

## PUBLIC RECORD

Dates: 19/06/2023 - 13/07/2023

Medical Practitioner's name: Dr Roderick MCCREA

GMC reference number: 3085231

Primary medical qualification: MB BS 1985 University of London

Type of case	Outcome on facts	Outcome on impairment
New - Misconduct	Facts relevant to impairment found proved	Consideration of impairment not reached

## Summary of outcome

Case concluded

## Tribunal:

Legally Qualified Chair	Mrs Tehniat Watson
Lay Tribunal Member:	Mr Geoff Brighton
Medical Tribunal Member:	Dr Nagarajah Theva

Tribunal Clerk:	Mr Josh Dayco
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## Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Stephen Brassington, Counsel, instructed by Weightmans Solicitors
GMC Representative:	Mr Peter Horgan, Counsel

## Attendance of Press / Public

In accordance with Rule 41 of the General Medical Council (Fitness to Practise) Rules 2004 the hearing was held partly in public and partly in private.

## Overarching Objective

Throughout the decision making process the tribunal has borne in mind the statutory overarching objective as set out in s1 Medical Act 1983 (the 1983 Act) to protect, promote and maintain the health, safety and well-being of the public, to promote and maintain public confidence in the medical profession, and to promote and maintain proper professional standards and conduct for members of that profession.

## Determination on Facts - 12/07/2023

### Background

1. Dr McCrea qualified in 1985 from University of London. Prior to the events which are the subject of the hearing Dr McCrea commenced worked at the Limes Surgery ('the Practice') as a GP trainee between 1991 and 1992. He obtained his MRCGP in the same year. Dr McCrea then became a General Practice principal in the Practice in 1992 until 2001. Dr McCrea explained that the Practice had a main surgery in Epping with two branches, one in North Weald and one in Theydon Bois. At the time of the events Dr McCrea was working at the Practice as one of the junior partners. Thereafter, Dr McCrea held a number of positions within the medical field.
2. The Allegation that has led to Dr McCrea's hearing involves sexual misconduct.
3. It is alleged that between 1996 and 1998, Dr McCrea had verbally and physically behaved inappropriately towards Patient A and Patient B. It is also alleged that at all material times, Patients A and B were vulnerable due to their mental health.
4. In relation to Patient A, it is alleged that between 1996 and 1998, Dr McCrea had inappropriately asked Patient A about her sex life during a consultation. In addition, it is alleged that Dr McCrea had undertaken an intimate anal examination of Patient A ('the Anal Examination'). During the Anal Examination, it is alleged that Dr McCrea asked Patient A to remove all her clothes from the waist down and inserted a telescope into Patient A's anus. It is also alleged that Dr McCrea failed to obtain adequate consent in that he had not provided an explanation as to how it would help with a diagnosis and had not explained to Patient A what the anal examination would involve. Further, it is alleged that Dr McCrea failed to offer Patient A a chaperone for the anal examination and that his actions, as set out above, were not clinically indicated.

5. In relation to Patient B, the allegations took place between 1997 and 1998. To summarise, it is alleged that on two separate occasions, Patient B consulted with Dr McCrea, who asked Patient B to remove her clothes and lie on the bed. In addition, it is alleged that Dr McCrea massaged Patient B, during which he made physical contact with Patient B's shoulder, her back, down to the top of her bottom, and with her bottom. Further, it is alleged that Dr McCrea told Patient B to make more appointments with him so that he could give her a massage and had given her a hug before she left the consultation room. It is alleged that on another occasion, during the massage, Dr McCrea had put his thumbs just beneath Patient B's knickers, told her *'how would you feel about taking your knickers off too?'* and told Patient B that it would be a good idea if he could go to her home and show her fiancé how to do the massage.
6. On another occasion, it is alleged that Dr McCrea attended Patient B's home and told Mr C *'I've come to give Patient B some TLC, a bit of a massage, you know because she's been having a really difficult time, and would you like to go upstairs with Patient B and I'll show you how to massage her properly'*. It is also alleged that Dr McCrea told Patient B to go upstairs and get undressed, went to Patient B's bedroom with Mr C and showed him how to massage Patient B.
7. In addition, it is alleged that Dr McCrea failed to record the home visit in Patient B's medical records and on another occasion, Patient B consulted with Dr McCrea, and he had carried out another massage on Patient B.

### **The Outcome of Applications Made during the Facts Stage**

8. At the outset of the hearing, the Tribunal, on its own volition, raised an anonymity issue regarding two GMC witnesses who were due to give oral evidence at this hearing. Both Counsel agreed with the Tribunal. Therefore, two GMC witnesses would be referred to as Mr D and Ms E during the course of the proceedings.
9. On 20 June 2023, Mr Horgan, Counsel for the GMC, made an application pursuant to Rule 17(6) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), to amend the Allegation and withdraw paragraph 1(b). The application was not opposed by Mr Brassington, Counsel for Dr McCrea. The Tribunal was satisfied that no injustice would be caused to Dr McCrea by the withdrawal of paragraph 1(b) of the Allegation and granted the GMC application.
10. On 20 June 2023, Mr Horgan made an application for private witness privacy screens to be used during Patient A's oral evidence. Mr Brassington did not oppose this application. The Tribunal noted that Patient A was a vulnerable witness, and determined it would only be fair to allow the application to enable Patient A to give her best evidence. Therefore, the Tribunal acceded to the application made by Mr Horgan.

