IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
[2022] EWHC 2192 (Admin)

No. CO/439/2022

Royal Courts of Justice

Tuesday, 10 May 2022

Before:

MRS JUSTICE FOSTER DBE

B E T W E E N :

ALBERTS

Appellant

- and -

GENERAL DENTAL COUNCIL

Respondent

MISS N GOMERSALL (instructed by Irwin Mitchell) appeared on behalf of the Claimant.

MR T ORPIN-MASSEY (instructed by the General Dental Council) appeared on behalf of the Respondent.

J U D G M E N T

(Transcript prepared without the aid of documentation)

MRS JUSTICE FOSTER DBE:

1 This is an appeal against the decision of the Professional Conduct Committee ("PCC") of the General Dental Council ("GDC") on 13 January 2022 by which it suspended the Appellant's registration for a period of 12 months, having found his fitness to practise was impaired by reason of his misconduct. By this appeal, the Appellant originally challenged, first, the finding that the Appellant's fitness to practise was impaired on the grounds of public protection; alternatively, secondly that the finding was unjust, because of a serious procedural irregularity, in that the PCC failed to give adequate reasons for their decision and, in any event, thirdly, that the PCC was wrong to consider a direction for suspension for 12 months was either necessary or proportionate in all the circumstances.

2 By a late notified concession, the Appellant dropped his first and second grounds of challenge. The court commends this approach and, although no argument was heard, I wish to indicate to the Appellant that it was an entirely proper approach to take given the materials and conclusions to which this court was likely to come on those issues. This has become a challenge only to the imposition of the 12-month suspension.

Background

3 Mr Tertius Alberts used to own a dental practice in which the incidents which are the subject of this appeal took place. At the relevant time he had sold the practice but was working there part-time. He is, and remains, a dentist registered with the GDC and has been in practice for a number of years. At the time of the incidents in November 2020, he was about eight months into this new pattern of working. The complainant was a dental nurse who had just begun to work at the practice when the events in question took place. It appears that they had never worked together, nor indeed met before the first incident.

4 The findings followed a three-day hearing by the PCC. The circumstances which gave rise to their conclusions were that the Appellant had made comments to this junior female colleague at work on two separate dates which were in terms of "How lovely your eyes are" and "Your eyes are like the snake from the Jungle Book. If I look into them for too long, I'll get into trouble". These comments were made on two dates in early November 2020.

5 In respect of both comments the Appellant accepts they were made within the hearing of other dentists at the practice and that, in respect of the second, he, Mr Alberts, winked at another dentist at the time of the comment.

6 The evidence given by Mr Alberts contained the following passages:

> "*Q. Do you accept that it is a very personal thing to comment on someone's attractiveness?*
>
> *A. You keep using the word 'attractiveness', with respect I only commented on her eyes, she was wearing a mask, so it left me with the hair and the eyes and, in my usual way of complimenting people, I remarked that she had lovely eyes.*
>
> *Q. Mr Alberts, you did not have to comment on her appearance at all, did you?*

A. Again, if I say with the knowledge of hindsight, if I knew it would have caused her discomfort, I would not have made those, but that is not what I mean. I mean as a level playing field, if I can use that term, because I have always been level with all my staff and my patients. I have never been myself on a pedestal above everyone else and this is part of the way I level the playing field with people, colleagues and the patients as well. If I caused her discomfort, yes, again, I made a mistake. That is not what it was supposed to be.

Q. Do you accept that it is a personal thing to comment on how beautiful someone's eyes are?

A. Say that again. Repeat that, please.

Q. Certainly. Do you accept that it is a very personal thing to comment on how beautiful somebody's eyes are?

A. I say it again, I say that I will accept that it is a personal thing, but, as I say, it was not meant as – it was meant as a personal compliment nothing more.

Q. Mr Alberts, do you accept that that kind of personal compliment, as you put it, that that crosses the line from the professional into the personal?

