

HEARING HEARD IN PUBLIC
McCANN, Eamonn Patrick Edward
Registration No: 56680
PROFESSIONAL CONDUCT COMMITTEE
JANUARY 2020 - DECEMBER 2021
Outcome: Erased with Immediate Suspension

McCANN, Eamonn Patrick Edward, a dentist, BDS Queen's University of Belfast 1982, was summoned to appear before the Professional Conduct Committee on 14 January 2020 for an inquiry into the following charge:

Charge (as amended on 14 January 2020 and 7 December 2020)

"That, being registered as a dentist:

Witness A

Inappropriate comments

1. On an occasion between 1990 and 1994, you said to witness A "you don't expect me to believe that you were on holiday with your boyfriend and didn't have sex" or words to that effect.
2. You conduct at charge 1 above was
 - a. inappropriate
 - b. sexually motivated
3. On one or more occasions between 1990 and 1994, you asked witness A how she kept her figure, or words to that effect.
4. You conduct at charge 3 above was
 - a. inappropriate
 - b. sexually motivated

Kissing on the cheek

5. On an occasion in or around one Christmas between 1990 and 1994, you kissed witness A on the cheek.
6. As amended - You conduct in respect of charge 5 above was
 - a. inappropriate
 - b. sexually motivated

Touching her leg

7. As amended - On one or more occasions between 1990 and 1994, you intentionally touched witness A's leg with your hand and/or fingers.
8. In relation to charge 7 above,

- a. witness A was not consenting
 - b. you did not reasonably believe that witness A was consenting
9. Your conduct in respect of charges 7 and/or 8 was:
- a. inappropriate
 - b. sexually motivated

Touching her vagina over clothing

10. As amended - On one or more occasions between 1990 and 1994, you intentionally touched witness A's vagina over clothing with your hand and/or fingers.
11. In relation to charge 10 above,
- a. witness A was not consenting
 - b. you did not reasonably believe that witness A was consenting
12. As amended - Your conduct in respect of charges 10 and/or 11 was:
- a. inappropriate
 - b. sexually motivated

Touching her vagina under clothing

13. As amended - On one or more occasions between 1990 and 1994, you intentionally touched witness A's vagina under clothing with your hand and/or fingers.
14. In relation to charge 13 above,
- a. witness A was not consenting
 - b. you did not reasonably believe that witness A was consenting
15. Your conduct in respect of charges 13 and/or 14 was:
- a. inappropriate
 - b. sexually motivated

Digital penetration

16. On one or more occasions between 1990 and 1994, you intentionally penetrated witness A's vagina with your fingers.
17. In relation to charge 16 above,
- a. witness A was not consenting
 - b. you did not reasonably believe that witness A was consenting
18. Your conduct in respect of charges 16 and/or 17 was:
- a. inappropriate
 - b. sexually motivated

Pressing crotch area against her

19. As amended - On an occasion between 1990 and 1994, you intentionally pressed your crotch area against witness A.

20. In relation to charge 19 above,
 - a. witness A was not consenting
 - b. you did not reasonably believe that witness A was consenting
21. Your conduct in respect of charges 19 and/or 20 was
 - a. inappropriate
 - b. sexually motivated

Attempting to have sex with her

22. On an occasion between 1990 and 1994, you intentionally attempted to penetrate the vagina of witness A with your penis.
23. In relation to charge 22 above,
 - a. witness A was not consenting
 - b. you did not reasonably believe that witness A was consenting
24. Your conduct in respect of charge 22 and/or 23 above was
 - a. inappropriate
 - b. sexually motivated

Witness B

Pressing crotch against her

25. As amended – On or around 17 September 2015, you intentionally pressed your crotch area against witness B.
26. In relation to charge 25 above,
 - a. witness B was not consenting
 - b. you did not reasonably believe that witness B was consenting
27. Your conduct in respect of charge 25 and/or 26 above was
 - a. inappropriate
 - b. sexually motivated

Touching her leg

28. As amended – On or around 1 October 2015, you intentionally touched witness B's leg.
29. In relation to charge 28 above,
 - a. witness B was not consenting
 - b. you did not reasonably believe that witness B was consenting
30. Your conduct in respect of charge 28 and/or 29 was:
 - a. inappropriate
 - b. sexually motivated

Touching her vagina over clothing

31. As amended - On or around 1 October 2015, you intentionally touched witness B's vagina over clothing with your hand and/or fingers.
32. In relation to charge 31 above,
 - a. witness B was not consenting
 - b. you did not reasonably believe that witness B was consenting
33. Your conduct in respect of charge 31 and/or 32 was:
 - a. inappropriate
 - b. sexually motivated

Touching her bottom and/or lower back

34. As amended – On or around 1 October 2015, you intentionally touched witness B's bottom and/or lower back.
35. In relation to charge 34 above,
 - a. witness B was not consenting
 - b. you did not reasonably believe that witness B was consenting
36. Your conduct in respect of charge 34 and/or 35 was:
 - a. inappropriate
 - b. sexually motivated

Caution/Notification of Charge

37. [WITHDRAWN]
38. [WITHDRAWN]
39. On 11 September 2017 at Dungannon Police Station in County Tyrone, you were cautioned by the police for common assault.

AND that by reason of the facts alleged, your fitness to practise is impaired by reason of misconduct and/or caution.”

On 15 January 2020 the Chairman made a statement regarding an application on the admissibility of evidence:

“Mr McCann

Mr Patience, on behalf of the GDC, made an application pursuant to Rule 57 to allow the evidence of a civilian witness, Witness C, for his oral evidence and also his witness statement to be admitted. Mr Patience informed the Committee that although his evidence is not related to the heads of charge, it is similar fact evidence. He submitted it would be admissible pursuant to Rule 57 (1) or (2).

Witness C is a former patient and recalled that on an unknown date in 2009/10 during an appointment, he had seen you placing your hand on the thigh of the dental nurse for about 1

to 2 minutes. He observed the dental nurse appeared visibly upset afterwards. This made the patient feel upset and uncomfortable and he subsequently left the practice.

Mr Patience submitted that it would not cause any procedural unfairness for Witness C's oral evidence to be admitted. He informed the Committee that his evidence is clearly probative, and describes conduct by you which is of an identical type to the behaviour described by Witnesses A and B.

Mr Patience referred to relevant case law and stated that the two-stage test for admissibility for such evidence has been met in this case. He submits that this evidence is relevant, and if it is admitted in the circumstances of this case, does not cause any unfairness to either party.

Mr Boyle on your behalf submitted that this oral evidence of Witness C should not be admitted as the evidence is not related to the heads of charge before this Committee. He further submitted that this witness statement is not particularly helpful, and the statement would be of limited value to the Committee. Mr Boyle informed the Committee that the witness statement mentions an incident on an unknown date in an unknown year some 9/10 years ago. He also submitted that the dental nurse has not been named.

Mr Boyle further submitted that the timeframe is entirely outside the timeframe of the heads of charge that you face. He submitted that the GDC has taken no steps at all to identify the dental nurse or the receptionist who had a discussion with her after this alleged incident.

He submitted that this evidence is not probative of any issue in these proceedings. The only possible allegations to which it could have some similarity with regards to Witness A are 7 and 8, and for Witness B are 28 and 29.

Mr Boyle submitted that if the Committee were to determine that this evidence is probative, it should not be admitted because the prejudice to you far outweighs the probative value of it, and also that the GDC have not sought to place any evidence from the dental nurse in question. Finally, Mr Boyle states that there is self-evidently unfairness to you as a result of its vagueness and the historic nature of the event.

Mr Patience submitted that the GDC had made further enquiries regarding Witness C specifically requesting his patient records from the dental practice with a view to identifying the dental nurse. The GDC had received a reply from the Practice Manager directing their enquiries to you and have received no reply.

The Committee took into account all the information before it. It bore in mind the submissions made by both parties. It accepted the advice of the Legal Adviser.

The Committee determined that the oral evidence of Witness C should be admitted as evidence. It considered that the evidence of Witness C would be admissible in a court of law and is therefore admissible under Rule 57(1). The Committee considered that the two-stage test for admitting similar fact evidence had been met. Firstly, the evidence was relevant to the case for the reasons set out above. Secondly, the evidence's probative value outweighs any prejudice against you. The Committee notes that the GDC sought to identify the dental nurse in question, but you did not respond to their requests for relevant records. These records could have identified the date of Witness C's appointment and assisted in identifying the dental nurse and the receptionist.

The Committee noted that Witness C's evidence, although it does not relate to the same time period as in the heads of charge, occurred between those dates and describes the

same type of behaviour. The Committee considered that admitting the evidence of Witness C would not cause any unfairness to either party. The Committee considered that although it was not directly linked to the heads of charge, it was probative and not unduly prejudicial. The Committee concluded that it would be in the interests of justice for it to be admitted and that it could attach the appropriate weight to the evidence in due course.”

On 17 January 2020 the Chairman made a statement regarding an application to adjourn the hearing:

“Mr McCann

Application to adjourn made by Mr Patience on behalf of the GDC

Mr Patience made an application under Rule 58 of the GDC (Fitness to Practise) Rules 2006 (the Rules) to adjourn this hearing [PRIVATE]

[PRIVATE]

Mr Patience submitted that it is important to ensure that all witnesses are enabled to give the best evidence that they can. He therefore submitted that an application is made for this Committee to adjourn the hearing at this stage in order for the GDC to make further enquiries into this matter. [PRIVATE]

Mr Patience submitted that these types of investigations will take time. [PRIVATE] Mr Patience submitted that given that these enquiries cannot be achieved in a short space of time and therefore an application is made to adjourn to undertake those enquiries.

Mr Boyle on your behalf did not oppose the application [PRIVATE]

Mr Boyle submitted that in fairness to you, the issue be properly explored, with expert evidence. He submitted that the criminal proceedings concluded over 2 years ago, and this matter continues to hang over your head, and that you are keen for this matter to be concluded as quickly as possible.

The Committee has considered carefully the submissions made by both parties. The Committee accepted the advice of the Legal Adviser, and has been reminded of the factors to be taken into account when considering this application.

The Committee accepts that it is appropriate for these matters to be heard as soon as possible. This would be in the interests of all parties. [PRIVATE] In the circumstances, the Committee has concluded that it is appropriate for the hearing today to be adjourned [PRIVATE] The adjournment will allow the GDC and your defence team the right to respond and produce any supplementary report.

The Committee proposes the following directions;

The GDC serve any further evidence 8 weeks from today, 13 March 2020.

The defence serve any further evidence 8 weeks after that date, which is 8 May 2020.

The Case Management Hearing to take place with this Committee, on the first day possible after 22 May 2020.”

On 17 January 2020 the hearing adjourned part heard and resumed on 30 November 2020.

On 8 December 2020, the Chairman made the following statement regarding an application to amend the Charges:

“Mr Patience on behalf of the GDC made an application under Rule 18 to amend the following charges:

- a. In charge 6, to amend the words ‘charge 3’ to read ‘charge 5’.
- b. In charge 12, to amend the words ‘11 and/or 12’ to read ‘10 and/or 11’.
- c. In charges 25, 28, 31 and 34, to amend the opening words which currently state ‘On

[DATE X]’ to read ‘On or about [DATE X]’.

Mr Patience submitted that in respect of heads of charges 6 and 12, the purpose of these amendments is to correct erroneous numbering references currently contained within those charges. He submitted that, regrettably, the references within charges 6 and 12 do not currently refer to the instances of conduct under the subject heading and instead, they erroneously refer to other charges contained under different subject headings. In view of the this, it is submitted that the proposed amendments would be desirable, so as to ensure that these charges accurately refer to the conduct to which it was intended they should refer.

It is submitted that there would be no injustice to the Registrant in allowing such amendments, given that the proposed amendments are in effect to correct a typographical errors and given that the subject headings in any event make it clear which charges are intended to be associated with each other.

In relation to the application to amend charges 25, 28, 31 and 34, so as to amend the opening words which currently state ‘On [DATE X]’ to read ‘On or about [DATE X]’. Mr Patience submitted that the purpose of this proposed amendment is to cater for the possibility that the Committee find that the conduct alleged in the charge did occur but are not satisfied that the evidence proves it occurred on the date particularised in the charge.

Mr Patience submitted that in this respect, such an outcome would be analogous to a situation where there has been ‘undercharging’, i.e. where the true gravity of the alleged conduct is not captured by the charges; in relation to undercharging, it was held in *Professional Standards Authority for Health and Social Care v. Nursing and Midwifery Council and Jozi* [2015] EWHC 764 (Admin), that a disciplinary tribunal should play a more proactive role than a judge presiding over a criminal trial in making sure that the case was properly presented and that the relevant evidence was placed before it and accordingly had a duty to guard against undercharging.

In relation to the question of fairness to the Registrant, Mr Patience submitted there would be no injustice for the following reasons:

- Whilst it is accepted that the cross-examination of Witness B has already begun, it has not yet been completed, meaning that there is still an opportunity for the defence to pursue any additional avenues of cross-examination that might arise as a result the proposed amendments.
- The defence have been on notice of the GDC’s intention to make this application to amend for a lengthy period of time. Oral notice was given on the final day of the last hearing (17th January 2020) and this was followed up in writing in an email sent to the defence on 31st January 2020. The defence has therefore been on notice of the

GDC's intention to make this application for some 10 months, giving them ample time to conduct any further investigations they considered to be necessary in order to be in a position to respond to the charge in its proposed amended form, should the application be granted.

- Due to the current adjournment of proceedings, this would give the defence more time to prepare their case in relation to this matter.

Mr Patience submitted that if there is some uncertainty as to the date specified, the GDC are entitled to propose amendments to the relevant heads of charge to reflect the full gravity of the conduct, so long as no injustice is caused.

Mr Boyle on Mr McCann's behalf did not oppose the GDC's application to amend heads of charge 6 and 12. However he did oppose the GDC's application to amend heads of charge 25, 28, 31 and 34.

He submitted that Witness B prepared 3 statements. The first was obtained by PSNI dated 13 October 2015, declaring the contents of this statement were true. Witness B identifies the date of 17 September and 1 October 2015 as the dates upon which the alleged assaults took place. Witness B's second statement dated 24 July 2016, which contained the same declaration as before, expressly referred again to the date of 17 September 2015. Her third statement dated 14 November 2016 also contained the same declaration as to its truth and referred to the same dates of 17 September and 1 October 2015.

Mr McCann was interviewed by the PSNI, and Mr McCann and his legal team later prepared his Defence to the criminal case based upon the evidence of Witness B that these alleged incidents happened on the dates she claimed. Mr Boyle submitted that the GDC obtained a witness statement from Witness B dated 24th August 2019. It is signed by Witness B with a declaration that she believes the facts stated in the statement to be true. It refers under a bold heading to the "Incident: 17 September 2015". Witness B refers to that specific date on 3 occasions in her statement. She expressed no doubt about it.

Mr Boyle submitted that the Notice of Hearing served upon Mr McCann prior to the hearing specifically identified the dates of 17th September and 1st October. This was necessarily so because the Notice of Hearing had to correspond to the evidence of the witness, by this time contained in 4 different witness statements. There was no suggestion in the Notice of Hearing of an "on or about" i.e. that the GDC were seeking to prove that these events happened (to the requisite standard) on some other date. He submitted that there was, and is, no evidential basis for this application whatsoever.

Mr Boyle submitted that the GDC wishes to adduce further evidence regarding Witness B including:

- [PRIVATE]
- [PRIVATE]
- [PRIVATE]

He submitted that the Defence have had, for the first time, the opportunity to put Mr McCann's case about these supposed events to witness B. This is the first time because the Public Prosecution Service in NI abandoned its prosecution of these incidents as described by Witness B and no evidence was called. All that has occurred is that the investigative

work undertaken by and on behalf of Mr McCann into the only evidence that either the PSNI or the GDC has ever collated has seriously and significantly undermined the reliability and the credibility of the evidence against him. That is the motivation for this application to amend.

Mr Boyle submitted that the test for amendment is not whether an amendment is “desirable”. The Committee have to be satisfied, having regard to the merits of the case and the fairness of the proceedings, that it can be made without injustice. He further submitted that the charge which he and his team have prepared to defend is incapable of proof. Permitting this amendment causes him the ultimate in injustice as it deprives him of his defence.

