



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: **Peter McCann**
Address of Respondent: **Beneficial Chiropractic Clinic
1 Blackwell Lane
Darlington
County Durham
DL3 8QF**
Registration Number of Respondent: **02217**

On 28 September – 9 October 2015 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 are guilty of unacceptable professional conduct.

ALLEGATION 1

PARTICULARS OF THE ALLEGATION:

That, being a registered chiropractor, you are guilty of unacceptable professional conduct in that:

1. At all material times you practised as a chiropractor at Beneficial Chiropractic Clinic, 1 Blackwell Lane, Darlington, County Durham, DL3 8QF.
2. Between about 3 February and about 10 March 2011 you treated Patient A (a female) on about five occasions.
3. During those treatments:
 - (a) You did not provide a private changing area separate from the treatment room but only a screen within the treatment room.
 - (b) You remained in the treatment room when patient A was undressing and/or dressing behind the screen.
 - (c) The screen was:
 - i. moveable;
 - ii. open at the sides;
 - iii. no more than about 5 feet high.
 - (d) A mirror was fixed to the wall of the treatment room in a position which could reflect intimate areas of a patient on the examination table.
 - (e) You undid Patient A's bra for the purpose of treatment without:
 - i. prior warning; and/or
 - ii. consent.
 - (f) You pulled down Patient A's knickers for the purpose of treatment without:
 - i. prior warning; and/or
 - ii. consent.
4. On or about 20 September 2012 Patient B (a female) consulted you for a chiropractic assessment.
5. At that consultation when asking Patient B to sit on the examination table, you used the expression 'park your backside' or similar words.
6. Your conduct as set out in paragraphs 3 and/or 5 above:
 - (a) failed to respect the dignity and privacy of patients;
 - (b) tended to bring the profession into disrepute.

ALLEGATION 2

PARTICULARS OF THE ALLEGATION

That, being a registered chiropractor, you are guilty of unacceptable professional conduct in that:

1. At all material times you practised as a chiropractor at Beneficial Chiropractic Clinic, 1 Blackwell Lane, Darlington, County Durham, DL3 8QF.
2. You provided treatment to Patient C (a female) on or about the following dates:
 - (a) 25 October 2012;
 - (b) 31 October 2012;
 - (c) 5 November 2012;
 - (d) 19 November 2012.
3. On each occasion listed in paragraph 2, during the course of the treatment you lowered Patient C's clothing and massaged her bare buttocks.
4. You did so:
 - (a) without prior warning; and/or
 - (b) without Patient C's consent.
5. Your actions as alleged in paragraphs 3 and 4:
 - (a) failed to respect the patient's dignity;
 - (b) tended to bring the profession into disrepute; and/or
 - (c) were sexually motivated.
6. On the final occasion listed in paragraph 2:
 - (a) After the treatment had concluded but while Patient C was still in the treatment area, you patted both of her buttocks hard.
 - (b) As Patient C was leaving the treatment area you cupped your hand around her right bottom cheek.
7. Your actions as alleged in paragraph 6:
 - (a) tended to bring the profession into disrepute; and/or
 - (b) were sexually motivated.

ALLEGATION 3

PARTICULARS OF THE ALLEGATION

That, being a registered chiropractor, you are guilty of unacceptable professional conduct in that:

1. At all material times you practised as a chiropractor at Beneficial Chiropractic Clinic, 1 Blackwell Lane, Darlington, County Durham, DL3 8QF.
2. Patient D (a woman) consulted you on or about 15 September 2014 complaining of back pain. This was the first time she had consulted a chiropractor.
3. Given the patient's presentation you should have conducted, and recorded the results of, a physical examination involving orthopaedic testing and arrived at a diagnosis or rationale for care before giving treatment.
4. At that consultation, you:
 - (a) failed to conduct an adequate physical examination; or
 - (b) failed adequately to record the results of your physical examination;
5. At that consultation, you:
 - (a) failed to arrive at a diagnosis or rationale for care; or
 - (b) failed to record a diagnosis or rationale for care; and
 - (c) nevertheless offered to, and did, give treatment immediately.
6. You did not explain to the patient the treatment techniques that you intended to use.
7. During the course of your treatment on that occasion:
 - (a) Patient D was wearing only bra and knickers under a gown, which was open at the back.
 - (b) While Patient D was lying face down on the couch, you said to her 'this is probably going to be the worst experience of your life' or words to that effect.
 - (c) You pulled her knickers down and squirted gel on to her buttocks.
 - (d) You gave a deep buttock massage.
 - (e) When Patient D said that it was very painful you told her to bite into the bed.
 - (f) Throughout this procedure you stood very close to the couch with your crotch resting on the couch.
 - (g) After the treatment, when Patient D was about to get up, you stopped her and said

you would help. You moved her legs so that she was in a bent position over the couch.

8. Your actions as alleged in paragraphs 7(c) and (d) were performed:
 - (a) without prior warning; and/or
 - (b) without Patient D's consent.

9. Your actions as alleged in paragraph 7:
 - (a) failed to respect the patient's dignity;
 - (b) were not clinically justified;
 - (c) tended to bring the profession into disrepute; and/or
 - (d) were sexually motivated.

ALLEGATION 4

PARTICULARS OF THE ALLEGATION

That, being a registered chiropractor, you are guilty of unacceptable professional conduct in that:

1. At all material times you practised as a chiropractor at Beneficial Chiropractic Clinic, 1 Blackwell Lane, Darlington, County Durham, DL3 8QF.
2. Patient E (a woman) consulted you on or about 20 January 2011 complaining of back pain. This was the first time she had consulted a chiropractor.
3. Given the patient's presentation you should have conducted, and recorded the results of, a physical examination involving orthopaedic and neurological testing.
4. At that consultation, you:
 - (a) failed to conduct an adequate physical examination; or
 - (b) failed adequately to record the results of your physical examination;
5. At that consultation, you recorded a diagnosis of right sided piriformis syndrome.
6. There were no recorded findings to justify that diagnosis.
7. During the course of your treatment on that occasion:
 - (a) Patient E was wearing only bra and knickers under a gown.
 - (b) While Patient E was lying face down on the couch, you pulled her pants down to just below her buttocks on both sides.
 - (c) You gave a buttock massage.
8. Your actions as alleged in paragraph 7(b) were performed without prior warning.
9. Your actions as alleged in paragraphs 7(b) and (c) were performed without Patient E's informed consent.
10. Your actions as alleged in paragraphs 7(b) and (c):
 - (a) failed to respect the patient's dignity;
 - (b) were not clinically justified;
 - (c) tended to bring the profession into disrepute; and/or
 - (d) were sexually motivated.

ALLEGATION 5

PARTICULARS OF THE ALLEGATION

That, being a registered chiropractor, you are guilty of unacceptable professional conduct in that:

1. At all material times you practised as a chiropractor at Beneficial Chiropractic Clinic, 1 Blackwell Lane, Darlington, County Durham, DL3 8QF.
2. Patient F (a woman) consulted you on or about 7 April 2014 complaining of lower back pain. This was the first time she had consulted a chiropractor.
3. Given the patient's presentation you should have conducted, and recorded the results of, a physical examination involving orthopaedic and neurological testing.
4. At that consultation, you:
 - (a) failed to conduct an adequate physical examination; or
 - (b) failed adequately to record the results of your physical examination; and
 - (c) failed to record an adequate diagnosis or rationale for treatment.
5. Thereafter you provided treatment to Patient F on about three occasions in April 2014.
6. During the course of your treatment on one or more of those occasions:
 - (a) while Patient F was lying face down on the couch, you pulled her pants down to below her buttocks;
 - (b) you pressed your hands or knuckles into her buttocks.
7. Your actions as alleged in paragraph 6 were performed:
 - (a) without prior warning;
 - (b) without Patient F's informed consent.
8. At the final treatment session in April 2014:
 - (a) you stood at the side of the treatment table with your genitals resting on the table and swayed from side to side;
 - (b) you became sexually aroused.
9. Your actions as alleged in paragraphs 7 and 8:
 - (a) failed to respect the patient's dignity;
 - (b) were not clinically justified;
 - (c) tended to bring the profession into disrepute; and/or

(d) were sexually motivated.

AMENDED ALLEGATION

That, being a registered chiropractor, you are guilty of unacceptable professional conduct in that:

PARTICULARS OF THE ALLEGATION

1. At all material times you practised as a chiropractor at Beneficial Chiropractic Clinic, 1 Blackwell Lane, Darlington, County Durham, DL3 8QF.

Patient E

2. Patient E (a woman) consulted you on or about 20 January 2011 complaining of back pain. This was the first time she had consulted a chiropractor.
3. Given the patient's presentation you should have conducted, and recorded the results of, a physical examination involving orthopaedic and neurological testing.
4. At that consultation, you:
 - a. failed to conduct an adequate physical examination; or
 - b. failed adequately to record the results of your physical examination;
5. At that consultation, you recorded a diagnosis of right sided piriformis syndrome.
6. There were no recorded findings to justify that diagnosis.
7. During the course of your treatment on that occasion:
 - a. Patient E was wearing only bra and knickers under a gown.
 - b. While Patient E was lying face down on the couch, you pulled her pants down to just below her buttocks on both sides.
 - c. You gave a buttock massage.
8. Your actions as alleged in paragraph 7(b) were performed without prior warning.
9. Your actions as alleged in paragraphs 7(b) and / or (c) were performed without Patient E's informed consent.
10. Your actions as alleged in paragraphs 7(b) and / or (c):
 - a. failed to respect the patient's dignity; and / or
 - b. were not clinically justified; and / or
 - c. tended to bring the profession into disrepute; and / or
 - d. were sexually motivated.

Patient A

11. Between about 3 February and about 10 March 2011 you treated Patient A (a female) on about five occasions.
12. During those treatments:
 - a. You undid Patient A's bra for the purpose of treatment without:
 - i. prior warning; and/or
 - ii. informed consent.
 - b. You pulled down Patient A's knickers for the purpose of treatment without:
 - i. prior warning; and/or
 - ii. informed consent
13. Your actions as set out in paragraph 12 above:
 - a. failed to respect the dignity and privacy of patient A; and / or
 - b. tended to bring the profession into disrepute; and / or
 - c. were sexually motivated

Patient B

14. On or about 20 September 2012 Patient B (a female) consulted you for a chiropractic assessment.
15. At that consultation when asking Patient B to sit on the examination table, you used the expression 'park your backside' or similar words.
16. Your conduct as set out in paragraph 15 above:
 - a. failed to respect the dignity and privacy of patient B; and / or
 - b. tended to bring the profession into disrepute.

Patient C

17. You provided treatment to Patient C (a female) on or about the following dates:
 - a. 25 October 2012;
 - b. 31 October 2012;
 - c. 5 November 2012;
 - d. 19 November 2012.
18. On each occasion listed in paragraph 17, during the course of the treatment you lowered

Patient C's clothing and massaged her bare buttocks.

19. You did so:

- a. without prior warning; and / or
- b. without Patient C's informed consent.

20. Your actions as alleged in paragraphs 18 and / or 19:

- a. failed to respect the patient's dignity; and / or
- b. tended to bring the profession into disrepute; and / or
- c. were sexually motivated.

