

**Health Professions Council
Conduct and Competence Committee
Simon Harrison CHRE Referral**

Executive Summary and Recommendations

1. Introduction

On 16th June 2005 a panel of the Conduct and Competence Committee heard an allegation about the fitness to practise of Simon Harrison, a physiotherapist. The allegation was as follows:

Your fitness to practise as a registered health professional is impaired by reason of your misconduct whilst employed at the Wrexham Maelor Hospital; in particular

- 1 On a date between 28 June 2004 and 5 July 2004 you put your arm around Miss A and put her head onto your shoulder.
- 2 On a date between 28 June 2004 and 5 July 2004 you put your arms around Miss A, hugging her and placing your head on her chest
- 3 On 5 July 2004 you
 - a) Outstretched your hands towards Miss A's breasts
 - b) Made various inappropriate comments of a sexual nature to Miss A in front of a patient
 - c) Made inappropriate comments in relation to a patient's genitalia
- 4 On a date between 28 June 2004 and 5 July 2004 you attended at work smelling of alcohol
- 5 On a date between 28 June 2004 and 5 July 2004 you attended at work smelling of alcohol
- 6 On 5 July 2004 you attended at work smelling of alcohol.

The panel determined that the allegation was well founded and imposed a caution order for three years. The notice of decision and order and a transcript of this hearing is provided.

That decision was challenged by the Council for Healthcare Regulatory Excellence pursuant to its powers under the NHS Reform and Health Care Professions Act 2002. s29(4) of the 2002 Act provides that, if CRHE feel that a relevant decision was unduly lenient or should not have been made and that it is desirable for the protection of members of the public, it may refer that decision to the appropriate court (High Court or Court of Session).

The case was considered by the Administrative Court on 30th March 2006. The purpose of the this hearing was to confirm the consent order that had been agreed by CHRE, HPC and Mr Harrison. A copy of the consent order is also provided.

A reconvened panel of the Conduct and Competence Committee heard the remitted case on 4th August 2006. The case was heard by the same panel which considered the case originally. On this occasion the panel imposed a suspension order for a period of six months.

2. Decision

This paper is for discussion

3. Background information

None

4. Resource implications

None

5. Financial implications

HPC was ordered to pay CHRE costs up to 5th September. This was for three reasons:

1. The First Respondent (HPC) is responsible for an error made by its CCC even though they are an independent disciplinary committee;
2. the First Respondent did not concede until 5th September 2005; and
3. proceedings are and always were necessary to obtain the consent order that has now been made.

In effect HPC was ordered to pay all of CHRE's costs between 16th July 2005 (the date from which CHRE could consider the case) and 5th September (the date HPC offered to dispose of the case via consent. The judge ordered that HPC pay CHRE costs of £13,703.28.

HPC was further ordered to pay the CHRE's costs for the hearing that took place on 30th March 2006. The amount payable was £7,500.

Therefore, the total amount paid to CHRE was £21,203.28.

HPC also incurred in £16,003.74 in legal costs.

These figures do not include the cost of the hearings on 16th June 2005 and 4th August 2006

6. Background papers

None

7. Appendices

Notice and Decision and Order - 16th June 2005

Transcript of hearing – 16th June 2005

Consent Order – 30th March 2006

Note of Administrative Court Hearing – 30th March 2006
Notice of Decision and Order – 2nd August 2006

8. Date of paper

25th August 2006

BEFORE THE CONDUCT AND COMPETENCE COMMITTEE

of the

1. **HEALTH PROFESSIONS COUNCIL**

held at
The Westminster Hotel,
City Road,
Chester.

on

Thursday 16 June 2005

In the matter of

SIMON R HARRISON
PH43175

2. **THE PANEL**

MR R CLEGG (Chairman)
MR M PROBERT
MR R HORWOOD

MS A HUGHES (Legal Assessor)
MS E SEALL (Hearing Officer)

MS N HILL, instructed by Kingsley Napley, Solicitors, appeared on behalf of the Council.

MS S SLEEMAN, Counsel, represented Mr Harrison, who was present.

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THE CHAIRMAN: Good morning everybody. My name is Robert Clegg. I am a Lay Partner of the Health Professions Council and I am chairing the proceedings this morning. On my right is Richard Horwood, who is a physiotherapist. On my left is Malcolm Probert, who is a Lay Partner to the HPC.

I would ask everybody else, please, to introduce themselves and explain their role.

THE LEGAL ASSESSOR: My name is Angela Hughes and I am the Legal Assessor. My role is to advise the Panel on law and procedure and to assist the Panel in relation to those matters and to ensure the proceedings are conducted fairly and properly.

I am independent of the Panel and any advice I give to the Panel will be placed on the record. I may also be asked to advise the Panel on questions of law if I retire with the Panel. If that happens, when we return I will state for the record any advice I have given as soon as the Panel reconvenes. If for any reason the Panel does not reconvene, I will record that advice in writing and provide copies for the parties.

Once the Panel has reached its decision I may also be asked to help to draft that decision to ensure that it complies with any relevant law and to ensure that the reasons are clearly set out. If I am asked to do so, it will only be after the Panel has reached a decision. I will not take part in the decision-making process.

MS SEALL: My name is Eve Seall. I am a Case Manager for the HPC and the Hearing Officer for today.

MR HARRISON: Simon Harrison, physiotherapist and the Defendant.

MS SLEEMAN: I am Sue Sleeman. I am Counsel for Mr Harrison.

MS HILL: Good morning. I am Nicola Hill from Kingsley Napley, Solicitors and I appear on behalf of the Health Professions Council this morning.

THE CHAIRMAN: Right. I appreciate this is difficult, Mr Harrison, but try and make yourself as comfortable as possible as we go through the process.

MS SLEEMAN: Sir, perhaps just on that point I could raise one issue. Mr Harrison has been diagnosed as suffering from Barrett's oesophagus, which is a condition which has associated symptoms of things like heartburn and indigestion of some sort. It is exacerbated by stress and he is already quite clearly suffering from some discomfort this morning. I have just indicated to him if he needs a break at any point simply to indicate to me.

THE CHAIRMAN: It is not a problem at all. Just let us know. Nicola.

MS HILL: I was going to start by asking Ms Seall to assist with the registration details.

3. EVE SEALL Affirmed

Examined by MS HILL

Q Can you advise the Panel, please, of Mr Harrison's registration details?

A The registration name is Mr Simon R Harrison. The registration number PH43175. The registered address is 53, York Road, Middlesbrough, Cleveland, United Kingdom, TS5 6LJ. His date of birth is 21.5.59.

Q When was he first registered, please?

A The first date of registration was 5.7.91.

MS HILL: Thank you very much. Sir, if I can deal with service quickly this way this morning rather than taking Ms Seall through it. The Notice of Allegation appears in your bundle at page 1. You will see it is dated 18 January and you will see it was sent to Mr Harrison at his address as it appears on the Register. The notice of today's hearing is dated 11 March. That appears at page 3 in your bundle and, again, that was sent to Mr Harrison at his address as it appears on the Register, as it should do. I can advise you that both Mr Harrison and his representatives had this bundle on 20 May and again we have sent that to his registered address.

MS SEALL: That is correct, sir, yes.

THE CHAIRMAN: Thank you.

MS HILL: Sir I wonder if, before we begin, I may make one brief preliminary application and that is this. You have seen the nature of the allegation today and I wonder if we may refer to the Complainant as Ms A rather than by her full name. As you know, this is a public hearing and her name will appear on the website or in any transcripts and I wonder if we can, therefore, can call her Ms A, due to the nature of the allegations, just to protect her in the future. I understand Ms Sleeman does not have any objections to that.

MS SLEEMAN: No, I have no objection to that.

MS HILL: Perhaps if we can all try and call her Ms A and if there are any slip-ups, perhaps the Shorthand Writer would be kind enough just to call her Ms A.

THE CHAIRMAN: If we fail will you correct us, please?

MS HILL: Sir, if I can open in this way. Mr Harrison is a registered health professional. You have heard he is a physiotherapist and has been so registered since 5 July 1991. As you are aware, today it is the Council's case, it is our application and we must satisfy you that Simon Harrison's fitness to practise is impaired by reason of his misconduct whilst employed at the Wrexham Maelor Hospital. I will remind you that the burden is upon the Council to prove our case on the balance of probabilities.

Sir, with that in mind I understand that you have had a Particulars document handed to you this morning.

THE CHAIRMAN: Yes.

MS HILL: Would you like Ms Seall to read those out or can I just indicate to you that, through his representative, Mr Harrison accepts the facts of allegation number 1 but does not accept that this leads to misconduct or that his fitness to practise is impaired.

MS SLEEMAN: And that the facts of the remaining charges are not admitted.

MS HILL: Yes, the facts of the remaining charges are not admitted. Sir, do you need them to be read out or are you happy to proceed on that basis?

THE CHAIRMAN: We have all read them, thank you.

MS HILL: As you know today, sir, I need to prove to you that each of the allegations is made out, that they amount to misconduct and that, as a reason of that misconduct, Mr Harrison's fitness to practise is impaired. So far Mr Harrison is prepared to accept just the facts of the first allegation, nothing more.

Sir, Mr Harrison commenced work at the Wrexham Maelor Hospital as a Senior 2 locum physiotherapist in Care of the Elderly on 10 May 2004. He had an open contract as the department at that time were so short staffed.

On 5 July 2004 various examples of inappropriate behaviour are alleged to have taken place and following this Mr Harrison was dismissed from employment. The inappropriate actions are alleged to have taken place both on 5 July 2004 and also during the previous week.

The inappropriate actions are that that on one occasion he put his arm around Ms A and put her head on to his shoulder; on a dated between 28 June and 5 July he put his arms around Ms A, hugging her, put his head on her chest - this was in the middle of the corridor; on 5 July firstly he put his hands outstretched to Ms A's breasts so that she thought he was going to touch her; he prevented her from leaving the space she was in, in between the patient's bed, the sink and the wall; he discussed his sex life in front of Ms A and a female patient, stating that he would require an instruction manual on how to operate female bits; during this conversation he said that he had not seen any female bits for a long time except for the patients', at which point he gestured towards the patient opposite and stated that her bits were wrinkly; he continued by asking Ms A if she had an instruction manual for how her bits operated and he stated that he might visit a sex shop.

On two occasions in the first week he attended at work smelling of alcohol and on the specific date, 5 July, he attended at work smelling of alcohol.

Sir, you have before you in the bundle, aside from the notices we have already looked at, witness statements from Ms A, Glenys Hodgson, Tudor Smith and Carol Jones. They are all here present today to give live evidence except Glenys Hodgson, as Mr Harrison's representatives were kind enough to indicate earlier on during the week that that evidence is accepted and can be read.

Sir, having reached that stage, please can I call Ms A to give her evidence.

MS SLEEMAN: Sir, my client has prepared a sketch plan of the ward where the incident - the third of the incidents, the one on 5 July - is said to have taken place. We do not say it is

entirely accurate in every detail but it might be of assistance in understanding the evidence. I think one has already been shown to Ms A.

4. MS A Affirmed

(The Chairman introduced the Panel)

Examined by MS HILL

Q Can I ask you to turn to the bundle in front of you and look at page 4? You will see your statement appears between pages 4 and 7. You have signed it at page 7. Can you confirm that?

A Yes.

Q Do you agree with the contents of your statement as it appears?

A Yes.

Q Thank you very much. Perhaps I can just ask you to begin by explaining your professional history, which you have set out, just very briefly, in your first paragraph?

A Yes. I qualified as an occupational therapist in 1997. I began working in the Wrexham Maelor in June 2004. Prior to that I had worked in Oswestry, Shrewsbury, Welshpool - various places and I was actually a locum occupational therapist at the time.

Q You then go on to say that in the week beginning 28 June 2004 you were covering for a colleague in the Morris Ward and that you had not worked closely with Simon Harrison before. Did you know of him before?

A I had seen him around the department briefly, but not worked closely with him, no.

Q Can you tell us what happened on the morning handover in relation to the first incident, please?

A Yes. I was sat at the Nurses' Station. I had a cold and was not feeling very well. I mentioned this and Simon was sat next to me and put his arm around me and pulled my head on to his shoulder and sort of did a "There, there", thing, which I did not feel wonderfully comfortable with, I did not know him that well. I just passed it off as a strange incident, really. I did feel that I smelt alcohol on him at that point, though.

Q That is what I wanted to ask you about. Are you able to enlarge on that a little bit? Was it a very strong smell, a passing smell? Are you able to elaborate any more?

A A smell as he exhaled.

Q OK. What did you do after this incident that morning?

A We had a morning handover from the ward staff.

Q Then you mentioned that you spoke to some other physiotherapist colleagues?

A I did and particularly people that worked with him and they mentioned that they had also smelt alcohol on him in the morning.

Q Can we then move to the second incident? You said later you were walking down the main corridor just past the canteen. Can you tell us what happened on this occasion, please?

A I was walking down the corridor. Simon was walking towards me. He began walking in quite a laboured fashion as if he was tired. He then walked up to me and put his arms around me and put his head on my chest with his head facing *that* way and hugged me in the middle of the corridor, which I felt quite uncomfortable with.

Q How long did he hug you for?

A About 30 seconds, I think.

Q Did you hug him back?

A No.

Q How did that make you feel?

A Uncomfortable.

Q Can I ask you again to explain how his head was positioned, as it were?

A *Here.*

Q Which way was his nose facing?

A *That way. (Demonstrated)*

Q Did he say anything at this time?

A That he was tired or overworked or something along those lines. I did not really respond wonderfully. I just said, "Oh well, never mind", sort of thing, and continued down the corridor. I just found it quite invasive, really.

Q Has anything like that ever happened to you at work before?

A No.

Q You say you felt quite surprised by his behaviour?

A Yes because I did not know him that well and people I do not know do not normally come up and hug me in the middle of the corridor.

Q What time of the day did that happen?

A It was before lunch or around that time, mid-morning.

Q Again you say you could smell alcohol?

A Yes, because he was so close.

Q You smelt that for the whole 30 seconds?

A Yes.

Q Did you tell anyone about the incident?

A I did not. At that time I was not sure what to do I was relatively new at Wrexham, I was a locum temporary post and I was not sure whether or not it was anything that was significant enough to say about, really. I just felt uncomfortable with it.

Q May we then move, please, to 5 July. You described that you were in bay one of the Morris Ward and we have got a map before you which Mr Harrison has drawn that you have seen this morning. Can you show us where you were standing? (*Demonstrated*)

THE CHAIRMAN: Against this first bed? There is a bed in there?

A There is a sink *there* and the beds are actually against the wall.

Q Sink near the door?

A There is a sink *here*.

MS HILL: Do you want to mark where you were standing and where the sink is?

A The beds actually go back against the wall. (*Witness marked the plan*) I was *there*, the sink is *there* and the bed actually goes against the wall.

THE CHAIRMAN: Right, the other way round, you mean?

A No, that is the headboard and the footboard, *there*. It is actually nearer. It is quite a narrow space and that is the wall. The beds are not free-standing. They are actually to the wall, the back of them.

MS SLEEMAN: Can I just see the plan? It is at the wrong angle for me.

THE CHAIRMAN: I think it is implied that given the beds, the headboards are back to the wall. Just for information, how many beds are there on this ward? There is an eight-bedded bay, a six-bedded bay and are these single or twin bedded?

A No, there are three side rooms and another two six-bedded bays, I think. I think there are usually about 27 beds on a ward in Maelor.

Q I was going to say, it is a fairly small ward.

A These two pieces, *that* bay and *that* bay, actually they go back. They go back *that* way.

Q *These* come out? They are a cruciform?

A Yes.

THE CHAIRMAN: I am with you. Thank you.

MS HILL: If I can then take you back to your statement. You have indicated where you were standing with the cross. Why were you standing there at that time?

A I had just finished speaking to a staff nurse about a patient and had gone to wash my hands before I left the ward.

Q Where did the nurse go?

A She walked out of the bay.

Q You then say that Simon Harrison came over and began talking to you about your cold. Can you tell us about that?

A I was sounding rather hoarse and chesty and he suggested that perhaps I would benefit from having some chest physio. He was stood at the end of the bed and put his hands out towards my breasts and got quite close to me, like *that*.

Q I have got to take you back. How far away were his hands from your chest?

A About *here*. (*Demonstrated*)

Q How far away was his body from you?

A *Here*. (*Demonstrated*)

Q OK. If I could ask you just to go on, then. What happened next?

A I must have looked surprised because he then laughed and dropped his hands and made a joke that if he had actually touched me that he would still be on the floor and that I would have hit him.

Q Can I just ask you, what did you think at the time that he did it, when he put his hands up?

A I thought he was actually going to touch me because he got so close and I did actually feel - because I was at the end of the bed by the sink and he was in front of me, I felt quite intimidated.