Mr Boyle submitted that the GDC who bring the case now want to rely on some unspecified time on an unspecified date. It is a hollow submission. Permitting the amendment would be to do no more than grant the GDC an unjustifiable “windfall” which would be unjust. They have called Witness B. They have alleged what has occurred and when it occurred, reflecting the evidence repeatedly attested to in statements by the witness. As above, all that has happened, is that it has been demonstrated that her evidence is not credible and not reliable. The allegations against Mr McCann were drafted by the GDC on the strength of the material available to it and the confirmed averments made in a number of sworn statements. Framed as they are, they do not constitute “under-prosecution”.

He invited the Committee to dismiss the application to amend heads of charge 25, 28, 31 and 34.

The Committee has carefully considered the written and oral submission from both parties. The Committee accepted the advice of the Legal Adviser.

The Committee first considered the wording of Rule 18, in particular the words ‘can be made without injustice.’ It decided that the normal meaning of those words is that it is the making of the amendment which may cause injustice. They do not mean that a decision not to make an amendment may cause injustice. It therefore focused its considerations upon the question of injustice to the Registrant.

In deciding whether to grant the application in respect of heads of charge 6 and 12, it had regard to the merits of the case and the fairness of the proceedings, and it was content that the proposed amendments could be made without causing injustice to Mr McCann. It noted that no objection was made by the defence.

The Committee then went on to consider whether to grant the GDC’s application in respect of heads of charge 25, 28, 31 and 34.

The Committee noted that the proposed amendment is to change the wording from “on”, to “on or about” before the date at the heads of charges. The Committee notes that the GDC or prosecution is not normally required to prove the actual date of a charge, unless it is a material element of the charge. However, the Committee notes that there are much wider considerations for the defence in this case.

The Committee notes that the GDC is making an application to change relevant heads of charge to reflect what Witness B had said in her oral evidence in January 2020. This is materially different to the evidence contained in her various witness statements. The Committee, having carefully considered the contents of Witness B’s witness statement and her oral evidence given to the Committee, concluded that the dates of the alleged assaults do not materially change the allegations contained in the charges. The material element of the charge reads to the acts alleged by Witness B.

Having reached that conclusion, the Committee went on to consider carefully the impact upon the Registrant and his defence of the proposed amendments. It accepted that the proposed amendments may deprive the Registrant of a defence which has been established in relation to the evidence given by Witness B. However, it does not deprive the Registrant of his right to defend the allegations made against him. Witness B can be further cross examined and her credibility as a witness can be challenged. It is also open to the defence to make submissions at the close of its case as to the credibility of Witness B.

The case is unlikely to be relisted before April 2021. It is open to the defence to further investigate Witness B's evidence. The defence can continue to question Witness B. Mr Patience further submitted that the words 'on or about' signify dates proximate to 17 September and 1 October 2015. The Committee accepts that view, and does not accept that the defence is put in the position of having to defend allegations over events which may be said to have occurred over a significant length of time. The Committee does not accept that placing the defence in the position of possibly making further investigations reverses the burden of proof, which remains upon the GDC.

The committee noted the authority relied upon by the GDC (Jozi), and the defence submissions, and further authority Council for the Regulation of Healthcare Professionals v GMC and Ruscillo [2004] EWCA 1356 referred to in response. It further noted that the authorities related to failures by regulators to reflect the true nature of the conduct of Registrants in the charges brought. In this case it finds there is no element of 'undercharging' of the Registrant. The material element of the allegations against him are contained in the charges and the Committee considers that the alleged dates of the conduct alleged are not material except that they may impact upon the way the defence puts its case. It does not find any useful analogy between the two different situations.

The Committee notes that Witness B is due to finish her oral evidence once this hearing resumes in 2021 and that defence have the opportunity to complete its cross-examination of her. The Committee will assess Witness B's credibility and reliability as a witness at a later stage. The Committee considers that it is in the public interest to hear all of the oral evidence of Witness B.

The Committee took into account the over-arching objectives of the GDC to protect the public and maintain public confidence. It accepted that the application of the over-arching objective is subject to the need to avoid injustice to the Registrant. The Committee having concluded that the amendments proposed do not cause an injustice to the Registrant, went on to consider the relevance of the over-arching objective of the GDC. The public interest in having serious allegations made against the Registrant properly investigated will be complied with in allowing the proposed amendments.

The Committee notes that the proposed amendments relate to non-specific dates. The Committee is satisfied that the proposed amendments do not change the material conduct alleged in the heads of charge and having had regard to all the merits of the case, is satisfied that it is in the public interest to hear all of the evidence available.

The Committee is satisfied that there is sufficient time for Mr McCann's defence team to pursue any additional avenues of cross-examination that might arise as a result the proposed amendments, and therefore no injustice would be caused.

It therefore accepts the GDC's application to amend heads of charge 25, 28, 31 and 34. It is satisfied that these amendments do not change the substance and nature of the allegations made against Mr McCann.

It is the Committee's view that the amendments can be made without injustice, having regard to the merits of the case and the fairness of the proceedings.

The heads of charge are amended accordingly."

On 4 December 2020 the hearing adjourned part heard and resumed on 15 February 2021.

On 22 February 2021, Mr Gerry Boyle (Counsel for Mr McCann) made a submission under Rule 19(3) on behalf of Mr McCann. The Chairman made the following response:

"Mr McCann

Mr Boyle on your behalf, has made a submission under Rule 19(3) of the General Dental Council (GDC) (Fitness to Practise) Rules 2006 that there is no case to answer in respect of charges 1-36 against you.

The charges against you, which are in dispute, are 1-24 in respect of Witness A, and 25-36 in respect of Witness B. Rule 19(3) of the General Dental Council (GDC) (Fitness to Practice) Rules Order of Council 2006 states:

"When the presenter has completed presenting evidence, the respondent or the respondent's representative may open the case for the defence, which may include a submission that there is no case to answer."

Submissions

Mr Boyle referred to the relevant test which is the well-known one of *R v Galbraith* [1981] All ER 1060 per Lord Lane CJ as applied in regulatory cases. Lord Lane CJ stated:

"How then should the judge approach a submission of 'no case'?"

(1) If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case.

(2) The difficulty arises where there is some evidence but it is of a tenuous character, for example because of inherent weakness or vagueness or because it is inconsistent with other evidence.

(a) Where the judge comes to the conclusion that the Crown's evidence, taken at its highest, is such that a jury properly directed could not properly convict on it, it is his duty, on a submission being made, to stop the case.

(b) Where however the Crown's evidence is such that its strength or weakness depends on the view to be taken of a witness's reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence on which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury."

Mr Boyle submitted that the first limb of this test should not cause any conceptual problems. A submission of no case should be upheld where there has been no evidence to prove an essential element in the alleged misconduct. He submitted that this Committee is empowered by the second limb of the *Galbraith* test to consider whether taking the evidence as a whole the GDC's evidence is too inherently weak or vague for any sensible person to safely rely upon it. Thus, if the witness undermines her own testimony by conceding that she is uncertain about vital points, or if what she says is manifestly contrary to reason this

Committee should hold that no reasonable Committee properly directed could rely on the witness's evidence, and therefore conclude there is no case to answer.

Allegations 1-24 Witness A

In relation to Witness A Mr Boyle submitted that she is not a witness upon whom any Committee could safely rely in order to find the facts alleged proved to the requisite standard. The evidence of Witness A was so intrinsically unreliable both in relation to individual charges and when taken as a whole, that it is simply not possible for this Committee as a fact-finding tribunal, properly directing itself, to find proved, to the requisite standard, the allegations made by her. Mr Boyle submitted that the Courts have observed:

"Although there is a single civil standard of proof on the balance of probabilities, it is flexible in its application. In particular, the more serious the allegation or the more serious the consequences if the allegation is proved, the stronger must be the evidence before a court will find the allegation proved." He referred the Committee to the case of R(N) v Mental Health Review Tribunal [2005] EWCA Civ 1605.

Mr Boyle submitted that Witness A was a witness so clearly capable of distortion or embellishment of the facts, in particular in relation to very serious allegations of sexual misconduct, to the extent that her evidence as a whole was intrinsically unreliable. He submitted that the inherent unlikelihood of some of the allegations Witness A advanced demand more persuasive (cogent) evidence which is completely lacking given the extent of the unreliability of Witness A.

Mr Boyle reminded the Committee of the following elements of her evidence and gave comment:

Mr Boyle submitted that Witness A suggested that there were always corrections and revisions required to treatment plans, which she then corrected and suggested was any excuse to get out of the surgery, which she flippantly described as a "play with words" which within a moment she conceded wasn't in fact true. He submitted that Witness A was seeking to portray you in the worst possible light on every aspect within moments of the alleged conduct commencing.

Mr Boyle submitted that Witness A, when it was pointed out to her that she was trying to give a poor impression said there were "unscrupulous treatments" a baseless assertion when challenged immediately she corrected this to "*he was unscrupulous*". When she explained what she meant was an allegation of fraud she said "*I didn't say that*". Mr Boyle submitted that she knew what she was suggesting. He submitted that Witness A contradicted herself about the quality of treatment having previously said there were times you deliberately didn't provide treatment and charged for it.

Mr Boyle submitted that when confronted with a letter Witness A had written, she tried to distance herself from it by claiming she hadn't signed it. Witness A stating that she hadn't signed the letter was disingenuous in the extreme, he submitted. Mr Boyle submitted that in her evidence she claimed she felt "*very lucky*" and "*very happy to deliver*" aspects of what she was saying. Witness A's answers and her demeanour were '*glib, flippant and dismissive, twirling her spectacles in her hands as she did.*' Witness A was inconsistent about the time when she worked at the practice and the period over which the supposed behaviour lasted and was unclear whether it was 2 years or 9 months.

Mr Boyle submitted that Witness A was inconsistent about whether or not she told her own mother what had happened and gave bizarre and disturbing evidence, refusing to answer the simplest of questions about alleged sexual predatory behaviour.

In respect of reporting the matter to the Police, Mr Boyle submitted that Witness A justified not going to the police by saying she was a Catholic and that it would need to be a pretty serious offence to do so. He submitted how much more serious could the claims be – allegations of deliberately digitally penetrating her on multiple occasions and rape. Witness A claimed the supposed sexual assaults would happen every week, which Mr Boyle submitted is an outrageous blasé exaggeration. If assaults were weekly over nine months, the most benign calculation would amount to over thirty occasions.

Witness A also claimed that you were able to tell when she was ovulating. Mr Boyle submitted that this is an ‘outlandish, preposterous, absurd, ludicrous’ piece of evidence. This “enabled” her to reduce her equally preposterous allegations of weekly assaults to monthly ones. Mr Boyle submitted that this is ‘*a dangerous manipulative devious*’ witness whose evidence should be dismissed as utterly unreliable.

According to Witness A, you knew that she was ovulating, because you were probably taking notes of the dates, a perverse and bizarre claim given that she also asserted she wasn’t even regular so she didn’t know, yet she suggested you did. Witness A, despite thirty or more alleged occasions of assault, touching her underwear, putting fingers inside her, and raping her, had told no one.

Mr Boyle then went onto the claim made by Witness A that after seeing an article in a Sunday newspaper she contacted the local police. He submitted that this is again untrue. Witness A’s mother saw an article and supposedly alerted her to it (her mother never having been told by her anything had ever happened) and Witness A in fact went to the press, not the police. Witness A in evidence then claimed it was a friend of her mothers who advised her, then claimed it was one of a multitude of cousins, aunts or uncles who advised her. Mr Boyle submitted that her evidence in this respect is inconsistent, lacking any semblance of credibility about her first complaint. He submitted that Witness A gave a preposterous reason for contacting a journalist rather than the police, saying it is “*easier to talk to someone you have never met before*” Witness A was obviously trying to concoct reasons why she contacted the press to hide the true reason.

Mr Boyle submitted that Witness A claimed she was with her mother, which was inconsistent with having been advised by relatives. She then claimed her mother had been inquiring into “these articles” as she was a social worker. In her evidence she refused to accept she telephoned the journalist to ask for information about the case, yet he gave her information about the case. Mr Boyle submitted that when Witness A realised that it could look bad that she spoke to a journalist first and then rang the police, she changed her evidence again and said “*I may have rung first*”. Mr Boyle suggested that Witness A only contacted police after a journalist suggested to her something about a potential victim supposedly being paid money.

Mr Boyle submitted that in relation to the supposed inappropriate comments Witness A claimed not to have understood because she was so young and naïve. She was in her early 20’s, had life experience but apparently was too young and naïve to understand your supposed inappropriate comments. Mr Boyle submitted that this was unreliable evidence.

Mr Boyle submitted that despite being subjected to comments and sexual assaults on a weekly basis for months Witness A would accept lifts home from you, claiming being in a car was “*a lot safer than it was in the dental chair*”. Mr Boyle submitted that Witness A’s

comments are '*fantastical, absurd, nonsense*' and she was massively over interpreting things.

Mr Boyle submitted that Witness A's statement is wrong when it suggests you used to tickle her in between patients. When asked how the contact started, Witness A abandoned this and was not able to answer this fully. Witness A refused to answer the question about whether she ever said to you stop doing that and volunteered, exaggerating again, that she thought she "*flicked his hand away*" never having mentioned anything of the sort before.

Mr Boyle submitted that there are inconsistencies about how the supposed touching started, and Witness A has exaggerated about trying to stop it, embellishing her account beyond the accounts given previously. He submitted that in none of her statements did she say when these supposed occasions of forcible digital penetration took place that it was painful or made her flinch or jump, she said "*I think you detach. I think women compartmentalise*". Witness A then suggested that it "*was great*" that Mr Boyle's questioning was "bringing it back" to her. Mr Boyle submitted that the obvious conclusion was that she was making it up as she went along.

Mr Boyle submitted that Witness A deflected when obvious exaggerations and embellishments were pointed out, claiming you somehow kept your hands between her legs when she stood up and when it was put to her that would be right next to the patient she deflected and referred to mixing amalgam.

Mr Boyle then submitted that Witness A then tried to claim that you would move patients' heads so they couldn't see, something she had to now claim because if you were engaging in digital penetration or touching of her between her legs when standing a patient would see. However, Witness A said she never saw you move patients' heads.

Mr Boyle submitted that in relation to the allegation about touching her on her underwear, she described about clamming up when this occurred. She claimed you had to use force to part her legs to reach her underwear – but Witness A could never remember you using force or prising her legs open. She then stated she did not remember you touching her legs. Witness A then described you as being 'quick', how you were very good with one hand, how it was amazing what you could do with one hand and how she "*distinctly*" remembered "he would taste me". Mr Boyle submitted that these comments are '*outrageous, outlandish, preposterous, and gratuitous lies*' which were never mentioned in any statement. Witness A added "*I would love to be able to add more*" and that "*even over my breakfast this morning things were coming back*".

Mr Boyle submitted that Witness A is a dangerous, totally unreliable and untrustworthy witness, who has given inconsistent and incoherent evidence about you supposedly telling her she was ovulating. He submitted that her evidence continued with even more dangerous and preposterous passages, when she claimed it was like you had x ray vision inside her. Witness A has made preposterous "*other-worldly*" claims that should give any objective panel acting fairly cause to have the gravest concerns about the credibility of what they are being told by a witness.

Mr Boyle submitted that Witness A claimed that when you penetrated her with your fingers it was to test if she was ovulating so that if 'you tried something' she would not get pregnant. Yet on the occasion when she claims you did try something you hadn't "*tested her*". When it was pointed out she may have exaggerated and embellished this she replied "*it is very possible he did though*".

With regards to the kiss on the cheek at Christmas time, Mr Boyle submitted that this was innocent and there is no evidence to support the contrary.

Mr Boyle submitted that in relation to the incident by the door, Witness A alleges that you regularly and deliberately prolonged your treatment of patients so that you could assault her, which he submitted was a bizarre assertion.

In Witness A's oral evidence about getting between floors as you almost ran towards her, jumping over the bannister, which she said was so "crystal clear", yet it had escaped any of her written accounts of this event. Mr Boyle submitted that Witness A's evidence about the most serious allegation of all was littered with inconsistencies where you supposedly "entered" her. She states he said "*He started to kiss me .. and entered me ... I was physically sick*" to then state later "*I don't think he kissed me*". She was unsure as whether you had actually entered her. Mr Boyle submitted that Witness A has given inconsistent accounts about even the most fundamental aspect of the allegation whether you "*entered*" her, and she has given inconsistent accounts about the aftermath of the event. Mr Boyle submitted that after the event Witness A went back to work, lying to the Committee by claiming she was not working with you, but that statement was untrue also. Mr Boyle submitted that her evidence is flawed before, during and after the alleged event.

