would probably have had an important influence on the result of the case and I do not admit it. My reasoning is as follows.
26. Mr. Ramasamy KC is right to observe that the issue of whether the GMC had discharged its burden of proof crucially turned on the question of credibility and reliability of the respective evidence of Ms A and Dr Roy. However, the LQC advised and the Tribunal observed at [16] of the Determination of Facts, by reference to *Suddock v NMC* [2015] EWHC 3612:

“Whilst demeanour is not an irrelevant factor for a court or tribunal to take into account, the way in which the witness’s evidence fits with any non-contentious evidence or agreed facts, and with contemporaneous documents, and the inherent probabilities and improbabilities of his or her account of events, as well as consistencies and inconsistencies (both internally, and with the evidence of others) are likely to be far more reliable indicators of where the truth lies. The decision-maker should therefore test the evidence against those yardsticks so far as is possible, before adding demeanour into the equation.”

27. To like effect at [17]:

“The LQC also reminded the Tribunal that it should not assess the witnesses credibility exclusively on their demeanour when giving evidence. He advised that their veracity should be tested by reference to objective facts, proved independently, and by reference to documents.”

28. It follows that whilst the Tribunal did indeed say that the issue of whether the GMC had discharged its burden of proof turned on the question of credibility and reliability of the respective evidence of Ms A and Dr Roy, that was to be determined against the background of any admissions by the parties; the contemporaneous documents; and any consistencies and inconsistencies in their evidence. That is precisely what the Tribunal went on to do: to test the evidence against those yardsticks. The consequence of that was that it did not believe Dr Roy’s account. I do not consider that it was wrong so to find; indeed, I consider that it was right so to find.

29. First and crucially, Dr Roy admitted that he had behaved inappropriately with Ms A over a number of years: in emails he sent to her from the age of 12; in 2005 (when she was 14) calling her his “baby”, “honey”; “jaanu” (to like effect); telling her he was deeply in love with her and could not stop thinking about her when she was 14; meeting her in Cardiff; then hugging and kissing her at Heathrow Airport and then driving her back to Cardiff when she was 14 years old; and encouraging her to use a webcam and then telling her that she had “amazing legs” (when she was 15). In his witness statement he admitted that around October 2005 (when she was 14 or had just turned 15)³:

“Regrettably we had become emotionally very close around this time and I may have expressed my strong feelings for her. I may have said that I loved her and could not stop thinking about her.”

30. Second, the contemporaneous documents are damning for Dr Roy. There is a full documentary record of a highly inappropriate essay, a poem and messages which he sent to Ms A over a considerable period of time when she was under-age, all of which the Tribunal rightly referred to and relied upon in finding that he was not a credible witness.

31. In particular, in August 2005, when Ms A was only 13 years old, he was sending her wholly inappropriate emails such as the following (noted by the Tribunal in [67] and [80]):

‘It was soooo nice to finally meet you. You surely didn't disappoint! You looked really nice in the sari on Saturday and even better on Sunday :-)

It felt really good to hug you after such a long while...

³ Tribunal Determination on Facts [78]

You looked at least 18 years old! Everyone was asking me if you were my girlfriend (lolz). I was tempted to say yes as you looked sooo damn good (lolz) ...

I would most definitely like to meet you again but the [the Association] is not the ideal place I guess. am a bit reserved in such a hostile environment.

I miss you! :-('

And:

** 'Foreskin issue? Hmm.....lol...oops*

** I don't masturbate (often!). Well, all boys do OK!!! Sorry!!! I don't know how I told you that!!! I feel so ashamed!!!*

** You DID look nice - perfect - that should not be a regret! Owhhh*

** Getting lip-gloss on my face was well worth it!!!*

** Yeah the wedding bells ringing were ironic especially since I'm buying you a platinum wedding ring soon!*

** You had 2 and a half glasses of wine!!! [Ms A]*

** My 4-pack is on its way! I do have rock hard abdominal muscles but the tendinous intersections are not apparent yet - but they will be - give me time (lol)*

I love you'