21. On the final occasion listed in paragraph 17:

- a. After the treatment had concluded but while Patient C was still in the treatment area, you patted both of her buttocks hard.
- b. As Patient C was leaving the treatment area you cupped your hand around her right bottom cheek.

22. Your actions as alleged in paragraph 21:

- a. tended to bring the profession into disrepute; and / or
- b. were sexually motivated.

Patient F

23. Patient F (a woman) consulted you on or about 7 April 2014 complaining of lower back pain. This was the first time she had consulted a chiropractor.

24. Given the patient's presentation you should have conducted, and recorded the results of, a physical examination involving orthopaedic and neurological testing.

25. At that consultation, you:

- a. failed to conduct an adequate physical examination; or
- b. failed adequately to record the results of your physical examination; and / or
- c. Recorded a diagnosis of lumbar compromise causing nerve disturbance when there were:
 - i. no; or
 - ii. insufficient

recorded findings to justify that diagnosis

26. Thereafter you provided treatment to Patient F on about three occasions in April 2014.
27. During the course of your treatment on one or more of those occasions:
- a. while Patient F was lying face down on the couch, you pulled her pants down to below her buttocks;
 - b. you pressed your hands or knuckles into her buttocks.
28. Your actions as alleged in paragraph 27 were performed:
- a. without prior warning; and / or
 - b. without Patient F's informed consent.
29. At the final treatment session in April 2014:
- a. you stood at the side of the treatment table with your genitals resting on the table and swayed from side to side;
 - b. you became sexually aroused.
30. Your actions as alleged in paragraphs 27 and / or 29:
- a. failed to respect the patient's dignity; and / or
 - b. were not clinically justified; and / or
 - c. tended to bring the profession into disrepute; and/or
 - d. were sexually motivated.

Patient D

31. Patient D (a woman) consulted you on or about 15 September 2014 complaining of back pain. This was the first time she had consulted a chiropractor.
32. Given the patient's presentation you should have conducted, and recorded the results of, a physical examination involving orthopaedic testing
33. At that consultation, you:
- a. failed to conduct an adequate physical examination; or
 - b. failed adequately to record the results of your physical examination;
34. At that consultation, you recorded a diagnosis of pelvic misalignment causing nerve disturbance when there was:
- (a) no; or
 - (b) insufficient

recorded findings to justify that diagnosis

35. You did not explain to the patient the treatment techniques that you intended to use.

36. During the course of your treatment on that occasion:

- a. Patient D was wearing only bra and knickers under a gown, which was open at the back.
- b. While Patient D was lying face down on the couch, you said to her 'this is probably going to be the worst experience of your life' or words to that effect.
- c. You pulled her knickers down and squirted gel on to her buttocks.
- d. You gave a deep buttock massage.
- e. When Patient D said that it was very painful you told her to bite into the bed.
- f. Throughout this procedure you stood very close to the couch with your crotch resting on the couch.
- g. After the treatment, when Patient D was about to get up, you stopped her and said you would help. You moved her legs so that she was in a bent position over the couch.

37. Your actions as alleged in paragraphs 36(c) and / or (d) were performed:

- a. without prior warning; and / or
- b. without Patient D's informed consent.

38. Your actions as alleged in paragraph 36:

- a. failed to respect the patient's dignity; and / or
- b. were not clinically justified; and / or
- c. tended to bring the profession into disrepute; and / or
- d. were sexually motivated.

In accordance with the provisions of Rule 18(1) (a) of the General Chiropractic Council (Professional Conduct Committee) Rules 2000 ("the Rules"), notice is hereby given of the decision of the Committee.

Introduction

1. The Professional Conduct Committee (“the Committee”) convened to consider an Allegation against Mr McCann. Mr McCann did not attend and was not represented. Miss Lindsey Rose appeared on behalf of the General Chiropractic Council (“the GCC”).
2. The Committee was provided with a bundle of papers, , numbered 1 to 342 and identified as C2, prior to the hearing. This bundle included witness statements and various responses from Mr Mc Cann.

Absence of the Relevant Person

3. In light of the absence of Mr McCann, 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 10 and identified as C1, together with, *inter alia*, the following documents (collectively referred to as C1):
 - i. a letter sent to Mr McCann dated 31 July 2013, specifying the allegation he faced in relation to Patients A and B;
 - ii. a letter sent to Mr McCann dated 20 September 2013, specifying the allegation he faced in relation to Patient C;
 - iii. a letter sent to Mr McCann dated 15 January 2015, specifying the allegation he faced in relation to Patient D;
 - iv. a letter sent to Mr McCann dated 27 February 2015, specifying the allegation he faced in relation to Patient E;
 - v. a letter sent to Mr McCann dated 20 May 2015, specifying the allegation he faced in relation to Patient F;
 - vi. a letter sent to Mr McCann dated 21 July 2015, enclosing the allegations relating to all six complainants and providing details of an application by the GCC to join all six cases to be considered and determined together at the same hearing;

- vii. an email sent to Mr McCann dated 13 August 2015 confirming the decision made by the Chair of the Committee allowing all the cases to be joined and dealt with at the same hearing
 - viii. an email read receipt dated 14 August 2015, indicating that the email sent on 13 August 2013 had been read.
- 4. The Committee accepted the advice of the legal assessor.
- 5. Included within the bundle was the Notice of Hearing dated 31 March 2015, thereby satisfying the 21 day notice requirement, which was sent to Mr McCann by email. The Notice provided details of the time date and venue of the hearing, but did not specify the allegation in accordance with Rule 3(2) of the Rules. The Committee was satisfied, however, that Mr McCann was aware of the Allegations he faced by virtue of the additional documentation referred to at (i) to (viii) above. This is an unusual case in that there was initially a complaint made by Patients A and B and subsequently complaints made by a further four patients over a period of time. Consequently, at the time the Notice of Hearing was sent out in March 2015 the final form of the Allegation was not known. It was not until the joinder application had been granted that the GCC knew it could proceed on all six complaints. That decision was made in August 2015 and confirmation sent to Mr McCann. The Committee noted that it was sent to an email address that Mr McCann was using because he later, on 3 September 2015, responded using that email address.
- 6. In light of all the documentation referred to above, the Committee was satisfied that, at least 21 days before the hearing, Mr McCann was made aware of the date, time and venue of this hearing and also the specifics of the Allegations made against him, albeit those specifics had not been sent with the Notice of Hearing emailed on 31 March 2015.
- 7. Having determined that the appropriate documents had been served in accordance with the Rules, the Committee then considered whether to proceed in Mr McCann's absence. The Committee bore in mind that although it had a discretion to proceed in the absence of Mr McCann, it should exercise that discretion with the utmost care and caution, particularly because Mr McCann was unrepresented.
- 8. Miss Rose, on behalf of the GCC, indicated that those who had been representing Mr McCann had sent an email dated 25 June 2015 stating, "*We write to inform you that, after a period of reflection, our client has taken the decision not to take any further active role*

in the GCC proceedings.” “Our client understands that the GCC process will continue in his absence ...”. On 3 September 2015 Mr McCann was sent an email by the GCC reminding him that if he wished to rely on any evidence at the hearing he needed to serve it. Mr McCann responded on the same date stating simply, “No evidence. Not taking part.” In earlier correspondence commenting on the complaint made by Patient F, dated 10 April 2015, Mr McCann stated, “I will not be attending the hearing and will not be responding any further in this matter.”

9. The Committee decided that Mr McCann had, by the indication from his representatives, and his own indication that he would not be taking part or attending the hearing, voluntarily absented himself from the hearing and thereby waived his right to be present. The Committee did not believe that any adjournment would result in Mr McCann attending and therefore nothing would be gained by adjourning the hearing. The allegations faced by Mr McCann were serious, many of them of a sexual nature, and the Committee considered that it was in the public interest, and in his own interests, that the matter be dealt with expeditiously. The Committee also noted that there were six witnesses who had attended and who, given the nature of the complaints, could be considered to be vulnerable. In addition, the allegations dated back to 2011 and there was a clear public interest in dealing with matters as soon as practicable. Given his indication that he would not be attending, the Committee did not believe there was any unfairness to Mr McCann and concluded that the matter should proceed today, notwithstanding his absence.

Application to amend the Particulars of the Allegation

10. Miss Rose, on behalf of the GCC, made an application to amend the Particulars of the Allegation. She indicated that the amendments were to more accurately reflect the evidence from Patient A and that of the expert chiropractor relied on by the GCC, Mr Bjorn Hennius, following a review of the case after she took it over from the lawyer previously with conduct of the case. Miss Rose indicated that some of the amendments proposed were to substance and some simply to form. She indicated that all the proposed changes as to substance had been sent to Mr McCann in advance of the hearing and he had been invited to make any comments he wished. Mr McCann had not raised any objections or made any comments. Miss Rose said that the only proposed amendments not notified to Mr McCann related to either typographical errors or small additions that were to form only and not to substance, with a view to making the Particulars consistent. Miss Rose submitted that the amended Allegation should be a single Allegation of

Unacceptable Professional Conduct and that the numbering would therefore need to be amended. She also wished to refer to the complaints chronologically rather than alphabetically.

11. Miss Rose also made an application to withdraw Particulars 3(a), (b), (c)(i)(ii)(iii) and 3(d) on the basis that they were not supported by the expert Mr Hennius and therefore could not be proved. She said that Mr McCann had been notified of this intended application.
12. In considering the application to amend the Committee took into account the fact that Mr McCann was not present, but also that he had been notified about most of the proposed amendments. The Committee accepted the advice of the legal assessor.
13. The Committee decided to allow all of the proposed amendments. The Committee was satisfied that the amendments could be made without injustice and were necessary to reflect the state of the evidence as it appeared in the documentation before the Committee. The most significant amendment was the addition in relation to Patient A that Mr McCann's actions in undoing her bra, without warning and/or consent, and his actions in pulling down her knickers, without warning and/or consent, were sexually motivated. Although this made the case against Mr McCann more onerous, the Committee noted that he had not objected to this addition and that the statement of Patient A provided evidence of a possible sexual motivation. It was therefore in the interests of justice that this amendment be allowed.
14. With Patient's D and F, the proposed significant amendments related to clinical treatment and more accurately reflected the findings of Mr Hennius. In light of this and the lack of any opposition from Mr McCann, the Committee was satisfied that these amendments were desirable and could be made without injustice. The application also included the addition of the word "informed" before the word "consent" in a number of the Particulars. This made the overall Allegation more consistent since "informed consent" appeared in some Particulars. The Committee was satisfied that no injustice would be caused by these additions,. The remaining amendments were to form only, namely adding the words ' and/or ', and the Committee added four such amendments to ensure consistency throughout the Allegation. No injustice was caused by allowing these amendments, which included reducing the Allegations to a single Allegation and the consequent renumbering.

15. In relation to original Particulars 3(a), (b), (c)(i)(ii)(iii) and 3(d), the Committee accepted the GCC's submission that it had no evidence to offer on these Particulars and thus formally found them not proved. For ease of reference these withdrawn allegations did not appear in the new single Allegation.