Mr Boyle submitted that with regards to allegations 1-24 in their entirety, they rest upon the '*tenuous, inherently weak, internally inconsistent, exaggerated, embellished, self-contradictory, out of all reason and common sense testimony*' of a witness who is utterly incapable of belief. It would be dangerous and unfair to rely upon it and this Committee ought to so conclude by ruling that there is no case to answer in relation to allegations 1-24.

Allegations 25-36 Witness B

Mr Boyle submitted that the law in relation to submissions of no case applies equally to Witness B. There are some similar themes to those related to Witness A, namely, the inherent improbability that you would deliberately sexually touch Witness B in the presence of a witness, namely, the patient in the chair, on the landing of a busy dental practice which is on the direct route from reception to the staff tea/coffee facilities and in broad daylight in the middle of the day when there were a number of other members of staff present.

Mr Boyle submitted that Witness B returned to work following the alleged inappropriate touching on the 17th September, knew all of the staff at the practice well, worked with the associate dentists in the weeks following, worked with you again in the weeks following and did not raise the issue with anyone, not even with the other members of staff.

Mr Boyle submitted that Witness B claimed to tell others at or around lunchtime on the 1st October 2015 of alleged inappropriate touching on the morning of the 1st October 2015 and of the events on 17th September 2015. According to her, those very staff members sent Witness B back up into the surgery with you for a mundane non-urgent administrative task. He submitted that this is implausible and inherently unlikely. When she then returned, she said no one had asked after her welfare.

Mr Boyle submitted that the actions of others, based upon the evidence heard, is entirely inconsistent with a complaint by Witness B that she had been subjected to inappropriate sexual behaviour. Notably, Witness B did not herself report any matter to the police, matters were reported by others and it was only in those circumstances she came to make a statement. Her statement mentions that she spoke to others at the practice in the weeks after the 1st October. Mr Boyle submitted that the Committee also know that Witness B

made a note, but that was at the suggestion of another member of staff, who then proceeded to contact the police. The Committee have heard no evidence from any other staff members.

Witness B gave statements which are internally entirely inconsistent and changed her testimony when giving evidence when she was capable of appreciating her account of what she claimed could not have happened in the way she claimed.

Mr Boyle submitted the following are relied upon and gave comment:

You faced allegations in criminal proceedings based upon Witness B's allegation that you had sexually assaulted her "*on three or four other occasions in September 2015*" although she could not recall the dates. The one date she could recall was the 17th September 2015. However, Witness B resiled from that account in a further statement to the police. Mr Boyle submitted that she did so when she was capable of distinguishing between a number of things happening on one date as per her hand written note. Witness B's attempt in evidence to suggest that perhaps the police officer had misunderstood was disturbing, as she had recorded "*3 or 4 other occasions*" in her own handwritten note. Mr Boyle further submitted that Witness B had claimed in her statement this was when it "*usually happened*" giving a clear impression of multiple occasions in the September and had "*always thought*" to herself that "*maybe the incidents*" were just a one off, a clear passage of evidence suggestive of as described "other occasions".

Witness B also claimed that you forced yourself against her from behind, and there was no mention of an erect penis. Witness B claimed that you were able to touch her in this fashion because the chair was backless. Photos supplied confirm that the chairs are not backless. In her statement she changed her account to you pressing up against her side and did not mention her back at all. She changed her evidence about the time when this alleged inappropriate touching occurred. It went from it "*may have been in the morning, but I'm not entirely sure*" to being on the morning of 17th September when she was setting up the surgery.

Mr Boyle submitted that Witness B changed her evidence about whether this was a day when you had no patients to potentially being in between patients, or when one had not turned up – again, contrary to her own statement that it was supposedly when the surgery was being set up. Most significantly of all she accepted "*he may have brushed past me ..*" and that he might have "*accidentally or innocently leant against*" her or "*leant into*" her when doing so. In light of that, even leaving all other concerns to one side, no Committee properly directing itself could safely convict in relation to the allegation centered around the 17th September.

Mr Boyle submitted that there was further evidence proffered by Witness B in her more recent GDC statement about this being on a morning when there were no patients, and that the email was supposedly a personal email. He submitted that none of this supports the GDC case, if anything it further undermines it. Mr Boyle submitted that the most powerful evidence however is that what occurred was entirely capable of innocent contact.

Mr Boyle submitted that there was also a tendency on the part of Witness B to shift her evidence when the inherent improbability of what she was describing was unravelling. In relation to the supposed touching of her leg with your left hand, having gone through what the procedure required and the resting of the light cure on your left-hand Witness B contended that this event supposedly occurred "*towards the end of the light curing*", yet she has previously suggested the touching lasted for 5 to 10 minutes. She was seeking to

foreshorten the time frame because she appreciated this could not have happened as she was alleging.

Witness B also conceded, without ever having mentioned it before, that during this work it was likely your left leg was in touch with her leg. Mr Boyle submitted that it was Witness B who first mentioned your leg before she was questioned about it. It is clear from her early police statement she was describing what she “*felt*” not what she actually saw. Further, the absolutely normal way in which she apparently conducted herself by making the entries on the computer are all entirely inconsistent with a prolonged inappropriate touching.

Mr Boyle submitted that there is no evidence that the incident during the taking of the x-ray was a deliberate sexual touching, and this was a momentary contact when by her own account you weren’t even looking at where she was when contact took place. Witness B’s account of where and how the touching took place to her front was, at best, unclear and entirely consistent with reckless contact which you accepted when cautioned.

With regards to Witness B’s account of the final supposed incident on 1st October, it is also now littered with inherent implausibility and has now changed significantly. There is the inherent improbability that she would have been sent back upstairs, there is the fact that you were not in his surgery as she claimed, there is the suggestion you gave her a different document altogether to write names on. Mr Boyle submitted that all of this is unreliable in the run up to the event. He submitted that critically there is also the completely unreliable shift in Witness B’s evidence, having claimed to be on her “*hunkers*”, when the inherent improbability that you could not from a standing position have reached down under her tunic was pointed out to her. Witness B not only claimed to have stood up before this happened but was supposedly now able to recall that she had cramp in her foot/pain in her knee which was why she did so.

Mr Boyle submitted that Witness B claimed that a touching of her bottom apparently took place after she was no longer on her hunkers or crouching and after she had turned to hand the supposed paper to you, begging the question how you could have touched her on the bottom at all.

Mr Boyle submitted the medical evidence in relation to Witness B does not provide any evidence in support of the allegations advanced by the GDC which the GDC have the burden of proving with cogent evidence.

Mr Boyle submitted that Witness B’s evidence, whilst not as outlandish as that of Witness A is tenuous, it is inherently weak, it is internally inconsistent, it is self-contradictory, it is out of all reason and common sense, it is not capable of belief and is uncorroborated. The second limb of Galbraith is clearly satisfied. It would be dangerous and unfair to rely upon it and this Committee ought to so conclude by ruling that there is no case to answer in relation to allegations 25-36.

Mr Boyle then submitted that the evidence of Witness C does not provide any support for the evidence of Witness A or B. It does not relate to any of the events relating to Witness A or B, and his evidence is not capable of lending weight to allegations of misconduct as it is of itself of limited weight. It is wrong about the dates, wrong about the nature of treatment and from a witness prepared to jump to conclusions and describe a due process of law as “*a farce*”.

Mr Patience on behalf of the GDC responded to the defence submission of no case to answer, made in respect of the charges relating to Witness A (charges 1 – 24) and Witness

B (charges 25 – 36). He submitted that the evidence is not tenuous or weak and, on the contrary, presents a strong and compelling case against you.

Mr Patience referred to Rule 19 (4) GDC FTP Rules 2006 provides that:

Where the respondent or the respondent's representative makes a submission that there is no case to answer, a Practice Committee shall adjourn the hearing and deliberate in private for the purpose of determining whether to accept the submission.

Mr Patience also referred to the relevant test set out in R v Galbraith as applied in regulatory cases. He submitted that the standard of proof to be applied in GDC proceedings is provided for in Rule 57 (4) GDC FTP Rules 2006, as follows:

Except as otherwise provided by this rule, it shall be for the Council to prove any fact alleged in the notification of hearing, on the balance of probabilities.

Mr Patience submitted that whilst it is correct to say that 'cogent evidence' is required before a serious allegation is found proved, this does not change the standard of proof.

Patient A

Mr Patience submitted that this is not a case where limb 1 of the *Galbraith* test is engaged, in that there is plainly some evidence to support the conduct alleged in each of the charges contained in the notice of hearing, as amended. The evidence which is particularly relied upon in this regard, in respect of each charge, is set out below for the Committee's benefit:

Charges 1-2: sex on holiday comment:

- a. At para. 16-17 of Witness A's statement;
- b. At p20C-20D and p40G-42D of the transcript from day 2.

Charges 3-4: keeping your figure comment:

- a. At para. 30 of Witness A's statement;
- b. At p20C-20D and p44E-45G of the transcript from day 2.

Charges 5-6: kiss in cloakroom:

- a. At para. 27 of Witness A's statement;
- b. At p62G-64A and 83C-83F of the transcript from day 2.

Charges 7-18: touching leg and vagina in treatment room:

- a. At paras. 22-26 of Witness A's statement;
- b. At p46H-62F of the transcript from day 2.

Charges 19-21: pinning to door and pressing crotch against her:

- a. At paras. 28-29 of Witness A's statement;
- b. At p64A-68F of the transcript from day 2.

Charges 22-24: attempting to have sex with her:

- a. At para. 31-36 of Witness A's statement;
- b. At p68G-76A of the transcript from day 2.

In relation to the charges which allege that Witness A was not consenting to the touching (charges 8a, 11a, 14a, 17a, 20a and 23a), Witness A made it plain in her oral evidence that she was not consenting to any of the touching/actions that she described.

In relation to the charges which allege that you did not reasonably believe that Witness B was consenting, this will involve a consideration of your state of mind at the time that the touching/actions occurred. In *Basson v GMC* [2018] EWHC 505 (Admin), Mostyn J observed (at para. [17]), in relation to the question of how an allegation of 'sexually motivated' should be proved, that: *"the state of a person's mind is not something that can be proved by direct observation. It can only be proved by inference or deduction from the surrounding evidence."*

It is submitted that this applies equally to an allegation that a Registrant did not have a reasonable belief in consent. With this in mind, it is further submitted that there is more than sufficient evidence upon which an inference of a lack of reasonable belief in consent on the Registrant's part can be drawn in this case, including in particular the following:

- The inherent unlikelihood that a dental nurse would want the dentist she was working with, during patient appointments and at other times during the working day, to touch her in the manner alleged would have been obvious to you.
- The evidence from Witness A also reveals that at the time the incidents occurred, she was in a relationship with another man and that you knew about this (see evidence referred above relating to the 'sex on holiday' comment).
- At para. 23 of Witness A's statement, she says: *"When he started to touch me I would close my legs and just clam up. I know I started to stand a lot because I didn't like to sit."* This would have put you on notice that the physical contact you were engaging in was unwanted.
- At p53C of the transcript of day 2, Witness states that she had *"learned to move quicker"*. The fact that she was moving away from his touch would have further put you on notice that the touching was unwanted.
- The evidence from Witness A reveals she stopped going into work on the days on which you worked at the Dungannon Practice (see w/s paras. 37-38) and that you stopped paying her for those days. When she returned to work, the touching started again (w/s para. 39).

In relation to the charges which allege that your conduct was sexually motivated, Mr Patience submitted that there is more than sufficient evidence upon which an inference of sexual motivation can be drawn, based on the inherent description of the conduct given by Witness A, including the areas of the body that were touched, the noticing of you having an erection and the final incident where you attempted to have sex with her; all of this is conduct of a type that is plainly sexual in nature. Given what the behaviour progressed to, an inference can be drawn that the inappropriate and sexual comments were made either for your sexual gratification or with a view to pursuit of a future sexual relationship with her. In relation to the charges which allege the conduct was inappropriate, Mr Patience submitted that there is plainly evidence upon which the Committee can draw this conclusion, given the nature of the conduct alleged by Witness A.

It is submitted that the charges relating to Witness A fall squarely within limb 2 (b) of the *Galbraith* test, namely that the evidence relating to them is *"is such that its strength or weakness depends on the view to be taken of a witness's reliability, or other matters which are generally speaking within the province of the jury"* and as such, should not be withdrawn

at this stage as there is evidence upon which a Committee properly directed could properly come to the conclusion that the facts are proved.

Witness B charges 25-36.

Mr Patience submitted that the submissions in relation to Witness B appear to be made entirely on the basis of limb 2 of the *Galbraith* test. Limb 1 will therefore not be addressed.

Mr Patience submitted that the charges relating to Witness B fall squarely within limb 2 (b) of the *Galbraith* test. Mr Patience submitted that reference was made by Mr Boyle to the 'inherent improbability' of you engaging in the conduct alleged with a 'patient in the chair'. He submitted that when considering this submission, the Committee is entitled to take into account that the evidence adduced by the GDC, viewed overall (i.e. from all three live witnesses called), suggests that you employed a strikingly similar *modus operandi* in relation to the commission of acts of sexual touching against your female dental nurses when there were '*patients in the chair*' within the dental surgery. Mr Patience submitted that the strikingly similar actions, described by each of the witnesses, itself provides cogent evidence to overcome the '*inherent improbability*' of a dentist behaving in the manner alleged.

With regard to the defence submissions about the reaction to the sexual assault, namely that the fact that Witness B did not complain about the email incident immediately, after it happened, does not necessarily mean it is a false complaint. Mr Patience submitted that it should be rejected for the same reasons as set out earlier. He submitted that Witness B gave clear reasons for not raising what had occurred during the email incident immediately, in that she thought that it was a '*one off*'. It is also entirely understandable that she did not raise it immediately, given that you were her employer and the owner of the practice.

Mr Patience submitted that it is not in dispute that Witness B did make some form of complaint to other members of staff at the practice, in respect of which Witness B was not challenged. Therefore, even if the Committee were to accept that she had not complained on 1 October 2015, it is not in dispute that she had complained to someone by at the very least, 6 October 2015, as another associate dentist at the practice who '*had heard what happened*' took it upon herself to contact the GDC, and when she was told by the GDC to go to the practice principal she then went to the police.

Witness B's evidence in her statement was that she had spoken to others at the practice. It also then notes that the matter was reported to the police by others. The Committee should ask itself, why would those others go to the police? Mr Patience submitted that the proper inference to be drawn is that they did so because a serious matter had been drawn to their attention by Witness B. So not only is there direct evidence of her complaining to others, but the actions of others in going to the police supports that.

Mr Patience submitted that in relation to the submissions made about the '*3 or 4 other occasions*' entry in her notebook and her first police witness statement, he submitted that Witness B's evidence was that when she wrote '*3 or 4 other occasions*' in her notebook, she had been seeking to describe 3 or 4 times during the course of her typing the email for you. This is in fact supported by the layout of her entry in the notebook.

Mr Patience submitted that Witness B conceded that the phrase '*other occasions*' was to be understood as referring to other dates. It is entirely understandable that the police officer who took Witness B's statement understood it in this way, when recording matters in the statement. Witness B was, however, firm in her evidence that this was a misunderstanding by the police officer, in that this was not the meaning she was trying to convey.

Mr Patience submitted that Witness B clearly had not picked this mistake up when the initial police statement was completed. The creation of the corrected statement was entirely driven by her. It was not created as a result of some other piece of evidence coming to light showing her to be in error and causing her to try and shift ground. He submitted that it was brought into existence at her instigation because she had noticed the error and did not want you to get into trouble for something you had not done, as she said in her evidence. This is overwhelming evidence pointing to the fact that there was a misunderstanding when she gave her initial statement.

Witness B's first statement contains a declaration of truth that she signed. However, she stated in her evidence that she did not actually read the statement herself before signing it because it was handwritten, and the female police officer thought she would not be able to read her writing. Mr Patience submitted that this is unsurprising, given what is now known about Witness B's cognitive difficulties, as set out in the summary of expert evidence, particularly her slow processing speed of new and unfamiliar information.

Mr Patience submitted that the assertion that *'the chairs are not backless'* is far from being an objectively agreed fact, so it cannot be said that Witness B's description of them as backless is objectively false. There is a very small 'back' to the chair that appears in the photograph but one which would not come very far up the lower back, nor extend very far to the sides of the lower back.