11. On 26 June 2023, the Tribunal acceded to the application made by Mr Brassington under Rule 29(2) of the Rules to adjourn the hearing until 30 June 2023. The Tribunal’s decision is set out in Annex A.

### The Admitted Facts

12. On 12 July 2023 and prior to the Tribunal announcing its determination on facts, through his Counsel, Mr Brassington, Dr McCrea admitted paragraph 4 of the Allegation, as set out above, in accordance with Rule 17(2)(d) of the Rules. In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced paragraph 4 of the Allegation as admitted and found proved.

### The Allegation and the Doctor’s Response

13. The Allegation made against Dr McCrea is as follows:

That being registered under the Medical Act 1983 (as amended):

#### Patient A

1. Between around 1996 and 1998:
  - a. on one occasion during a consultation with Patient A you asked her one or more inappropriate questions about her sex life, including those set out in Schedule 1, or words to that effect;  
**To be determined**
  - b. ~~on one occasion, Patient A consulted with you regarding heart palpitations and you:~~
    - i. ~~took her to another room and asked her to undo her bra;~~  
**Amended and withdrawn under Rule 17(6)**
    - ii. ~~undertook an intimate examination of Patient A’s breasts (‘the Breast Examination’) where you:~~
      1. ~~cupped her breasts one at a time;~~  
**Amended and withdrawn under Rule 17(6)**
      2. ~~lifted up her breasts to place a stethoscope underneath;~~  
**Amended and withdrawn under Rule 17(6)**
    - iii. failed to:

~~1. obtain consent from Patient A for the Breast Examination;~~  
**Amended and withdrawn under Rule 17(6)**

~~2. offer Patient A a chaperone for the Breast Examination;~~  
**Amended and withdrawn under Rule 17(6)**

~~b. e.~~ on one occasion, Patient A consulted with you and you undertook an intimate anal examination ('the Anal Examination') where you:

i. asked Patient A to remove all her clothes from the waist down;  
**To be determined**

ii. inserted a telescope into Patient A's anus;  
**To be determined**

iii. failed to obtain adequate consent from Patient A for the Anal Examination, in that you did not:

1. provide Patient A with an explanation as to why it would help with a diagnosis;  
**To be determined**

2. explain to Patient A what the Anal Examination would involve;  
**To be determined**

iv. failed to offer Patient A a chaperone for the Anal Examination.  
**To be determined**

2. Your actions as described at paragraphs 1a and 1bi-1bii and ~~1ci-1cii~~ were not clinically indicated. **Amended under Rule 17(6)**  
**To be determined**

### **Patient B**

3. Between around 1997 and 1998:

a. on one occasion, Patient B consulted with you and you:

i. said to her:

1. 'What you need is some TLC':  
**To be determined**

2. 'Let me give you a hug';  
**To be determined**  
or words to that effect:
  - ii. hugged her;  
**To be determined**
  - iii. suggested that you give her a massage and asked her to:
    1. remove her clothes;  
**To be determined**
    2. lie on the bed;  
**To be determined**
  - iv. said to her 'if you go into the room and undress, I can come in and make you feel better', or words to that effect;  
**To be determined**
  - v. asked if you could undo her bra, or words to that effect;  
**To be determined**
  - vi. massaged her:
    1. shoulder(s);  
**To be determined**
    2. back, to the top of her bottom;  
**To be determined**
  - vii. touched her bottom during the massage;  
**To be determined**
  - viii. told her to make more appointments with you so that you could give her a massage, or words to that effect;  
**To be determined**
  - ix. gave her a hug before she left the consultation room;  
**To be determined**
- b. on one occasion, Patient B consulted with you and you:
  - i. asked her to undress;  
**To be determined**

- ii. gave her a massage;  
**To be determined**
  - iii. put your thumbs just beneath her knickers;  
**To be determined**
  - iv. said to her ‘how would you feel about taking your knickers off too?’,  
or words to that effect;  
**To be determined**
  - v. said to her that you thought it would be a good idea if you went  
around and showed her fiancé how to do the massage, or words to  
that effect;  
**To be determined**
- c. on one occasion, you attended Patient B’s home and you:
- i. said to Mr C ‘I’ve come to give Patient B some TLC, a bit of a  
massage, you know because she’s been having a really difficult  
time, and would you like to go upstairs with Patient B and I’ll show  
you how to massage her properly’ or words to that effect;  
**To be determined**
  - ii. told Patient B to go upstairs and get undressed, or words to that  
effect;  
**To be determined**
  - iii. went to Patient B’s bedroom with Mr C and showed Mr C how to  
massage Patient B;  
**To be determined**
  - iv. failed to record the home visit in Patient B’s medical records;  
**To be determined**
- d. on one occasion, Patient B consulted with you and you carried out  
another massage.  
**To be determined**
4. At all materials times, Patients A and B were vulnerable due to their mental  
health. **Admitted and found proved**
5. Your actions as described at paragraphs 1, 2 and 3 were sexually motivated.  
**To be determined**