A. I don't have any more comment on what I felt like on the day and what my intention was and my intention was not to be personal. It does not matter this person was beautiful, ugly, normal, it does not make any difference, if I make a compliment to make someone feel comfortable in my presence and to take me off my pedestal."

7 Mr Alberts went on to describe his approach as an "icebreaker". He accepted in questioning that he was about three times the age of the – I will call her – "victim" and wished to emphasise he would not have done it again if he had known that she felt uncomfortable.

He further said this:

"*Q. Mr Alberts, just a few minutes ago, I think in relation to my question, you said that it was jokey, light-hearted characterisation. That is in relation to the second comment about the snake, if I understood you correctly.*

A. Say it again.

Q. I just want to check I understood what you said a few moments ago. I asked you – I suggested to you that simply saying that someone's eyes are pretty or beautiful, that is not funny. It is not a joke. I believe your response was, your characterisation of the conversation as a joke relates only to the snake comparison, is that what you are saying?

A. I am saying that, when I say somebody has lovely eyes, they do not see that as a joke, that was the compliment.

Q. That was the compliment, the other was the joke, understood. You also said a few minutes ago that your second comment was to ensure that your first comment was not misinterpreted. Did I catch that correctly just now?

A. Yes. It's probably the wrong way of expressing myself, but that was to stress the way so she understands my jovial easy personality and that the compliments about her eyes were to level the playing field when we joke about the snake to express the way I am with my character as a jovial easy person."

He further said about the second part of the phrase "getting into trouble":

"*Q. Let's talk about the phrase "I'll get into trouble". What you meant there was a sexual connotation, that's what you meant, isn't it?*

A. I don't agree with that, because that was not my intention."

8 In submissions on behalf of the GDC, it was said that, on the evidence they had received and looking at the words used in context, a reasonable person would consider that, because of the nature of the words, they might be sexual and, looking at the purpose for which they were said, namely, to express sexual interest and signal sexual attraction or both, the words were sexual. The Committee was invited, on the balance of probabilities, to the conclusion that the charge, including that the comments were sexually motivated, was proved.

9 Mr Alberts accepted that the comments were inappropriate and unprofessional and he accepted that the complainant was made to feel awkward or uncomfortable, but he did not admit that his conduct was sexually motivated. The PCC, however, found that element of the charge proven and it is no longer challenged here.

10 The finding of the terms of impairment are, however, instructive. Relevantly, the Committee found:

"*When determining whether the facts found proved amounted to misconduct, the Committee had regard to the terms of the relevant professional standards in force at the time of the incidents. The Committee, in reaching its decision, had regard to the public interest and reminded itself that misconduct was a matter for its judgment. The Committee has concluded that your conduct was in breach of the following Standards for the Dental Team (2013):*

"*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.*

...

"*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.*"

The Committee:

> "*…was of the view that the breaches in this case went to the heart of requirements for professional behaviour. The Committee considered that your conduct in making remarks of a sexual nature fall far below the standards expected of a registered dentist. Your conduct, which the Committee found to be unprofessional and of a sexual nature, was repeated over two separate days for your colleague to be uncomfortable. The Committee considered that this is not treating a colleague with respect, neither does it accord with the requisite dignity to a fellow professional to not cross professional boundaries at the workplace. You were a senior practitioner and behaving in that manner, in the manner that you have, would be considered deplorable by the wider profession. It was completely unacceptable. You were in a position of privilege and trust working with people who might be vulnerable or junior to you in terms of age and/or position within the practice. The Committee considered that sexual misconduct is always serious. Your conduct fell significantly below the standards expected of a registered dentist and amounted to misconduct.*"

11 The Committee considered remediation and they agreed that his conduct was capable of remediation, although accepting a submission by the GDC that in respect of sexual misconduct, that was difficult. The Committee indicated they had carefully examined the Appellant's reflective pieces (that is to say the written statements of his personal reflection on the charges and his actions) and they accepted that he had demonstrated some remorse and noted that he apologised for his action.

