



**JUDICIARY OF
ENGLAND AND WALES**

In the Westminster Magistrates' Court

Crown Prosecution Service

v

Neil Fox

Judge Howard Riddle, Senior District Judge (Chief Magistrate)

Mrs Alexia Fetherstonhaugh JP

Ms Sandie Blandford JP

Findings of fact and verdict

Mr Neil Fox faces ten charges as set out below. The names of the complainants cannot be published. To prevent accidental transmission of those names, or details that could lead to them being identified, we have used initials for all witnesses and in some cases have not included important evidence we heard.

There are ten charges, five having been discontinued before the trial began.

1. On Saturday 6th July 1991 at Norman Park, Bromley Common BR2 9EF indecently assaulted A, a girl under the age of 16 years.
Contrary to Section 14(1) of and Schedule 2 to the Sexual Offence Act 1956.
2. On Friday 5th April 1996 at Chessington World of Adventures, Chessington KT9 2NE indecently assaulted B, a girl under the age of 16.
Contrary to Section 14(1) of and Schedule 2 to the Sexual Offence Act 1956.
3. Between 31.01.2003 and 31.12.2003 at Capital Radio, Leicester Square, London WC2H 7LA indecently assaulted C, a woman aged 16 or over.

- Contrary to Section 14(1) of and Schedule 2 to the Sexual Offence Act 1956.
4. Between 31.01.2003 and 31.12.2003 at Capital Radio, Leicester Square, London WC2H 7LA indecently assaulted C, a woman aged 16 or over. Contrary to Section 14(1) of and Schedule 2 to the Sexual Offence Act 1956.
 5. Between 31.01.2003 and 31.12.2003 at Capital Radio, Leicester Square, London WC2H 7LA indecently assaulted C, a woman aged 16 or over. Contrary to Section 14(1) of and Schedule 2 to the Sexual Offence Act 1956.
 6. Between 31.01.2003 and 31.12.2003 at Capital Radio, Leicester Square, London WC2H 7LA indecently assaulted C, a woman aged 16 or over. Contrary to Section 14(1) of and Schedule 2 to the Sexual Offence Act 1956.
 7. Between 01.01.2007 and 30.11.2007 at 4 Winsley Street, London W1W 8HF intentionally touched a woman aged 16 or over and that touching was sexual when she did not consent and you did not reasonably believe that she was consenting.
Contrary to Section 3 Sexual Offences Act 2003.
 8. Between 01.03.2014 and 01.08.2014 at 4 Winsley Street, London W1W 8HF intentionally touched a woman aged 16 or over and that touching was sexual when she did not consent and you did not reasonably believe that she was consenting.
Contrary to Section 3 Sexual Offences Act 2003.
 9. On 09.07.1988 at Euston indecently assaulted F, a girl under the age of 16 years.
Contrary to Section 14(1) of and Schedule 2 to the Sexual Offence Act 1956.
 10. On 09.07.1988 at Euston indecently assaulted F, a girl under the age of 16 years.
Contrary to Section 14(1) of and Schedule 2 to the Sexual Offence Act 1956.

The evidence

We heard evidence from 50 witnesses (30 live and 20 in statement form), and submissions, over ten days. We have notes of the evidence but in these reasons we summarize to a very significant extent – there is no attempt to reproduce all the material we have considered. All witnesses gave evidence under oath, in English. Some had special measures available.

A told us that on 6th July 1991 she was at Norman Park, Bromley with school friends. She was 15. It was a classic cars event and they had gone because famous DJs were there. Towards the end they saw Neil Fox and took a photograph with him (which was exhibited). She didn't know whose idea the photo was. When it came time to go he kissed her, tongue in mouth, and put his hand up her skirt onto the back of her knickers. It was horrible and she pulled away. It only lasted a few seconds. It was a public place and other people were around. Her friends noticed the kiss and said he had an eye for her. She told her mother immediately and later (some time before their marriage in 1997) her husband. She reported to police after hearing on radio that Neil Fox had been arrested.

The skirt was a Ra-Ra skirt, short but not very short. Neil Fox put his hand up her skirt – when she got up from the floor after the photo her bottom was not visible. She could not remember some of the details about the day, such as who asked for the kiss or whether she went to kiss him with an open mouth.

L took the photo (referred to above). She has a memory of the day (parts are clear and parts are not) and thinks they were all kissed. She was kissed on either the cheek or the lips, nothing that upset her. She remembers telling Neil Fox they were 14, and he said “Really?” while staring at A's chest. She has lost touch with A, and was contacted by another friend through Facebook. A did not complain about what had happened, and was excited to meet him. She was impressed by celebrity. They were all buoyed up by meeting Neil Fox. It was quite a fun experience.

Mr A gave evidence in a written statement. He was married to A and remembers A telling him “that dirty bugger [referring to Neil Fox] kissed me”.

B went to Chessington World of Adventure with her twin sister and friend P about April 1996. Photos were taken. They were big fans of the radio show. After the event B went to the front to see Neil Fox. Her sister and friend went elsewhere. She joined a group of people waiting for a hug or a photo. She was on one side of the barrier, he on the other. A group of adult women asked for a kiss and he kissed them on, she thinks, the cheek. She said “Hi Foxy, can I

have a kiss?” He said “Yes” meaningfully. She leant forward with her cheek. He put his arm around her back, put his lips against her lips, forced her mouth open, put his tongue in and moved it about for a few seconds. She was shocked and tried to pull her head back but wasn’t able to pull back as he had his hand on her back and he was forceful. She was unable to move back because of his arm. She was shocked and hadn’t wanted that. She had never been kissed that way before. She was upset and confused. She felt she had done something wrong by the way he moved off. She went home, into her bedroom and cried. She felt disgusted – and thought maybe she was to blame.

She didn’t tell anybody at the time. The first person she told was her sister when she was at university, about 4 years later. She also told S and K, two friends of hers, some time after and when they were in Cardiff in 2003 or 2004. She said she had been “snog raped”. On 22nd October 2015 one of these same friends, S, texted her to say she had seen allegations about Neil Fox in the media. There were no details of the allegations at that time, save that they were sexual and made by women. It was not easy to decide to go to police, but she did.

She was four months short of her 16th birthday at the time. There were several hundred people, men and women, mixed ages, but not loads of people. She doesn’t remember photographers or security guards. Fans were pleased to see Dr Fox but not exuberant. She had a camera but didn’t ask for a photo or autograph. This was a spontaneous decision, not planned. Her contact with Neil Fox lasted at most a minute – the kiss just a few seconds. The tongue was inserted forcibly in her mouth. “It stayed with me. You don’t forget something like this.”

She has been on protests and is able to express her views but never thought about complaining sooner. When Dr Fox walked off after kissing her others waiting complained and said, “where is he going?”

C told us she worked with Neil Fox in 2003, when she was 25. In the beginning, they got on well, he was friendly and welcoming. She was thrilled when she got the job. However, her feeling about it changed, because of the

banter from the men in the studio and not just Neil Fox. They would speculate about whether she was good in bed, and what kind of position she would like. Neil Fox was involved and it was in her presence. Things were being said to each other and they knew she could hear it. She might have said “just shut up” but from the beginning she wanted to try and establish a relationship. She told her bosses about her discomfort with this sort of banter in the office environment. This was before anything else happened.

Nothing was done about it.

The next significant thing was “when he grabbed my boobs”. It was an evening in the studio. This was within a few weeks of her starting the job.

S was also present, but no one else would have been able to see. It was after 7pm, that is when Neil Fox would have finished his show. He went out of the room with a guest band. She and S waited for Neil Fox to come back and he did.

“I was standing with my back to the door. He walked behind me and grabbed my breast, firmly. He didn’t say anything. I didn’t say anything. S was a few feet away. She did see it. She didn’t say anything. His hands were there for a good few seconds. It was prolonged. I just stood still and was too shocked to do anything. I didn’t welcome it and didn’t consent to it. I didn’t want it to happen. I was too shocked to say anything to him. He let go and took his hands away. He stayed in the room and walked around the desk as if nothing had happened.”

She and S left work and went to the pub together.

“I told her that it really hurt. Physically it hurt, it was painful. I was complaining to her that it was still hurting. I said to her, it was inappropriate and I was concerned that he had done it in front of her. It wasn’t a good signal to send out and it really undermined me. It was humiliating.”

The witness was shown an email that she did not recognize at first. It had her name, was dated 8th April 2013 and refers to the incident on 3rd April 2013. It was sent to an HR person. Nothing was done. A manager asked her to clarify if it actually happened.

The second occasion was in the morning before a show. He said “I’ve got something to tell you...wait till we get to the studio.”

He said “I had a dream about you last night and woke up with a big sweaty hard-on and I was fucking you up this wall”, and he was saying like let’s do it.

“I don’t think he was being serious. I think I said something like stop being silly.” She thought he had had such a dream because he repeated it. I was single. I didn’t welcome the remarks. I wasn’t happy about the remarks. I didn’t tell him very well.”

There followed a series of inappropriate conversations and touching. There were other incidents of inappropriate sexual contact. On one occasion he pushed her down on the desk in the studio. Only the two of them were present.