Q Were you able to get away?

A No.

Q Can I take you back to the diagram. You have said that all six beds were occupied?

A Yes.

Q Everybody has had their breakfast, it is about quarter-to nine in the morning - you say that in your statement - but you are not sure what they could or could not see in relation to what went on?

A No, because they were all elderly patients and obviously some people are hearing and visually impaired at that age.

THE CHAIRMAN: Indeed, and even much younger!

MS HILL: Were there any nursing staff in the bay with you at the time or any other medical staff at all?

A No.

Q It was just you and Mr Harrison?

A Yes.

Q After the incident when he has dropped his hands and said to you, "Gosh, I think you would have kicked me if I had actually touched you", what did you do next?

A I picked up my file and was trying to exit the ward but he was still stood in the way between the ward and the bed, so I could not actually move past him without physically moving past him and so I stood where I was. He then adopted a more relaxed posture but was still stood in the way and continued the conversation.

Q You say that he actually moved in front of you so that you could not get out?

A Yes.

Q You say that in your statement?

A Yes.

Q He then began discussing his sex life while still in this narrow space by the occupied bed. He then says in a jokey manner that he had not had sex for a while and you do say that everything he said was in a jokey manner with a smile on his face?

A Yes.

Q Why did you feel that it was inappropriate, then? Why did you feel intimidated?

A Because of his actions, because I did not know him very well and because of his invading my personal space, talking about things that I did not feel were appropriate for a work colleague. I did not know how to deal with it because I had never had to deal with that before. I felt intimidated and I did not feel very comfortable with the situation at all but I was not sure how to deal with it, so I acted quite passively, probably.

Q There is perhaps one thing I should ask you. Would this sort of thing be appropriate from any of your colleagues, perhaps if you had known them longer?

A I do not think so, no.

Q He then, once he said that he had not had sex for a while, what else did he go on to say, in that paragraph 11?

A He was saying that he would not know how genitalia operated now on a woman and that the only ones he had seen recently had been a patient's and he actually gestured to the bed opposite, which is this bed *here*, and saying the only ones he had seen recently were that patient's and that they were wrinkly and the lady was actually awake and in her bed at the time. He then asked me if I had an instruction manual for how my parts operated and I said, 'No.' I just found it very inappropriate, really, to be discussing his sex life and a patient's genitals in the middle of an occupied bay, at all

Q Then you say that he finished off by saying that he might need to visit a sex shop?

A Yes.

Q At that point you were able to leave?

A Yes.

Q What did you feel as you left? What was running through your head?

A I was upset. I was quite shocked, really, that I had just had that conversation with somebody and to have somebody get so physically close to me. I did not feel very comfortable at all about the situation and I felt that I needed to speak to somebody about it. Because of the three instances it had escalated in terms of what had happened and I did not really feel very comfortable working with him.

Q Can I ask you, were you able to smell alcohol on the third occasion?

A Yes.

Q There is the smell of alcohol again. You say you were very shaken?

A Yes.

Q What did you do next? Who did you go and tell?

A I went and spoke to my line manager, Glenys Hodgson.

Q What did you tell her?

A That I had had an incident that morning with Simon Harrison and briefly outlined the details and at that point she went to speak to Carol, the physio manager.

Q You said in your statement you were concerned about the permanent OT. Can you tell us a bit about that?

A Yes, the permanent member of staff that normally works on that ward is a 21 year old OT and she was off sick and I was covering that ward that I do not normally work on and she had told me previously that Simon had asked for her home phone number and I felt concerned about how she would deal with his behaviour if he was behaving in a similar manner towards her.

Q If I can just finish off by asking you to explain what happened. Glenys Hodgson, you say, went to speak to Carol Jones. What happened then?

A Tudor Smith came in and spoke to me about the incidents.

Q Who is he?

A He is the Clinical Superintendent who was managing Simon. Then I relayed what had happened to me and he stated that there had been some previous incidents before but they had not been officially reported, and then went to speak to Carol Jones. At that point I was asked to remain in the office and they came back some time later to tell me that the situation had been resolved and that he was no longer going to be working there.

Q Can I ask you some more general questions? Obviously you had to work with him during the whole week. How did you approach that?

A In my role I was not just based on one ward, I am based on several, so my actual contact with him was limited but I just remained very professional, really, and saw my patients and tried to avoid contact.

Q You will understand that Mr Harrison is unlikely to agree with a lot of what you have said and therefore the Panel have got to decide which evidence they prefer, your evidence or Mr Harrison's evidence. Was there ever any altercation or any incident that would turn you against Mr Harrison or would suggest that you do not like him professionally and that you want to bring an allegation of this type?

A No. I had not worked with Mr Harrison previously, I did not know him very well. There was no personal reason behind bringing this up. It was just that I professionally felt that it needed to be dealt with.

Q Is there any way that you could have been mistaken in relation to Mr Harrison's actions towards you?

A I do not think so. You act off how somebody is making you feel and their body language and their behaviour and I felt that it was inappropriate behaviour.

MS HILL: Thank you very much. I do not have any further questions for you but no doubt Ms Sleeman will have some questions for you.

THE CHAIRMAN: Just before we do, there are a couple of points of clarification. Just so I am absolutely clear, this six-bedded bay, the sink is near the door. You suggest that the space between the sink and the bed end is very limited and therefore you were obstructed?

A Yes.

Q Is the sink within the curtilage of the bed screen?

A Yes.

Q Is that the only sink in the six-bedded area?

A Yes.

Q But it is within the...

A If you pull the curtains round the end of the bed they probably come to the sink.

Q So it is very limited?

A It is probably no more than *that* between the sink and the side of the bed.

Q There was actually a patient in that bed?

A Yes.

Q All the time?

A Yes.

5. Cross-examined by MS SLEEMAN

Q Ms A, I am not going to ask you very much about the first incident because you probably know Mr Harrison accepts that the incident occurred, but I just want to establish some of the background circumstances. This happened at handover time, did it not?

A The first incident?

Q The first incident?

A Yes.

Q 8.45, something like that?

A Something like that.

Q That is quite a busy time on the ward, is it not? There are quite a number of staff around, patients are being bathed and dressed and breakfasted, are they not?

A Yes.

Q He accepts that he did make this gesture which brought your head briefly on to his shoulder and his recollection is that he said something like, "Poor you, I hope you're better soon." Does that accord with your recollection?

A (*No audible response*)

Q And you did not make any response at the time, did you?

A No.

Q The second incident then, the one in the corridor by the canteen, this was around about lunchtime, was it not? That is why you were near the canteen, probably?

A Yes.

Q Again that is a busy time, is it not? There are people coming and going?

A There were not actually very many people on the corridor at that time.

Q But there were people?

A Not within the immediate vicinity but yes, there would be people on the corridor.

Q It is right that there was some sort of exchange between you, is it not? He told you that he was very tired, did he not and it is right, he accepted, he did very briefly put his head, he says on your shoulder, *here*. That is right, is it not?

A It was *here*.

Q The reason he did that was a gesture of simply demonstrating how tired he was, as if he was going to sleep, was it not? That was the context?

A It was the context but it was not acceptable to put somebody in my close physical space that I did not know very well and put it on my body.

Q But you accept it was clear that was the context? He was saying, "I am very tired" and he was effectively motioning to lay his head down to go to sleep?

A On my chest, yes.

Q You said, I think, that it was clear that he was joking?

A That he had a jokey manner throughout the entire thing. I do not think he had a concept of how his actions may be construed.

Q It is not right, though, that he hugged you, is it?

A He put his arms around me and put his head on my chest.

Q I suggest he did not do that, it was on your shoulder?

A I was the one that had his head on my chest and he put his arms around me and I construe that as a hug.

Q It is not really credible, is it, that anyone would put their arms around and hug somebody in a public corridor in a hospital, someone they do not know?

A Well, that is what happened.

Q Moving then to the incident on 5 July. If we can perhaps just go back to the plan, I want to be absolutely clear. We can probably dispense with the second side of the plan because it seems to me that what we are talking about occurred on this page, if I can just fold it over. I just want to check that I am clear about this. You say that the sink, as I understand it, is *here*?

A Yes.

Q And you were standing *here*?

A Yes.

Q Where, then, do you say that Mr Harrison was?
A He was actually *there*, between the sink and - the bed is actually closer to the sink and he was between the foot of the bed and the edge of the sink.

Q So you say he was a bit further out into this area than you were? You were nearer the back wall than he was?

A No, I was not near the back wall. I was near the foot of the bed between the sink and the foot of the bed and he was *here*.

Q So he was further out into the ward than you were?
A Slightly.

Q Do you say all six beds were occupied?
A Yes.

Q Again, this took place at handover time, did it not, 8.45?
A There was not, actually handover, I do not think, at the time.

Q But it was that time of day?
A It was that time of day, yes.

Q So far as you can recall, I think you said that there were not any other staff around. Simon Harrison's recollection is that there was a Staff Nurse around. Do you remember that?
A There was a Staff Nurse I spoke to prior to going to the sink but she walked out of the bay.

Q It is right, is it not, that at this time of day again it is a busy time, patients are being attended to. Anyone could walk in at any moment, could they not?
A They could but they did not during the incident.

Q Similarly to the second incident, Mr Harrison accepts that there is an element of truth in what you have described but he does not accept that it went to the full extent as you describe it. He accepts that there was a comment about chest physio but he says what happened is he simply said to you, reference to the conversation you had had earlier about your bad cold, he said that he simply said to you, "You are sounding better, you don't need chest physio" and just put his hands up like that as a gesture to say, "You don't need it". That is right, is it not?
A No.

Q It was clear, was it not, from this discussion, that it was a reference back to the conversation you had had the previous week about your heavy cold?
A The reference to the chest physio was obviously a reference to my cold. The conversation moving on to a patient's genitalia, I failed to see the reference to a cold with that.

Q I was not suggesting there was. The reference to chest physio. The fact is it was a short exchange, was it not? It was over in a couple of seconds?
A Minutes, I would say.

Q You said in your witness statement that his hands were very close to you. Paragraph 6 of your witness statement, towards the bottom of page 5 of the bundle?

A Yes.

Q You said his hands were about 1cm from your breasts and you indicated that earlier on in your evidence in chief. That is really a very small distance, is it not?

A Yes.

Q To anyone observing from more than a couple of feet, it would look as though there was actual contact, would it not?

A I presume, yes.

Q If I can perhaps demonstrate on Ms Hill.

THE CHAIRMAN: I am not sure that we need to, really.

MS SLEEMAN: If I put my hand *there*, it looks as though I am touching her, does it not?

A Yes.

Q Again, it is simply not very credible, is it, that anybody would do that on a public ward where all the beds are occupied and anyone could walk in at any moment?

A It may not seem credible to us but that is what actually happened, which is why I felt it was an incident that required reporting.

Q It is not right that he moved to block your path, is it?

A He moved his body position to make it very difficult for me to get out from the side of that bed.

Q Did he say anything to indicate that is why he was moving his body?

A He was very jokey and chatty throughout the entire exchange.

Q He did not say "I am blocking your path" or anything like that, did he?

A No, but his actions ensured that I could not move past him.

Q That is not right, is it? He stood standing where he was for the whole of your exchange?

A Sorry?

Q I suggest that is not right. He simply stayed standing in the same place?

A He did move his body position.

THE CHAIRMAN: I am sorry, Ms A, I did not catch the last remark.

A He moved his body position slightly to make it more difficult for me to walk past him.

MS SLEEMAN: In paragraph 7 of your witness statement you say that you must have looked shocked because he dropped his hands and laughed and then you say that he said something along the lines of, "If I'd touched you I'd still be on the floor now." He accepts that he did make a comment something along those lines and then you responded something

along the lines of, “Yes, you would” and you might kick him as well. He accepts that both of those comments went on.

You wrote a letter of complaint, did you not, before you wrote your witness statement to the Health Professions Council? Do you remember that?

A Yes. It was a long time ago, yes.

Q Do you want to see a copy of it, just to refresh your memory?

A Yes, please.

THE CHAIRMAN: We do not have a copy of that?

MS SLEEMAN: No, sir. I do have sufficient copies for you to have them if you wish to. It is a small point and it may be, depending on what Ms A says, that it is not necessary for me to hand it up. I am content to do so if you think it would be of assistance when I have made the point. Perhaps the witness can be shown that. (*Handed to witness*) Would you prefer to see it now, sir?

THE CHAIRMAN: No.

MS SLEEMAN: Have you had a chance to refresh your memory?

A Yes.

Q This was a letter that you wrote in response to communication with the Health Professions Council, was it not, asking you for more details of your complaint?

A Yes.

Q So you knew at the time of writing it that it was important that you gave a full and accurate account of the incident?

A Yes.

Q If you can look at the long third paragraph, you describe this incident. You say,

“Mr Harrison offered to give me chest physio and reached with both hands towards my breasts, and stopped within millimetres... attempted to make a joke stating that he thought I would have physically struck him if he had actually touched me.”

Then you go on to say,

“I again attempted to leave without engaging in direct confrontation.”

You do not say anything there about your response about agreeing that you would have hit him and kicked him, do you?

A No.

Q So that was not a completely full account, was it?

A No.

Q Did you leave it out because you thought that if you put it in it might put you in a bad light?

A No.

Q In fact you are doing the same thing today, are you not, Ms A? You are not giving a wholly honest account?

A No. I am giving an account of what happened on that incident. It is very difficult to write a witness statement in terms of that, remembering and knowing exactly what people want in a situation. It is a situation I had never been in before. It was my attempt to give a full account and when I actually met with Nicola and was asked questions and you put yourself back into that situation, you remember more fully what happened.

Q It is right, is it not, that you have continued to exaggerate the incident that took place on 5 July? There was no mention of women's bits, was there, as you say?

A There was.

Q It is right that Mr Harrison accepts that he did go on to say something along the lines - this is after you had said that you would hit him and kick him as well - he accepts that he responded with something along the lines of, "There's no need to worry, I wouldn't know what to do with a woman. I would need an instruction manual", but that was the extent of the exchange, was it not?

A He then went on to mention that a patient's genitals were wrinkly and those were the only ones that he had seen recently and did I have an instruction manual as to how my genitals worked.

Q Can we just go back to the plan? We have got Simon Harrison standing slightly further into the bay than yourself. Am I right in thinking that the two of you are facing one another?

A Yes.

Q So he has his back to the top wall?

A Yes.

Q And you have your back to this wall?

A Yes.

Q This bed here, the one nearest to both you and Mr Harrison, was occupied, was it not?

A Yes.

Q You said all of the beds were occupied. That would be a very strange gesture, then, would it not? You say that when he mentioned the patient having bits that were wrinkly, you say he then gestured right the way behind him?

A He turned and gestured.

Q That is quite an unnatural way to do it, given that there is a patient right here next to him?

A Maybe he had not seen those genitals. Maybe he had only seen the lady's opposite. I do not know.

Q Again, I suggest that is simply not a credible account of what happened, is it?

A It is. I have no reason to make this up.

Q It is also not right to say that he smelt of alcohol, is it?

A He did.

Q You say that on the first two occasions as well as on 5 July you smelt alcohol on his breath. That is quite a serious matter, is it not?

A It is.

Q For a physiotherapist working with patients, it would have potential implications for patient safety, would it not?

A Yes.

Q Why, then, did you not report the matter when you first smelt it on his breath, do you say?

A I spoke to some physiotherapy colleagues who said that his Clinical Supervisor was aware that there had been other reports of instances smelling of alcohol.

Q The Clinical Supervisor is aware, you say, previously? Who was that?

A His line manager, Tudor Smith.

Q But you decided not to go and tell Mr Smith that you had also smelt alcohol on his breath?

A I did not at that time. This all happened within a few days.

Q That is not really a credible position is it, Ms A, because if you as a responsible occupational therapist became aware that a colleague was smelling of alcohol on duty and that there had been previous reports, it would be particularly important that you ensured immediately that the Clinical Supervisor was aware, would it not?

A In hindsight, yes. I had never been in that situation before. I would certainly act differently now.

Q I suggest if it were true you would have gone straight to Tudor Smith the first time you smelt the alcohol?

A It was early morning, I was not sure if it had been due to heavy drinking the night before or due to drinking during that day. I did not report it.

Q It is also right, is it not, that on the first two occasions you did not ask Mr Harrison not to do what he was doing?

A I am not a particularly confrontational person. I did not deal with it in the way I would deal with it now. Having had this experience I would be much more assertive but at the time being new to a post and temporary in that post, I was not assertive enough in dealing with it and that probably encouraged it to escalate and I would act differently.

Q Is that, then, why you exaggerated your account when you did report it, because you wanted to make it so serious that you wanted to be sure that there was no danger of your having to work with him again?

