

PUBLIC RECORD

Dates: 06/12/2022 - 20/12/2022

Medical Practitioner's name: Dr Cyrus MILLS
GMC reference number: 3515172
Primary medical qualification: MB BS 1986 University of Madras

| Type of case | Outcome on facts | Outcome on impairment |
|------------------|-----------------------|-----------------------|
| New - Misconduct | No facts found proved | Not Impaired |

Summary of outcome

No action (warning not considered)

Tribunal:

| | |
|--------------------------|--------------------|
| Legally Qualified Chair | Mrs Tehniat Watson |
| Lay Tribunal Member: | Mr Darren Shenton |
| Medical Tribunal Member: | Dr Janet Nicholls |
| | |
| Tribunal Clerk: | Mr Mark Hibbert |

Attendance and Representation:

| | |
|--|--|
| Medical Practitioner: | Present and represented |
| Medical Practitioner's Representative: | Mr Giles Powell, Counsel, instructed by the Medical Protection Society |
| GMC Representative: | Ms Kathryn Johnson, Counsel |

Attendance of Press / Public

In accordance with Rule 41 of the General Medical Council (Fitness to Practise) Rules 2004 the hearing was held partly in public and partly in private.

Overarching Objective

Throughout the decision making process the tribunal has borne in mind the statutory overarching objective as set out in s1 Medical Act 1983 (the 1983 Act) to protect, promote and maintain the health, safety and well-being of the public, to promote and maintain public confidence in the medical profession, and to promote and maintain proper professional standards and conduct for members of that profession.

Determination on Facts - 20/12/2022

1. This determination will be handed down in private. However, as this case concerns Dr Mills' alleged misconduct a redacted version will be published at the close of the hearing with those confidential matters removed.

Background

2. Dr Mills qualified in 1981 with MBBS awarded by The University of Madras, India. He moved to the UK in 1985 and between 1986 and 1990 worked as a SHO and Registrar in Psychiatry. Between 1990 and 1999 he worked as an Associate Specialist in Psychiatry. Between 1994 and 1999 he was Clinical Director in Relationship and Sex Therapy at The Priory, Ticehurst House Hospital ('the Priory'). In 1999 he started his own practice, Bo Mills Associates, and became self-employed but continued to provide therapy at the Priory, as an externally contracted therapist, until 2006. After leaving the Priory, he continued to run his own practice in Battle, East Sussex, and at Harley Street, London.
3. Dr Mills relinquished his license to practice in 2015 and closed his practices in Battle and Harley Street.
4. It is alleged that between 2004 and 2017, Dr Mills provided treatment to Patient A and that he behaved in a sexually motivated way towards her whilst she was vulnerable. It is further alleged that Dr Mills failed to maintain adequate records of his treatment sessions with Patient A and that he breached patient confidentiality by disclosing information about other patients to Patient A.
5. The initial concerns were raised with the GMC on 24 July 2018 by Patient A.

The Outcome of Applications Made during the Facts Stage

6. The Tribunal granted the GMC's application, made pursuant to Rule 34(1) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), that further documents be admitted to the hearing bundle. The Tribunal's full decision on the application is included at Annex A.
7. The Tribunal partially granted Dr Mills' application, made pursuant to Rule 17(2)(g) of the Rules, that the GMC had not adduced sufficient evidence for any of the facts to be found proved. The Tribunal's full decision on the application is included at Annex B.

The Allegation and the Doctor's Response

8. The Allegation made against Dr Mills is as follows:

That being registered under the Medical Act 1983 (as amended):

1. You provided treatment therapy to Patient A between November 2004 and 2017. **To be determined**
2. Whilst providing treatment therapy to Patient A XXX between November 2004 and 2006, on one or more occasion during your individual therapy sessions with Patient A, you:
 - a. hugged her for a prolonged period; **To be determined**
 - b. told her to 'feel my arms safe around you', or words to that effect; **To be determined**
 - c. put your cheek against her cheek, and told her to 'feel it there', or words to that effect; **To be determined**
 - d. asked her to dress as if she had been out in her small piece, or words to that effect; **To be determined**
 - e. stroked her:
 - i. back; **To be determined**

- ii. skin; **To be determined**
- iii. hair; **To be determined**
- iv. face; **To be determined**
- v. legs; **To be determined**
- f. put your hands underneath her:
 - i. top; **To be determined**
 - ii. waistband; **To be determined**
- g. whilst carrying out the actions described at paragraph 1f, told her how:
 - i. soft her skin was; **To be determined**
 - ii. lovely she smelt, **To be determined**or words to that effect;
- h. asked her to:
 - i. wear a skirt; **To be determined**
 - ii. sit on your knee; **To be determined**
 - iii. get naked; **To be determined**
 - iv. stroke your chest, **To be determined**or words to that effect;
- i. touched her genitals; **To be determined**
- j. masturbated her; **To be determined**

- k. made her:
 - i. perform oral sex on you; **To be determined**
 - ii. masturbate you with her hands; **To be determined**
 - iii. swallow your semen; **To be determined**
 - iv. take the oral contraceptive pill; **To be determined**
 - l. had sexual intercourse with her. **To be determined**
3. In 2005 you took Patient A to a:
- a. restaurant, following which you:
 - i. asked to have sexual intercourse with her by a gravestone; **To be determined**
 - ii. made her perform oral sex on you in a public carpark; **To be determined**
 - b. hotel for an overnight stay, during which you:
 - i. were both naked in a bed; **To be determined**
 - ii. stroked her; **To be determined**
 - iii. kissed her on the cheek; **To be determined**
 - iv. asked her:
 - 1. what the best sex she had ever had was; **To be determined**
 - 2. to perform a sexy dance for you; **To be determined**

or words to that effect;

- v. masturbated her; **To be determined**
- vi. touched her breasts; **To be determined**
- vii. made her perform oral sex on you, on one or more occasion.
To be determined

4. You told Patient A, on one or more occasion between July and December 2005, that one or more of your actions described at paragraphs 2-3 were:

- a. part of sexual surrogacy; **To be determined**
- b. to be kept a secret, **To be determined**

or words to that effect.

5. In 2006 you:

- a. convinced Patient A to undergo a sterilisation procedure as you told her you were terrified she would get pregnant, or words to that effect; **To be determined**
- b. took Patient A as an assistant for your work XXX and, on one or more occasion, when returning together from work you stopped at the woods identified in Schedule 1, where you:
 - i. made her perform oral sex on you; **To be determined**
 - ii. had sexual intercourse with her; **To be determined**
 - iii. took her to XXX. **To be determined**

6. Whilst providing treatment therapy to Patient A XXX between 2006 and 2017, on one or more occasion during your individual therapy sessions with Patient A, you had sexual intercourse with her. **To be determined**

7. In or around 2008 XXX commenced training Patient A as a therapist, XXX and, in 2016, in response to Patient A telling you:
 - a. that you needed to focus on your relationship with your wife, you referred fewer clients to Patient A; **To be determined**
 - b. that she would need to look for work elsewhere, you would then refer clients to Patient A. **To be determined**
8. Between:
 - a. April 2007 and 13 February 2016, you went away with Patient A for an overnight stay on one or more of the dates set out in Schedule 2; **To be determined**
 - b. 2009 and 2011, on one or more occasion you attempted to take Patient A to XXX; **To be determined**
 - c. 2016 and 2017, you told Patient A that she needed to train and work with XXX Mr B, meaning that Patient A had to split the fee she would receive from a client. **To be determined**
9. On 13 February 2016, you had sexual intercourse with Patient A at the location described in the relevant entry in Schedule 2, without Patient A's consent. **To be determined**
10. Your actions as described at paragraph 2a-2i, 3bi-3biv, 4, 5a and 8a-8b were sexually motivated. **To be determined**
11. At the time of your actions as set out in paragraphs 2-9, Patient A was vulnerable by reason of the matters set out in Schedule 3. **To be determined**
12. You failed to maintain adequate records in relation to your individual treatment sessions with Patient A at:
 - a. XXX; **To be determined**

- b. XXX. **To be determined**

Breaches of patient confidentiality

13. Between 2007 and 2018 you breached patient confidentiality, in that:
- a. on one or more occasion you told Patient A what had been discussed during your individual session with a patient, XXX; **To be determined**
- b. on 22 August 2011 you forwarded a personal email from a patient of yours to Patient A; **To be determined**
- c. you joked to Patient A that a client of yours ‘could not get it up’, or words to that effect, about a client who had erectile dysfunction. **To be determined**

Witness Evidence

9. The Tribunal received evidence on behalf of the GMC from the following witnesses:
- Patient A, in person and by video link. Patient A also provided witness statements dated 17 June 2019 and 3 August 2022.
10. Dr Mills was not called to give evidence at the hearing but provided his own witness statement dated 1 November 2022.
11. The Tribunal also received evidence on behalf of Dr Mills in the form of witness statements from the following witnesses who were not called to give oral evidence:
- Ms C, formerly Dr Mills’ secretary XXX, dated 21 December 2019 and 1 December 2021;
 - Ms D, Counselling Psychologist and Psychotherapist and a friend of Dr Mills, dated 10 November 2021;
 - Ms E, Psychologist and Psychotherapist and a friend of Dr Mills, dated 23 June 2022.