“He grabbed me from behind, positioned me and pushed me down on the desk, face down. He had me bent over a desk. He was behind me and simulating sex.

I don’t know whether I made a formal complaint, I felt humiliated.”

There was another time when he just said hello and put his hands between my legs. It was outside the studio, near the work area. The majority of the team were there and she thinks that others saw it.

“We were kissing hello. I was wearing jeans and a top. As he is kissing me, he put his hands into my legs. I felt him touching me. It wasn’t accidental contact. It was intentional cupping of my groin area. It wasn’t prolonged. I was like did that just happen and carried on with my day. I don’t recall anyone approach me about what had happened.”

“There were other forms of contact and mainly touching. There was a lot of bum touching. Grabbing my bum and what a nice bum I had. I didn’t do anything like that to him. I would say stop it. Get off. Some people can rebuff in a friendly way. It wasn’t light-hearted. He thought it was funny I think.”

“AB [a manager] suggested she say to him, “how would your wife feel if she learnt what you were doing?”

After a year she took a job at a different company. These incidents were not the only reason for leaving. She recalls speaking to others about what was happening, and named some people. She has since married and told her husband what had happened. She hadn’t mentioned everything, probably told

just the basic details. She made contact with police in January 2014 after reading an article about another case. She got off the tube and spontaneously phoned the police.

C understands it was her contact with police that started the whole investigation. She would have appreciated more help from her employers but guesses that she did not receive it because Mr Fox was popular and a celebrity. She was demoted but did not go to an industrial tribunal.

The show they worked on was high intensity and a pressured environment. Male banter about how good you are in bed is quite intimidating when you first meet people.

When Neil Fox put his arms around her and squeezed her breasts it wasn't a bear hug and it was for a good few seconds. As for the simulated sex, he may well have perceived it as play acting. "I don't believe this act was performed for sexual gratification." The incident where he cupped her vaginal area was not painful or thrusting. As for the comments about the dream, they were pre-meditated, but she agrees with the comment in her witness transcript that: "That's the weird thing about all this. Not at any point do I feel that he actually wanted to have sex with me. He wanted me to know that he was in charge and that he could make me feel that big [indicates]".

She remembers a conversation with a manager, C1 in Starbucks. She remembers no conversation with C1 in a car park.

She also talked about Mr Fox asking her to do something humiliating when they were recording on tape. There was a need for a second tape just before the show was going on air, but he refused to do it unless she asked with her breasts.

"I had to squeeze by boobs together and make them move. This was recorded. I had pushed my breasts together and anyone listening to it would have realised [that I had done it] because he did the tape."

S worked on the show and remembers a laddish and sexist atmosphere with jokes about which celebrity you would have sex with, boobs, etc. Neil Fox and

another would say to C “Your boobs look nice”, “have you done the walk of shame” [meaning did you have sex last night], and at first she would fight back but later lost the will to fight. No comments were directed at S.

She recalled an incident when Neil Fox came back into the studio after an interview with a band. C was standing up with her back to the door. Neil Fox walked up behind her and put his hands on her breasts. C was shocked, went pale but didn’t say anything. S did not hear Neil Fox say anything. Later S and C went to Yates Bar and discussed whether C should do anything about it. C wasn’t sure what to do. S doesn’t know whether it was reported but was not spoken to by anyone from the company. She was not made aware of any other incident.

C was more uncomfortable with the banter than S was. She didn’t find it particularly objectionable.

In cross examination she said that when Neil Fox put his arms around C and placed his hands on her breasts she did not interpret it as a hug but it could have been. His hands went on both breasts, and he didn’t say he was sorry.

TK was told by C in 2011 (and before Neil Fox was arrested) of inappropriate behaviour that took place on several occasions – he touched her bum and boobs; she had to talk to him with her breasts; told her about a dream and said they could have sex right there; bent her over the radio desk and simulated sex with her. This witness describes what she considers to be “pervy” comments and an incident where Neil Fox approached a young woman she names (T), walked behind her, lifted her hair, said “you smell good” and stroked her hair.

She knows or has met a number of witnesses in this case. She sent a text about the hair incident to friends as there was interest in the climate of famous people being arrested.

AB was C’s boss at the relevant time. She remembers discussing difficulties that C was having. She had heard of it from someone else and engineered a meeting in the car park. C was reluctant to talk about it at first, but eventually

told her that Neil Fox had come up behind her and gripped her breasts very tightly. C was worried about her job. This was an awful time for the company and for C. She doesn't remember any later conversation about other incidents, but there may have been. Any complaint about Neil Fox would have been made through her. The presenter didn't make C's job easy. AB thought he was a bit of a bully. She was shown an email sent in her name, and exhibited.

K worked as a colleague during the time Neil Fox presented the weekend chart. She never felt uneasy around Neil Fox, he was always straight with her. She felt she could talk freely around him. He was a strong character. There was an "in house" production team, consisting of CK and M. They had a lot of banter with Neil. Some of the banter was sexist comments about artists on the radio, things like "they would sleep with that person or another". It was definitely a boys' culture thing. She does not recall any sexist comments being made by anyone, including Neil, towards her.

K says that C joined as producer of the show. She does not remember "Foxy" being funny or in any way inappropriate with her, at that time. "I do remember C telling me about an incident where Neil had put his hands on her breasts. She told me that Neil had approached her from behind in the studio and had put both his hands on her breasts. I do remember she could not stop crying."

AP remembers C telling her that Neil Fox pushed or pressed her against the side of the studio and either touched or grabbed her boobs. She asked her if it could have been an accident as she thought Foxy was a flirty type but C was adamant it was no accident. She also told her about various other things that had happened. AP recollects being told that Neil Fox pretended to have sex with C.

JN says that a few months into working at the company, C came to dinner/lunch at his house. She told him of many incidents where Neil Fox had made inappropriate sexual comments. Also an incident where he had brushed up against her sexually and a specific incident where he had come up behind her and pushed against her in a sexual way and touched her breasts.

On occasions when they had spoken of it, C has cried and become very emotional.

SA recalls how C described incidents when Neil Fox touched her breasts and the lower half of her body in the studio when she was alone, and in front of other members of the production team. He also recalls the image of her re-enacting when Neil Fox grabbed her breasts. C had told him that she had complained to both her line manager and managing director. She told him that basically the whole thing had been “brushed under the carpet”. C was visibly upset and tearful each time she recounted her experiences.

FP remembers in December 2001 having a conversation with C about Neil Fox. She told her that on one occasion he physically assaulted her by touching her breasts. As she spoke she was becoming more and more visibly upset. She said that it happened on more than one occasion although FP thinks this was in relation to the comments rather than the sexual touching.

DC says in June 2004 C told him that Neil Fox had touched her and made inappropriate comments and that she had reported them to her employer and nothing had been done. Over the years she had told him bits about what happened. She told him that Neil Fox had touched her and made comments to her but nothing really graphic. It was only when the police officers came round that he heard how graphic it was.

AB remembers C speaking to her in the work car park. She engineered the chat having heard from other people of difficulties C was having. C told her Neil Fox had grabbed both her breasts very strongly. C was nervous about telling her this as she was worried about her job. AB said C was being bullied and found it hard to deal with Neil Fox.

A statement was read from **MP**.

R was in the staff kitchen in 2013 when Neil Fox came up behind her, held onto her shoulder, and kissed it. She said “Oh my God, did you just kiss me?”. He laughed and left. “It was gross and made me feel uncomfortable.” She saw

HT, and then told JW and AR. She was contacted by the police, made a statement, but later asked to withdraw the allegation. "I didn't think it was that bad... This whole situation was a lot worse than what the act was." However, she is sure it was a kiss and that he did not just put his hands on her shoulder to move her.

HT recalls this incident but did not see it. On the way back from the kitchen R told her Neil Fox had kissed her shoulder. She wasn't upset but she wasn't happy about it. They had a giggly conversation and it didn't seem to matter too much. The kitchen is very small.

D worked with Neil Fox from about 2005 for about two years. At first he was friendly but then became too familiar. One day in 2006 they were together with JE in the studio. During a live broadcast, while records were playing, Neil Fox got up, put his hands up her waist and started tickling. "I said get off, but he found it quite funny." He manoeuvred her over to the sofa, sort of pushed her back, jumped on top of her and started simulating sex, thrusting. They were face to face. JE had his phone out as if taking photos. She said "Get off" three times and then got off the sofa, said "Don't ever do that to me again", and walked out of the studio. While this was happening one side of her bra was exposed. JE found it funny. He later agreed he had taken pictures but told her he had deleted them. She wanted to stop them being circulated and to show HR what had happened. "I felt quite sick about what had happened."

She does not remember further physical contact but other things built up and she didn't want to be around him. Possibly two months later she went to HR. She lost her job and thinks part of the reason was she complained about this incident and an occasion when Neil Fox called her a Paki. It is possible the complaint was made during the redundancy process. Whatever the company records state, she says the complaint was of sexual assault, not sexual discrimination. Her complaint was not made in writing. Her boyfriend was uncomfortable with the whole situation and it was early on in the relationship, so she didn't tell him details.