Background and evidence

16. Miss Rose read a statement by the Registrations Manager at the GCC, who confirmed that Mr McCann registered with the GCC in June 2004 and that he was at all material times a registered chiropractor, practising from the Beneficial Chiropractic Clinic, 1 Blackwell Lane, Darlington, County Durham.
17. It was alleged that over a period of four years, from 2011 to 2014, Mr McCann's conduct in relation to six patients amounted to Unacceptable Professional Conduct. In relation to all six complainants, it was alleged, *inter alia*, that Mr McCann breached the Codes of Practice and Standards of Proficiency (CoP/SoP) in that his behaviour during treatment sessions failed to respect their dignity and tended to bring the profession into disrepute. Further, in relation to all but one Patient, it was alleged that his actions were sexually motivated when treating those female patients.
18. In various correspondence Mr McCann denied the allegations and stated that he was at all material times acting as a reasonable chiropractor.
19. The GCC relied, *inter alia*, on the oral and documentary evidence of the six patients, supported by the expert evidence of Mr Hennius who provided a report and three addendums. He also attended the hearing and provided oral evidence.

DECISION

20. The Committee considered with care all the evidence, both oral and documentary, together with the submissions made by Miss Rose on behalf of the GCC. The Committee took particular care when considering the position of Mr McCann who was not present and not represented and had careful regard to the written submissions that he had provided at various stages of the investigation. The Committee accepted the advice of the legal assessor and was reminded that it was for the GCC to prove the Allegation and to do so on the balance of probabilities.
21. The Committee considered each Particular separately, but allowed for some cross-admissibility of evidence in light of the very similar nature of the complaints which all, bar Patient B, involved allegations of pulling down knickers and massaging buttocks without first telling the patients that this was going to happen and why and without asking permission to do so. The Committee considered that there was a very clear perception by the five patients of some form of sexual gratification running throughout all the complaints.
22. When considering the possibility of collusion, the Committee considered it significant that Patient E guessed that Patient D was talking about Peter McCann when speaking about her bad experience with a chiropractor. Similarly with Patient A, she guessed that Patient B was talking about Mr McCann, even though she had not mentioned any name, but merely referred to a chiropractor. This lent weight to their accounts and reduced any risk of collusion and or contamination because neither Patient D or B had named the chiropractor they were talking about. The Committee noted that all the complainants gave evidence in accordance with their statements, without embellishment, and was satisfied by their answers in evidence that there had been no collusion between them, nor had their accounts been innocently contaminated in any way. The Committee concluded that it would not be unfair to allow the evidence to be cross admissible in this way.
23. Having had the opportunity to see and hear the six patients give evidence, the Committee found each to be a credible and reliable witness. They each gave accounts consistent with their first complaints and the statements they had made. They were all prepared to say when they could not remember particular details due to the passage of time. Cogent explanations were given for the delays in making complaints. Their accounts of treatment were largely consistent with the clinical notes. None of them gave oral accounts that

indicated any form of collusion or contamination, either as a result of any discussions or through reports in the media. With each witness the contrary account, as provided in the written submissions of Mr McCann, was put to them and they were given an opportunity to respond. They all remained sure of their accounts and the Committee saw no reasons to disbelieve what they said happened. Although Patient F was confused about the dates she attended, she was clear about all other details.

24. The Committee for the most part accepted the evidence of the expert Mr Hennius, which was adapted to take into account the fact that the witnesses provided considerably more detail in their oral evidence about the tests carried out by Mr McCann pre-treatment.
25. In coming to its decision, the Committee first considered the factual aspects of the allegation to establish what had happened. Having decided those facts, it then considered those particulars which alleged that aspects of Mr McCann's behaviour were sexually motivated, failed to respect patients' dignity, were not clinically justified, and/or tended to bring the profession into disrepute.

Particular 1 found proved

26. Undisputed evidence was provided by the GCC Registrations Manager that at all material times Mr McCann practised as a chiropractor at Beneficial Chiropractic Clinic, 1 Blackwell Lane, Darlington, County Durham.

PATIENT E

27. The evidence of the patients was provided in a chronological order and not alphabetically, save for Patient D who was unavailable after the second day of the hearing and so was called out of order. Hence the Committee first heard from Patient E. Patient E attended at the clinic on one occasion only on 20th January 2011, when she was 39 years old, having been suffering from back pain for some time. She was asked to change into a gown leaving on her bra and knickers.
28. Patient E remembered Mr McCann then carrying out various tests which included lying on her back and raising her legs up one at a time. She said he did lots of arm and leg movements, pulling her legs to one side, pulling on her legs and tapping the bottoms of her feet. She said her legs were moved outwards to both sides and downwards as well. At one stage Mr McCann took hold of her ankles and moved her legs about a foot apart.

29. Patient E recalled that Mr McCann informed her that one of her legs was slightly longer than the other and that her hip was displaced. Mr McCann recorded in the chiropractic records that she had *“right sided piriformis syndrome causing nerve disturbance.”* She thought the cause was a fall in the snow when she landed on her bottom, but said the pain was in her lower back, not her bottom.
30. She was then asked by Mr McCann to lay face down on the treatment table and he told her that he was going to massage her buttocks but did not say why. Patient E said that Mr McCann then pulled down her pants to below her buttocks and he then massaged her for quite a long time, maybe 10 minutes. He did not massage her anywhere else. Patient E said she felt exposed and quite shocked, but did not say anything, and thought that *“maybe that’s just what happens”*. She said that Mr McCann had not said that he was going to pull down her knickers, nor had he asked her if it was alright for him to do that. Patient E said that he never gave her the option to consent because he never asked her. She said she just froze and was in a *“sheer panic”*, feeling very vulnerable because there was no one else at the clinic. At the conclusion of the massage she said that Mr McCann pulled her knickers back up.
31. Although Mr McCann booked a further appointment for Patient E, she thought *“I just remember wanting to get out of there. I also knew I wasn’t going to go back.”* Patient E did not return for any future appointments.
32. Patient E said she did not complain about Mr McCann at the time because she *“felt silly and wondered if it was maybe just me feeling vulnerable.”* She also said that she did not know at that stage who to complain to. However, she next heard about him when Patient D put a post on Facebook that she had been to a chiropractor and was feeling violated. Patient E straight away thought it must be Mr McCann and responded to Patient D. Patient E then contacted the GCC on 28th October 2013 and shortly after confirmed that she was making a complaint regarding her treatment.
33. Patient E said that she and Patient D had spoken briefly to each other about their experiences, but she could not remember if that was before or after she had made her statement. She was adamant that any discussions she had with patient D had not influenced or impacted upon her evidence in any way. She added that she had felt traumatised by the event and that it would stay with her forever because she thought at the time that it was a *“sexually related thing that he was doing”* and that he *“has got to stop.”*

34. Mr McCann commented on 17th November 2014, in response to the complaint, stating that he could not recall Patient E, but referred to what he would have done from the chiropractic records. He stated that she was subject to the same treatment regime as anyone else presenting with those conditions and denied that he would have pulled her pants down without an explanation. He also stated that he has significantly altered his practice since he saw her 4 years earlier. He explained that all examinations and treatments of female patients were now carried out in the presence of a female chaperone.
35. Mr Hennius stated that in considering the chiropractic records, it was not clear what neurological, orthopaedic and other tests Mr McCann carried out, other than a Straight Leg Raise (“SLR”) test, and the thermal and EMG scans. In oral evidence, Mr Hennius said that he did not know whether NAD (understood to mean No Abnormalities Detected) indicated no testing was done or the tests were negative.
36. In his written report, Mr Hennius stated that the findings recorded in the patient records did not suffice to justify the diagnosis of “*right sided piriformis syndrome*”. However, in oral evidence, Mr Hennius stated that there was no particular test to indicate piriformis syndrome and that it was more a process of elimination. He said that it was a differential diagnosis after excluding other things and thus this diagnosis was consistent with no abnormalities detected. He conceded that the diagnosis was not inconsistent with the notes and the recordings of NAD and that the diagnosis could be right given the drawing on the pain diagram. He told the Committee that that a buttock massage is a clinically appropriate treatment for the diagnosis.
37. With reference to the removal of items of clothing, Mr Hennius said that it was routine for chiropractors to move aside articles of clothing, including pulling down knickers and undoing bras, in order to gain access to areas of a patient’s body in order to examine and/or apply treatment. He said that steps may be taken to minimise exposure of a patient’s body, such as using a gown to cover a patient’s other buttock. However, he stated that it can be clinically justifiable and reasonable for a chiropractor to lower underwear to below both buttocks to do a buttock massage. What was important, he said, was that the patient was kept fully informed as to the need to remove items and the nature of the treatment to be given. He emphasised the importance of communicating throughout with the patient and that the chiropractor needs to ensure that the patient gives consent, either verbally or with body language, for the procedure to go ahead.

Particular 2 proved

38. The Committee accepted the evidence of Patient E that this was the date she attended and that this was the first time she had consulted a chiropractor.

Particular 3 proved

39. The Committee accepted the evidence of Mr Hennius that given Patient E's presentation Mr McCann should have conducted and recorded the results of a physical examination involving neurological testing and possibly orthopaedic testing depending on the clinical decision of the chiropractor.

Particular 4(a) not proved

40. Patient E said that Mr McCann carried out various tests which included lying on her back and raising her legs up one at a time. She said he did lots of arm and leg movements, pulling her legs to one side, pulling on her legs and tapping the bottoms of her feet. She said her legs were moved outwards to both sides and downwards as well. At one stage Mr McCann took hold of her ankles and moved her legs about a foot apart. Mr Hennius said that he could not tell from the records what tests had in fact been carried out. The records completed by Mr McCann indicated NAD in most of the categories. In the Orthopaedic/Neurological Tests box he had written "SLR -ve". In light of the account given by Patient E and the notation provided in the records, the evidence suggested that some tests had been carried out and therefore the Committee was not satisfied on the balance of probabilities that the tests had not been carried out.

Particular 4(b) not proved

41. The Committee noted that the records for Patient E showed a result in all the boxes in the form. Mr Hennius said that all individual tests should be recorded rather than to roll together one's findings and put NAD. The Committee did not accept that rolling together in this way was inadequate. It noted that where there was a particular finding Mr McCann did record it, namely the straight leg raise. Accordingly the Committee was not satisfied that the GCC had proved that he had failed adequately to record the results of his physical examination.

Particular 5 proved

42. This diagnosis was not disputed and was recorded in the chiropractic records.

Particular 6 not proved

43. The Committee found this not proved on the basis of Mr Hennius' oral evidence that the diagnosis was not inconsistent with the findings of NAD and the drawing on the pain diagram.

Particular 7(a) proved

44. The Committee accepted the evidence of Patient E and also noted that Mr McCann, in his written submissions, accepted that this Particular was not in dispute.

Particular 7(b) proved

45. The Committee accepted the evidence of Patient E and also noted that Mr McCann, in his written submissions, accepted that this Particular was not in dispute.

Particular 7(c) proved

46. In light of Mr McCann's written submissions, it was clear that this Particular was not disputed. He said he could not recall Patient E specifically, but he would have needed to massage her right buttock in order to release her piriformis muscle. This was also reflected in the clinical records and the evidence of Patient E.

