



In the matter of Section 22 of the Chiropractors Act 1994 (“the Act”)

and

The General Chiropractic Council (Professional Conduct Committee) Rules 2000 (“the Rules”)

and

The consideration of an allegation by the Professional Conduct Committee

**NOTICE OF FINDING BY
THE PROFESSIONAL CONDUCT COMMITTEE
OF THE GENERAL CHIROPRACTIC COUNCIL**

Name of Respondent: **Christopher Foley**
Address of Respondent: **Cornwall Neighbourhoods For Change
Carnellis Road
St. Ives
Cornwall
TR26 1BN**
Registration Number of Respondent: **00112**

On 25 January 2017 the Professional Conduct Committee (“the Committee”) of the General Chiropractic Council met to consider the following allegation against you, referred to it by the Investigating Committee in accordance with Section 20(12)(b)(ii) of the Chiropractors Act 1994 (“the Act”):

THE ALLEGATION:

That being a registered chiropractor you have been convicted in the United Kingdom of a criminal offence

PARTICULARS OF THE ALLEGATION

1. That you, a registered chiropractor, were convicted of a criminal offence in that:
 - a. On 18 May 2016 at the Crown Court at Maidstone you pleaded guilty to and were convicted on indictment of the following matters:
 - i. 11 counts of recording a person doing a private act;
 - ii. 1 count of possession of extreme pornographic material;
 - iii. 5 counts of sexual assault on a female.
 - b. On 14 July 2015 you were sentenced in relation to the above matters to:
 - i. A total of 4 years 7 months imprisonment;
 - ii. A Sexual Harm Prevention Order for 10 years which prevents you from practising as a chiropractor.

AMENDED ALLEGATION

That being a registered chiropractor you have been convicted in the United Kingdom of a criminal offence

1. That you, a registered chiropractor, were convicted of a criminal offence in that:
 - a. On 18 May 2016 at the Crown Court at Maidstone you pleaded guilty to and were convicted on indictment of the following matters:
 - i. 11 counts of recording a person doing a private act;
 - ii. ~~1 count of possession of extreme pornographic material;~~
 - iii. ii. 5 counts of sexual assault on a female.
 - b. On 27th May 2016 at the Crown Court at Maidstone you pleaded guilty to and were convicted on indictment of the following matter:
 - i. 1 count of possession of extreme pornographic material.

b.c. On 14 July ~~2015~~ 2016 you were sentenced in relation to the above matters to a total of 4 years 7 6 months imprisonment and made subject to a Sexual Harm Prevention Order for 10 years which prevents you from practising as a chiropractor.

DECISION

INTRODUCTION, PRELIMINARY MATTERS AND BACKGROUND

1. The Professional Conduct Committee (“the Committee”) convened to consider an Allegation against Mr Foley. Miss Lindsey Rose appeared on behalf of the General Chiropractic Council (“the GCC”). Mr Foley did not appear and was not represented.
2. The papers before the Committee were in one bundle, numbered 1 to 145, together with an additional page showing that Mr Foley is currently on the non-practising part of the Register.

Service and application to proceed in absence

3. In light of the absence of Mr Foley, the Committee first considered whether the appropriate documents had been served in accordance with the General Chiropractic Council (Professional Conduct Committee) Rules 2000 (“the Rules”). The Committee was provided with a service bundle numbered 1 to 28. Service was dealt with in private to protect the interests of Mr Foley because some of the documentation made reference to his prison address. The Committee accepted the advice of the Legal Assessor.
4. Included within the bundle was the Notice of Hearing dated 19 December 2016, thereby satisfying the 21 day notice requirement and addressed to Mr Foley at his current address as known to the GCC. Proof of postage was provided by way of a Royal Mail Track and Trace indicating that the Notice was delivered on 20 December 2016. The Committee was therefore satisfied that the GCC had complied with the Rules on service.
5. Having determined that the appropriate documents had been served in accordance with the Rules, the Committee then considered whether to proceed in Mr Foley’s absence. The Committee bore in mind that although it had a discretion to proceed in the absence of Mr Foley, it should exercise that discretion with the utmost care and caution, particularly because Mr Foley was unrepresented.