32. On any view, these are not platonic messages; they are highly sexualised messages.

33. Further, as the Tribunal states in [81]-[83] of the Determination on Facts, when Ms A was 13 and turning 14:

"81. On 13 September 2005, Dr Roy emailed Ms A (in which he edited a rap song for her):

'...I had dreams of fuckin a [Redacted] bitch lik [Ms A], wen i saw dat ass on da front of dat Cineblitz, and the article in that magazine said she likes ganstas love nasty thangs, so im im the glass house havin nasty dreams, good girls never give it up, but anything is possible if Chotu fucked Swastica...' The Game - Dreams (Lollllllllllllll)'

82. In 30 October 2005 Ms A suggested to Dr Roy that they ask each other 21 questions and she asked, amongst other questions:

'15) You really have a 7 inch dick and ginger pubes?? (Just wondering...!!)

...

20) *You prefer blow jobs where the girl goes all the way up to the top of the dick... (I need to know for future reference!! lol.)'*

83. *The Tribunal considered that both of these questions were likely to have been asked in response to comments made by Dr Roy to her... "*

34. When Ms A was 14, Dr Roy sent her an "Essay" on "Why Ravish Loves Ms A Unconditionally" (see the Tribunal's Determination on Facts [103]). That "Essay" included the following damning passages:

"The times in the alley way in Leicester and our numerous Cardiff- Newcastle-Heathrow Cardiff-London 'sessions' were so memorable and so meaningful. With every kiss, smile, laugh, look & touch I fall deeper in love with you.⁴ In the end we all die, but when I'm with you all I think about is you, me, and this one moment of pure bliss...

You are also one of the sexiest girls in the world and no-one turns me on more than you do. Evidence of that is the fact that I never wank over anyone else but you now! Your body defines perfection. Your rear-end deserves exclusive mention. You have a pair of legs that ought to be the envy of all women. Amerie, eat your heart out!..."

35. There are other contemporaneous references to Dr Roy kissing and hugging Ms A which are plainly more than mere fantasising on his part, referring to specific alley-way sessions. For example, on 25 February 2006 (when Ms A was 14) Dr Roy emailed Ms A as follows:

"...kissing and hugging you is a totally different experience to kissing and hugging anybody else. I hope you feel the same way as I do about it. There is a definite union that is beyond the scope of description by words. The times in the alley way in Leicester and our numerous Cardiff- Newcastle-Heathrow-Cardiff-London 'sessions' were so memorable and so meaningful. With every kiss, smile, laugh, look & touch I fall deeper in love with you. In the end we all die, but when I'm with you all I think about is you, me, and this one moment of pure bliss..." (emphasis added)

36. This gives the lie to the submission made on behalf of Dr Roy, based upon his evidence to the Tribunal (which it rejected) that Dr Roy's kissing and cuddling of Ms A when she was under-age was purely platonic. He continued to lie about this in cross-examination which was highly damaging to his credibility:

⁴ Emphasis added

Q You say:

“Our physical contact occasionally extended to a kiss on the cheek or a hug but it was never sexual until many years later when she was an adult.”

If it was no more than a kiss, an occasional kiss on the cheek or a hug, why did you describe it in terms of being a “totally different experience to kissing and hugging anybody else”?

A Because when you greet – for example, when you greet a stranger, you may kiss and hug them, but if I’m kissing and hugging a girl that I’m developing an infatuation for, it’s going to have a different feeling, it’s going to feel – you know, as compared to a stranger it’s going to feel different.”

37. The poem emailed by Dr Roy to Ms A on 31 December 2006 (when Ms A was 15) (quoted at the Determination on Facts [104]) also included this highly sexualised passage which strongly suggests that this was much more than mere fantasy:

*“There may be an age gap between us
But age is nothing but a mere number
That is exactly how I feel about the size of my cucumber!
...
Your body defines perfection
How can you not like your own reflection? I could write a poem on your appearance alone
But then you would be reading it until the cows come home
From you beautiful smile, lips, hair, teeth and freckles
To your sexy buttocks and thighs
Damn girl, I wish Gosforth wasn’t as far as City High
It simply don’t get no better
Baby with that figure
You would even look sexy in a loose sweater
My mid-summer night’s dream
Is to make you cream
Let’s stop pretending girl
I want to fuck you for real & make your toes curl
I fancise [sic] about you in your school uniform
Fucking you through that mini-skirt is why I was born
...
You know you love when I play in-between your legs
You beg for me to stop
Because you know where it would head
Straight into your mother’s bed!⁵
Let’s do it on your living room floor
Maybe on your living room couch
I really wanna hear you say ‘ouch’!
Perhaps on your dining table*

⁵ Emphasis added

*You know it's very stable
'Back seat of my jeep, let's swing an episode'
Missionary maybe but I would rather be rode
We can skip the meal
I just wanna hear you squeal
I wanna do you in the dark so hard
...
I wanna watch porn flicks with you
And then play copycat screw
I wanna read the Kamasutra with you too
Then we can both become how-to-fuck gurus
...
I just wanna hear you moan and groan
Girl let's bone!"*

38. The Tribunal rejected Dr Roy's wholly implausible explanations for the explicit wording of the poem (see its Determination of Facts at [105]-[107] and relied upon it to prefer Ms A's account over Dr Roy's. This is a common theme throughout the Determination and I consider that the Tribunal was fully entitled, indeed, correct, to find that this contemporaneous documentary material very firmly undermined Dr Roy's credibility and evidence:

"105. In oral evidence, Dr Roy sought to downplay the content of the Poem, stating that it was 'corny', 'did not make any sense' and was written 'to make Ms A laugh'. However, the Tribunal found Dr Roy's explanation to be implausible and considered that the overtly sexual nature of the Poem was consistent with his increasingly sexualised behaviour towards Ms A who was a minor and nine years younger than him.

106. The Tribunal has had regard to Dr Roy's evidence that the poem was taken from two rap songs, 'Fuck you tonight' and 'Backseat'. However, the Tribunal noted that only a total of four lines from the original songs had been included in the poem which remained overwhelmingly a poem in Dr Roy's own words, albeit based on rap music.

107. For the reasons set out earlier in this determination, the Tribunal preferred the account of Ms A over that of Dr Roy, which it found to be credible and reliable, and which was supported by the sexual nature of Dr Roy's messages to her."

39. As Ivan Hare KC, counsel for the GMC succinctly put it, the overtly sexual nature of the Poem was consistent with Dr Roy's increasingly sexualised behaviour towards Ms A, who was a minor and nine years younger than him.
40. Indeed, there is specific and overwhelming evidence in the contemporaneous documents and Dr Roy's admissions which belie the account given by him and strongly corroborate the account of Ms A on almost all of the allegations before the Tribunal, see the Tribunal's Determination on Facts at [40]-[45]; [48-55]; [57-62];

[65]-[69]; [71]-[73] ; [76]-[84]; [87]-[93]; [102]-[108]; [109]-[115] and [117]-[120]; [122]-[128]; [133]-[136]; [150]-[152]; [154]-[155]. Indeed, for every finding where the Tribunal preferred the evidence of Ms A over that of Dr Roy, the Tribunal relied upon one or more findings that Dr Roy's account was inconsistent with contemporaneous documents and/or his admissions.

41. Third, Dr Roy's evidence was inconsistent in a number of ways, as noted by the Tribunal, which undermined the credibility and reliability of his evidence generally: see the Determination on the Facts at [100].

“In addition, the Tribunal considered that Dr Roy's evidence was inconsistent on a number of central issues, for example he denied that he found Ms A beautiful notwithstanding the various messages in which he praised her beauty and described her as ‘one of the most beautiful girls in the world’. He also suggested that he was naïve at the time, having attended an all-boys school and having had a sheltered upbringing. The Tribunal also noted that Dr Roy was evasive when asked whether or not he fancied Ms A in that he initially admitted it, then subsequently denied it. The Tribunal noted that his denial was inconsistent with his message to Ms A of 26 July 2005 in which he stated ‘oh yeah & I do fancy you’. The Tribunal concluded that this inconsistency in relation to such an important aspect of the evidence undermined the credibility and reliability of his evidence generally”.