Expert Witness Evidence

12. The Tribunal also received evidence from an expert witness, Dr I. Dr I is a Consultant Psychiatrist in Adult Psychiatry and Medical Psychotherapy. He provided reports dated 28 June 2022 and 15 November 2022 and gave evidence via video link. He was called by the GMC to provide his opinion on the appropriateness of Dr Mills treating Patient A whilst in a relationship with her and the adequacy of his record keeping.

Documentary Evidence

13. The Tribunal had regard to the documentary evidence provided by the parties. This evidence included but was not limited to:
 - Patient A's medical notes XXX;
 - Various emails from Patient A to the GMC;
 - Video recording taken by Patient A;
 - Recorded telephone call between Patient A and Dr Mills and transcript of the call;
 - WhatsApp and text messages between Patient A and Dr Mills;
 - Patient A's correspondence with the College of Sexual and Relationship Therapists;
 - Patient A's correspondence with the GMC;
 - Patient A's training records;
 - Correspondence between Patient A and the Office of XXX Police and Crime Commissioner;
 - Correspondence sent by Patient A to Ms F;
 - XXX;
 - Police investigation file into Dr Mills;
 - Letter from Dr G, Consultant Psychiatrist, to Patient A's GP;
 - Patient A's counselling records;
 - Patient A's medical records;
 - Police investigation file into Patient A;
 - Telephone note of call between the GMC and Patient A on 30 October 2020;
 - Correspondence between the GMC and XXX requesting further documents.

Application to amend the Allegation under Rule 17(6)

14. Following the Tribunal's decision on Dr Mills' 17(2)(g) application, Ms Johnson, on behalf of the GMC, made an application pursuant to Rule 17(6) of the Rules, to amend the Allegation.
15. Ms Johnson invited the Tribunal to amend the Allegation by striking through all of the remaining paragraphs, effectively withdrawing the Allegation.
16. Ms Johnson noted the Tribunal's determination on 17(2)(g) and its clarification that it had found there to be insufficient evidence to demonstrate that Patient A continued to be Dr Mills' patient XXX. In light of this, she submitted that the remaining paragraphs of the Allegation, even if found proved, could not amount to serious misconduct and therefore current impairment.
17. Ms Johnson submitted that it had been considered whether, if the remaining facts were found proved, would there be grounds for the Tribunal to issue a warning? It was the view of the GMC that there would be no grounds for this and therefore Ms Johnson invited the Tribunal to grant the application to amend the Allegation and effectively withdraw the remainder of the allegations.
18. On behalf of Dr Mills, Mr Powell did not resist the application to amend and withdraw the outstanding paragraphs of the Allegation.
19. In reaching its decision the Tribunal bore in mind Rule 17(6) of the Rules which states that:

'17(6) Where, at any time, it appears to the Medical Practitioners Tribunal that—

(a) the allegation or the facts upon which it is based and of which the practitioner has been notified under rule 15, should be amended; and

(b) the amendment can be made without injustice,

it may, after hearing the parties, amend the allegation in appropriate terms.'

20. The Tribunal noted Ms Johnson's submissions and that Mr Powell did not resist the application. It considered that in withdrawing the remaining paragraphs of the Allegation there could be no injustice to Dr Mills.

21. The Tribunal considered the outstanding paragraphs and determined to accept the GMC's application to amend the allegation by striking out the remaining paragraphs, effectively withdrawing the Allegation against Dr Mills.

The Tribunal's Overall Determination on the Facts

22. The Tribunal has determined the facts as follows:

That being registered under the Medical Act 1983 (as amended):

~~1. You provided treatment therapy to Patient A between November 2004 and 2017. Deleted following a successful Rule 17(6) application~~

~~2. Whilst providing treatment therapy to Patient A XXX between November 2004 and 2006, on one or more occasion during your individual therapy sessions with Patient A, you:~~

~~a. hugged her for a prolonged period; Deleted following a successful Rule 17(2)(g) application~~

~~b. told her to 'feel my arms safe around you', or words to that effect; Deleted following a successful Rule 17(2)(g) application~~

~~c. put your cheek against her cheek, and told her to 'feel it there', or words to that effect; Deleted following a successful Rule 17(2)(g) application~~

~~d. asked her to dress as if she had been out in her small piece, or words to that effect; Deleted following a successful Rule 17(2)(g) application~~

~~e. stroked her:~~

~~i. back; Deleted following a successful Rule 17(2)(g) application~~

~~ii. skin; Deleted following a successful Rule 17(2)(g) application~~

~~iii. hair; Deleted following a successful Rule 17(2)(g) application~~

~~iv. — face; Deleted following a successful Rule 17(2)(g) application~~

~~v. — legs; Deleted following a successful Rule 17(2)(g) application~~

~~f. — put your hands underneath her:~~

~~i. — top; Deleted following a successful Rule 17(2)(g) application~~

~~ii. — waistband; Deleted following a successful Rule 17(2)(g) application~~

~~g. — whilst carrying out the actions described at paragraph 1f, told her how:~~

~~i. — soft her skin was; Deleted following a successful Rule 17(2)(g) application~~

~~ii. — lovely she smelt; Deleted following a successful Rule 17(2)(g) application~~

~~or words to that effect;~~

~~h. — asked her to:~~

~~i. — wear a skirt; Deleted following a successful Rule 17(2)(g) application~~

~~ii. — sit on your knee; Deleted following a successful Rule 17(2)(g) application~~

~~iii. — get naked; Deleted following a successful Rule 17(2)(g) application~~

~~iv. — stroke your chest; Deleted following a successful Rule 17(2)(g) application~~

~~or words to that effect;~~

i. ~~_____ touched her genitals;~~ Deleted following a successful Rule 17(2)(g) application

j. ~~_____ masturbated her;~~ Deleted following a successful Rule 17(2)(g) application

k. ~~_____ made her:~~

i. ~~_____ perform oral sex on you;~~ Deleted following a successful Rule 17(2)(g) application

ii. ~~_____ masturbate you with her hands;~~ Deleted following a successful Rule 17(2)(g) application

iii. ~~_____ swallow your semen;~~ Deleted following a successful Rule 17(2)(g) application

iv. ~~_____ take the oral contraceptive pill;~~ Deleted following a successful Rule 17(2)(g) application

l. ~~_____ had sexual intercourse with her.~~ Deleted following a successful Rule 17(2)(g) application

3. ~~_____ In 2005 you took Patient A to a:~~

a. ~~_____ restaurant, following which you:~~

i. ~~_____ asked to have sexual intercourse with her by a gravestone;~~ Deleted following a successful Rule 17(2)(g) application

ii. ~~_____ made her perform oral sex on you in a public carpark;~~ Deleted following a successful Rule 17(2)(g) application

b. ~~_____ hotel for an overnight stay, during which you:~~

i. ~~_____ were both naked in a bed;~~ Deleted following a successful Rule 17(2)(g) application

ii. ~~_____ stroked her;~~ Deleted following a successful Rule 17(2)(g) application

iii. ~~_____ kissed her on the cheek;~~ Deleted following a successful Rule 17(2)(g) application

iv. ~~_____ asked her:~~

1. ~~_____ what the best sex she had ever had was;~~ Deleted following a successful Rule 17(2)(g) application

2. ~~_____ to perform a sexy dance for you;~~ Deleted following a successful Rule 17(2)(g) application

~~or words to that effect;~~

v. ~~_____ masturbated her;~~ Deleted following a successful Rule 17(2)(g) application

vi. ~~_____ touched her breasts;~~ Deleted following a successful Rule 17(2)(g) application

vii. ~~_____ made her perform oral sex on you, on one or more occasion.~~ Deleted following a successful Rule 17(2)(g) application

4. ~~You told Patient A, on one or more occasion between July and December 2005, that one or more of your actions described at paragraphs 2-3 were:~~

a. ~~_____ part of sexual surrogacy;~~ Deleted following a successful Rule 17(2)(g) application

b. ~~_____ to be kept a secret;~~ Deleted following a successful Rule 17(2)(g) application

~~or words to that effect.~~

5. ~~In 2006 you:~~

a. ~~convinced Patient A to undergo a sterilisation procedure as you told her you were terrified she would get pregnant, or words to that effect;~~