6. Miss Rose informed the Committee that Mr Foley was currently serving a prison sentence and had signed a document stating, *“I would like to waive my right to attend the above hearing and my right to attend at any sanction stage.”*
7. In light of that document, the Committee decided that Mr Foley had waived his right to attend and had voluntarily absented himself. Mr Foley had also said in a letter dated 22 September 2016 that he would not be sending a legal representative to the proceedings. The Committee did not believe that any adjournment would result in Mr Foley attending and therefore nothing would be gained by adjourning the hearing. The allegations faced by Mr Foley are serious and the Committee considered that it was in the public interest, and in his own interest, that the matter be dealt with expeditiously. Given his indication that he had waived his right to attend and would not be legally represented, the Committee did not believe there was any unfairness to Mr Foley and concluded that the matter should proceed today, notwithstanding his absence.

Application to amend the Particulars of the Allegation

8. Miss Rose made an application to amend the Particulars of the Allegation. The reason for the application was that the original certificate of conviction, which was dated 29/07/16, contained errors. It recorded the date of sentence as 14/07/2015 when it should have been 14/07/2016 and it also stated that Mr Foley pleaded guilty to all matters on 18/05/2016, when he in fact pleaded guilty to the charge of possession of extreme pornography on 27/05/2016. The original allegation drafted by the Investigating Committee also stated that he was sentenced to a period of 4 years 7 months imprisonment, when it was in fact 4 years 6 months. Miss Rose indicated that Mr Foley had been notified by the GCC of the proposed amendments and he had responded saying that he did not object to them. She also applied to amend 1(b) to reflect the fact that a Sexual Harm Prevention Order is not in fact part of a sentence but rather an ancillary order. Although Mr Foley had not been informed of this change, it was not one of substance but rather one of form and was a matter of public record.
9. The Committee accepted the advice of the Legal Assessor that it had the power to allow amendments provided they could be made without injustice. The Committee was satisfied that the proposed amendments could be made without injustice in that they reflected the actual dates when events occurred and the true length and form of sentence. The Committee

noted that Mr Foley had not raised any objections to the proposed amendments that he was aware of and that the one he did not know about was only to form not substance. Accordingly, the Committee allowed the amendments requested.

Background and Nature of the Allegation

10. Mr Foley, a 67 year old man, had been in private practice as a chiropractor since 1988 at his own clinic in Pembury, near Tunbridge Wells in Kent. As a result of receiving a complaint from a client of the Registrant that he had been covertly filming her during treatment, police attended his home address on 13 November 2013 and arrested him on suspicion of voyeurism. At the time of his arrest Mr Foley said, “*Would it help if I admitted the offence?*” His home address and clinic were searched and a number of items seized including computers and a digital camera, which were submitted for forensic analysis. Downloads from these items showed that Mr Foley had been videoing his clients over a period of time and also showed evidence of a potential sexual assault, as well as images of extreme pornography.
11. Mr Foley was interviewed about the alleged offences and he admitted taking short videos of patients in his clinic. He explained how he would place the camera on a shelf that looked down the length of the couch and in a similar location above the computer station. However, he said they were to assist him with understanding the way he worked and not done for any sexual purpose. He thought the majority of clients he filmed would be females under the age of 30. He accepted that he had not had the clients’ permission to film them and that he had been doing it for a couple of years. He said he was ashamed of what he had done and very sorry.
12. After Mr Foley’s arrest, a female client of his reported that he had sexually assaulted her during treatment. This was whilst she worked for him as a receptionist and received free treatment. During the course of this he asked her to remove her bra and touched her over the chest area. She believed that at this point he lent against her with an erection. She believed that he had touched her inappropriately on her breasts and under her thighs on her pants.
13. Two further females then contacted the police and stated that during treatment they had been touched inappropriately. One of them was only 17 at the time and claimed that whilst receiving treatment between February and July 2013, Mr Foley touched her breasts and

vaginal area. She said that he stated at the start of one of the treatments, *“this was going to be the start of a very close relationship.”*