Mr Patience submitted that the phrase used in the notebook *'from behind'* is not in fact greatly inconsistent with Witness B's subsequent more detailed description in her statements of you pinning her to the bench by pressing up against her left side with your penis between her hips and waist. The difference in the position in which you were described as being is a matter of centimetres. He submitted that it is unsurprising that when Witness B gave a formal witness statement a couple of weeks later, she went into far greater detail about what had occurred.

Mr Patience submitted that it is to be noted that Witness B's notebook is silent as to the time of day when the email incident occurred. However, the key point, that Witness B has been consistent on throughout, is that there was nobody else in the room when this incident occurred. Mr Patience submitted that the precise timing of it and the precise circumstances which led to there being no patients in the room are details which do not form part of the *'core allegations'* and this point therefore does not fatally undermine the relevant charges.

Mr Patience submitted that with regards to Witness B's comments that you may have brushed past her, he submitted that the passages of evidence referred to, must be scrutinised in detail with the utmost care, as it is submitted the interpretation the defence are seeking to place upon them is entirely inaccurate. The first piece of evidence to which reference is made is when Witness B states *'May have brushed against me go past me but-'*. The next piece of evidence referred to is her answer *"Maybe occasionally, yes."* This is given in response to a series of questions and answers, in which she stated that whilst you had a tendency to look at the email being typed to check it, you could do that whilst sitting in the chair. When it was finally put to her that this is what had happened on the date of the email incident, she firmly disagreed. It is entirely incorrect to assert from this evidence that *'no Committee properly directing itself could safely convict'* in relation to this charge.

Mr Patience submitted that in relation to the patient appointment list, the email incident may not have happened on 17 September 2015 and furthermore, the submissions in this respect

are repeated and adopted. In relation to the '*sent email box*', the same point applies vis-à-vis the date and additionally, the veracity of that has not yet been the subject of evidence.

Mr Patience submitted that with regard to the evidence that Witness B gave in relation to the leg touching, occurring towards the end of the light curing did not involve her resiling from any of the core allegations that she makes in respect of the incident, namely that you touched and then squeezed her leg whilst she was holding the light cure and shield. This statement amounts to a clarification as to the precise timing of the touching in relation to the dental procedure that was taking place but it does not, it is submitted, amount to a significant shift in the key features of her account and is not something which means her evidence in respect of these charges is fatally undermined.

Mr Patience submitted that Witness B was very firm in her evidence in saying that she could not have been mistaken in thinking that she was being touched by your hand, when in fact she was being touched by your leg, because her leg was being squeezed at the relevant time. She was also firm in saying that whilst your leg was in contact with her leg, due to the way in which they were sitting, so was his hand. There is nothing in this point that should cause the relevant charges to be dismissed.

Mr Patience submitted that the fact that Witness B made notes on the computer after the touching does not mean that her account of what took place is false; there is no stereotypical way in which someone who has suffered a sexual assault reacts.

Mr Patience submitted that there is evidence upon which a Committee properly directed could conclude that it is more likely than not that this was an intentional touching, namely:

- Witness B's opinion as to whether the touching was deliberate;
- The location on Witness B's body where the touching occurred (palm at front of vaginal area, fingers going underneath); this evidence was not unclear and was not consistent with reckless touching;
- The evidence in relation to your conduct viewed overall, tends to suggest that you regularly sought to sexually touch dental nurses working for you, including in the course of patient appointments.

Mr Patience submitted that it is not inherently implausible that Witness B would have been sent back upstairs having complained; she and her colleagues were in an incredibly difficult position following her complaint to them, given you were their employer and the practice owner. Furthermore, Witness B has never resiled from the core allegations she makes in respect of this incident, namely that you lifted her tunic and touched her back, put your hand under the waistband of her trousers and squeezed her buttock, all of which were recorded in writing in her notebook one day after the incident took place. Also, it would be entirely possible to collect a piece of paper being handed to you with one hand and squeeze someone's bottom with the other hand.

Mr Patience submitted that the medical evidence in respect of Witness B is relevant evidence and the Committee should take this into consideration when assessing her evidence.

In particular:

- Para. 9 of the expert summary, which sets out the nature of the condition from which the witness suffers. It is such, we submit, that if her allegations were false they would

have been clearly exposed as such in the course of her evidence and for the reasons given above, this is not what has occurred.

- Para. 16 of the expert summary, which makes it clear that the nature of Witness B's condition is not such that it would increase the risk of her misperceiving innocuous behaviour as sexual behaviour.

Mr Patience submitted that the evidence of Witness C is plainly relevant to the Committee's considerations at this stage, given that the Committee has ruled that evidence to be admissible. Mr Patience submitted that the errors the witness may have made as to the date of the appointment and/or the nature of the treatment does not fatally undermine his evidence. These are peripheral details that do not alter the core allegations that Witness C makes, in respect of which he has been consistent since first contacting the police.

Mr Patience submitted that no motive has been suggested for him to have fabricated his account. It was suggested that he was mistaken. His evidence was that he was not mistaken, and his coming forward was motivated by a desire to do what he perceived to be the '*right thing*' given what he had witnessed. Whilst he saw an article in the paper about you facing charges, he knew nothing about the complainants, meaning he did not know that they were dental nurses. Given this, the only explanation for the similarity between the conduct he describes (the Registrant touching the leg of the dental nurse whilst he was in the chair) and the conduct alleged by Witnesses A and B is that he is truthfully and accurately describing what he saw. Mr Patience submitted that that this is extremely powerful evidence supporting the charges brought.

For the reasons given above, it is submitted that the submission of no case to answer should be rejected.

Committee's deliberations

The Committee considered and applied the guidance provided by Lord Lane in Galbraith. It concluded that the submission made on behalf of the Registrant fell under the second limb of Lord Lane's formulation, that there was evidence but that it was '*tenuous, because it is inherently weak, vague or inconsistent*'. It then considered in relation to each charge, taking all of the evidence together, whether the evidence fell within limb 2(a) or 2(b) of Lord Lane's formulation.

The Committee considered the evidence as a whole, favourable or unfavourable to the GDC's case as directed by the case of R v Shippey [1988] Crim LR 767.

In relation to each charge, it considered the primary or core charges and then went on to consider the charges which required it to decide whether it would be possible for it to draw appropriate inferences from the primary or core facts.

It treated the word '*inappropriate*' as having its ordinary every day meaning of '*not appropriate*'.

In relation to sexual motivation it applied the words of Mostyn J in the case of Basson v General Medical Council [2018] EWHC 505 (Admin):

'A sexual motive means that the conduct was done either in pursuit of sexual gratification or in pursuit of a future sexual relationship.'

In relation to motivation and issues of consent, the committee applied the following passage from Basson:

‘...the state of a person’s mind is not something that can be proved by direct observation. It can only be proved from inference or deduction from the surrounding evidence’

The Committee took in to account the requirement that where evidence related to an allegation which was ‘*improbable*’, it should look for cogent evidence with an enhanced level of scrutiny. It applied the principle that this did not alter the civil standard of proof. It has carefully avoided any consideration of the case which went beyond the charges before it and avoided speculating on any issue.

The Committee has considered carefully the evidence of Witness A, who was trying to recall events around 1990 - 1994, some 30 years ago. It considered that there were inconsistencies between her oral evidence and her written statement, particularly with regard to the timeframes. The Committee considered that there were inconsistencies in many parts of Witness A’s oral evidence, but not all of her evidence. However, Witness A was able to communicate effectively when asked to clarify some matters. It concluded that Witness A’s evidence, despite its imperfections, was capable of supporting the charges relating to her.

The Committee has considered carefully the evidence of Witness B regarding alleged events in 2015. The Committee noted that there were times when Witness B had some difficulty in trying to recall events due to the passage of time. It noted that the quality of her evidence improved when her medical condition was taken into account in how she was questioned.

The Committee then went on to consider the evidence of Witness C and found his evidence to be consistent about what he claimed to have seen. However, when asked he was unable to put a window of the alleged timeframes on what he witnessed. Overall, the Committee found that he tried to assist the Committee to the best of his ability. It noted that he was an independent witness, who stated that his motive in coming forward, being involved in court proceedings and this hearing, was to do the ‘*right thing*’.

The Committee then went on to consider each head of charge separately, taking the evidence as a whole, and reached the following conclusions. The Committee has indicated its overall approach to its task. It will have to consider the evidence at the close of the facts stage of the case and reach conclusions as to whether charges are proved or not. It would not be appropriate for the Committee to set out in detail at this stage findings in relation to each charge. This might indicate that the Committee has reached findings of fact, which it has not.

Inappropriate comments

40. *On an occasion between 1990 and 1994, you said to witness A “you don’t expect me to believe that you were on holiday with your boyfriend and didn’t have sex” or words to that effect.*

The Committee has looked at all the material before it, and is satisfied that it has received evidence upon which it could find the matters proved. It therefore refuses Mr Boyle’s application on this Head of Charge.

41. *You conduct at charge 1 above was*
- a. inappropriate*
 - b. sexually motivated*

The Committee has looked at the meaning of these two phrases, and is satisfied that it has received evidence upon which it could find the conduct in Head of Charge 1 to be both inappropriate and sexually motivated. It therefore refuses Mr Boyle's application on this Head of Charge.

42. *On one or more occasions between 1990 and 1994, you asked witness A how she kept her figure, or words to that effect.*

The Committee has looked at all the material before it, and is satisfied that it has received evidence upon which it could find the matters proved. It therefore refuses Mr Boyle's application on this Head of Charge.

43. *You conduct at charge 3 above was*
a. inappropriate
b. sexually motivated

The Committee has looked at the meaning of these two phrases, and is satisfied that it has received evidence upon which it could find the conduct in Head of Charge 3, to be potentially inappropriate and sexually motivated. It therefore refuses Mr Boyle's application on this Head of Charge.

Kissing on the cheek

44. *On an occasion in or around one Christmas between 1990 and 1994, you kissed witness A on the cheek.*

The Committee has looked at all the material before it, and is satisfied that it has received evidence upon which it could find the matters proved. It therefore refuses Mr Boyle's application on this Head of Charge.

45. *As amended - You conduct in respect of charge 5 above was*
a. inappropriate
b. sexually motivated

The Committee has looked at the meaning of these two phrases, and is satisfied that it has received evidence upon which it could find the conduct in Head of Charge 5, to be potentially inappropriate and sexually motivated. It therefore refuses Mr Boyle's application on this Head of Charge.

Touching her leg

46. *As amended - On one or more occasions between 1990 and 1994, you intentionally touched witness A's leg with your hand and/or fingers.*

The Committee has looked at all the material before it, and is satisfied that it has received evidence upon which it could find the matters proved. It therefore refuses Mr Boyle's application on this Head of Charge.

47. *In relation to charge 7 above,*
a. witness A was not consenting
b. you did not reasonably believe that witness A was consenting

The Committee has looked at all the material before it, and is satisfied that it has received evidence upon which it could find the matters proved. It therefore refuses Mr Boyle's application on this Head of Charge.

48. *Your conduct in respect of charges 7 and/or 8 was:*

- a. *inappropriate*
- b. *sexually motivated*

The Committee has looked at the meaning of these two phrases, and is satisfied that it has received evidence upon which it could find the conduct in Head of Charge 7, to be potentially inappropriate and sexually motivated. It therefore refuses Mr Boyle's application on this Head of Charge.

Touching her vagina over clothing

49. *As amended - On one or more occasions between 1990 and 1994, you intentionally touched witness A's vagina over clothing with your hand and/or fingers.*

The Committee has looked at all the material before it, and is satisfied that it has received evidence upon which it could find the matters proved. It therefore refuses Mr Boyle's application on this Head of Charge.

50. *In relation to charge 10 above,*

- a. *witness A was not consenting*
- b. *you did not reasonably believe that witness A was consenting*

The Committee has looked at all the material before it, and is satisfied that it has received evidence upon which it could find the matters proved. It therefore refuses Mr Boyle's application on this Head of Charge.

51. *As amended - Your conduct in respect of charges 10 and/or 11 was:*

- a. *inappropriate*
- b. *sexually motivated*

The Committee has looked at the meaning of these two phrases, and is satisfied that it has received evidence upon which it could find the conduct in Head of Charge 10, to be potentially inappropriate and sexually motivated. It therefore refuses Mr Boyle's application on this Head of Charge.

Touching her vagina under clothing

52. *As amended - On one or more occasions between 1990 and 1994, you intentionally touched witness A's vagina under clothing with your hand and/or fingers.*

The Committee has looked at all the material before it, and is satisfied that it has received evidence upon which it could find the matters proved. It considers it to mean the touching of the vaginal area. It therefore refuses Mr Boyle's application on this Head of Charge.

53. *In relation to charge 13 above,*

- a. *witness A was not consenting*

- b. you did not reasonably believe that witness A was consenting*

The Committee has looked at all the material before it, and is satisfied that it has received evidence upon which it could find the matters proved. It therefore refuses Mr Boyle's application on this Head of Charge.

54. *Your conduct in respect of charges 13 and/or 14 was:*

- a. inappropriate*
b. sexually motivated

The Committee has looked at the meaning of these two phrases, and is satisfied that it has received evidence upon which it could find the conduct in Head of Charge 13, to be potentially inappropriate and sexually motivated. It therefore refuses Mr Boyle's application on this Head of Charge.

Digital penetration

55. *On one or more occasions between 1990 and 1994, you intentionally penetrated witness A's vagina with your fingers.*

The Committee has looked at all the material before it, and is satisfied that it has received evidence upon which it could find the matters proved. It therefore refuses Mr Boyle's application on this Head of Charge.

56. *In relation to charge 16 above,*
a. witness A was not consenting
b. you did not reasonably believe that witness A was consenting

The Committee has looked at all the material before it, and is satisfied that it has received evidence upon which it could find the matters proved. It therefore refuses Mr Boyle's application on this Head of Charge.

57. *Your conduct in respect of charges 16 and/or 17 was:*
a. inappropriate
b. sexually motivated

The Committee has looked at the meaning of these two phrases, and is satisfied that it has received evidence upon which it could find the conduct in Head of Charge 16, to be potentially inappropriate and sexually motivated. It therefore refuses Mr Boyle's application on this Head of Charge.

Pressing crotch area against her

58. *As amended - On an occasion between 1990 and 1994, you intentionally pressed your crotch area against witness A.*

The Committee has looked at all the material before it, and is satisfied that it has received evidence upon which it could find the matters proved. It therefore refuses Mr Boyle's application on this Head of Charge.

59. *In relation to charge 19 above,*
a. witness A was not consenting
b. you did not reasonably believe that witness A was consenting

The Committee has looked at all the material before it, and is satisfied that it has received evidence upon which it could find the matters proved. It therefore refuses Mr Boyle's application on this Head of Charge.

60. *Your conduct in respect of charges 19 and/or 20 was*

- a. *inappropriate*
- b. *sexually motivated*

The Committee has looked at the meaning of these two phrases, and is satisfied that it has received evidence upon which it could find the conduct in Head of Charge 19, to be potentially inappropriate and sexually motivated. It therefore refuses Mr Boyle's application on this Head of Charge.

Attempting to have sex with her

61. *On an occasion between 1990 and 1994, you intentionally attempted to penetrate the vagina of witness A with your penis.*

The Committee has looked at all the material before it, and is satisfied that it has received evidence upon which it could find the matters proved. It therefore refuses Mr Boyle's application on this Head of Charge.

62. *In relation to charge 22 above,*

- a. *witness A was not consenting*
- b. *you did not reasonably believe that witness A was consenting*

The Committee has looked at all the material before it, and is satisfied that it has received evidence upon which it could find the matters proved. It therefore refuses Mr Boyle's application on this Head of Charge.

63. *Your conduct in respect of charge 22 and/or 23 above was*

- a. *inappropriate*
- b. *sexually motivated*

The Committee has looked at the meaning of these two phrases, and is satisfied that it has received evidence upon which it could find the conduct in Head of Charge 22, to be potentially inappropriate and sexually motivated. It therefore refuses Mr Boyle's application on this Head of Charge.

Witness B

Pressing crotch against her

64. *As amended – On or around 17 September 2015, you intentionally pressed your crotch area against witness B.*

The Committee has looked at all the material before it, and is satisfied that it has received evidence upon which it could find the matters proved. It therefore refuses Mr Boyle's application on this Head of Charge.