12 However, the Committee went on to say, "You have shown little understanding as to the seriousness of your sexual misconduct or its impact". This impact was said to be both upon the victim and upon the reputation of the profession.

13 The Committee had seen the Appellant give his evidence and they stated their view that he had demonstrated no meaningful insight as to why his conduct had been inappropriate or what it was that rendered it unprofessional. He spoke, so they record, of the ability of others to misunderstand his intentions and he failed to realise the impact of his actions on others, stating, among other things, "You still consider your comments to be jokes". The Committee indicated they had not seen, in conjunction with a list of courses completed by the Appellant, reflections to convey what he understood he had actually learned, nor as to how he had changed his behaviour on the basis of what he had learned. They noted that the completed courses were both completed within a week at the end of March. It appears it was another date in September on which the Appellant had completed some courses and that the date that they gave was inaccurate. Little weight was placed upon this, properly, by Mr Alberts's counsel, and I do not place much weight upon this error.

14 Of importance to the Committee's findings was a determination made by the PCC in 2018, in respect of him, which considered a series of charges relating to sexually-motivated conduct towards female colleagues in the practice. Not all of those charges were made out, but the PCC considered that the Appellant's fitness to practise had been impaired by the allegations that were found proved and he was, as a result, reprimanded.

15 The behaviour in the current case was, in my judgement, remarkably similar to some of the behaviour in the earlier case of which the Appellant had been found guilty. The Committee in this case stated, in terms, that the repeated sexual misconduct, coupled with "a low level of insight and insufficient remediation" presented a risk of repetition. They concluded that

public confidence in the profession would be undermined if no finding of impairment was made given the factual findings made. They concluded their remarks as follows:

> "*Having regard to all of these matters, the Committee has determined that your fitness to practise is currently impaired by reason of your misconduct on both public protection and public interest grounds.*"

Legal Framework

16 The framework of a decision of this nature is contained in the Dentist Act 1984 and the guidance materials promulgated thereunder. Section 1(1ZA) and section 1(1ZB) of the 1984 Act indicate the overarching objective of the GDC which is protection of the public. This includes the pursuit of the following objectives: (a) to protect, promote and maintain the health, safety and wellbeing of the public; (b) to promote and maintain public confidence in the professions regulated under this Act; and (c) to promote and maintain proper professional standards and conduct for members of those professions.

17 The Indicative Sanctions Guidance of the GDC expresses the objectives and purpose of the PCC thus:

> "*5.11 The PCC exists to protect the public interest, which includes:*
> *• protecting patients, colleagues and the wider public from the risk of harm.*
> ...
>
> "*5.18 Similarly, the PCC will need to consider whether there are any aggravating factors to the case. Aggravating factors may include:*
>
> *• actual harm or risk of harm to a patient or another;*
> ...
>
> "*6.1 The PCC may impose a sanction when it determines that the dental professional's fitness to practise is currently impaired. Sanctions are intended to protect the public interest, which includes:*
>
> *• the protection of patients, colleagues and the wider public from the risk of harm.*
> ...
>
> "*7.5 The PCC should be aware of the potential risks to patients, the wider public and public confidence in the profession. In cases of serious sexual misconduct, the PC.C may reasonably determine that there is a real prospect of current impairment and that erasure might be the appropriate sanction.*"

18 Those parts of the jurisprudence which are relevant to the issues arising in the current appeal are to the following effect: in *General Medical Council v Dr Nilesh Pravin Jagjivan and Professional Standards Authority for Health and Social Care* [2017] EWHC 1247 (Admin) the Divisional Court determined, among other matters, that in a case concerning a doctor:

(1) Where appeals are governed by CPR 52(21), the court will allow an appeal if the underlying decision is wrong or unjust because of a serious procedural or other irregularity in the proceedings in the lower court. In regulatory proceedings, the appellate court will not have the professional expertise of the tribunal of fact; as a

consequence, the appellate court will approach tribunal determinations about whether conduct is serious misconduct or impairs fitness to practise and what is necessary to maintain public confidence and proper standards in the profession (that is to say sanctions) with diffidence (see *Fatnani and Raschid v General Medical Council* [2007] EWCA Civ 46 at paragraph [16] and *Khan v General Pharmaceutical Council* [2017] 1 WLR 169 at paragraph [36]).