Particular 8 proved

47. Patient E is adamant that she did not know that Mr McCann was going to pull her pants down to massage her buttocks and she felt "*sheer panic*" as a result. She accepted that he had told her that he was going to massage her buttocks. In the police interview at page 66 of C2 Mr McCann speaks of his standard practice of unhooking a bra or pulling down knickers and that he does not ask permission, although he would not do it without warning. The Committee preferred the evidence of Patient E, who was consistent and compelling, and was satisfied on her evidence that Mr McCann had not given Patient E prior warning about the lowering of her knickers. It also took into account the evidence of four other patients who alleged that he similarly lowered their knickers to below their buttocks without prior warning.

Particular 9 proved in relation to 7(b), but not in relation to 7(c)

48. In light of its finding in Particular 8 that Mr McCann gave no prior warning about removing the knickers the Committee considered that he had not obtained informed consent from Patient E for this act. However, given the fact that he had notified Patient E that he was going to massage her buttock the Committee was satisfied that she was

informed about this and by her actions provided implicit consent to that treatment. This accorded with the evidence of Mr Hennis.

Particular 10(a) proved

49. Patient E described feeling exposed and embarrassed when Mr McCann pulled down her knickers without warning. The Committee is satisfied his actions failed to respect her dignity.

Particular 10(b) not proved

50. On the basis of the chiropractic records and the evidence of Mr Hennis, the Committee accepted that the removal of the knickers and the subsequent massage were clinically justified.

Particular 10(c) proved

51. As set out below at 10(d), the Committee considered that Mr McCann behaved in a sexually motivated way towards Patient A. It therefore followed that those actions tended to bring the profession into disrepute.

Particular 10(d) proved

52. In reaching its decision that these actions were sexually motivated the Committee took into account, by way of cross admissibility, the evidence from Patients A, C, D and F, as well as Patient E. The Committee noted that on the facts that it had already found proved Mr McCann had behaved in a very similar way with five different female patients on numerous occasions. With each patient he had pulled down their knickers without prior warning or consent and then massaged their buttocks, usually also without any warning, causing shock, embarrassment and humiliation.

53. The GCC alleged in some instances that his diagnoses, which warranted the treatment by buttock massage with underwear lowered, were not clinically justifiable on the basis of the chiropractic records. As set out in the facts determination below, the Committee did not find this proved.

54. However, the Committee considered that providing no prior warning before undertaking these intimate but clinically justifiable actions was a striking and consistent feature in the allegations of five of the patients.

55. After careful consideration of all the evidence, the Committee concluded that Mr McCann had demonstrated a clear modus operandi which he found sexually gratifying and was

sexually motivated. This involved lowering knickers of female patients to expose their buttocks without prior warning or informed consent and performing a buttock massage on their bare buttock, again usually without warning or consent.

56. The Committee recognised that it is an unusual and significant step to find that actions by a health professional that may have been clinically justified were also sexually motivated. It considered this with great care. Before coming to this conclusion, the Committee considered whether Mr McCann's behaviour could be attributed to shoddy practise resulting from a lack of understanding of appropriate professional standards and the impact of his behaviour on patients. However, the Committee rejected this possibility after determining the facts of this allegation and noting that Mr McCann behaved in exactly the same way to Patients D and F in 2014, after being arrested on suspicion of sexual assault in February 2013 as a result of patient complaints.
57. He was interviewed by the police about, amongst other things, having failed to give prior warning of or gaining consent for the lowering of underwear in relation to patients A and C. He was also interviewed about the lack of prior warning or consent from Patient C for massaging her buttock and about patting and cupping her bottom in a sexual manner following treatment.
58. The police investigation was not furthered as the primary complainant, Patient C, decided not to pursue it for personal reasons however a GCC investigation into the complaints of A, B and C was ongoing.
59. In his written submissions to the GCC on 30 April 2013 Mr McCann said, *"I am sorry that Patient A did not appreciate that this would involve the repositioning of her underwear. I now explain exactly what I am going to do regarding the soft tissue massage and ask the patient to reposition their own underwear to expose the relevant area."* He went on to say, *"I would like to say how concerned I feel that Patient A felt she was subjected to demeaning and inappropriate behaviour. I have never felt that I have behaved in any inappropriate manner and am distressed to hear that this is how she was feeling."* *"I hope that the lessons that I have learnt by this experience can only improve the quality of care and the respect and dignity of all my patients."*
60. Despite knowing that lowering underwear and performing buttock massages without prior warning or consent had caused distress and had been perceived as sexualised behavior by patients, Mr McCann went on to treat Patients F and D in an identical way to that which

had caused the previous complaints and investigations. By this stage, Mr McCann had stated explicitly that he understood the effect on patients of this behaviour and that he had consequently changed his practise. He must also have been in no doubt about the possible professional and personal consequences of repeating his behaviour.

61. Having ruled out the possibility of a lack of understanding on the part of Mr McCann, the Committee concluded Mr McCann operated in this way, performing intimate actions which may have clinical justification without prior warning or consent, because he was sexually gratified by it and was sexually motivated to do so.
62. Further, some of the findings of fact contributed to the Committee's conclusion that Mr McCann had displayed sexually motivated behaviour in the lowering of underwear and massaging of buttocks without warning or consent. In its determination of the facts of the Allegation, the Committee found that Mr McCann patted and cupped one patient's buttocks after a treatment which had involved the lowering of that patient's underwear to her knees and massaging her buttock without warning or consent.
63. At a different appointment with another patient, Patient F, the Committee found that he had become visibly sexually aroused at the conclusion of a treatment which had also entailed lowering that patient's underwear to below her buttocks without warning. These facts also contribute to the Committee's conclusion that he was sexually gratified by this modus operandi and it was sexually motivated.

PATIENT A

64. In February 2011, Patient A, who was 39 years old, attended at the clinic for treatment having suffered a whiplash injury in a road traffic incident. She attended for 5 appointments between 3rd February 2011 and 10th March 2011.
65. Patient A stated that she was asked to change into a gown, leaving on her bra and knickers. Thereafter she was asked to lie face down on the bench. She said that Mr McCann undid her bra but did not tell her that that was what he was going to do, nor did he ask her if it was alright for him to do that.
66. Patient A said that on the second appointment she was wearing a thong and bra under the gown. She said that Mr McCann did the same thing with her bra, not asking or telling her that he was going to undo it. She said that on the second visit she mentioned a pain in her

hips as well. She said that he used some sort of foam footwear and said he could see the problem with the hip, adding that he could do some work to realign the hip. He then, without warning, pulled her thong down and massaged the left side of her lower back and also her bottom.

67. She said that she was not asked if it was alright for him to pull down her thong or told that he would need to do so. Also, since he was only massaging one buttock she could not understand why he needed to pull down the thong at all since her entire buttock cheek was already exposed. She said she felt disgusted at the time, but kept telling herself that he was a professional and that she was over reacting. However, she was so shocked and uncomfortable by this that she went shopping to buy the biggest knickers she could find. She said she went on to wear knicker shorts at subsequent visits because she felt so uncomfortable and exposed.
68. Patient A described how on each further occasion, Mr McCann continued to unfasten her bra strap to massage her and to pull her knickers down without explanation or seeking consent. She said, *"I was feeling like he was getting some sort of gratification from my exposure and touching me."* Patient A said she was uncomfortable with the treatment *"from start to finish"*. She told the Committee how she cancelled her last appointment, then rearranged and then re-cancelled it because she was unable to make herself return, and felt deeply uncomfortable with Mr McCann's behaviour. She stated that she stopped going when she recognised that it was his inappropriate behaviour that was at fault and not her being over sensitive.
69. Patient A did not report the matter to anyone initially as she thought *"it was just her."* However, once Patient B told her of her experience she said *"I bet it's Peter McCann."* They discussed it and Patient A felt relieved and also felt the need to take action to avoid it happening to another patient. She therefore contacted the GCC along with Patient B. On 21st November 2012, the GCC received a joint letter of complaint against Mr McCann from Patients A and B. She said that the two of them had discussed the case and their statements because she had been comforted and reassured to speak to someone else who had experienced treatment from Mr McCann. She added, however, that none of that had impacted upon her evidence, which was in any event quite different to Patient B's.
70. Mr McCann denied the allegations and that he was doing anything other than established chiropractic techniques. He accepts that he undid Patient A's bra to massage her upper trapezius muscles, as it would have been impossible to massage without doing this. He

further accepted that he may not have asked for permission but stated that he made it clear he was going to massage her neck and shoulder area as part of the treatment. He stated that Patient A showed compliance with his treatment proposals and implementation at all times.

71. Mr McCann stated in his further observations, on 30th April 2013, that he was sorry Patient A had not understood that he was going to reposition her underwear before massaging her: *“I now explain exactly what I am going to do regarding the soft tissue massage and ask patients to reposition their own underwear to expose the relevant area. I have modified the Consent Agreement on the Patient Record Card to read as follows: I consent to undergo any computerised scans, physical and/or neurological assessments as requested by the chiropractor. I understand that I may be asked to undo or adjust clothing to expose parts of my body to facilitate treatment. I can request a chaperone if I so wish.”*
72. Mr Hennius considered the allegations and stated that a reasonable chiropractor will often need to remove article of clothing, which may include underwear, in order to access particular areas of the body. However, they should aim to preserve the patient’s dignity by, for example, ensuring privacy in the treatment room, appropriate use of gowns or articles of the patient’s clothing, covering over an exposed buttock if it was not being worked on. He emphasised the need for communication between the chiropractor and patient, setting out what will take place prior to it being carried out, so that the patient can provide consent.
73. Mr Hennius said that whilst Mr McCann may have needed to undo Patient A’s bra and pull down her underwear, if he did this without first explaining to her what he was going to do, then he did not act as a reasonable chiropractor.

Particular 11 proved

74. This Particular was supported by the Patient records and the evidence of Patient A.

Particular 12(a)(i) proved

75. The Committee heard the evidence of Patient A who said that on each occasion Mr McCann undid her bra without prior warning. Mr McCann in his written submissions admitted undoing her bra to massage her upper trapezius muscles and said he may not have asked permission to do so. The Committee was satisfied on her evidence that he did not give any prior warning on any occasion.

Particular 12(a)(ii) proved

76. In light of its finding on Particular 12(a)(i), the Committee considered that there had not been any informed consent since the bra was undone without prior warning. The Committee decided that Mr McCann should have obtained consent on each occasion and that consent was not implied by virtue of Patient A's return for further treatment.

Particular 12(b)(i) proved

77. Patient A was a bit confused about whether her buttocks were first massaged on the second or third occasion. The records suggested it was done on the third and fourth visits and this accorded with Patient A's recollection that it happened twice. She was clear that on both occasions Mr McCann pulled her knickers down without prior warning. This also accorded to some extent with the explanation given by Mr McCann in his police interview. The Committee accepted the evidence of Patient A that she was not given prior warning.