~~Deleted following a successful Rule 17(2)(g) application~~

b. ~~took Patient A as an assistant for your work XXX and, on one or more occasion, when returning together from work you stopped at the woods identified in Schedule 1, where you:~~

i. ~~made her perform oral sex on you;~~ Deleted following a successful Rule 17(2)(g) application

ii. ~~had sexual intercourse with her;~~ Deleted following a successful Rule 17(2)(g) application

iii. ~~took her to XXX.~~ Deleted following a successful Rule 17(2)(g) application

6. ~~Whilst providing treatment therapy to Patient A XXX between 2006 and 2017, on one or more occasion during your individual therapy sessions with Patient A, you had sexual intercourse with her. Deleted following a successful Rule 17(2)(g) application~~

7. ~~In or around 2008 XXX commenced training Patient A as a therapist, XXX and, in 2016, in response to Patient A telling you:~~

a. ~~that you needed to focus on your relationship with your wife, you referred fewer clients to Patient A;~~ Deleted following a successful Rule 17(2)(g) application

b. ~~that she would need to look for work elsewhere, you would then refer clients to Patient A.~~ Deleted following a successful Rule 17(2)(g) application

8. Between:

~~a. April 2007 and 13 February 2016, you went away with Patient A for an overnight stay on one or more of the dates set out in Schedule 2; Deleted following a successful Rule 17(6) application~~

~~b. 2009 and 2011, on one or more occasion you attempted to take Patient A to XXX; Deleted following a successful Rule 17(2)(g) application~~

~~c. 2016 and 2017, you told Patient A that she needed to train and work with XXX Mr B, meaning that Patient A had to split the fee she would receive from a client. Deleted following a successful Rule 17(6) application~~

~~9. On 13 February 2016, you had sexual intercourse with Patient A at the location described in the relevant entry in Schedule 2, without Patient A's consent. Deleted following a successful Rule 17(2)(g) application~~

~~10. Your actions as described at paragraph 2a-2i, 3bi-3biv, 4, 5a and 8a-8b were sexually motivated. Deleted following a successful Rule 17(6) application~~

~~11. At the time of your actions as set out in paragraphs 2-9, Patient A was vulnerable by reason of the matters set out in Schedule 3. Deleted following a successful Rule 17(6) application~~

~~12. You failed to maintain adequate records in relation to your individual treatment sessions with Patient A at:~~

~~a. XXX; Deleted following a successful Rule 17(6) application~~

~~b. XXX. Deleted following a successful Rule 17(2)(g) application~~

Breaches of patient confidentiality

~~13. Between 2007 and 2018 you breached patient confidentiality, in that:~~

~~a. on one or more occasion you told Patient A what had been discussed during your individual session with a patient, XXX; Deleted following a successful Rule 17(6) application~~

b. ~~on 22 August 2011 you forwarded a personal email from a patient of yours to Patient A; Deleted following a successful Rule 17(6) application~~

c. ~~you joked to Patient A that a client of yours ‘could not get it up’, or words to that effect, about a client who had erectile dysfunction. Deleted following a successful Rule 17(2)(g) application~~

23. As no facts have been found proved it therefore follows that Dr Mills’ fitness to practise is not currently impaired.

ANNEX A – 20/12/2022

Application to admit further evidence under Rule 34(1)

24. During the oral evidence of Patient A, Ms Johnson, on behalf of the GMC made an application, pursuant to Rule 34(1) of the Rules, to admit further documents as evidence.
25. Ms Johnson submitted that the documents included further notes of therapy sessions between Patient A and her counsellor, Ms H.
26. Ms Johnson submitted that the documents were important to the case and should be accepted into evidence.
27. On behalf of Dr Mills, Mr Powell submitted that, whilst disappointing that the documents are only now being provided, the application to admit them into evidence was not opposed.
28. The Tribunal had regard to Rule 34(1) of the Rules which states that:

'34.(1) The Committee or a Tribunal may admit any evidence they consider fair and relevant to the case before them, whether or not such evidence would be admissible in a court of law.'

29. The Tribunal noted the submissions and that Dr Mills did not oppose the application. It considered the content of the documents and took the view that they were relevant and that it would not cause any unfairness to Dr Mills to admit the documents into evidence.
30. The Tribunal therefore granted The GMC's application.

ANNEX B – 19/12/2022

Application under Rule 17(2)(g)

31. Following the closing of the GMC's case, Mr Powell, on behalf of Dr Mills, made an application under Rule 17(2) (g) of the GMC's (Fitness to Practise) Rules 2004, as amended, (the Rules) which states:

'17(2) The order of proceedings at the hearing before a Medical Practitioners Tribunal shall be as follows—

...

(g) the practitioner may make submissions as to whether sufficient evidence has been adduced to find some or all of the facts proved and whether the hearing should proceed no further as a result, and the Medical Practitioners Tribunal shall consider any such submissions and announce its decision as to whether they should be upheld;'

Submissions on behalf of Dr Mills

32. Mr Powell submitted that the evidence presented by the GMC was not sufficient for any of the factual allegations to be found proven or for the hearing to proceed further and consider Dr Mills' fitness to practise.
33. Mr Powell submitted that the factual evidence relied and rested on three things 1) the evidence of Patient A; 2) the telephone call recording of 1 June 2018; and 3) the patient notes. He stated that there were fundamental problems with all three.
34. Mr Powell stated that the evidence of Patient A was not credible nor capable of supporting the allegations. He submitted that her evidence was fundamentally flawed.
35. Mr Powell submitted that the telephone recording and transcript did not record an admission of the allegations advanced, nor did it provide any cogent evidence in respect of any of the allegations. He stated that it was obtained in odd and curious circumstances.
36. Mr Powell noted that the only patient notes were those provided by XXX on 19 October 2018. Nothing further was able to be produced.
37. Mr Powell addressed the expert evidence provided by Dr I. He submitted that the views expressed were in relation to a doctor patient relationship between a patient and a psychiatrist rather than a patient and a psychotherapist. Further that the evidence was of little, if any, value and was dependent on the conclusion of the factual evidence and allegations.

38. Mr Powell drew the Tribunal's attention to the case of *R v Galbraith [1981] 73 Cr App R 124 CA* which states:

'(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 prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict upon it, it is his duty, upon a submission being made, to stop the case.

(b) Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness' 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 upon 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.

It follows that we think the second of the two schools of thought is to be preferred. There will of course, as always in this branch of the law, be borderline cases. They can safely be left to the discretion of the judge.'

39. Mr Powell also drew the Tribunal's attention to the following cases:

- Shippey [1988] Crim LR 767
- R (Bennett) v HM Coroner for the Inner South London [2007] EWCA Civ 617 (CA)
- R (N) v Mental Health Review Tribunal (Northern Region) [2006] QB 468
- In re D [2008] UKHL 33 [2006] QB 468
- R (on the application of Dutta) v General Medical Council [2020] EWHC 1974 (Admin)
- Gestmin SGPS SA v Credit Suisse (UK) Ltd [2013] EWHC 3650 (Comm)
- Lachaux v Lachaux [2017] EWHC 385 (Fam) [2017] 4 WLR 57
- Carmarthenshire County Council v Y [2017] EWFC 36 [2017] 4 WLR 136
- Kimathi v Foreign and Commonwealth Office [2018] EWHC 2066

- Ramaswamy v General Medical Council [2021] EWHC 1619 (Admin)
 - R v Croydon Justices ex parte Dean [1993] Q.B. 769
 - R v Bloomfield [1997] 1 Cr. App. R. 135
 - Jones v. DPP [2012] R.T.R. 3, DC
 - Moss & Son Ltd v. CPS, 177 J.P. 221
 - DC and R. (Barons Pub Co. Ltd) v. Staines Magistrates' Court [2013] Crim.L.R. 758, DC
40. Mr Powell submitted that the evidence of Patient A was inconsistent and not credible. He stated that, applying limb 2 of Galbraith, it was not capable of supporting the allegations and that the allegations were not capable of being proved in this case.
41. Mr Powell submitted that Patient A's motive and rationale for making the allegations was that she was vindictive and unable to cope with rejection by Dr Mills, having seen him XXX.
42. Mr Powell submitted that it was clear from WhatsApp messages that Patient A was in love with Dr Mills, wanted her love reciprocated, and felt that she gave more to the relationship than he did.
43. Mr Powell submitted that Patient A had a clear capacity to invent things and make false allegations as evidenced by the September 2018 fall/assault.
44. Mr Powell submitted that the allegation of non-consensual sex was a clear elaboration, mentioned only when she thought the police were not taking her seriously.
45. Mr Powell submitted that, in cross examination, Patient A deliberately gave evidence or the impression that she had told her therapist about the abuse in 2016 or 2017 before conceding that it was in fact on 1 May 2018, the day she reported it to the Police.
46. Mr Powell submitted that Patient A's allegation regarding her sterilisation procedure was contrary to notes recorded by the consultant and her GP, which were that she had consented freely and clearly. Throughout the process of giving evidence, she elaborated and altered her evidence.
47. In reference to the telephone call recorded on 1 June 2018, Mr Powell submitted that it was peculiar that Patient A had failed to mention this in her police interview on 8 June

2018. He stated that there was a further call on 5 June 2018 lasting 50 minutes in which Dr Mills rejected Patient A's allegations and that it was inconceivable that she did not also record this call. Patient A had stated that Dr Mills called her, and she responded because she was concerned about his welfare. However, it was clear that the call was not about welfare and that it was Patient A who called Dr Mills.