42. It follows that regardless of Ms B's statement, there was overwhelming corroborative evidence for Ms A's account on each of the various allegations. Nothing in Ms B's statement undermines these findings of the Tribunal.
43. Turning to the statement of Ms B, first, whilst it is true that she came forward of her own accord to give this evidence, she is not able to provide any direct evidence about the relationship between Dr Roy and Ms A at the relevant time in the sense that she did not witness any of the meetings between Ms A and Dr Roy which admittedly took place (referred to in paragraph 5 above). Indeed, she only met Dr Roy briefly on one occasion on 14 February 2006 when he gave her and Ms A a lift in his car. Her evidence is accordingly limited to this extent.
44. Second, Ms B's account is based entirely on her recollection of what she was told by Ms A (going back more than 20 years) to a time when Ms A was entirely under the influence of Dr Roy. Moreover, as Mr. Hare KC points out, whilst Ms B says they were still friends, it is a fact that Ms B and Ms A were not even at the same school at the time of some of the most serious allegations, as at the end of year 9 Ms B moved school for 2 years (Ms B's statement at [8]).
45. It follows that whilst Ms B's statement is apparently credible in the sense that there is no reason to believe that she is lying about anything that she says, it should be treated with caution in view of the long passage of time since the relevant events and her limited involvement in them.

46. Indeed, Ms B's lack of knowledge as to what was going on between Ms A and Dr Roy is well illustrated by paragraph 21 of her witness statement where she asserts:
"After the incident of [Ms A] going to Cardiff, she only saw Rav at one or two family events where there was no opportunity for there to have been any sexual contact. Although I was at a different school to [Ms A] at that time, we were still close friends and socialised together often and she would have told me if anything had developed further."

As Mr. Ramasamy KC was compelled to accept, this is simply wrong. There were numerous meetings between Ms A and Dr Roy after the Cardiff visit, with the opportunity for sexual contact: see paragraph 5 above.

47. Third, Ms B also says ([14]) that she *"first heard about Rav when we were in year 9, we would have been 14 at the time."* This demonstrates that Ms A had been keeping her relationship with Dr Roy secret for some time, as there was considerable inappropriate contact between Ms A and Dr Roy when Ms A was between 11-13 years of age, as the Tribunal found to be proved. This is consistent with Ms A's evidence that Dr Roy told her to keep their relationship secret.
48. Fourth, Ms B states ([20]) *"I don't believe they had any sexual contact until we were in sixth form...when she told me they had kissed... [Ms A] would have been 16 when we started sixth form and she would have turned 17 shortly after sixth form started. The kiss would have been 16 or more likely 17. I remember that the kiss was a major development in their relationship."*
49. This is very unlikely to be correct as it is undermined by the contemporaneous documents, see paragraphs 34-36 above. The relationship had become sexualised long before Ms A was 16 or 17. Furthermore, the suggestion that a kiss when Ms A was aged 16 or 17 was a "major development in their relationship" is again belied by the contemporaneous documents. At the very least, Ms A and Dr Roy were kissing when Ms A was 14.
50. Fifth, Ms B is also wrong to say *"After the incident of [Ms A] going to Cardiff, she only saw Rav at one or two family events where there was no opportunity for there to have been any sexual contact"* ([21]). It appears she is unaware of the many opportunities taken by Dr Roy after the Cardiff visit and described in paragraph 5 above. It follows that Ms B cannot in fact be *"confident that if anything at all sexual had happened with Rav I would have known about it"* ([23]). Her confidence is misplaced.
51. Sixth, paragraph 36 of Ms B's statement is unjustly critical of Ms A and fails to appreciate that it may take several years for victims of sexual abuse to come to terms with what has happened to them. Indeed, this paragraph of her statement, which expresses her subjective opinion, is not factual evidence at all. Indeed, it leaves the reader wondering what the motivation of Ms B may be for making these unfortunate observations. Mr. Ramasamy KC sensibly did not rely upon the observations in this paragraph of Ms B's statement.