And that by reason of the matters set out above your fitness to practise is impaired because of your misconduct. **To be determined**

### Witness Evidence

14. The Tribunal received evidence on behalf of the GMC from the following witnesses:

- Patient A, in person;
- Mr D, ex-husband of Patient A, in person;
- Patient B, in person;
- Ms E, by video link;
- Mr C, ex-partner of Patient B, in person.

15. Dr McCrea provided his own witness statement dated 7 June 2023 and also gave oral evidence at the hearing. In addition, the Tribunal received evidence from Mrs F, in person.

16. Further, the Tribunal received testimonial evidence from the following witnesses on Dr McCrea's behalf:

- Dr G, by video link;
- Dame H, by video link.

17. The Tribunal also received evidence on behalf of Dr McCrea in the form of witness statements from the following witnesses who were not called to give oral evidence:

- Ms I, receptionist at the Practice in Theydon Bois.

### Expert Witness Evidence

18. The Tribunal also received evidence from two expert witnesses.

- Dr J, GP, instructed on behalf of the GMC. He provided an expert report dated 26 October 2021 and three supplemental reports dated 23 November 2021, 27 April 2022 and 26 January 2023.
- Dr K, GP, instructed on behalf of Dr McCrea. He provided an expert report dated 23 April 2023.
- A joint expert report was also produced and was signed by Dr J on 19 June 2023 and by Dr K on 18 June 2023.

### Documentary Evidence

19. The Tribunal had regard to the documentary evidence provided by the parties. This evidence included but was not limited to:



- Various documents relating to Patient A, Mr D, Ms E, Mr C and Patient B’s police interview, statements and interview notes;
- Relevant GP records of Patient A and Patient B;
- Emails from Patient A’s therapist;
- Emails from two therapists of Patient B;
- Patient B’s counselling records from Essex Partnership University NHSFT;
- Various relevant literature provided by Dr McCrea relating to breast examination, cardiac auscultation, cardiac palpitations, chaperones, consent, Good Medical Practice, respiratory exam and examination;
- WhatsApp conversation between Patient A and Patient B dated 20 to 21 January 2021;
- Email correspondence between Patient A and Patient B dated 12 to 13 February 2021;
- Various testimonials from Dr McCrea’s professional colleagues and acquaintances;
- Various exhibits provided along with Mrs F’s witness statement.

### The Tribunal’s Approach

20. In reaching its decision on facts, the Tribunal accepted the advice of the Legally Qualified Chair. It bore in mind that the burden of proof rested on the GMC and that it is for the GMC to prove the Allegation. Dr McCrea did not need to prove anything. It noted that the standard of proof is that applicable to civil proceedings, namely the balance of probabilities, i.e., whether it is more likely than not that the events occurred. When considering the standard required to prove an allegation, the Tribunal had regard to the case of *Byrne v General Medical Council [2021] EWHC 2237 (Admin) (10 August 2021)* which states:

*‘(1) There is only one civil standard of proof in all civil cases, and that is proof that the fact in issue more probably occurred than not.*

*(2) There is no heightened civil standard of proof in particular classes of case. In particular, it is not correct that the more serious the nature of the allegation made, the higher the standard of proof required.*

*(3) The inherent probability or improbability of an event is a matter which can be taken into account when weighing the probabilities and in deciding whether the event occurred. Where an event is inherently improbable, it may take better evidence to persuade the judge that it has happened. This goes to the quality of evidence.*

*(4) However, it does not follow, as a rule of law, that the more serious the allegation, the less likely it is to have occurred. So whilst the court may take account of inherent probabilities, there is no logical or necessary connection between seriousness and probability. Thus, it is not the case that "the more serious the allegation the more cogent the evidence need to prove it".’*