48. Mr Powell submitted that the following matters made Patient A's evidence and the allegations wholly incredible:

- Patient A said she realised in 2004 and 2005 that what was happening was wrong, but did nothing about it while complaining about her Mr J to the police and to her GP;
- Within 3 sessions Dr Mills was allegedly acting wholly and sexually inappropriately yet it did not cause Patient A to address it with anyone else in anyway nor ask anyone at XXX or elsewhere whether it was appropriate. It would be obvious that such behaviour, as alleged therapy, would be wrong and inappropriate.
- Within 2 or 3 months Dr Mills was allegedly taking her to XXX or asking her to perform sexual acts XXX as apart of some form of therapy. That would make it even more obvious that such behaviour, as alleged therapy, would be wrong and inappropriate.
- Patient A became a therapist from 2006 onwards having substantial training to and beyond 2010, including a 2-day course on abuse, yet she did not raise the matter with anyone;
- Patient A did not raise the matter with any of the 4 counsellors or others who she saw in 2015. Yet Patient A was able to report the matter concerning Mr J and XXX in 2014 and 2015 to the Police and others.
- Patient A did not report the matter to her GP or to the psychiatrist, Dr G, despite relaying other highly confidential and sensitive matters to them;
- Patient A was perfectly able to report others to the Police or make complaints to their managers or bosses, including as she conceded to Relate and the Jehovah's

Witnesses; and complaints about her gynaecologist. He said she made complaints about 11 people of things identified in cross examination.

- Patient A referred Ms K who was 18, Ms L who was 17 and a female friend to Dr Mills, when on her evidence she considered him to be a man who had sexually abused her. Such an approach would be irrational.
49. Mr Powell noted that Patient A did not inform the GMC on 30 October 2020 that she was subject to 2 police investigations for perverting the course of justice and malicious allegations. He submitted that it was obvious that she knew it would undermine her.
 50. Mr Powell submitted that Patient A told the GMC that she had confided in her psychotherapist, Ms E, about the abuse she suffered from Dr Mills. Mr Powell submitted that the statement provided by Ms E did not support Patient A's account.
 51. Mr Powell noted that in oral evidence, Patient A stated that she told colleagues at work about the sexual surrogacy treatment with Dr Mills. He submitted that it was odd and not credible since if she had done so, it would have triggered someone saying it was wrong and should be reported. This was inconsistent with her written evidence.
 52. Mr Powell submitted that Patient A alleged that the birthday party/festival she was invited to, was XXX which she did not want to attend. However, she conceded in cross examination that she did attend and that XXX were historic and not in 2009.
 53. Mr Powell submitted that the medical notes from XXX suggest that there were only five therapy sessions between Dr Mills and Patient A. He stated that other details Patient A had given were contrary to the evidence and were, again, an elaboration.
 54. Mr Powell submitted that Patient A had refused to provide her patient records to CORST because she knew they would undermine her.
 55. Mr Powell submitted that the Police did not consider Patient A to be credible and that the GMC was of the same view in its Rule 28 application. He submitted that the GMC recognised through counsel and set out in the withdrawal form, that Patient A's credibility was fundamentally undermined and that the allegations did not meet the realistic prospect test. It recorded that there was no realistic prospect of proving the

charges in the case. The Registrar agreed that the evidence had potential to impact on the test.

56. Mr Powell noted that Patient A herself, in her police interview, recognised that people did not believe her. He submitted that it was clear that her memories and the way in which she takes in information had been impacted by her mental health. She has suffered intrusive memories, flashbacks and dis-associative episodes over sustained periods.

Submissions on behalf of the GMC

57. Ms Johnson opened her submissions by echoing the principles set out in the case of *Galbraith*. She noted that this had been applied recently in the case of *Solicitors Regulation Authority v Sheikh [2020] EWHC 3062 (Admin)* where Davis LJ held that the key question at the half-time stage is whether, on ‘one possible view of the evidence’, there is evidence upon which a reasonable Tribunal (not all reasonable Tribunals) could find the matter proved when making the final adjudication. If the answer is yes, then there is a case to answer.
58. Ms Johnson drew the Tribunal’s attention to the following cases:
- *Khan v GMC [2021] EWCH 374 (Admin)*
 - *R. (on the application of Mokhammad) v General Medical Council [2021] EWHC 2889 (Admin)*
 - *Arowojolu v GMC [2019] EWHC 3155 (Admin)*
59. Ms Johnson submitted that the Allegation should be considered in two parts: the events that occurred XXX when Patient A was a patient of Dr Mills and the subsequent years when XXX. She stated that the Tribunal could come to different conclusions in respect of each of those parts of the case.
60. Ms Johnson submitted that the Rule 28 documentation in the supplemental bundle had no relevance at this stage. The views expressed are only the opinions and views of others. The views expressed are not evidence. It is the Tribunal’s opinion of the oral and documentary evidence that matters.

61. Ms Johnson submitted that in considering the first part of the case (when Patient A was receiving therapy XXX), there was sufficient evidence upon which a reasonable Tribunal could find the allegations proved.
62. Ms Johnson submitted that the evidence of Patient A was supported by the recording of the telephone call.
63. Ms Johnson accepted that Patient A's account contained unusual features and a relevant question was why would she go along with what was happening. However, Ms Johnson reminded the Tribunal that Patient A was particularly vulnerable, having been the victim of serious domestic violence. Ms Johnson submitted that Patient A's account of the events at XXX had been consistent.
64. Ms Johnson noted that in the telephone call, Dr Mills did not challenge Patient A when she accused him of abuse or stated that he could go to prison or be struck off. She further noted that it was Dr Mills who stated that they had been close for 14 years.
65. Ms Johnson submitted that Patient A's account provided an explanation as to how they ended up working with each other, in that it was a continuation of their relationship. She stated that if the appointments had ended in April 2005, Patient A would never have ended up working with Dr Mills.
66. Turning to events which occurred after XXX, Ms Johnson accepted that there were inconsistencies in Patient A's evidence and that it was for the Tribunal to carefully assess what they were and consider whether they were *'self-contradictory and out of all reason and common sense'* so as to render the evidence *'tenuous and inherently weak.'*
67. Ms Johnson responded to the submissions made by Mr Powell regarding the evidence.
68. Ms Johnson submitted that Patient A was consistent in terms of what happened at XXX. Thereafter, she stated that the Tribunal should guard against adopting stereotypes of how a victim of sexual abuse behaves.
69. In terms of Patient A's motivation, Ms Johnson submitted that XXX could have been a catalyst for her. She stated that it was clear Patient A did not enjoy XXX because she went to the Police, either to give a true account or alternatively to make false allegations.

70. Ms Johnson submitted that as demonstrated in the case of *Arowojolu*, the Tribunal must carefully consider whether the evidence proves Patient A made previous false allegations before considering her credibility. She submitted that the evidence heard did not establish that Patient A had made any deliberate false allegations.
71. Ms Johnson submitted that the Tribunal would need to assess whether the way in which the complaint about non-consensual sex was made, meant that no reasonable Tribunal could find it proved. She stated that if the Tribunal conclude that the evidence was unreliable in relation to this aspect it did not mean all other aspects of Patient A's account were rendered unreliable and incapable of belief.
72. Ms Johnson submitted that for a sterilisation procedure to be agreed, Patient A would have to convince a doctor that she was giving full and informed consent. She stated that Patient A's evidence was an explanation of what she meant when she earlier claimed that Dr Mills had talked her into it.
73. In relation to the telephone recording, Ms Johnson submitted that even if Patient A's motives were not to enquire about his welfare but to set him up, it did not reduce its significance. She noted that at no point did Dr Mills deny any of the things that Patient A accused him of doing XXX and was therefore supportive of her account. She stated that failure to record or produce a recording of a subsequent call did not undermine this recording as evidence.
74. Ms Johnson submitted that Patient A's failure to mention the police investigation into her own behaviour was consistent with being embarrassed and in any case, it was ongoing, and she had not been charged with any criminal offence.
75. Ms Johnson reminded the Tribunal that, at this point, its assessment should be based on the evidence called on behalf of the GMC. She noted that Patient A's therapist, Ms E, was a witness to be called on behalf of Dr Mills.
76. Ms Johnson conceded that Patient A's account of having told colleagues about the sexual surrogacy was a new detail. However, she submitted that Patient A did not provide the detail of what was said and that the conclusion that it would have triggered someone saying it was wrong, was speculative.