52. Seventh, Ms B also asserts that Ms A did not tell her at the time (prior to turning 16) that she was having sexual relations with Dr Roy, and it is suggested that this undermines Ms A's credibility. However, I agree with Mr. Hare KC's submission that there is nothing surprising about the fact that Ms A did not disclose the details of the relationship to her friends and this fact, even if true, does not undermine the Tribunal's findings on credibility. Moreover, Ms A gave evidence to the Tribunal that Ms B in particular had suspicions about the nature of her relationship with Dr Roy. As she stated in her witness statement [8]:

"I kept our relationship a secret from my family as they would not have allowed it; I insisted we were just friends (see para 24). Dr Roy also wanted me to keep our relationship secret; the secrecy of our relationship was driven by him. He told me I was not allowed to tell anyone he was my boyfriend and that we were romantically involved. I had to maintain that we were just friends and that he was a 'brother-like' figure. A couple of my school friends at the time could tell he clearly liked me romantically, even before we were officially in a relationship, based on the frequency we spoke and the flirty comments he always made which they witnessed through MSN conversations – for example, [Ms B] and [a further name, anonymised for the purposes of this judgment]." (emphasis added)

53. Consistently with Ms A's evidence to the Tribunal, the contemporaneous documents show that Dr Roy attempted to cover up the nature of his relationship with Ms A. Thus, on 9 July 2005 Dr Roy told Ms A to delete emails he had sent her and asked why she hadn't done so yet (recited in the Determination on the Facts at [52]). Dr Roy also admitted that in December 2005 (when she was 14), he met Ms A in Cardiff and "told Ms A that she should say that she was 18 years old" if she bumped into one of his housemates. His unconvincing attempt to explain away this fact in cross examination was again very damaging to his credibility:

"Q Can you clarify for me, then, why you felt it necessary to suggest that if she was asked by anybody, for whatever reason they might ask, she should say she was 18?"

A Because two of my house... one or two of my housemates were at home and obviously, like you say, she has turned up unexpected, unannounced, and to avoid them jumping to the wrong conclusion that we were some sort of couple, I told her to say she is a friend visiting me for ... just for university experience. That is what I meant by that, as I put: "[did not] get unpleasant ideas about us" in the email.

Q Why make something up when you could just as easily have said, "She's a family friend from up north" – which was the truth. Why not just say that? Why contrive a point about age? Why was that relevant?"

A Because she ... I got the impression she didn't look 18. I mean, she didn't always look 18, it was only that time when she wore the sari, so I didn't want my friends to think that this underage girl has just turned up to our house and I have invited her in to ... for unlawful acts or anything like that of assault. I just said, "This girl's arrived unannounced," and my plan was ... My inclination was to drop her back and if anyone saw her just say ... just keep things simple: "Let's say that you're my friend and you're visiting me."

Q But why the age? You could have said, "It's just a friend who has come down to ---"

A Only because ---

Q "It's a family friend who has come to visit." Why reference to the age?

A Only because I thought she probably didn't look 18. You know, they might be thinking that I had brought an underage girl to my home for a specific reason, which I didn't want them to jump to the wrong conclusion."

In short, the Tribunal was fully entitled to find that Dr Roy wanted to conceal the true nature of his relationship with Ms A and that he made her aware of that fact and nothing that Ms B says in this respect undermines the Tribunal's findings on credibility: see the Tribunal's Determination on the Facts at [91]-[93].

54. Indeed, the level of control exerted by Dr Roy over Ms A was such that when her parents discovered that she had not attended school when she was 14 (and had instead crossed the country to visit Dr Roy) (see Ms A's witness statement at [29]):
"Dr Roy asked me to tell my family that I had depression and wanted to run away; he told me under no circumstances was I to say that I had visited him as he was my boyfriend. I was not depressed and I thought this suggestion was strange however Dr Roy did not want anyone to know that we were romantically involved. He told me he would get into a lot of trouble if I didn't spin this narrative, so I was happy to follow his instructions."
55. Mr. Ramasamy KC further sought to rely on Ms B's assertion (para [5]) that she and Ms A themselves had a sexual encounter when they were 14 years old which involved kissing and digital penetration of Ms B by Ms A. However, I agree with Mr. Hare that if anything, this supports Ms A's account that she had been sexualised by Dr Roy at this time (since in or around December 2005 when Ms A was 14 years old) since Dr Roy had digitally penetrated Ms A in his bed in Cardiff and again later in his car in London.
56. Finally, Mr. Ramasamy KC relied heavily upon the Aladdin point. I do not consider, however, that this undermines Ms A's credibility or the findings of the Tribunal on