21. The Tribunal noted that it must reach its decision on the facts based on the evidence before it. It could draw reasonable inferences from what it had heard but it must not speculate. When drawing inferences, the Tribunal must be able to safely exclude, as less than probable, any other possible explanations. There must be evidence that justifies the inference.
22. Dr McCrea is of good character with no previous regulatory matters against him, and the Tribunal had before it unchallenged positive testimonials as to his character. His good character is relevant to the Tribunal's consideration in two ways. Firstly, in relation to credibility, the Tribunal should take into account his good character when considering whether it accepts his evidence. Secondly, in relation to propensity, the fact that the doctor has not acted in this way in the past may make it less likely that he acted as is now alleged.
23. The Tribunal considered that Dr McCrea's good character was not a defence to the allegations; it is one factor to take into account when considering all of the evidence in the round. What weight should be given to the doctor's good character and the extent to which it assists on the facts of this particular case is a matter for the Tribunal to decide.
24. The Tribunal took account of the LQC's advice as it applies specifically to the assessment of witness evidence in sexual misconduct cases.
25. It agreed it should guard against applying stereotyped images of how an alleged victim or an alleged perpetrator ought to have behaved at the time or how they ought to have appeared when giving evidence. It noted that people react differently and there is no one classic response. Some may complain immediately whilst others may feel shame and shock and not complain for some time. A late complaint does not necessarily mean that it is a false complaint. The Tribunal agreed it would judge the evidence on its intrinsic merits and approach the evidence without prejudice.
26. In relation to sexual motivation, the Tribunal had regard to the case of *Basson v GMC [2018] EWHC 505 (Admin)*, in which the judge held that:

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

*And*

*'..In civil proceedings that fact, the state of the man's mind, is to be proved in the usual way by the necessary body of evidence on the balance of probabilities. An appellate challenge to a finding of fact is always highly demanding. However, the state of a person's mind is not something that can be proved by direct observation. It can only be proved by inference or deduction from the surrounding evidence.'*
27. The Tribunal also had regard to the case of *Haris v GMC [2021] EWCA Civ 763* which states that sexual motivation could be inferred from:

- a. The fact that the touching was of the sexual organs*
- b. The absence of a clinical justification*
- c. The absence of any other plausible reason for the touching.'*

### The Tribunal's Analysis of the Evidence and Findings

28. The Tribunal has considered each outstanding paragraph of the Allegation separately and has evaluated the evidence in order to make its findings on the facts.

#### Patient A

29. The Tribunal noted that the time-period of the allegations was 1996 - 1998. The report to the police and the police interviews took place 14 – 16 years later and at the time of this hearing, it was 25 - 27 years since the time of the index events. It accepted that given the passage of time, memories and recollection of witnesses may understandably be affected.
30. It also accepted that Patient A was vulnerable at the time of the alleged incidents. She confirmed in her police interview and also in her oral evidence to the Tribunal, *'I was at a time in my life when I was feeling quite emotionally vulnerable...'*, *'at the time of the these events...I was extremely emotionally and psychologically vulnerable...'*
31. Mr D also reported that at the relevant time, Patient A had *'a lot going on in her life'* and *'That was to do with the flashbacks and abuse she sustained.'* It was reported that Patient A was a victim of childhood sexual abuse from her immediate family and Patient A had *'broken contact'* and had become *'estranged from the family.'*
32. The Tribunal made no judgment in respect of the delay in the index events being reported and it took the view that it was understandable due to Patient A's personal circumstances which stemmed from her childhood abuse.
33. The Tribunal considered the evidence. It was mindful that some of Patient A's evidence conflicted with that of other evidence in the case, of which the following are examples:
- It noted that in her police interview of October 2012, Patient A had stated that *'I don't actually remember the dates of when this happened... and I don't actually remember the order either, but I can remember what actually happened to me, so I'll just say it how I can remember it really.'* In her statement to the GMC dated 26 October 2021 Patient A had stated *'On page two of the exhibit BHH1 (police interview notes) at point 3 (referring to the alleged anal examination) it outlines the next appointment I had with Dr McCrea. This would have been by [sic] fourth appointment with him, with the consultation being appointment one, the one where he asked about my sex life being appointment two and the appointment where he touched my breast being appointment three.'*

It noted however, that Patient A had thereafter clarified this in her supplemental statement dated 13 February 2023, in which she stated that *'I want to clarify that I cannot remember the exact order of the appointments I had with Dr McCrea so I cannot be certain this was the order.'* In oral evidence, Patient A stated that she had no recollection of the order of the appointments and stated that she wished she had made a note or journaled the events as they took place – she said that no one had advised her to do so either at the time or subsequently.

- Whilst the Tribunal was mindful that there was no longer any allegation relating to an inappropriate manner in which an examination for heart palpitation was conducted, it nevertheless considered the evidence relating to this in order to assess the reliability of Patient A's memory. Patient A's police interview in 2012 illustrated that she reported to the police that *'he asked me to remove my top and undo my bra...So my bra was still on but it was undone'*. However, Patient A thereafter stated in her statement dated 26 October 2021 that *'Dr McCrea said he wanted me to take off my top and bra so he could check my heart'*.

Ms E's evidence was that Patient A reported to her that she had been asked to remove her upper clothing including her bra. Patient A clarified in her 2023 statement that in fact she had been asked to remove her top and not her bra.