A I have not exaggerated my account. I have given a true and accurate account of what happened.

Q You were aware, were you not, all along that he was a locum?

A As was I.

Q So you knew that in the event of a serious complaint there would be no requirement for a disciplinary hearing or anything like that?

A I am not aware of the employment procedure for locum OTs. I had only literally started as locum in that June.

MS SLEEMAN: Thank you. I have no further questions.

THE CHAIRMAN: You were referring to para 15 and you did not continue with that point.

MS SLEEMAN: Yes, I am sorry. I moved on and did not go back.

THE CHAIRMAN: I do not want to miss anything.

MS SLEEMAN: Just to confirm, then, that Tudor Smith, when you spoke to him on the 5th, indicated to you that there had been previous reports of smelling of alcohol and also, you said, a problem with a student physiotherapist?

A Yes.

MS SLEEMAN: Thank you, sir, for that reminder.

MS HILL: I do not have any further questions for you in re-examination but the Panel may have some questions for you.

6. Questioned by THE PANEL

MR PROBERT: Just to clarify, Chairman, just the timing of the three incidents. What time of day was the first one?

A Morning handover, so it would be about quarter-to nine-ish, something like that.

Q Right. Then the other one was mid-morning. Is that correct?

A Mid-morning, yes.

Q And the third one was again about 8.45?

A Early morning, yes.

THE CHAIRMAN: From me, just one point. Back to the room. Where did you put your file? When you came to leave you picked your file up to seek to move. Where was your file after you washed your hands?

A I had put it on top of the bin.

THE CHAIRMAN: I think we are happy now for you to leave. You may stay in the room if you wish for the remainder of the hearing or you are free to go, whichever you prefer.

MS HILL: Thank you very much. Sir, if we can then proceed, just running through Glenys Hodgson's statement with you and then I wonder if we can have a very quick break because my other witnesses have arrived since the hearing started and I have not said 'Hello' to them yet.

THE CHAIRMAN: By all means.

MS HILL: Sir, the statement of Glenys Hodgson appears at page 8. She signs it at page 9. She introduces herself as the Head of Occupational Therapy at the Wrexham Maelor Hospital and she has been in that position for four years. She qualified in 1970. You will see that she says as part of her clinical role she sees elderly medical patients and that she had worked with Simon Harrison on two occasions on a clinical basis when she was covering for members of her staff.

She only gives evidence in relation to 5 July. She describes that Ms A came into her office and asked to speak to her about an incident that involved Simon Harrison. She felt that she had to report this to her as it had not been the first time that it had happened. She explained that similar incidents had occurred twice in the week before and the time had now come to report matters.

Ms A explained that the week before Simon Harrison had put his head on her chest in the corridor. She was clearly upset by events. She also told Miss Hodgson about an incident when she and Simon Harrison had been together and he had been talking about his sex life and other inappropriate things in front of patients.

She writes that as the incidents were continuing, Ms A felt that she needed to draw them to her attention as they were inappropriate and upsetting. She was aware that she was a locum and was new to the department.

As soon as she had heard this information from Ms A she decided that the matter needed to be dealt with by the physiotherapy department quickly, as Ms A and Simon Harrison were supposed to be working together on the ward that day and Ms A would not be able to see her patients whilst he was still there.

With that in mind she explained that she would have to tell the Superintendent Physiotherapist so that they could deal with it.

She then left the office and went to speak to Carol Jones, who is the Superintendent Physiotherapist. She told her that there had been an inappropriate incident that needed her input and needed her to deal with in relation to one of her staff and one of her own members of staff. Carol Jones then went into the office to speak to Ms A and Glenys Hodgson says that she remained in the department.

Tudor Smith then also became involved and spoke to Carol Jones and at this time Ms A was kept in the department with Glenys Hodgson.

Carol Jones and Tudor Smith then both addressed the issue straightaway in discussion. Carol Jones returned and said that they were going to meet with Simon Harrison. When they had

both done this Carol Jones came back and informed both Ms A and Glenys Hodgson that he had been asked to leave the hospital.

Perhaps most importantly is her final paragraph where she says:

“We are very pleased that Ms A brought this to our attention. I feel that she has shown a lot of courage to do what she has done. If she had simply left that day, as she could have done as a locum, we would never have known”

and then she states that the evidence is true to the best of her knowledge and belief.

Do you have any comments?

MS SLEEMAN: I do not, no. I may refer to it in my closing submissions but I have no comments.

THE CHAIRMAN: How long do we want to break for?

MS HILL: Literally five minutes, for, just so that I can go and say, ‘Good morning.’

THE CHAIRMAN: We will give you ten.

MS HILL: Thank you, sir.

THE CHAIRMAN: We will retire.

The Panel adjourned for a short time.

MS HILL: Sir, can I continue please, by calling Tudor Smith.

7. TUDOR SMITH Sworn

(The Chairman introduced the Panel)

Examined by MS HILL

Q If I can start by thanking you for coming and ask you to look at the bundle in front of you, please, and turn to page 10. You will see that your statement appears between pages 10 and 12. Would you just confirm that you have signed the statement at page 12, please?

A I have signed it.

Q Can you confirm that you adopt the contents - you accept the contents - of your statement?

A I have read the statement and I concur with that.

Q Can I ask you just to begin, please, by setting out your brief professional history and your current role?

A I am a clinical specialist in adult rehabilitation at Wrexham Maelor Hospital. My role is to educate and supervise students and perform a consultant role in clinical issues concerning patients.

Q You say that you were directly responsible for Simon Harrison. He was a locum working for you. Can you tell us how you became involved in the incident on 5 July of last year?

A Certainly, yes. May I read from my statement, if necessary?

Q You can refer to it, yes.

A In my own words, certainly. I first became involved when I was summoned, as I recall, by a manager that there had been an incident concerning Mr Harrison and that I would need to speak to the manager of Occupational Therapy concerning it. I went to speak to her and she then recommended that I spoke with Ms A concerning this, which I then did, in private.

She told me of the incident which had occurred and that she had been made to feel very uncomfortable and she was obviously upset. At that time I did not, obviously - I told her that the discussion would be in confidence and I did not inform her of any intention of mine to take any immediate action.

Q You say that she describes in particular an incident in the corridor that had made her feel uncomfortable when Simon Harrison placed his head on her chest?

A Yes. I recall that.

Q Then you decided you needed to deal with Simon Harrison. Carol Jones said that you would speak to him but it was decided, I think, that up would speak to him first on your own?

A Yes. I initially took him to a room privately to discuss the issue and the incident concerned. We both sat down in a small room to discuss it.

Q We are now at paragraph 4 of your statement.

A Yes, that is fine. I informed him that I had been advised that there had been an incident and that a member of staff, which I did not name, was very upset.

Q What was his response to that?

A There was no initial response. There was an enquiry from him about whether it concerned Ms A. I really did not want to tell him who the person was at that point, I did not feel it was appropriate.

Q You say in your statement he makes the comment, "Is it because I have been too touchy feely"?

A Yes, that statement was made when I said look, there had been this incident and we were obviously trying to understand what had happened and he expressed that view to me, yes.

Q You then went on to say to him that, "You have made somebody feel uncomfortable, you have invaded their space." At that time you said he asks, "Is it Ms A?"

A Yes.

Q You did not want to tell him anything at that stage?

A No, I did not. I did not think it appropriate to tell him that that was the person involved.

Q The Panel have also been hearing evidence this morning about the smell of alcohol on that occasion. Perhaps you can explain to them what your view was on that day?

A On that day - prior to that day I must say that I had no experience of Mr Harrison smelling of alcohol at work. I was working with him on a daily basis but not in close proximity. Within the confines of a small office, about nine foot by nine foot, with the door closed, it was quite apparent to me that there was a smell of alcohol on his breath when discussing things with him.

Q At paragraph 5 you mention a conversation that you had with Simon Harrison when he very first arrived at the hospital. Perhaps you can tell us about that conversation?

A This is a conversation that occurred very early on. While I was inducting Mr Harrison into his job, he approached me in an open and polite manner and informed me that he would want to be informed if there were any misunderstandings or if I was unhappy with his work in any way and the tone of the conversation was that he felt that he had been misunderstood in his previous employment in terms of communication.

Q What did you make of that at the time?

A At the time I assumed it related to clinical issues or his management of his case load or such routine issues that we would normally have to deal with and I later, obviously, recalled the incident in respect of what had happened.

Q In relation to Ms A?

A Yes.

Q Thank you. So, after talking to Simon Harrison on your own you then went to speak to Carol Jones. What did the two of you agree should be done?

A I left Mr Harrison in the office and I went to speak to Carole, really for support with the situation, because I personally was not familiar with the procedures, etc, so I thought it needed a manager's support at this point. I spoke very briefly to Carol and Carol and I agreed to see Simon together, so we transferred to the main office where the three of us sat down together to discuss the incident.

Q It looks from your statement that you had already, before you had seen him, decided that he would not be allowed to go back on the ward?

A That was principally why I asked Carol for her support at that point, because of the smell of alcohol and the incident. I did not feel comfortable to send him straight back to a ward environment. I had actually summoned him directly from working with patients at the time to the office and I had taken him away from the clinical situation and with this pending I did not really want to send him back to his case load.

Q You then discuss his position as a locum and the effect of that on his dismissal?

A We discussed that there had been an incident, obviously, and we had felt that there was a serious problem that had occurred and I was certainly aware that with the nature of the complaint and the smell of alcohol, we did not feel we could send him back to the ward and it

was Carol's view at the time that we should not let him return and he should leave the department immediately.

Q You then meet with him, paragraph 7 now?

A Yes.

Q It seems that the issue of alcohol is raised straight away. What was said in relation to that?

A On discussion in the office Carol asked Mr Harrison directly whether there was a problem with alcohol, which he denied.

Q You have made further comments to him in relation to the alcohol it seems?

A Yes. That actually occurred, the discussion about that was a small discussion before we went into the main office when I was in private, myself just me and Mr Harrison together and I said at that time that I understood him quite well, he had worked with me well and really I was trying to assist him at that time in giving me the correct information. I said, "You have had rides in my car. Did you have a problem with alcohol at that time?" treating it as a problem rather than an issue, and again he denied that he had a problem with alcohol.

Q It is just that in your statement you say that you had the initial discussion with him, then you discussed it again with him when you were with Carol Jones. She raises it and then you raise it with him again?

A Yes. I think I raised it again alongside Carol. We both did that together, as far as I recall.

Q When you told Simon Harrison, when you were with Carol Jones, what was going to happen, what was his attitude?

A Apparent disbelief was the initial attitude. He had apparently no indication that he had done anything wrong in any way but he obviously had expressed the view that he had been too touchy feely, was that the problem? I think he was explaining to us that that was his demeanour and he may have let us down on that front, but he did not really see it as a serious issue and was quite surprised that we were taking it this far.

Q He then realises that you have asked him to leave there and then, he has not got a notice period. What happened next?

A Yes, it was all a bit uncomfortable because he was working as a locum at that time and normally disciplinary proceedings would have followed, as far as I understand them. As he was working on a short-term contract as a locum, my manager decided that he would be removed from his post immediately.

He was able to gather his belongings. I asked him for his identification badge and I walked with him into the gym where he used to store his bits and pieces, when he removed some items. I later understood that some of his items were left behind.

Q Then, in paragraph 9, you mention other complaints that you received. Can you tell us briefly about those?

A Yes. Obviously when an incident like this has happened people are aware that there has been - people wanted to know where he was after that and I had to briefly explain to them that he had been removed from his post. People came forward to me without prompting to

state that did I not realise that he often smelt of alcohol, one of which was Rachel Hawkings, my technical instructor who worked with me, although she had not mentioned anything to me up to that point.

Other members of staff came forward to me on visiting the ward to state that they had felt him over-familiar with themselves on occasions.

Q There is the final comment in relation to your cleaner?

A Yes. I actually approached her at this point because another member of staff - I forget who - had said that she had something to say to me regarding the issue. She came forward with the viewpoint that she felt very uncomfortable in the department. She cleans the department in the evenings and it is very much a bit of a ghost ship in the department. It is a bit dark in places and full of cubby holes and she was cleaning the area, sometimes on her own, sometimes with a partner, and she intimated to me that she felt very relieved that he had gone because she felt very uncomfortable around him and he had made her feel especially uncomfortable on one incident where ice had been put down the back of her blouse - I assume it was as a joke.

MS HILL: Thank you very much. I do not have any further questions for you but Ms Sleeman will probably have a few for you on behalf of Mr Harrison.

8. Cross-examined by MS SLEEMAN

Q Mr Smith, I am going to be working mostly from your witness statement.

A Fine.

Q Paragraph 3, you refer to 5 July, which was Simon Harrison's last day and you say that you met with Ms A in private and she described an incident in a corridor that had made her feel uncomfortable when Simon had placed his head on her chest. That was the only incident she mentioned then, was it?

A To me at that time, yes. She was rather upset and I must admit I did not push her, really, to tell me details of what had gone on. It was sufficient for me to know that she was very upset and that an incident had occurred.

Q When, then, did you learn about the other two incidents that are now alleged?

A Can you be specific about the other two incidents?

Q It is also said by Ms A that there was an incident prior to the corridor incident when he pulled her head on to his shoulder?

A Right.

Q Is this the first time you have heard about that incident?

A It rings bells but I cannot say that that actually was recalled by myself.

Q What about the incident that too, place on 5 July where Simon Harrison is said to have been working on the six-bedded ward and made inappropriate comments to Ms A? You are not aware of that?

A I am not party to that information, sorry.

Q On 5 July, so far as you are concerned, the conversations you had with Carol Jones simply related to the incident in the corridor?

A That is correct.

Q Nothing else. Paragraph 5 of your witness statement, you refer to a discussion you had with Mr Harrison, you say when he first arrived at the hospital. His recollection it was some time into his working at the hospital. I think you said in the course of his induction. His recollection is that a little bit later than that?

A That is possibly true.

Q Your response was, at the time, that you confirmed that there were no problems with his work, did you not?

A That is correct.

Q In which case it cannot be as part of his induction because you would not have been in a position to say that?

A No, induction in clinical sessions is usually - I need some experience of their work over a week or so to at least let them know.

Q In relation to the matters that you set out in paragraph 4, you say you spoke with him initially and you say you took him into a small office. His recollection is that there was only one formal meeting in a separate room. He recalls that you came and spoke to him, he thinks on the ward by the notes trolley. Is that possible?

A I summoned him from the ward to a meeting in a small office in the department.

Q His recollection is that you came and spoke to him at the notes trolley and called him into the meeting, which is where Carol Jones was present, and there was then just the one formal meeting. Is that possible?

A My view of it is that there were two meetings.

Q When you summoned him from the ward, that was by the notes trolley, was it?

A As I recall, yes.

Q You confirmed that in the course of the time that he was at the hospital, you personally had not smelled alcohol on his breath?

A No, I had not.

Q Until the 5th?

A No.

Q It is right to say, is it not, that on occasions you had given him a lift home, so you had been in quite close contact with him?

A I recall one incident where I gave him a lift home.

Q At paragraph 9 of your statement you say that after Mr Harrison had left other members of staff came forward and I think you did confirm that as of 5 July then, the day when Simon Harrison left, you were not personally aware of any allegations of the smell of alcohol or of inappropriate behaviour. Is that right?

A At that point no member of staff had approached me with that allegation.

Q I am sorry if it sounds very pedantic, but just to confirm, that refers both to the smell of alcohol and inappropriate behaviour?

A That is correct.

Q You were not aware of either of those matters until the 5th?

A No.

Q How did Simon Harrison look to you on 5 July when you took him to the meeting? You said shocked but in terms of his turn-out?

A Slightly dishevelled. More so than his usual appearance.

Q You have not mentioned that in your witness statement, have you?

A I have not.

Q Is that because that is not what you have observed at the time? You have only realised that with hindsight?

A No. I think it just has not been raised.

Q Given what you have just confirmed, that you were unaware of any criticisms of his behaviour until 5 July, it cannot be right, can it, that you told Ms A at any time prior to that date that there had been problems with Simon Harrison? Is that very convoluted? Shall I try...

A If you would not mind just repeating the statement.

Q You have just confirmed that it was only on 5 July that you became aware of any other staff concerns about Mr Harrison, whether it be smelling of alcohol or inappropriate behaviour?

A I had no problems with Mr Harrison up until that day.

Q You had no reports of any other staff having problems until that day?

A Or reports.

Q Given that, you cannot have said to Ms A on 5 July that there had been prior reports, either of smelling alcohol or of inappropriate conduct, can you?

A I do not recall - I only recall a brief meeting with Ms A on the date. She was very upset at the time. I do not remember discussing the details of the incident apart from the ones we have talked about.

