



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: **Jonathan Whitlock**

Address of Respondent: **Banbury Chiropractic Clinic
37 The Green
South Bar
Banbury
Oxfordshire
OX16 9AE**

Registration Number of Respondent: **03466**

On 18 – 22 and 25 – 26 April 2016 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 (re Patient A):

That being a registered chiropractor you are guilty of unacceptable professional conduct.

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 Banbury Chiropractic Clinic, 37 The Green, South Bar, Banbury, OX16 9AE.
2. You treated Patient A (a woman) at a number of sessions in January, February and March 2015.
3. At a treatment session on or about 11 February 2015 when Patient A was lying on her back on the treatment table fully clothed with her arms over her chest:
 - (a) you moved your hands very close to her breasts;
 - (b) you were only prevented from touching her breasts because she covered them with her hands.
4. At a subsequent treatment session between mid February and mid March 2015, while Patient A was lying on her back fully clothed with her knees raised, you rested the fingertips of your right hand between her legs in the area of the labia.
5. At a treatment session on or about 18 March 2015:
 - (a) while Patient A was lying on her back fully clothed, you leaned so far over as to be nearly on top of her for a few seconds;
 - (b) while Patient A lay on her front with you standing at her left side, you had your right hand on her buttocks. Your right hand was tracing lines over, or stroking, her buttocks with one or two fingers dipping between her buttocks;
 - (c) while you stood at her left shoulder you pressed your penis against her shoulder;
 - (d) your penis at that time was erect or semi-erect;
 - (e) when Patient A was about to use the walking machine, you squeezed Patient A's hand and said 'enjoy it'.
6. In relation to some or all of the matters set out in paragraphs 3 to 5 above:
 - (a) the touching did not constitute part of a justified course of treatment;
 - (b) the touching was without the patient's consent;
 - (c) your actions were sexually motivated.
7. On or about 14 January 2015 you procured a series of x-ray exposures of Patient A

without adequate clinical justification, alternatively without recording adequate clinical justification.

8. One of the x-ray exposures you procured on that date, an anterior-posterior open mouth exposure, was not justified in that it had no diagnostic value.

THE ALLEGATION (re Patient B):

That being a registered chiropractor you are guilty of unacceptable professional conduct.

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 Advanced Chiropractic Clinic, 79 Gales Drive, Three Bridges, Crawley, RH10 1QA.
2. You examined and/or treated Patient B (a woman) at a number of sessions in August and September 2012.
3. At an examination and/or treatment session on or about 24 August 2012 you rolled down Patient B's knickers and/or put your hand on her bottom under knickers without:
 - (a) previously asking for permission; and/or
 - (b) explaining why you were proposing to do this.
4. At an examination and/or treatment session on or about 24 August 2012 while Patient B was wearing a gown and being positioned for an x-ray to be taken, your hand stroked past her breasts.
5. At treatment sessions on or about 3, 7, 10, 14, and/or 17 September 2012, you repeated the behaviour set out in paragraph 3.
6. At the final treatment session on or about 17 September 2012 you deliberately rubbed or touched the area between Patient B's legs, including her labia and pubic area.
7. With regard to the behaviour set out in paragraph 6:
 - (a) it took place in a private treatment room and not an open treatment area;
 - (b) the door of the room was closed;
 - (c) the behaviour immediately ceased when another chiropractor entered the room;
 - (d) you then quickly pulled up Patient B's knickers and resumed treatment to the lower back.
8. In relation to some or all of the matters set out in paragraphs 3 to 6 above:
 - (a) the touching did not constitute part of a justified course of treatment;
 - (b) the touching was without the patient's consent;

(c) your actions were sexually motivated.

9. On or about 24 August 2012 you failed to take, alternatively failed to record, an adequate history regarding Patient B's reported complaint of headaches.
10. On or about 24 August 2012 you procured a series of x-ray exposures of Patient B without adequate clinical justification, alternatively without recording adequate clinical justification.
11. You failed to report, alternatively failed to record (adequately or otherwise), the findings on examining the x-rays taken of Patient B on 24 August 2012.
12. On or about 24 August 2012 you procured a series of spinal x-rays of the cervical and lumbar spine of Patient B without considering separately the need to x-ray (a) the cervical and (b) the lumbar spine.
13. It was your practice not to consider separately the need to x-ray (a) the cervical and (b) the lumbar spine.

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.

AMENDED ALLEGATION

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

Patient A

1. At all material times you practised as a chiropractor at Banbury Chiropractic Clinic, 37 The Green, South Bar, Banbury, OX16 9AE.

2. Between 14 January 2015 and 18 March 2015 you treated Patient A.

3. At a treatment session on or about 11 February 2015 when Patient A was lying on her back on the treatment table, fully clothed with her arms over her chest, you:
 - (a) moved your hands very close to her breasts without:
 - i. previously asking for permission; and/or
 - ii. explaining why you were proposing to do this.
 - (b) were only prevented from touching her breasts because she covered them with her hands.

4. Your actions at 3 (a) and (b), individually and/or taken together, were:
 - (a) Inappropriate; and/or
 - (b) Without the consent of Patient A; and/or
 - (c) Sexually motivated.

5. At a subsequent treatment session between mid February and mid March 2015, while Patient A was lying on her back on the treatment table, fully clothed with her knees raised, you:
 - (a) rested your fingers between her legs in the area of the labia; and/or
 - (b) deliberately touched or allowed your fingers to touch the area of her labia.

6. Your actions at 5 (a) and (b), individually and/or taken together, were:
 - (a) Not justified as part of the course of treatment; and/or

- (b) Without the consent of Patient A; and/or
- (c) Inappropriate; and/or
- (d) Unprofessional; and/or
- (e) Sexually motivated.

7. At a treatment session on or about 18 March 2015 while Patient A was lying on her back on the treatment table, fully clothed, you leaned over her using your whole body, so you were nearly on top of her without:

- (a) previously asking for permission; and/or
- (b) explaining why you were proposing to do this.

8. Your conduct at 7 was:

- (a) Without the consent of Patient A; and/or
- (b) Inappropriate; and/or
- (c) Sexually motivated.

9. At a treatment session on or about 18 March 2015 while Patient A was lying on her front on the treatment table, fully clothed with you standing at her left side, you:

- (a) traced a figure of 8 over her buttocks with your fingers; and/or
- (b) stroked her buttock with your fingers; and/or
- (c) deliberately touched or allowed your fingers to touch the area between her legs.
- (d) While carrying out treatment around her shoulder you:
 - i. stood at her left shoulder with your penis pressed against her shoulder; and
 - ii. at the time of doing so your penis was erect or semi-erect.

10. Your actions at 9 (a), (b), (c) and (d) above, individually and/or taken together, were:

- (a) Not justified as part of a course of treatment; and/or
- (b) Without the consent of Patient A; and/or
- (c) Inappropriate; and/or

- (d) Unprofessional; and/or
- (e) Sexually motivated.

11. At a treatment session on or about 18 March 2015 when Patient A was about to use the walking machine, you squeezed Patient A's hand and said 'enjoy it'.

12. Your conduct at 11 above was:

- (a) Inappropriate; and/or
- (b) Unprofessional; and/or
- (c) Sexually motivated.

Patient B

13. At all material times you practised as a chiropractor at Advanced Chiropractic Clinic, 79 Gales Drive, Three Bridges, Crawley RH10 1QA.

14. Between 24 August 2012 and 17 September 2012 you examined and/or treated Patient B.

15. At an appointment on or about 24 August 2012 you:

- (a) rolled down Patient B's knickers; and/or
- (b) put your hand on her bottom under her knickers; and
- (c) your conduct at (a) and (b) was without:
 - i. previously asking for permission; and/or
 - ii. explaining why you were proposing to do this.

16. Your conduct at 15 above was:

- (a) Without the consent of Patient B; and/or
- (b) Inappropriate; and/or
- (c) Unprofessional; and/or
- (d) Sexually motivated.

17. You repeated the behaviour described in 15 above, on the following occasions:

- (a) 3 September 2012; and/or
- (b) 7 September 2012; and/or
- (c) 17 September 2012

18. Your conduct on any or all of the occasions referred to in paragraph 17 above was:

- (a) Without the consent of Patient B; and/or
- (b) Inappropriate; and/or
- (c) Unprofessional; and/or
- (d) Sexually motivated.

19. At an appointment on or about 24 August 2012 while Patient B was wearing a gown and being positioned for an x-ray to be taken, your hand stroked past her breasts.

20. Your conduct at 19 above was:

- (a) Without the consent of Patient B; and/or
- (b) Inappropriate; and/or
- (c) Unprofessional; and/or
- (d) Sexually motivated.

21. At a treatment session on or about 17 September 2012, while Patient B was lying on her front on the treatment table, you:

- (a) Massaged Patient B's left buttock; and/or
- (b) Deliberately rubbed between her legs in the area of her labia and/or pubic region.

22. Your conduct at 21 (a) and (b), individually and/or taken together, was:

- (a) Not justified as part of a course of treatment; and/or
- (b) Without the consent of Patient B; and/or

- (c) Inappropriate; and/or
- (d) Unprofessional; and/or
- (e) Sexually motivated.

23. On or about 24 August 2012 you failed to take, alternatively failed to record, an adequate history regarding Patient B's reported complaint of headaches.

24. On or about 24 August 2012 you procured a series of x-ray exposures of Patient B in circumstances where:

- (a) You had not established adequate clinical justification for each x-ray; and/or
- (b) Inadequate justification was recorded in respect of each x-ray; and/or
- (c) Did not adequately record the findings of each x-ray.

DECISION

INTRODUCTION, PRELIMINARY MATTERS AND BACKGROUND

1. The Professional Conduct Committee (the Committee) convened to consider an Allegation against Mr Whitlock. Mr Whitlock attended and was represented by Mr Jonathan Goldring. Miss Lesley Bates appeared on behalf of the General Chiropractic Council (“the GCC”).