14. A further female complained to the police of sexual assault having seen reports in the local media. She explained to Mr Foley that she had problems with her pelvis after giving birth and that Mr Foley, *“put his hands under her knickers to the pubic area. He gave no warning of this.”*
15. Mr Foley returned to the police station on 10 March 2014 to be further interviewed following the forensic examination of his computers and the complaints of sexual assault. At that interview he denied he had sexually assaulted patients and went on to say *“no comment”* to all the questions put to him. He was also asked about a file on his computer named *“animal fucking”* which contained images of women and animals, to which he also replied *“no comment”*.
16. After Mr Foley was charged with these matters, two new complainants made allegations of sexual assault. Both involved Mr Foley touching intimate areas without warning.
17. Mr Foley was interviewed for a third time on 7 July 2014. He answered questions on this occasion about his treatment of these two female patients who alleged they had been sexually assaulted by him. He denied the allegations.
18. On 16 May 2016, Mr Foley appeared before the Crown Court at Maidstone and, on the third day of his trial, following evidence from three victims, he changed his plea to plead guilty to five offences of sexual assault and eleven offences of voyeurism. On 27 May 2016 he also entered a guilty plea to the single count of possessing 51 extreme pornographic images.
19. On 14 July 2016, Mr Foley returned to the Crown Court to be sentenced. In his sentencing remarks the Judge said: *“I pause ... to reflect upon the harm caused in relation to this offending. That harm can be assessed from the victim personal statements that have been placed before the court. Three victims gave evidence during the course of the trial before you changed your plea to one of guilty. ... I have had the benefit of not only reading, but seeing the effect upon those individuals of the offending. There was also a short letter from a doctor reporting anxiety and the need for psychotic medication. ... the palpable effect of the abuse*

that they had suffered was there for all to observe. The court witnessed the impact of your crimes, mental scars which will or may never heal. It must be understood that it is not simply the sexual acts that make this crime serious, but the effect upon your victims. ... One of your victims - only 17 when first treated - felt violated. There is a theme of violation, mistrust and disgust in relation to how they felt. That stress and anxiety mean that the victims - at least one of them - is concerned that they are being watched or filmed, and feels that the privacy of their own body has been taken from them, causing anxiety and indeed a mistrust in healthcare professionals. ... the nature of your criminal conduct is clearly abhorrent to all."

20. He went on to say, *"Christopher Foley, you fall to be sentenced in relation to your activity when you practised as a chiropractor in Pembury, a chiropractor who had practised for many years, with many satisfied patients. You used that position of trust and abused it, sexually assaulting a number of patients over a significant period of time, and also covertly recording those individuals for your own sexual gratification. As I have said, the palpable effect of the abuse was there for all to see. The court has witnessed the impact of your crime. It must be understood - as I have said - it is not simply those sexual acts of themselves, but the filming, and the deep and profound mental anguish you leave in the minds of your victims."*
21. The Judge took into account Mr Foley's previous good character, some letters attesting to his exemplary conduct and his, albeit late and after three victims had given evidence, guilty pleas, and his remorse. The total sentence passed was one of four years and six months imprisonment. The Judge also made a Sexual Harm Prevention Order for a period of 10 years, barring Mr Foley from working with children and vulnerable adults and from practising any alternative therapy or as a chiropractor.

Findings of Fact

22. The Committee considered with care all the evidence presented, together with the submissions made by Miss Rose. The Committee accepted the advice of the Legal Assessor, who referred it to Rule 7(1) of the Rules, which states that where the allegation is that the registered chiropractor has been convicted in the United Kingdom of a criminal offence a certificate of conviction shall be conclusive evidence of the offence committed.