- a. *In relation to charge 25 above,*
- b. *witness B was not consenting*
- c. *you did not reasonably believe that witness B was consenting*

The Committee has looked at all the material before it, and is satisfied that it has received evidence upon which it could find the matters proved. It therefore refuses Mr Boyle's application on this Head of Charge.

65. *Your conduct in respect of charge 25 and/or 26 above was*

- a. *inappropriate*
- b. *sexually motivated*

The Committee has looked at the meaning of these two phrases, and is satisfied that it has received evidence upon which it could find the conduct in Head of Charge 25 to be potentially inappropriate and sexually motivated. It therefore refuses Mr Boyle's application on this Head of Charge.

Touching her leg

66. *As amended – On or around 1 October 2015, you intentionally touched witness B's leg.*

The Committee has looked at all the material before it, and is satisfied that it has received evidence upon which it could find the matters proved. It therefore refuses Mr Boyle's application on this Head of Charge.

67. *In relation to charge 28 above,*

- a. *witness B was not consenting*
- b. *you did not reasonably believe that witness B was consenting*

The Committee has looked at all the material before it, and is satisfied that it has received evidence upon which it could find the matters proved. It therefore refuses Mr Boyle's application on this Head of Charge.

68. *Your conduct in respect of charge 28 and/or 29 was:*

- a. *inappropriate*
- b. *sexually motivated*

The Committee has looked at the meaning of these two phrases, and is satisfied that it has received evidence upon which it could find the conduct in Head of Charge 28 to be potentially inappropriate and sexually motivated. It therefore refuses Mr Boyle's application on this Head of Charge.

Touching her vagina over clothing

69. *As amended - On or around 1 October 2015, you intentionally touched witness B's vagina over clothing with your hand and/or fingers.*

The Committee has looked at all the material before it, and is satisfied that it has received evidence upon which it could find the matters proved. It considers it to mean the touching of the vaginal area. It therefore refuses Mr Boyle's application on this Head of Charge.

70. *In relation to charge 31 above,*

- a. *witness B was not consenting*
- b. *you did not reasonably believe that witness B was consenting*

The Committee has looked at all the material before it, and is satisfied that it has received evidence upon which it could find the matters proved. It therefore refuses Mr Boyle's application on this Head of Charge.

71. *Your conduct in respect of charge 31 and/or 32 was:*

- a. *inappropriate*
- b. *sexually motivated*

The Committee has looked at the meaning of these two phrases, and is satisfied that it has received evidence upon which it could find the conduct in Head of Charge 31 to be potentially inappropriate and sexually motivated. It therefore refuses Mr Boyle's application on this Head of Charge.

Touching her bottom and/or lower back

72. *As amended – On or around 1 October 2015, you intentionally touched witness B's bottom and/or lower back.*

The Committee has looked at all the material before it, and is satisfied that it has received evidence upon which it could find the matters proved. It therefore refuses Mr Boyle's application on this Head of Charge.

73. *In relation to charge 34 above,*

- a. *witness B was not consenting*
- b. *you did not reasonably believe that witness B was consenting*

The Committee has looked at all the material before it, and is satisfied that it has received evidence upon which it could find the matters proved. It therefore refuses Mr Boyle's application on this Head of Charge.

74. *Your conduct in respect of charge 34 and/or 35 was:*

- a. *inappropriate*
- b. *sexually motivated*

The Committee has looked at the meaning of these two phrases, and is satisfied that it has received evidence upon which it could find the conduct in Head of Charge 34 to be potentially inappropriate and sexually motivated. It therefore refuses Mr Boyle's application on this Head of Charge."

On 26 February 2021 the hearing adjourned part heard and resumed on 16 July 2021.

Mr McCann was not present but was represented at this hearing by Mr Gerry Boyle, Counsel. On 23 July 2021 the Chairman announced the findings of fact to the Counsel for Mr McCann:

"Background

The case before this Committee involves allegations arising from information received by the GDC on 22 October 2015 from the Police Service of Northern Ireland. The General Dental Council (GDC) was informed that you were under investigation for alleged serious sexual offences. The email confirmed that you were arrested and interviewed by the Police on 15 October 2015. In an email dated 2 November 2015 the GDC was informed that you were charged on 15 October 2015 with 4 counts of sexual assault and released on police bail

subject to conditions. Those conditions were subsequently repeated by the Magistrates Court on 11 November 2015. On 11 September 2017 at Dungannon Police Station in County Tyrone, you were cautioned by the police for common assault.

Witness A and Witness B independently made complaints to the GDC alleging that whilst at the practice your behaviour towards them was both inappropriate and was sexually motivated. These now form the heads of charge at 1-36.

Evidence

The Committee received a substantial amount of documentary evidence which included written statements on behalf of the GDC from Witness A, Witness B, Witness C and Witness UK, a GDC employee. It also heard oral evidence from Witness A, Witness B, and Witness C.

The Committee heard oral evidence from you.

The Committee when considering the charges was guided by the following case law: *Basson v General Medical Council* [2018] EWHC 505 (Admin), and *H (Minors) (Sexual Abuse: Standard of Proof* [1996] AC 563.

The Committee was guided to relevant case law by counsel for the GDC and yourself and received advice from the Legal Adviser over the issue of cross admissibility of the evidence of witnesses A, B and C.

The Committee was satisfied that there was no evidence before it of collusion between the witnesses over their evidence and noted that there was no evidence that the witnesses were known to each other. It considered the issue of 'contamination' or 'innocent influence' over the evidence and proceeded on the basis that those terms had the same meaning.

Witness B was the first witness to make a complaint against you and the police investigation was reported in the press. The Committee did not have sight of the press articles referred to in the course of the case but considered it could proceed in its deliberations without that evidence.

The Committee having viewed the accounts of Witness A and Witness C is satisfied that it could exclude any contamination of the evidence. The Committee notes that there are similarities in their witness statements. However, they were describing separate incidents and there are material differences in their accounts. It considered that any contamination of the evidence would have resulted in a greater degree of similarity.

The Committee, being satisfied that it could exclude any inference of contamination of the evidence between the witnesses, proceeded throughout its deliberations to consider the evidence of all of the witnesses. In doing so it applied the guidance given in the relevant cases and in the advice it has received as to the need to be cautious in considering it, noting the difference between coincidental similarity of the evidence and evidence which might point to a tendency of the Registrant to act in a particular way in similar circumstances.

The Committee has taken into account all the evidence presented to it. It has accepted the advice of the Legal Adviser. It has throughout applied the principle that the burden of proving each head of charge is upon the GDC and that the standard of proof is the civil standard, that is proof on a balance of probabilities.

I will now announce the Committee's findings in relation to each head of charge:

	<p><u>Witness A</u></p> <p><u>Inappropriate comments</u></p>
1.	<p><i>On an occasion between 1990 and 1994, you said to witness A “you don’t expect me to believe that you were on holiday with your boyfriend and didn’t have sex” or words to that effect.</i></p> <p>Not proved.</p> <p>The Committee noted the written statement and oral evidence of Witness A and accepted that a conversation did take place, however it is not satisfied exactly what the conversation involved.</p> <p>You stated in oral evidence that you have no recollection of Witness A as a dental nurse in your employment. You stated you might have had a conversation about holidays but did not discuss anything of a sexual nature.</p> <p>The Committee is satisfied that the GDC has not provided sufficient evidence to support this head of charge.</p> <p>The Committee accepts your oral evidence and is satisfied that you did not say words to that effect and finds this head of charge not proved.</p>
2.	<p><i>You conduct at charge 1 above was</i></p>
2.(a)	<p><i>Inappropriate</i></p> <p>Not proved.</p> <p>Having found head of charge 1 not proved, this head of charge falls away.</p>
2.(b)	<p><i>sexually motivated</i></p> <p>Not proved.</p> <p>Having found head of charge 1 not proved, this head of charge falls away.</p>
3.	<p><i>On one or more occasions between 1990 and 1994, you asked witness A how she kept her figure, or words to that effect.</i></p> <p>Proved.</p> <p>The Committee noted Witness A’s written statement and in particular “<i>He would make comments about me and my figure. It was always in a round about way. He would ask me about sports and whether I went to the gym; how did I keep my figure. I used to go to the gym a lot. It was personal and crossing a boundary. These comments were always when we were alone.</i>”</p> <p>In oral evidence Witness A made reference to a discussion with you regarding her figure and that following these remarks she wore her father’s cardigan to hide her figure. Witness A stated that these comments were about the shape of her figure.</p> <p>You stated in oral evidence that you did not say this and that if anything you would speak about sport and fitness and not a colleague’s figure.</p> <p>The Committee accepts the evidence of Witness A and finds that it is more probable than not that a conversation did take place regarding how she kept</p>

	<p>her figure or words to that effect.</p> <p>It therefore finds this head of charge proved.</p>
4.	<i>You conduct at charge 3 above was</i>
4.(a)	<p><i>inappropriate</i></p> <p>Proved.</p> <p>It treated the word '<i>inappropriate</i>' as having its ordinary every day meaning of '<i>not appropriate</i>'.</p> <p>The Committee noted the oral evidence and written evidence of Witness A where she is clear that you did say these words and that these words spoken by you made her feel uncomfortable.</p> <p>In cross examination, when asked about comments about her figure, you stated that you did not recall Witness A but that you may have commented about someone being tanned after a holiday.</p> <p>The Committee is satisfied that these comments had crossed a boundary and changed Witness A's behaviour. The Committee considers that the nature of your conversation is out of the bounds of what would be considered normal behaviour by an employer.</p> <p>The Committee considers that your comments were inappropriate, as you were commenting on the shape of her figure.</p> <p>It therefore finds this head of charge proved.</p>
4.(b)	<p>sexually motivated</p> <p>Proved.</p> <p>The Committee took into account the meaning of sexually motivated as set out in the case of Basson: 'A sexual motive means that the conduct was done either in pursuit of sexual gratification or in pursuit of a future sexual relationship.'</p> <p>Witness A in oral evidence said that these inappropriate comments were the commencement of your inappropriate behaviour, and that this escalated over a period of time. She had noted the age difference between you both and that your behaviour made her feel uncomfortable.</p> <p>You stated in oral evidence that you did not remember Witness A and explained how you would have conducted yourself in the workplace.</p> <p>The Committee having considered all of the evidence carefully is satisfied that it could not find any other reasonable explanation for your conduct other than sexual motivation.</p> <p>It therefore finds this head of charge proved.</p>
	<u>Kissing on the cheek</u>
5.	<i>On an occasion in or around one Christmas between 1990 and 1994, you kissed witness A on the cheek.</i>

	<p>Proved.</p> <p>The Committee noted Witness A's written statement and in particular "<i>There was one incident when the Registrant came into the Practice happily at Christmas time with bonuses and gave me a long kiss. It was in the cloakroom when I was about to leave for Christmas, and it was just me there. He kissed me on the cheek and said, "I've always wanted to give you a Christmas kiss."</i></p> <p>It also noted her complaint to the GDC dated 26 September 2018 where she states "<i>I went to leave one evening and it was around the Christmas break, in hindsight, he always made sure I was left with him alone while all the staff had left. I was putting on my coat to leave and he ran into toilet/changing area and kissed me and handed me my bonus (the kiss was an xmas kiss supposedly)."</i></p> <p>In oral evidence Witness A stated that you had kissed her at Christmas time.</p> <p>You stated in oral evidence that you have no recollection of this, but you accepted that you could have given a staff member a Christmas kiss.</p> <p>The Committee, having taken into account the improbability of such an event, as well as the guidance and warnings in the case of Dutta, accepts the evidence of Witness A whose oral and written account was consistent. The Committee notes that you cannot contradict this as you cannot recollect this incident or Witness A. It is satisfied that these events did occur as described by her, and that you did kiss Witness A at Christmas time.</p> <p>It therefore finds this head of charge proved.</p>
6.	<i>You conduct in respect of charge 5 above was</i>
6.(a)	<p><i>inappropriate</i></p> <p>Proved.</p> <p>It treated the word '<i>inappropriate</i>' as having its ordinary every day meaning of '<i>not appropriate</i>'.</p> <p>Witness A in oral evidence stated that this occurred in the cloakroom after receiving her Christmas bonus. Witness A also stated that afterwards she ran straight home.</p> <p>You stated in oral evidence that you when giving out Christmas bonuses you would never kiss a colleague, and especially in a cloakroom.</p> <p>The Committee accepts the evidence of Witness A who was consistent in her evidence that you had handed out the Christmas Bonus to her away from other colleagues in a cloakroom, and that you came into that area from behind her and gave her a "long kiss". This caused her distress and she immediately ran straight home.</p> <p>The Committee notes that you were her employer, and that this occurred in a small, enclosed space with no other colleagues present. The Committee is therefore satisfied that your conduct was inappropriate.</p>

	It therefore finds this head of charge proved.
6.(b)	<p><i>sexually motivated</i></p> <p>Proved.</p> <p>The Committee took into account the meaning of sexually motivated by reference to the case of Basson: 'A sexual motive means that the conduct was done either in pursuit of sexual gratification or in pursuit of a future sexual relationship.'</p> <p>The Committee noted that this occurred in a cloakroom where no other colleagues were present.</p> <p>The Committee having found that this event happened, found no plausible explanation why you would kiss Witness A in a cloakroom away from other colleagues other than for sexual gratification.</p> <p>It therefore finds this head of charge proved.</p>
	<u>Touching her leg</u>
7.	<p><i>As amended - On one or more occasions between 1990 and 1994, you intentionally touched witness A's leg with your hand and/or fingers.</i></p> <p>Proved.</p> <p>You said you do not recollect Witness A but that you would not behave like this.</p> <p>Witness A in her oral and written evidence gave a detailed account of how you would touch her leg with your hand or fingers under the dental chair whilst in the presence of a patient.</p> <p>The Committee noted that there is a similarity in relation to leg touching between the accounts of Witnesses A, B and C. The Committee having excluded collusion or contamination, is satisfied that these are accounts of similar behaviour which the Committee considers support the account of Witness A and is not mere coincidence.</p> <p>The Committee accepts the evidence of Witness A and that you intentionally touched her leg with your hand and/or fingers</p> <p>It therefore finds this head of charge proved.</p>
8.	<i>In relation to charge 7 above,</i>
8.(a)	<p><i>witness A was not consenting</i></p> <p>Proved</p> <p>The Committee notes the oral evidence of Witness A who describes your behaviour and that she did not request this, and that you were not in a relationship together. She stated that she had tried to move away, although she could not always do this as she was assisting you in treating a patient. Witness A stated that she would swat your hand away and that she did not want to be touched by you.</p> <p>You stated that you have no recollection of Witness A, and you deny ever</p>

	<p>having a sexual relationship with any of your staff, nor you would behave in this way to any of your staff.</p> <p>The Committee accepts Witness A's account that there was no other relationship between you both, save that of an employer/employee relationship. Witness A clearly stated in oral evidence that she did not consent for you to do this. It is satisfied that this is not normal behaviour between two colleagues, particularly in front of a patient. The Committee is therefore satisfied, given the behaviour of Witness A who tried to move away, that she could not have consented for you to touch her on her leg with your hands or fingers.</p> <p>The Committee finds this head of charge proved.</p>
8.(b)	<p><i>you did not reasonably believe that witness A was consenting</i></p> <p>Proved</p> <p>Witness A stated in oral evidence that she tried to clam up her legs and tried to move away from you.</p> <p>The relationship between you and Witness A was in the context of employer/employee only. The Committee is satisfied that this is not normal behaviour in any workplace environment between two colleagues who are not in a relationship.</p> <p>The Committee could not find any plausible reason why you would believe that Witness A was consenting to this behaviour. It is satisfied that you did not reasonably believe that Witness A was consenting.</p> <p>The Committee therefore finds this head of charge proved.</p>
9.	<p><i>Your conduct in respect of charges 7 and/or 8 was:</i></p>
9.(a)	<p><i>inappropriate</i></p> <p>Proved.</p> <p>It treated the word '<i>inappropriate</i>' as having its ordinary every day meaning of '<i>not appropriate</i>'.</p> <p>The Committee notes that this was behaviour between an employer and an employee. It considers that the touching of Witness A's leg as described, an area that is very personal, is inappropriate, particularly as Witness A had not given her consent for you do this. It finds no plausible reason why you would inappropriately touch a colleague, particularly in front of a patient in a workplace setting.</p> <p>The Committee is satisfied that your behaviour was inappropriate.</p> <p>It therefore finds this head of charge proved in respect of heads of charge 7 and 8.</p>
9.(b)	<p><i>sexually motivated</i></p> <p>Proved.</p> <p>The Committee again took into account the meaning of sexually motivated as</p>