(2) However there may be matters, such as dishonesty or sexual misconduct, where the court is likely to feel that it can assess what is needed to protect the public or maintain the reputation of the profession more easily for itself and, thus, attach less weight to the expertise of the tribunal. (See *The Council for Regulation of Health Professions v GMC and Southall* [2005] EWHC 579 (Admin) at paragraph [11] and *Khan* paragraph [36].) As Lord Millett observed in *Ghosh v GMC* [2002] UK PC 29, the appellate court:

> "*...will accord an appropriate measure of respect to the judgment of the Committee, but the appellate court will not defer to the Committee's judgment more than is warranted for the circumstances.*"

19 A large number of cases have dealt with the role of the court when considering sanction. I cite only a few of relevance here. In the case of *Marinovich v General Medical Council* [2002] UKPC 36, the general rule (to which some nuance has been given in later cases) was expressed. That general rule was relied upon by the Respondent; where the Privy Council said this at paragraph [28]:

> " *... it has been said many times that the Professional Conduct Committee is the body which is best equipped to determine questions as to the sanction that should be imposed in the public interest for serious professional misconduct. This is because the assessment of the seriousness of the misconduct is essentially a matter for the Committee in the light of its experience. It is the body which is best qualified to judge what measures are required to maintain the standards and reputation of the profession.*"

20 In *The PSA v The Healthcare Professional Council v Doree* [2017] EWCA (Civ) 319, the court re-emphasised the requirement for caution when reviewing a disciplinary tribunal's decision on sanctions. Reference was made to *Fatnani and Raschid*. Two strands of authorities were identified arising from decisions before the change in the appeal system of the GMC. The two strands were, firstly, the differentiated function of a panel imposing sanctions from that of a court imposing punishment. The second strand was the special expertise of the panel to make the required judgement. The case of *Gupta v General Medical Council* [2002] 1 WLR 1691 was referred to and *Bolton v The Law Society* [1999] WLR 512, the *locus classicus* for the proposition that the reputation of the profession is more important than the fortunes of any individual member.

21 *Doree* was an appeal against a dismissal, at first instance, of the super regulator's appeal brought against the imposition of only a caution on a doctor against whom misconduct had been found in the form of bullying, harassing and, in the respect of one colleague, sexually-motivated behaviour. In that case, the Court of Appeal declined to allow the appeal and declined to interfere with the panel's conclusion, in particular, on insight and risk of repetition. It upheld the judge's decision to the effect that the panel had the advantage of seeing and hearing the registrant and others and was in a better position to assess the risk of

repetition; it had given careful consideration to what was said by the registrant. The Court of Appeal in *Doree* held this at paragraph [38]:

> "*Whether a registrant has shown insight into his misconduct and how much insight he has shown are classically matters of fact and judgment for the professional disciplinary Committee in the light of the evidence before it. Some of the evidence may be matters of fact, some of it merely subjective in assessing a registrant's insight. A professional disciplinary Committee will need to weigh all the relevant evidence, both oral and written, which provides a picture of it. Of course, there will be cases in which the registrant's own evidence given orally and tested by cross-examination would be the best evidence that could be given and perhaps the only convincing evidence.*"