Particular 12(b)(ii) proved

78. In light of its finding on Particular 12(b)(i), the Committee considered that there had not been informed consent since the knickers were pulled down without prior warning. The Committee considered that it was incumbent upon a chiropractor to both explain why underwear might need to be adjusted and to obtain consent to do so and accepted the evidence of Patient A that this did not happen. The Committee also took into account the police interview of Mr McCann following his arrest on suspicion of sexual assault in 2012, in which he accepted that this was his normal practice.

79. The Committee decided that Mr McCann should have obtained consent on each occasion and that consent was not implied by virtue of Patient A's return for further treatment.

Particular 13(a) proved

80. Patient A described feeling embarrassed and distressed in her treatment sessions with Mr McCann. The committee considered that the lack of prior warning or consent contributed to this. It was satisfied that his actions amounted to a failure to respect Patient A's dignity and privacy.

Particular 13(b) not proved in relation to 12 (a) proved in relation to 12(b)

81. The Committee did not consider a failure to give prior warning and obtain consent from a Patient before undoing her bra tended to bring the profession into disrepute. As set out below, the Committee did not find this was sexually motivated. It therefore concluded that this failing, though poor practice, was not sufficient to tend to bring the profession into

disrepute. However, in light of its finding at 13(c) below that Mr McCann's actions in relation to the removal of the knickers was sexually motivated, it followed that this did tend to bring the profession into disrepute.

Particular 13(c) not proved in relation to 12 (a) proved in relation to 12(b)

82. The Committee was not satisfied on the balance of probabilities that Mr McCann's actions in relation to the bra were sexually motivated. There was no other evidence to support this contention and it fell outside the standard *modus operandi* which the Committee has found to be sexually motivated. However, in relation to the removal of the knickers the Committee was satisfied that Mr McCann's actions were sexually motivated. In reaching this decision the Committee took into account, by way of cross admissibility, the evidence from Patients C, D, E and F, as well as Patient A, and its decision that Mr McCann had a *modus operandi* as detailed in paragraphs 123-4 below.

PATIENT B

83. Patient B attended for an appointment with Mr McCann on 20th September 2012, when she was 67 years old, due to ongoing hip pain which she had been suffering with for some years. When she attended there was a changing room, with a locked door and two gowns hanging in the room. She changed into the gown, keeping on her bra and knickers. She said that when she came out of the changing room, Mr McCann slapped the examination table and said to her "*park your backside here*". She was adamant that these were the words he used. She was taken aback, but described him being a tall man, who spoke with authority and so she did as she was told.

84. She also recalled that she was uncomfortable with Mr McCann's physical proximity when he was giving her his findings and she was on the treatment table. The Committee noted that there was no particular relating to this aspect of her account and drew no conclusions or inferences from it. It is included in this document as this part of her account formed part of the discussion between Patient B and Patient A as set out below.

85. Patient B met Patient A a few weeks after this and mentioned her experience. Patient A informed her of her own experience and at this point, Patient B said she realised that "*I had not been mad in feeling uncomfortable during my assessment with him*" and told Patient A of her experience. She later notified her GP of the incident, who advised her of the GCC. Patients A and B then decided to make a joint complaint to the GCC.

86. In his written submissions, Mr McCann denied that he told Patient B to “*park her backside*”, or that he ever uses that phrase. He always asks patients to lie on their backs and says that patients often have trouble understanding exactly what he wants them to do, so such a phrase would not make any sense. He later stated that he would not say this phrase as he would want someone to lie down and not sit down.
87. He stated that he always stands next to the bench facing the patient when he explains his diagnosis and treatment and he had not noticed she felt uncomfortable. He denied that he would ever position himself deliberately to make contact with a patient.

Particular 14 proved

88. This Particular was supported by the Patient records and the evidence of Patient B.

Particular 15 proved

89. The Committee accepted the very clear evidence of Patient B that Mr McCann used the expression “*park your backside*” and that she was affronted by this. The Committee thought this would be a very odd thing to have made up and found Patient B to be a convincing witness. It considered carefully Mr McCann’s written submissions that he had not used these words but concluded that it preferred the consistent written and oral evidence of Patient B, which it found to be compelling.

Particular 16(a) proved

90. The Committee was satisfied that the use of this expression failed to respect the dignity of this 67 year old lady, attending a chiropractor for the first time. The Committee did not consider there was an issue of privacy, however the gravamen of the charge was the failure to respect the dignity and on that basis the Particular was found proved.

Particular 16(b) not proved

91. The Committee considered that this was an unfortunate and disrespectful phrase for Mr McCann to have used. It was ill-judged and unprofessional, however it was not so onerous as to bring the profession into disrepute.

PATIENT C

92. Patient C attended at Mr McCann’s clinic for treatment on four occasions from 25th October 2012 to 19th November 2012, when she was 34 years old, as she had been suffering from a bad back and sciatica for a number of years.

93. Her account is as follows. On her first appointment she wore sportswear. She was told to remove her upper clothing and to put on a gown, leaving her bra on. She then lay face down on the bench and Mr McCann then, without first asking, giving an explanation or seeking her consent, pulled her leggings down to her knees and then did the same with her knickers. She said that there had been no conversation prior to this about the need to remove her underwear. He then massaged her right buttock. She describes this as feeling intrusive and uncomfortable, but she had been suffering with a bad back for a long time, she had gone to see a professional and the purpose of treatment was to resolve her problem with her back.
94. She recalls that Mr McCann diagnosed her as having a twisted, tilted and rotated pelvis and that she would need 5 or 6 appointments. The chiropractic records indicate that she was diagnosed with *“lumbar and cervical compromise causing nerve disturbance.”*
95. On her second and third appointments, he again pulled down her leggings and knickers to her knees and massaged her right buttock in the same way as on the first occasion. Patient C said that although she felt uncomfortable at having her bottom exposed, she did not at that time question his motives because the treatment was working and so she continued to go. She told the Committee how on each occasions after the buttock massage, Mr McCann would then pull her knickers and leggings back up.
96. On the final appointment on 19th November 2012, Patient C said she wore a trouser suit. As before, Mr McCann pulled down her trousers. She thinks that he asked her to unclip them in order for him to be able to do so. He then pulled her knickers down to just above her knees and carried out a buttock massage and possibly a thigh massage too. After the treatment was concluded she climbed off the bed, having pulled up her trousers and stood up. She said Mr McCann was standing directly behind her and he put one hand on each of her buttocks and carried out a *“patting motion”*. She said at the second pat he left his hands on her buttocks for a second and she immediately felt uncomfortable. She explained how he put his entire hands on her buttocks and she was adamant that at that stage the treatment was over. She said *“I felt very uncomfortable and immediately began to question the treatment given.”* Patient C said she looked at him in a way to indicate her unhappiness at this and went into the changing area to put on her top.
97. Although this was only her 4th session, as she came out, he then said that she would not need to come back for further appointments. As she headed to the reception area she said Mr McCann was behind her and she felt a cupped hand around her right bottom cheek.

She describes herself as feeling “*very uncomfortable at this point and was questioning whether Mr McCann had been sexually aroused during the course of my treatment.*” However, she did not say anything because she “*wanted to take time to consider what to do and not to confront Mr McCann at that time.*” On leaving the appointment, she went to the police station and made a complaint about Mr McCann.

98. The following background information was based on documentary evidence before the Committee from the police and the GCC. The police on receiving Patient C’s complaint contacted the GCC. Around this time, the GCC had been contacted by Patients A and B. As is usual with a police investigation, the GCC awaited the outcome of the police matter before proceeding with the GCC investigation against Mr McCann. It was therefore the case that the police investigated all 3 complaints at this time.
99. Mr McCann was arrested and interviewed about the allegations made by Patients A, B and C on 8th February 2013. Mr McCann was unable to recall the treatments of Patients A and C specifically, but accepted that massage of a patient’s buttocks following removal of their trousers and underwear formed a routine part of his treatment. He denied that the touching was sexual. He also denied that he would have touched Patient C on the buttocks in the way she alleged, although stated that he touches people prior to them being in their underwear and to put them at their ease. He may have touched her but he cannot recall doing it, but if he had, it would not have been sexual.
100. The following questions and answers were recorded in the interview:
- i. Question: *Do you ever ask them to remove their bra or their pants or their knickers?*
 - ii. Answer: *Again, only if they’re face down and that’s when I need to and I just.....again just either unhook their bra if I am doing neck and shoulders, or I just slide their pants down to get at their backside if that’s where we need to be.*
 - iii. Question: *And would you ask permission to do that before you did it or would it be something you did as part of the treatment?*
 - iv. Answer: *It’s just part ... just part of the treatment. It’s just not something that you kind of get involved into. I can just say aw I’m just gonna slip these down here or I’m just gonna unhook that but it’s not a wrote thing. I don’t ask permission.....*
 - v. Question: *So would the fact that, for example, pants needed to be removed, would that be explained to the client?*
 - vi. Answer: *Well I’ve explained where I’m gonna massage and I mean again it’s a conversation that you have and you know I’m not reading off a script so various people do various things and if they’re older you know you might have to explain what you’re gonna*

do because they've got all sorts of elasticated things on and erm...so you know it's whatever I think's appropriate.

101. Patient C did not wish to pursue her complaint with the Police and so they did not take any further action against him regarding any of the complaints. The police investigation having been brought to an end, the GCC then began an investigation into the claims. Mr McCann was then notified of the complaints to the GCC of Patients A, B and C by a letter dated 1 March 2013, and gave his response, stating that he had treated the patients in the usual course of events and denying that his actions were sexually motivated.
102. Patient C said that she had not discussed her complaint with any other complainant. She had discussed it with her parents and former husband, but that none of these discussions impacted in any way upon her account.
103. Mr McCann's response regarding Patient C was that he did not admit touching her on the bottom, as he did not even recall who she was. He stated that she did not object when he unfastened her bra to massage her shoulders or when he massaged her buttocks. He explained that usually it is 4 to 6 sessions, but results can be quicker or slower. He denied specifying it would be 5 appointments. He said that whilst he may have put his hand in the small of her back as guidance to the changing room, or on her hips as he helped her off the treatment table, he never patted or cupped her bottom.
104. Mr Hennius stated that, similarly to Patient A, whilst it would have been necessary to lower Patient C's clothing to treat her, if Mr McCann had done this without first explaining to her what he was about to do and without waiting for her permission, then he did not act as a reasonable chiropractor. He said that he could see no reason, however, for Mr McCann to have pulled her clothing, including her knickers, down as far as he did. He said that if the thigh also needed treatment then he could have massaged the buttock first, having pulled the knickers down to just below the buttocks and then replaced the knickers before treating the thigh. To fail to do so would not respect the dignity of the patient and fell far below the standard expected of a reasonable chiropractor.
105. Regarding particulars 21(a) and (b) of the allegation, Mr Hennius explained: *"Touching of what may be described as intimate areas (such as the buttocks), unless this is carried out with instructive or therapeutic intent [and with consent] is in my opinion entirely inappropriate"*. He stated that if Mr McCann did what is alleged in particulars 21 (a) and (b), then his actions fell far below the actions expected of a reasonable chiropractor.