77. Ms Johnson submitted that by accepting in oral evidence that the XXX were historic, Patient A showed honesty.
78. In relation to the medical notes from XXX, Ms Johnson submitted that they only show that five initial sessions took place. She stated that if Dr Mills was using the sessions for sexual activity with Patient A, there would be little if anything, recorded in the notes.
79. Ms Johnson submitted that the views of other bodies as to Patient A's credibility had no relevance and should be ignored.
80. Ms Johnson submitted that there was no medical evidence to suggest that Patient A was incapable of providing reliable evidence as a result of her mental health issues. She also submitted that Patient A's view that nobody believed her was in relation to the Police being slow to act when she raised concerns about XXX.
81. In relation to the medical records made by Dr Mills, Ms Johnson submitted that it was clear they are lacking, in that there was no detailed assessment or plan and they made little sense.

Relevant Legal Principles

82. The Tribunal reminded itself that, at this stage, its purpose was not to make findings of fact but to determine whether sufficient evidence existed such that a Tribunal, correctly advised as to the law, *could* properly find the relevant paragraphs proved to the civil standard, which is the balance of probabilities i.e., that the fact in issue more probably occurred than not. The Tribunal needed to carefully consider their decision on this application and take into account the Tribunal's overarching statutory duties to protect the public. The Tribunal had regard to the test set out in the case of *R v Galbraith* 73 Cr App R 124 and the approach set out by Lord Lane that:

(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 prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict upon it, it is his duty, upon a submission being made, to stop the case.

(b) Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness' 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 upon 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.

83. It referred to the case of *R (Dr Alan Tutin) v General Medical Council [2009] EWHC 553 Admin* in respect of applying the principles set out in *Galbraith* to regulatory proceedings, where the panel necessarily acts as both judge and jury.
84. *The Tribunal also referred to the case of Solicitors Regulation Authority v Sheikh [2020] EWHC 3062 (Admin)* where it was held that if on one possible view of the evidence, there is evidence on which a jury could properly convict then the matter should be allowed to proceed to verdict. Further that the question is to be assessed by what a reasonable jury, *not all reasonable juries*, could on one possible view of the evidence conclude. In other words, whether the allegation *could* be made out and not whether it *would* be made out.
85. The Tribunal directed itself that it must consider all of the evidence before coming to a conclusion about the credibility of any witness evidence. It bore in mind that credibility was divisible and that it should not base its decisions about credibility solely on the demeanour of a witness. It identified that it was open to the Tribunal to decide in respect of any witness, whether it could accept all of their evidence, none of it or some of it. (*R (Dr Alan Tutin) v General Medical Council [2009] EWHC 553 Admin*).
86. In addition to the cases referenced in submissions, the Tribunal also had regard to the case of *Byrne v GMC [2021] EWHC 2237 (admin)* which stated:

'First, the credibility of witnesses must take account of the unreliability of memory and should be considered and tested by reference to objective facts, and in particular as shown in contemporaneous documents. Where possible, factual findings should be based on objective facts as shown by contemporaneous documents: Dutta §§39 to 42 citing, in particular, Gestmin and Lachaux.'

87. The Tribunal considered the submissions made by both parties and the relevant case law quoted. It also took account of the evidence presented, both oral and documentary, in reaching its decision.

The Tribunal's Decision

88. The Tribunal reminded itself of each paragraph of the Allegation and considered all of the evidence before it. It noted that for a majority of the charges, the evidence relied solely upon the account given by Patient A. For some others, it had Patient A's evidence and other evidence which it needed to consider.

89. The Tribunal took the view that the evidence of Patient A was clearly critical to this case. It noted the submissions made as to the credibility and reliability of her evidence and how this should then be interpreted. It sought to assess Patient A's credibility as a whole and make an assessment on the overall sufficiency of evidence adduced and then consider the individual allegations.

Patient A's evidence

90. The Tribunal acknowledged that the Allegation referred to alleged events which were dated. It accepted that as a result there would be some inconsistency and confusion in some of the detail. It also acknowledged that Patient A was a vulnerable witness.

91. The Tribunal was mindful that Patient A had suffered from some difficulties with her mental health. The evidence demonstrated that she had a significant amount of counselling and therapy, and in oral evidence she described having issues with losing periods of time and having flashback memories. The Tribunal noted that whilst giving evidence, particularly when challenged on specific dates and the sequence of events in time, Patient A often seems to get confused and was unable to remember things clearly. However, the Tribunal did not consider that such difficulties rendered Patient A incapable of providing reliable evidence, as there was no expert or medical evidence in this regard.

92. The Tribunal considered the matters set out by Mr Powell in his submissions, and the submissions made in response by Ms Johnson. It gave consideration to all of Patient A's evidence including her statements, the telephone recording and transcript, the medical

records and other documents such as the Police ABE interview transcript of the call on 1 June 2018 and contemporaneous records such as various hotel bookings, emails, texts and 'WhatsApp' correspondence provided.

93. The Tribunal considered the evidence it had relating to Patient A's arrests and investigation in relation to her alleged perverting the course of justice and making false allegations against others.
94. The Tribunal was concerned with the evidence it had seen regarding Patient A's fall/assault in September 2018 which she had reported to the police. The Tribunal considered Patient A's supplementary statement dated 3 August 2022 and also the police logs provided in the bundle. Patient A had at first seemed to accept that she had fallen and had also told the hospital that this was the case. However, in the weeks and months that followed she came to view the incident as an assault and placed a number of people as potentially responsible – XXX, Mr J, Dr Mills and XXX Ms F. As a result of Patient A asserting that Ms F may have been responsible for the 'assault' on her, she had been arrested for GBH. Patient A reported sustaining broken ribs and a punctured lung. The Tribunal noted that Patient A's account of her injuries, which she gave to the police, did not match with her medical records. When the documented inconsistency was pointed out to Patient A during cross examination, she simply said that the medical professionals were '*wrong*'. She further stated that '*I was told a couple of days later by the hospital that I had several broken ribs*'. The Tribunal also noted from the police information provided that Patient A had then asserted that '*this was not the first time this has happened*'.
95. The Tribunal had regard to the concerns expressed by the Police about this. The police entry of 6 July 2020 stated '*I have added a detailed timeline of [Patient A]'s contact with the police since 2004. In particular the GBH case involving an allegation against REDACTED is concerning and may involve pervert COJ. Here [Patient A]'s account changed three times, initially reporting it to A&E as an accident in Sept 2018, reporting to the police in November 2019 that it was an assault by a third party possibly linked to Dr Mills, and finally a further report to the police in May 2019 (after a disagreement with REDACTED that it was REDACTED who knocked her out with a blow to the head causing broken ribs and a punctured lung. A&E medical evidence later showed that she reported the matter as an accident and was discharged with bruising*'.

96. The Tribunal noted that in oral evidence, Patient A stated that she didn't make accusations but that she suggested these possibilities to the police when they asked who may have been responsible. It noted that Patient A's statement to the police clearly showed where she had said 'Yes, she had', in response to a question as to whether Ms F had been violent towards her. The Tribunal did not accept that she had merely speculated. It also noted that Patient A put Ms F in the frame after they had had a falling out. The Tribunal concluded that this evidence was not credible. It demonstrated Patient A's willingness to manipulate and fabricate evidence to suit and support her own version of events.
97. The Tribunal considered another allegation and complaint made by Patient A in 2020, against the founder of XXX. The Police had considered Patient A's behaviour sufficiently serious to have investigated and arrested her on suspicion of stalking involving serious alarm and distress. This complaint by Patient A followed a disagreement over use of a video online and Patient A's consent for it. Patient A stated to the police that she had been coerced into signing it. From the police log it appears that Patient A believed that the video was only to be used for police training. When she was challenged by the police on having retweeted links and re-posting them on Facebook and Instagram, she had responded to say that she had not intended this and may have acted out of shock/fight/flight. According to Patient A, the complaints were also due to breaches in safeguarding and confidentiality duties owed by the organisation. The Police were concerned that this complaint presented as '*malicious communications via email making false accusations.*' The police were also concerned that Patient A had a history of making allegations to the police when she has had a dispute with people.
98. The Tribunal took the view that these incidences were a demonstration of a pattern of vindictive behaviour in which Patient A was willing to manipulate and fabricate stories to support a narrative which she has created, after she had had a falling out with the individuals. It noted that the view of the Police (DS review 7 July 2020) was as follows, '*I feel (t)he harassment against the victim is as a result of the breakdown of the suspects relationship with her which has then lead (sic) to uncovering a rather disturbing pattern of behaviour exhibited by the suspect in very similar situations with other parties allegations have been made against.*'
99. The Tribunal also noted that Patient A had not disclosed the above information to the GMC when they were undertaking their enquires, despite providing further information that had been sought by the GMC in October 2020. Whilst Patient A stated in oral

examination that she didn't know why she had not done so, the Tribunal took that view that she had not been forthcoming about this information herself as she knew that this would undermine her position.