- In respect of the reports/complaints purported to have been made to the Practice and the GMC by Mr D of the index events, the Tribunal noted Patient A's oral account that *'we have tried unofficially to report'*. Further that she was *'aware of it'* and was *'involved in it'*. Patient A stated that *'she was around and about when my husband then made the call'*.

Mr D's recollection however was that he made the calls himself as he did not think Patient A wanted to take things further herself. He also stated that he did not believe that he would have made the call with Patient A being there *'because she wasn't telling me she wanted any action to be taken, this is on my own action.'*

- The Tribunal further considered the evidence Patient A gave in respect of a previous sigmoidoscopy that she had undergone. In cross examination she was referred to her police interview in which she stated that she had not had any internal examinations in her back passage. However, in her oral evidence, she stated, *'I'm remembering that I did have an examination before. But that did not feel intrusive, because I actually knew what it was for.'* However, when asked to confirm the nature of the exam she was recalling, Patient A could not initially remember what kind of an examination it was and whether it was an anal or rectal examination. Later on, in evidence, Patient A stated, *'I don't actually remember having an actual anal exam but I may have done.'*

Patient A was taken to a part of the medical notes which referred to a sigmoidoscopy that had been undertaken and referred to in a letter of 1987. In response, Patient A confirmed, *'I didn't mean to mislead anybody. At time of me seeing Dr McCrea, I was*

*not suffering with this in a severe and whatever the words were. It wasn't severe at the time, so it escaped my memory.'*

- The Tribunal further examined the discrepancy that was present within Patient A's account as to whether the alleged anal examination involved a digital examination or one with an instrument.

Patient A's clear account in her police interview of 2012, 14-16 years after the index event, was that there was no use of any equipment and that a digital examination took place. Patient A stated, *'I was aware that he was putting gloves on and I imagine lubrication, I don't know, and then he put his finger inside my anus and then it was like he was just feeling around the rim and it was very uncomfortable'*. In answer to the question, *'Did he explain, did he need to use any specialist equipment?'* Patient A answered *'No'*.

However, in her first statement to the GMC dated 26 October 2021, Patient A recalls, *'he made me lie on my side with my knees up and inserted a telescope into my bottom.'* She stated that where it had stated in her police interview notes that a finger had been inserted, that was wrong. Patient A further explained in her statement dated 13 February 2023 that *'I was quite shocked that I did not say anything about the telescope. When I read the transcript I was thinking, why didn't I mention that because I couldn't believe that I have not mentioned it. On reflection, I think I failed to mention to the telescope in the police interview because I was embarrassed about it. I was quite anxious and nervous when I attended the meeting with the police and I think I was ashamed. But I do remember quite clearly that he showed me what he called a telescope before he inserted it and it was absolutely a telescope and not a finger that he inserted.'*

In answer to Tribunal questions, Patient A did however also accept that it could have been both, i.e an insertion of a finger and an instrument.

34. Having considered these aspects of Patient A's evidence, the Tribunal acknowledged that given the passage of time since the alleged incidents to when they were reported to the police, and to date, there is inevitability going to be some confusion in the detail. It also considered that Patient A had tried to assist the Tribunal with her best recollection, however it did bring into sharp focus the fallibility of her memory.

#### Paragraph 1(a) of the Allegation

35. The Tribunal considered whether, between around 1996 and 1998, Dr McCrea had on one occasion during a consultation with Patient A, asked her inappropriate questions about her sex life namely what is set out below or words to that effect:
  - If Patient A enjoyed oral sex with her husband;
  - How far Patient A would go;
  - If Patient A would allow her husband to ejaculate in her mouth;

- If Patient A enjoyed cunnilingus and fellatio;
- How often Patient A has sex with her husband.

36. The Tribunal considered the written and oral evidence of Patient A in this regard.

37. The Tribunal noted the following exchange from the police interview in 2012:

*Q: 'When you decided to approach the GP about sort of overcoming your childhood issues, did you arrange to see him specifically or was it just an allocation?*

*[Patient A]: Yes, after I saw him and he said he wanted to help me, he said, "Well, then, you know, I can book you in for some time to chat." I called it counselling because it was counselling and then I did book in specifically to him from that point on.*

*Q: Ok. How often were you seeing him?*

*[Patient A]: I can't actually remember. I would be making that up if I tried. I would be making that up if I tried. I could guess if you want?'*

Thereafter Patient A stated, '*I would at a guess, say every other week*'.