Particulars 17(a) to (d) proved

106. These Particulars were supported by the Patient records and the evidence of Patient C.

Particular 18 proved

107. The Committee accepted the clear evidence of Patient C that on each occasion that she attended, Mr McCann lowered her clothing which consisted of her trousers and knickers, and massaged her bare buttocks. This accords with the chiropractic records and was not disputed by Mr McCann.

Particular 19(a) proved

108. The Committee was satisfied by the emphatic evidence given by Patient C that her clothing was removed without prior warning, together with Mr McCann's responses in the police interview at page 70, of bundle C2, where he admits doing this generally without any explanation.

Particular 19(b)

109. In light of its finding on Particular 19(a), the Committee considered that there could not have been informed consent since the knickers were pulled down without prior warning. With regard to the massage of the buttocks, Patient C said "*I can't remember him ever explaining what he was going to do prior to any treatment.*" It followed that there cannot have been informed consent for the buttock massage. In Mr McCann's police interview he stated on page 69, that he would not ask for permission.

110. The Committee decided that Mr McCann should have obtained consent on each occasion and that consent was not implied by virtue of Patient C's return for further treatment.

Particular 20(a) proved

111. The Committee was satisfied on the evidence of Patient C and Mr Hennius that Mr McCann's actions failed to respect her dignity. There was no need for him to have pulled the knickers down as far as her knees and to have done it without warning or consent. Mr Hennius was clear that if any treatment was required below the knicker line Mr McCann should have replaced the knickers before carrying out any massage on Patient C's leg.

Particular 20(b) proved

112. The Committee was in no doubt that the exposure of a woman's intimate parts without prior warning and consent, together with the unnecessary exposure of a patient's intimate

parts by leaving the knickers down whilst he massaged her leg, were actions that tended to bring the profession into disrepute.

Particular 20(c) proved

113. The Committee accepted that, based on the chiropractic records, the massage of Patient C's buttock was clinically justified. However, Mr Hennius said there was no justification for lowering Patient C's clothing down to her knees. The Committee concluded that in lowering the clothes to this extent Mr McCann's actions were sexually motivated. Further, the failure to seek consent or give prior warning that he was going to lower her clothing or massage her bare buttocks fitted with the pattern of behaviour across five patients which the Committee considered to be sexually motivated. Notwithstanding the fact that the treatment of buttock massage was clinically justifiable, the Committee was satisfied that lowering her clothing and massaging Patient C's buttocks without giving prior warning were sexually motivated actions.

Particular 21(a) proved

114. Patient C gave very clear and unambiguous evidence that after treatment was completed Mr McCann patted both her buttocks hard and that on the second pat his hands lingered a short while. She immediately questioned his motives for treating her and went straight to the police to report his behaviour. In his police interview Mr Cann accepted that he may have touched her in the small of the back or hips or similar. He said that he was touching people all the time, it being the very nature of a chiropractor's work and also for putting patients at ease. He later denied that he would have patted her buttocks. The Committee found Patient C to be a compelling witness and had no reason to doubt her account.

Particular 21(b) proved

115. As with Particular 21(a), Patient C gave a very clear and unambiguous account of Mr McCann cupping his hand around her right bottom cheek as she went to leave the treatment area. Mr McCann could not specifically remember Patient C, but denied that he would have touched her buttock in this way. Patient C's evidence was tested by questions from the Committee, who found her to be very credible. Whilst recognising that it was for the GCC to prove its case and not for Mr McCann to disprove it, the Committee gave less weight to Mr McCann's account, which had not been given on oath and tested in any way.

Particular 22(a) proved

116. The Committee considered Patient C was a very credible and compelling witness and the Committee could not see any clinical justification for Mr McCann's actions. Her treatment

had been completed and Patient C had climbed off the bench and only then did Mr McCann pat her hard on both buttocks, twice. Then later, once she had dressed and was leaving the treatment area he cupped a hand around her buttock. This behaviour was completely unprofessional and the Committee was in no doubt that inappropriate touching of a patient's bottom in this way tended to bring the profession into disrepute.

Particular 22(b) proved

117. The Committee noted that Patient C went straight to the police to complain about what she considered to be a sexual assault following this incident and from her oral evidence it was clear that she considered Mr McCann's actions to be sexually motivated. The Committee could see from the evidence that it could be thought that Mr McCann had a propensity to be over familiar and casual with patients and also a bit coarse in his language, as demonstrated by Patient B. However, the Committee considered that placing two hands on a female patient's bottom twice followed by a hand cupping of her buttock could only be done in a sexual way and for sexual gratification and went significantly beyond simply being over familiar. Furthermore, despite Patient C giving him a stern look after the first inappropriate touching of her bottom, Mr McCann went on to do it again. The Committee therefore found that the actions of Mr McCann in the patting of the buttocks (21(a)) and the cupping of the bottom cheek (21(b)) were sexually motivated.

PATIENT F

118. Patient F visited Mr McCann for treatment on a number of occasions in April 2014, when she was 47 years old, having had some back spasms and pain in her lower back just above her coccyx. Although a bit confused about the dates, Patient F remembered that she attended on four occasions. The first on her own, the second with her husband and then two further appointments on her own. She said that at the time she was taking a lot of strong prescription medications for her back spasm, which was very painful.
119. Her account is as follows. On the first visit Patient F provided information about her problem, but did not think she had any treatment. She laid on the bed fully dressed and Mr McCann felt all along her hips and lifted her legs up and down and then said that her pelvis was out of alignment. She added that he put some boots on her feet and also pulled her legs and ankles and checked to see if her shoulders were level. He also pressed her hips down on the table and pressed her pelvis in a see-saw motion. She could not remember if he carried out any further tests on that first visit.

120. On the second visit her husband accompanied her and that visit passed without incident.
121. On the third visit she was asked to put on a gown and to keep her bra and knickers on. She lay face down on the bed with her gown open at the back. Patient F said that Mr McCann then got hold of her pants and pulled them right down, *“totally past my bum and everything was exposed, they were right past my buttocks to the top of my thigh.”* She said that he had not told her he was going to do that, nor had he asked her if it was alright to pull her knickers down. She said that at the time she did not question why she needed to take her clothes off but that she did not agree or consent to her pants being pulled down. She said she was both mortified and embarrassed and that she was *“crying with my head through the hole in the table.”* She said that Mr McCann then squirted gel onto her and pushed his knuckle or fist into the top of her left buttock cheek. She said it was very firm and very painful, but she did not say anything because she thought it was just part of the process. She said when he had finished he patted her back with some tissue paper, but that she then had to wipe the gel off and all she wanted to do was to get out of there. She said she had to pull her knickers back up.
122. Despite her experience on the third visit Patient F said she returned a fourth time because *“her friends had been going to Mr McCann for years and they thought he was a lovely bloke, so I thought maybe it was just part of the treatment and maybe he pulled my knickers too far down accidentally.”* Also her back was getting better, so she thought she would continue. On her next appointment, he once again pulled her knickers right down, exposing her buttocks as before. Once again he did not tell her that he was going to do that, nor did he seek permission. However, on this occasion, she said, he did not in fact touch her bottom. She said, *“I was still face down in the hole and he came up to the top and stood close to my head. His genital area was right in my eye-line, so when he spoke to me and I moved my head to look all I could see was his penis. He had his testicles on the table and was swaying from side to side. I could see that he was sexually aroused and looked like he had a semi on. I could see his trousers were bulging.”* In answer to a question she said *“You can see the shape of a penis through trousers when it is erect in front of your face.”* She said she was disgusted, mortified and frightened because no one else was in the building and she thought *“I have to get out of here.”* Thereafter she did not make eye contact with him but just left as quickly as she could and has not returned since.
123. On being questioned by the Committee, Patient F said that Mr McCann had been wearing jogging bottoms and that she was sure that he was in a semi state of arousal. She said that she did not know if his penis was fully erect or semi erect, but from the shape of his penis

she could see that it was not hanging down but was sideways so that she could see it sticking out.

124. She explained that she did not complain about him at the time as *“in my naivety I did not know who to contact or if anyone would believe me as I was only one person.”* However, she then heard in the news about other complaints against Mr McCann and so decided to come forward at that stage. She contacted the police and also contacted the GCC to make her complaint on 18th January 2015. Patient F said she had discussed what happened with other people and she was aware of other complainants, although she had never seen them before. She said that she had not discussed the content of her statement with anyone and the discussions she had with the other complainants was about the situations they found themselves in. She added that those discussions had not impacted upon anything that she had said.

125. Mr McCann responded to the allegation and denied that he removed her underwear without asking her first. He said he did move her underwear in order to massage her lower back without getting massage cream on it. However, *“I always ask every patient male or female for permission to undo or adjust their underwear.”* He strongly denied that he was sexually aroused by her. He later stated that she may have mistook the action of removing the massage cream from her as a swaying motion.

IN PRIVATE

█ [REDACTED]

█ [REDACTED]

IN PUBLIC

128. With regard to the chiropractic records, in his written report, Mr Hennis stated that it was not clear whether Mr McCann carried out any neurological and orthopaedic tests when he first examined Patient F. In his third addendum report, Mr Hennis stated that Mr McCann had recorded the diagnosis as: *“lumbar compromise is causing nerve disturbance”*. He stated that other than a recording of *“local tenderness L4+5”*, he had not recorded any

other findings regarding the examination of the lumbar spine on either a diagram or the written patient records. He said that a diagnosis depended on the ability of a chiropractor to make use of recognition and probability in relation to the information gained and by specific tests of the patient. The more thorough the case history and the more relevant the tests the greater the probability that the diagnosis reached would be correct. Mr Hennis stated that in his opinion Mr McCann had recorded very few tests and/or observations regarding Patient F's lumbar spine and pelvis, which led him to his diagnosis.

129. In his oral evidence he said that the Mr McCann's actions described by Patient F in her oral evidence, and which went much further than her statement, sounded like tests, however apart from the "*local tenderness L4+5*" there was nothing else recorded by Mr McCann. Mr Hennis pointed out that Patient F had been in a lot of pain and that would limit the number and type of tests that Mr McCann could have carried out. He said that if "*local tenderness L4+5*" was as a result of a palpation test then that is some finding to justify the diagnosis, but he would have expected Mr McCann to have done more tests. He accepted that the diagnosis could be right, but that there was insufficient within the records to justify the diagnosis. Accordingly, Mr McCann had either not carried out sufficient tests or had carried out the tests but had failed to record that fact. In light of Patient F's oral evidence, Mr Hennis was of the opinion that it was more a matter of Mr McCann not recording tests that he had carried out.
130. Mr Hennis said it was not uncommon that a chiropractor moves in relation to the treatment table and or patient during examination and treatment procedures. He said this movement may at times be described as rhythmical and could perhaps appear to be swaying and could involve genitals resting on the table.

Particular 23 proved

131. These Particulars were supported by the patient records and the evidence of Patient F.

Particular 24 proved

132. The Committee accepted the evidence of Mr Hennis that given Patient F's presentation Mr McCann should have conducted and recorded the results of a physical examination possibly involving neurological orthopaedic testing depending on the clinical decision of the chiropractor and the patient's ability to move. It was noted that this particular patient was in severe pain when she attended.