Q Specifically on 5 July you did not say to her that there had been previous problems with Simon Harrison, did you?

A No.

Q Because that would not be true, would it?

A No. I should like to mention one item which is not actually within the statement, concerning your question.

Q The question I have just put?

A If that is all right.

Q The question was specifically whether you said to Ms A that there had been previous problems?

A To fill out your answer.

Q You have confirmed that you did not say to Ms A that there had been previous problems?

A No, that is correct, I did not say that to her, no.

Q Do you want to go on and give your further explanation?

A I think it was a month prior to this that we had a female mature student physiotherapist who approached me in confidence and said that she felt I should know that she had felt uncomfortable around Mr Harrison and, in her view, I should not place student physiotherapists with him. That was treated in confidence by myself. It was taken by me, I must admit, not that seriously. I did approach my manager, Carol Jones, and informed her of the fact, just as a formality, really, that something had been said and I agreed with the student concerned that no action would be taken.

Q Can I confirm you did not raise that with Ms A on 5 July?

A No. That was not raised.

MS SLEEMAN: I have no further questions, thank you, sir.

9. Re-examined by MS HILL

Q Just two small points. The Panel have been shown this morning a copy of a letter that Ms A sent to the Health Professions Council. Have you ever seen that before?

A No.

Q The reason you are not aware of the nature of the complaint is that you are not involved in reporting to the Health Professions Council?

A No, I have had no contact with them at all.

Q Thank you. Could you just go back to the last point, because it became quite confused. In relation to 5 July you said firstly that it was only on 5 July that you were aware of previous complaints, but I think you then went on to explain that you had been aware of an earlier complaint with the student physiotherapist?

A That is correct.

Q So there had been earlier complaints?

A Not directly pertaining to Ms A.

Q I appreciate that. You only knew about Ms A?

A I believe the question was about Ms A.

THE CHAIRMAN: I think we have cleared that up.

10. Questioned by THE PANEL

MR HORWOOD: Tudor, I would just like to ask, are there quite a lot of pressures on the service and do you have problems with recruiting staff?

A In the past yes, we have had recruitment problems.

Q Do you regularly use locums?

A Yes, we do.

Q Is that due to the pressure and difficulties?

A It is to do, yes, with recruiting staff at the hospital. We do vary the amount of locums that we need, there is quite a high staff turnover, especially amongst the middle grades of staff, as in most Trusts where I have worked, so we are used to having locums and to inducting them and supervising them, yes.

Q Do you tend to use one agency for locums?

A It would appear to me that we have multiple agencies.

Q Am I correct in saying that Mr Harrison came to work on 10 May?

A Yes, that would be about correct, yes.

Q He had only been with you for about six or eight weeks?

A I think he had been with us about seven weeks when the incident occurred.

MR PROBERT: Just a couple of questions, please, if I may. You referred just now to the earlier incident with the mature student. After you had got that information from that student, did it not occur to you to have a weather eye out as to what might be going on, because it appears to me that you took that, put it in a box and put it on to one side. That should have set alarm bells ringing?

A Alarm bells rang and that is why I informed my manager, but really I did have - the way in which the student spoke to me, she made no concrete accusation. She just said that she had been made to feel uncomfortable and I felt that there was not sufficient weight in what she had said or any concrete evidence to really take it any further in any shape or form. She was not prepared to do that and therefore I was not prepared to take it further.

Q On the basis of that you chose not to mention it to Mr Harrison?

A That is right.

Q The second question is, on 5 July when you finally saw Mr Harrison, you said that he was dishevelled to what he normally was. Did you form a view as to why that might be?

A It is difficult. It is a long time ago now. In general Mr Harrison was well presented at work. On the day - the day was a bit of a blur now - he obviously was upset after - at the meeting and afterward so it is a bit difficult for me to say whether he appeared to me very dishevelled prior to that meeting.

Q You can be dishevelled for various reasons, can you not? You have had a busy morning on the ward and you feel as though you have been pulled through a hedge backwards; if you have had a hard night out the night before. You did not form an opinion as to, if it was unusual, why it might be?

A No, apart from his general appearance I cannot comment on why.

Q That was the only time he appeared in that sort of slightly dishevelled form?

A That is correct.

THE CHAIRMAN: Thank you. Nothing further from anybody? Thank you, Mr Smith. You are free to go. You may stay in the room if you wish or, indeed, you may leave and go back?

A I probably will actually leave. I do have commitments later this afternoon.

THE CHAIRMAN: No problem.

MS HILL: Thank you for attending.

11. CAROL JONES Sworn

(The Chairman introduced the Panel)

Examined by MS HILL

Q Can I ask you to look at the bundles in front of you and look at pages 13 to 15? Hopefully you will find your statement appears there?

A Yes.

Q Can I ask you to look at page 15 just to confirm that you have signed the statement there?

A That is right. That is my signature.

Q Do you adopt the contents of your statement? Do you agree the contents?

A I do.

Q Can I ask you just to begin by advising the Panel of your current role and briefly your professional history?

A I am currently Acting Head of the Physiotherapy Service for the North-east Wales Trust. As you can see from my first statement, I have spent most of my career in the North-east Wales Trust, or its predecessor. I have been through the ranks, as they say and I find myself where I am now, really.

Q When was Simon Harrison employed by you?

A He came to us last May, a year ago, really, 2004. We were going through a particularly bad patch and unable to recruit permanent staff, so he came in May.

Q What was his role?

A He was employed as a Senior 2 physiotherapist on the Care of the Elderly wards.

Q Did you have much involvement with him prior to the incident on 5 July?

A Not clinically. Obviously I saw him in passing in the staff room and, as you do with people in passing you exchanged 'Good morning' and all those sorts of thing, but not clinically I did not have a great deal of involvement.

Q Was there any discussion with any other members of staff about him?

A There were little comments, as you get in any area you get comments about staff and as I have put in my statements, they found him somewhat odd and creepy. Obviously from my point of view I did ask Tudor, who was his clinical lead, had he had any thoughts on that and had anybody expressed anything different from that and the answer was 'No' and his clinical work was fine, so as far as I was concerned, that was just people's perception of how he was.

Q Can you tell us about 5 July, when you became aware?

A Obviously it was a year ago and I have written this down and we did not write anything on the day, so it is as I remember it as best as I can. That Monday morning I got Glenys, who is the Occupational Therapy Manager, came in quite - I do not know what the word is - quite upset in a big way that something had gone on and that a member of her staff had been very upset because there had been an incident involving Mr Harrison and she wanted me to come immediately, drop what I was doing and come and speak to the Occupational Therapist involved so that she could tell me exactly what had gone on.

Q It seems that Tudor Smith went to speak with her first?

A Yes, that is right.

Q And then he said that he thought you should be involved?

A Yes.

Q What did you do then?

A I did then go, obviously, sometimes knowing Glenys as I do she does get over-enthusiastic about things but obviously when Tudor had been and come and said, 'I think we need to discuss this', I thought right, I will have to stop what I am doing and go and find out what has gone on. I popped into the office where Ms A was.

Q What was her demeanour?

A She was very, very upset. She was sitting there, she was just sitting there, shoulders slumped sort of thing and quite upset really and I could see that obviously something had gone on that was more serious than I had first anticipated and then when she told me...

Q What did she tell you had happened?

A She said that he put, Simon had put his head on her chest and had been telling her things about his sex life, basically and that it was not the first time that it had happened. She also did say about smelling of alcohol. I just felt then that obviously, from my point of view, there was more to what was going on than I had previously realised again and that obviously I had to do something about it pretty quickly, really.

Q How long were you with her for?

A It was not that long, actually, because she was getting very upset and I felt that we should withdraw from that person at that moment and say, 'Let's go and think about what I need to do', so I was not in there - I would say five minutes maximum.

Q You then decide that you are going to speak to Mr Harrison with Tudor Smith because you do not want to be on your own with him?

A That is right.

Q Then you say you spoke to HR?

A I did.

Q Why did you speak to HR?

A I was just checking. Obviously if he had been a permanent member of staff he would have had to go home but there would have been a policy to follow because there are policies for such things that go on, but he was not a permanent member of staff and I obviously felt probably that I was going to have to say that I did not want to employ him any longer, but I was just checking with HR that that would be OK and I did not have to follow the procedure of a permanent staff. Just double checking, really, where I stood.

Q Having spoken to Ms A, you obviously believed what she had to say to you?

A Well, yes. I did not have any reason not to disbelieve her, to be honest. Just her whole demeanour was obviously something had gone on. Whatever it was, she was terribly upset.

Q What did you say to Mr Harrison once you were in the meeting with him?

A It was quite a difficult thing to do, obviously, to say these things, that there had been an incident with a member of staff and I did not say which member of staff it was and that basically, she felt that he had acted quite unprofessionally with her and on hearing what she had said I had to say that it felt that way to me as well and also the fact that there was alcohol, we could smell alcohol on his breath and that, in view of that, it was too serious a matter for me to do anything other than ask him to leave.

Q OK. You have just mentioned the alcohol smell. Perhaps you could tell us about that, whether you were able to smell it in the meeting?

A I was. I was, particularly when we stood up and he was going out of the room, it was quite overpowering at that stage. Obviously the room we were in was fairly large and I could not say from where I was sitting originally I could smell it, but as I stood up to ask him to leave the room, I could definitely smell it then.

Q What was his demeanour? You say he was quite dishevelled?

A He was, yes. We have had comments about what he looked like and he was not your normal locum, because the locums normally are youngsters, aren't they, and they are full of life and they are aged between 25 and 35, but from my point of view, all right, he was not a normal locum but he was doing his clinical work. I could not comment on any of that.

His appearance was not the normal appearance. Again, I could not say anything about that, but on this particular day he was more than scruffy, I have to say. He did look a little bit that he could have done with tidying up somewhat, shall I say.

Q You then have said to Mr Harrison what the allegations were and that he was going to have to leave. What was his response?

A I was expecting him to be angry and aggressive and all those things when you have made an allegation such as that and that did not happen. He did not even appear shocked. He just sat there and said, "If I apologise is there anything you could do to make it not have happened?" sort of thing and that actually threw me because I was possibly expecting to be shouted at and all those things, so that was the shock, I think, the fact that there was an acceptance, really, I have to say. It appeared to me to be an acceptance. It certainly was not - we are not going to have this two way heated discussion. It did not happen at all.

Q He asked you if there was anything wrong with his clinical work that he could put right?

A Yes, that is right.

Q You have already said that there were no problems with his clinical work?

A yes.

Q You then say that so far as you were concerned his behaviour was unacceptable and he would have to go?

A Yes, right.

Q What did you do next in terms of getting him to actually leave the building physically?

A We discussed with him that we obviously did not want him to go anywhere on his own and rumours being rumours, and we have got a lot of female staff, I felt it was better that there was a male member of staff with him when he went into the workplace, which was the gym, to pick up his stuff and then he could leave the department escorted, if you like, but an unofficial escort. It was just another member of staff taking him out as opposed to getting somebody else involved, security or anybody, just to keep it low key, really.

Q OK. You then confirm with HR that you have asked him to leave and you confirm with the Accommodation Officer because obviously he was living in Trust property

A That is right.

Q Did you then have any further contact with Mr Harrison?

A Yes, by the telephone.

Q Why was that?

A He apparently had been starting - he had rung the gym a couple of times to try to speak to Tudor, who was not always on duty or was not always in the room when he spoke.

Q In the end you spoke to him?

A Yes, I did because people were getting themselves a little bit upset about things and I said, 'Look, if he does phone again, just direct him through to me and I will try and speak to him and see what was the problem' and then through the conversation I gather that he had left some items of belongings here, in particular his cheque book and obviously you need your cheque book. He wanted to come and pick it up and I did not think it was a good idea for him to come again into the workplace, so we said let's make a point of where you can come and pick your cheque book up and in my understanding we had arranged a pre-arranged meeting place. Then I asked another male member of staff, again I thought it was better that it came from a male member of staff, would he go and take the cheque book and the other

little odds and things back down to him in the pre-arranged point, which he tried to do but he could not find him. Then he decided, the male colleague, in his wisdom, that he would just put it in the Porter's Lodge because obviously as far as he was concerned it was out of the department then.

Q You are then told that Mr Harrison is sitting outside the hospital on a bench in the pouring rain?

A Yes. Obviously people know him. We are not a static workforce. People are in and out doing home assessments and the geography of the building was that people were not always just in the department and he was recognised as sitting on a bench in the pouring rain. Obviously the feelings were a bit emotional at this particular week, so seeing him there thought that perhaps he should not have been there and came and told us, you see.

Q What did you do to deal with that situation, then?

A It was near to finishing time on Friday afternoon, everybody was going to be going out of the building and I thought perhaps that we should have some sort of security so that if he did see the person involved - although I did not mention that person to him - that she would feel protected and indeed other female members were beginning to feel a little bit insecure in that he had been dismissed on the Monday and here we were on Friday and he was still loitering around.

Q You say, therefore, that when he went in to collect his cheque book he was then escorted away?

A Yes.

Q By security?

A Yes, he was. I understand that is what happened. That is what they told me they did. I was not there physically. They did tell me that is what they did, yes.

Q We have heard evidence this morning from Tudor Smith in relation to an earlier complaint in relation to Mr Harrison that he brought to you. Are you able to give any evidence in relation to that? I have not explained that very well. An earlier complaint was made by a student physiotherapist in relation to Mr Harrison and that complaint was made to Tudor Smith and he came and discussed that with you?

A Yes.

Q Do you recall that?

A It was a very vague complaint, I have to say, or a passing statement, I believe, that this particular student had made. It was not anything that - yes, I gathered it, I took it on board, what Tudor was saying, but we did not - because the student herself had just made this statement, I think it is right to say and Tudor had said, "What do you want us to do about it?" and she had categorically said, "Nothing, really" but she said that she felt that she needed to say it just to Tudor, so I did not do anything with it, but yes, I do remember the conversation.

MS HILL: Thank you very much. I do not have any more questions for you but Ms Sleeman is likely to have some questions for you on behalf of Mr Harrison.

12.

13.

14. **Cross-examined by MS SLEEMAN**

Q Mrs Jones, you made this statement that we have in the bundle at pages 13 to 15. You knew they were being made in connection with these proceedings?

A Yes.

Q You knew it was important to give a full and accurate account when you made the statement?

A Yes.

Q Paragraph 3, you say that you had not had much involvement with Simon Harrison during the seven weeks or so that he was working at the hospital. You say you did chat to him if you saw him?

A Yes.

Q It is right to say that on none of those occasions you smelt alcohol on his breath prior to 5 July?

A I could not smell alcohol, no, but he did eat a lot of strong curries, I have to say and comments were made about that but no, I did not.

Q You say in paragraph 3 that you asked Tudor Smith if he felt there was anything wrong with Simon Harrison. It was the way you put it here:

“...anything wrong with Simon Harrison and if his clinical work was fine.”

That implies two specific parts of the test - Simon Harrison generally and his clinical work and Tudor Smith confirmed that both aspects were fine?

A That was fine, yes.

Q Paragraph 5 of your witness statement, you describe that you had a brief conversation with Ms A and you say that she was very upset - this was on 5 July?

A Yes.

Q What you say in your witness statement is that she told you that Simon Harrison had put his head on her chest and had been telling her things about his sex life and that this had happened the previous week as well. So, you gained the impression, did you, that there were two incidents of head being put on chest and two incidents of telling about sex life?

A I do not know whether there were two incidents of head. There were two, definitely two incidents. Whether he put his head on her chest both times I do not really recall her saying that. I do remember the things that stick in your mind, such as he put his head on her chest and he had started talking about sex - whether he did the same thing twice, I do not recall her saying that, to be honest.

Q Let us look at what you say in your statement. You say he put his head on her chest and then you go on to say:

“Had been telling her things about his sex life and that this had happened the previous week as well.”

That rather suggests that the impression you had, at least at the time of writing the statement, was that there had been two conversations about the sex life. Is that right?

A It is difficult to recall completely what happened. Obviously she was very upset. I do remember her saying that something similar had happened the previous week as well.

Q Something similar to this conversation about the sex life?

A Obviously at that time she was too upset and I do not think it was my duty, if you like, to start asking her deep and delving questions at that stage.

Q You say that she mentioned to you that he smelt of alcohol on three separate occasions. Did you ask why she had not mentioned that earlier?

A I did and she told me that she was a locum, she was a new member of staff, she was feeling her feet. Yes, we did ask. Both myself and Glenys wondered and we did ask her why she had done that and that was her reply, basically.

Q Your expectation would be, normally, that if a member of staff smelt alcohol on another member of staff on duty, you would expect them to report it, would you not?

A Yes, but she is not my member of staff so I do not know what is said to people but yes, I would expect it.