Application to amend the Particulars of the Allegation

2. At the outset of the hearing, Miss Bates made an application to amend the Particulars of the Allegation. She indicated that the amendments were to more accurately reflect the evidence from Patients A and B and that of the expert relied on by the GCC, Mr Richard Brown. Miss Bates indicated that most of the amendments proposed were to form rather than substance, although some involved additions. She indicated that all the proposed changes had been sent to Mr Whitlock in advance of the hearing and he was invited to make any comments he wished. Mr Whitlock had not raised any objections and Mr Goldring indicated that the Defence did not object to any of the proposed amendments. Miss Bates submitted that the amended Allegation should be a single Allegation of Unacceptable Professional Conduct and that the numbering would therefore need to be amended.
3. Miss Bates also made an application to withdraw certain Particulars from the original Allegations; specifically, Particulars 7 and 8 in relation to Patient A, and Particulars 7, 12 and 13 in relation to Patient B, on the basis that they were not supported by their expert Mr Brown and therefore could not be proved. She said that Mr Whitlock had been notified of this intended application, which was not opposed.
4. In considering the application to amend, the Committee took into account the fact that Mr Whitlock did not oppose any of the requested amendments, but came to its own independent decision on each suggested amendment. The Committee accepted the advice of the Legal Assessor.

5. 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 amendments in relation to Patient A included the addition of a number of Particulars that Mr Whitlock had not asked for permission before doing certain acts and/or had not explained what he was proposing to do; and also that he had deliberately touched or allowed his fingers to touch the area between Patient A's legs. Having read the statement of Patient A and all the other material relied on by the parties, the Committee was satisfied that this more accurately reflected the written evidence. The other requested amendments in relation to Patient A were to form rather than substance and provided clarity about specifically what was being alleged. The Committee noted that the Defence did not object to the proposed amendments. The Committee concluded that it was in the interests of justice that these amendments be allowed.
6. With Patient B the proposed amendments were to more accurately reflect the written evidence of Patient B and to clarify the allegations. Having read the statement of Patient B, the Committee was satisfied that the amendments did reflect her evidence and were minor in nature, largely providing clarification. In light of this and the lack of any opposition from Mr Whitlock, the Committee was satisfied that these amendments were desirable and could be made without injustice.
7. With reference to original Particulars 7 and 8 in relation to Patient A and Particulars 7, 12 and 13 in relation to Patient B, 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.
8. During the course of Mr Whitlock's evidence it became apparent to the Committee that his admission (see "Admissions" below) in relation to Particular 15(a) was an equivocal one and that in fact he was denying having rolled down Patient B's knickers on 24 August 2012. There was also a question mark over whether any treatment took place on that first occasion or whether it was an assessment/examination. In addition, it was apparent that the word "her" was missing from 15(b). Accordingly, Miss Bates applied to amend Particular 15 to

remove the words “a treatment session” and to replace them with the words “an appointment”. The same application was made in relation to Particular 19, which had the same wording. Miss Bates also applied to add the word “her” between “under” and “knickers” in 15(b). Mr Goldring, on behalf of Mr Whitlock, did not object to these suggested amendments. The Committee accepted the advice of the Legal Assessor that it could amend the Allegation at any time up to the finding of facts provided it did not cause injustice. The requested amendments more accurately reflected the state of the evidence and thus the Committee decided to allow the application and was satisfied that it would cause no injustice.

9. Miss Bates also applied to amend Particular 14 to add the words “examined and/or” before the word “treated”. This was to reflect the evidence which suggested no actual treatment took place on the first visit by Patient B on 24 August 2012, but rather an examination. There was no objection to this proposal and the Committee allowed it for the same reasons as the other amendments granted.
10. Once amended those Particulars were again put to Mr Whitlock to allow him the opportunity to admit or deny them and he denied all of 15 and 19. He maintained his admission in relation to Particular 14.

Admissions

11. Following the initial amendments to the Allegation, Mr Goldring indicated that Mr Whitlock was admitting Particulars 1, 2, 13, 14, 15(a) & 24(c). Accordingly the Committee found these facts proved.
12. Following the subsequent amendments to the Allegation, Mr Whitlock withdrew his admission to Particular 15(a), and accordingly this was no longer formally found proved at that stage.

Application for Special Measures

13. Miss Bates made an application for Patient A, who had expressed anxiety at the prospect of giving evidence whilst being able to see Mr Whitlock, and him being able to see her, to be allowed to give her evidence from behind a screen. Mr Goldring did not oppose the application. The Committee accepted the advice of

the Legal Assessor that it may, on occasion, be appropriate for special measures to be employed to enable a vulnerable witness to give the best evidence they can. The Committee noted that a witness may be considered vulnerable where the allegation against the registrant was of a sexual nature and the witness was the alleged victim, as was the case here. The Committee was satisfied that Patient A was a vulnerable witness and that, absent any opposition by the Defence, it was appropriate to allow her to give her evidence from behind a screen. Accordingly, the application for special measures was granted. The Committee made it clear that by adopting such a measure this in no way reflected adversely on Mr Whitlock, nor did it indicate any presumption by the Committee about Patient A's credibility and reliability as a witness, which would be assessed in the usual way when she gave her evidence.

Background

Patient A

14. At all material times Mr Whitlock practised as a chiropractor at Banbury Chiropractic Clinic ("the Clinic"), 37 The Green, South Bar, Banbury, Oxfordshire.
15. Patient A first attended the Banbury Clinic in January 2015. She attended seven sessions between 15 January and 18 March 2015 and on each occasion she was seen by Mr Whitlock.
16. On 25 March 2015 Patient A contacted the GCC by email, in which she wrote: *"I am writing to document a case of what I believe is sexual assault at Banbury Chiropractic Clinic by Jonathan Whitlock. There have been three separate incidents that made me feel physically uncomfortable with my treatment, the last occurring on March 18th which I subsequently confronted the chiropractor about during the treatment."*
17. An email in response was sent to Patient A the following day by a Fitness to Practise Lawyer at the GCC and, on 31 March 2015, she provided a more detailed account on the telephone. In that account she stated that she had booked 12 sessions with Mr Whitlock starting on 25 February 2015. She had not completed the sessions and her last one, the fifth, was on 18 March 2015. She stated that the sexual assaults occurred over three sessions.

18. She described the three sessions as follows: *“...she was lying on the treatment table fully clothed...having to cover her breast area with her hand so as to stop Mr Whitlock’s hand going further up to her breasts, she did not say anything on that occasion as she thought, it might be something or nothing, she did not raise it with the chiropractor nor reported it to the practice manager. On the second occasion...she was lying down on her back on the treatment table, fully clothed, she had on T-shirts, sports bra-like bra and trousers, her knees were raised, his hand/fingertips were between her legs, on that occasion, he also does a lot of massaging of her buttocks without giving her any warning, basically, when he feels like it...she did not report it to the practice manager on this occasion, as she said it all happened very fast, she thought it might have been a mistake. On the third occasion...she was lying on her front on the treatment table, the chiropractor had his left hand on her coccyx and buttocks, and his right hand was stroking her buttocks and he had his finger between her legs, he did that twice...she felt uncomfortable.”*
19. She informed the GCC that after the ‘stroking incident’ she had asked him *“What was that for?”* and he *“quickly removed his hand from her buttocks and said something about having to concentrate on her lower back area”*. He proceeded to carry out some manoeuvres in silence. She still felt uncomfortable and so after the session she asked why he had been stroking her to which he replied *“I’m not really aware of what my right hand was doing”*. She stated she was aghast and responded *“Really?”* before getting her coat, speaking with reception and then leaving the clinic.
20. On 1 April 2015 she contacted the GCC by email to say she had left out a key detail. In her email, she stated: *“I neglected to mention that in the third instance there were two points in the downstairs treatment room where I felt physically uncomfortable and worried that in this session there was a closeness that I was concerned about.”* Patient A went on to report that during one spinal ‘cracking’ procedure Mr Whitlock was almost on top of her as she lay on her back, and that after the “stroking” he came around to her left side to perform a procedure and while doing so he leaned *“so close to my upper left arm that I could feel his penis, which I maintain was erect or semi-erect.”*

21. After she left the clinic on 18 March 2015, she did not return. However, she had informed her husband, Mr A, upon leaving the clinic and then later on Ms W, [REDACTED] [REDACTED] telephoned Patient A and the matters were reported to her.
22. Patient A made her first witness statement on 1 June 2015, her second on 5 May 2016 and a third on 18 April 2016, all of which she adopted in her evidence.
23. Mr A provided a statement in which he said how his wife had phoned him on 18 March 2015 following her appointment with Mr Whitlock. She did not want to go into detail over the phone, but it was pretty clear to him that something had happened. When she arrived home, about half an hour after the appointment, Mr A said that his wife told him that Mr Whitlock had touched her buttocks in a way that did not seem to have anything to do with the treatment, with his hand stroking her buttocks and that his hand had gone between her legs. She said that she challenged him and he said that he did not always know what his right hand was doing. Mr A described his wife as upset, uncomfortable and feeling violated. She also said that, looking back at the other appointments, some of the things were strange and she felt uncomfortable, but that she had not challenged Mr Whitlock about them.
24. Ms W, [REDACTED] provided a statement to the GCC in which she stated that she was aware that something had happened during Patient A's visit on 18 March as she heard Mr Whitlock apologising for something and spoke with him about it. She made notes of her conversations with Patient A and with Mr Whitlock, which were within the Chiropractic records. Mr Whitlock informed Ms W that Patient A had asked him about his hand positioning and had stated he was lightly tracing his fingers across her buttock and between her legs. He told Ms W that he had denied that he put his hand between her legs but said he was *"sometimes unaware of what my right hand is doing when I am concentrating on my left."*
25. After her discussion with Mr Whitlock, Ms W telephoned Patient A. Initially Patient A only reported events of 18 March 2015 and said Mr Whitlock *"gently caressed her bottom and between her legs"* while she was lying on her front. She asked what he was doing but no reason was given but *"there was a marked change in Jonathan's technique and his hands moved away"*. She also informed Ms W that

he had moved to work on her upper back and *“she thought, but was not sure, she felt an erection on her side.”* She also referred to *“other incidents during treatments that she thought were sexual – however wanted to email me the details of these rather than go over them on the phone.”*

26. Ms W arranged a meeting with Mr Whitlock after she had received the further information from Patient A and asked him for his response. She noted he was *“visibly incredibly upset”* mostly, he said, for Patient A and for the reputation of the business. He said he did not have an erection during the appointment, and he had not put his hand between her legs. He demonstrated on Ms W what he thought he had been doing at the time. He said this was down to *“misplaced hands”* and he was not sure how or why it had happened.