Particular 25(a) not proved

133. Patient F said she laid on the bed fully dressed and that Mr McCann felt all along her hips and lifted her legs up and down and then said that her pelvis was out of alignment. She added that he put some boots on her feet and also pulled her legs and ankles and checked to see if her shoulders were level. He also pressed her hips down on the table and pressed her pelvis in a see-saw motion. In light of the account given by Patient F and the notation provided in the records, the evidence suggested that some tests had been carried out and therefore the Committee was not satisfied on the balance of probabilities that the tests had not been carried out.

Particular 25(b) not proved

134. The Committee noted that the records for Patient F show a result in all the boxes in the form. Mr Hennius said that all individual tests should be recorded rather than to roll together one's findings and put NAD. The Committee did not accept that rolling together in this way was inadequate. It noted that where there was a particular finding Mr McCann did record it, namely the local tenderness at L4 and L5. Accordingly the Committee was not satisfied that the GCC had proved that he had failed adequately to record the results of his physical examination.

Particular 25(c)(i) not proved

135. Mr Hennius said given that Patient F was in a lot of pain there may have been a limit to the tests that could be done. He added that the local tenderness in L4 and L5 could mean that lumbar compromise was the right diagnosis. It was clear therefore that there was some evidence to justify the diagnosis.

Particular 25(c)(ii) not proved

136. Mr Hennius conceded that lumbar compromise was a reasonable diagnosis in all the circumstances if one could not do full testing in light of the pain that Patient F was in and also given the finding of local tenderness at L4 and L5. Accordingly, the GCC had not proved that there were insufficient findings recorded to justify the diagnosis.

Particular 26 proved

137. This Particular was supported by the chiropractic records and the evidence of Patient F.

Particular 27(a) proved

138. Patient F was clear that on the third and fourth occasion Mr McCann pulled her knickers down. She said that on the third occasion he did a buttock massage, but on the fourth

occasion Mr McCann did not touch her bottom. The chiropractic records supported there being a buttock massage on the third occasion only. In his written submissions Mr McCann accepted that he had moved Patient F's pants out of the way to massage her lower back to avoid getting cream on them and on another occasion to massage her left piriformis muscle. The Committee was thus satisfied that Mr McCann had pulled her knickers down on two occasions.

Particular 27(b) proved

139. Patient F said that on the third occasion, having pulled her knickers down, Mr McCann pressed his knuckles or fist deeply into her buttocks. This is not disputed by Mr McCann who accepts he gave her a massage to her left piriformis muscle.

Particular 28(a) proved

140. Patient F said that Mr McCann removed her knickers on both occasions without prior warning. Mr McCann said in his written submission that he always asks every patient for permission to undo or adjust their underwear whether it is their "*first appointment or fifty first.*" The Committee noted that this was in stark contrast to the account he gave in his police interview referred to above, but also noted that this treatment was carried out sometime after that interview and thus allowed for the fact that Mr McCann may have adapted his approach. That said, the Committee accepted Patient F's unambiguous account that there had been no prior warning that her knickers were going to be lowered to below her buttocks or that he was going to massage her buttock. That account had been given under oath and tested and the Committee found no reason to disbelieve it.

Particular 28(b) proved

141. In light of its finding on Particular 28(a), the Committee considered that there could not have been informed consent since the knickers were pulled down without prior warning. With regard to the massage of the buttocks, Patient F said she knew he was going to massage the knot in her lower back, but she did not know that her buttock was going to be massaged and she was mortified when he pulled her pants down. It followed that there could not have been informed consent for the buttock massage either. The Committee decided that Mr McCann should have obtained consent on each occasion and that consent was not implied by virtue of Patient F's return for further treatment.

Particular 29(a) proved

142. The Committee accepted the evidence of Patient F about Mr McCann's position and movement in relation to the table.

Particular 29(b) proved

IN PRIVATE

[REDACTED]

IN PUBLIC

144. The Committee accepted the clear and compelling evidence given by Patient F on this point. The Committee noted that on this occasion Mr McCann had pulled down Patient F's knickers to below her buttocks but had not in fact carried out any treatment on her buttocks. The Committee was satisfied that Mr McCann had become sexually aroused.

Particular 30(a) proved

145. The Committee noted the evidence of Patient F that when Mr McCann pulled down her knickers without warning she was mortified and so upset she was crying with her face down through the hole in the bed. This behaviour clearly failed to respect her dignity as did his act of becoming sexually aroused whilst standing touching the bed.

Particular 30(b) not proved in relation to 27 and proved in relation to 29

146. The Committee accepted that, based on the clinical records, it was clinically justified to pull down Patient F's knickers and to carry out a buttock massage. However, clearly there could be no clinical justification for becoming sexually aroused during the treatment of a patient.

Particular 30(c) proved

147. In light of its finding at 30(d) below that Mr McCann's actions in relation to the removal of the knickers and massaging the buttock were sexually motivated, it followed that this did bring the profession into disrepute.

Particular 30(d) proved

148. Although there was, on the face of the chiropractic records, a clinical justification for removing Patient F's knickers and massaging her buttock on the third visit, the Committee was satisfied that Mr McCann's actions were also sexually motivated. In reaching this decision the Committee took into account, by way of cross admissibility, the evidence from Patients A, C, D and E, as well as Patient F, and its decision that Mr McCann had a

sexually motivated *modus operandi* within which this behaviour fits. It considered that lowering her underwear to below her buttocks on her last visit without warning was clearly sexually motivated as, in addition to fitting within his usual *modus operandi*, he did not do any treatment on that area and was visibly sexually aroused immediately after.

149. Further, it noted that this is one of the patients that Mr McCann treated after his arrest and after his submissions to the GCC about his reformed practice. By this stage he was in no doubt about the effect of this behaviour on patients or its inappropriateness.

PATIENT D

150. On 15th September 2014, Patient D attended at the Registrant's clinic for chiropractic treatment with Mr McCann, when she was 35 years old. She had never been to a chiropractor before. Patient D explained how they went through some questions and answers and she provided an account of what had happened and what her problem was. She said that the summary in the chiropractic records was a fair one and that she did say some of the pain was going down her left side. She did not remember when she signed the consent form, but thought it was before the procedures commenced.

151. Her account is as follows. She was then told to change in the changing room into her bra and knickers and to wear a gown, left open at the back. As she lay on the bed Mr McCann immediately said he could see that she had one leg shorter than the other and a twisted pelvis. She said that he had not at that time carried out any tests on her. He said he would do a couple of manoeuvres, which involved him holding her hip and shaking it quite violently. He then lifted her leg in the air, bent it towards Patient D so that it bent at the knee and pivoted at the hip and did the same on the other side. He also performed other techniques and at one stage put some form of "spongy" shoes on to her feet.

152. Patient D said that she was then asked to lie on her front and having done so, Mr McCann said "*This is probably going to be the worst experience of your life.*" She was adamant that is what he said, saying "*I am 100% sure those are the words he used because they stuck in my brain.*" She said that, without telling her or asking her if it was alright, he pulled down her knickers to below her bottom, exposing her whole bottom. He then, without having said what he was going to do, squirted gel onto her bottom and gave her a deep buttock massage. She said that it was extremely painful and that shortly after starting the massage Mr McCann asked her if she was in pain. Patient D said that when she said she was, he

responded by telling her to “*bite into the bed.*” She was surprised and thought this was an inappropriate thing to say.

153. At the end of the massage Mr McCann pulled her knickers back up and she then tried to get off the bed, but Mr McCann told her to wait and that he would help her. He did this by taking hold of both her ankles and moving them around and off the bed so that Patient D found herself bent face down over the bed and she said “*it felt like he was hunched over me, my gown was still open at the back.*” She said that throughout the process she felt that “*something was not right*” and that she “*just wanted to get out of there.*” When asked what she meant by “*something not right*”, she said “*something was not right in a sexual way, because of the procedures and the way his hands were on me and the way he told me to bite into the bed was like a sexual innuendo.*” She said she did not say anything to him at the time because she felt embarrassed and humiliated and she “*just needed to go.*”
154. Patient D said that she had spoken to Patient E about what had happened to her after she had put something on Facebook about feeling “a little violated after seeing a chiropractor this afternoon” and Patient E responded “Just out of interest was he called Peter?” They knew each other as passing acquaintances at the farm where they both went horse riding. They had since become more friendly and travelled to London together for the hearing. She was adamant, however, that nothing they had talked about had influenced or impacted upon what she had written in her statement and the evidence that she had given to the Committee.
155. In his written submissions, Mr McCann has stated that he performed chiropractic manipulations on Patient D, having explained what he was going to do and that he would need to massage her left piriformis muscle and that it may be uncomfortable. He said that he informed Patient D that he would ask permission before adjusting her underwear, which he claims he did “*with due care and only so far as I needed for access. I always ask every patient male or female for permission to undo or adjust any underwear whether it is their first appointment or fifty first.*” Mr McCann also denied saying that it would be the worst experience, but believed that he said, “*This won’t be a lot of fun as I suspect it will be quite tender*”. He accepted that he helped her off the couch as he found this to be the safest way to get patients down.
156. Mr Hennius stated that in considering the chiropractic records, it was not clear what neurological, orthopaedic and other tests Mr McCann had carried out, other than a Straight Leg Raise test. He said that if this is the only test Mr McCann carried out, and he did not

perform other relevant tests, then his conduct fell far below the standards of a reasonable chiropractor. However, if he did perform those tests but did not record them, then his conduct fell below but not far below the standards of a reasonable chiropractor.

157. In his third addendum report, Mr Hennis stated that Mr McCann recorded the diagnosis as: *“Pelvic misalignment causing nerve disturbance with attendant pain and loss of function”*. However, Mr Hennis explained that Mr McCann had not recorded a finding of pelvic misalignment on a diagram or in writing except for the report of findings. He added further that a diagnosis depended on the ability of a chiropractor to make use of recognition and probability in relation to the information gained and by specific tests of the patient. He said that the more thorough the case history, and the more relevant the tests, the greater the probability that the diagnosis reached would be correct. Mr Hennis said that in his opinion Mr McCann had recorded very few tests and/or observations regarding Patient D’s lumbar spine and pelvis, which had led him to his diagnosis.
158. In his oral evidence, Mr Hennis said that a misaligned pelvis can be detected just by observing, as described by Patient D, and therefore should have appeared in the records under “General Observations”. However, under that heading Mr McCann had recorded NAD which Mr Hennis said must be incorrect because there was an abnormal finding, namely the misaligned pelvis. He concluded, however, that in light of Patient D’s oral evidence, it was more likely to be a case of failing to record rather than failing to carry out the necessary tests. He accepted that pure observation in this instance could be sufficient to make the diagnosis that he did. That, he said, fell below rather than far below the standard expected of a reasonable chiropractor.
159. Mr Hennis said that it would be wholly inappropriate to say to a patient who is in pain to *“bite into the bed”*. He said that if a patient reports that treatment is painful then the chiropractor should respond to that and modify their treatment. He said that a deep buttock massage can be appropriate treatment for the diagnosis made in this instance, but emphasised the importance of speaking with the patient and obtaining informed consent to the removal of clothes covering intimate parts and the subsequent treatment.
160. He said that there are sometimes clinical reasons to stand behind a patient and help her up after treatment and that would be reasonable. But if not done with the aim of helping the patient then his actions fell below the standards expected, or far below depending on the motive.