38. The Tribunal noted that Patient A had stated to the police that she had herself referred to her appointments with Dr McCrea as '*counselling*'. Patient A asserted that she had challenged Dr McCrea on the questions he had allegedly asked and queried why they were relevant. She recalls that Dr McCrea's response was that they '*may be relevant*' but could not recall any additional details as to what he said.
39. In her statement of 2021, Patient A stated, '*I did not want to answer the questions but I felt he must be asking for a reason.*' She further stated that she could not remember how she answered the questions.
40. The Tribunal also examined Patient A's answers in oral evidence, in relation to specific queries put to her about the context of these alleged questions. Patient A stated, '*I can't remember it word for word but he will have asked me how I was. I would have said, you know, what I am struggling with, and we would have started talking about the sexual abuse and he then went into questioning me about my sex life.*'
41. In relation to the childhood sexual abuse suffered, Patient A also stated, '*I didn't really go into – I mean it would have been quite vague about the sexual abuse with him because I just wasn't used to talking about it.*' She stated '*I wouldn't have gone into detail...*' and '*I just couldn't have done it*'. Patient A further confirmed that she knew that she didn't go into detail. She also stated that she couldn't remember if she would have told Dr McCrea about the perpetrator of her childhood abuse.
42. Patient A was not able to provide any other information as to what discussions took place before the alleged questions were asked.

43. The Tribunal noted that there were no medical notes available to it in respect of the period in question. There was no other information relating to whether double appointments were booked or not by Patient A. In her police interview of 2012, Patient A had informed the police that she may have seen Dr McCrea as a patient 10 times. She further stated, *'it was quite a few times. Not specifically for this, you know, just for different general things probably before that.'*
44. Patient A was unable to recall with any accuracy details of consultations with other clinicians particularly in relation to her libido and sex life. The Tribunal therefore inferred it was unlikely that she would have an accurate memory of what she had discussed in each of the 10 consultations she had had with Dr McCrea.
45. The Tribunal next considered if Patient A had informed anyone in respect of the 'inappropriate questions'. It noted that Mr D had confirmed in oral examination that he only knew about the examination for heart palpitations which Patient A had told him about. He was not aware of any other incidents. However, it noted that Patient A had had the following exchange with the police in 2012:

*Q: 'So in terms of what you told your ex-husband, did you talk to him about the conversation you had with Dr McCrea?'*

*[Patient A]: Yes I think he knew that you know, what our conversations were about the sex.*

*Q: What was his reaction?'*

*[Patient A]: He was really angry and he wanted to do something about it...*

*Q: Did you tell him about the breast exam?'*

*[Patient A]: I cannot actually remember.*

*Q: Okay. So, In your head you're confident that you told him about the conversation.*

*[Patient A]: Yes'*

46. In oral evidence, Patient A stated: *'I am not 100 percent whether I told him about that or not. I know I spoke to him about the inappropriateness, but I don't know if it was actually about that.'* *'I cannot remember what I did tell my husband because at the time I was very stressed, I was very anxious and I was very embarrassed.'*
47. The Tribunal noted that Ms E also was not aware of any other incidents of alleged inappropriate behaviour at the time Patient A informed her about the heart palpitation examination. It was a few years later that Ms E was told by Patient A about the counselling session – *'I understand that this was before the examination incident'*. She stated, *'Dr McCrea had asked her about her sex life'*. Ms E also stated that Patient A *'was realising maybe that wasn't necessarily helpful to her.'*



48. The Tribunal considered Dr McCrea’s evidence in this regard. In his written statement, he confirmed that he had no recollection of any of these matters including an appointment where he had asked Patient A questions about her sex life. He confirmed that *‘It can be appropriate for the GP to ask a patient about their sex life when dealing with a particular concern, but he would not have asked the questions set out... unless these issues were specifically raised by Patient A’*. *‘The questions... are not questions I would ask and are not my words. I would not have used language such as ‘cunnilingus’ and ‘fellatio’*. Dr McCrea reiterated in oral evidence that if any patient made a sexual abuse allegation, he would never ask the inappropriate questions as alleged.
49. The Tribunal further considered Dr McCrea’s method of consultation, which was patient led, which Patient A had also confirmed. Dr McCrea further stated that certain questions could be asked about oral sex if a sexually transmitted infection was being considered but the alleged questions were well beyond the precision needed to diagnose that. He further stated that in the context of talking about a patient’s relationship, questions could be asked about a couple’s sexual relationship but not in the manner alleged – it would be a patient lead process and *‘one might ask how a patient is getting on with a husband’*.
50. The Tribunal considered the experts’ evidence. Dr J and Dr K agreed that context of questioning was important and Dr K further opined that patients did not always understand the issues they would present with or how to articulate them. Referring to *‘hidden agenda’*, Dr K further said *‘one thing about context is that it is often the case that it may not be simply what a patient says but a patient’s demeanour, how comfortable they are with issues or even a suspicion you may have that there is something else underlying this.’*
51. The Tribunal noted the following passage from Patient A’s statement of 2021 *“the notes towards the end of page two exhibit BHH1 [Police interview notes] state that “she didn’t know what was right or wrong, as essentially, she trusted him as her doctor. She did state she now feels that the examinations were inappropriate.” ‘I felt the examinations were inappropriate as in hindsight I felt violated. It was afterwards that I felt quite ashamed that I had allowed him to do those things. I felt he completely overstepped the boundaries and should not have done those things.’*
52. The Tribunal further considered this passage from Patient A’s police interview in 2012: *‘I would just say it was – his manner, it’s just – I can’t even describe – it’s really inappropriate. It just feels – it felt creepy, intrusive. I mean all three different instances it was intrusive in very different ways. In some ways talking about my sex life is kind of, that’s hard and , you know that is so intrusive. So it was – I mean I just didn’t have any boundaries up at the time; you know, I didn’t really – I couldn’t work out what was right or wrong’*.
53. Having considered the entirety of the evidence, the Tribunal considered that Patient A’s view that inappropriate questions were asked of her likely developed some time after