credibility. It is apparent that Ms A approached the GMC in June 2018 with her complaint as a result of a discussion that took place with her mother's friend, a doctor whom she called her "aunt". That was explored with her in cross-examination before the Tribunal. I do not consider that had the jokey reference in a brief text exchange with her friend in April 2018 to Dr Roy having been her Aladdin when she ran away to Cardiff would probably have had an important influence on the result of the case in the light of all of the documentary and other evidential material referred to in this judgment which was highly damaging to Dr Roy's credibility and fully supportive of Ms A's credibility as a witness of truth. She did indeed believe he was her Aladdin when she was 14 years old and it did cause her to run away to Cardiff. Indeed, it may even be that she still has those feelings. But that in no way diminishes the seriously inappropriate conduct of Dr Roy and comes nowhere near undoing the Tribunal's careful findings on credibility in the light of the wealth of the documentary evidence, admissions and inconsistencies and lack of plausibility in Dr Roy's evidence to the Tribunal, all of which was very strongly supportive of the account of Ms A in virtually every respect.

57. Indeed, Mr. Ramasamy KC implicitly recognised this fact in being compelled to contend that Ms B's evidence might lead a Tribunal to find that Dr Roy's many incriminating written communications were fantasy on his part rather than expressions of the reality of what was happening at the time. I do not agree. There is, as a result, no likelihood of another Tribunal finding, by reference to Ms B's evidence, that Ms A's evidence on the allegations before the Tribunal was prone to embellishment or exaggeration.

58. In short, there is nothing in the statement of Ms B which calls into question the Tribunal's findings of credibility and it would not "probably have an important influence on the result of the case." As Leveson LJ stated in *Southall v GMC* [2010] EWCA Civ 407 at [47]:

"First as a matter of general law, it is very well established that findings of primary fact, particularly if founded upon an assessment of the credibility of witnesses, are virtually unassailable... in Gupta v General Medical Council [2002] 1 WLR 1691, Lord Rodger put the matter this way (at [10]...):

"In all such cases the appeal court readily acknowledges that the first instance body enjoys an advantage which the appeal court does not have, precisely because that body is in a better position to judge the credibility and reliability of the evidence given by the witnesses. In some appeals that advantage may not be significant since the witnesses' credibility and reliability are not in issue. But in many cases the advantage is very significant and the appeal court recognises that it should accordingly be slow to interfere with the decisions on matters of fact taken by the first instance body. This reluctance to interfere is not due to any lack of jurisdiction to do so. Rather, in exercising its full jurisdiction, the appeal court acknowledges that, if the first instance body has observed the witnesses and weighed their evidence, its decision on such matters is more likely to be correct than any decision of

a court which cannot deploy those factors when assessing the position." (emphasis added)

59. That is the position in the instant case, with or without the evidence of Ms B, and I accordingly refuse to allow Dr Roy to adduce the evidence of Ms B on this appeal. In these circumstances, it follows that, as Dr Roy concedes, the appeal must be dismissed.

Costs

60. I have received costs schedules from the parties and I am asked to summarily assess costs. Mr. Ramasamy KC objects to the GMC's costs schedule in two respects:
- a) It was unnecessary to have 3 solicitors present in court;
 - b) The court sat for half a day but costs for a full day are claimed by the GMC.
61. I accept these criticisms. I consider that Dr Roy should pay the GMC's cost in the sum of £12,000 and I summarily assess them in that sum, payable within 14 days, but with liberty to Dr Roy to apply as to the method and timing of payment.