Patient B

27. On 25 March 2015, Ms W spoke with Mr Whitlock again. During the meeting she asked him if there was anything else she should know about and he referred to another situation having been reported at the Advanced Chiropractic Clinic in Three Bridges, Crawley (*“the Three Bridges Clinic”*). As a result of this information the Clinic made enquiries and contacted Patient B who contacted the GCC on 3 August 2015. She reported that she had made an allegation to the Three Bridges Clinic at the time it occurred in 2012. She said Mr Whitlock had been made aware of it and that she had correspondence in relation to it between her and [REDACTED] Mr H. She provided the correspondence to the GCC.
28. Patient B first attended the Three Bridges Clinic on 24 August 2012. She attended on six occasions between 24 August and 17 September 2012, during which five treatments are recorded with Mr Whitlock. Patient B complained [REDACTED] [REDACTED] on 22 September 2012 and put her complaint in writing the next day.
29. In the typed letter she sent [REDACTED] she described the treatments she received on each occasion. In respect of the first appointment on 24 August 2012, under the heading *“Muscle work”* she wrote: *“When lying on the table on my front, Jonathan said “I’m just going to roll these down a bit” meaning my leggings and knickers. The top inch of my bottom crack was now on show. He would then put his hand under my knickers to find muscle area that hurt when*

pressing hard. When an uncomfortable muscle area was found, he would keep the pressure in the area for 10 – 15 seconds after the time that I confirmed that the pain was fading away. The uncomfortable area was always on my right buttock. At no time was I asked if I was comfortable with him either rolling down my underwear or if I was happy to have his hands directly on my bottom under my knickers. I was also not told the reason for having to do this.”

30. She went on to describe having an x-ray on this first occasion: *“It was required that I had three x-rays. I had to wear a gown as I was asked to strip down to my knickers. As I was being positioned by Jonathan for the x-rays, he moved me from a side view to a front view by holding onto my arms at breast level and whilst doing so he stroked past my breasts.”*
31. She went on to describe the muscle work treatment carried out on 3 September and 7 September in the same terms as described in relation to the first appointment. Each of these appointments were recorded as having taken place in the *“treatment room – front room of clinic.”* Patient B described Mr Whitlock carrying out the *“muscle work”* on 10 and 14 September too but on those occasions it was done over her leggings. On these two occasions the treatment took place in the *“treatment room – back room of clinic”* which was a more public area.
32. Patient B then described her last appointment which took place on 17 September 2012, again in the *“treatment room – front room of the clinic”*. She described the *“muscle work”* in the same way as before but said that he then, *“... proceeded to massage the left side over my leggings and whilst moving his hand, deliberately rubbed the area in-between my legs. He continued to massage the left side of my bottom at which point the door to the room opened. Jonathan quickly rolled my knickers and leggings up whilst talking to you [Mr H] (I discovered this was you through our telephone call). He was clearly nervous and thrown-off-course. It seemed as if Jonathan didn’t know what to do next.”* She said he had then taken her into the back room and shown her a man on a treadmill wearing some equipment and explained that she would be using this on the next occasion but with different apparatus. She described this as a *“pointless exercise.”*
33. Patient B received a response to that letter, ■ which ■ referred to the room at the front of the practice being used at times for regular

care. He acknowledged that this was the room he had entered during her last visit. She was informed he had spoken with Mr Whitlock who was *“very upset when he read your letter and that you felt he was acting improperly and that he had caused you distress and to feel vulnerable”* and *“apologises for giving the impression that he was acting improperly and crossing professional boundaries.”* Patient B was informed that the matters had been discussed with Mr Whitlock who recognised that he should have explained what he was doing and why. She was informed [REDACTED] would be mentoring Mr Whitlock on effective patient communication and had advised Mr Whitlock that he should confine any soft tissue work to trigger point pressure techniques over the clothes particularly with female patients.

34. Patient B was not entirely happy with the response and there was some further communication between them, in which Mr H clarified that he had meant to say [REDACTED] monitoring rather than mentoring Mr Whitlock. She did not return for treatment after 17 September 2012. The matter only came to light again as a result of the Patient A complaint.
35. Patient B made her first witness statement to the GCC on 23 September 2015 and her second on 25 February 2016, both of which she adopted during her oral evidence to the Committee.
36. The GCC also relied on expert evidence from Mr Richard Brown, a chiropractor registered with the GCC and Secretary General of the World Federation of Chiropractic. In his report he stated, *“In terms of physical examination or treatment, a chiropractor will usually undertake a range of procedures that either endeavour to clinically determine the nature of a particular condition or provide therapeutic intervention to relieve pain and/or improve function. These may involve manual contact, either directly or through clothing where the hands of the chiropractor may come into close proximity with intimate or sensitive areas of the body. In my opinion, such areas would include the breasts, genitalia, anus or buttocks.”* He goes on to say that, *“It is the duty of a chiropractor to exercise particular care in the examination or treatment of these areas and be mindful of the duty to establish effective communication with patients, to be polite and considerate and to provide accurate, relevant and clear information to patients so that they may provide informed consent to assessment and care.”*

37. Mr Brown noted that the majority of the Particulars alleged depended essentially on the evidence to be given by the parties and the view of the Committee about the credibility and reliability of their evidence, rather than expert evidence. He was however able to provide his opinion about the various incidents and the techniques adopted by Mr Whitlock and what would and would not be appropriate.
38. Mr Brown and Mr McCrossin, an expert chiropractor instructed by the Defence, produced a joint statement of experts for the Committee in respect of Particulars 23 and 24. In light of that joint statement the GCC decided to offer no evidence on Particulars 23 and 24 (a) and (b) and the Committee formally found those Particulars not proved.

FINDINGS OF FACT

39. In reaching its decision on the facts, the Committee considered with care all the evidence both oral and documentary. It also bore in mind the submissions made by Miss Bates and Mr Goldring and accepted the advice of the Legal Assessor. Throughout its deliberations the Committee had in mind the fact that it was for the GCC to prove its case and to do so on the balance of probabilities. It was not for Mr Whitlock to disprove the allegations.
40. The Committee heard oral evidence from the following witnesses:

Patient A - Complainant

Ms W - [REDACTED]

Patient B - Complainant

Mr Whitlock - Registrant

41. The following statements were read, by agreement with the Defence, with the following caveat, that where the witnesses were relying on what had been said to

them by others, the Defence accepted that those things were said, but not necessarily that they had actually happened:

Mr A - Husband of the Complainant Patient A

Ms S - [REDACTED]

Mr B - Husband of the Complainant Patient B

42. The expert reports of both Mr Brown and Mr McCrossin were accepted in evidence, there being no real disputes between them, as evidenced by the Joint Expert Report that they provided at the hearing.
43. Reference was also made in the papers to [REDACTED] [REDACTED] Mr H. He did not provide any direct evidence to the Committee, but there were letter from him to Patient B within the material relied on by the GCC.
44. The Committee's findings in relation to the majority of the facts in this case depended on its assessment of the reliability and credibility of the two patients, Patient A and Patient B, and of Mr Whitlock. What was said by other witnesses was often no more than repeating what they had been told by either Patients A and B or Mr Whitlock, and whilst providing some support in the form of recent complaints, their evidence was of less significance. The experts agreed with each other and the Committee accepted their evidence.
45. The Committee considered Patient A and Patient B separately, but its conclusions were the same in relation to both. It found them to be open, credible and essentially reliable witnesses, who did their best to explain what they recalled had happened. They were clear on much of their evidence, yet happy to concede matters when they were unsure. There was no suggestion that either witness knew the other or had any idea of what the other had complained about. The Committee could see no reason to disbelieve their evidence, whilst acknowledging that some of what they reported was a question of perception rather than actual knowledge, for example precisely what Mr Whitlock's hands were doing on particular occasions. The Committee noted that both Patients continued to visit Mr Whitlock even after having misgivings about his behaviour,

but the Committee did not consider this diminished the credibility or reliability of their evidence. It was perfectly plausible that, at the earlier visits, they might doubt exactly what had happened given the relationship that exists between a professional chiropractor and a patient, and that it was only after each of their last visits where the most serious behaviour took place, that they then questioned the earlier incidents.

46. The Committee considered each Complainant and each Particular separately. Although in these reasons the Particulars are dealt with as they appear numerically, the Committee decided to look first at certain aspects of the final appointments of both Patients in order to determine whether it was appropriate to allow the cross-admissibility of evidence in relation to those Particulars.
47. The Committee noted that Patient A and Patient B did not, and do not, know each other. Their complaints related to incidents at different clinics and more than two years apart. At the time Patient A made her complaint she knew nothing about Patient B and vice versa. When Patient B was contacted, all she was told was that there had been another similar complaint to hers, but she was provided with no more details than that either at the time or subsequently. In all the circumstances the Committee was satisfied, on the balance of probabilities, that the accusations against Mr Whitlock were entirely separate and there was no realistic prospect that either had been influenced or contaminated by the other. In relation to Particulars 9(c) and 21(b), the Committee considered these to be very similar allegations. Both involved Mr Whitlock allegedly placing his hand between the legs in the genital area of a female patient during the course of treatment. In all the circumstances the Committee decided to allow for the cross-admissibility of evidence on these Particulars and thus to allow the evidence of Patient A on this point to support Patient B and vice versa.
48. The Committee then went on to consider these two Particulars chronologically, starting with Patient B's last visit on 17 September 2012. As will be seen in the findings below, having found Particular 21(b) proved and that Mr Whitlock's actions were sexually motivated in accordance with Particular 22(e), the Committee considered whether this meant that Mr Whitlock had a propensity or tendency to touch patients in this way. On the basis of just one finding, the Committee was not prepared to go this far. However, having then found Particular 9(b) proved, the Committee decided that Mr Whitlock did have a propensity to

behave in this way and this influenced its findings in relation to Particulars 5(a) and (b) and 6(e).