	<p>set out above.</p> <p>The Committee took into account that the inappropriate touching of Witness A occurred whilst treating a patient. The Committee having found that it happened, found no plausible explanation why you would touch her leg.</p> <p>The Committee considers that your touching was deliberate and with intent. The Committee considers that there is no other reasonable explanation to touch Witness A's leg without her consent, other than for your own sexual gratification. The Committee is also satisfied that you had touched Witness A in an inappropriate part of her body with a view to a future sexual relationship.</p> <p>It therefore finds this head of charge proved in respect of heads of charge 7 and 8.</p>
	<u>Touching her vagina over clothing</u>
10.	<p><i>As amended - On one or more occasions between 1990 and 1994, you intentionally touched witness A's vagina over clothing with your hand and/or fingers.</i></p> <p>Proved.</p> <p>Witness A in her written statement stated, "<i>He start touching my knee and sometimes he went so far as to touch my vagina over my underwear</i>". In her oral evidence Witness A maintained that you had touched her vagina over her clothing whilst in the presence of a patient.</p> <p>You stated in oral evidence that you have no recollection of Witness A or of these incidents. You also stated that you would never behave in this way to any of your staff.</p> <p>The Committee noted that Witness A was consistent throughout in her written and oral evidence in respect of this head of charge, which the Committee find is sufficient cogent evidence.</p> <p>The Committee having taken into account the improbability of such an event as well as the guidance and warnings in the case of Dutta, is satisfied on the on the basis of the evidence of Witness A that this event occurred as described by her, and that the touching was intentional.</p> <p>It therefore finds this head of charge proved.</p>
11.	<i>In relation to charge 10 above,</i>
11.(a)	<p><i>witness A was not consenting</i></p> <p>Proved</p> <p>The Committee notes the oral evidence of Witness A who describes your inappropriate behaviour and that she did not request this. Witness A is very clear that you were not in a sexual relationship with her. She tried to move away and stated that she had not consented to this behaviour.</p> <p>You stated that you have no recollection of this incident but deny ever touching her vagina over her clothing and said that you would never behave in this way to any of your staff.</p>

	<p>The Committee accepts Witness A's account that there was no relationship between you both other than employer/employee, and that she did not consent to you touching her vagina over her clothing. The Committee is satisfied that touching her was unwanted, and was intrusive and sexual in nature. Witness A in her evidence was insistent that she did not want this to happen.</p> <p>The Committee therefore finds this head of charge proved.</p>
11.(b)	<p><i>you did not reasonably believe that witness A was consenting</i></p> <p>Proved.</p> <p>Witness A stated in her written and oral evidence that she tried to close her legs and clam up and move away from you. The Committee is satisfied that this is not normal behaviour in a workplace environment between two colleagues who are not in a relationship.</p> <p>The Committee could not find any plausible reason why you would believe that Witness A was consenting to your touching her.</p> <p>The Committee therefore finds this head of charge proved.</p>
12.	<p><i>Your conduct in respect of charges 11 and/or 12 was:</i></p>
12.(a)	<p><i>Inappropriate</i></p> <p>Proved.</p> <p>It treated the word '<i>inappropriate</i>' as having its ordinary every day meaning of '<i>not appropriate</i>'.</p> <p>The Committee considers that the touching of Witness A's vagina over her clothing in the way she describes without consent in a dental setting was inappropriate. Also, the Committee considers that this occurred in the context of an employer/employee relationship, where Witness A quite clearly did not give consent for you to do this. The Committee considers that the nature of your conduct is out of the bounds of what would be considered normal behaviour in a workplace setting.</p> <p>The Committee is satisfied that your conduct was inappropriate.</p> <p>It therefore finds this head of charge proved in respect of heads of charge 11 and 12.</p>
12.(b)	<p><i>sexually motivated</i></p> <p>Proved.</p> <p>The Committee again took into account the meaning of sexually motivated as set out above.</p> <p>The Committee took into account that this event happened in the context of treating a patient. The Committee finds there is no reason for you to touch Witness A in an intimate and personal area of her body other than sexual gratification.</p> <p>The Committee having found that this event happened, found no plausible</p>

	<p>explanation why you would touch Witness A's vagina over her clothing, other than for your own sexual gratification.</p> <p>The Committee is also satisfied that you had touched Witness A in an intimate part of her body with a view to a future sexual relationship.</p> <p>It therefore finds this head of charge proved in respect of heads of charge 11 and 12.</p>
	<u>Touching her vagina under clothing</u>
13.	<p><i>As amended - On one or more occasions between 1990 and 1994, you intentionally touched witness A's vagina under clothing with your hand and/or fingers.</i></p> <p>Proved.</p> <p>Witness A in her written statement stated "<i>One time he also went under my underwear with his fingers which I remember were really long. He would be doing it while, casually speaking to patients. I remember it was bright outside and I think it was 1992</i>".</p> <p>In her oral evidence, Witness A was definite that you had intentionally touched her vagina under her clothing on more than one occasion between 1990 and 1994.</p> <p>You stated in oral evidence that you have no recollection of Witness A or of these incidents. You stated that you would never behave in this way to any of your staff.</p> <p>The Committee having taken into account the improbability of such an event as well as the guidance and warnings in the case of Dutta, accepts the evidence of Witness A whose account was very specific in detail. You do not have a recollection of this event and can't contradict the account of Witness A. It is satisfied that these events did occur as described by her, and that the touching was intentional.</p> <p>It therefore finds this head of charge proved.</p>
14.	<i>In relation to charge 13 above,</i>
14.(a)	<p><i>witness A was not consenting</i></p> <p>Proved.</p> <p>The Committee accepts Witness A's account that there was no relationship between you both other than employer/employee, and that she did not consent to you touching her vagina under her clothing. The Committee is satisfied that this touching by you was not welcome, was intrusive and sexual in nature. Witness A in her evidence was insistent that this was unwanted conduct and she did not consent to this.</p> <p>It therefore finds this head of charge proved.</p>
14.(b)	<p><i>you did not reasonably believe that witness A was consenting</i></p> <p>Proved.</p>

	<p>The Committee is satisfied that you could not have reasonably believed that Witness A was consenting to this type of behaviour.</p> <p>The Committee could not find any plausible reason why you would believe that Witness A was consenting.</p> <p>It therefore finds this head of charge proved.</p>
15.	<i>Your conduct in respect of charges 13 and/or 14 was:</i>
15.(a)	<p><i>inappropriate</i></p> <p>Proved.</p> <p>It treated the word '<i>inappropriate</i>' as having its ordinary every day meaning of '<i>not appropriate</i>'.</p> <p>The Committee is satisfied that this was inappropriate behaviour between an employer and an employee. It considers that the touching of Witness A's vagina under her clothing in the way she describes in a dental setting to be inappropriate. Also, the Committee considers that this occurred in the context of an employer/employee relationship, where Witness A quite clearly did not give consent to you doing this. The Committee considers that the nature of your conduct is out of the bounds of what would be considered to be normal behaviour, particularly in a workplace setting.</p> <p>The Committee is satisfied that your conduct was inappropriate.</p> <p>It therefore finds this head of charge proved in respect of heads of charge 13 and 14.</p>
15.(b)	<p><i>sexually motivated</i></p> <p>Proved.</p> <p>The Committee again took into account the meaning of sexually motivated as set out above.</p> <p>The Committee having found that it happened, found no plausible explanation why you would touch Witness A's vagina under her clothing, other than for your own sexual gratification. This is an intimate and personal area of her body.</p> <p>The Committee is also satisfied that you had touched Witness A in an intimate part of her body with a view to a future sexual relationship.</p> <p>The Committee having considered all of the evidence carefully is satisfied that it could not find any other reasonable explanation for your conduct other than sexual motivation.</p> <p>It therefore finds this head of charge proved in respect of heads of charge 13 and 14.</p>
	<u>Digital penetration</u>
16.	<i>On one or more occasions between 1990 and 1994, you intentionally penetrated witness A's vagina with your fingers.</i>

	<p>Proved.</p> <p>Witness A in her written statement stated “<i>One time he also went under my underwear with his fingers which I remember were really long. He would be doing it while, casually speaking to patients. I remember it was bright outside and I think it was 1992...When the Registrant put his fingers inside me he told me once that I was ovulating.</i>”</p> <p>In her oral evidence, Witness A stated that you had placed your fingers inside her underwear and you would taste her and put it into your mouth afterwards. Witness A stated that this happened more than once. She also said that you said that your wife was a gynaecologist. The Committee accepts that your wife was not a gynaecologist but notes that she is a GP and infers that she has some gynaecological knowledge.</p> <p>You stated in oral evidence that you have no recollection of Witness A or these incidents. You stated that you would never behave in this way to any of your staff.</p> <p>The Committee having taken into account the improbability of such an event as well as the guidance and warnings in the case of Dutta, accepts the evidence of Witness A whose account was consistent and detailed. You said that you have no recollection of Witness A as a dental nurse and that you would never behave in this way. It is satisfied that these events did occur as described by her on more than one occasion, and that the touching was intentional.</p> <p>It therefore finds this head of charge proved.</p>
17.	<i>In relation to charge 16 above,</i>
17.(a)	<p><i>witness A was not consenting</i></p> <p>Proved.</p> <p>The Committee accepts the account of Witness A and is satisfied that there was no relationship between you both other than employer/employee, and that she did not consent for you to digitally penetrate her vagina. The Committee is satisfied that this behaviour was not welcome. Witness A in her evidence was insistent that she did not want this to happen.</p> <p>It therefore finds this head of charge proved.</p>
17.(b)	<p><i>you did not reasonably believe that witness A was consenting</i></p> <p>Proved.</p> <p>The Committee could not find any plausible reason why you would believe that Witness A was consenting.</p> <p>The Committee therefore finds this head of charge proved.</p>
18.	<i>Your conduct in respect of charges 16 and/or 17 was:</i>
18.(a)	<p><i>inappropriate</i></p> <p>Proved.</p>

	<p>It treated the word '<i>inappropriate</i>' as having its ordinary every day meaning of '<i>not appropriate</i>'.</p> <p>The Committee is satisfied that your conduct was inappropriate. It considers that the digital penetration of Witness A's vagina in the way she describes in a dental setting to be inappropriate. Also, the Committee considers that this occurred in the context of an employer/employee employer relationship, where Witness A quite clearly did not give consent to you doing this.</p> <p>The Committee is satisfied that your conduct was inappropriate.</p> <p>It therefore finds this head of charge proved in respect of heads of charge 16 and 17.</p>
18.(b)	<p><i>sexually motivated</i></p> <p>Proved.</p> <p>The Committee took into account the meaning of sexually motivated as set out above.</p> <p>The Committee having considered all of the evidence carefully is satisfied that your conduct was intended to be in pursuit of sexual gratification as well building towards a sexual relationship.</p> <p>It therefore finds this head of charge proved in respect of heads of charge 16 and 17.</p>
	<p><u>Pressing crotch area against her</u></p>
19.	<p><i>As amended - On an occasion between 1990 and 1994, you intentionally pressed your crotch area against witness A.</i></p> <p>Proved.</p> <p>Witness A in her written statement stated "<i>As I was leaving, he came running towards me and pressed himself on my back. He was tall and would take quick strides. I remember thinking where did he come from so quickly. He came down the stairs so quickly. I remember being shocked. He had his hand on the lock on the door probably to block me from leaving but I was able to leave. I don't remember the details but I remember he had me pressed on the door and I got away. It was the first time that he had done that. I could feel that he was erect. He literally had me up against the door. I nearly vomited. He stopped pressing against me and I went out the door. I don't remember what I said. I was shocked.</i>"</p> <p>In her oral evidence, Witness A stated that you had intentionally pressed your crotch area against her.</p> <p>You stated in oral evidence that you have no recollection of Witness A or of these incidents. You stated that you would never behave in this way to any of your staff.</p> <p>The Committee having taken into account the improbability of such an event as well as the guidance and warnings in the case of Dutta, accepts the evidence of Witness A whose oral and written account was consistent. It is satisfied that you were working late after the receptionist, staff and patients</p>

	<p>had gone home. It is satisfied that the practice outside door was shut and that you had pressed Witness A up against that door. You do not have a recollection of Witness A but deny that you would have behaved in this way towards any member of staff. It is satisfied that these events did occur as described by her, and that the touching was intentional.</p> <p>It therefore finds this head of charge proved.</p>
20.	<i>In relation to charge 19 above,</i>
20.(a)	<p><i>witness A was not consenting</i></p> <p>Proved.</p> <p>The Committee accepts Witness A's account that there was no relationship between you both, and that she did not consent for you to do this. She states that she did not want this, felt sick and froze. The Committee is satisfied that this touching was not welcome. Witness A in her oral evidence was insistent that she did not want this to happen.</p> <p>The Committee is therefore satisfied that Witness A did not consent to you pressing your crotch area against Witness A.</p> <p>It therefore finds this head of charge proved.</p>
20.(b)	<p><i>you did not reasonably believe that witness A was consenting</i></p> <p>Proved.</p> <p>Witness A stated in oral evidence that she tried to move away from you and that she felt sick after you had done this. The Committee is satisfied that this is not normal behaviour and could find no evidence to suggest that you believed that Witness A was consenting.</p> <p>The Committee therefore finds this head of charge proved.</p>
21.	<i>Your conduct in respect of charges 19 and/or 20 was</i>
21.(a)	<p><i>inappropriate</i></p> <p>Proved.</p> <p>It treated the word '<i>inappropriate</i>' as having its ordinary every day meaning of '<i>not appropriate</i>'.</p> <p>The Committee finds that this was inappropriate behaviour between an employer and an employee. It considers that pressing your crotch area against Witness A as described to be inappropriate.</p> <p>The Committee is satisfied that your conduct was inappropriate.</p> <p>It therefore finds this head of charge proved in respect of heads of charge 19 and 20.</p>
21.(b)	<p><i>sexually motivated</i></p> <p>Proved.</p> <p>The Committee took into account the meaning of sexually motivated as set</p>

	<p>out above.</p> <p>The Committee could find no other motive for your conduct other than sexual gratification. It is clear that you were behind Witness A and had sexually touched Witness A whilst you had an erection.</p> <p>The Committee having considered all of the evidence carefully is satisfied that your conduct was intended to be in pursuit of sexual gratification as well building towards a sexual relationship.</p> <p>It therefore finds this head of charge proved in respect of heads of charge 19 and 20.</p>
	<p><u>Attempting to have sex with her</u></p>
22.	<p><i>On an occasion between 1990 and 1994, you intentionally attempted to penetrate the vagina of witness A with your penis.</i></p> <p>Proved.</p> <p>Witness A in her written statement stated <i>“At the end of one of those days I was working with the Registrant, he tried to have sex with me. This was the final straw for me and I’d had enough. Everyone had left the practice and no one else was around. It happened in the surgery room. I was wearing my uniform, I remember, I will never forget because I was wearing dark green underwear and I thought whether he saw it under the white uniform. He’s been quite friendly and had been touching me on the legs throughout the day. He also mentioned my skin when he was touching me. He said that my skin was soft. He only ever touched my legs as that’s what patients could not see. He had an erection for most of the afternoon whilst he was touching me. I remember I could see it. He didn’t try to show me but I could see it through his trousers and when he was sitting I could see it...It was at the end of the day that I was cleaning in the surgery and he just launched at me. He launched to my front. I don’t think he kissed me. He would always take off his tunic in the surgery rather than in the cloak room and he would always be topless underneath it. When he approached me I think his tunic was unbuttoned. I don’t remember his trousers being down. I think his trousers were on but his zip was undone. It lasted for seconds. He must have pulled down my underwear. In my letter to the GDC, dated 26 September 2018, I stated that the Registrant entered me. However, I am not sure whether he entered me, or if he pulled down my underwear. He came on me but I don’t know if he penetrated me. I think that he came before he could properly enter me. It was so quick, my dress was open, my buttons were not ripped. He didn’t grab my chest area from what I remember.</i></p> <p><i>I felt wet on my crotch and I could feel his cum on my skin...”</i></p> <p>The Committee recognised in considering the improbability of this occurring that this is an exceptionally serious allegation and took that fully into account.</p> <p>Witness A describes a sexual encounter that happened very quickly. In her evidence she stated that she was unclear whether your penis had penetrated her vagina. However, she was consistent that you had attempted to have sex with her. Her evidence was that you ejaculated on her underwear and the</p>

