

# Raied Haris v. GMC [2021] EWCA Civ 763: when is sexual touching sexually motivated?

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In 2019, Dr Haris, a qualified doctor since 2008 came before the GMC following complaints from two unrelated female patients that he had undertaken nonclinical intimate examinations on them without their informed consent. The two incidents occurred on two different dates, at two different locations and were remarkably similar in that the Doctor had touched the vaginal area of both patients whilst not wearing gloves. In relation to one of the patients, Dr Haris had also caressed the patient's buttocks and fondled her breast during the examination.

Despite the appellant denying the allegations, the Medical Practitioner's Tribunal ('MPT') believed the accounts of the two patients. Although the MPT made a finding that the acts complained of "could reasonably be perceived as overtly sexual", they concluded that the GMC could not prove on a balance of probabilities that Dr Haris' conduct was sexually motivated. In reaching this conclusion, the Tribunal had accepted the diagnosis of a consultant forensic psychiatrist that the appellant was "asexual" and had no interest in a sexual relationship. Therefore it concluded that the touching carried out was not for sexual gratification. The GMC appealed the decision and Foster J allowed the appeal in [2020] EWHC 2518 (Admin). She made a finding that the only rational conclusion to be drawn from the facts found by the MPT was that the motivation for the touching was sexual. Dr Haris' appeal related to this ground.

On 20 May 2021, the Court of Appeal rejected the appellant's submission that Foster J had gone behind the finding of fact made by the Tribunal that there was no sexual motivation. Lady Justice Andrews concluded that the Tribunal had ignored the fact that the best evidence of Dr Haris' motivation was his behaviour. At paragraph 37, it went on to state that: "*The behaviour was not just capable of being reasonably perceived to be overtly sexual, it was overtly sexual, and there is no other way in which it could have been perceived. A doctor, of all people, would have known that.*" Therefore the reasoning of the Tribunal was "fundamentally flawed" and Foster J rightly held that their finding was not reasonably open to

them. Furthermore, the MPT had failed to consider the implications of their findings that the Doctor had failed to tell the truth and the patients had. They had not taken this fact into account when making a critical finding on whether the actions of Dr Haris were sexually motivated.

The Court concluded at paragraph 57 that: *“In the absence of a plausible innocent explanation for what he did, the facts spoke for themselves. A sexual motive was plainly more likely than not; I would go so far as to say that that inference was overwhelming.”* As to what those plausible innocent explanations could be, well returning to Foster J’s decision, it appears that this may be limited to accident, consent and any clinical or other proper justification [paragraph 60].

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8 July 2021



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