22 I must add some extracts from the case of *Arunachalam v General Medical Council* [2018] EWHC 758 to which both parties referred. This was a decision of Kerr J where the approach of this court on a regulatory appeal, where sexual allegations are involved, was considered. In that case, the doctor had been erased from the register for sending numerous personal, although not sexualised, messages to two work colleagues, persistently with a false familiarity and intimacy that did not exist between them. The tribunal had found that they were sexually motivated. The court did not uphold the sanction of erasure. In reaching that conclusion on those facts, the judge said this at paragraph [58]:

> "*This was undoubtedly a sexual misconduct case. Such cases are inherently serious, such that they may well lead to erasure, even for a first time offender with a good clinical record. Often, maintaining public confidence in the profession and upholding high standards of behaviour by stamping out unacceptable behaviour of this kind will require erasure in a sexual misconduct case.*
>
> "*59. Where the victim is a colleague rather than a patient, severe sanctions in such cases are generally necessary, in addition, to protect and uphold the dignity of workers in the profession and to protect their freedom to work without being molested. The victims are usually women.*
>
> "*60. This was therefore always a case in which the potential for erasure loomed large, even though the appellant had a good record and had not previously offended in this or any other way. Both parties realistically recognised that in their submissions to the tribunal.*
>
> "*61. In other parts of the world where the culture is different, and in some isolated sectors in this country, there is still a culture which regards such behaviour as acceptable. That is completely wrong and now regularly proclaimed to be so. The days are gone when mainstream discourse was in any way split on the issue of sexual misconduct, particularly in the workplace. The mainstream in our society, reflected in our law, is now that there is virtual zero tolerance of such behaviour.*

"*62. In the criminal law, where personal mitigation counts for more than in this disciplinary jurisdiction, the law encourages judges to give offenders a second chance by imposing alternatives to immediate custody, such as a suspended sentence or a community penalty. Justice is tempered with mercy. That is more difficult in this jurisdiction because the nature of the sanction is not punitive but protective of the profession and the public. To justify the second chance, it has to be weighed not just against the risk that giving it may create more victims should he fail to take it. It also has to be weighed against the risk that public confidence in the profession will be undermined.*"

The sanctions decision in respect of Mr Alberts

23 The Committee here expressly took into account the guidance (revised December 2020) entitled "Guidance for the Practice Committees including Indicative Sanctions Guidance". It made note of the principle of proportionality and the requirement to balance the public interest against the Appellant's interest. The Committee said the following:

"*The Committee has had regard to the mitigating and aggravating factors in this case. The mitigating factors identified by the Committee include:*

- *admissions made to some of the charges at the outset of the hearing;*
- *evidence of same remorse shown.*

The aggravating factors include:

- *previous fitness to practise history. The Committee had sight of a previous determination made by a PCC in 2018 but found the charges, similar to this case, proved;*
- *your breach of trust and the differences in seniority, your conduct occurred in a professional capacity in your role as a senior dentist, where you were in a position of trust. Your colleagues should be able to rely on your professionalism and leadership. It was Witness 1's [the references to the victim] first week at the practice and her first time meeting you. The Committee considered the imbalance causing Witness 1 to feel distressed and potentially making her feel vulnerable;*
- *low level of insight;*
- *disregard for professional standards;*
- *potential harm caused to Witness 1 – employees should not have to feel uncomfortable or awkward at their place of work. The Committee considered the impact your behaviour had on Witness 1 and the likely emotional harm caused to her;*
- *not an isolated incident. The Committee considered that there is a pattern of behaviour not just in respect of this case, but the*

similarity of this sort of conduct previously. The Committee also had regard to the testimonials put forward on your behalf."

24 The Committee then, as is appropriate, turned to consider whether it could conclude the case by taking no further action. It determined that, in light of the serious findings, it could not do so, that was neither appropriate nor proportionate, nor, of course, is such a conclusion challenged here.

25 When considering a reprimand, the Committee declined to impose merely a reprimand on two bases: firstly, it was insufficient to safeguard "the wider public interest given the serious nature of the Appellant's misconduct". This necessarily connoted the public interest in upholding the good name of the profession. That is to say promoting and maintaining confidence in the dental profession and promoting and maintaining proper professional standards.