She accepts that she may have been involved in some of the sexual banter in the studio but was not involved in tickling others.

MC told us the he remembered straightaway that he knew about a video where Neil was simulating sex with D over a sofa. He cannot remember how he knew about it. He honestly doesn't remember seeing the video but says he did hear about it back then. He says it was from 2007.

JW knows Neil Fox, C, RA and some others mentioned in this case. He remembers seeing RA at work in 2014, looking shaken. He asked her what was wrong and after some hesitation she told him Mr Fox kissed her neck and shoulder. On an earlier occasion he had been with C in Pizza Express and said he admired Neil Fox. She then told him Neil Fox had made her do things with her breasts. He has spoken to people about incidents but has not gossiped.

M says she remembers C, in 2013, saying that Neil Fox pushed her onto a desk so that she was on her front and he was behind her, mimed dry humping. She also remembers C telling her that there were lots of little incidents but she didn't detail them. Nobody at work supported her or intervened in any way even though others witnessed it.

J was contacted by DC Lindsay in early April 2015 and was asked if he remembered sending an email to SM back in 2007 with a video which showed D and Neil Fox. He says he at first he couldn't remember a specific video. JA then stated that he now remembered the video that DC Lindsay was referring to. The only thing he remembered was that Neil Fox was on top of D simulating a sex act. He believes the email was sent from his work email account and was sure it was after SM had left but he could not remember when it was.

DC Lindsay is one of the officers in the case, and gave evidence about the arrest of Neil Fox and read the transcript of his interview. Neil Fox is of good character.

This officer contacted three ladies, a witness in Australia (charge discontinued), R (who wanted to withdraw) and D. There is no record of those conversations. She did not share information about other complaints with D.

DI Bolton answered questions about the investigation and strategic decisions taken, including publicity.

IB gave evidence through a s9 statement. She stated that she had known D since they met at university in 2000. Some time during 2006 D had told her over a series of conversations all about what was happening to her at work involving Neil Fox. She told her that she felt intimidated by him because of who he was and his celebrity status and he clearly thought his behaviour was acceptable. She also told her that a man by the name of JE, who she thinks was also a producer, witnessed some of Neil Fox's behaviour but when D complained JE basically put his hands in the air and said that he hadn't seen anything and that he was not going to back her up. D also told IB that she had complained to her manager but they were making it clear to her that they weren't going to do anything about it and that she might as well leave her job.

At this stage we heard evidence, with agreement, from defence witnesses. That was because it was not appropriate to hear about the final allegation at this stage, and hearing evidence outside normal sequence made best use of time available, without causing difficulty for either party.

T (the person named by TK) had no recollection of Neil Fox coming up behind her, sniffing her hair, and saying she smelt good. She has no complaint against Neil Fox for inappropriate conduct, and respects him. If something like that had happened then she wouldn't remember it. It is possible it did occur and she has forgotten it. Memory fades with time.

SM has known Neil Fox for about 20 years and worked with him for "hundreds and hundreds" of hours. He is likeable, affable and never behaved inappropriately to her. She spent many hours alone with him, as did other women, none of whom ever complained about him. He would treat women as equal. He was 100% never threatening. 2003-2004 was the highlight of her career, and Neil Fox was at the top of his game.

She wasn't aware of the complaint made to Ms O'H. All she knows of the complaints is what she has read in the papers. She had never felt threatened or had been commented upon about her physical appearance "I would stand up". However, she never suspected Neil Fox was a bully – "he was a softie."

SE used to see Neil Fox at work on a daily basis. She never observed any inappropriate behaviour, nor heard any complaint about him. The show had energy, creating fun practical jokes and larking around (we heard similar comments from many witnesses). He would compliment a woman in a charming way, give her a hug and also sometimes use graphic language. He was "incredibly respectful to anyone he works with". There are boundaries at work, and she would have made it known if she had been touched in an unacceptable way.

JS worked with Neil Fox in the studio and on outside broadcasting. The atmosphere was always lively and some jokes could be rude or on the edge, but it was all good natured. No women complained to her – he is kind and considerate. He complimented her and would hug her. No complaint of sexual misconduct ever reached her ears.

A O'N worked with Neil Fox on many occasions. She described the lively atmosphere in the studio before and during a show, a lot of fun and some dancing. She went to the gigs in the 1990s. There could be hundreds of girls there who, depending on the time of year, were usually quite provocatively dressed. Girls would also gather outside Euston Tower. Neil Fox was a celebrity at the time. Girls would ask for kisses and photos. AO'N was known as an agony aunt and if a female employee had a problem they would come and talk to her about it. Nobody complained about Neil Fox.

KO stated she worked at Capital Radio from 1994 to 1996 at Head of Events. Her responsibilities included organising the Capital Radio Rig at Chessington World of Adventures. It took place at Easter. At the end of the show Neil Fox and others might go to the crowd barriers to sign autographs and have photographs taken. They would have been accompanied by security from Showsec. While Neil Fox was signing photographs the security would have

been very near him. Any engagement by Neil Fox with the fans was in the full sight of security and any other persons standing in the pit areas. A photographer also attended who KO believes was called JMc. KO recalls that never in the time that she has been involved with organising this event, or during the time she worked with Neil, had she heard of any complaint about his conduct towards women and certainly no complaints were made to her.

JMc worked with Neil from around the mid-1990s through to the early 2000s. His principal role at Capital Radio was as a photographer. JMc says that a very large number of the various teams including Radio Production were staffed by women, also many of the heads of department and senior management positions were held by women. As JMc mentioned earlier, his work with Capital Radio was often to photograph and help with the artists and presenters at Outside Broadcasts/Roadshows/Rig shows. He spent much time observing and photographing Neil at these events and once again he can 100% say that he never saw anything inappropriate occur. Contracted security would always be accompanying any artist or presenter when they would meet the public. The very idea that something inappropriate may have occurred is impossible to believe.

RE has extensive senior management experience in radio (including Capital Radio from 1991-97) and other areas. He described how Neil Fox related to young fans and other staff. He never saw anything inappropriate or received complaints about him from staff or the public. He commented that “cultural mores were different in the 1990s to today” and what is seen as inappropriate today may then have been seen as “a bit of fun”, so that behaviour that might have been tolerated then would be seen as off limits today. That said, unsolicited physical contact would always have been “off limits”, but he never saw any behaviour that gave him concern about Neil Fox. He received complaints about others. He saw young women, including teenagers, lacking restraint in their approach to DJs outside the studio, but Neil Fox was always friendly but mature.

BG saw Neil Fox daily in 2001 and early 2012. He was never inappropriate to her. There was no truth in the suggestion from another witness that she

refused to work alone in the studio with Mr Fox. He was always kind, generous and considerate, but she left the show because early hours took their toll.

AG had a senior management role with Capital from 2001 to July 2003, and later Magic. She never received any complaint about Mr Fox's sexual behaviour. She came across him every day and he was always professional. There was a young, enthusiastic and creative atmosphere in the studio. There was banter in a down-to-earth way, but it was not offensive, and Neil Fox was not autocratic. The witness enjoyed encouraging the careers of other women: many of her senior staff were female. In 2006-2007 she and RP discussed restructuring the show presented by Neil Fox, and this involved upgrading the production team and D becoming redundant. She does not recall any complaint by D before the redundancy process, but later there were complaints about racial discrimination (Neil Fox referred to D as a Paki) and sexual discrimination (because the job was offered to a man). There was no reference to a physical assault, and indeed D applied for the new position working with Neil Fox. AG made it clear to Neil Fox that he could not use the word "Paki" which he admitted using but not in a derogatory sense.

The letter dated 5th December was put to the witness. She could not remember what sexual comments were referred to. All she remembers was the allegation of sexual discrimination. She would have remembered a complaint about sexual acts. The witness did not write the letter and it is not signed by her although she accepted her name was at the bottom. D was a good worker – it was not her fault that there needed to be an upgrade in the position. Lawyers were involved and a compromise was signed. The video said to be taken by JE was never mentioned to her.

LP has known Neil Fox since 1987. She was on the Roadshows with him. They presented Roadshows in pairs. Security was provided by Showsec and there was always someone from security accompanying the DJs when they went to meet the public (which was part of the responsibilities of the DJs). She too confirmed the lively atmosphere in the live studios to keep up energy levels.

Neil Fox was always respectful and she never saw him be disrespectful to women.

She identified herself from a photo when she was in the record library, which was small with narrow aisles. There were two full-time librarians and one of them was always there. It may not have been open overnight.

BD worked with Neil Fox for many years, and came from Los Angeles to give evidence for him. He is effervescent and charismatic. He was never inappropriate with her – had he been she would have taken care of it. “We all made sexual jokes. We wouldn’t today but there was a different atmosphere then.”

TK was recalled to say that the incident she gave evidence about was not just before 14.03, but in the morning. She passed on anything useful that she heard to police.