PATIENT A

Particular 1 - At all material times you practised as a chiropractor at Banbury Chiropractic Clinic, 37 The Green, South Bar, Banbury, OX16 9AE.

49. Background information, admitted and found proved.

Particular 2 - Between 14 January 2015 and 18 March 2015 you treated Patient A.

50. Background information, admitted and found proved.

Particular 3 - At a treatment session on or about 11 February 2015 when Patient A was lying on her back on the treatment table, fully clothed with arms over her chest, you:
her

(a) moved your hands very close to her breasts without:

i. previously asking for permission; and/or

ii. explaining why you were proposing to do this.

(b) were only prevented from touching her breasts because she covered them with her hands.

Particular 4 - Your actions at 3 (a) and (b), individually and/or taken together, were:

(a) Inappropriate; and/or

(b) Without the consent of Patient A; and/or

(c) Sexually motivated.

51. This is the first incident Patient A described. She is unable to be precise about the date but what she described suggested in all likelihood that it was 11 February or possibly 19 February 2015. She attended sessions on those dates during which she complained of stomach pains for which she had seen her GP. Mr Whitlock indicated he could help with the symptoms and said something like *"let's have a*

look at the stomach area.” She said he did not explain what he was going to do, nor that his hands would be on her ribcage and she expected him to examine her stomach.

52. Patient A stated that she was lying on the treatment table, fully clothed and with her arms over her chest. She described Mr Whitlock’s hands on her stomach and her rib cage and going as high as her hands and *“very close to my breasts.”* She stated she was pressing her hands *“hard to cover them so his hands could not go further”*. When asked to clarify the details of this she stated that the hand on her ribcage was positioned with his fingers facing upwards towards her breasts and the tips of his fingers just below her breasts.
53. When cross-examined, Patient A said that she covered her breasts with her arms and hands to prevent Mr Whitlock from touching her breasts. She said, *“I was applying a significant amount of pressure to my arms to stop him going further, I was having to stop him touching me further and I was pressing hard to stop him from doing that.”* She added that she felt, *“... a significant amount of pressure from his fingers on my hands so it felt like a battle of wills.”* She was challenged on why she had not said anything to the GCC about Mr Whitlock’s fingers pressing against her hands in this way and she replied that she had mentioned it in conversations she had on the phone with the GCC, but they then interpreted what she said and made the record of the conversations. She accepted that she gave Mr Whitlock consent to touch her stomach area where she was experiencing pain, but not to touch her close to her breasts and there was no explanation for why he might need to do that.
54. She did not challenge Mr Whitlock at this time or think anything further about it at the time as she thought it *“could have been something or nothing.”*
55. The chiropractic records contained two entries which referred to her stomach complaint. There is reference to *“lots of stomach trouble”* on 11 February and reference to visiting her GP who *“thinks it’s muscular”* on 19 February. On this latter occasion there is also reference to Mr Whitlock carrying out a *“diaphragm release”*.
56. Mr Brown’s evidence was that a diaphragm release is commonly used by chiropractors and involves the patient lying on their back. He said contact is made

with the area below the breasts – the lower costal margin. The diaphragm is palpated at this position. Mr Brown observed that Patient A’s description of events accorded with a diaphragm release having been performed. He further stated that *“the anatomical site of the diaphragm is such that this would be considered within normal limits for this technique.”* That is to say, the position of the hands under the breast area would be within normal limits.

57. In his evidence Mr Whitlock said he would have obtained Patient A’s permission to carry out the treatment and explained to her what he was going to do. He then demonstrated the treatment he had carried out and where his hands would have been. He said that before carrying out the treatment he asked Patient A to cover her breasts for her dignity and privacy and that this was his normal practice. He rejected the suggestion that Patient A had been the one to decide to cover her breasts. He accepted that his hand was quite close to her breast but that this was as a result of the adjustment he was carrying out. He denied trying to touch her breasts.

3(a)(i) & (ii) not proved

58. The Committee found on the clear evidence of Patient A that Mr Whitlock did move his hands, or a least a hand, very close to her breasts during the diaphragm and rib release that he carried out and indeed he accepts that this was the case. Patient A said that she decided to cover her breasts with her arm because she felt uncomfortable. Mr Whitlock said he asked her to do that in order to preserve her dignity and privacy. Patient A said that she had pain in the stomach area and drew that on a body map that was shown to the Committee. Mr Whitlock said words to the effect of *“let me have a look”* and she allowed him to do so. Patient A said that she consented to him examining her stomach area and did not think that included the rib area. Mr Whitlock’s evidence was that it was all *“part and parcel”* of the same examination, diaphragm release and rib release.
59. When considering (a)(i) and (ii), Patient A did not feel he gave enough explanation, whereas he thought he did. The Committee considered that it may have been the case that Mr Whitlock could have given a better explanation, but it could not be satisfied, on the balance of probabilities, that he did not ask for permission or give any explanation and that Patient A went along with it, implying some acceptance of the procedure. Accordingly these Particulars were found not proved.

3(b) not proved

60. The Committee was not satisfied that Mr Whitlock was only prevented from touching Patient A's breasts because she covered them with her hands. From his evidence and that of Mr Brown, it was clear that a chiropractor's hands will inevitably come close to a patient's breasts whilst carrying out a diaphragm and rib release and whilst there may have been some contact between Mr Whitlock's fingers and Patient A's hand, the Committee could not be satisfied, in the circumstances of this treatment, that this was more than accidental.

4 (a) not proved

61. In light of its findings above, the Committee was not satisfied that Mr Whitlock's actions at 3(a) and/or (b) were inappropriate. It may be that he should have taken more care and been more sensitive to Patient A's needs, but the Committee could not say that his actions were inappropriate.

4(b) not proved

62. Patient A said that she went to the clinic with gastric pains and expected Mr Whitlock to look at her stomach and she was happy for him to do that. On 19 February she returned and there was a note in the chiropractic record to the effect that she had seen her GP and he had thought the problem was muscular. Mr Whitlock said if it was muscular it was appropriate that he treat it. In all the circumstances the Committee could not be satisfied that she had not consented to the treatment.

4(c) not proved

63. In light of its finding that the GCC had not proved that the actions were inappropriate or without consent, it follows that they could not be satisfied that they were sexually motivated, since sexually motivated conduct will always be inappropriate and without consent.

Particular 5 - At a subsequent treatment session between mid February and mid March 2015, while Patient A was lying on her back on the treatment table, fully clothed with her knees raised, you:

(a) rested your fingers between her legs in the area of the labia; and/or

(b) deliberately touched or allowed your fingers to touch the area of her labia.

Particular 6 - Your actions at 5 (a) and (b), individually and/or taken together, were:

(a) Not justified as part of the course of treatment; and/or

(b) Without the consent of Patient A; and/or

(c) Inappropriate; and/or

(d) Unprofessional; and/or

(e) Sexually motivated.

5(a) & (b) proved

64. This is the second incident Patient A described. Patient A is not able to say which appointment it was but clearly recalled lying on her back on the treatment table, fully clothed and with her knees raised. She stated Mr Whitlock was using his right hand to apply pressure to the back of her right thigh and pushing it towards her chest. As he did so, the fingertips of his hand were resting between her legs in the area of her labia. The heel of his hand was in the middle/back of her thigh and she could feel his fingertips resting between her legs. As he moved and applied pressure to her thigh – moving it towards her chest – she could feel his fingers touching between her legs.
65. She stated this was the first time this manipulation had been performed and she was not informed what he would be doing or where his hands would be. She stated *“He simply gave me instructions to get into different positions. He did not seek my consent when he carried out this action.”*
66. Mr Brown described the process of stretching the buttock and thigh muscles by drawing the knee to the chest as being *“not an uncommon procedure”* and one which is commonly used in chiropractic. He stated that: *“...a reasonable chiropractor would be mindful of the sensitivity of the region where pressure was being applied, ensuring that manual contact with the genital area, even through clothing, should be avoided. It is possible for a chiropractor undertaking this technique to avoid the genital area by adjusting the angle of the contact hand.”*

67. Mr Brown further stated, *“I know of no chiropractic technique that would include or necessitate the manual contact as described”* and that this does not *“constitute part of a justified course of treatment.”*
68. In his evidence Mr Whitlock emphatically denied that his fingers or any part of his hand came into contact with Patient A’s labia. He demonstrated for the Committee on Mr McCrossin precisely the treatment that he said he had carried out. The Committee noted that this involved Mr Whitlock placing one arm around and under Mr McCrossin’s legs just under the knees and then using his second arm above the legs to apply pressure. It was clear to the Committee that in using this technique Mr Whitlock’s hand would have been nowhere near Patient A’s labia. Accordingly, either it did not happen at all and Patient A was lying or mistaken, or Mr Whitlock deliberately touched her labia.
69. The Committee had already indicated that it considered Patient A’s evidence to be both credible and reliable and it could see no reason why she might either make this allegation up or be in some way mistaken about what she felt taking place. However, this was a very serious allegation and the Committee thus looked to what other evidence might support Patient A’s account. In this regard, the Committee considered the very similar allegation of touching between the legs made by Patient B which it had already found proved and also its findings in relation to Particular 9(c), a similar allegation made by Patient A on a later occasion, which it had found proved. In light of its findings in relation to Particular 21(b) and that it was sexually motivated and the same for Particular 9(c), the Committee considered this lent support to the proposition that Mr Whitlock had a propensity to touch female patients between the legs in this way.
70. The Committee noted what Patient A said about this touching and why she had made nothing of it at the time, but did not think that diminished the credibility of her evidence because her explanation was both reasonable and understandable. When cross-examined about why she had returned after this incident and why she had not reported it to anybody at the time, Patient A said, *“It all happened very fast and I thought it might be a mistake. It is very hard to accuse someone of something very serious and I just wanted to be really sure of what I was saying before I took it any further.”* She said she was unsure if it was an assault and although she considered whether to go back, at that time she was not sufficiently

alarmed to not go back. She said it was not until the last appointment that she was “... *clear in my mind about what his intent was.*”

71. In light of the clear evidence from Patient A and the compelling supporting evidence of Patient B, the Committee was satisfied that it was more likely than not that Mr Whitlock did rest his fingers between Patient A’s legs in the area of her labia and did so deliberately since there was no possibility, on his explanation and demonstration, that this could have occurred accidentally.