the consultation as opposed to during or straight after. This was also supported by Patient A having proceeded to attend further consultations with Dr McCrea. It considered probable that Patient A's view of the consultation being '*inappropriate*' and her feeling '*creepy*', developed after the heart palpitation examination which she considered to be inappropriate, and which had also been confirmed to her by Ms E as '*not right*'. Ms E advised her not to see Dr McCrea again. It considered that Patient A did not have a clear recollection of the alleged consultation.

54. The Tribunal accepted Patient A's view that talking about her sex life would be both sensitive and intrusive for her. However, it could not discount that the consultation may have addressed issues relating to Patient A's personal sex life as a result of the impact of the childhood abuse on her. In that context, the Tribunal accepted the evidence of Dr K that some questions relating to a patient's sex life requiring some detail would be relevant and not inappropriate. It considered it plausible and probable that Patient A would have remembered the difficult feelings which she described as '*intrusive*' and '*embarrassing*' whilst not accurately remembering the finer details of the consultation including the issues discussed and questions asked. The Tribunal was not convinced, when considering the evidence in its entirety, that Patient A would have a clear account of that consultation and any questions asked. It took the view that Patient A's recollection and memory in this regard was not reliable. It accepted Dr McCrea's evidence on this issue relating to his normal practice.
55. The Tribunal was of the view that Patient A was not intentionally misleading in her evidence and had tried her best to assist the Tribunal. However, given the length of time and the weakness of memory, it was on balance, more likely than not that Patient A was mistaken in relation to the inappropriateness and detail of any questions put to her during the said consultation.
56. Therefore, on the balance of probabilities, the Tribunal determined and found paragraph 1(a) of the Allegation not proved.

#### **The stem of paragraph 1(b) of the Allegation**

57. The Tribunal first considered the stem of paragraph 1(b) of the Allegation before considering the sub-paragraphs of the Allegation. It considered whether, on one occasion, Patient A consulted with Dr McCrea and that he undertook an anal examination of her.
58. The Tribunal considered the evidence of Patient A. It noted the discrepancy in Patient A's recollection as to whether it was a digital exam, or one made with the use of an instrument, or both. It considered the further details that Patient A had provided about the discussion she had had with Dr McCrea before embarking on the examination and also her recollection of having taken off her clothes from the waist down, lying on the bed on her side and with her knees up.

59. It considered that there were no medical notes relating to this examination and there was no indication that Patient A had talked about this examination with Mr D or Ms E at the time. The Tribunal took the view that this did not necessarily indicate that no examination took place and considered that Patient A's concern about having been anally raped as a child could have influenced her ability to talk about this examination.
60. Dr McCrea confirmed in giving evidence that he had no recollection of the alleged anal examination, and he confirmed in his written statement, that *'if I had undertaken an anal examination I would have been responding to a complaint from Patient A about some pathology in this area and I would have offered Patient A a chaperone'*.
61. Therefore, on the balance of probabilities, the Tribunal determined that the anal examination had taken place.

Paragraph 1(b)(i) of the Allegation

62. The Tribunal considered whether, during the anal examination, Dr McCrea had asked Patient A to remove all her clothes from the waist down.
63. The Tribunal considered its findings above that an anal examination is likely to have taken place. It considered Patient A's account, *'I don't know if I took my clothes off completely or I just exposed my backside'*.
64. Both Dr J and Dr K were also agreed that *'when performing an anal examination, it would be necessary for clothes to be removed from the waist down.'*
65. The Tribunal therefore took the view that it would logically follow that if an anal examination took place, Dr McCrea must have asked Patient A to remove all her clothes from the waist down.
66. Therefore, on the balance of probabilities, the Tribunal determined and found paragraph 1(b)(i) of the Allegation proved.

Paragraph 1(b)(ii) of the Allegation

67. The Tribunal considered whether, during the anal examination, Dr McCrea had inserted a telescope into Patient A's anus.
68. The Tribunal considered the evidence before it. It noted that the word 'telescope' was not defined as equating to any particular instrument. There were no medical notes relating to this examination. It referred to the evidence of the experts and Dr McCrea on the description of a 'sigmoidoscope' and a 'proctoscope', with the former being significantly longer than the latter. It also noted uncontested evidence that a performance of a sigmoidoscopy entails considerable advance preparation for it to be effective. It considered Dr McCrea's evidence that such examinations using a

sigmoidoscope would be carried out in a clinic designated to these examinations and would involve another member of staff for assistance.