X gave evidence by way of her ABE interview, which she adopted. In it she told us that she was aged 14 in April 1988 when Neil Fox kissed her with tongues in the Capital Radio car park. The following year, after her 15th birthday but before October, he showed her around the Capital Radio library. It was on a Saturday, He talked to another DJ, Paul McKenna, but she cannot remember whether this was before or after the incident. When they were on their own they kissed. He undid his jeans and put his hand on hers and guided it onto his erect penis. He put his hand up her skirt, in her knickers and put a finger in her vagina. She does not think it was all his finger, and it wasn’t there long. It was quite uncomfortable but did not hurt. This was the first time this happened to her. She wasn’t upset. There was no force. He would have stopped if asked. He did not ejaculate. It was quite dark in there. She is pretty sure she was wearing a little black cotton-like skater skirt but cannot remember what top she was wearing, or whether he had a belt. She thinks the jeans were buttoned, but can’t remember. She does not know if he was wearing underwear. It probably lasted about five minutes. She does not know why it stopped: “I guess at some point he must have put his willy away and went downstairs...it’s nearly 30 years ago.” She does not know if he escorted

her back. She told her friend LS everything, but cannot remember for sure the circumstances - probably it was immediately afterwards in McDonalds.

Later, after she turned 16, she visited his flat in Cricklewood and on maybe five or six occasions, touched his penis and made him cum. This happened in his bedroom, with their clothes on, and standing up. She was not coerced, and didn't feel badly, as she adored him. "I was fine with what happened." She described his flat, the mural and a soft toy on the bed. She has just snap shots in her memory as it was "a really long time ago". She would have told her friend LS about the things she and Neil Fox did at the flat.

She produced a scrapbook, an envelope with her words, a letter she wrote to a friend, a school calendar and some emails. She and other former Capital Radio fans have kept in touch by Facebook, where there were comments about Mr Fox's arrest and a sweepstake as to how many others would come forward. A trip was arranged to Butlin's in January 2015 when Mr Fox was discussed briefly. She denied making up the allegation to make others jealous. She was not intending to go to the police at the time. She didn't say she had sexual intercourse and didn't say to LS that she had given Neil Fox a blow job. It was a shock for her to be contacted by the police.

She did not know that the Capital Radio car park was used by sensitive government department. "He definitely did kiss me in the car park." She went into the building only once when she went to the library. She could not recall the precise size of the library. She does not recall how this came about. She cannot remember the conversation in the library. She doesn't know whether LS came up with her on that day, though probably she did. She would have told her that day or on a subsequent occasion. She told the police: "I assumed I would have spoken to her..."

Mr Fox had said that she should go over to his flat. She knew where his flat was. He didn't tell her his address and she attended without any notice.

Four s9 statements were read [as below] and two further interviews under caution of Neil Fox, in which he answered all questions, were also read.

LS states in August 1988 she went on holiday with her parents and they stayed at the Derwentwater Caravan site. X sent her two letters. One was dated 22nd August in a small pink envelope and another was a brown A4 envelope dated 30th August. On the back of the envelope X had written "I'm 15 I used to be young and innocent. Then I met Neil Fox I'm still young! I'll explain Sat". When LS returned from holiday she says that they either saw each other or spoke on the phone. X told her that Neil had asked her to help carry some records to the car and that Neil had got off with her. At that time when we were younger this meant kissing with tongues. X really liked him, she felt flattered by his attention. "I used to stay at X's house quite a lot when we were younger. X had a direct telephone number into the studio and she used to speak to Neil for quite a while." LS says that she is not 100% sure what S was referring to in her quotes on the envelope as the kiss was much earlier and the next thing that happened was at the record library at Capital Radio. LS thinks she was there when that happened but she can't be sure. Now LS can't remember if she went up to Capital Radio with X that day. X told her that Neil fingered her and that she wanked him off. She cannot be 100% sure if she used those words. LS remembers X telling her that someone was knocking on the record library door whilst this was going on. X at the time told her the first time she went there, she took the pictures and gave Neil a blow job. X had borrowed one of her shirts and Neil came on her shirt. At the time she was aware that X had gone to his flat but she didn't know how often. It's only been more recently that X told her she had gone round to Neil's a lot more than she knew about it at the time.

LW recalls that during Facebook conversations X mentioned that she and Neil Fox had sexual relations during the period and now that she had seen reports of his arrest it made her question her fond memories of that period on meeting at Butlin's. S expanded on it a bit more and told her that during the tour of the record library that things had happened which led to each other having hands in each other's pants. X also went on to say that she had gone to his house and made him cum. LW received an email from Neil Fox [a copy of which was produced for the court]. LW says that Neil Fox was always kind to her, even writing a note when he thought she was upset with him.

GA recalls the summer of 1988 when she went up to Capital Radio every day. She says that when some girls asked for a kiss from Neil Fox got a kiss on the cheek but others a kiss on the lips. Because the girls loved Neil it just seemed normal. There was also a girl called X. GA didn't know at that time that anything had gone on between X and Neil. GA says that a number of them went to Butlin's and it wasn't until then did she realise what had gone on between X and Neil. X told the group that at one time Neil took X to the record library and snogged and cuddled her, she can't remember what else X said. Then X told the group that she went to his flat once; Neil's girlfriend wasn't there. She told them that they kissed and she masturbated him.

RMc recalls that whilst they were at Butlin's the Neil Fox case came up in conversation. She can remember X talking about how her and Neil were close and that she had been to his house. She believes that some of the others already knew some of the details. X didn't go into much detail. RMc recalls her saying that she was under 16 when things happened and she mentioned a time when she went to the record library and Neil Fox had put his hand in her pants.

There are a number of **Section 10 admissions** which have not been reproduced here.

Neil Fox gave evidence on his own behalf and there follow some of the points he made in live evidence. In addition, his various police interviews were before the court as part of the prosecution.

From 1987 – 2014 he worked in live radio, but has not broadcast since arrest. Over 29 years he has worked closely with many female colleagues, hundreds. Before his arrest he had never received any complaint from any colleague or fan regarding sexually inappropriate behaviour towards them. There had been no complaint for any managers save once about a racist comment.

On 30 September 2014 he was arrested and taken to Charing Cross police station. His houses in London and Sussex were searched. He was interviewed. In interview, the police raised a complaint by C. This the first occasion that he

heard about this complaint. They also raised, a complaint about few months before [2014] relating to R. Three other complaints were put. A (Bromley 1991). This was the first occasion he heard the complaint. Next, B Chessington in 1996. This was this also the first occasion he heard about this complaint. D, in 2007 worked in his show. It was only then in interview that he was aware that there was a sexual complaint.

In September 2015 he was further arrested re X in 1988.

There was always a lot of banter in the studio. These comments could become edgy, sexy. There was a lot of horse-play, pinching, piggy back, tickling etc. He would never have engaged in physical conduct if he had felt that they were not consensual. C never complained to him. "No one complained to me, not from management." He has no recollection of squeezing her breasts. "I don't have any recollection of that incident. I would never have gone behind someone and grabbed her tits. I would have gone behind someone and given them a bear hug." He would not have hugged someone if you thought it was not consensual. C was tactile. People were generally huggy and that would not be an odd thing to do.

He does not recall another incident when, fully clothed, he pushed over C and simulated a sexual act, but there was a lot of Benny Hill acting. "I've seen it with others and walked out and laughed about it. I have no recollection of doing it with C."

As for the incident at the radio station where he is said to have greeted two male colleagues and C and cupped her vagina, he has no recollection. "I can't imagine what that greeting is, I have no idea." There were times I might have touched her bottom in a playful way that you don't think anyone going to be offended. "If you thought someone was going to be uncomfortable then you wouldn't do it."

As for R he remembers she was wearing a royal blue top. She was standing in front of the sink. He had gone there to make a cup of tea. He remembers walking in. He put his hands on her shoulder to guide her out of the way. She

was standing right in front of the sink, making a cup of tea. "I said you look amazing or you are wearing an amazing top. I don't think I would have kissed her on the shoulder. It's not something I go around doing." She didn't make any complaints to him.

He was at the Bromley event. The police produced a photo. He has no recollection of the incident. He was probably opening the event, maybe playing some records; signing autographs; meeting people and taking photos. He wouldn't take along any security. He would meet girl fans who would sometimes ask for a hug and kiss. If it was a kiss, he would normally kiss on the cheek, a social kiss. It was not his practice if someone asked for a kiss, that he would insert his tongue in their mouth. He heard what the witness said but it didn't happen.

As for B, at Chessington he would have kissed thousands of fans in his time. In 1996 on the Capital Road Show, Capital Radio were very serious about security, for both presenters and fans. There were young fans there with their parents. It could easily have been fans there with parents. Minimum 4-6 people security, strong visible security. They were always branded. After presenting had finished, he would go down to the barriers to meet the fans. There would be at least two Showsec security guys just to make sure that he was fine and that the crowd was fine. He has no recollection of meeting B. He would have given her a kiss on the cheek. He would not have inserted his tongue in her mouth.

D was good fun. Magic had small studio: a desk, a door, full length window, a sofa, it was quite compact but sounded great. D didn't speak to him about the incident where he is said to have simulated sex with her and made no complaint to him. No one complained about any physical activity with D. She was ticklish. "However I have never had simulated sex with D. She had tickled me before, in playful way. She had done it to J."