100. The Tribunal considered the timing of Patient A reporting Dr Mills to the police, which she did on 1 May 2018. It noted that Patient A agreed that XXX was the catalyst for reporting Dr Mills. She stated that she did not want to attend XXX and that whilst getting ready, she had heard news relating to Bill Cosby and the media reports of his abuse. She stated that this made her realise that Dr Mills had abused his position and taken advantage of her when she was vulnerable. However, the Tribunal noted the contents of the text message Patient A sent to Dr Mills after XXX which stated: *'Morning! Hope you slept well. Was an amazing day. Thank you so much for making sure I was ok...'* In oral examination Patient A stated that she had said this as she did not know what to say. The Tribunal was also mindful of Patient A's testimony that she did not love Dr Mills and was not jealous of his wife but noted that on 27 February 2018 Patient A sent a message to Dr Mills, stating, *'the chemistry feels so strong, yet I know you don't feel what I do or take the risks I would. My dream is for the one I love to feel the same for me. I need to move away from you as you break my heart'*.

101. The Tribunal noted Patient A's questions to the police as reported in the police log, in respect of whether Dr Mills was handcuffed when arrested and whether Ms N had been present. Patient A had commented that Dr Mills would need to explain this to Ms N. When questioned about this, Patient A initially stated that she was not sure and couldn't remember why she had asked these questions and thereafter stated that she was concerned about Ms N as XXX. The Tribunal was of the view that Patient A's accounts were self-contradictory and unreliable, showing traits of being vindictive and that her evidence brought her credibility into question.

102. In its further assessment of the sufficiency of evidence, and Patient A's credibility the Tribunal considered the following:

- Patient A confirmed that she had referred Ms K aged 18 and Ms L who was aged 17 to Dr Mills for therapy and that he would see them for free. The Tribunal noted that this was post the abuse Patient A was alleging against Dr Mills from 2004. When questioned, Patient A stated that she was coerced and manipulated into doing so but did not give any further detail. The Tribunal did not consider this to be rational.

- In respect of when her therapeutic relationship came to an end with Dr Mills, Patient A stated in her email to the College of Sexual Relationship Therapists (COSRT) that she had '*...no idea when the therapeutic relationship started or ended...*'. In her ABE interview she had stated that her therapy probably finished after six months and in her email to the GMC in July 2018, she said that the sessions finished at the end of 2005. From the evidence presented it would appear that when the police had decided to take no further action, Patient A alleged that her therapeutic relationship with Dr Mills had extended into 2006 and beyond. The Tribunal was of the view that this not only showed inconsistency but weakened her evidence.
- Patient A stated that she didn't know how her sessions continued to be funded past the initial sessions when XXX. She stated in her oral evidence that for the sessions that continued into 2006 and beyond, Dr Mills didn't take any money and stated that he would make a donation to charity. The Tribunal did not think this was a clear or cogent account.
- Patient A stated in her oral evidence that no part of her relationship with Dr Mills was consensual, even her relationship between 2007 and 2014 as she had felt coerced and controlled and did not know how to 'get away from him'.
- In her statement Patient A had stated that she '*went on the pill in May 2005*'. Patient A's medical records however confirm that she wishes to restart contraception in August 2005.
- In respect of Patient A alleging that Dr Mills had joked to her about a client who '*could not get it up*' the Tribunal noted that in her oral evidence, Patient A stated that Dr Mills would joke about clients. When challenged as to whether it was one client or more than one, she stated that she could not remember.
- Patient A had pointed to XXX having decapitated and then exhumed the body of her pet cat but had also attributed this to Mr J.

103. The Tribunal also had regard to Patient A's evidence in respect of Dr Mills having had sexual intercourse with her on 13 February 2016 without her consent. The Tribunal was

mindful that this was a serious allegation. Patient A however did not report this incident to the police until 8 June 2018, even though she had reported Dr Mill's alleged abuse on 1 May 2018. Patient A had had further opportunities to report this to the police yet had not reported this before 8 June. The Tribunal noted that Patient A had in fact stated in her ABE police interview that her sexual relationship with Dr Mills had ended in 2014 which was contradictory. The Tribunal was mindful that in her counselling session with Ms H, just before her report to the police, Patient A had not mentioned or reported this either. When questioned, in her oral evidence, Patient A stated that she could not remember why she had not mentioned it to the police before. The Tribunal questioned the plausibility of this and also noted that when Patient A did report it to the police, on 8 June 2018 it was in the context of the time it was taking the police to investigate the initial complaint. The Tribunal took the view that Patient A's account, in how she came to report this alleged serious incident and her confirmation that she did not know why she had not mentioned this to the police before the time that she did, had a significant and adverse impact on her credibility and brought to the fore her tendency to embellish and even falsify information to bolster her complaint/s. It also called into question Patient A's honesty and integrity.

104. The Tribunal also assessed Patient A's evidence in respect of Dr Mills attempting to take her to XXX. In her statement Patient A refers to invitations she received from Ms D. In her oral evidence Patient A stated that she didn't want to go to the Festival and that Ms D had assured her that *'there would not be any XXX happening'*. In relation to the party in May 2009, Patient A stated that she didn't remember it being a birthday party as she didn't remember taking a present or card and was under the impression that XXX would take place. She said that she was under the impression that XXX and that there may have been a possibility of XXX after she went to bed. In her oral evidence, Patient A herself accepted that the impression given in her statement was at odds with her oral evidence. She also conceded that XXX were historic.

105. The Tribunal further looked at Patient A's account when giving evidence in respect of her having been convinced to undergo Sterilisation in 2006 by Dr Mills. Reference was made to Patient A's account in her statement to her dating a male friend under the heading '2006'. Patient A noted that in her oral evidence she stated that in fact she had not had her dates with the male friend until 2007, and the Tribunal was of the view that this change in position was due to the context of the timing of the sterilisation and viewed Patient A's account to be unreliable in this regard. The Tribunal also had regard to the contemporaneous medical records which reported that she was 'keen on

sterilisation’ and a further entry in the medical records that *‘I discussed with her other methods such as Mirena coil and impanon but she has not changed her mind and is definitely going for sterilisation’*.

106. The Tribunal considered the allegations made by Patient A, in that Dr Mills took her to XXX, made her perform oral sex on him in public places and that she considered this to be part of therapy. It noted that in her ABE interview to the police, she had stated that she would not have signed up to this in a million years.

107. The Tribunal further noted that in response to Tribunal questions, Patient A stated that she had not known the term ‘sexual surrogacy’ when she had visited a book shop and library to research what was happening during her sessions in 2005. However, once she was aware of this term, she did not research it. Patient A said that she had mentioned it to someone at XXX where she had worked who had thought it was ‘weird’. The Tribunal was of the view that these two accounts were not congruent with each other, and did not consider Patient A’s evidence to be reliable or cogent.

108. The Tribunal then gave consideration to the recorded telephone call of 1 June 2018 and its transcript. Firstly, the Tribunal examined the circumstances in which Patient A said she had made the recording. It noted that it was in fact Patient A who had called Dr Mills and not the other way around. Despite stating that it was Dr Mills who had called her, Patient A conceded in oral examination that it was her who had called him. Patient A also denied the reference in the police logs to her having *‘inadvertently’* made the recording, but she did state in her oral examination that her phone would *‘sometimes record calls accidentally’*.

109. The Tribunal further considered the evidence given by Patient A with regards to this call. Patient A provided several different accounts as to why the call was made. Patient A had said initially that the call was made to check on Dr Mills’ welfare. She later said that the call was made to get Dr Mills to admit what he had done. It was when further challenged, that Patient A agreed that she had made the recording on purpose so that she could listen back to it, but that it was not intended for the Police. It considered that she had been wholly inconsistent in this regard.