6(a)(b)(c)(d)(e) in relation to 5(a) & (b) proved

72. In light of its findings in relation to Particulars 5(a) and (b), it is clear that deliberately touching a patient’s labia is not part of a justified course of chiropractic treatment. Patient A did not consent to having her labia touched and it was clearly inappropriate and unprofessional. When considering whether Mr Whitlock’s actions were sexually motivated the Committee noted the definition in the Council for Healthcare Regulatory Excellence guidance on sexual boundaries which states that sexual behaviour is, “acts, words or behaviour designed or intended to arouse or gratify sexual impulses or desires.” The Committee considered that any reasonable person would consider that touching the female labia could be sexual and that in all the circumstances of this case any reasonable person would conclude that the purpose of the touching had been sexual and therefore sexually motivated.

Particular 7 - At a treatment session on or about 18 March 2015 while Patient A was lying on her back on the treatment table, fully clothed, you leaned over her using your whole body, so you were nearly on top of her without:

- (a) previously asking for permission; and/or**
- (b) explaining why you were proposing to do this.**

Particular 8 - Your conduct at 7 was:

- (a) Without the consent of Patient A; and/or**
- (b) Inappropriate; and/or**
- (c) Sexually motivated.**

7(a) & (b) not proved

73. This is the third incident Patient A described. She was able to date it because it was the last appointment she attended. She recalled lying on her back on the treatment table, fully clothed. Mr Whitlock was applying pressure to her back and leaned *“so far over me as to be nearly on top of me.”*
74. She said this was the first time he had done this and he had not explained to her what he would be doing and did not seek her consent to do it, he *“only gave instructions about getting into different positions”*. She referred to no other practitioner having used their whole body to apply pressure to her before and it was *“a bit strange and made me feel uncomfortable.”*
75. Mr Brown stated that an anterior thoracic adjustment technique is one in which the practitioner will lean over the patient in close proximity and provide a downward thrust with his upper body in order to effect the manipulation. He considered a variant of this may be consistent with that described by Patient A on 18 March 2015.
76. The chiropractic records appeared to refer to an *“AntD”* technique being carried out on 18 March, although this was not the first occasion it was referred to as it was included in the notes in relation to each of the previous appointments.
77. Mr Whitlock said that he carried out a modified anterior thoracic adjustment on Patient A and that although he may not have sought her permission or explained what he was doing on 18 March, this was because he had carried out the same technique previously on Patient A at other visits and that he had obtained her permission and explained the proposed treatment at the outset. Mr Whitlock said it was referred to in his notes in every session as *“AntD”* and that the way Patient A described it was the recognised way a chiropractor carries out this adjustment.
78. On the evidence it was apparent to the Committee that what Mr Whitlock had carried out was a recognised chiropractic treatment and that it was duly recorded in the chiropractic notes. There was no suggestion that it was not clinically justified. Although Patient A could not remember the treatment having been carried out before, the chiropractic records indicated that it had been. If this was the case and an explanation and consent obtained on the first occasion, then it would not have been unreasonable, albeit perhaps not best practice, for Mr Whitlock to have inferred consent to the subsequent use of the same treatment,

without the need to gain consent on every occasion and also to explain the treatment on every occasion.

79. In all the circumstances the Committee could not be satisfied, on the balance of probabilities, that this treatment had been carried out without Patient A's permission or without an explanation being given for why the treatment was to be done. The Committee considered that there could have been implied consent given when the same procedure is carried out every time, even if the precise nature of the treatment differed on this occasion.

8(a), (b) & (c) not proved

80. In light of the reasons for its findings in relation to Particular 7, it follows that Particulars 8(a), (b) and (c) were also not proved.

Particular 9 - At a treatment session on or about 18 March 2015 while Patient A was lying on her front on the treatment table, fully clothed with you standing at her left side, you:

(a) traced a figure of 8 over her buttocks with your fingers; and/or

(b) stroked her buttock with your fingers; and/or

(c) deliberately touched or allowed your fingers to touch the area between her legs.

(d) While carrying out treatment around her shoulder you:

i. stood at her left shoulder with your penis pressed against her shoulder; and

ii. at the time of doing so your penis was erect or semi-erect.

9(a) not proved 9 (b) proved

81. This is part of the third incident Patient A described as occurring on 18 March 2015. It occurred after the incident which forms Particulars of Allegation 7 and 8. Following that matter, Patient A laid on her front. She described Mr Whitlock standing on her left side with his left hand on her lower back. She described it as being on her "coccyx" which she identified as being the base of her back where her spine started. She described his other hand as being on her buttocks. She said "his right hand was idly tracing a figure of eight over my buttocks. It felt like caressing or stroking". She said his finger, or fingers, went between her legs

twice. Patient A said that she did not say anything at first but when it happened the second time she asked him, *“What that was for?”* She said he immediately withdrew his hand and said something about concentrating on her lower back. She said he went on to perform two swift treatments, *“using the bench to jolt my head and neck.”*

82. After the treatments had concluded, she asked him again *“Jonathan, you know downstairs in the treatment room when you were tracing your fingers over me? What was that for?”* She said he asked her what she meant and so she repeated the question. He replied *“I’m not really aware of what my right hand is doing sometimes”*. She described being aghast, walking to reception and leaving. As she was leaving, he said goodbye and that he would see her the next week. She never returned.
83. Patient A contacted her husband on the telephone after this appointment. She informed him that something had happened but she did not want to go into details or tell him straight away. When they were at home about half an hour after the appointment she told him Mr Whitlock had *“touched her buttocks in a way that did not seem to have anything to do with the treatment with his hand stroking her buttocks, in what sounded to me like a caress, and that his hand had gone between her legs”*. She also told him she had challenged Mr Whitlock and that he said he did not always know what his right hand was doing. Mr A said that Patient A was upset at this time.
84. That same evening, Ms W phoned Patient A to say that Mr Whitlock had explained to her that there had been a problem at her treatment session. Patient A then told Ms W what had happened.
85. Mr Whitlock made Ms W aware that there had been an issue with Patient A and appeared to have reported that Patient A told him he had traced his fingers on her buttock and put his fingers between her legs and he denied that he had done so. However, Patient A herself did not mention, in any of her evidence, that she asked him about his fingers between her legs, only that he traced his fingers over her. The Committee inferred, therefore, that he was aware of what he had done at the time he was doing it and thus did not need the detail from Patient A. Additionally, when asked about this by Ms W after she had spoken with Patient A, he was able to demonstrate a stroking action on her right buttock, and appeared

to be using his fingertips as Patient A described. He did not demonstrate his fingers moving between Ms W's legs because he denied this happened. The movement is described by Ms W as being from "*side to side across my buttocks and then back.*" Ms W, [REDACTED] formed the view that there could be no clinical reason for what he did with his right hand and that this was not a part of piriformis muscle work as what was done was stroking with very little pressure. She discussed this with Mr Whitlock who "*agreed that there would not have been a clinical reason for what he did with his right hand*" and he maintained it was down to "*misplaced hands.*"

86. In his oral evidence to the Committee Mr Whitlock gave a different account. He said that whilst he was using his left hand to palpate the sacrum and sacroiliac joint his right arm was free and by his side and he assumed it must have "*brushed*" Patient A's buttock. He said that the change in the position of his body as he moved backwards and forwards and side to side meant that his hand could have brushed her buttocks. He agreed that he removed his hand as soon as Patient A made him aware that it had happened. He emphatically denied putting his fingers anywhere near the area between Patient A's legs.
87. There was no disagreement that on 18 March Patient A had treatment whilst lying on her front on the treatment table. She was fully clothed. The Committee noted that Mr Whitlock appeared to accept that he had been stroking her buttock, albeit on his case without really knowing that he was doing it and describing it as a case of "*misplaced hands*". He denied doing it intentionally and agreed that he removed his hand as soon as he was made aware of it. The Committee took into account that in 2012 Mr Whitlock had been the subject of Patient B's complaint about touching her between her legs. He had been spoken to about it and the Committee expected him as a result to exercise more care in order to ensure that any misunderstanding, if that is what it was, did not arise again. Mr Whitlock accepted that he had had a conversation with Mr H following the incident with Patient B and was advised about future conduct, although he could not really remember if the touching between the legs was discussed. The Committee found this somewhat surprising given it was the most serious allegation made.
88. In all the circumstances, the Committee thought it highly unlikely that Mr Whitlock's hand was just brushing Patient A's buttocks inadvertently and that in fact he was aware of what he was doing. This was supported by the fact that he

was able to demonstrate this very shortly thereafter on Ms W in very similar terms to the way described by Patient A. The Committee thought it unlikely that he would have been able to carry out that demonstration in that way if he had in fact been unaware of what he was doing.

89. The Committee was satisfied on the entirely consistent and credible evidence of Patient A, and indeed to a certain extent on Mr Whitlock's own evidence, that he had been stroking Patient A's buttocks. However, the Committee could not be satisfied, to the requisite standard, that he was necessarily making figure of 8 patterns given that Patient A could not see what was happening and was having to go by feel alone. In reaching this finding, the Committee took into account all the evidence relating to the visit on 18 March 2015 and that the stroking of the buttock appeared to be a precursor to his touching her between the legs in much the same way as the Committee found he had behaved in relation to Patient B.

