

Screen 1

Office Of National Statistics

- The Crime Survey for England and Wales estimated that in the 12 months ending March 2020 there were 773,000 adults aged 16 to 74 years who were victims of sexual assault (including attempts) with almost four times as many female victims (618,000) as male victims (155,000)
- To put that into perspective, the volume of sexual offences recorded by the police has almost tripled in recent years, although these figures actually represent a tiny decrease - less than a single %.
- Latest estimates from the CSEW showed that fewer than one in six (16%) female victims and fewer than one in five (19%) male victims aged 16 to 59 years of sexual assault by rape or penetration since the age of 16 years reported it to the police.

Screen 2

Rights of Women survey from January 2021

- 45% of women surveyed in England and Wales said they had been sexually harassed on online work platforms since March 2020's lockdown

Government Equalities Office: 2020 Sexual Harassment Survey

- 29% of the UK population in employment experiencing some form of sexual harassment in their workplace or work-related environment in 2019.

Screen 3

Sexual Motivation Example Drafting

1. "On [date], during your consultation with Patient A you:
 - a. undertook a vaginal examination that was not clinically indicated;
 - b. pulled down Patient A's underwear;
 - c. leaned against Patient A's side as you examined her;
 - d. thrust your pelvis against Patient A's side as you were examining her;
 - e. stared at Patient A's pubic area;

2. Your conduct described at paragraphs 1a-e above was sexually motivated."

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

Basson v General Medical Council [2018] EWHC 5050 (Admin)

per Mostyn J

Screen 4

General Medical Council v Dr Raied Haris [2020] EWHC 2518 (Admin)

“It is in my judgement clear beyond argument that the intimate touching of Patients A and B was sexual and that answering a question as to the motivation of the toucher, the only available answer is yes, the motivation must have been sexual. This is another way of saying the only reasonable inference from the facts is that the behaviour was sexual. This derives from:

- The fact that the touching was of the sexual organs
- The absence of a clinical justification
- The absence of any other plausible reason for the touching
- The absence of any suggestion of accident and the absence of any consent gives further colour to the acts.”

[per Mrs Justice Foster at §47, 48]

Screen 5

Mrs Justice Foster on Criminal Law

The criminal offence is described in the Sexual Offences Act 2003 s 3:

- 1) A person (A) commits an offence if—
 - (a) he intentionally touches another person (B)
 - (b) the touching is sexual,
 - (c) B does not consent to the touching, and
 - (d) A does not reasonably believe that B consents

As to "sexual" in subsection (1)(b), section 78 of the 2003 Act provides two ways to determine whether the touching is sexual thus:

s.78 "Sexual"

For the purposes of this Part touching or any other activity is sexual if a reasonable person would consider that—

- (a) whatever its circumstances or any person's purpose in relation to it, it is because of its nature sexual, **or**
- (b) because of its nature it **may** be sexual **and** because of its circumstances or the purpose of any person in relation to it (or both) it is sexual."

Screen 6

The Smorgasbord of Sexual Misconduct

- Voyeurism - criminalising conduct done “for the purpose of obtaining sexual gratification” [s.67 Sexual Offences Act 2003]
- Perhaps less likely, Upskirting [s.67A], the purpose of which is “obtaining sexual gratification” or “humiliating, alarming or distressing” the subject

More likely in a healthcare regulatory context:

- Harassment, including stalking, sexting, unwelcome or suggestive conversations;
- Exposure;
- Abuse of professional position - boundaries blurring eg by employing a patient or providing pro bono therapy sessions with an ulterior motive that a sexual relationship might develop (grooming?)

And still others in which the patient consents:

- engaging in an improper personal or sexual relationship with a service user - often said to breach a fundamental tenant of the health professional/patient relationship and worse still if the patient was vulnerable.

Screen 7

Sexual Misconduct in FTP Proceedings

Difficulties for the Regulator

- Lack of evidence - generally single witness
- Contemporaneous corroboration - often self-serving (arguably)
- Delay/Developing Account: See **Miller [2010] EWCA Crim 1578 and D [2008] EWCA Crim 2557**
- Clinical explanation for intimate touching
- Exemplary Character: See Lady Hale in **SB (Children)(Care Proceedings: Standard of Proof) [2010] 1 AC 678** - "If an event is inherently improbable, it may take better evidence to persuade the judge that it has happened that would be required if the event were a commonplace."

Difficulties for the Registrant

- Why would they lie?
- One word against another
- Delay - missing evidence, diminished recollections, absent witnesses
- #MeToo

Screen 8

Erasure as a Sanction

Yasin v GMC [2018] EWHC 677 (Admin): 2 sexual assaults on junior female nurses on the same day - erasure necessary to uphold and maintain standards and to promote public confidence

GMC v Khatyar [2018] EWHC 813 (Admin): sexually motivated pestering and harassment of one patient; sexual assaults of two others, fondling breast under guise of medical examination - suspension quashed, erasure substituted

Wentzel v GMC [2004] EWHC 381 (Admin) (sexual relationship with psychiatrically vulnerable patient, valuable asset to profession much needed by NHS, no risk of repetition - erasure).

GMC v Stone [2007] EWHC 2534 (Admin) - again relationship with vulnerable patient while continuing to treat her (and also some dishonesty).

Screen 9

Suspension...and the PSA

Yeong v GMC [2009] EWHC 1923 (Admin): challenge to suspension following relationship with former patient fails - “general public interest in clearly marking proper standards of behaviour so as to uphold public confidence in the medical profession....was by far the weightiest factor” and remediation unlike in clinical cases was much less significant. Suspension upheld.

Warren v NMC [2010] EWHC 678 (Admin): former drug addict patient for whom nurse was key worker. Contact made 6 months after nurse resigned and a sexual relationship followed. 12 month suspension.

General Medical Council v Ahmed [2022] EWHC 403 (Admin): Contacting a 14 year old patient on Facebook, leaving a friend request and sending messages to another patient, the latter of which was found to be sexually motivated, albeit there was no physical relationship. The matters were 6 years old by the hearing. This conduct “fell towards the less serious end” and “erasure is not an automatic consequence in a case involving sexual misconduct. It all depends on the relevant facts” Murray J

2 month suspension - GMC’s appeal dismissed despite serious professional misconduct.

The Professional Standards Authority is quick these days to step in - see **Professional Standards Authority v Health and Care Professions Council (HCPC) and Leonard Ren-Yi Yong [2021] EWHC 52 (Admin)** for a very recent example where a Panel’s decision that a social worker’s harassment of female colleagues was not sexually motivated was overturned.