	<p>skin of her crotch while she was on the floor of the surgery. The Committee is of the view that this occurred when you attempted to penetrate Witness A's vagina with your penis, whether you succeeded in doing this or not.</p> <p>You stated in oral evidence that you have no recollection of Witness A but that you would never have done this.</p> <p>The Committee having taken into account the improbability of such an event as well as the guidance and warnings in the case of Dutta, is satisfied that an event of the nature described by Witness A did occur and that Witness A was describing a confused and unpleasant event. It noted the evidence of Witness A and drew a conclusion that you were attempting to penetrate her with your penis.</p> <p>It therefore finds this head of charge proved</p>
23.	<i>In relation to charge 22 above,</i>
23.(a)	<p><i>witness A was not consenting</i></p> <p>Proved.</p> <p>The Committee accepts Witness A's account that there was no intimate relationship between you and her. The Committee is therefore satisfied that Witness A could not have consented.</p> <p>The Committee finds this head of charge proved</p>
23.(b)	<p><i>you did not reasonably believe that witness A was consenting</i></p> <p>Proved.</p> <p>The Committee could not find any plausible reason why you would believe that Witness B was consenting.</p> <p>The Committee therefore finds this head of charge proved.</p>
24.	<i>Your conduct in respect of charge 22 and/or 23 above was</i>
24.(a)	<p><i>inappropriate</i></p> <p>Proved.</p> <p>It treated the word '<i>inappropriate</i>' as having its ordinary every day meaning of '<i>not appropriate</i>'.</p> <p>The Committee is satisfied that this event by its nature could not be other than inappropriate.</p> <p>It therefore finds this head of charge proved in respect of heads of charge 22 and 23.</p>
24.(b)	<p><i>sexually motivated</i></p> <p>Proved.</p> <p>The Committee took into account the meaning of sexually motivated as set out above.</p> <p>The Committee is satisfied that this event by its nature could not be other</p>

	<p>than for sexual gratification.</p> <p>It therefore finds this head of charge proved in respect of heads of charge 22 and 23.</p>
	<p><u>Witness B</u></p> <p><u>Pressing crotch against her</u></p>
25.	<p><i>As amended - On 17 September 2015, you intentionally pressed your crotch area against witness B.</i></p> <p>Proved.</p> <p>Witness B in her written statement stated “<i>While I was typing the next thing I knew he had me pinned against the workbench that the computer was on. I felt like his penis was erect and he was pushing up against me. I was not looking in his direction so I couldn’t see his penis. I could feel his penis on my left side, between my hips and my waist I felt my nose was starting to run and I knew I had a tissue in my right hand-pocket. I was feeling flustered. And started to squirm, I then tried to get the tissue from my pocket and by doing so tried to stop him from pinning me by trying to reach into my right hand pocket. He had jammed me against the workbench so that I could not reach into my pocket. I was not able to reach into my pocket. I just wanted to get the email written and get out of there. I began to get flustered and he started to do an in an in-and-out motion, three or four times. I was feeling flustered and I just wanted to get away from him.</i>”</p> <p>In her oral evidence, Witness B stated that you had intentionally pressed your crotch area against her side when she was writing an email on your behalf.</p> <p>You stated in oral evidence that you stated that you deny asking Witness B to write an email on your behalf on 17 September 2015. You also stated that you never pressed your crotch against Witness B and that you would never behave like this with your staff.</p> <p>The Committee noted potential inconsistencies in Witness B’s account of when this incident happened. However, it noted that Witness B was consistent in her description of the actual event.</p> <p>The Committee having taken into account the improbability of such an event as well as the guidance and warnings in the case of Dutta, accepts the evidence of Witness B. You do not have a recollection of this event and cannot contradict the account of Witness B. It is satisfied that these events did occur as described by her on or around 17 September 2015, and that the pressing of your crotch area was intentional.</p> <p>It therefore finds this head of charge proved.</p>
26.	<p><i>In relation to charge 25 above,</i></p>
26.(a)	<p><i>witness B was not consenting</i></p> <p>Proved.</p> <p>The Committee notes the oral evidence of Witness B who describes your behaviour and said throughout her evidence that she did not consent to you</p>

	<p>touching her. She stated that your behaviour made her feel uncomfortable and that she was squirming. She states that she considered the relationship between you both to be that of employer/employee.</p> <p>The Committee noted that after this incident she immediately reported what she said had occurred to members of staff at the practice. The matter was subsequently brought to the attention to the Police by a colleague of Witness B. Witness B attended court and was prepared to give evidence.</p> <p>The Committee accepts Witness B's account that there was no intimate relationship between you and her and that your behaviour made her feel uncomfortable. The Committee is therefore satisfied that Witness B could not have consented to you pressing your crotch against her.</p> <p>The Committee finds this head of charge proved.</p>
26.(b)	<p><i>you did not reasonably believe that witness B was consenting</i></p> <p>Proved.</p> <p>Witness B stated in oral evidence that she was trying to move away from you after you have inappropriately touched her. Your behaviour made her feel uncomfortable and she was squirming.</p> <p>The relationship between you and Witness B was that of employer/employee. The Committee is satisfied that this is not normal behaviour in any workplace environment between two colleagues that are not in a relationship.</p> <p>The Committee could not find any plausible reason why you would believe that Witness B was consenting.</p> <p>The Committee therefore finds this head of charge proved.</p>
27.	<p><i>Your conduct in respect of charge 25 and/or 26 above was</i></p>
27.(a)	<p><i>inappropriate</i></p> <p>Proved.</p> <p>It treated the word '<i>inappropriate</i>' as having its ordinary every day meaning of '<i>not appropriate</i>'.</p> <p>The Committee considers that you pressing your crotch against Witness B in the way she describes in a dental setting to be inappropriate. Further, the Committee considers that this occurred in the context of an employer/employee relationship, where Witness B quite clearly did not give consent to you to do this. You were in a position of authority. The Committee considers that the nature of your conduct is out of the bounds of what would be considered normal behaviour, particularly in a workplace setting.</p> <p>The Committee is satisfied that your conduct was inappropriate.</p> <p>It therefore finds this head of charge proved in respect of heads of charge 25 and 26.</p>
27.(b)	<p><i>sexually motivated</i></p>

	<p>Proved.</p> <p>The Committee took into account the meaning of sexually motivated as set out above.</p> <p>The Committee took into account the inappropriate touching of Witness B. The Committee considers that your touching was with intent. It considers that there is no other reasonable explanation to press your crotch against Witness B without her consent, other than for your own sexual gratification.</p> <p>It therefore finds this head of charge proved in respect of heads of charge 25 and 26.</p>
	<p><u>Touching her leg</u></p>
28.	<p><i>As amended - On 1 October 2015, you intentionally touched witness B's leg.</i></p> <p>Proved.</p> <p>Witness B in her written statement stated <i>"I handed the Registrant the filling material to fill the cavity and I had to harden it with the light so I was holding the light in one hand and the orange shield in the other to protect our eyes from the blue light. For one moment the Registrant had to put the strip in the tooth to keep the composite material in the tooth. He was holding it with both hands. Then he held it with one hand and using his left hand he touched my left leg. He touched my leg first near my knee and started squeezing it up and down and started moving his hand up and down. He continued up and down to my vaginal area. He didn't actually touch my vagina on this occasion. While I did it I was holding the light in one hand and the shield in the other.</i></p> <p><i>I was looking at the filling to harden it with the light and keeping the light in place. The Registrant was looking at the filling as well but had his left hand on my left leg. The Registrant touched my leg in this way for about 5 minutes and because I had my hands full I couldn't move away. The pressure of his hand was quite hard on my leg. During the incident when he touched me I was sat down the whole time."</i></p> <p>In her oral evidence Witness B maintained that you had touched her leg for approximately 5 minutes whilst in the presence of a patient.</p> <p>You stated in oral evidence that you were resting the curing light with your left hand, and therefore you could not have touched Witness B with your left hand. You also stated that you would never behave in this way to any of your staff.</p> <p>The Committee noted that Witness B was consistent throughout both her written and oral evidence in respect of this head of charge, and that this was similar to the account given by Witness C of what he said he had witnessed.</p> <p>The Committee did not find it probable that you would have rested a curing light on your left hand as you described and therefore you would be unable to touch Witness B's leg with your left hand.</p> <p>The Committee find there is sufficient cogent evidence of this head of charge.</p> <p>The Committee having taken into account the improbability of such an event</p>

	<p>as well as the guidance and warnings in the case of Dutta.</p> <p>The Committee is satisfied on the on the basis of the evidence of Witness B that these events did occur as described by her.</p> <p>It therefore finds this head of charge proved.</p>
29.	<i>In relation to charge 28 above,</i>
29.(a)	<p><i>witness B was not consenting</i></p> <p>Proved.</p> <p>The Committee accepts Witness B's account that there was no intimate relationship between you and her and that your behaviour made her feel uncomfortable. The Committee is therefore satisfied that Witness B could not have consented to you touching her leg.</p>
29.(b)	<p><i>you did not reasonably believe that witness B was consenting</i></p> <p>Proved.</p> <p>The Committee could not find any plausible reason why you would believe that Witness B was consenting.</p> <p>The Committee therefore finds this head of charge proved.</p>
30.	<i>Your conduct in respect of charge 28 and/or 29 was:</i>
30.(a)	<p><i>inappropriate</i></p> <p>Proved.</p> <p>It treated the word '<i>inappropriate</i>' as having its ordinary every day meaning of '<i>not appropriate</i>'.</p> <p>The Committee considers that the touching of Witness B's leg in the way she describes in a dental setting to be inappropriate. Also, the Committee considers that this occurred in the context of an employer/employee relationship, where Witness B quite clearly did not give consent to you to do this. The Committee considers that the nature of your conduct is out of the bounds of what would be considered normal behaviour.</p> <p>The Committee is satisfied that your conduct was inappropriate.</p> <p>It therefore finds this head of charge proved in respect of heads of charge 28 and 29.</p>
30.(b)	<p><i>sexually motivated</i></p> <p>Proved.</p> <p>The Committee took into account the meaning of sexually motivated as set out above.</p> <p>The Committee considers that your touching was with intent. The Committee considers that there is no other reasonable explanation to touch Witness B's leg without her consent, other than for your own sexual gratification.</p> <p>It therefore finds this head of charge proved in respect of heads of charge 28</p>

	and 29.
	<u>Touching her vagina over clothing</u>
31.	<p><i>As amended - On 1 October 2015, you intentionally touched witness B's vagina over clothing with your hand and/or fingers.</i></p> <p>Proved.</p> <p>Witness B in her written statement stated <i>"During the appointment, the Registrant and I had to do a couple of x-rays. I had the x-ray control button in my hand and it is on a lead. When taking x-rays everyone except the patient has to leave the room so that we are not near the x-ray. The control for the x-ray is on a cord and it is safe distance from the room. I took the button and went outside to wait for the Registrant to come out. He was adjusting the x-ray in the patient's mouth so I waited for him outside with the button. When he was done he came outside where I was waiting. I pressed the button.</i></p> <p><i>The patient had her eyes closed and was lying down. We could see the patient the whole time. I was standing at the banister waiting for him to come out so x-ray could be taken. It only takes a second for x-ray as long as patient doesn't move. After I pressed the button the x-ray was taken, the Registrant and I were about to go back in the surgery room. He was on my right side and we were both facing the surgery. He leaned forward and touched me with his left hand in my vaginal area. The palm of his hand was facing me."</i></p> <p>In her oral evidence Witness B maintained that you had touched her vagina over her clothing.</p> <p>You stated in oral evidence that you do not recall touching her, however, you did state that there is a possibility that you may have brushed past her when an x-ray was being taken of a patient's mouth and when you had both left the treatment room. You stated that you would never behave in this way to any of your colleagues. It noted that you have accepted a Police Caution for reckless touching in respect of this incident. The Committee accepts that this caution does not amount to an admission of intentional touching or of sexual misconduct.</p> <p>The Committee took into account photographs taken of the practice and in particular the surgery room. The Committee noted that there were some minor inconsistencies in Witness B's written and oral evidence as to the position of your hand. However, the Committee noted that immediately after this incident Witness B made a complaint to a colleague. A complaint was then made to the Police and the GDC.</p> <p>Witness B was consistent that she had been touched during the taking of an x-ray, and that this touching was not accidental. The Committee also took into account that Witness B reported this immediately after this incident took place. The Committee considers that Witness B's evidence in respect of this head of charge provides sufficient cogent evidence.</p> <p>It therefore finds this head of charge proved.</p>
32.	<i>In relation to charge 31 above,</i>

32.(a)	<p><i>witness B was not consenting</i></p> <p>Proved</p> <p>The Committee accepts Witness B's account that there was no intimate relationship between you and her and that your behaviour made her feel uncomfortable. The Committee is therefore satisfied that Witness B could not have consented to you touching her vagina over clothing with your hand and/or fingers.</p>
32.(b)	<p><i>you did not reasonably believe that witness B was consenting</i></p> <p>Proved</p> <p>The Committee could not find any plausible reason why you would believe that Witness B was consenting.</p> <p>The Committee therefore finds this head of charge proved.</p>
33.	<p><i>Your conduct in respect of charge 31 and/or 32 was:</i></p>
33.(a)	<p><i>inappropriate</i></p> <p>Proved.</p> <p>It treated the word '<i>inappropriate</i>' as having its ordinary every day meaning of '<i>not appropriate</i>'.</p> <p>The Committee considers that the touching of Witness B's vagina over her clothing in the way she describes in a dental setting to be inappropriate. Also, the Committee considers that this occurred in the context of an employer/employee relationship, where Witness B quite clearly did not give consent to you to do this. The Committee considers that the nature of your conduct is out of the bounds of what would be considered normal behaviour.</p> <p>The Committee is satisfied that your conduct was inappropriate.</p> <p>It therefore finds this head of charge proved in respect of heads of charge 31 and 32.</p>
33.(b)	<p><i>sexually motivated</i></p> <p>Proved.</p> <p>The Committee took into account the meaning of sexually motivated as set out above.</p> <p>The Committee took into account that the inappropriate touching of Witness B occurred whilst treating a patient. The Committee considers that your touching was with intent. The Committee considers that there is no other reasonable explanation to touch Witness B's vagina over her clothing without her consent other than for your own sexual gratification.</p> <p>It therefore finds this head of charge proved in respect of heads of charge 31 and 32.</p>
	<p><u>Touching her bottom and/or lower back</u></p>
34.	<p><i>As amended - On 1 October 2015, you intentionally touched witness B's</i></p>

	<p><i>bottom and/or lower back.</i></p> <p>Proved.</p> <p>Witness B in her written statement stated <i>“That afternoon as I was talking to xxx and xxxx, xxxx asked me to take an indemnity document up the Registrant who was in his surgery. She only meant for me to take it and leave it there, not knowing that he was going to make me complete the document and write down all the names of the staff members. I leant over the bench to write the names. It was quite a low bench. Again, there was nobody in the surgery. I was just crouching down leaning on the bench writing down the names of the nurses that worked at the Practice so he could add us to his indemnity.</i></p> <p><i>I cannot recall how long my tunic was, I think it was down to my bottom. While I was writing the names, the Registrant, who was standing behind me, lifted my tunic so that my lower back skin was exposed. He squeezed the left side of my bottom and was touching my bare skin on my lower back area. He then put his hand down the waistband of my trousers all from behind.</i></p> <p><i>I was very cross and uncomfortable with what he was doing but I carried on writing. I may have been moving my feet about, but I can’t remember now what I did. I was asking myself had I done anything to warrant this behaviour”.</i></p> <p>Witness B was consistent in describing the way that you touched her. In her oral evidence Witness B gave a detailed account of the way you had touched her bottom and her back.</p> <p>You stated in oral evidence that you could not recall her giving you a form to complete and that this is not something you would have been used to doing.</p> <p>However, the Committee noted that Witness B was inconsistent about the position of her body whilst she was being touched. She then provided further details that she had moved whilst she was writing, as she was physically uncomfortable. She was consistent that you had touched her on her bottom and lower back.</p> <p>The Committee notes that you do not have a recollection of this event and cannot contradict it except in general terms. It noted that although you say you would not have done what is alleged by Witness B, the Committee is satisfied that you would have been able to touch Witness B in the manner described.</p> <p>The Committee having taken into account the improbability of such an event as well as the guidance and warnings in the case of Dutta is satisfied on the on the basis of the evidence of Witness B that these events did occur as described by her.</p> <p>It therefore finds this head of charge proved.</p>
35.	<i>In relation to charge 34 above,</i>
35.(a)	<p><i>witness B was not consenting</i></p> <p>Proved.</p>