Q Generally with members of staff in your department and others, there would be an expectation, would there not, of immediate reporting of something like that?

A I would hope so, yes.

Q You say in paragraph 10 you expanded a little bit just now in response to questions from Ms Hill, that he was not shocked at all, you say?

A No.

Q He was not shocked?

A No.

Q You are quite sure about that?

A He did not give the appearance to me of what I would expect was shock, shock or horror. It was just - he just sat there.

Q It would not be right to say that he appeared surprised that you were taking it as seriously as you were?

A No. There was not - I was sure that he would either be angry or shocked and that would come out in quite a manly sort of way, possibly, but he did not. He just sat there, basically and listened to what we said and sort of apologised and was there any way he could carry on what he was currently doing for us. It just was not the reaction I was expecting.

Q His recollection is that at some point in the meeting he asked something, whether - probably what you referred to in paragraph 10 - what he could do to put it right. His recollection was something more on the lines of was there anything he could do to retrieve the situation. Does that sound right to you?

A Yes.

Q You say that he was never very tidy but it is right, is it not, that you had never raised with him any issues about that?

A Yes, because there is a standard of dress and he was up to that. All right, he did not wear the same sort of trousers that the other guys wore but he was clean enough. There was not anything that I felt I needed to say.

MS SLEEMAN: Thank you, I have no further questions.

MS HILL: I have no further questions, sir.

15. Questioned by THE PANEL

MR HORWOOD: If I could just pick up on something you said from earlier on and that was that there were issues regarding the staffing and that is why you used locums. Obviously you felt this incident serious enough to dismiss Mr Harrison immediately. Obviously that was going to have an effect on the clinical working side?

A Yes.

Q You obviously had to balance those two things?

A I did.

Q Am I right I thinking that you felt the incident at the time was so serious that you needed to let Mr Harrison go?

A I did, yes.

THE CHAIRMAN: Nothing from me. Mrs Jones, thanks very much indeed for coming. You are free to leave but you may, if you wish, stay in the room now for the rest of the proceedings and, indeed have some lunch. It may be the only time you get something from the HPC! It is entirely up to you.

A I think I will leave the room at the moment, thank you.

THE CHAIRMAN: OK.

MS HILL: Sir, that concludes the evidence on behalf of the Health Professions Council this morning. It is twenty-past twelve.

MS SLEEMAN: I have just asked my client, in anticipation that he might be given a choice whether his preference would be to get on with his evidence now or to have a break first and he has indicated he would like to have a break.

THE CHAIRMAN: Do you want a quick break? Are you happy to carry on?

MR HARRISON: Yes.

MS SLEEMAN: In that case, I will call Mr Harrison.

16. SIMON HARRISON Affirmed

Examined by MS SLEEMAN

Q If I can remind you that although I am asking questions, if you can address your answers towards the member of the Panel it will probably help them in hearing what you are saying and if you can remember the Shorthand Writer and keep the speed of your answers down.

A Sure.

Q Can I ask you to start off by confirming where and when you qualified?

A At Teesside Polytechnic, 1991.

Q What did you qualify with?

A Graduate Diploma in Physiotherapy.

Q Was that full-time or part-time?

A Full-time.

Q Where did you go and work then, on qualification?

A Hartlepool General.

Q What was the post?

A Junior physio grade, whatever.

Q How long did you stay in that post?

A That post, about 18 months.

Q Where did you go then?

A I got promoted within the system.

Q To?

A Senior 2.

Q Can you remember when that was, approximately?

A Not off hand.

Q But within 18 months or so of qualifying?

A About that, yes.

Q How long did you stay in the Senior 2 post?

A Four or five years.

Q Did you have particular responsibilities as a Senior 2?

A I was responsible for juniors and students and I was also seconded at one point to the clinical supervisor for the University of Teesside.

Q When did you leave Hartlepool General?

A The actual main base will have been when I got a Senior 1 post in Wheelchair Services. That would be about 1996/97.

Q Was that still working for the same Trust?

A Yes.

Q What was the name of the Trust?

A North Tees and Hartlepool NHS Trust.

Q How long did you stay in the Senior 1 post?

A About five years.

Q When you left, can you give a rough idea of when we are talking about now, just the year?

A 2001.

Q What did you go and do then?

A I requested a transfer to a Senior 2 post within the Trust.

Q How long did you stay in that post?

A About a year.

Q What was the Senior 2 post?

A Rotational.

Q What did you do after you left a year later?

A I took a bit of time out and then elected to try some locum work.

Q Can you remember when you started doing locum work?

A Not off hand. It might have been, I would say, about a year later.

Q So around about late 2001, early 2002?

THE CHAIRMAN: 2003 by my reckoning. You had a year out. You took a year out?

A Yes.

MS SLEEMAN: I do have a copy - I did not intend this to turn into a memory test. I am sorry. I am trying not to lead but perhaps if you are happy for me to do that. The CV shows that he left the Senior 1 post in September 2001 and then took the Senior 2 post in Care of the Elderly Rehab from that date until 21 June 2002 and then began working as a locum in December 2003.

THE CHAIRMAN: December 2003, so you had 18 months out?

A I think that will be about right, yes.

MS SLEEMAN: Again, perhaps I can just summarise. Is it right to say then you had a variety of locum positions until you found yourself at Maelor Hospital?

A Yes.

Q Starting on 19 May. When you went from being directly employed to working in locum positions - perhaps first of all, can you say, what was the average length of the locum assignment that you were given?

A Three to four weeks.

Q What were the differences - obviously you had been directly employed for some years by one Trust. What were the differences between being directly employed and working as a locum for relatively short periods of time?

A The money.

Q Anything else?

A It became very clear that different hospital units do have slightly disparate methods of practice, even though we are supposed to be in one direction.

Q Can you be a bit more specific about what you mean by 'methods of practice'?

A Some of the paperwork is different. Also trying to bed into a new place every few weeks may be occasionally trying.

Q The locuming positions, again, in different parts of the country - Cambridgeshire, Luton and Dunstable, Anglesey, North Devon, St Helier. Where was your family home when you first started locuming?

A Middlesbrough.

Q Where were you living when you went to do these locum placements, then?

A Hospital accommodation.

Q Was that the situation when you went to work at Maelor Hospital?

A Yes.

Q You heard the evidence from Mr Smith earlier about an exchange between you and him in which he says that you asked him to let you know if there were any problems. Can you remember, first of all, when you made that comment?

A Some time in the first week.

Q Why did you say that to him?

A Because, as I say, I was aware that different hospitals practise in slightly different ways and I just wanted to try and make sure that I was fitting in as best as possible.

Q What, if anything, did he raise with you about your conduct and your work before 5 July?

A Nothing negative at all. He told me that my clinical work was good and he was quite happy with me.

Q You heard a number of witnesses say that they smelt alcohol on your breath. A number say that they smelt it on 5 July and one has said he smelt it on previous occasions. What do you say about that?

A I had a very noisy night club approximately 30, 40 yards outside my accommodation. This would often operate until half two or so in the morning. I on occasion had maybe two, three cans of beer at night just to try and settle me down so that I would be getting some quality sleep.

Q Can you think of any other reason why you might smell of alcohol first thing in the morning?

A No.

Q I am going to ask you first of all very briefly about the first incident, the one where it is said that you put your arm around Ms A and you put her head on to your shoulder?

A Yes.

Q You have admitted the facts of that incident?

A Yes.

Q Can you just tell the Panel briefly how it occurred?

A We were sat at the nursing point awaiting hand over first thing on a morning. She told me that she had a cold and she was feeling particularly bad that day and I put my hand to the far side of her head and guided it to my shoulder, basically as an act of comfort and sympathy, so her head was on my shoulder no more than two, three seconds.

Q Was anything said either by you or her?

A Again, I offered a couple of comforting words but there was no response from Ms A at all.

Q How many times before that had you met Ms A?

A Maybe four or five.

Q The second incident, then, in the corridor near to the canteen. Ms A said that it was mid-morning. What is your recollection of when it occurred?

A It will have either been mid-morning at coffee break or at lunchtime. I am not sure which.

Q What kind of place is it at that time of day?

A Busy.

Q Why is that?

A Because staff from all over the hospital would be going for either their coffee breaks or their lunch breaks.

Q What happened?

A As I recall, I had had a poor night's sleep thanks to the night club. My recollection is that I briefly placed my head on her shoulder and just told her that I was really tired.

Q You said you placed your head on her shoulder. You saw earlier on where she said your head was much lower, on her chest. What do you say to that?

A It was on her shoulder.

Q She also said you put your arms around and hugged her for about 30 seconds?

A I do not recall that but had I done so, the number of staff that would have been going past at that time of day, somebody would have said something.

Q Moving on to the third incident, the one that took place on 5 July?

A Yes.

Q You were here when Ms A gave her evidence and you saw, she demonstrated with reference to the plan where you and she were positioned. Would that be broadly correct, Mr Harrison?

A Yes.

Q I think she described the incident as taking place at again around about the time of hand over. I think she said hand over had not actually happened?

A No, it was a very busy day that day. As I understood it the ward had been on take that day. Every bed was full and there were more than the usual number of staff on the ward.

Q The ward was on take, you say. Can you explain what you mean by that, for those of us who are not...

THE CHAIRMAN: I think we all understand it.

MS SLEEMAN: Does that mean that there were new patients coming in?

A It was a primary admission ward over the weekend.

Q What does that mean in terms of your familiarity with the patients in this six-bedded bay?

A There would be quite a few new faces. I would have to go round all the new patients go familiarise myself with them before I could even think about treating them.

Q You heard Ms A's description of the incident. Can you tell us in your own words what your recollection is?

A We exchanged morning pleasantries just by the sink and she commented that she was still feeling poorly from the cold and my recollection is that I could not hear any added sounds just standing where I was and I said, "No need for chest physio."

Q How far away from her were you standing when you said that?

A I would guess two or three steps.

Q You made a gesture of putting your hands up - I am trying not to rely on demonstrations for the sake of the Shorthand Writer. How far would the distance have been between your raised hands and Ms A when you made that comment?

A Maybe a foot, 18 inches.

Q After you made that gesture and that comment, what, if anything, did she say to you?

A I believe she asked if I was trying to touch her breasts and my comment to that was, "I wouldn't do that, you'd hit me." The reply was in a light-hearted fashion because I did not actually think she was serious.

Q You say 'the reply' - do you mean her reply or your reply?

A My reply.

Q What was your reply? Do you mean the comment you gave earlier?

A Yes.

Q You said to her, "I wouldn't do that, you'd hit me"?

A Yes.

Q Was there any further comment from her?

A I do not recall, no.

Q In her witness statement she said her recollection is she said something along the lines of, "I would have kicked you too." Do you have any recollection of that?

A I do not but it may have come up in conversation about that, but I do not recall it.

Q Ms A also said that at one point you moved your position, she said she felt to block her from exiting where she was. What do you say to that?

A I made no attempt to deliberately block her path.

Q You heard her description earlier of the approximate dimensions of the particular area where you were. Do you agree with that? She said it is quite narrow at the point where the sink juts out?

A There would have to be room for either a cabinet or an armchair in the corner.

Q Do you mean the corner with the back wall?

A Yes.

Q Where do you say you were while the exchange was going on?

A It could well have been as she described it.

Q What is your recollection? You say you did not make any attempt deliberately to block the path. What, if any, recollection do you have of having moved at any point during the discussion?

A It is that long ago I cannot remember.

THE CHAIRMAN: I am sorry, Ms Sleeman, I missed the question. I got the answer.

MS SLEEMAN: Ms A said in her evidence that she felt that Mr Harrison moved deliberately to block her and she said he did not deliberately. I asked him whether he could recall moving his position at any point.

MR HARRISON: That may have been her perception but it was not a deliberate act in that fashion.

MS SLEEMAN: But you think you may have moved?

A It is possible.

Q If you did move, in what direction? Can you remember?

THE CHAIRMAN: That is a difficult question. It does not quite follow. You cannot remember - which direction?

MS SLEEMAN: Only that Mr Harrison just said he may have moved. If he had some recollection of moving it might be helpful to know which direction that was:

Q Are you able to say?

A No.

Q As I said, it is not meant to be a memory test. You heard Ms A's account of a further discussion, a further exchange between you. First of all she said that you made reference to needing an instruction manual on how to operate female bits. Do you remember any comment that could be construed in that way?

A That would come along to the comment about if I was trying to touch her and me saying that, "I would not do that, you would hit me." I believe that followed on with, "Beside, it's been that long I wouldn't know what to do with a woman." I am still believing it to be a moderately light-hearted conversation.

Q So, so far as you can recall it, you think you said, "Besides it's been that long I wouldn't know what to do with a woman". She goes on to make a reference to an instruction manual. Do you remember saying anything?

A I believe I followed it on with, "I'd probably need a book of maps" or something.

Q A book of maps?

A Something along those lines.

Q She goes on to say that you then said that it had been a long time since you had seen any except the patients' and at that point you gestured towards the patient, she says in the bed which would have been behind you and said that that patient's bits were wrinkly. Do you remember saying anything?

A I would never say anything like that about a patient.

Q Do you remember if there was any discussion relating to patients at this point in the exchange?

A No.

Q She goes on to say you then asked whether she had an instruction manual in relation to herself. Do you remember?

A No, not so.

Q Finally, she says that you said you might visit a sex shop. What do you say to that?

A Not so.

Q Any reference to a sex shop?

A No.

Q There is reference in Ms A's witness statement - she did not deal with it verbally this morning but the statement has been seen by the Panel - she said that there was a 21 year old occupational therapist on the ward who said that she had told her that you had asked for her home telephone number. Can you explain how that might have arisen?

A I believe that we exchanged mobile telephone numbers.

Q I should ask you first of all, do you know who she is referring to?

A Yes. The regular OT who was on sick that week. She had gone down with meningitis.

Q Can you explain how this exchange might have arisen about you having asked her for her telephone number?

A As I say, I believe we exchanged mobile telephone numbers when we bumped into each other in the supermarket one night. There was another member of the OT staff present at the time.

Q I think I probably know the answer to this but it has been said that there were concerns raised by a student physiotherapist. Did you have any knowledge of that at the time?

A No.

Q There has also been reference to your having bought presents for a woman called Katrina Catewell. Can you explain what that might be a reference to?

A I would often take in biscuits, cakes and sweets for the ward staff in general. It was never directed to one person in particular.

Q Who would you give them to if you were bringing cakes and biscuits into the ward?

A Probably the senior Sister or, if she was not present, the nearest member of staff.

Q Why did you do that?

A They were nice to me, I was just trying to be nice back to them.

Q An account was given by Mrs Jones of what occurred following your being asked to leave the hospital on the Monday?

A Yes.

Q With reference to your telephoning the department, can you tell the Panel what happened?

A At the end of the meeting with myself and Tudor, Tudor escorted me to the locker room where I retrieved my coat and my rucksack and he then guided me off the premises. It was when I was coming to start packing my belongings into my cases back at the accommodation that I realised that there was a carrier bag full of software, handouts and my cheque book. I rang, tried to get in touch with Tudor to arrange retrieval of these goods and it took virtually all week to get that arranged.

Q What was arranged eventually?

A That I would wait at the town end entrance of the hospital and a male member of staff would bring my property to me.

Q What happened when you went to wait at the appointed place?

A I waited some 20, 25 minutes beyond the arranged time and on thinking about it, I surmised that the male member of staff may have gone to the bigger main entrance at the other end of the hospital. I also surmised that if I walked round the outside of the hospital he might come down the main corridor to where I had been waiting and decided the course of action I really should take would be to walk through the hospital on the main corridor so that if he did that, I would bump into him and I could take possession of my goods and leave the hospital.

Q So having decided on that, is that what you did?

A I started down the main corridor and was met by one of the security members of staff who had with him my carrier bag of property. He asked me where I was going. I said I was just coming to pick up my goods and then I can be gone.

Q Finally, it has been said that there were reports of you sitting on a bench outside the hospital on this particular day in the pouring rain. Can you shed any light on why that might have been said?

A I was sitting on the bench outside the main door while I was waiting for said member of staff to show up with my property. When it started to rain I moved to sit on a chair just inside the door, during which time several members of staff who recognised me either entered or left the hospital and therefore walked straight past me.

MS SLEEMAN: I think I have no further questions, sir.

THE CHAIRMAN: Thank you.

MS HILL: Sir, I am conscious of the time. I am not going to get through in five minutes my cross-examination. I think it is probably better to break and then do it after lunch.

THE CHAIRMAN: We will be guided by you. Thank you. Can we agree what time we are going to come back? Shall we say half-past one? That is 35 minutes. I think that is long enough.

MS SLEEMAN: Sir I will warn my client, of course, that he is under oath and we will not discuss his evidence. Are you content with that?