9(c) proved

90. In relation to touching her between the legs, Mr Whitlock denied that this had occurred. Patient A described an action which appeared deliberate, and not part of the usual treatment. Given the explanation and demonstration given by Mr Whitlock, the Committee was satisfied that the action described could not have occurred accidentally or as a result of 'misplaced hands', but went rather further than that. Either Patient A was mistaken or lying, or Mr Whitlock deliberately touched her between the legs.
91. The Committee had already indicated that it considered Patient A's evidence to be both credible and reliable and it could see no reason why she might either make this allegation up or be in some way mistaken about what she felt taking place. However, this was a very serious allegation and the Committee thus looked to what other evidence might support Patient A's account. In this regard, the Committee considered the very similar allegation made by Patient B, albeit it over two years earlier. The Committee had already decided to allow the evidence of Patient B to support Patient A in this regard for the reasons given above. The Committee had considered Patient B's complaint first about the touching between the legs and found it proved, as referred to below. The Committee did think that this was very similar conduct and that the likelihood of coincidence that two patients, two and a half years apart and at different clinics should make such similar complaints was remote. Accordingly, the Committee decided that the

evidence relating to Patient B in this regard was supportive of the evidence of Patient A.

92. Accordingly, in light of the clear, credible and reliable evidence of Patient A, supported by the evidence of Patient B on Particular 21(b) and the recent complaint evidence of Mr A and Ms W, the Committee was satisfied on the balance of probabilities, that Mr Whitlock did touch Patient A between the legs on this occasion and that it was deliberate. This finding was further supported by the response by Mr Whitlock to Patient A, overheard by Ms W, where Mr Whitlock *“immediately denied to her face that he put his hand between her legs.”* The Committee thought this was a telling denial given at this stage Patient A had not alleged that he had touched her between the legs, she had only asked him what he had been doing. This showed that he knew precisely what he had been doing.

9(d) (i) and (ii) proved

93. After the stroking incident, Patient A resumed lying on her front with her arms under the table. Mr Whitlock was standing at her left shoulder working on her back with both his hands. She felt both his legs on her shoulder and could feel his penis against her shoulder. She recalled it was either erect or semi-erect. She said *“I could clearly feel it between his legs and if he was not aroused, I don’t think I would have noticed it so definitely.”* When asked to clarify the details she stated his legs were pressing against her *“shoulder to upper arm area...and I felt his penis in the soft area where my shoulder meets my arm, on the outside of the armpit area”*.
94. Mr Whitlock denied that he was at any time aroused in the way described. He said that he always kept his mobile phone in his left pocket which went around the front of his trousers. He accepted that this would not result in it being between his legs. He also said that he was not standing close enough for his body to come into contact with Patient A at all.
95. In her oral evidence Patient A said that Mr Whitlock was standing at her left shoulder with his body flat against hers. She knew this because she could feel both his thighs against her body and the thing she could feel was between his legs. She said it felt like soft tissue like a body part rather than a mobile phone or part of a belt and she thought it was his penis in an erect or semi-erect state. The

Committee thought this was a very clear description even though her earlier description to Ms W was less emphatic.

96. The Committee believed the account given by Patient A and was satisfied that it was more likely than not that Mr Whitlock did stand with his body against Patient A and that at the time his penis was erect or semi-erect. The Committee noted that this action followed shortly after the touching between the legs, which the Committee found had occurred. The Committee also noted that on Mr Whitlock's account he insisted that he would not have been near enough for her to feel anything, whether it be his mobile phone or penis. There was, therefore, no possibility of mistake. Either Patient A felt his erect, or semi-erect, penis, or she was lying about it. The Committee was satisfied that she felt exactly what she thought she felt.

Particular 10 - Your actions at 9 (a), (b), (c) and (d) above, individually and/or taken together, were:

(a) Not justified as part of a course of treatment; and/or

(b) Without the consent of Patient A; and/or

(c) Inappropriate; and/or

(d) Unprofessional; and/or

(e) Sexually motivated.

10(a) to (e) in relation to 9(a) not proved

97. In light of its finding in relation to 9(a), it follows that Particular 10 no longer applies to 9(a).

10(a), (b), (c), (d) & (e) in relation to 9(b), (c) & (d)(i) & (ii) proved

98. In relation to 9(b) and (c), both of which were found proved, the Committee concluded that the stroking of Patient A's buttocks and touching her between the legs was deliberate. There can have been no clinical justification for these actions and the Committee was satisfied that it was more likely than not that these actions were sexually motivated. Equally, there could be no justification for pressing against a patient in a state of arousal as reflected in Particular 9(d)(i) and (ii) and the Committee was satisfied on the balance of probabilities that this action was sexually motivated.

99. Having found that Mr Whitlock's actions in 9(b), (c) and (d)(i) and (ii) were sexually motivated, it must follow that they were: not justified as part of a course of treatment; without Patient A's consent; inappropriate; and unprofessional. Accordingly, the Committee found all of Particular 10 proved in relation to 9, save for 9(a) as mentioned above.

Particular 11 - At a treatment session on or about 18 March 2015 when Patient A was about to use the walking machine, you squeezed Patient A's hand and said 'enjoy it'.

Particular 12 - Your conduct at 11 above was:

- (a) Inappropriate; and/or**
- (b) Unprofessional; and/or**
- (c) Sexually motivated.**

11 proved

100. The final stage of the treatment on 18 March 2015 involved the use of the walking machine. Patient A went into another room, was assisted into the brace by Mr Whitlock, and stepped onto the machine with her hands on the bars. She said that Mr Whitlock put one of his hands on hers and squeezed it, saying "*enjoy it*", smiled and walked away.
101. In his evidence Mr Whitlock said that it was not uncommon for him to touch a patient on the hand as they went on to the walking machine and for him to say in a light hearted, jovial sort of way, for them to enjoy it. He did not think he would have squeezed her hand.
102. Mr Whitlock admitted that he touched Patient A's hand and said words to the effect of "*enjoy it*". The only issue, therefore, was whether the touching amounted to a squeeze. The Committee considered this to be very much a question of perception and Patient A clearly thought it was a squeeze. On the balance of probabilities the Committee was satisfied that the touching amounted to a squeeze and found this Particular proved.

12 (a) & (b) proved, (c) not proved

103. The Committee considered that it was both inappropriate and unprofessional of Mr Whitlock to have squeezed Patient A's hand and said "*enjoy it*" when she was getting on the walking machine, because this was unnecessary and demonstrated over familiarity. Mr Whitlock accepted in his oral evidence that he was "*over-stepping the mark*" and had been "*over familiar.*" However, the Committee did not consider the evidence proved that his actions on this occasion had been sexually motivated.

PATIENT B

Particular 13 - At all material times you practised as a chiropractor at Advanced Chiropractic Clinic, 79 Gales Drive, Three Bridges, Crawley RH10 1QA.

104. Background information, admitted and found proved.

Particular 14 - Between 24 August 2012 and 17 September 2012 you examined and/or treated Patient B.

105. Background information, admitted and found proved.

Particular 15 - At an appointment on or about 24 August 2012 you:

- (a) rolled down Patient B's knickers; and/or**
- (b) put your hand on her bottom under her knickers; and**
- (c) your conduct at (a) and (b) was without:**
 - i. previously asking for permission; and/or**
 - ii. explaining why you were proposing to do this.**

Particular 16 - Your conduct at 15 above was:

- (a) Without the consent of Patient B; and/or**
- (b) Inappropriate; and/or**
- (c) Unprofessional; and/or**
- (d) Sexually motivated.**

Particular 17 - You repeated the behaviour described in 15 above, on the following occasions:

(a) 3 September 2012; and/or

(b) 7 September 2012; and/or

(c) 17 September 2012

Particular 18 - Your conduct on any or all of the occasions referred to in paragraph 17 above was:

(a) Without the consent of Patient B; and/or

(b) Inappropriate; and/or

(c) Unprofessional; and/or

(d) Sexually motivated.

106. Patient B first attended the Three Bridges Clinic on 24 August 2012 suffering from tension in her shoulders, associated headaches, and lower back pain which extended down to her right bottom cheek. The consultation took place in the treatment room at the front of the clinic, referred to as the "private room". At this consultation she completed forms, underwent an examination and had x-rays. She also thought that she received treatment. Mr Whitlock's evidence was that on this first visit there was an examination but not treatment. It was apparent from his answers that, to a patient, an examination and treatment of the piriformis muscle in the buttock might appear to be very similar and a patient might not be able to differentiate between the two. The Committee noted that Patient B had not ever attended a chiropractor before and so would perhaps not have been familiar with the way in which they operate.
107. Patient B said that the treatment consisted of what she described as "*muscle work*" which involved lying on the table, on her front. She says he told her "*I'm just going to roll these down a bit*" referring to her knickers and leggings. When he had done this, she said "*the top inch of her bottom crack was on show*" and he would put his hand under her knickers to find the muscle which hurt and then perform the treatment which involved applying pressure for 10 to 15 seconds until the pain faded. This muscle work was applied to her right buttock. Patient B said

she was not asked whether she was comfortable with him rolling down her knickers or putting his hands underneath them and that she was not informed of the reason for it.

108. There followed five appointments on 3, 7, 10, 14 and 17 September 2012. The chiropractic records showed that on each of those occasions Mr Whitlock conducted "Piri", meaning piriformis soft tissue work on her right buttock. On 3, 7 and 17 September the appointments were carried out in the "private room" and followed the same pattern as described by Patient B above. On 10 and 14 September, she was treated in the "public room", where others may be present and she said on those occasions he carried out the right buttock soft tissue work but over her leggings rather than rolling down her leggings and knickers as he did in the "private room". Miss Bates suggested there was something calculated in this different approach, but Mr Whitlock asserted that this was to maintain the dignity and privacy of Patient B when working in a public room.
109. Mr Brown's evidence was that manual therapy involves close contact between the patient and the practitioner and commonly involves the need to move or adjust clothing in order to access the area to be treated. He stated that it is the duty of the chiropractor to exercise care in the examination and treatment of intimate areas such as the buttocks. Mr Brown said the "muscle work" treatment referred to by Patient B described myofascial trigger point therapy to her right piriformis, in the region of her right buttock. This was a commonly-used treatment and involved the application of deep pressure for a period of time until the tenderness subsided. He concluded that the technique used on these occasions appeared to be a justified course of treatment.