	The Committee accepts Witness B's account that there was no intimate relationship between you and her and that your behaviour made her feel uncomfortable. The Committee is therefore satisfied that Witness B could not have consented to you touching her bottom and lower back.
35.(b)	<p><i>you did not reasonably believe that witness B was consenting</i></p> <p>Proved.</p> <p>The Committee could not find any plausible reason why you would believe that Witness B was consenting.</p> <p>The Committee therefore finds this head of charge proved.</p>
36.	<i>Your conduct in respect of charge 34 and/or 35 was:</i>
36.(a)	<p><i>inappropriate</i></p> <p>Proved.</p> <p>It treated the word '<i>inappropriate</i>' as having its ordinary every day meaning of '<i>not appropriate</i>'.</p> <p>The Committee considers that the touching of Witness B's bottom and her back in the way she describes in a dental setting to be inappropriate. Also, the Committee considers that this occurred in the context of an employer/employee relationship, where Witness B quite clearly did not give consent for you to do this. The Committee considers that the nature of your conduct is out of the bounds of what would be considered normal behaviour.</p> <p>The Committee is satisfied that your conduct was inappropriate.</p> <p>It therefore finds this head of charge proved in respect of heads of charge 34 and 35.</p>
36.(b)	<p><i>sexually motivated</i></p> <p>Proved.</p> <p>The Committee took into account the meaning of sexually motivated as set out above.</p> <p>The Committee considers that your touching was with intent. The Committee considers that there is no other reasonable explanation to touch Witness B's bottom and back without her consent, other than for your own sexual gratification.</p> <p>It therefore finds this head of charge proved in respect of heads of charge 34 and 35.</p>
	<u>Caution/Notification of Charge</u>
37.	WITHDRAWN
38.	WITHDRAWN
38.(a)	WITHDRAWN
38.(b)	WITHDRAWN

39.	<p><i>On 11 September 2017 at Dungannon Police Station in County Tyrone, you were cautioned by the police for common assault.</i></p> <p>Admitted and found proved.</p> <p>The Committee has seen an electronic copy of the Certificate of Caution signed on 11 September 2017 to the offence of Common Assault.</p>
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We move to Stage Two”.

On 23 July 2021 the hearing adjourned part heard and resumed on 2 December 2021.

On 3 December 2021, the Chairman announced the determination as follows:

“Having announced its finding on all the facts, the Committee heard submissions on the matters of misconduct, impairment and sanction.

Mr Patience informed the Committee that Mr McCann has no prior fitness to practise history. Mr Patience submitted that the facts found proved amount to misconduct. He submitted that the Committee has found that the Registrant engaged in repeated instances of inappropriate, sexually motivated, non-consensual, intentional physical contact with female dental nurses (including touching of the genitals both over and under clothing and attempted sexual intercourse). His behaviour occurred in the workplace, in circumstances where the Registrant did not reasonably believe that they were consenting. Mr Patience stated that the facts proved in this case support a finding of misconduct and identified the standards, which in his submission, have been breached.

Mr Patience then moved on to the issue of current impairment and addressed the Committee on the factors that it must consider, as outlined in the case of Cohen v General Medical Council [2008] EWHC 581 (Admin), including Mr McCann’s lack of insight or any remediation. He invited the Committee to consider the factors identified in the case of Cohen including that the misconduct was directed at more than one individual and the length of time over which the misconduct took place. In particular, the behaviour was continuing to occur, this time with Witness B, right up until the point of the complaint to the police in 2015. Mr Patience noted that Mr McCann had denied the conduct which the Committee has now found proved, as was his right. It was submitted that he cannot be said to have recognised that he should have behaved differently and accordingly has no insight at all into the misconduct he has committed.

Mr Patience addressed the Committee on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the GDC as a regulatory body. Mr Patience referred the Committee to the test as set out by Dame Janet Smith in the Fifth Shipman report and confirmed in the case of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin). He submitted that Mr McCann has clearly breached a fundamental tenet of the dental profession, namely that a dentist should treat colleagues fairly, with respect and dignity and in line with the law. He submitted that Mr McCann’s fitness to practise is currently impaired by reason of misconduct.

Mr Patience addressed the Committee on the matter of sanction and referred to the cases of Arunachalam v GMC [2018] EWHC 758 and Yasin v GMC [2018] EWHC 677. He also

referred the Committee to the specific matters for consideration as set out in the '*Guidance for the Practice Committees*' as published by the GDC in October 2016. He submitted that although suspension is capable of being appropriate in serious cases, the allegations in this case are so serious that they demonstrate a harmful deep-seated personality issue which would make erasure the appropriate order and furthermore, public confidence in the profession would be insufficiently protected by the imposition of a sanction less than erasure.

Mr Patience submitted that the misconduct here is fundamentally incompatible with remaining on the dental register and involved the abuse of a position of power and trust, by virtue of the fact that Mr McCann's behaviour was sexual in nature and was directed towards dental nurses who were directly employed by him and had to work alone with him. There has also been a persistent lack of insight. Mr Patience submitted that it is also clear, in particular from the evidence of Witness A, that the Registrant's conduct caused serious distress to her of a nature that has endured for a long period of time. Mr Patience submitted that by taking all of these factors into account, that the appropriate sanction in this case is one of erasure.

Mr Boyle submitted that he would not address the issue of misconduct or on impairment. However, in response to the submissions made by Mr Patience regarding impairment, he submitted that regarding the length of time over which this conduct continued to occur, that this has the potential to overstate the findings that have been made, as there was a large gap between both witnesses of 21 years. Secondly in respect of Witness B, Mr Boyle submitted that Mr McCann's behaviour did not continue after Witness B had returned to work following a family funeral. Finally, in respect of submissions made regarding the Police caution, Mr McCann had accepted this in relation to reckless contact and not deliberate touching. Mr Boyle submitted that it would be dangerous to ally this caution with anything to do with sexually motivated conduct.

Mr Boyle submitted that the proportionate sanction is one of suspension. Mr McCann has no previous fitness to practise history and has been a dentist of good character serving his community for over 30 years. Mr Boyle submitted that the numerous testimonials provided from colleagues, patients and members of the community that have known him for a number of years, portraying Mr McCann as a man of impeccable good character, with no identified issues of deep-seated attitudinal behaviour. Mr Boyle submitted that the testimonials support the way in which Mr McCann has approached the allegations and engaged with relevant authorities.

Mr Boyle submitted that Mr McCann has not practised as a dentist for over 6 years, and the impact this process has had on him has been chastening. Mr McCann would love to return to dentistry but due to health issues, he cannot. Mr Boyle submitted that there is no prospect whatsoever of him returning to dentistry and therefore being in a position to engage in this type of contact ever again and there is no risk of repetition.

Mr Boyle submitted that it would be wrong to categorise this as an on-going course of conduct or as continuing over a number of years. He submitted that the allegations in relation to Witness A date back some 30 years, whilst the recent allegations of Witness B were not on the same scale.

He submitted that the public interest has already been well served. This is because the allegations have received press coverage, been under investigation by the Police, and these GDC proceedings have been held in public. Mr Boyle invited the Committee to weigh the need to serve the public interest, and to counterbalance the need for a proportionate

response, that to mark the gravity of the findings, the imposition of a sanction of suspension would mark the seriousness of the misconduct and would be proportionate.

The Committee fully considered all the evidence in this case as well as the submissions made by Mr Patience and Mr Boyle. It accepted the advice of the Legal Adviser, which included the factors relevant to the considerations of the Committee and relevant case law.

Decision on whether the facts found proved amount to misconduct:

When determining whether the facts found proved amount to misconduct the Committee had regard to the terms of the relevant professional standards in force at the time of the incidents. In the early 1990's these were not specifically codified but applied in principle.

The Committee, in reaching its decision, had regard to the public interest and accepted that there was no burden or standard of proof at this stage.

The Committee has concluded that Mr McCann's conduct in relation to Witness B was in breach of each of the sections of the *Standards for the Dental Team* (2013) as set out below.

Standard 1.3.2

You must make sure you do not bring the profession into disrepute.

Standard 6.1.2

You must treat colleagues fairly and with respect, in all situations and all forms of interaction and communication. You must not bully, harass, or unfairly discriminate against them.

Standard 9.1

You must ensure that your conduct, both at work and in your personal life, justifies patients' trust in you and the public's trust in the dental profession.

Standard 9.1.1

You must treat all team members, other colleagues and members of the public fairly, with dignity and in line with the law.

The Committee appreciated that the above breaches do not automatically result in a finding of misconduct. However, the Committee was of the view that the breaches in this case are serious and fundamental to the profession. The Committee concluded that Mr McCann's conduct was a significant departure from the standards expected of a registered dental professional. Further, a number of allegations were found proved relating to repeated sexually motivated behaviour, towards two female colleagues without their consent, in the workplace. The Committee is satisfied that Mr McCann's conduct would be considered deplorable by fellow professionals.

The Committee was of the view that the findings of inappropriate and sexually motivated conduct represent a serious departure from the standards expected of a registered dental professional.

Decision on impairment:

The Committee first considered whether Mr McCann's fitness to practise is impaired by reason of the caution given in 2017. The Committee notes that the caution was made in respect of reckless contact and not sexual behaviour. The Committee also noted that the caution, which Mr McCann accepted, was over 4 years ago. The Committee, having taken

into account all of the relevant factors, does not consider that his fitness to practise is impaired by reason of his caution.

The Committee proceeded to decide whether, as a result of his misconduct, Mr McCann's fitness to practise is currently impaired.

The Committee considers that dental professionals occupy a position of privilege and trust in society, and they must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession. In this regard the Committee considered the judgment of Mrs Justice Cox in the case of Grant. In paragraph 74 she said;

74. In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant Committee should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.

The Committee considered that the misconduct found, that of Mr McCann's sexually motivated behaviour, was such that it was liable to bring the profession into disrepute and that he breached a fundamental tenet of the profession.

The Committee had no information from Mr McCann that he has taken any steps to remedy his conduct or that he had any recognition that his conduct was inappropriate. The Committee was of the view that the findings in this case relating to Mr McCann's conduct represent behaviour related to character and attitudes, and that this is highly difficult to remedy. Given the complete lack of information from Mr McCann regarding any remediation, remorse or insight, the Committee cannot be satisfied that the risk of repetition is low.

The Committee has borne in mind that its primary function is to protect patients and the public including the dental team. It has also taken into account the wider public interest, which includes maintaining confidence in the dental profession and the GDC as a regulator and upholding proper standards and behaviour. The misconduct identified in this case was, in the view of the Committee, sufficiently serious to warrant a finding of impairment. Further, public confidence in the profession would be significantly undermined were the Committee not to make a finding of current impairment.

Having regard to all this the Committee has concluded that Mr McCann's fitness to practise is currently impaired by reason of misconduct.

Decision on sanction

The Committee next considered what sanction, if any, to impose on Mr McCann's registration. It recognised that the purpose of a sanction is not to be punitive, although it may have that effect, but rather to protect patients and the wider public interest.

The Committee has taken into account the GDC's '*Guidance for the Practice Committees*'. The Committee applied the principle of proportionality, balancing the public interest with Mr McCann's interests. The Committee has considered the range of sanctions available to it, starting with the least serious.

The Committee considered the aggravating and mitigating factors present in this case. The aggravating factors included:

- potential harm to Witnesses A and B;

- occurred on multiple occasions;
- involved vulnerable persons, in particular both dental nurses were in your employment;
- breach of trust towards colleagues who should feel safe at work;
- inappropriate and unprofessional behaviour;
- lack of insight and remorse.

In respect of the mitigating factors, the Committee placed limited value on the multiple testimonials providing evidence of good character. These were all written prior to the findings of fact, and the writers were not aware either of the charges or of the charges subsequently found proved. It noted Mr McCann has no previous fitness to practise history.

In the light of the findings against him the Committee has determined that it would be wholly inappropriate and irresponsible to conclude this case without taking any action or with a reprimand, as neither would restrict Mr McCann's registration or address the lack of insight in this case.

The Committee next considered whether a period of conditional registration would be appropriate in this case. The Committee was mindful that any conditions imposed must be proportionate, measurable and workable. The Committee noted that Mr McCann has stated that he has no ability to return to practise. In any event, the Committee determined that it would not be possible to formulate appropriate and practical conditions which would address the serious public interest concerns. The Committee concluded that conditions would not be proportionate in this case.

The Committee then considered whether a suspension order would be proportionate and appropriate in this case. The Committee is in no doubt that Mr McCann's misconduct, including his unprofessional behaviour and his sexually motivated behaviour, was wholly unacceptable and seriously damaging to the reputation of the profession and to the public's confidence in the dental profession. Mr McCann directed his inappropriate and sexually motivated behaviour towards two non-consenting colleagues. It also noted that some of his behaviour had occurred whilst in the presence of patients. The Committee had nothing before it to show that Mr McCann has any insight into the seriousness of his actions, or the potential consequences and he has not provided any assurance to this Committee that his misconduct would not be repeated.

The Committee then considered whether the issues identified are fundamentally incompatible with Mr McCann remaining on the Register.

The Committee considered the guidance in relation to considering imposing a sanction of erasure. In particular:

The ability to erase exists because certain behaviours are so damaging to a registrant's fitness to practise and to public confidence in the dental profession that removal of their professional status is the only appropriate outcome. Erasure is the most severe sanction that can be applied by the PCC and should be used only where there is no other means of protecting the public and/or maintaining confidence in the profession.

Erasure will be appropriate when the behaviour is fundamentally incompatible with being a dental professional: any of the following factors, or a combination of them, may point to such a conclusion:

[specifically]

- *serious departure(s) from the relevant professional standards;*
- *the abuse of a position of trust or violation of the rights of patients, particularly if involving vulnerable persons;*
- *where a continuing risk of serious harm to patients or other persons is identified;*
- *findings of a sexual nature;*
- *a persistent lack of insight into the seriousness of actions or their consequences.*

In all the circumstances of this case the Committee concluded that the findings against Mr McCann are so serious as to be incompatible with his remaining on the GDC register. The Committee concluded that the only proportionate sanction is that of erasure.

The Committee considered that this order is necessary to mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standards of conduct required of a registered dental professional at all times.

The Committee was aware that the effect of this order is that Mr McCann will be prevented from working as a registered dental professional using a GDC registration. This could result in financial hardship, though the Committee received no direct information about that matter. However, in applying the principle of proportionality, the Committee determined that Mr McCann's interests in this regard are outweighed by the need for public protection and protection of the wider public interest.

As a result of the Committee's decision, Mr McCann's name will be removed from the dentists register.

The Committee now invites submissions from both parties as to whether Mr McCann's registration should be suspended immediately."

Immediate Order:

"Having directed that Mr McCann's name be erased from the register, the Committee had to consider, in accordance with rule 22(2), whether to impose an immediate order to cover the appeal period, or until any appeal against the outcome is heard.

The Committee has considered the submissions made by Mr Patience. Mr Boyle indicated that he had no submissions to make to the Committee.

The Committee accepted the advice of the Legal Adviser.

The Committee was satisfied that an immediate order of suspension was entirely appropriate to protect the public and also to protect the public's confidence in the profession and in the GDC as the regulator. The Committee considered that, in all the circumstances, public confidence in the profession and in the GDC as its regulator would be undermined if an immediate order of suspension were not imposed. The Committee concluded that, having determined that Mr McCann's misconduct was fundamentally incompatible with his

remaining on the register, to allow him to remain on the register unrestricted during the appeal period would be inappropriate with the totality of its findings, particularly the lack of insight prevalent in this case.

If, at the end of the appeal period of 28 days, Mr McCann has not lodged an appeal, this immediate order will lapse and will be replaced by the substantive direction of erasure. If Mr McCann does lodge an appeal, this immediate order will continue in effect until that appeal is determined.

Unless Mr McCann exercises his right of appeal, his name will be erased from the register 28 days from the date on which this determination is deemed to have been served upon him.

The interim order on Mr McCann's registration is hereby revoked.

That concludes the case."