As for X he used to see fans gather outside all the time. He remembers LW. He remembers X. X became a bit obsessive of him. There was a big gang and she was on the edge of it. He doesn't recall inviting X into the record library.

It had bright lighting, it was functioning room, and you needed to see records. There was a librarian, a main librarian and assistants (two main full-time). Records were precious and the library wouldn't be just left open.

X became obsessed, and he saw her outside Capital hundreds of times. He may have kissed her on the cheek. He did not at any stage kiss her by inserting his tongue in her mouth. He has no recollection of being with her in the record library. Intimate touching never happened. Fans found out where he lived but he never invited her around to his flat. He only saw her on one occasion outside the flat, when he invited her in. His best recollection is that this was summer 1989. She came up and told him that she had a boyfriend and that she wouldn't be coming up as much to Capital Radio. There was no intimate contact on that occasion. He has not seen her since.

LW had said that X gave her a telephone number for Capital Radio. That was not the hotline number. That was the published phone-in number.

X was not the only female fan to visit the flat - a couple of others have. She did not go into the bedroom with him, but could have seen the rooms from outside. He doesn't know where her recollection of the item on the bed came from. "I'm not one for teddy bears, not into American football." If she had been in his bedroom, it wouldn't have been with him. It's not true that sexual activity took place in his bedroom. He never drove her away from his flat.

He did have an operation in 1989, because of a problem with his ear. At the end of August he had an operation and had to keep a bandage on. He would have worn it all the time until he was allowed not to. It was in the national news. It's not true, when C said in a letter to her friend: "I helped him put it on." "When I read that letter, she was fantasising, that is what I thought. I wasn't having a thing with her at all." C may have telephoned in between records. The number LW gave in evidence is the general number. "In between the records, we would take calls and take requests. I don't recall inviting her to the library. I had been to the concert and Paul McKenna hadn't. I agree a tour is precisely the kind of thing that happened. I could have easily taken her for a tour. If the library was open she may have been taken into the library. I have

no doubt that she may have gone into the Capital library. Not with me. I have no recollection of taking X into the library with me. I didn't do what she says I did."

In April 2015, he sent an email to LW because the police didn't give him any specifics about the Bromley incident and information was sketchy. He thought LW might have been at the event, and could help.

As for C, there is room for mistake as to whether he put his hands on her breasts. He is serious about that. His hands could have mistakenly gone onto her breasts. He didn't realise that he had done it at the time. Nothing was ever said to him. He does not remember the incident. He never simulated sex with C. It was clearly play-acting. There may have been occasions when he would have simulated sex, but not in a sexual way. In a Benny Hill type of way. It is like being caught in a compromising position. It could well have meant his body come into contact with her bottom. He doesn't recall cupping her with his hand. The whole thing is ridiculous.

He did not ever see the video recording of what he was doing with D, but he does recall tickling. He didn't kiss R on the shoulder. He would not have kissed her in that way. She is not a friend.

KG was one of the fans who, when she was 15 years old, gathered outside capital radio to see the DJs. The behaviour of the fans was predatory and very obsessive. They would know the movements of the DJs and often they would find out their home addresses. They would be pretty "full on" that they had crushes. They used to intimate that they had a connection or relationship but it was really fantasy. "I'm getting this Christmas present and I'm sure he is getting me something." They often pretended to be boyfriend and girlfriend. Neil Fox was always very friendly. She didn't observe him behave inappropriately. He showed her the record library. When she heard the news of this case she contacted Mr Burton, the defendant's solicitor, and offered to give evidence.

JM was another former 15-year-old fan who phoned the solicitor because she was incensed to hear that Dr Fox was charged with behaving inappropriately. She wanted to assist. She was one of those who, aged 15 to 16, used to wait outside the capital radio. She didn't see Neil Fox behave inappropriately.

MMc is a sound engineer with lengthy experience in live radio. He worked closely with Neil Fox and C during the time she was on the show. It was essential for the success of the program that there be fun and energy. C did not really bring anything to the show, either creative-wise or energy-wise. He didn't observe any inappropriate behaviour towards C and he never heard that the line had been crossed. C would join in the laughter but would not reciprocate, in other words would not instigate jokes herself. He gave an example of how in a small studio space you would touch someone's bottom and could say "move on" without it being unacceptable.

JE was brought in as executive producer when D was the assistant producer. He also described the games, silly ideas, office swimming and backwards basketball. Their behaviour might have bordered on being risky, but he didn't deem it inappropriate. There were no concessions for women as everyone was treated the same. D was lively and bubbly and they were "tight". She used colourful language and would say things like "my boobs are feeling heavy today". She never mentioned that Neil Fox had acted inappropriately. He has no recollection about simulating sex and didn't take any video. At the time he had a Blackberry and the police took custody of that Blackberry and a laptop but have returned them to him. He assumes (but doesn't know) that the laptop and phone were examined and said that they were the same ones he had at the time. He has no recollection of a video showing D and NF simulating sex. He denied filming it.

The Law

The law is as agreed by the parties, and is set out or summarized as below.

Indecent assault

The law is agreed, with one item of contention.

- i. The prosecution must prove an intentional touching of the complainant in circumstances of indecency. A defendant must be proved to have intended to commit an assault and to have intended to commit one, the nature of which was in fact indecent [in the sense defined below].
- ii. In the case of an adult it must be proved to have happened without her consent. For these purposes “*consent*” may be defined as set out below in respect of the Act of 2003.
- iii. It must also be proved that the defendant knew that the complainant was not consenting or was reckless as to whether she consented or not. He would be reckless if he did not care one way or the other.
- iv. In the case of a child under 16 an intentional touching is not rendered lawful by the consent of the child [**Section 14(2)**]. Should the issue arise however, if a defendant may genuinely have believed a child complainant *who in fact consented*, to be at least 16 years old then he commits no offence [**R v K** 2002 AC 462].
- v. An assault is “*indecent*” if it would be so considered by a right minded person; was the conduct complained of so offensive to current standards of modesty and privacy as to be regarded as indecent?
- vi. The first question is whether the nature of the conduct, devoid of any explanation, is plainly indecent. If so this element of the offence is proved [irrespective of the motive for conduct; it is not necessary in such circumstances to prove it was done for the purposes of sexual gratification].
 - a. If however the conduct is merely “*capable*” of being indecent then the court may have regard to factors extraneous to the nature of the acts themselves such as the relationship, if any, between the parties and the motive of the defendant for doing what he did. **R v Court** 1989 AC 28.

The matter of contention is whether “current” means the standards applied today or then. Mr Price says it must be the standards of today, “as otherwise the task of the jury would sometimes be impossible”. We disagree. If what Mr Fox did was not a criminal offence at the time it occurred then it cannot become so later because standards of indecency have changed.

Sexual assault

Sexual assault is touching where the touching is sexual in character. Whether touching is sexual is set out in s78 Sexual Offences Act 2003, and we have been referred to the correct approach to s78(b) as set out by the Court of Appeal in *H* [2005] 2 AER 859. The prosecution must establish that the complainant did not consent to the touching.

The definition as agreed by the parties, and accepted by us, is as follows:

- i. The prosecution must prove an intentional touching of the complainant and that the said touching is *sexual*.
- ii. It must be proved that the complainant did not consent to the said touching. “*A person consents if he/she agrees by choice and has the freedom and capacity to make that choice*”: **Section 74**.
- iii. It must be proved that the defendant did not reasonably believe that the complainant was consenting. Whether a belief is reasonable is to be determined “*having regard to all of the circumstances, including any steps the defendant has taken to ascertain whether the complainant consents*”: **Section 3(2)**.
- iv. An act 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*. **Section 78**.

Separate consideration and cross admissibility

Subject to what appears below, the evidence in respect of each charge requires separate consideration and each verdict will ultimately depend upon the court being sure of the truth of the particular facts relating to the particular charge under consideration.

However, the evidence of one complaint [or complaints] may be admissible to support the case on another [or others] if, in relation to the complaint under consideration, that evidence is “*relevant to an important matter in issue*” between the prosecution and the defendant: **Section 101(1)(d) CJA 2003**.

In deciding that question the court should have particular regard to the time which may have elapsed between any of the alleged incidents then under consideration: **Section 101(3) CJA 2003**.

Two questions arise in considering this question of relevance:

- i. When first made, was the complaint in respect of the conduct the subject of the charge, independently made? [*That is to say is there any real possibility that the complainant in question at the time of making that first complaint knew of the fact of the making of any of the other complaints and if she did, of any of the detail of any of those complaints?*]
- ii. If it was independently made is any similarity which arises between the complaints sufficiently close as to be inexplicable on the basis of coincidence.

Evidence of sexual misconduct not the subject of a charge.

Such evidence is admissible under **Section 101(1)(d) CJA 2003** if it is relevant to an important matter in issue between the prosecution and the defence. Those matters in issue include whether the defendant has a propensity to commit offences of the kind with which he is charged [**Section 103(1)(a)**].