Particular 31 proved

161. These Particulars were supported by the Patient records and the evidence of Patient D.

Particular 32 proved

162. The Committee accepted the evidence of Mr Hennis that given Patient D's presentation Mr McCann should have conducted and recorded the results of a physical examination possibly involving neurological orthopaedic testing depending on the clinical decision of the chiropractor and the patient's ability to move.

Particular 33(a) not proved

163. Patient D said that she lay on the bed and that Mr McCann immediately said he could see that she had one leg shorter than the other and a twisted pelvis. She said that he had not at that time carried out any tests on her. He said he would do a couple of manoeuvres, which involved him holding her hip and shaking it quite violently. He then lifted her leg in the air, bent it towards Patient D so that it bent at the knee and pivoted at the hip and did the same on the other side. He also performed other techniques and at one stage put some form of "spongy" shoes on to her feet. In light of the account given by Patient D and the notation provided in the records, the evidence suggested that some tests had been carried out.

164. The Committee took the view that tests were done which did form a physical examination and that all boxes notated a result. It agreed with Mr Hennis that it was not possible to tell specifically what tests had been done. Having established that an examination was done, the Committee had no information before it on which it could conclude that the examination was inadequate. It therefore found the GCC has not satisfied it on the balance of probabilities that Mr McCann failed to conduct an adequate examination.

Particular 33(b) not proved

165. The Committee noted that the records for Patient D showed a result in all the boxes in the form. Mr Hennis said that all individual tests should be recorded rather than to roll together one's findings and put NAD. The Committee did not accept that rolling together in this way was inadequate. It noted that where there was a particular finding Mr McCann did record it, namely the "SLR +ve". Accordingly the Committee was not satisfied that the GCC had proved that he had failed adequately to record the results of his physical examination.

Particular 34(a) & (b) not proved

166. Mr Hennius conceded that “*pelvic misalignment*” could be both a finding as well as a diagnosis and that a chiropractor could diagnose this condition simply by observation. Since pelvic misalignment is recorded in the *Report of Findings*, it could not be said that there was no or insufficient recorded findings to justify that diagnosis.

Particular 35 proved

167. The Committee accepted the evidence of Patient D who said that the buttock massage was not explained to her.

Particular 36(a) proved

168. Patient D said that she was wearing only bra, knickers and a gown which was open at the back. From his written submissions, it did not appear that this was disputed by Mr McCann.

Particular 36(b) proved

169. The Committee accepted the emphatic evidence from Patient D that these were the words used by Mr McCann. Although he denied using these words, his account had not been given on oath and tested in the way that Patient D’s evidence had been.

Particular 36(c) proved

170. Patient D said that Mr McCann pulled down her knickers and squirted gel on to her buttocks. Mr McCann did not appear to dispute this and the Committee saw no reason not to believe Patient D.

Particular 36(d) proved

171. Patient D said that Mr McCann gave a deep buttock massage and Mr McCann did not dispute this.

Particular 36(e) proved

172. The Committee believed the clear evidence of Patient D that this was what Mr McCann said to her. Although he denied using these words, his account had not been given on oath and tested in the way that Patient D’s evidence had been.

Particular 36(f) proved

173. The Committee accepted the evidence of Patient D that Mr McCann stood close to the couch with his crotch resting on the couch. It also accepted the evidence of Mr Hennius

that it was normal for a chiropractor to have to do this in the course of providing treatment to a patient.

Particular 36(g) proved

174. Patient D gave evidence that this was the way in which Mr McCann behaved at the end of her treatment session and Mr McCann accepted this in his written submissions. Mr Hennius gave evidence, which the Committee accepted, that this could be an appropriate way to help a patient off the treatment bed.

Particular 37(a) proved

175. The Committee accepted the evidence of Patient D that her knickers were pulled down and her buttock massaged without prior warning.

Particular 37(b) proved

176. In light of its finding on Particular 37(a), the Committee considered that there could not have been informed consent since the knickers were pulled down without prior warning. With regard to the massage of the buttocks, Patient D said she did not know that her buttock was going to be massaged. It followed that there could not have been informed consent for the buttock massage either.

Particular 38(a) proved in relation to 36(b)-(e) not proved in relation to 36 (a), (f) -(g)

177. The Committee considered that Mr McCann's words and actions as recorded in Particulars 36(b) to (e) failed to respect patient's dignity. However, those recorded in 36(a), (f) and (g) were not proved because they were accepted practice according to Mr Hennius.

Particular 38(b) proved in relation to 36(b) and (e) not proved in relation to 36(a), (c), (d), (f) and (g)

178. The Committee did not consider the words used by Mr McCann, as recorded in Particulars 36(b) and (e) were clinically justified or acceptable. However, the rest of Particular 36 was, on the basis of the chiropractic records and the evidence of Mr Hennius, clinically justified.

Particular 38(c) proved in relation to 36(b), (c), (d) and (e) not proved in relation to 36(a), (f) and (g)

179. The Committee was satisfied, in light of its findings in relation to Particular 38 (a) above and Particular 38(d) below, that Particulars 36(b), (c), (d) and (e) tended to bring the profession into disrepute. The comments he made were unprofessional and wholly inappropriate. His behaviour was sexually motivated. For the reasons given at 38(b) above, the Committee did not consider that Particulars 36(a), (f) and (g) tended to bring the profession into disrepute.

Particular 38(d)

180. Although there was, on the face of the chiropractic records, a clinical justification for removing Patient D's knickers and massaging her buttock, the Committee was satisfied that Mr McCann's actions were also sexually motivated. This is also one of the patients that Mr McCann treated after his arrest and after his submissions to the GCC. In reaching this decision the Committee took into account, by way of cross admissibility, the evidence from Patients A, C, E and F as well as Patient D, its decision that Mr McCann had a sexually motivated *modus operandi* within which this fits and the fact that by this stage he was in no doubt about the effect of this behaviour on patients or its inappropriateness.

UNACCEPTABLE PROFESSIONAL CONDUCT

181. Having found a number of the facts proved, the Committee then considered whether they amounted to Unacceptable Professional Conduct (UPC). UPC is defined by the Chiropractors Act as conduct which falls short of the standard required of a registered chiropractor. In deciding whether the facts found proved amounted to UPC, the Committee took into account all the evidence provided, both oral and written, together with the submissions made by Miss Rose. The Committee accepted the advice of the legal assessor.
182. The Committee was in no doubt that the facts found proved amounted to UPC. The Committee found that Mr McCann had behaved in a sexually motivated way towards five female patients over a period of nearly four years. That behaviour included the pulling down of knickers without warning or consent together with the massaging of buttocks which, whilst clinically justified, was also sexually motivated. On one occasion he became visibly sexually aroused whilst treating one of the patients. His behaviour also included the inappropriate and sexually motivated touching of a patient's buttocks after treatment had concluded. Throughout Mr McCann failed to respect the dignity of these six patients and also carried out a number of acts that tended to bring the profession into disrepute. The Committee was clear that Mr McCann's behaviour would be considered deplorable by other members of the profession and fell far below the standard expected of a reasonable chiropractor.

SANCTION

183. On deciding the appropriate and proportionate sanction, the Committee took into account the submissions made by Miss Rose on behalf of the GCC and considered the Indicative Sanctions Guidance issued by the Council. The Committee was cognisant of the fact that the purpose of sanctions was not to punish Mr McCann but to protect the public, maintain public confidence in the profession and maintain proper standards of conduct. Mr McCann had not provided any evidence by way of mitigation and stated that he did not wish to do so. The Committee considered each sanction from the least serious before deciding the appropriate sanction and accepted the advice of the legal assessor.
184. Following the Committee's finding of UPC, and in accordance with section 22(11) of the Chiropractic Act 1994, Mr McCann was afforded an opportunity to address the Committee on the question of sanction. He responded in an email (referred to as D2) stating, "*I do not wish to provide a statement of mitigation against sanctions as I do not wish to have any further involvement with the GCC and the chiropractic profession.*" Mr McCann continued to deny the allegations made against him.
185. The facts found proved against Mr McCann were so serious that an admonishment or conditions of practice would be wholly disproportionate and insufficient. The Committee had found that Mr McCann had behaved in a sexually motivated way towards five female patients over an extended period of time. With Patient C he had repeatedly touched her bottom in a sexualised way after treatment had been completed. With all five patients he had pulled down their knickers without warning and massaged their buttocks, again usually without warning. This pattern of behaviour persisted even after his arrest for indecent assault in 2013. From that moment in time Mr McCann was on notice that his behaviour was both under scrutiny and unacceptable.
186. He subsequently claimed he had learnt lessons from the experience and adapted his approach ensuring that he explained to all patients what he would be doing in such a situation and asking them to take responsibility for repositioning their underwear to expose the relevant area. However, despite these assurances he went on to act in the exact same way with Patients F and D, pulling down their knickers without warning and carrying out buttock massages without first explaining that that was what he was going to do. With Patient F he exhibited very clear signs of sexual arousal shortly after unnecessarily exposing her buttocks and not carrying out any treatment on them.

187. The Committee considered that this behaviour demonstrated a deep-seated, harmful attitudinal problem, whereby Mr McCann sought sexual gratification from his patients under the veil of legitimacy of carrying out clinically justified treatment. In his latest email, D2, Mr McCann continued to deny any sexual motivation and offered nothing by way of an apology to his patients. This demonstrated a complete absence of insight and remorse. Accordingly although the Committee considered suspension, it concluded that removal from the register was the only possible appropriate and proportionate sanction in this case. Gaining sexual pleasure from treating patients and touching patients in a sexualised way is wholly incompatible with the profession of chiropractic.
188. The guidance notes from the Council for Healthcare Regulatory Excellence, Guidance of Sexual Boundaries January 2008 states as follows: *“The professional relationship between a healthcare practitioner and a patient depends on confidence and trust. A healthcare professional who displays sexualised behaviour towards a patient breaks this trust, acts unprofessionally and may also be committing a criminal act.”*
189. Mr McCann deliberately exploited the trust that his patients had in him by reason of his professional status and his behaviour was a grave abuse of that trust. Any sanction less than removal from the register would leave patients at risk. Furthermore, a failure 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.

INTERIM SUSPENSION ORDER

190. Having decided that the appropriate sanction in this case was removal from the register of chiropractors, the Committee then invited representations from Miss Rose on whether an Interim Suspension Order was necessary. Such an Order would cover the appeal period until either no appeal was lodged, or any appeal was disposed of, during which time the substantive order would not come into effect. Miss Rose invited the Committee to make such an order in order to protect the public. The Committee accepted the advice of the legal assessor.
191. The Committee considered that in light of its findings of fact, the nature and seriousness of the UPC and its decision that a failure to remove Mr McCann from the register would leave patients at risk, it was necessary to make an Interim Suspension Order in order to protect the public. The Committee was satisfied that Mr McCann posed a real risk of

significant harm to patients if such an order was not made. This order will remain in place until the substantive order comes into force, or at the conclusion of any appeal should one be made.

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: 9 October 2015



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.