15 & 16 not proved in their entirety

110. The Committee noted the format of Patient B's complaint letter to Mr H dated 23 September 2012 and the apparent use of "cut and paste" when it came to the "muscle work" performed on her right buttock, which suggested to the Committee that she perhaps did not remember precisely the detail of every visit. Mr Whitlock accepted that he rolled down Patient B's leggings and knickers to perform the piriformis soft tissue treatment when in the "private room", but had not done so on the first occasion which had been an examination rather than a treatment. The Committee considered that Patient B could have been mistaken about the first visit and could not therefore be satisfied on the balance of probabilities that on

that first occasion Mr Whitlock rolled down her knickers or put his hand on her bottom under her knickers.

111. In light of its findings in relation to 15(a) and (b), it follows that 15(c) fell away.
112. Particular 16 relies on findings of fact in relation to 15 and since these were not proved it follows that 16 in its entirety fell away also.

17(a), (b) & (c), in relation to 15(a) proved

113. On the subsequent visits on 3, 7 and 17 September, Mr Whitlock accepted that he rolled down Patient B's knickers to perform the piriformis soft tissue treatment, as described by Patient B.

17(a), (b) & (c), in relation to 15(b) not proved

114. Patient B said that after he rolled down her knickers, Mr Whitlock put his hand under her knickers to perform the treatment. Mr Whitlock maintained that he did not put his hand under her knickers, but would roll them down slightly further on the right hand side where he was performing the treatment. He demonstrated how, using the palm of his hand, he would endeavour to hold back the knickers whilst carrying out the work. The Committee noted the evidence of Mr Brown and the diagram which showed where this work needed to be performed and it was apparent that a degree of lowering of underwear was unavoidable. In light of Mr Whitlock's denial and the fact that Patient B was lying on her front and so not able to actually see what was happening but rather was relying on how it felt, the Committee could not be satisfied, to the requisite standard, that he did in fact put his hand under her knickers during this treatment.

17(a), (b) & (c), in relation to 15(c)(i) & (ii) as applied to 15(a) not proved

115. Mr Whitlock said that he did ask for permission to roll down the knickers and he did explain why he was needing to do so. Patient B's evidence was that "*He told me, rather than asked me (i.e. "I'm just going to" rather than "do you mind if") if it was okay to roll my knickers down.*" She did not recall him giving her a reason why he needed to do that. The Committee noted that Patient B had presented with a pain in her right buttock, that Mr Whitlock had identified an area that needed treatment and that he had said to her that he needed to roll down her knickers in order to treat the buttock. He did not, for instance, simply roll down her

knickers without saying anything and whilst he might have phrased his comment in a rather more questioning type of way, he had given her the opportunity to object if she wished to and she had not done so. In the circumstances, the Committee concluded that the GCC had not proved that the rolling down of the knickers had been done without consent or without some explanation of why that needed to be done.

Particular 18(a), (b), (c) & (d) not proved

116. In relation to Particular 18, the Committee only had to consider the rolling down of the knickers at the three appointments. The Committee had already concluded that the GCC had not proved lack of consent in this regard and thus it followed that 18(a) could not be found proved. With consent not an issue, the Committee did not find the act to be inappropriate or unprofessional since it was supported by the expert evidence of Mr Brown. Given Mr Whitlock was carrying out a recognised and appropriate treatment in a recognised and appropriate way, the Committee was not satisfied that his actions on these occasions were sexually motivated.

Particular 19 - At an appointment on or about 24 August 2012 while Patient B was wearing a gown and being positioned for an x-ray to be taken, your hand stroked past her breasts.

Particular 20 - Your conduct at 19 above was:

- (a) Without the consent of Patient B; and/or**
- (b) Inappropriate; and/or**
- (c) Unprofessional; and/or**
- (d) Sexually motivated.**

Particulars 19 & 20 not proved

117. Patient B described, as part of her first consultation, having x-rays taken. She was dressed in a gown and her knickers. The first x-ray was a side view, and then Mr Whitlock positioned her for a front view. She said he held her arms at breast level and as he moved her, his hand "*stroked past my breasts.*" She said at first she was not sure whether it was an accident or not but she found it strange that he did not apologise. In her oral evidence she demonstrated how he held her

arms with his hands in order to position her and that his thumbs brushed her breasts.

118. Mr Whitlock said that in order to take x-rays properly it is important that the patient is standing in the correct place and that he would hold a patient's arms to position them correctly. He denied deliberately touching her breast and said that if it did happen it must have been an accident. He said he was unaware of it happening and that Patient B did not say anything at the time.
119. Miss Bates made it clear that Particular 19 was put on the basis that the touching was deliberate rather than accidental. In light of Patient B's evidence that she could not be sure at the time whether the touching could have been accidental, the Committee could not be satisfied on the balance of probabilities that the touching, if it did occur, was deliberate. Accordingly, this Particular was not found proved.
120. In light of its finding in relation to 19, Particular 20 fell away.

Particular 21 - At a treatment session on or about 17 September 2012, while Patient B was lying on her front on the treatment table, you:

- (a) Massaged Patient B's left buttock; and/or**
- (b) Deliberately rubbed between her legs in the area of her labia and/or pubic region.**

Particular 22 - Your conduct at 21 (a) and (b), individually and/or taken together, was:

- (a) Not justified as part of a course of treatment; and/or**
- (b) Without the consent of Patient B; and/or**
- (c) Inappropriate; and/or**
- (d) Unprofessional; and/or**
- (e) Sexually motivated.**

Particulars 21(a) & (b) proved

121. The last appointment Patient B attended was on 17 September 2012. This appointment took place in the treatment room at the front of the clinic – the

private room. Mr Whitlock then carried out the piriformis soft tissue treatment on her right buttock as on previous occasions. However, according to Patient B, he then proceeded to massage her left buttock, over her leggings, and then to *“deliberately rub the area in between my legs”* in the area of her labia and the pubic area. She described Mr Whitlock moving to her left buttock even though there was no problem on her left side and using a *“rolling motion”* rather than the application of pressure he had used on her right buttock. She said it was a different motion, moving his fingertips in circles. She said he *“was working his hand down from my left buttock and moving his hand inwards”*. She referred to thinking *“oh my god”* as he got close to the area where she has pubic hair. She says as his hand moved lower and inwards it was on top of her knickers while rubbing the area between her vagina and anus. She says he had not explained why he needed to carry out any muscle work on her left buttock, nor sought her consent to do so and did not explain why he needed to rub the area he did.

122. Patient B described being in shock at what was happening and wondered whether Mr Whitlock realised what he was doing. She said that as she was trying to digest what was happening, the door opened and Mr H entered the room. She stated that Mr Whitlock *“quickly moved his hand away, pulled up my knickers and started on my lower back again as he was talking to [Mr H]”*. Patient B said the appointment came to an end very quickly after this and then Mr Whitlock took her into the open treatment room and showed her a man using a piece of equipment and said she would be using it soon but did not explain further. She said she felt it was not something which she would be doing to help her problem and Mr Whitlock seemed to be shaken up and was just saying anything because he did not know what to do. She described him as being *“clearly nervous and thrown off course.”* Miss Bates suggested that this was because he had been *“caught in the act.”*
123. Patient B informed her husband, Mr B, of this incident upon arrival at home after the appointment. At the time she relayed it to him he said she was *“a mixture of emotion and upset...it looked like it had affected her because she seemed taken aback by it and was not her usual self.”*
124. Mr Whitlock said he had no record and no recollection of massaging Patient B's left buttock and he categorically denied ever touching in the area of her labia and/or pubic area. On his account there was no possibility that his hand might

have accidentally come into contact with Patient B's left buttock or the area between her legs described. He said that the only time he went near her left buttock was when placing a block under her left hip and he may have touched her left buttock, but he did not massage it.

125. Both parties accepted that Patient B had a treatment session on 17 September 2012 and that she was lying face down on the treatment table. There was a clear dispute on the evidence about whether Mr Whitlock massaged Patient B's left buttock or not and whether he touched her between the legs. On Mr Whitlock's account there was no possible alternative explanation such as an accidental touching. The Committee considered Mr Whitlock's reference to placing blocks could not in any way be confused with massaging. The Committee saw no reason to doubt Patient B's very consistent account as given in her first complaint, in both her statements and in her oral evidence, that he did massage her left buttock and touch her between the legs. There was no room for error or mistake. The consistency of this account was supported by the evidence of her husband about what she said when she got home. The Committee also noted that she reported the behaviour [REDACTED] at the clinic and also that she did not return for any further treatment after this date.
126. The Committee has already indicated that it considered Patient B's evidence to be both credible and reliable and it could see no reason why she might either make this allegation up or be in some way mistaken about what she felt taking place. However, this was a very serious allegation and the Committee thus looked to what other evidence might support Patient B's account. In this regard, the Committee considered the very similar allegation made by Patient A, albeit it over three years later. The Committee found Patient A to also be a reliable and credible witness and could think of no reason why she might either make her similar allegation up or be in some way mistaken about what she felt taking place.
127. As stated above, the Committee was satisfied that there was no evidence of collusion between these two witnesses who did not know each other, nor did they know the specifics of the complaint made by the other so there was no question of any cross-contamination of their individual accounts. Both patients gave evidence about how during the course of treatment Mr Whitlock put his hand between their legs and touched their labia and pubic region. The Committee did think that this was very similar conduct and that the likelihood of coincidence that

two patients, three years apart and at different clinics should make such similar complaints was remote. Accordingly, the Committee decided that the evidence relating to Patient A in this regard was supportive of the evidence of Patient B.

128. In all the circumstances the Committee was satisfied that it was more likely than not that Mr Whitlock massaged Patient B's left buttock and then deliberately rubbed between her legs in the area of her labia and/or pubic region.