Alternatively, it may be admissible as evidence of the background circumstances or context in which an offence is alleged to have been committed [**Section 101(1)(b) and Section 102**].

Evidence of the fact and the terms of a previous complaint are admissible:

- i. As evidence of consistency supporting the truth of the complaint or to demonstrate inconsistency undermining it. In the former case consistency does not provide *independent* support for the truth of a complaint because the statement originates with the complainant.
- ii. As evidence of the truth of its content where the complainant has confirmed in her evidence that to the best of her belief she made the statement and it is true.
- iii. To rebut a suggestion of recent invention.

Unwarranted assumptions

The court should not judge the evidence of a complainant by reference to unwarranted assumptions about how a truthful complainant should be expected to behave or to present. There is no single true reaction to a sexual/indecent assault.

The court is entitled to consider why, if it be the case, a delay occurred in the making of a complaint and whether that fact may undermine its truth. But it should not do so starting from the premise that a true complaint will be made promptly and it should consider any explanation a complainant may have given on the matter. A delayed complaint is not necessarily an untrue complaint. A prompt one is not necessarily true.

Delay

This direction applies to any charge where many years have elapsed since the offence which the defendant is alleged to have committed took place. A number of questions arise:

- Why did it take so long for the complainant in question to come forward to the police?
- Does this affect the court's assessment of them as witnesses?
- Is the delay to be explained on the basis that the complaints are untrue, that they are recent inventions?
- Or are there other explanations which account for the delay?
- What is the effect of the passage of time on the memories of witnesses?
- Does that affect their reliability on the matters in issue? Or is that victims of sexual abuse do not forget the fact of it, though they may forget or misremember the fine detail of the events in question.

Prejudice to the defendant caused by delay

The court must direct itself as to the difficulty which a defendant faces when called upon to answer allegations of misconduct occurring many years ago. In such circumstances, a defendant may be able to say no more than "*I did not do this*" or "*I would not have done this*" and this can appear superficially unconvincing. The court should take account of any specific examples of prejudice brought about by delay cited on behalf of the defendant in deciding

whether in respect of any charge to which this direction applies the prosecution has discharged the burden of proof.

Consent

The three complainants said to be under 16 at the time of the offences cannot consent. Otherwise consent is dealt with in the law on indecent assault or sexual touching, above.

Our approach to the evidence

We start with the presumption of innocence. The crown must prove its case so that we are sure. We look at each charge individually and if there is a reasonable doubt about guilt then we must return a verdict of not guilty on that charge.

We have considered the question of cross-admissibility, as set out above. On the one hand, it is overwhelmingly unlikely that all complainants have made up or misremembered the allegations. On the other hand, the question of coincidence was of little relevance in deciding whether any one of the allegations may have been untrue, bearing in mind the nature of the acts, the timing of them, in some cases the lack of independence, and the nature of the police investigation

Mr Fox is of good character. He has no criminal convictions. The employment records appear to show one complaint and that made reference to racist and sexist comments, but not behaviour. There is also an email sent by C about one of her allegations. There is a considerable body of evidence from former colleagues who worked with Mr Fox throughout the 27 years he was in the broadcasting business. Many but not all of those were women, and several were in positions of authority. Moreover, two fans from the relevant period came forward to support him. There is therefore a weight of evidence that over a quarter of a century no complaints were made (again with the exception mentioned above, and that was not brought to the attention of Mr Fox) about his sexual behaviour, and most of those who worked with him believed he behaved appropriately in generating fun for his show. Good character is

relevant both to his credibility and to the likelihood that he would commit one or more of the offences he faces here.

However, in one case we are satisfied he has lied to us. We are sure he must remember kissing R. This damages his credibility. Nevertheless, because of the historic nature of the other allegations, it does not substantially damage his evidence that he has no recollection of the incident. At this distance in time that is perfectly plausible, especially if he is not guilty. Also, there is some evidence that the atmosphere may have changed latterly, possibly because of a change in what is considered acceptable in an office, possibly because of an improving culture of not accepting inappropriate behaviour, and possibly for other reasons. Moreover, many of the women who spoke to the credit of Mr Fox impressed us as strong-minded and unlikely targets for sexual bullying. Therefore, despite the many fulsome testimonials, we do not conclude from that evidence alone that the offences complained of would not have occurred. One possibility, and it is only one, is that some young women were more vulnerable than others, because of their interest in, or professional relationship with, the defendant. We are also satisfied, having examined the facts, that his behaviour on some occasions crossed the line of acceptable behaviour. However, behaving unacceptably and reprehensively is not the same as behaving in a criminal manner.

We bring our collective experiences of life and as fact finders in criminal cases. We are aware that memory fades with time and can distort with time. The time that has passed, the nature of the event, and whether the event has been kept alive by retelling are all relevant. We bear in mind the effects of delay, and the prejudice caused to the defendant by delay. This is a central feature in this case. The allegations (bar one) go back many years, in one case over twenty-seven years. It does not mean that Mr Fox cannot have a fair trial, and Mr Caplan at no stage made that assertion. However, a fair trial can only take place when the tribunal takes proper account of the consequences of delay.

An unusual feature of the case is that almost all the incidents took place in the presence of others who could have been expected to see what happened, and were in a position to intervene, report or at least complain at the time. In fact,

only one witness to the event has come forward to say she saw it. Others who were present do not claim to have witnessed anything untoward. Some witnesses speak of having seen a video or photograph of one of the incidents complained about.

Another notable feature as far as the charged allegations is concerned, is that there is little or no clear evidence of sexual gratification. Such evidence as we have heard on the point suggest that the behaviour was not for sexual gratification and C, in particular, identifies bullying as the motive.

We are also aware that no tribunal can claim to be able to assess with certainty from demeanour alone whether a witness is truthful. All evidence needs to be considered as a whole and in context. This exercise is itself made more difficult by the passage of time.

A number of witnesses have reminded us that what is and is not generally considered to be acceptable sexual conduct can vary over time. We accept that but do also believe that there is some behaviour that is always unacceptable.

We are aware that victims of sexual assault do not necessarily report the offences immediately or at all. There are a number of reasons for this. Self-blame is not uncommon, even when unjustified.

We have considered each allegation by starting with the witness's account, then considered whether there is corroboration (bearing in mind that corroboration is not required legally), recent complaint (again not a legal requirement) and then whether there are any doubts. Where appropriate we have considered whether the behaviour of which we are sure amounts to indecent assault or sexual touching, as the case may be.

Findings of fact and verdicts

Charge 1

On Saturday 6th July 1991 at Norman Park, Bromley Common BR2 9EF indecently assaulted A, a girl under the age of 16 years. This relates to the allegation that Mr Fox kissed a 15-year old girl by inserting his tongue in her mouth and putting his hand up her skirt.

A was a credible witness. We believe her. There was no reason for making up this incident. However, that is not the question we must ask. The question for us is whether we are sure, that is satisfied beyond a reasonable doubt, that she was indecently assaulted.

The incident happened over 24 years ago. A and Mr Fox did meet and there is a photograph to prove it. The encounter was brief and the kiss itself is said to have lasted for a few seconds. A was with friends. One of those friends, L, noticed the defendant take an interest in A, but did not witness any assault. You would expect a fellow fan, who had herself asked for a kiss, to notice if there was anything untoward in the kiss given to A. Indeed, A said her friends saw it happen. We heard from one of those friends, L. You would have expected her to be looking, and at the least to notice a hand go up her skirt. So much time has gone by that it is possible that L saw it, and has forgotten. It is possible that she did not see it because she was looking the other way. It is simply impossible, after all this time, for other witnesses to remember exactly where they were and where they were looking at the time of the case. Nevertheless, the possibility remains that L saw her friend being kissed, and didn't notice anything untoward. L's recollection, and this coincides with what A told us, is that she did not complain at the time. L remembers that A was excited to meet Mr Fox and all were buoyed by the experience. It was quite a fun experience. Again we remind ourselves that people, particularly young people, react to these incidents in many different ways. Some do try to hide their distress from their friends, and some do not report it immediately. Nevertheless, it is a factor to take into account.

A did not report this matter to the police until 23 years after the event, and then as a result of publicity following other complaints. There is no contemporaneous record of it happening. She does not appear to have written an account for herself. She did tell her mother, but unfortunately her mother is no longer alive to recount what was said. She did tell her husband in general terms, some years afterwards.

All this is explainable. It is not unusual, and does not cause us to disbelieve A. However, it raises a doubt about the nature and circumstances of the kiss. A clear view of the context is missing. It is hard, if not impossible, for a bench to be sure of an incident, and the context of that incident, that occurred almost a quarter of a century ago, and lasted seconds. Here we do not have the benefit of a contemporary complaint, written account, or other witnesses who saw it, although other people were there. All in all, we cannot be satisfied that whatever happened amounted to a criminal offence, indecent assault, in 1991. We must make allowance for the difficulties facing a defendant in answering an allegation that goes back so many years.

In all the circumstances we do find some doubt and we must give the benefit of that doubt and find Neil Fox not guilty of this offence.