26 Second, the Committee noted a previous PCC had issued a reprimand in 2018 for charges that were similar, but the registrant had repeated his conduct.

27 When turning to whether a period of conditional registration might be suitable, the Committee reminded itself that conditions required to be proportionate, measurable and workable. That conclusion is no longer challenged today before me, but the reasons for rejecting it are instructive.

28 For three reasons the Committee declined to impose conditions. First, they stated there would need to be a sufficient level of insight. They had determined, in the course of the consideration of current impairment, that the registrant had demonstrated a low level of insight into how his conduct was wrong. They recalled that he had taken the same professional boundaries course previously, but had repeated the same behaviour in November 2020. The Committee had also considered that, although the conduct was capable of being remedied, it would be difficult to do so. The registrant needed to embark on what they referred to as "meaningful remediation". They carefully examined the contents of written reflective pieces from the registrant in which he demonstrated, they accepted, some remorse and he apologised for his actions. However, the Committee were of the view that there was, in fact, little understanding of the seriousness of the misconduct shown nor its impact on the complainant or the reputation of the profession.

29 It was against that background that the Committee rejected conditional registration as an appropriate sanction, also stating it would not be possible to formulate appropriate practical conditions that would address the misconduct.

30 When examining the present situation, the Committee expressed the view that they had little reassurance that the conduct would not be repeated in the future and reflected that the applicant considered his comments as "jokes". They recognised that he had sought to set up a system in his current workplace but made certain criticisms of that. That is now not relevant as, realistically, he accepts before this court, that the real challenge is to the length of the suspension that was imposed.

31 I observe that it is plain, reading the decision as a whole, that the risk of repetition was very significant in the minds of the Committee. In terms, they considered Mr Alberts had attempted to remediate his misconduct but did not feel that the remediation and the insight were by any means complete. On the other hand, they expressly stated that the concerns were not so serious that the conduct was fundamentally incompatible with continued registration and there was a realistic prospect of remediation. For that reason, although they

had given, they said, serious consideration to the option of erasure, they held that that step would have been disproportionate and that a suspension in all the circumstances was appropriate.

32 In particular, and of relevance, since the length of the suspension is here challenged, they stated, expressly, that the period of 12 months would give the Appellant enough time to develop full insight and remediation. The Committee recognised the full force of the order but expressly balanced the protection of the wider public interest as weighing more heavily than the registrant's interests in this case. They also ordered that the suspension order was to be reviewed before its expiry when the hearing would consider what action it should at that point take and they directed evidence which would be of assistance to the Committee on that further occasion, including further reflection on the findings and the steps to remediate the failings identified. It was also to include a real understanding of the impact upon the complainant of the registrant's action, and upon the profession in the wider interest. They indicated a mentor was not compulsory but might be of assistance and indicated, again, that this was not conclusive of the evidence that the registrant might bring forward if he wished to on that occasion.

Mr Alberts's case to the Court

33 In elegant and concise submissions, Miss Gomersall rested in her skeleton argument on the proposition that there was no real evidence to suggest that the registrant posed any danger to the public in general, as opposed to others within his practice, that he had, in fact, shown insight into his failings, that he had genuinely expressed remorse and, further, there was evidence that he had taken rehabilitative and corrective steps. Those are considerations which are framed on the sanctions guidance and they are expressly relevant to a consideration of the appropriate sanction. The submission was that a shorter period was appropriate. The long period of 12 months was disproportionate. A shorter period was sufficient and, in addition, adequately protected the interests at play. It was appealably wrong of the Committee, in Miss Gomersall's submission, not to impose a shorter sanction.