THE CHAIRMAN: Thank you.

(a) The Panel adjourned for lunch

17. **Cross-examined by MS HILL**

18.

19. **Q Can I start by referring you to the Standards of Conduct, Performance and Ethics document, the blue document and also the Standards of Proficiency for Physiotherapists. No doubt you will be aware of those?**

A Yes.

Q You have read them and you have taken on board the contents?

A Yes.

Q You understand them?

A I think so.

Q Thank you. Let us look at the first incident first, as it were. You have agreed you were there at the time and that you put Ms A's head on to your shoulder, a fact you have accepted?

A Yes.

Q You said that that was in an attempt to offer some form of comfort to her?

A Yes.

Q Did you feel you knew her well enough to offer her that sort of comfort?

A I did not see why not.

Q I would suggest to you that you did not know her well enough and that it was in fact quite an inappropriate thing to do doing to somebody who you have not met before. What would you say about that?

A I did not feel it was pushing the bounds of things too much.

Q But you accept that she felt that it was?

A Yes, possibly.

Q Thank you. Then let us look at the second incident. Obviously you are known to each other during this time, you have been working with each other and the first incident has happened. Ms A says that you approached her in a corridor, you placed your arms around her waist and you rested your head on her chest. What do you say to that?

A The head was on her shoulder.

Q Ms A said in her evidence that there were not many people around and you said in your evidence that there were lots of people round. It is the case, is it not, that there were not that many people around at the time?

A It is a busy time of day for the canteen. People taking meal breaks, coffee breaks.

Q You say that you met in the corridor. You accept that?

A Yes.

Q You just said to me again then that it was only a head that you put on her shoulder?

A Yes.

Q There was no hugging, there was no head on the chest. Did any altercation take place between you and Ms A at any stage that would mean that she was against you professionally, that she wanted to bring these allegations or enlarge on them?

A No.

Q So when she says that you did put her head on her chest and you hugged her, that is correct, is it not? That is what actually happened?

A I dispute that.

Q You accept, do you not, that the Panel are going to have to choose between your evidence and her evidence in making a decision today?

A Yes.

Q Ms A has said that you did put your head on her chest in the corridor and that you did hug her. She was quite specific about that and quite specific about how your head was placed. She was even able to show the Panel. She is right, is she not, that is in fact what happened?

A I still say it was on the shoulder.

Q You have said today, quite a few times now in fact, that the head was placed on the shoulder but initially you said something different in relation to this incident, did you not?

A Can you enlighten me?

Q What have you said about this incident in the past? I believe that you have denied this incident in the past. I can see you looking at a letter and I would like to refer you to that. That is the letter that you initially sent to the Health Professions Council on 18 December. If I can just read the relevant part to you.

THE CHAIRMAN: Do we have copies of this?

MS HILL: No, sir, you do not have copies of this.

THE CHAIRMAN: I know we do not, but do we have any prepared?

MS HILL: You are not going to need them, sir. Obviously I can get them for you if you need them but I am not going to refer to a great amount of it.

On the final page you say:

“With regard to paragraph 2 of the Complainant’s statement”

- and in paragraph 2 of her statement she refers to this incident -

“I have on no occasion either placed my hands around her waist or placed my head on her chest.”

You see you said that?

A Yes.

Q You have not actually confirmed, though, that you met her in the corridor, have you, in the way that you have with the other two incidents in this letter?

A I will accept that the meeting took place.

Q You will accept that now but you were not accepting it then so there is different evidence then than there is now?

A In my statement of 18 December I did not say that we did not meet in the corridor.

Q In your letter of 18 December you said - I did not know whether there was many differences in there and I got lost in the negatives.

A Paragraph 2 refers to the head on the shoulder.

Q Paragraph 2 of her original letter that she has given this morning:

“The second occurred later that week when Mr Harrison stopped me in a corridor and placed his arms around my waist and placed his head on my chest. I noted on both occasions the smell of alcohol and felt uncomfortable with the physical contact.”

So she specifically mentions there that there is a meeting in the corridor, but in your response to the investigating Panel - so the Panel that decided there was a case to answer - you do not confirm that you met in a corridor. You simply deny that the incident happened altogether?

A We may well have met in the corridor.

Q But you did not say that in your initial letter?

A No.

Q Thank you. Let us then look at the third incident on 5 July. A lot of this is obviously already agreed. You accept that you were in bay one with her?

A Yes.

Q You accept that there are six beds in bay one and that those beds were full?

A Yes.

Q You accept that you had a conversation with her?

A Yes.

Q I think you probably accept that she was in a confined space at the time?

A Yes.

Q It is true, is it not, that you were the only two staff members present?

A I believe so, yes.

Q You were the only staff members present because it has been put to you and to the witness that there were other members of staff present?

A There was - as I said earlier - more than the usual members of staff on the ward with it having taken up full bed occupancy over the weekend and it is quite possible that any member of staff could walk in the room at any time.

Q They could walk in the room but they were not there at the time?

A I do not believe so, no.

Q Let us move on. You did not, in fact, gesture towards her, "You don't need physio, do you?" Rather you actually outstretched your hands as if to touch her breasts and stopped one centimetre away from her?

A No.

Q That is in fact what did happen, is it not?

A No.

Q You did that when you knew that there were no other people present and that she could not get past you to leave the room?

A As I say, any member of staff could have walked in at any moment.

Q But there was not anybody there at the time?

A I do not believe so.

Q When you realised, having seen her face, that stretching out your arms in that way was inappropriate, you dropped your hands and you said to her, "If I'd have touched you I'd be on the floor now"?

A "If I had touched you, you would have hit me."

Q So words to that effect?

A Yes.

Q At that point Ms A had to put her file in front of her chest, did she not, in order to try and protect herself and move around you but you, in fact, moved your body, did you not, so that it made it very difficult for her to get past without causing a scene?

A I did not deliberately obstruct her passage. It may have been interpreted that way.

Q You then said to her - and I do concede that you said it in a joking manner - that you had not had sex for a while and you have accepted that you said to her that it had been so long that you would need an instruction manual. I think you have accepted words to that effect?

A Words to that effect, yes.

Q You thought you were being humorous. This is surely not an appropriate way to be speaking to a colleague, especially directly in front of a patient?

A As I said, I believed it to be a light-hearted conversation. It was very brief.

Q I would have to say that that is not an appropriate way to speak to a colleague that you do not know well enough or, indeed, to any colleague and not appropriate in front of a patient.

MS SLEEMAN: Would you ask him a question?

MS HILL: I could add on to the beginning, I would have to say to you and get your comment on the fact that it is not an appropriate thing to say to a colleague in front of a patient?

A At the time I did not believe I was pushing things too far.

Q You then went on to say, did you not, that it had been a long time since you had seen any female bits except for the patients and at that point you turned and pointed to a patient in a bed behind and said, "Apart from her bits and they were wrinkly."

A No. As I said earlier, I would not speak about any patient like that.

Q I suggest to you that you did say that and that the patient was awake and could well have heard what you said?

A No.

Q You then, in fact, went on, did you not, to ask Ms A whether or not she had an instruction manual for her bits and she had to say that she did not?

A No, I did not say that.

Q You then said, did you not, that you might have to visit a sex shop?

A Not so.

Q I would say to you that all of those things did happen?

A No.

Q We have heard quite convincing evidence from Ms A that those things did happen?

A No.

Q Fortunately after that last comment she was able to leave the bay as somebody else came in. That conversation was not appropriate, was it?

A Possibly not.

Q Thank you. Let us move on to the alcohol.

A However, I do deny the latter part of that conversation.

Q We have heard evidence from each of the witnesses in relation to the alcohol. I am not entirely clear from the evidence that you gave whether or not you accept that you smelt of alcohol on those occasions. I appreciate that you said that you had drunk alcohol the night before?

A Yes.

Q But what is your view on whether you smelt of alcohol that morning?

MS SLEEMAN: Madam, is that a matter that this witness can answer, whether or not Mr Harrison smelt of alcohol. We have heard evidence from a number of witnesses that they smelt alcohol on his breath. It seems to me that Mr Harrison is unable to say whether or not other people did smell alcohol. He has offered an explanation as to why there might have been a smell but he cannot say categorically whether other people smelt it on him.

THE LEGAL ASSESSOR: Perhaps the question could be rephrased.

MS HILL: I am just in difficulties in terms of how I proceed with the particular. I have been told that he does not accept that he smelt of alcohol, yet he has given an explanation that he may well have done, so I am kind of in limbo. That is my difficulty.

THE LEGAL ASSESSOR: I accept the point. I do not think that this witness can say did other people smell alcohol. Perhaps he could be asked if he was aware that there was a smell of alcohol coming from his breath. That may be a more appropriate question for this witness.

MS HILL: Indeed, madam, I will ask it in that way, then:

Q Mr Harrison, were you aware that there was a smell of alcohol?

A No.

Q When you attended at work? In which case we will need to just look at everything the witnesses have said. Ms A has said and you have agreed that you put her shoulder on to your head on the morning of the first incident?

A No.

THE CHAIRMAN: We are getting confused now.

MS HILL: Putting her head on to your shoulder on the incident of the first morning. It is early on, 8.15 a.m. She says that she could smell...

A 8.45.

Q 8.45 a.m. and she could smell alcohol on you at that time. What do you say about that?

A There was no comment made at that time.

Q What do you say about whether or not you smelt of alcohol? Did you smell of alcohol?

THE CHAIRMAN: That is the same question. I do not wish to be - that is effectively the same question you put before.

MS HILL: The question I am trying to ask is that each of these people have said that he smelt of alcohol, yet he has simply said, "I had three or four pints the night before" and he is leaving it there. I am not sure that you are going to be able to make a decision on whether or not he did smell of alcohol without something further from him. That is my concern.

THE CHAIRMAN: To be fair, I think the point has been made and I am not sure that Mr Harrison can confirm whether or not he smelt of alcohol. Was he aware of it - probably not. Each of the witnesses have stated that they smelt alcohol on him - Ms A three times and each of the other two witnesses at least once on 5 July. So, three people have said it and there are five occasions, but clearly I do not know that he can say whether he was aware that he smelt of alcohol.

MS HILL: Sir, on that basis I will say this instead:

Q As you have just heard from Mr Clegg, there are three separate witnesses who say that they have smelt alcohol on you. One witness says on three occasions, two of them say on one occasion each. From the evidence that we have heard it seems that you have attended at work on three days out of six possible working days smelling of alcohol. If that was the case, you would have to agree that that was not appropriate, would you not?

A As has been already pointed out, if I am not aware that I am smelling of alcohol, how can I act upon it?

Q Let us take it away from you directly, then. You would not expect a fellow health professional to attend at work smelling of alcohol, would you?

A No.

Q Especially not three out of six days?

A No.

Q Can I then turn, please, very briefly to the conversation with Tudor Smith. I do not now if you do agree because it was not put to you - do you agree that you said that you had been too touchy feely?

A I asked if it had been commented I was being touchy feely.

Q You gathered that this is in relation to a complaint that had been made by Ms A?

A It appeared that way.

Q That is quite an interesting choice of phrase, is it not, 'touchy feely', which would suggest that you knew that you had been touching her inappropriately and that you had been making inappropriate comments to her, would it not?

A It is a term that we use up in the north-east.

Q We use it in the south as well but I am sure it has the same meaning. That meaning, 'touchy feely' is that you have been touching somebody and feeling somebody and I would therefore suggest that you knew that you had been inappropriate with her?

A I was in a state of shock at the time and it might have been inappropriately worded.

Q Thank you. Just to finish off, can I ask you again to put yourself in this position. If the Panel decide that each of these allegations are made out and have been found today, then I think that you would have to accept that they would amount to misconduct, would you not?

A Possibly.

Q Would you go as far as to accept that as a result of that misconduct your fitness to practise would be impaired?

A With the knowledge I have had through this procedure I would be able to amend my behaviour accordingly and therefore still remain fit to practise.

Q The suggestion there is that you are not fit to practise, you were not fit to practise at the time because of your behaviour?

A I doubt it.

Q You doubt you were fit to practise?

A I dispute the comment.

Q I am confused, sorry?

A Because on all counts it has been stated that my clinical work and workload were good and therefore not impaired.

Q Mr Harrison, make no mistake, there is no allegation at all today in relation to your competence. This is simply in relation to your misconduct and you will understand that the Health Professions Council is simply looking today at ensuring that the public are protected, or whether or not they require protection by reason of this misconduct that has taken place before. I do not dispute in any way that there is any problem with your clinical knowledge, just so that you are clear.

A Right.

Q My question was you, have accepted that if the Panel find these allegations today, you accepted that they would probably amount to misconduct and my question then was, does that result in your fitness to practise being impaired?

A If I had had the appropriate feedback from the relevant members of staff, again, I would have been able to adjust and compensate appropriately.

Q I would suggest to you that there should have been no need for them to have to do that because you should not have been behaving in that way in the first place. As a health professional you should be able to conduct yourself appropriately at all times?

A It did not feel inappropriate at the time.

MS HILL: Thank you very much. I do not have any further questions for you. I do not know if there is some re-examination.

20. Re-examined by MS SLEEMAN

Q I think just the one point. Mr Harrison, it was put to you that in your original letter to the Investigating Committee that you made no mention of incident number 2. You simply denied that you had ever put your head on Ms A's shoulder or hugged her in the corridor. Can you say now why you made no mention of the incident that you have described today in that letter?

A It was not a deliberate omission.

Q Can you explain why it was not in there?

A I may have accidentally missed that section when I was reading through the paperwork.

Q Just for the sake of completeness, you do say in that letter at no time did you hug her or put your head on her chest. You said, "I have on no occasion either placed my hands around her waist or placed my head on her chest." What do you say about that today?

A I stick by that.

MS SLEEMAN: I have no further re-examination, sir.

THE CHAIRMAN: Thank you.

21. Questioned by THE PANEL

MR HORWOOD: I would just like to ask you a couple of questions, Mr Harrison, relating back to your CV. Could I possibly ask you why, having spent five years as a Senior 1 in Wheelchair Services, you then decided to request a transfer back to a Senior 2 post?

A I became aware that my physiotherapy skills in other fields would be suffering. I wanted to remain in contact with other fields within the profession. It is a very insular post, is wheelchair services. You are always well out of the building, you do not have the normal physiotherapy contacts.

Q Going on from that, then, could I ask you why you decided to take time out from physiotherapy altogether?

A Just personal reasons.

Q OK.

A I had been going through an unpleasant divorce at the time and I did not want it to impinge on my work practice.

Q When you did come back to physio and you worked as a locum, did you work for a number of different agencies?

A Yes.

Q There are quite a few posts there. There are approximately six posts in a period from December 2003 to May 2004. I personally worked as a locum a couple of times. They do quite often offer you different posts varying in length of time and I can see that the one you went to Wrexham Maelor was an open ended appointment?

A Yes.

Q Was it just the case in the early part of 2004 that there were no longer term locum posts available, or did you choose to move from post to post taking short-term contracts?

A I chose to move from post to post.

Q Can I ask you why you chose to do that rather than base yourself in one particular place?

A I wanted to retain my house in Middlesbrough. Several posts that were offered to me I just did not like the look of. Due to the rates of pay that locums can get, I was able to pick and choose.

Q I too, when I locumed, was offered work that was local to where I live and I chose to do that to save the inconvenience of travelling long distances and living away, so my question to you is why you chose to live down in Devon or Cambridge when your house was in Middlesbrough if there was work available around your home area?

A It was a nice way to see the country.

MR HORWOOD: OK. I have no further questions, Chairman.

MR PROBERT: I have just one, please. Mr Harrison, you accepted on the sheet of particulars and admitted item 1, the first item. That is fine, we take that as it has been explained to us. There was an item you denied. Why do you think a member of staff, Ms A in particular, should make the allegation that has been made against you if it did not happen?

A No idea.

Q Ms A or the other members of staff did not dream them, surely?

A We obviously have different recollections of the same incidents.

Q Something must have happened?

A As I say, there are parts of it I accept, but not all of it.

Q So the fact that they have been made must have been made with some foundation, then?

MS SLEEMAN: That is a matter to be decided yet. It is not really a question for this witness.

THE CHAIRMAN: Are you currently working, Mr Harrison?

A No.

Q Have you not worked since this time?

A That is correct.

THE CHAIRMAN: OK, thank you.

MS SLEEMAN: I have no further questions, sir.

MS HILL: Sir, I think it now falls to me to make the closing speech and then, of course, Ms Sleeman may want to do the same.

Sir, we say that Simon Harrison's fitness to practise is impaired by reason of his conduct at the Wrexham Maelor Hospital. As I explained to you initially, is the allegation made out and do you find the particulars in front of you actually took place? If so, do these amount to misconduct and then, if that misconduct is found, does that lead to his fitness to practise being impaired?