22(a), (b), (c), (d) & (e) in relation to 21(a) & (d) proved

129. There is no suggestion that Patient B's left buttock needed any treatment and therefore it cannot have been justified as part of a course of treatment. There can be no course of treatment that allows for the deliberate rubbing of a patient's labia and/or pubic region. In light of its findings and reasoning in relation to Particular 21, it followed that the touching of the left buttock and between Patient B's legs cannot have been with consent. Such touching in both instances was clearly inappropriate and unprofessional. The Committee was in no doubt that touching Patient B's labia and pubic region was sexually motivated and that moving to the left buttock before doing so was a precursor to such touching and so was equally sexually motivated.

Particular 23 - On or about 24 August 2012 you failed to take, alternatively failed to record, an adequate history regarding Patient B's reported complaint of headaches.

130. No evidence offered and formally found not proved.

Particular 24 - On or about 24 August 2012 you procured a series of x-ray exposures of Patient B in circumstances where:

(a) You had not established adequate clinical justification for each x-ray; and/or

(b) Inadequate justification was recorded in respect of each x-ray; and/or

(c) Did not adequately record the findings of each x-ray.

131. With reference to Particulars 24(a) and (b) no evidence was offered and the Committee formally found them not proved.

132. Particular 24(c) was admitted and found proved on the basis of that admission.

UNACCEPTABLE PROFESSIONAL CONDUCT

133. In the particular circumstances of this case, and following submissions by Mr Goldring to this effect and advice from the Legal Assessor, the Committee decided to deal with the findings of fact first, provide those to the parties, and then to move to Unacceptable Professional Conduct (“UPC”) if appropriate. This was because there were 57 findings of fact to be made with any number of possible permutations, making it very difficult for the advocates to properly address the question of UPC until the Committee’s findings were made known.
134. Having found a number of the facts proved, the Committee then considered whether they amounted to UPC, which is defined in 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 Bates and Mr Goldring, who did not argue otherwise.
135. The Committee was in no doubt that the facts found proved amounted to UPC. Mr Whitlock’s behaviour represented significant breaches of the following parts of the GCC’s Code of Practice and Standard of Proficiency, 2010, namely: C3, which states, *“You must establish and maintain clear sexual boundaries with patients”*; and E3, which states, *“You must avoid acting in a way that may undermine public confidence in the chiropractic profession or bring the profession into disrepute.”* The Committee found that Mr Whitlock had behaved in a sexually motivated way towards two female patients. He demonstrated a pattern of behaviour, which included the touching of buttocks when not clinically justified and the placing of his hand or fingers between the patients’ legs, in the area of the labia and/or pubic region, and touching or rubbing them there. On one occasion Mr Whitlock noticeably became sexually aroused whilst treating one of the patients. Mr Whitlock failed to respect the dignity of Patients A and B. He carried out a number of acts that tended to bring the profession into disrepute and thereby undermined public confidence in the chiropractic profession. His behaviour amounted to a gross breach of trust of the chiropractor/patient relationship. The Committee was clear that Mr Whitlock’s behaviour would be

considered deplorable by other members of the profession and fell far below the standard expected of a reasonable chiropractor.

136. With reference to Particulars 11 and 12, the Committee decided that the inappropriate and unprofessional touching of Patient A's hand, together with the comment "*enjoy it*", whilst not to be condoned, was not sufficiently serious to amount to UPC. The Committee had not found that behaviour to be sexually motivated and it therefore fell into a category of its own. The same was true of Particular 24(c), which related to the failure to adequately record the findings of x-rays. That failure, which Mr Whitlock admitted from the outset, concerned the x-rays of one patient taken on one day and whilst it is always important to adequately record the findings of an x-ray, this single clinical failure was not sufficiently serious to amount to UPC.

SANCTION

137. On deciding the appropriate and proportionate sanction, the Committee took into account all the evidence, together with the submissions made by Mr Goldring and Miss Bates. It also considered the Indicative Sanctions Guidance ("the ISG") issued by the GCC. The Committee was cognisant of the fact that the purpose of sanctions was not to punish Mr Whitlock but to protect the public, maintain public confidence in the profession and maintain proper standards of conduct. The Committee considered each sanction from the least serious before deciding the appropriate sanction and accepted the advice of the Legal Assessor.
138. The Committee first considered the aggravating and mitigating features in this case. It found the following aggravating factors: a gross abuse of trust towards both patients; the sexual misconduct was separated by two and a half years, during which time Mr Whitlock had been informed of Patient B's complaint and yet did nothing to ensure that such conduct was not repeated; in relation to Patient A the behaviour was not isolated, occurring as it did on two separate occasions; that having been demonstrably aroused on 18 March 2015, Mr Whitlock did not seek to distance himself from Patient A or the treatment he was carrying out whilst in that state of arousal; the fact that Patient A, and very likely Patient B although she had not specifically stated it, felt violated by his conduct.

139. The Committee found the following mitigating factors: no previous disciplinary findings before the GCC; the fact that Mr Whitlock had attended two training courses, entitled “Introduction to Professional Boundaries” on 21 May 2015 and “Advanced Professional Boundaries” on 22 May 2015; an indicated willingness to undergo counselling and to attend a course for healthcare professionals found guilty of sexual misconduct.
140. In reaching its decision on the appropriate and proportionate sanction in this case, the Committee took into account the principles set out in section C3 of the Code of Practice 2010, which states that chiropractors must establish and maintain clear sexual boundaries with patients. The Committee also bore in mind the guidance issued by the Council for Healthcare Regulatory Excellence, which states, *“Sexual misconduct seriously undermines public trust in the profession. It is the chiropractor’s responsibility to prevent sexual boundaries being crossed, not the patient’s. The misconduct is particularly serious if there is an abuse of the special position of trust that a chiropractor has ... The risk to patients is important.”*
141. The Committee first considered an admonishment, but the facts found proved against Mr Whitlock were so serious that an admonishment would be wholly disproportionate and insufficient. The Committee had found that Mr Whitlock had behaved in a sexually motivated way towards two female patients. With Patient B he had touched her buttock in a sexualised way and then proceeded to put his fingers between her legs on her labia and/or pubic region. He was warned about this behaviour [REDACTED] and yet this pattern of behaviour persisted even after his warning in 2012. From that moment in time, Mr Whitlock was on notice that his behaviour was under scrutiny. Despite that, two and a half years later he repeated his actions, this time with Patient A. This behaviour was not at the lower end of the spectrum and an admonishment would not protect patients, or do anything to demonstrate how seriously these matters were taken by the regulator. Such an outcome could potentially damage public confidence further.
142. The Committee next considered a Conditions of Practice Order. The Committee noted that the main aim of conditions is to protect patients from harm, whilst allowing the chiropractor to put right any shortcomings in their practice. The Committee considered that this sanction is more appropriate when there are

clinical failings rather than behavioural. The ISG lists some of the factors that might make such an order appropriate. The first is that there is no evidence of deep-seated personality or attitudinal problems. The Committee is of the view that there is cogent evidence in this case of deep-seated personality or attitudinal problems as reflected in the very serious UPC found proved. The Committee did not think it was possible to formulate conditions that would address the UPC in this case but that, even if it were possible, in light of the nature and seriousness of Mr Whitlock's conduct, a Conditions of Practice Order would not adequately reflect the gravity of his behaviour.

143. The Committee then considered a Suspension Order. The ISG lists a number of factors that might make a Suspension Order appropriate. The first is that the breach of the Code of Practice is not fundamentally incompatible with continued registration. The Committee was of the view that the repeated touching of female patients in intimate areas of their body for the purposes of sexual gratification is fundamentally incompatible with continued registration. Another factor in the ISG to be considered is that there is no evidence of harmful deep-seated personality or attitudinal problems, but the Committee has already indicated otherwise. The next factor to consider when deciding whether a suspension might be appropriate is that there is no evidence of the repetition of similar behaviour since the incident. However, in this case the behaviour was repeated after the first incident. Another factor is whether the Committee is satisfied the chiropractor has insight and does not pose a significant risk of repeating the behaviour. The Committee has no real evidence of insight from Mr Whitlock because he maintains his stance that he did not behave in the ways found proved against him and, having already decided that he has a propensity to behave in the way described, the Committee considered that Mr Whitlock did pose a significant risk of repeating the behaviour.
144. Having discounted the possibility of suspending Mr Whitlock, the Committee concluded that removal from the register was the only appropriate and proportionate sanction in this case. The Committee noted that many of the factors listed in the ISG when considering removal were present in this case. Gaining sexual pleasure from treating patients and touching patients in a sexualised way is wholly incompatible with the profession of chiropractic. Mr Whitlock's behaviour caused emotional harm to his patients. It was a gross abuse of his position of trust. It was a violation of his patients' rights. It was an

abuse of his professional standing and there has been a persistent lack of insight on his part. Additionally, there was a real fear that he would behave in this way again, putting patients at risk. Furthermore, failing to remove a chiropractor from the register in these circumstances would seriously undermine public confidence in the profession of chiropractic and in the GCC as its regulator.

145. Accordingly the order of this Committee is that the Registrar remove Mr Whitlock's name from the register.
146. This decision will take effect 28 days from the day on which notification is served on Mr Whitlock. Accordingly, Miss Bates made an application for an interim suspension order to cover this period and also to cover any period of appeal should one be made. Mr Goldring did not oppose the application.
147. The Committee accepted the advice of the Legal Assessor and was mindful that an interim suspension order can only be imposed if decided necessary to protect the public. The Committee decided that an interim suspension order was necessary in order to protect the public, for the same reasons as given for ordering that Mr Whitlock's name be removed from the register. The Committee has already identified that Mr Whitlock represents a risk to the public and therefore to allow him to continue to practise would be wholly inconsistent with its findings above.

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

That concludes this case.

Chair of the Professional Conduct Committee

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

Please note that the decision of this Committee is a relevant decision for the purposes of

Section 29 of the National Health Service Reform and Health Care Professions Act 2002.

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

Signed:

Dated: 26 April 2016



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.