34 It was submitted that there was a difference between risk of harm to the public at large and the risk of harm to those within the practice. In her written submissions, it was argued that the PCC was led into error by considering sanction on that wrong premise. It was argued and emphasised before me further that the PCC had assumed harm as an aggravating factor when there is, in fact, no evidence of it. The only evidence was to the effect that the behaviour was "a bit strange and over friendly" – as it was characterised by the victim. It had led to embarrassment and awkwardness and discomfort, but that did not, and could not, equate to harm in the registrant's submission. It was submitted that there was no basis for "speculating" that harm had been caused.

35 Miss Gomersall argued that evidence of good conduct following the index incident was insufficiently taken into account, as was the apology, the early admissions and the remorse that had been expressed during an internal investigation. I was taken to a report in which that had been recorded together with additional comments from the registrant, to which my attention was drawn. They were as follows:

- "*he regretted the incident;*
- *he wished to extend his apologies to the victim in respect of the comments and upsetting her;*

- *he would wish to fully cooperate with the dental partners in the investigation;*
- *that the victim needs to know how sorry he is;*
- *the victim needs to be aware that the practice is a safe place to work;*
- *the registrant offered to work on days when the victim was not in attendance;*
- *the registrant would be happy to leave the practice, if that was the decision of the court;*
- *the registrant asked for resolution as soon as possible;*
- *the registrant stated this incident was a 'blip' and he is only 'human';*
- *the registrant stated that this type of situation would not arise in future.*"

36 Evidence of further corrective steps, including the professional development and courses, were relied on by Miss Gomersall, and she indicated that, although factors were mentioned, they were not, in her submission, properly balanced by the Committee.

37 It was also advanced, and indeed not contested by the GDC, both below and here, that the misconduct in question was at the lower end of the range of seriousness, given that it was sexual misconduct, and yet, it was submitted, the sanction imposed was the longest period of suspension available to the Committee.

38 In this regard, reference was made by Miss Gomersall to *Arunachalam*, which she said was more serious than this, yet in that case erasure was substituted with a commensurate suspension. The relevant features, were, said Miss Gomersall, merely mentioned and not evaluated by the PCC.

Consideration

39 Any submission to the effect that "the public interest" does not encompass work colleagues is given a complete answer, in my judgement, by the Respondent. The analysis of what is comprehended by the notion of public interest, by Mr Orpin-Massey in his skeleton argument is, in my judgement, correct. He states that the Appellant's submission, essentially, equates public safety with patient safety and that there is some notional difference between a case involving a patient and a case involving a work colleague. The point was not pressed on behalf of Mr Alberts but I observe there is nothing of substance in that submission. Public safety includes patients, colleagues and visitors in the context of dental practice. As was said by the Respondent, if it was Parliament's intention that the GDC existed solely to protect patient safety, then the overarching objective might have been stated in those terms, but Parliament mandated the Council to protect the public. That is a broad interpretation and it is a broad interpretation that has been given by the underlying materials promulgated by the GDC which I have set out above. Plainly the interests of fellow professionals and staff is comprehended in the public interest.

40 The guidance for the Interim Orders Committee itself states in its paragraph [12] under the heading "Public Protection":

> "*The IOC must be satisfied on all the available information before it that an order is necessary for the protection of the public, that is to say there is a real risk of harm to the health, safety or wellbeing of a patient, visitor, colleague or other member of the public if the registrant is allowed to practice without restriction.*"

41 In my judgement, this applies also to the notions of sanction, protection, harm and risk. The statutory extracts set out above also make clear that protection of the public includes necessarily those members of the public who work with a registrant. It is not confined only to patients, but includes colleagues and visitors.

42 The case of *Arunachalam,* and the dictum which I have already cited, quite clearly reflects the importance of protection of work colleagues and the duties owed: the duties are in this context like duties, in my judgement, as those imposed in respect of patients, albeit the relationship may not necessarily be the same.

43 It was also noted on behalf of the GDC that the Interim Orders Committee in July 2021 reflected this understanding of what public safety and public protection encompassed when they made their various determinations concerning a conditions of practice order made before the substantive hearing.