Can we, then, please, look at each alleged incident? The alcohol. Ms A gave evidence that she smelt it on three occasions. Carol Jones and Tudor Smith agree that there was a strong smell of alcohol on 5 July. I accept that Mr Harrison cannot comment on this but I would say that there is no reason for any of these witnesses to make up such an allegation. Mr Harrison has already left their employment and they are no longer concerned with him. I suggest that you can find, therefore, that there was a strong smell of alcohol which would be inappropriate.

Let us look at the first incident, the head on the shoulder. It is accepted that this did take place. Both witnesses are agreed on that. You have heard how Ms A felt after that. You must decide if that was inappropriate. We would say it is. It would be inappropriate with any health professional but especially with one you did not know very well.

Then, please, can we look at the second incident. In relation to this matter you must chose between the evidence of Ms A and Mr Harrison. Ms A says that the incident took place. Mr Harrison says that it did not. You have heard from Ms A that the incident happened in the corridor and consisted of a hug that lasted 30 seconds during which he placed his head on her chest. She was very clear about the incident and very specific in her evidence as to where his head was placed. She said that she could not have been mistaken by his actions.

Mr Harrison says that there was a meeting but he placed only his head on her shoulder in a gesture to say that he was tired. Once again, that in itself is inappropriate but we say he went further than that.

You have no doubt noted that he has stuck fairly closely to the story, the explanation given by Ms A, and perhaps the best way to protect himself in a situation like this is to stick as closely to the truth as he can. They are very similar versions. You can find it is more likely than not that Ms A's version actually took place. You are also assisted by the previous evidence, the fact he wrote to the Health Professions Council, to the Investigating Committee, and he did not refer to the incident in the corridor in the way that he has done so today. He gave different evidence on that occasion to that which you have heard now and that would go to how much weight you want to attach to his evidence.

Let us look at 5 July. Again, you must choose between the evidence of Ms A and Mr Harrison. Mr Harrison accepts that he was there at the time, he was present and that he said he would require an instruction manual as he had not had sex for some time. We say that is inappropriate, again, in itself.

He denies the fact that he outstretched his hands towards her breasts to touch them. We say that he did and you have heard from Ms A that she felt that he was going to touch her inappropriately in this way.

Despite the brief admissions that he has made that we say are inappropriate, we say that inappropriate behaviour went further than that and that you are able to find that on the evidence that you have heard what Ms A says took place could well have done so as Mr Harrison accepts that he was present and that a conversation along the lines of the allegation took place. He simply places a different twist or angle on the explanation. It is more likely than not that this incident took place as described by Ms A. She is very sure of her evidence.

If you accept her evidence, then behaviour of this type has occurred by then on three separate occasions, which would suggest that this incident and the previous incidents were more likely to have taken place than not, as an inappropriate pattern of behaviour is established.

Sir, when you are considering which evidence you want to accept and who you want to believe, can I ask you to consider this. Firstly, Ms A has attended to give evidence today and it has not been a pleasant experience for her. Her intention in reporting the matter, you heard, was to protect others, the younger occupational therapist and because she thought that matters had now got out of hand. Neither are able to suggest an incident that would have turned Ms A against Mr Harrison professionally. She therefore had no reason to mislead you, especially in relation to incidents where Mr Harrison agrees he was present and he had a tendency to be rather more direct or over-familiar with her than he should have been.

Ms A was an excellent witness. She was very clear. She was able to answer satisfactorily any suggestions put to her that she was elaborating or that she was mistaken or that she was making things up.

I would accept that there were some discrepancies between the evidence of the witnesses that you have heard today but I ask you to place most weight on the evidence of Ms A. She was the one that this happened to, she is the one who has given you the best evidence in relation to that.

The management who were dealing with her on that day were not expecting to deal with her. I think you can tell from them that they were quite, perhaps, flustered by that. They did not make any notes at the time. They could see that she was distressed and they did not want to push her any further.

If there are now discrepancies in her recollection, that is really no surprise. The statements were made in April, May, March of this year, nearly a year later and, as I have said, they have no notes to refer back to. There should be no suggestion that Ms A has exaggerated matters simply because there are some slight discrepancies between her and her managers.

Sir, we say that the allegations are made out. You must then decide whether they amount to misconduct. I would concede that some of them alone do not - attending at work, perhaps, on one occasion smelling of alcohol would not necessarily amount to misconduct. The first incident alone would not amount to misconduct. However, the incident in the corridor certainly would. As for the incident and the conversations in front of the patient on 5 July, both of them are misconduct in their own right. Taken collectively we say that these actions must amount to misconduct.

If three witnesses could smell alcohol on Mr Harrison, then patients certainly could. If you have three incidents when Mr Harrison is smelling of alcohol in six working days, you may want to infer that it was happening more regularly than that.

We then have the three examples of inappropriate behaviour towards a colleague. You have heard from Ms A that they left her feeling, in her words, intimidated, uncomfortable, shocked, unhappy, annoyed and very shaken. The inappropriate touching and the comments and the alcohol must amount to misconduct.

Sir, you must then decide if Mr Harrison's fitness to practise is impaired. Please consider what the public perception would be of his actions. The very nature of his actions, the inappropriate touching, the inappropriate comments about his sex life, the inappropriate references to the patient's genitalia, the inappropriate sexual questioning of Ms A and the attending at work smelling of alcohol must amount to his fitness to practise being impaired.

You have just heard evidence from Mr Harrison. He has accepted that, if you find these matters found, as it were, today, sir, that they could amount to misconduct. He then went on to explain that his fitness to practise, however, was not impaired as he has changed his ways and it will not happen again. Sir, I have said, that is a very dangerous route to go down, accepting only Mr Harrison's word when he was not able to appreciate that he was behaving inappropriately in the past. If you were to be satisfied of that, I think you should perhaps

have some evidence from a current employer or from somebody more recently to show that there had been no further problems with him. I accept that he is not working but that is, in fact, a matter for Mr Harrison and I do not think you should just accept his word that his fitness to practise is no longer impaired.

Sir, we therefore say that these actions happened, that they amount to misconduct and that his fitness to practise is impaired.

THE CHAIRMAN: Thank you. Ms Sleeman.

MS SLEEMAN: Sir, clearly what is alleged does amount to a serious matter in its entirety, taking into account all of the various elements of what has been alleged, and by anybody's standards I would suggest, if it is made out as per the evidence of Ms A, it would amount to inappropriate conduct. I do not think there would be any question about that. You have heard in this matter from three witnesses from the Trust.

You have also heard, sir, that the witness statement of Glenys Hodgson has been previously agreed, so you have had it read to you. Sir, the only observation I would make on it is that she says in the course of her witness statement, in paragraph 2, that she worked with Simon Harrison on two occasions on a clinical basis and she makes no mention herself of smelling alcohol on him on either of those occasions.

Sir, clearly insofar as incidents two and three and the references to smelling of alcohol are concerned, it is a matter where you and your colleagues are simply going to have to decide whose account you believe. When you turn your minds to considering that issue, I would invite you to treat the respondent as a witness of truth for a number of reasons - primarily this; you have heard his evidence today. He does accept that there is some grain of truth in the account as provided by Ms A but we say it has been greatly exaggerated, particularly in relation to incident number 3.

Sir, you and your colleagues might consider that, of course, if Mr Harrison was an untruthful Respondent, he would simply have come here today and made a blanket denial that any of these matters occurred at all. You might think that would be less complicated for him, less likelihood of his being caught out.

Sir, I would ask you and your colleagues to consider in particular this, that the conduct that he has admitted to is something that even on his account you and your colleagues might consider amounts to inappropriate conduct and so, in my submission, if he was an untruthful respondent, he would not expose himself to the risks of your finding that fact.

There are other matters that I would urge you and your colleagues to consider when you are deciding whose account you believe and, in particular, especially in light of Ms Hill's comments towards the end of her closing submission, the burden of proof is, of course, on the Council, not on the Respondent to prove anything at all. It is now, of course, a relatively low burden and I have no doubt your learned Legal Assessor will come to give you some guidance on that point in due course.

It is sometimes said that although it is strictly speaking on the balance of probability - that is to say the civil standard of proof rather than the criminal one of beyond reasonable doubt -

nevertheless, where the allegations are particularly serious, if you like it is a sliding scale. The more serious the allegations, the more sure you should be of the position before you find that. I do not know at this point whether she is planning to give you that advice but I have heard it said on previous occasions by Legal Assessors and I can see she is indicating that that is her view.

Sir, having said that, the burden does fall fairly and squarely on the Council. Having said that, it is always apparent when representing any Respondent where there is a conflict of fact between two witnesses that inevitably, in considering who you believe, you and your colleagues will come back to the question that has been very clearly expressed by Mr Probert earlier on - why would Ms A lie? That is not to say, of course, that the burden shifts to Mr Harrison but, of course, in seeking to convince you of his innocence in these matters, it is helpful if he is able to offer you some possible explanation while accepting, of course, he cannot get inside the mind of Ms A or, indeed, any of the other witnesses. If he is able to offer some sort of explanation, then of course it is sensible to do so because it might assist you when you come to make that decision.

Whilst not being able categorically to state that this is the position, I would invite you to consider this as a possible scenario. Ms A had accepted that on two occasions he acted in a way with which she felt uncomfortable, she felt was inappropriate, but that on neither of those occasions did she feel sufficiently confident to say to him, 'Don't do that, I don't think it is appropriate. Stop it.'

You might think, sir, that following - that we make no criticism of her for not doing that. She is perfectly entitled to take that approach if she wishes to and, indeed, most of you will know from your own experience that the majority of polices and procedures in Trusts these days give the victim, as it were, a choice as to whether they raise inappropriate conduct with the perpetrator at the time or whether they go to a more senior member of management and the latter, of course, is what she did.

We say that her choice of doing that is significant in light of what she did next, because we say it is entirely possible that having, she says, suffered two incidents of inappropriate behaviour at the hands of Mr Harrison and feeling unable to challenge him, on the third occasion she then felt that she needed to present an account which was sufficiently serious that it would ensure that management would ask him to leave the hospital, that there would be no further risk of her having to work alongside him and to suffer any further incidents.

We say, sir, it is notable that even on that third occasion she did not say to him, 'What you are saying is inappropriate', even in respect of the alleged comment in respect of the patient.

Sir, in considering that as a possible scenario - as I say, it is not possible to get inside the mind of the Complainant but it is relevant, I say, for you to take into account that Mr Harrison was at the time a locum, someone whose position is relatively precarious when a complaint such as this is made against him. There would, therefore, be no risk of having to attend a disciplinary hearing within the hospital - a simple thing really to contact the agency and say, 'We do not want him any more' and this is exactly what happened.

We offer that as a possible explanation as to why the account of the incident, in particular the incident on 5 July, has been exaggerated.

In any event, sir, setting aside a possible explanation, we would invite you to reject the evidence of Ms A and of the other Trust witnesses. We say it is not credible for a number of reasons.

Firstly, we say all three incidents are said to have taken place in busy, public, open places. It is accepted they all happened at times of day when those particular locations would have been open to other members of staff and, on some occasions, patients as well. Whether or not there actually were staff in the area - I am thinking particularly in respect of the third incident on 5 July - it is, of course, unthinkable that anyone other than someone who is extremely reckless, would even consider acting in such an inappropriate way in an area where somebody might come in. The fact that they did not is not necessarily determinative.

We say, sir, that if the explanation is just that, that Simon Harrison is so reckless that he simply did not care that a colleague might overhear this exchange, then we say there is no explanation as to why that did not occur before 5 July. He started working at the hospital on 10 May. If he is so unaware of acceptable boundaries of behaviour, we say it would have come out prior to the date that it finally did.

We also point, sir, to the inconsistencies between Trust witnesses and I note that Ms Hill simply dismisses them on the basis that the accounts were written well after the time of the incident but, sir, there are some very significant discrepancies and, in particular, I would invite you to recall the evidence of Mr Smith, who, after a bit of muddling, finally did accept that until 5 July he was not aware of any complaints. He then went back and said he had actually been made aware of the incident involving the student physiotherapist but he was quite clear on this point, which is that as of 5 July, he did not say to Ms A that there had been previous complaints about Simon Harrison. Ms A's clear evidence was that Mr Smith did tell her on that date that there had been previous complaints, including about a student physiotherapist.

They cannot both be right and we say that in that particular instance it is Mr Smith who is right and not Ms A.

You might also consider the position of Rachel Hawkings, sir - not a witness you have had the benefit of hearing from today but you have had some comments attributed to her in the witness statement of Ms A and you will recall that what is said of Rachel Hawkings is that she had told Ms A on the day of the first incident - so in that first week - that there had been previous complaints and that Mr Smith was aware.

Again, taking into account Mr Smith's evidence today, what Rachel Hawkings said or whether Rachel Hawkings said it to Ms A cannot be correct.

Sir, in the course of the evidence there have been references to other members of staff raising issues about Mr Harrison smelling of alcohol while at work. It is notable, we say, that none of these were raised at the time and we say it is unthinkable that professional, caring, competent healthcare professionals would not do so if that were really the case.

You might also remember the witness statement of Carol Jones, at paragraph 4 if you read that statement as it is written - and bearing in mind that it was written prior to a warning that

it would be used in these proceedings and it was therefore very important that it should be full and accurate in all respects - clearly it conveys the impression that her discussion with Ms A on the day in question left her with the understanding that there had been a conversation about Mr Harrison's sex life on the previous week as well.

Sir, again, there are other matters attributed to other members of staff, evidence that is given at second hand, I say. I am referring in particular to the issue of Rachel Hawkings saying that Mr Harrison always smelt of alcohol and Miss Catewell and the gifts, the cleaner and the ice cubes and so on and so forth. Sir, you have not heard direct evidence from any of those witnesses and we say in proceedings such as these where, albeit it is a civil standard, civil rules of evidence, therefore we cannot prevent hearsay evidence being brought in, we say it would be very, very dangerous for you to place any weight whatsoever on those accounts without having heard direct from those witnesses and we would urge you to discount them entirely. They do not, of course, form any part of the Council's case. They do not form part of the specific allegations and we say you should place no reliance on them whatsoever because, of course, there has been no opportunity to test the evidence in cross-examination of those witnesses.

Sir, the significance I would invite you and your colleagues to attach to these inconsistencies between the accounts of the Trust witnesses, which Ms Hill dismisses as simply being of no relevance and simply attributable to the passage of time, is this. I say that it is wholly consistent with a situation which has happened in the way that we have described, where there is a kernel of truth, there has then been discussion, deliberations between parties, some speculation perhaps and other matters have been added and added and added, and that is exactly what we say has happened in the present case. What has happened eventually is that an account has evolved which is actually quite a long way from the truth of the matter.

In contrast, I say, Mr Harrison has been clear and consistent throughout. It was clear that there was one omission from his original submission to the investigating Committee but, sir, if you look at - you have not seen the benefit of the letter but what he says there is, "On no occasion did I put my hands around her waist and put my head on her chest." He still says that today.

Sir, I can see a possible outcome, which is that you might decide that you do prefer Mr Harrison's evidence over that of Ms A and believe his account of this incident but nevertheless find that, even as admitted by him, it amounts to what Ms Hill describes as misconduct and therefore that you would feel the need to consider whether or not his fitness to practise is impaired on the basis of the behaviour as admitted by him.

Sir, if you find yourselves in that position, I would invite you to consider the matter in this way. From your own personal knowledge and experience of working in hospital Trusts, what do you think would have happened to a professional who had had a complaint such as that made against him? In my submission the very likely outcome, had the member been a regular member of the employed staff, is that disciplinary proceedings might well have been instigated, there might have been a formal hearing and the outcome, in my submission, the most likely outcome, would have been something along the lines of a written warning.

If you think that that is a likely outcome, then I say it is open to you today to conclude that, notwithstanding the conduct admitted by Mr Harrison, that his fitness to practise is not

impaired because, of course, if it is a matter that you think falls within the range of the sort of matter which is generally dealt with by an NHS Trust along the lines of perhaps a written or a verbal warning or something like that, then it is open to you to find that his fitness to practise is not impaired because, by definition, if an NHS Trust deals with it in that way, there is no impairment of fitness to practise because, of course, the professional will be allowed to continue to practise.

In deciding whether or not his fitness to practise is impaired - and you will note that the specific charge is that his fitness to practise is impaired rather than was impaired at the time of the incident - I say you can take into account the matter that Mr Harrison referred to towards the end of his evidence, which is that notwithstanding the difference in accounts in respect of his behaviour as admitted with the benefit of hindsight, he now understands that he did overstep the boundaries - perhaps not so far as to make it affecting his fitness to practise but that in the light of that he has now the benefit of additional hindsight and that his conduct for the future will be regulated by virtue of having gone through these proceedings.