23. In light of that advice, and the Certificate of Conviction contained within the bundle, the Committee found all the Particulars of the Allegation proved.

SANCTION

24. On deciding the appropriate and proportionate sanction, the Committee took into account all the evidence, together with the submissions made by Miss Rose. It also considered the Indicative Sanctions Guidance (“the ISG”) issued by the GCC and the guidance on sexual misconduct issued by the Council for Healthcare Regulatory Excellence (“the CHRE”). The Committee was cognisant of the fact that the purpose of sanctions was not to punish Mr Foley but to protect the public, maintain public confidence in the profession and maintain proper standards of conduct. The Committee considered each sanction from the least serious before deciding the appropriate sanction and accepted the advice of the Legal Assessor.
25. The Committee first considered the aggravating and mitigating features in this case. It found the following aggravating factors: a gross abuse of trust towards patients; the sexual misconduct continued over a considerable period of time and only came to light when a patient discovered the recording equipment; the psychological harm caused to his victims; a resulting mistrust of health care professionals by some of his victims; targeting vulnerable women and in one instance a 17 year old; premeditated acts as shown by the recording of the women.
26. The Committee found the following mitigating factors: no previous disciplinary findings before the GCC; Mr Foley’s admissions of guilt in the Crown Court, although this followed on from earlier denials, and only after three of his victims had been required to give evidence, and so was given little weight.
27. In reaching its decision on the appropriate and proportionate sanction in this case, the Committee took into account the principles set out in section C3 of the Code of Practice 2010, which states that chiropractors must establish and maintain clear sexual boundaries with patients. The Committee also bore in mind the guidance issued by the Council for Healthcare Regulatory Excellence, which states, “*Sexual misconduct seriously undermines public trust in the profession. It is the chiropractor’s responsibility to prevent sexual boundaries being*

crossed, not the patient's. The misconduct is particularly serious if there is an abuse of the special position of trust that a chiropractor has ... The risk to patients is important."

28. The Committee did not consider this to be a case where the criminal offences in question had no material relevance to the fitness of Mr Foley to practise chiropractic and so did not use its power to take no further action under section 22(3) of the Chiropractor's Act 1994. The criminal offences were intrinsically linked to his practice as a chiropractor.
29. The Committee first considered an admonishment, but the facts found proved against Mr Foley were so serious that an admonishment would be wholly disproportionate and insufficient. The Committee had found that Mr Foley had sexually assaulted five of his patients and covertly filmed some of them and many others for his own sexual gratification. This behaviour was not at the lower end of the spectrum and an admonishment would not protect patients, or do anything to demonstrate how seriously these matters were taken by the regulator.
30. The Committee next considered a Conditions of Practice Order. The Committee noted that the main aim of conditions is to protect patients from harm, whilst allowing the chiropractor to put right any shortcomings in their practice. The Committee considered that this sanction is more appropriate when there are clinical failings rather than behavioural. The ISG lists some of the factors that might make such an order appropriate. The first is that there is no evidence of deep-seated personality or attitudinal problems. The Committee is of the view that there is cogent evidence in this case of deep-seated personality and attitudinal problems as reflected in the very serious convictions. The Committee did not think it was possible to formulate conditions that would address the offending behaviour in this case but that, even if it were possible, in light of the nature and seriousness of Mr Foley's conduct, a Conditions of Practice Order would not adequately reflect the gravity of his offending and offensive behaviour.
31. The Committee then considered a Suspension Order. The ISG lists a number of factors that might make a Suspension Order appropriate. The first is that the breach of the Code of Practice is not fundamentally incompatible with continued registration. The Committee was of the view that sexually assaulting patients is fundamentally incompatible with continued registration, as is covertly filming them. Another factor in the ISG to be considered is that

there is no evidence of harmful deep-seated personality or attitudinal problems, but the Committee has already indicated otherwise. In addition, the Committee must consider whether the chiropractor has insight and whether he poses a significant risk of repeating the behaviour. The Committee has no real evidence of insight from Mr Foley, who has chosen not to participate in this hearing or to provide any written representations and who denied the allegations for sometime before deciding to change his plea. In light of the extreme nature of his depraved behaviour, committed over an extended period of time, the Committee considered that Mr Foley did pose a significant risk of repeating the behaviour if allowed to continue to practise as a chiropractor.