Charge 2

On Friday 5th April 1996 at Chessington World of Adventures, Chessington KT9 2NE indecently assaulted B, a girl under the age of 16. This relates to the allegation that Mr Fox kissed another 15-year old girl, B, by inserting his tongue in her mouth.

This was five years later, but still a very long time ago – almost 20 years ago. The comments that apply to the difficulties of assessing a historic allegation, when the defendant (particularly if innocent) cannot reasonably be expected to remember the event, also apply in this case.

Here again we found the witness to be intelligent, credible, and without any motive for lying. We believe her. We are satisfied that she is telling the truth as she remembers it. However, we are conscious of the difficulty for a bench to assess with certainty from the demeanour of a witness about a historic event, and also about the danger of misremembering, which happens to everybody. One difficulty for the defendant and the court when a witness misremembers something many years ago is that they are sure of the truth of their evidence, and so are unlikely to accept the possibility of mistake. We accept that being kissed by Neil Fox would be a major incident for a teenage girl, and one that she would probably remember.

We are satisfied that Neil Fox kissed B. She was at the outdoor event at Chessington, and other evidence places the defendant there. However, nobody else has come forward to corroborate exactly what happened. B's twin sister and friend were not there at the time. There were other people, including adults, at the barrier who could reasonably be expected to have seen what happened. On the account as given to us, other people were waiting for Mr Fox to speak to them, and it is reasonable to assume that they were looking in his direction and would have noticed what had happened. If Mr Fox did commit a criminal offence in front of these people he was taking a risk, as he could not have known (as was pointed out to us) whether one of those nearby was a parent of B. It is entirely understandable – indeed almost inevitable- after this period of time that none of them has come forward. We have evidence that security officers would have been nearby, but again after this passage of time it would difficult or impossible to trace them and in any event it would not be reasonable for them to be expected to remember the incident, particularly if nothing remarkable happened. The evidence of bystanders may have harmed the defendant's case, but if he is not guilty they may have helped. This is a difficulty in historic cases.

This witness did not report the incident at the time, and first told her twin sister some years later. She told her friends five or six years later, and did not report the matter to the police until news of Mr Fox's arrest was published.

None of this is surprising, and it does not shake our belief that B came to court to tell us the truth. However, there is a doubt about the nature and circumstances and context of the act, primarily because of the passage of time and lack of corroboration.

It is perhaps worth mentioning that despite the similarities between these two allegations, A and B, we have not found in either case that a small doubt is converted, because of the other allegation, into a decision where we are satisfied beyond all reasonable doubt.

We find Neil Fox not guilty of this offence.

Charge 3

Between 31.01.2003 and 31.12.2003 at Capital Radio, Leicester Square, London WC2H 7LA indecently assaulted C, a woman aged 16 or over. This is the allegation that Mr Fox put his hands on C's breasts.

Mr Fox does not remember grabbing C's breasts. We are sure he did. He came back into the studio after leaving with a music group, returned, found her with her back to him, and grabbed her from behind with his hands on her breasts, over her clothing. This was seen by her colleague S. C and S discussed it at Yates's shortly afterwards. It was painful and she showed distress from the start. There is a broadly contemporaneous email setting out what happened. C complained about this incident in particular to a number of people, several of whom have given evidence in person or in writing in this case. However, we accept that it was never raised with Mr Fox himself until after his arrest. He is therefore being asked for the first time to remember an incident 11 or 12 years ago.

In our view it is never acceptable to grab a woman's breasts in the workplace. This is especially the case when there is, as there was in this instance, an imbalance of power between the man and the woman. He was a famous DJ. She was young and understandably anxious to forward her career and not to lose the exciting opportunity of working on a high profile show.

Neither this, nor any of the incidents complained about by C were interpreted by her as sexual. There was no apparent sexual gratification. The incident lasted seconds.

The witness to this event, S, described what happened to the court. She was asked whether it could be a hug. She said she had not interpreted it in that way, but it could have been a hug. Both hands were on C's breasts, and there was no apology. We think it is far more likely than not that what happened was not a hug. It was a deliberate squeezing of the breasts. Nothing was said and the motivation is unclear. If it was intended to be playful, then it was a joke in poor taste that crossed the line. If it was bullying, as interpreted by C, then that is even worse.

This allegation has caused us anxious consideration. We are sure it happened. We are sure it was completely unacceptable. We understand why C was distressed at the time and has been distressed subsequently on recollecting the incident. She thinks she was being bullied and did not receive adequate support from her employer. However, after all this time and for the reasons given above including the evidence from S that it might have been a hug, we cannot be sure that in context this amounted to a criminal offence, an indecent assault.

We find Neil Fox not guilty of this offence.

Charge 4

Between 31.01.2003 and 31.12.2003 at Capital Radio, Leicester Square, London WC2H 7LA indecently assaulted C, a woman aged 16 or over. This relates to the allegation that Mr Fox grabbed C between the legs over clothing.

C was throughout a plausible and credible witness. We believed her. She made the first complaint, the subject of charge 3, at the time. She gave a clear and graphic account of other incidents that occurred while she was in the studio. However, her evidence suffers, as does that of all the other complainants in this case, from the problems that surround evidence given about events that often last for a short duration, so long ago. In this case we are talking about at least 12 years ago. There was no recorded complaint at the time. Unlike the breasts incident, which was reported to a good number of people, nothing seems to have been said directly about this incident. As a result, no complaint was brought to the attention of the management, even during the discussions towards the end of her employment, nothing was written down at the time and nothing was recorded until the police interviewed C in 2014.

The allegation, a cupping between the legs as a greeting, is odd. It was very brief. There were other people in the room but we have not heard from them that they noticed this alleged assault. There are reasons for that. Perhaps they didn't see it, although C says they did. Perhaps they genuinely do not recall it. Just possibly they do recall it but to not want to give evidence that it occurred. However we cannot exclude the possibility, after all the time that has passed,

that the incident has not been remembered accurately and in context so that we can make determinations on fact of which we are sure, and then a determination as to whether those facts amount to a criminal offence of indecent assault.

We find Neil Fox not guilty of this offence.

Charge 5

Between 31.01.2003 and 31.12.2003 at Capital Radio, Leicester Square, London WC2H 7LA indecently assaulted C, a woman aged 16 or over. This is the allegation that Mr Fox simulated sex with C.

All the comments we have made about the difficulties of assessing the truth of historic sex accusations apply here. There is strong evidence, that we accept, that the process of creating energy and fun in the studio involved what might be described as adolescent behaviour, “Benny Hill” behaviour or just odd as far as outsiders are concerned. For most of those working in the studio at the relevant time it was accepted as important to create energy and fun in this work, so that an atmosphere of good humour could be conveyed to the audience. This incident, as we understand it, occurred in the studio during a live broadcast. C never thought that Mr Fox wanted to have sex with her, and he did not have an erection. There was some evidence that this type of behaviour did occur as a joke to persuade passers-by that something untoward was happening. It was described as playacting. It was not reported at the time or until many years later.

Something similar happened to D. That is relevant in our consideration.

We are satisfied that the simulated sex as described by C did indeed occur. Because of the passage of time we cannot be sure of the context. By any standards it was coarse and unacceptable. A line was crossed. C was entitled to be distressed and to feel, as she undoubtedly did feel, that she was being belittled and humiliated.

However, that is not the question we must resolve. We must be sure that what occurred, in context, was an indecent assault within the terms of the statute as

set out above. Because it is not possible to be sure exactly what happened, and more particularly exactly in what context, we cannot be sure that this amounted to a criminal offence.

We find Neil Fox not guilty of this offence.

Charge 6

Between 31.01.2003 and 31.12.2003 at Capital Radio, Leicester Square, London WC2H 7LA indecently assaulted C, a woman aged 16 or over. This is the allegation that Mr Fox touched C on the bottom on numerous occasions, of which this is a sample count.

This allegation caused us less difficulty than most of the others. The allegations were not sufficiently specific, as to what happened, when or where, or in what context, for us to be sure that they amounted to a criminal offence. One witness, Mr McM gave a plausible situation in which it might be acceptable, in a small studio, for one colleague to touch another on the bottom.

The only proper verdict open to us is one of not guilty.

Charge 7

Between 01.01.2007 and 30.11.2007 at 4, Winsley Street, London W1W 8HF intentionally touched a woman aged 16 or over and that touching was sexual when she did not consent and you did not reasonably believe that she was consenting. This is the allegation that Mr Fox manoeuvred RD over to a sofa, and simulated sex with her.

This was more recent, although our note of the evidence suggested that it occurred in 2006, so nine years ago. Here there is, or at least was, a contemporaneous record. A photo or video was taken. This was seen by a number of people and their recollection has been recorded in recent statements. There can be no doubt in our mind that this incident occurred. It was unacceptable. There was an imbalance in the relationship. No member of staff should be expected to have to tolerate an act of simulating sexual intercourse. This witness was understandably upset and it is a matter of some surprise that it does not appear to have been recorded by the management, at least at the time when redundancy negotiations were being conducted, and

other allegations were being considered and advanced on D's behalf. It appears that none of those who saw the photograph or video thought of reporting it, either as workplace bullying or to the police as a criminal offence. The person who C says was present, and she believes took the photograph or video, gave evidence and does not corroborate her account. The defendant was not asked to recall it until eight or nine years after the event.