110. The Tribunal did consider that the telephone call was corroborative evidence which could strengthen Patient A’s evidence. The Tribunal noted that Dr Mills did not deny the allegations suggested to him by Patient A and that at times he responded to say *‘I don’t*

know. I can't go there.' In response to Patient A saying '*...you know you could go to prison for that?*' The Tribunal was clear however that Patient A had not put the allegation to Dr Mills in any detail. Further, that his responses were not an acceptance or admission of guilt. It remained mindful that the recording was made with a set agenda in mind by Patient A. It was of the view that this lowered the quality of this evidence and the Tribunal could not attach any weight to it as evidence to support the Allegation against Dr Mills.

111. The Tribunal noted the submission by Mr Powell that the evidence contained 11 instances where Patient A had made complaints about other people across a variety of organisations/agencies. Whilst the Tribunal are only concerned with the allegations made against Dr Mills, it noted that some of these complaints had been shown to be vindictive and false. This demonstrated Patient A to have a propensity to make vindictive complaints and false allegations against individuals she had come into conflict with. Furthermore, when challenged about the inconsistencies or lack of substance to her allegations, Patient A had a tendency to supply a narrative and embellish her evidence to support her version of events.

112. The Tribunal was of the view that in considering the overall assessment of Patient A's evidence, it clearly showed a pattern of behaviour which at times was manipulative and vindictive. It also identified a propensity to elaborate and change her evidence to support her own narrative.

113. The Tribunal asked itself whether the strength of the evidence rests upon the Tribunal's assessment of the reliability of Patient A as a witness. It considered that it did and that the evidence adduced by GMC was largely based on Patient A's account. It further considered whether that witness was so unreliable or discredited that the Allegation or parts of it were not capable of being proved.

114. The Tribunal carefully carried out a holistic examination of the evidence adduced and Patient A's credibility. It was of the view that Patient A's credibility and reliability was tainted to such an extent that the overall evidence became tenuous, implausible and inherently weak. Nevertheless, it went on to consider each part of the Allegation in turn.

The Tribunal's Determination on the Allegation

115. The Tribunal went through the Allegation and looked at each individual paragraphs. It considered the evidence available for each and determined whether or not there was sufficient evidence for the charge to stand and be taken forward. The determination of the Tribunal is as follows:

That being registered under the Medical Act 1983 (as amended):

1. *You provided treatment therapy to Patient A between November 2004 and 2017.*

The Tribunal determined there to be sufficient evidence for it to consider this as capable of proof, in so far as Patient A did receive therapy from Dr Mills at a point in time (2005), which is not disputed. This paragraph of the Allegation stands.

2. *Whilst providing treatment therapy to Patient A XXX between November 2004 and 2006, on one or more occasion during your individual therapy sessions with Patient A, you:*

- a. *hugged her for a prolonged period;*
- b. *told her to ‘feel my arms safe around you’, or words to that effect;*
- c. *put your cheek against her cheek, and told her to ‘feel it there’, or words to that effect;*
- d. *asked her to dress as if she had been out in her small piece, or words to that effect;*
- e. *stroked her:*
 - i. *back;*
 - ii. *skin;*
 - iii. *hair;*
 - iv. *face;*
 - v. *legs;*
- f. *put your hands underneath her:*
 - i. *top;*
 - ii. *waistband;*
- g. *whilst carrying out the actions described at paragraph 1f, told her how:*

- i. soft her skin was;*
 - ii. lovely she smelt,
or words to that effect;*

- h. asked her to:*
 - i. wear a skirt;*
 - ii. sit on your knee;*
 - iii. get naked;*
 - iv. stroke your chest,
or words to that effect;*

- i. touched her genitals;*
- j. masturbated her;*
- k. made her:*
 - i. perform oral sex on you;*
 - ii. masturbate you with her hands;*
 - iii. swallow your semen;*
 - iv. take the oral contraceptive pill;*

- l. had sexual intercourse with her.*

The Tribunal noted that the evidence adduced in support of this allegation was Patient A's account to a large extent. It acknowledged that Patient A had consistently repeated her account of the events in 2004 – 2006 in her statement and in her interview to the police. It was of the view that repetition was not corroboration, and it was cognisant of its overall assessment of Patient A's credibility and the reliability which had an adverse effect on the weight that could be placed upon it. It placed little weight on the transcript of the telephone call Patient A recorded on 1 June 2018 for the reasons detailed above.

The Tribunal determined that taken at its highest, there was insufficient evidence for Paragraph 2 in its entirety to be proved to the necessary standard. It further determined that a contrary conclusion would not be reasonably sustainable. No reasonable Tribunal would be able to safely conclude that Patient A's account could be proved to the

requisite standard based on the overall assessment of her credibility and reliability. The Tribunal therefore found that in respect to this paragraph, there was no case to answer.

3. *In 2005 you took Patient A to a:*
- a. *restaurant, following which you:*
 - i. *asked to have sexual intercourse with her by a gravestone;*
 - ii. *made her perform oral sex on you in a public carpark;*

 - b. *hotel for an overnight stay, during which you:*
 - i. *were both naked in a bed;*
 - ii. *stroked her;*
 - iii. *kissed her on the cheek;*
 - iv. *asked her:*
 - 1. *what the best sex she had ever had was;*
 - 2. *to perform a sexy dance for you'*
or words to that effect;
 - v. *masturbated her;*
 - vi. *touched her breasts;*
 - vii. *made her perform oral sex on you, on one or more occasion.*

The Tribunal was of the view that Patient A's account was the only evidence available to support this disputed allegation. It had considered that the credibility and reliability of her evidence was significantly undermined and therefore there was an absence of proof to the necessary standard. It further determined that a contrary conclusion would not be reasonably sustainable.

Accordingly, the Tribunal concluded that taking the GMC's case and evidence as its highest, no reasonable Tribunal, properly directed, would be able to safely conclude that Patient A's account on this allegation could be proved to the requisite standard based on the overall assessment of her credibility and reliability. The Tribunal therefore found that in respect to this paragraph, there was no case to answer.

4. *You told Patient A, on one or more occasion between July and December 2005, that one or more of your actions described at paragraphs 2-3 were:*
- a. *part of sexual surrogacy;*
 - b. *to be kept a secret,
or words to that effect.*

The Tribunal was of the view that Patient A's account was the only evidence available to support this disputed allegation. It had assessed Patient A to be unreliable and lacking in credibility which rendered the evidence sufficiently weak to such a degree that a properly directed Tribunal could not find the facts of this paragraph of the Allegation proved. The Tribunal therefore found that in respect to this paragraph, there was no case to answer.

5. *In 2006 you:*
- a. *convinced Patient A to undergo a sterilisation procedure as you told her you were terrified she would get pregnant, or words to that effect;*
 - b. *took Patient A as an assistant for your work XXX and, on one or more occasion, when returning together from work you stopped at the woods identified in Schedule 1, where you:*
 - i. *made her perform oral sex on you;*
 - ii. *had sexual intercourse with her;*
 - iii. *took her to XXX.*

The Tribunal had considered the contemporaneous medical evidence which recorded that Patient A was 'keen on sterilisation' and noted that this was despite other options such as the Mirena coil and an implant being discussed with her. It noted Patient A's account in her statement where she alleged that Dr Mills had 'brainwashed' her. It also noted the Gynaecology pre -op note which stated: '*Patient aware of complications... trauma to organs... risk of laparotomy... failure rate/risk of ectopic pregnancy*'. It further considered her inconsistent evidence in respect of dating a male friend in 2006/2007.

The Tribunal remained mindful of its assessment of Patient A's credibility and determined that taking the evidence as its highest, no reasonable Tribunal, properly

directed, would be able to safely conclude that Patient A's account could be proved to the requisite standard. It determined, for the reasons set out above, that there was insufficient evidence for Paragraph 5 in its entirety. The Tribunal therefore found that in respect to this paragraph, there was no case to answer.

6. *Whilst providing treatment therapy to Patient A XXX between 2006 and 2017, on one or more occasion during your individual therapy sessions with Patient A, you had sexual intercourse with her.*

The Tribunal reminded itself of its assessment of the evidence relating to Patient A's account that treatment therapy continued in 2006. It further considered Patient A's account in her statement and in her oral evidence in respect of this and was of the view that the evidence of Patient A was the only evidence available to support the disputed allegation. Due to its assessment of Patient A's credibility and in the absence of any corroboration, it determined that there was insufficient evidence for Paragraph 6 in its entirety and an absence of proof to the necessary standard.

Accordingly, for the reasons stated above, the Tribunal concluded that taking the GMC's case and evidence as its highest, no reasonable Tribunal, properly directed, would be able to safely conclude that Patient A's account could be proved to the requisite standard. The Tribunal therefore found that in respect to this paragraph, there was no case to answer.