32. Having discounted the possibility of suspending Mr Foley, the Committee concluded that removal from the Register was the only appropriate and proportionate sanction in this case. The Committee noted that many of the factors listed in the ISG when considering removal were present in this case. Gaining sexual pleasure from treating patients and touching patients in a sexualised way and from covertly filming them is wholly incompatible with the profession of chiropractic. Mr Foley's behaviour caused significant emotional harm to his patients. It was a gross abuse of his position of trust. It was a violation of his patients' rights. It was an abuse of his professional standing. Additionally, there was a real fear that he would behave in this way again, putting patients at risk if ever allowed to return to practise as a chiropractor. Furthermore, failing to remove a chiropractor from the Register in these circumstances would seriously undermine public confidence in the profession of chiropractic and in the GCC as its regulator.
33. Accordingly the order of this Committee is that the Registrar remove Mr Foley's name from the Register.

Interim Suspension Order application

34. This decision will take effect 28 days from the day on which notification is served on Mr Foley. Accordingly, Miss Rose made an application for an interim suspension order to cover this period and also to cover any period of appeal should one be made.
35. The Committee accepted the advice of the Legal Assessor and was mindful that an interim suspension order can only be imposed if decided necessary to protect the public. The

Committee noted that Mr Foley was already restricted by the sentence and orders of the Crown Court, however it was aware that as a Professional Conduct Committee it acted independently of any other decision making body. The Committee decided that an interim suspension order was necessary in order to protect the public, for the same reasons as given for ordering that Mr Foley's name be removed from the Register. The Committee has already identified that Mr Foley represents a risk to the public and therefore to allow him to continue to practise would be wholly inconsistent with its findings above.

In accordance with Section 31 of the Chiropractors Act 1994, this decision will not have effect until the expiry of 28 days from the date on which notification is served on you or, where an appeal is made, until the appeal is withdrawn or otherwise disposed of.

That concludes this case.

Chair of the Professional Conduct Committee

In accordance with provision of Rule 18(1)(a) of the General Chiropractic Council (Professional Conduct Committee) Rules 2000, we must remind you of your right of appeal under Section 31 of the Chiropractors Act 1994, as amended by Section 34 of the National Health Service Reform and Health Care Provisions Act 2002, to the High Court of Justice in England and Wales against this decision of the Committee. Any such appeal must be made before the end of the period of 28 days, beginning with the date upon which this notice is served upon you.

Please note that the decision of this Committee is a relevant decision for the purposes of Section 29 of the National Health Service Reform and Health Care Professions Act 2002.

The Professional Standards Authority has a period of 40 days, in addition to any appeal period provided to the chiropractor, in which to lodge an appeal.

Signed:

Dated: 25 January 2017



Richard Kavanagh

On behalf of the Professional Conduct Committee

Explanatory Notes:

Notices of Finding are normally divided into three sections, which reflect different stages of the hearing process:

1. The Allegation: This section contains the full allegations as drafted by the Investigating Committee and as considered by the Professional Conduct Committee.
2. The Decision: This section contains the findings of fact reached by the Professional Conduct Committee on the allegation and the reasons therefore. In particularly complex cases the reasons may be given separately from the findings of fact for purposes of clarity.
3. The Sanction: This section contains details of the sanction applied by the Professional Conduct Committee. In certain cases the section may be sub-divided for the purposes of clarity.