One final point, sir. I would just make the point that although, just going back to the evidence, there have been accounts and second hand reports of smelling of alcohol on the breath and so forth, none of those accounts come from the nursing staff and those, of course, on an elderly ward would be the people who were having the most day to day contact with Mr Harrison.

Sir, unless I can be of any further assistance those are the matters I would seek to raise.

THE CHAIRMAN: Thank you, Ms Sleeman. I think we turn now to you, Ms Hughes, for guidance.

THE LEGAL ASSESSOR: Clearly the facts of Allegation 1 have been admitted by the Registrant but the facts only. The onus therefore rests on the Council to satisfy you that Allegations 2 to 6 have been proved on the balance of probabilities.

I would remind the Panel that the more serious the allegation the more compelling or careful or precise the evidence should be. In particular in professional disciplinary proceedings the mere balance of probability is not sufficient and a degree of probability must be proportionate to the nature and gravity of the issues before you and given the potential consequences of an adverse finding.

If the Panel are satisfied the facts have been proved on the balance of probabilities, they then have to determine do those facts amount to misconduct and, if so, does that misconduct impair the Registrant's fitness to practise?

If I can be of any assistance in helping to draft the decision I will be happy to do so, Chair.

THE CHAIRMAN: Thank you. We will retire. Just for completeness, I would ask for one copy each - not for each of us, just one copy of each - of the two letters that have been referred to - Mr Harrison's submission to the HPC in response.

MS SLEEMAN: I do have copies of that letter.

THE CHAIRMAN: Just one will be fine.

MS HILL: I will get you a copy of the other one, sir.

THE CHAIRMAN: Yes.

MS SLEEMAN: Sir, you are welcome to my copy. It is slightly marked.

THE CHAIRMAN: We are happy to let whoever lends us one have it back. Thank you.
(Documents handed to the Panel)

(The Panel retired to deliberate in private)

22.

23. DECISION

THE CHAIRMAN: Having noted the facts in Allegation 1 are admitted by the Registrant, we went on to consider the remainder. Having read and listened carefully to all the evidence and submissions presented, we find that the remaining allegations have been well founded and, given the nature of all the allegations, amount to misconduct by which the Registrant's fitness to practise is impaired.

In arriving at this decision, we have found Ms A to be a credible witness and have accepted her versions of events in Allegations 1, 2 and 3. We also heard evidence from Mr Smith and Mrs Jones confirming that they had smelled alcohol on Mr Harrison's breath on 5 July, in addition to the two earlier occasions when Ms A had smelt his breath, i.e. Allegations 4 and 5.

In looking at the facts of this case we have considered the Standards of Performance, Conduct and Ethics and consider that breaches have occurred in respect of number 1, acting in the best interests of patients, clients and users - that is in respect of an inappropriate comment regarding a patient; number 3, where the Registrant must keep high standards of personal conduct at all times; number 13, where the Registrant must carry out their duties in a

professional and ethical way and; finally, number 16, where the Registrant must make sure that their behaviour does not damage their profession's reputation.

THE LEGAL ASSESSOR: I was asked to join the Panel in the course of their retirement and I assisted with the drafting of the decision. The decision had been made before I joined them.

THE CHAIRMAN: Thank you, Ms Hughes. I apologise for not allowing you to say that earlier.

Can I look to the both of you to proffer any submissions in respect of sanction?

MS HILL: Sir, it is not appropriate for me to address you on sanction but no doubt Ms Sleeman will want to.

MS SLEEMAN: I take it there is no past history, no antecedents.

MS HILL: I am sorry, that is correct. Mr Harrison is not known to the Health Professions Council for any other reason.

MS SLEEMAN: No. Thank you, I am grateful. Sir, I would like to call Mr Harrison again briefly about the effects. I wonder if he might remain here this time. I think it is unlikely he will be cross-examined.

SIMON HARRISON Recalled
Examined by MS SLEEMAN

Q You are still under oath from the last time. Mr Harrison, the Panel has heard from you about matters leading up to your - I will call it dismissal, though it technically was not because obviously you were not employed, but just for the sake of shortness - dismissal from the hospital. We have also heard that you were actually employed through an agency. Did you have any discussions with the agency following your departure from the hospital about your continued employment by them?

A It was a very short conversation and they said that they could not represent me any further.

Q The consequences, then, of that discussion and your departure from Maelor Hospital were what?

A The aftermath?

Q Yes.

A I have suffered damage to my physical and mental health. Also financially.

Q You said your physical health first of all. What is that a reference to?

A Eczema has re-emerged after many, many years. I thought I had got rid of it when I was a teenager.

Q When did that come back?

A Two or three months ago.

Q What do you attribute that to?

A More than likely the stress of the proceedings, the procedure.

Q When you say your mental health as well, what are you referring to?

A At times I can become very depressed very quickly.

Q Have you sought any medical assistance for that?

A No. I did have a course of Prozac when I was going through my divorce those years ago and found it did not do anything.

Q The Panel has heard that you were living at the time in hospital accommodation at Maelor Hospital?

A Yes.

Q What happened, then, when you were dismissed?

A I spent the next few days packing my belongings and trying to retrieve my personal possessions.

Q Where did you go then?

A Home.

Q Home being?

A Middlesbrough.

Q We have heard you are not currently working as a physiotherapist. What have you been doing in terms of work since July of last year?

A I have been signing on.

Q For the whole period?

A Yes and my self-confidence and motivation have been virtually completely destroyed.

Q Clearly up until as of today you are still on the Health Professions Council Register as a physiotherapist, so strictly speaking you can work?

A Yes.

Q Why have you not sought to work as a physiotherapist?

A I wanted to get these proceedings out of the way before considering going for another physio job.

Q If, following today's hearing, you were permitted to remain on the Register as a physiotherapist and you were able to get back into physiotherapy as a profession, what do you think you would have learned from this whole experience?

A To be far more attentive of how I explain myself and that within the clinical surroundings.

Q Can you explain a bit more what you mean by that? How you explain yourself within the clinical surroundings, perhaps with reference to your relationship with professional

colleagues within the workplace? How might you approach that if you were to go back, if you were able to go back?

A I would be a lot more careful as to how I presented myself.

Q With the benefit of hindsight, what do you think now of your conduct towards Ms A on those dates last year?

A I stick by what I said.

Q But in terms of her response to your conduct, what do you think about that now?

A As I said to you earlier, at no point did I sense any physical or verbal warning off.

Q Looking at what you previously said about if you were able to return to physiotherapy as a career, you say you would be more careful. In the context of what you have just said about there not being verbal or physical warnings, how would you approach that differently, then, if you were to find yourself in a similar situation?

A I would endeavour not to place myself in a similar situation and if possible I would keep a wide exclusion zone.

Q But what would that actually mean in a workplace, keeping a wide exclusion zone? Again, it is hypothetical but if you were to get back to physiotherapy at some point in the future, you are going to have to work alongside other physios, other healthcare professionals. What do you mean by keeping an exclusion zone? How would you do that?

A Maintaining at least an arm's length distance where possible and where possible having at least one other member of staff present at all times.

MS SLEEMAN: I have no further questions, sir.

MS HILL: Sir, I do not have any questions for Mr Harrison.

MS SLEEMAN: Any questions from you and your colleagues, sir?

THE CHAIRMAN: Not in that regard, no. I have to say, I am a little bit worried, Mr Harrison, that when asked what have you learned, you say, "I stand by what I said in terms of the events." I think I am probably best withdrawing that. I think Ms Sleeman was finding similarly - putting the question, "What have you learned?" and your response was, "I stand by what I said earlier in terms of the events with Ms A" and you seem a little unclear as to exactly how those would be managed in future. We have heard the evidence, in incident number 3 no other staff were present. You cannot always - you certainly could not always ensure that there is somebody else present?

MR HARRISON: I could invite another member of staff.

THE CHAIRMAN: OK. I understand. Thank you. Ms Sleeman, do you wish to address us?

MS SLEEMAN: Briefly yes, sir, I will. Thank you.

Sir, clearly you have found that my client's fitness to practise is impaired by virtue of the incidents as described by Ms A and that is accepted.

Sir, you have just now had the benefit of further evidence from him about the effects of the dismissal on him. Sir, you will bear in mind, I have no doubt, when considering disposing of this matter, the fact that because he was an agency member of staff he effectively had no opportunity to recover the position, to modify his behaviour, to remain in employment as I referred earlier. That might have been a possibility had he been a direct employee, perhaps with a written warning on his file or something of that nature.

Sir, you have heard also the consequences for him are particularly severe because it meant not just the loss of this particular job, by virtue of the response of the agency - quite rightly you might think - but the prospect of any further employment was certainly taken away from him and, of course, his home at the time. He was living in hospital accommodation and, of course, he had to leave that and I am sure you and your colleagues will accept that that was a very painful experience for him.

Sir, what my client has said at this last stage and at the previous stage, he was very clear from the start that there was never any intent to cause offence. It is clear that what occurred did amount to an error of judgment - you might think a serious one - but no more than that. Clearly not something where he set out to cause offence to Ms A or to anybody else.

Sir, you and your colleagues might be concerned with what you might feel appears perhaps to be a lack of insight, a lack of clarity with the benefit of hindsight but, sir, I say there are a number of ways of learning a lesson and one, a particularly effective one, is by learning of the particular consequences of any transgression. I say that is the way Mr Harrison has learned his lesson in this particular case. He has lost his job, he has lost his career, he has lost his home, all at one fell swoop. He had no opportunity of going through a hearing. Sir, you are looking puzzled.

THE CHAIRMAN: You had not lost your main residence?

MR HARRISON: No.

MS SLEEMAN: I meant his home as in where he was living at the time.

THE CHAIRMAN: That is the nature of locum work.

MS SLEEMAN: I understand that, sir, but it is an additional feature that would not have arisen had he been directly employed and living in his own home. It is a further sense of disruption. He had the indignity of having to collect his possessions, packing up his possessions and moving. He had a home to go back to, otherwise he would have been rendered homeless. I am not suggesting he was made homeless but, nevertheless, it is a further disruption to his personal and professional life which has served, I say, to reinforce the fact that you have judged his conduct to have been unacceptable on this occasion.

He has now had time, of course, to reflect on that and to consider precisely what those consequences have been. Sir, you have heard that the incident occurred back in July of last year. That is almost a full year now. It is a long time to be living with the stress and the strain and the uncertainty of knowing whether or not he will be allowed to continue to practise his chosen profession, physiotherapy, in the future.

Sir, I do have some testimonials which I will hand up. I do not propose to read them out loud. (*Handed to the Panel*) You will note what is said - in particular I would invite you to look at what is said by Denise Jones, who is a fellow professional physiotherapist. She describes Mr Harrison as being a supportive and knowledgeable senior who guided her competently through her early experience. The other testimonial is from a personal friend.

Sir, I appreciate that in some cases a much more extensive bundle of testimonials is handed up. Here Mr Harrison has felt so disconcerted by these events, so ashamed, really, of being before the Panel, that he has not felt able to ask more people to provide them, which is not uncommon, in my experience and you should not read, I say, very much into the fact there are only two. You should look at the quality of the ones and the substance of what they say.

Sir, I say by virtue of all of those factors he has been punished sufficiently and it is very clear from what he has said just now that in the future, if you were minded to permit him to remain on the Register and if he were at some point in the future to overcome the obvious difficulty he would now face if he were to seek to get back in to physiotherapy as a professional - and he realises, of course, there would be difficulties around references and it may well be it is simply not possible, but if it is - you have heard him say that he has now decided that he will, of course, be much more careful in the future. He has referred to placing an exclusion zone around himself. You might think that sounds a bit extreme but it does demonstrate, in my submission, an awareness on his part that he simply cannot risk a repetition of anything like this happening at a future point.

Sir, No doubt your learned Legal Assessor will take you in due course to your powers of disposal but I will just refer briefly to some of the possibilities you have.

There is a possibility of taking no further action. In my submission it is unlikely that you and your colleagues will think that this is a matter where that is appropriate though, of course, if you do come to that conclusion I would invite you to do that on the basis that he has already been sufficiently punished on the basis of all of the matters that I have previously referred to.

Sir, in the alternative, if you felt that that approach did not sufficiently mark the seriousness of the conduct in this case, I would invite you to consider imposing a caution on the Respondent. In my submission, sir, that would have the benefit of reinforcing to him, if it needs reinforcing, the message that this kind of behaviour simply is not appropriate. It would, in my submission, be wholly proportionate to the seriousness of the matters of which he has been found guilty and it would have the additional effect that if there were to be any problems in the future, he would, of course, be brought back before another similar Panel and they would be made aware of the fact that there had been a previous problem.

You might think, sir, that that would be something similar to the kind of approach which might well have been taken with an employer at the time in the terms that I have referred previously in perhaps placing a written warning on his file or something like that.

In my submission, sir, if you do not feel able to take no action, that is the appropriate course of action. I would invite you not to consider either suspending him or striking him off.

In my submission it is unlikely that you will be able to think of any conditions that might be appropriate in this case but, of course, if you and your colleagues can think of some that you

feel would be appropriate, then, of course, I would invite you to do that rather than either suspend or strike him off.

Sir, unless I can be of any further assistance, those are my submissions.

THE CHAIRMAN: Thank you.

MS HILL: Sir, I wonder if I may just make two very brief points?

Firstly, as you know, this is not about punishing Mr Harrison. That is referred to a couple of times there that he has already been sufficiently punished and you are looking to punish him. This is not a punitive forum. It is simply to protect the public. I would ask you to bear in mind that you need to look at the public being protected when you impose your sanction.

With that in mind, although it is unfortunate that all these things have happened to Mr Harrison in terms of his illnesses and his lack of confidence and his having to move away from the hospital, they are a result of his own actions and, though unfortunate, need to be weighed against the public protection.

MS SLEEMAN: Sir, perhaps just on that point, can I just come back very quickly. The reason I referred to punishment is because when you are deciding on protection of the public, one way to ensure they are protected is by ensuring that he understands that he must not behave like this again. That is the link. I was not suggesting that that is the test that you applied. It is the protection of the public.

THE CHAIRMAN: I am sure we will be advised of the test momentarily.

THE LEGAL ASSESSOR: Thank you, Chair. I would advise the Panel that the purpose of sanctions is not punitive. The function of the Panel is to determine what is necessary to protect the public and the order in which it considers sanctions is in Article 29 of the Health Professions Order.

Firstly, you look at mediation or no further action. Mediation is a consensual process where there are outstanding issues between the party and the health professional and no further action for cases at the lower end of the spectrum where there are no unresolved issues, basically.

If the Panel do not think that either of these sanctions are appropriate, the next one you can look at is a caution. That would be appropriate for slightly more serious cases where there may be a low risk of recurrence but where the lapse has been corrected and was in itself of a minor nature. If the Panel were considering a caution, the period would be between one and five years.

The next in order to consider is a Conditions of Practice Order but again there may be difficulties given the points mentioned by Ms Sleeman with this option.

The next in line is a Suspension Order. If the Panel were of a mind to impose that, the maximum period would be one year.

The final sanction is a Striking Off Order and that is for serious, deliberate or reckless acts and that is the most serious sanction that would be open to the Panel.

If I can assist you with the drafting of your decision I would be happy to do so, Chair.

THE CHAIRMAN: Thank you.

MS SLEEMAN: Sir, I am sorry, one factor I did forget to mention is that you should take into account, of course, the fact he has no previous history.

THE CHAIRMAN: Yes, thank you.

(The Panel retired to deliberate in private)

24. DECISION

THE CHAIRMAN: Mr Harrison, in determining what sanction to impose we have taken into account your further evidence and also submissions made on your behalf.

In the light of the facts of this case we did not feel that to take no further action was appropriate. However, a caution, in our view would be sufficient to protect the public and the Registrar will be directed to annotate the Register accordingly. The caution is to run for three years.

I should advise you of your rights of appeal and they will be included in the correspondence that is sent to you within a period of 28 days if you wish to appeal against that decision.

MS SLEEMAN: Thank you very much, sir.

MS HILL: Thank you, sir.

THE CHAIRMAN: It has been quite a long day. I will take this opportunity of thanking everybody for their involvement in the process. You referred earlier that it was somewhat informal but I hope that you will accept that it has been done thoroughly and appropriately.

I would always wish to thank the Shorthand Writer who, I think, has the hardest job of the lot on these occasions, so thank you and also to you, Ms A, for having so patiently sat through what has clearly been a difficult day for you. To everybody, thank you very much indeed.

To you, Mr Harrison, I hope that you get some employment and things pick up for you.

MS SLEEMAN: Thank you very much.

MS HILL: Thank you, sir.

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