7. *In or around 2008 XXX commenced training Patient A as a therapist, XXX and, in 2016, in response to Patient A telling you:*
- a. *that you needed to focus on your relationship with your wife, you referred fewer clients to Patient A;*
 - b. *that she would need to look for work elsewhere, you would then refer clients to Patient A.*

The Tribunal noted that Patient A commenced training XXX in 2008 but it had no evidence other than Patient A's account that XXX had commenced training Patient A. It also noted the certificate of attendance at a 'Introduction to therapy with couples' course XXX. This demonstrated that Patient A attended a course XXX in 2007 and only showed attendance at a course. In respect of the remainder of the allegation at

Paragraph 7, it was of the view that insufficient evidence had been adduced in this regard.

Accordingly, for the reasons stated above, the Tribunal concluded that taking the GMC's case and evidence as its highest, no reasonable Tribunal, properly directed, would be able to safely conclude that Patient A's account could be proved to the requisite standard. The Tribunal therefore found that in respect to this paragraph, there was no case to answer.

8. *Between:*

a. *April 2007 and 13 February 2016, you went away with Patient A for an overnight stay on one or more of the dates set out in Schedule 2;*

The Tribunal determined that besides Patient A's account, there was other documentary evidence such as hotel bookings which needed to be considered and were capable of proof. This paragraph of the Allegation therefore stands.

b. *2009 and 2011, on one or more occasion you attempted to take Patient A to XXX;*

The Tribunal reminded itself of its assessment of the evidence in this regard, as stated above and determined, that there was insufficient evidence for Paragraph 8b.

The Tribunal concluded that taking the GMC's case and evidence as its highest, no reasonable Tribunal, properly directed, would be able to safely conclude that Patient A's account could be proved to the requisite standard based on the overall assessment of her credibility and reliability. The Tribunal therefore found that in respect to this paragraph 8b, there was no case to answer.

c. *2016 and 2017, you told Patient A that she needed to train and work with XXX Mr B, meaning that Patient A had to split the fee she would receive from a client.*

The Tribunal determined that besides Patient A's account, there was other documentary evidence which needed to be considered, specifically relating to the splitting of fees. This paragraph of the Allegation therefore stands.

9. *On 13 February 2016, you had sexual intercourse with Patient A at the location described in the relevant entry in Schedule 2, without Patient A's consent.*

The Tribunal had considered this serious allegation and the evidence pertaining to it in its exercise to assess the strength of the evidence and the credibility of Patient A's account. It reminded itself of the timing in relation to how this alleged incident was reported which inherently called into question the inconsistency of the Patient A's behaviour and actions when compared with the seriousness of the allegation. The Tribunal formed the view that Patient A's evidence was weak and tenuous.

The Tribunal was of the view that as the evidence of Patient A was the only evidence available to support the disputed charges, and as it considered that the reliability of her evidence was fundamentally flawed, there was an absence of proof to the necessary standard. It further determined that a contrary conclusion would not be reasonably sustainable.

Accordingly, for the reasons stated above, the Tribunal concluded that taking the GMC's case and evidence as its highest, no reasonable Tribunal, properly directed, would be able to safely conclude that Patient A's account could be proved to the requisite standard based on the overall assessment of her credibility and reliability. The Tribunal therefore found that in respect to this paragraph, there was no case to answer.

10. *Your actions as described at paragraph 2a-2i, 3bi-3biv, 4, 5a and 8a-8b were sexually motivated.*

Having determined that none of the paragraphs referred to in this allegation can stand except 8a, paragraph 8a should stand as is capable of proof. Therefore, this paragraph of the Allegation will stand in respect of 8a only.

11. *At the time of your actions as set out in paragraphs 2-9, Patient A was vulnerable by reason of the matters set out in Schedule 3.*

The Tribunal noted that there was evidence beyond Patient A's own account, such as medical records and counselling records, which needed to be considered in respect of this paragraph. This paragraph would therefore stand.

12. *You failed to maintain adequate records in relation to your individual treatment sessions with Patient A at:*

a. *XXX;*

The Tribunal determined that there is documentary evidence to be considered in respect of this paragraph which is capable of proof. This paragraph of the Allegation therefore stands.

b. *XXX.*

The Tribunal determined that there was insufficient evidence adduced in this regard and it was mindful that it did not think that there was sufficiency of evidence in the related paragraph 6 of the Allegation. It therefore determined that taken at its highest, no reasonable Tribunal, properly directed, would be able to safely conclude that this allegation could be proved to the requisite standard. The Tribunal therefore found that in respect to this paragraph, there was no case to answer.

Breaches of patient confidentiality

13. *Between 2007 and 2018 you breached patient confidentiality, in that:*

a. *on one or more occasion you told Patient A what had been discussed during your individual session with a patient, XXX;*

The Tribunal determined that there is documentary evidence capable of proof to be considered in respect of this paragraph. This paragraph of the Allegation therefore stands.

b. *on 22 August 2011 you forwarded a personal email from a patient of yours to Patient A;*

The Tribunal determined that there is documentary evidence, capable of proof, to be considered in respect of this paragraph. This paragraph of the Allegation therefore stands.

c. *you joked to Patient A that a client of yours ‘could not get it up’, or words to that effect, about a client who had erectile dysfunction.*

The Tribunal determined that it had no other evidence beyond the account given by Patient A. The Tribunal was of the view that as the evidence of Patient A was the only evidence available to support the disputed charge, and as it considered that the reliability of her evidence was fundamentally flawed and lacked credibility, there was an absence of proof to the necessary standard.

Accordingly, for the reasons stated above, the Tribunal concluded that taking the evidence as its highest, no reasonable Tribunal, properly directed, would be able to safely conclude that Patient A's account could be proved to the requisite standard in respect of Paragraph 13 c. The Tribunal therefore found that in respect to this paragraph, there was no case to answer.

116. In summary, the Tribunal allowed the application under Rule 17(2)(g) in respect of the following paragraphs of the Allegation: 2,3,4,5,6,7, 8b, 9, 12b, 13c.

117. The Tribunal refused the application under Rule 17(2)(g) in respect of the following paragraphs of the Allegation: 1, 8a, 8c, 10 (as it relates to 8a), 11, 12a, 13a and 13b.

Schedule 1

XXX

Schedule 2

- 20 April 2007.
- 19-20 April 2007, XXX.
- 2 November 2007, XXX.
- 12 January 2008, XXX.
- 2-4 April 2008.
- 8-9 May 2008, XXX.
- 16 May 2008, XXX.
- 13 June 2008, XXX.
- 19-20 June 2008.
- 26-27 June 2008, XXX.
- 10-11 July 2008, XXX.
- 31 July 2008, XXX.
- 7-8 August 2008, XXX.
- 28-29 August 2008, XXX.
- 6 March 2009, XXX.
- 2 May 2009.
- 29 May 2009.
- 19 June 2009, XXX.
- 20-21 August 2009.
- 27 August 2009, XXX.
- 10 September 2009, XXX.
- 9-10 October 2009.
- 18-19 February 2010.
- 9 April 2010.
- 7-8 May 2010.
- 14-15 May 2010, XXX.
- 2-3 July 2010.
- 24 July 2010, XXX.
- 2-3 September 2010, XXX.
- 16-17 September 2010, XXX.
- 23-24 September 2010, XXX.
- 30 September – 1 October 2010, XXX.

- 14-15 October 2010.
- 19 May 2011, XXX.
- 20-28 May 2011, XXX.
- 9 June 2011, XXX.
- 12-18 June 2011, XXX.
- 30 June 2011, XXX.
- 2-3 July 2011, XXX.
- 14-16 July 2011.
- 28-29 July 2011, XXX.
- 29-30 October 2011, XXX.
- 20-24 October 2011, XXX.
- 22-23 December 2011.
- 18-20 May 2012.
- 3-4 July 2012.
- 20-22 July 2012.
- 6 October 2012, XXX.
- 1-2 November 2012, XXX.
- 3-4 November 2012.
- 10 November 2012, XXX.
- 4-5 May 2013.
- 17-19 May 2013.
- 21-23 May 2013, XXX.
- 5-12 October 2013, XXX.
- 19 October 2013, XXX.
- 31 October – 1 November 2013, XXX.
- 7-8 November 2013, XXX.
- 21-22 November 2013, XXX.
- 28-29 November 2013, XXX.
- 6-7 December 2013, XXX.
- 9 - 12 May 2014. XXX.
- 16 -17 October 2014. XXX.
- 18-20 October 2014. XXX.
- 5-7 November 2014. XXX.
- 1-2 May 2015. XXX.
- 15 – 16 May 2015. XXX.
- 10 – 12 July 2015. XXX.

- 13 February 2016. XXX.

Schedule 3

Patient A's personal circumstances at the time, including but not limited to her:

- history of previous abuse;
- marital difficulties.