This allegation took place after the introduction of the Sexual Offences Act 2003. Therefore, the test set out above for sexual touching is in play.

- i. The prosecution must prove an intentional touching of the complainant and that the said touching is *sexual*.
- ii. It must be proved that the complainant did not consent to the said touching "*A person consents if he/she agrees by choice and has the freedom and capacity to make that choice*": **Section 74**.
- iii. It must be proved that the defendant did not reasonably believe that the complainant was consenting. Whether a belief is reasonable is to be determined "*having regard to all of the circumstances, including any steps the defendant has taken to ascertain whether the complainant consents*": **Section 3(2)**.
- iv. An act 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*. **Section 78**.

We are satisfied that this was an intentional touching and that the complainant did not consent to the touching. Mr Fox took no steps to ensure that she consented. However, once again it is impossible after this passage of time to consider the context of what happened. Without knowing the whole context, it is unlikely, but not impossible, that the defendant believed the complainant was consenting. On his account, tickling and simulated sexual intercourse did take place and others appeared to consent and she had joined in the tickling. As we say, this is unlikely, but not impossible. As a result, we cannot be sure that the act was sexual as defined in point iv above. Certainly it may be sexual but because of all the circumstances we have heard in this case,

and because of the passage of time, we cannot be sure that from the circumstances or the purpose of Mr Fox, the act was sexual.

We find him not guilty of this offence.

Charge 8

Between 01.03.2014 and 01.08.2014 at 4, Winsley Street, London W1W 8HF intentionally touched a woman aged 16 or over and that touching was sexual when she did not consent and you did not reasonably believe that she was consenting. This is the allegation that Mr Fox kissed R on the shoulder in the kitchen.

This event happened comparatively recently (although the witness suggested in evidence that it occurred in 2013 whereas the charge refers to 2014). Here it is clear that Mr Fox has a memory of the incident. He remembers the top that R was wearing. He remembers being in the kitchen and touching her to, he says, move her out of the way. R told colleagues what had happened immediately after the incident, and they confirmed this to the court. Mr Fox was unconvincing in cross examination, and we are satisfied that it was demonstrated that he was not telling the truth when he said he did not remember kissing R.

The only question for us is whether we are sure this was sexual touching, so as to amount to a criminal offence under the Sexual Offences Act. We are not so persuaded. R herself said it was “not so serious” and clearly found the anticipated experience of giving evidence worse than the incident itself. She had not wanted to pursue the matter and was persuaded to give evidence. Although her own view on whether she was the subject of a sexual assault is not determinative, nevertheless we place considerable weight on her own assessment, and her immediate reaction, as described by a witness. This was an unpleasant incident for her but it was not a criminal offence, and her judgement in not wanting the matter to come to court is one we support and agree with.

Our verdict is not guilty.

Charge 9

On 09.07.1988 at Euston indecently assaulted X, a girl under the age of 16 years. See charge 10 below.

Charge 10

Charge 9 and charge 10 are the allegations that Mr Fox indecently assaulted X, in the library at the radio station, when she was 15. One allegation is that he placed her hand on his erect penis. The other allegation is that he put his finger in her the vagina.

These allegations have also caused us anxious deliberations. We believe X. She was a credible witness. In the time in which she was giving evidence we saw no sign that she was a fantasist, as was being suggested by the defence. There was some supporting circumstantial evidence. She told a friend shortly afterwards. There is no doubt that she met the defendant on many occasions and visited his flat after the age of 16. It is accepted that she may well have been in the library at some time, although the defendant says this would have been on a tour of the radio station. Others were given the same tour. The approximate date can be verified by her memory of a concert that the defendant also remembers, and it appears that he accepts he may have discussed with another disc jockey, Paul McKenna, at the time and in the presence of X.

There is no doubt that if the events in the library occurred as she describes them, then this would have been an indecent assault. Consent in fact (which clearly there was) does not amount to consent in law because of her age. The age of consent is there to protect children. There can be no blame or stigma to a child who engages in sexual activity with an adult.

On her own account this witness adored the defendant at the time. She wrote her name as X Fox, which was an obvious adolescent crush. She enjoyed their relationship at the time. She did not regret it afterwards and had happy memories. This only changed when news of his arrest was published. We were encouraged by the defence to read again a letter she sent to a friend. This did perhaps imply a closer relationship with Mr Fox than actually occurred. However, there are many explanations for that and the letter is at best ambiguous.

This incident in the library occurred over 27 years ago. It was on X's account brief. Mr Fox has no recollection of the incident, which he would not if it did not occur.

There was no complaint at the time. Indeed, X did not choose to contact the police. They contacted her after being given information by somebody else following the discussions at Butlin's and later on Facebook. There was no clear contemporaneous written account or direct written allusion to the events, as the witness appears to have kept a scrapbook but not a written account or diary, as some adolescent girls at that time might have done.

These two related charges indicate clearly the difficulty for a defendant in defending an allegation from 27 years ago. She is convincing and we believe her. For her the event would have been very memorable. There is some circumstantial corroborating evidence. However, there is no clear and direct corroborating evidence. The classic ways of testing an account were not available to the defence in this case. For example, we heard evidence that the library is comparatively small and there would always have been a librarian on duty when the library was open. This makes sense, as the record collection at that time would have been central to the business of the radio station. Had the allegations being made at or at least close to the time, it would have been possible to check with the librarians as to whether they were on duty at the relevant time. There may well have been written records showing who was on duty and when. The other named disc jockey might be expected to have a memory of the conversation. Depending on when the alleged offence was said to have occurred, the defendant might have been able to provide an alibi. Moreover, the normal methods of testing an account are not available here, because it is perfectly understandable that X has no clear memory of surrounding circumstances. She does not know whether her friend LS was at the radio station at the time (although she thinks she was). She doesn't remember any conversation before or afterwards. She remembers the library was dark, whereas other witnesses say it was well lit. It is not clear where or exactly when the conversation with the other disc jockey took place. It is not obvious how the encounter ended. On her account he did not ejaculate. There is a suggestion from another witness, LS, that X might have referred to a

banging of the door. We want to emphasize that there is no criticism of X for not remembering any of the surrounding details. There is no criticism of her for not reporting the incident for 27 years or until the police contacted her. There is and can be no criticism that there was no contemporaneous account. All these difficulties for the defence (and ultimately for the court in reaching a decision of which we are sure) arise from the passage of time. Moreover, the defence cannot make as much of discrepancies as they would with a recent allegation. For example, LS remembers being told there was oral sex, while X says there was not. There is the confusion as to what was meant by sexual relations. LS remembers being told about one visit to Mr Fox's flat, while X refers to six or seven. These are all reasonable discrepancies after so many years. The defence were deprived by time of showing discrepancies that cast doubt on the account, if there were any.

We are asked to reach a decision about which we are sure on our assessment of a witness in an ABE interview and while giving evidence over perhaps an hour or two. The allegation in its central detail is uncorroborated. There is no contemporaneous or recent account. Memories of what was told to LS, and where and when, are necessarily hazy or inconsistent. The defence has been deprived by the passage of time from challenging the account in the way it could be challenged had it happened more recently.

We emphasize that we believe X. We do not think she is lying or fantasizing. We are aware that for a variety of reasons events a long time ago can be misremembered. In these circumstances it is an invidious task for a court to say it is sure that what is alleged did indeed happen. We have a small doubt and that must be exercised in favour of the defendant.

Our verdict is not guilty to both charges.

Summary

We heard evidence about 10 allegations from six women. We believed each of the complainants. The question we must ask is whether we are sure of the

facts alleged, sure of the context in which they occurred, and sure that they amount to criminal offences.

For a tribunal of fact, the most difficult aspect of this case was that most of the allegations were historic. They are said to have occurred at intervals over quarter of a century. While the events were undoubtedly memorable for the complainants, it is appropriate for the reasons outlined above to approach accounts of what happened in a brief period of time, so long ago, with caution.

We are also satisfied that during the relevant period what is and what is not indecent, what is unacceptable, as well as attitudes to reporting unacceptable behaviour, have changed though we believe some forms of behaviour described were as indecent then as they are now.

In addition to the cross admissibility of evidence on the ten charges of which we heard, there was other evidence of reprehensible or other behaviour on which we were invited to rely. We recognize the argument that it is highly unlikely that each of these witnesses has mistaken the context of the event that took place. However, that provided only limited assistance when we looked at each charge individually.

In the case of the most recent allegation, we are sure it happened but are not sure that it amounts to the criminal offence of sexual touching. In the other cases, we either cannot be sure the incident occurred as described, or we cannot be sure that in the context it was a criminal offence, namely indecent assault, or in one case sexual touching.

This is not to go back on our original assessment that we believed the witnesses and accept that they had attended to tell us the truth as they remember it. Nor should this verdict be taken as a criticism of the decision to bring this prosecution. It was a strong case and one that needed to be brought to the court for determination.

The verdict is not guilty on all charges.

14 December 2015