44 The essential submission on behalf of the Appellant is that the 12-month suspension was not needed in order to manage the risk that was posed by this Appellant to the public. That was misunderstood, in part, Miss Gomersall submitted because the PCC had assumed harm when there was, in fact, no evidence of it.

45 I reject the proposition that the evidence of the effect upon the victim: for example, her not wishing to work alone with the Appellant, cannot be characterised as actual emotional harm, it plainly was. Likewise, the epithet that she used in her own statement to describe how the comments made her feel. Such a conclusion would disregard the circumstances of the offence: the age differential, the experience differential, the status differential as between the experienced professional and the young nurse. It is a common feature of behaviour which is sexualised that it often carries with it a power imbalance. That was arguably extreme in the present case: the senior and established professional and the new dental nurse, on his own admission, about a third of his age. The Committee were, in my judgement, entirely right to conclude that the behaviour, of itself, would cause harm. This was so, even if the victim's description of her embarrassment and discomfort was of a more moderate character.

46 The circumstances of the events complained of include the fact that this was the woman's work environment. I am clear, as was explained eloquently in the judgment of Kerr J, that a woman is entitled to be protected from sexually-motivated commentary and personalised conversational approaches, particularly in her professional environment. The days have gone by when right-thinking people believed such behaviour was tolerable or, indeed, "just a joke". In my judgement, such behaviour carries with it the notion of harm, absent clear evidence to the contrary. The Committee made no error of approach in referring to harm upon the facts here.

47 It was argued that the PCC afforded insufficient weight to the mitigating factors of the conduct following the incident in question and the apology, and that the rehabilitative steps

were undervalued or ignored. Well put as all those arguments were, I also reject them. They overlook the important fact that the Committee has had a very good opportunity of seeing the registrant and hearing his evidence. The paragraphs of his evidence set out above are, in my judgement, a clear foundation for the findings of the Committee that Mr Alberts had not grasped the import of his behaviour. He persisted during the hearing, after all his training and reflective writing, in characterising what he said and did as a joke and putting it down to characteristics of his personality. Helpfully, he had undertaken a number of courses and he had been able to offer his apology. However, his explanations in evidence appear to suggest that what would have stopped him from the comments he made, was prior knowledge that the victim would be upset. This betrays a serious misunderstanding. These elements founded the Committee's concerns that understanding of the nature of his behaviour was as yet incomplete, indeed it required some significant work. I also note the page to which my attention was taken, containing his reflections, set out above. The penultimate bullet point reflects the registrant's observation that he is "only human" and the incident was a "blip".

48 Part, indeed, an important part, of the reasoning supporting the imposition of the 12-month suspension was expressly to offer the registrant the opportunity to take some time to understand fully the ramifications of what had happened.

49 Necessarily, it was a matter of great concern that the registrant had, in fact, been found responsible just a few years ago before for very similar behaviour indeed. History suggested that he had not learned insight, or acquired an appreciation of the ramifications of what he saw as merely an expression of his jovial personality. In such circumstances, the length and nature of the sanction cannot, in my judgement, be characterised as either disproportionate or unnecessary in the public interest. These features counted against the notion that another order was, in effect, the only appropriate outcome.

50 The Committee could – indeed, as it was suggested that this court should itself do – have imposed a lesser sanction or a shorter suspension. However, there is no error of approach in the Committee's conclusions and, in all of the circumstances in this case, for the reasons I have given, particularly the need for development of insight, the need for adequate remediation and a length of time in which to do it, it is impossible to conclude that 12 months was appealably wrong.

51 The court's role, in considering a sexual matter, may be rather more intrusive than in a case of clinical failure, but, even allowing for that intrusive function, I cannot possibly characterise the findings as not properly available to the Committee. This was a case where future risk was clearly presented and previous attempts at remediation had obviously failed and the man who appeared before the Committee appeared to them, reasonably, not to have significant insight into his behaviour.

52 I am obliged to reject this appeal.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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