69. The Tribunal turned its mind to the discrepancy in Patient A's account as to whether the examination was digital or with an instrument and noted Patient A's clarification that an instrument was definitely used, and that the examination may have even involved both – a digital exam and the use of an instrument.
70. In light of the evidence it heard, the Tribunal took the view that on a balance of probabilities, an instrument was used during this examination, and it was more likely than not, a proctoscope, as an investigative tool and one that did not require any advance preparation.
71. It further considered Dr J's evidence that a proctoscope was a small hollow tube with a rounded edge which would allow visual inspection in the anal canal. Dr McCrea's evidence and that of Dr K's reinforced that a digital examination or one with a proctoscope would allow for diagnosing or excluding pathologies. It considered that its exploratory use would be akin to a telescope to view the anal canal. A 'telescope' was something that Patient A said Dr McCrea had referred to and showed her before he inserted it into her anus.
72. Therefore, on the balance of probabilities, the Tribunal determined and found paragraph 1(b)(ii) of the Allegation proved

Paragraphs 1(b)(iii)(1) and 1(b)(iii)(2) of the Allegation

73. The Tribunal considered whether, during the anal examination, Dr McCrea failed to obtain adequate consent from Patient A, in that he did not provide Patient A with an explanation as to why an anal examination would help with a diagnosis and did not explain to Patient A what an anal examination would involve.
74. The Tribunal first considered what explanation was provided by Dr McCrea as to why an anal examination would help with a diagnosis. At this stage the Tribunal were considering whether an explanation was given by Dr McCrea as to why an anal examination would help with a diagnosis. It would, in considering paragraph 2 of the Allegation, consider whether there was a clinical indication for the examination.
75. In her statement Patient A stated, *'I expressed that I was anally raped as a child and I had concerns that I had internal damage because of it. Dr McCrea said he could check for me whether I had internal damage'*.
76. The Tribunal accepted both experts' view that an anal examination would not be able to determine the question of childhood anal rape committed many years prior. Dr McCrea was of the same view in this regard. The Tribunal noted that from her own account, Patient A stated that a discussion preceded the examination, and that the examination

was to check whether there was any internal damage. The Tribunal took the view that Patient A knew that at the very least, any internal damage was being explored.

77. The Tribunal further considered Dr J's evidence in cross-examination in which he accepted that a complaint of anal rape in a female patient would increase the index of suspicion of other pathologies including viral infections and bowel or anal carcinoma.
78. It also considered Dr K's view that there are many alternative pathologies that could be identified by a GP but one would not share those with a patient at the outset. He said that the examination can also rule out potential alternative pathologies.
79. Dr McCrea had stated in oral evidence that at the time of the index events, a doctor may not have explained everything to the Patient and that one would bear in mind the agenda of the patient and the doctor's agenda and that this would be *'a classic case of those coming together'*. He stated that *'in those days I probably didn't say you may have anal carcinoma and these days I may say it – I may not have gone into full details with her [Patient A] as to why a rectal exam was a good idea'*.
80. The Tribunal further considered the evidence of Patient A. It bore in mind that within the police interview in 2012, when asked by the police if Patient A felt she had consented to the examination, her response was 'Yes'.
81. The Tribunal noted that after the initial discussion, Patient A agreed to go to the examination room and agreed to take her clothes off from the waist down to enable the examination. In her statement she said, *'he showed me what he was going to use and it looked like a stick. He called it a telescope. I am not sure if it was a camera.'* Patient A further stated in 2012 to the police, *'it wasn't painful but it was very very uncomfortable and he just said, you know, "Don't worry. Its nearly over" and then that was it.'*
82. Given the evidence before it and as set out above, the Tribunal was of the view it was reasonable to infer that adequate consent was obtained by Dr McCrea from Patient A.
83. Therefore, on the balance of probabilities, the Tribunal determined and found paragraphs 1(b)(iii)(1) and 1(b)(iii)(2) of the Allegation not proved.

#### Paragraph 1(b)(iv) of the Allegation

84. The Tribunal considered whether, during the Anal Examination, Dr McCrea failed to offer Patient A a chaperone. It considered the duty that was placed on a doctor following the 1996 guidance which stated that the offer for a chaperone should be made 'whenever possible'.
85. It noted that Patient A was asked by the police, *'Did he give you the opportunity to have any female doctor do that examination?'* to which she replied *'No....No all I was going to*

*say that I know there was a female receptionist on and, you know, I should have asked for her to be present.'*

86. The Tribunal also considered Dr McCrea's evidence which was that the policy of the practice at the time was the 1996 Guidance. Further, that *'being very straight, the words of the GMC have changed over the years, the reality of the principle has not changed. I have always asked and offered chaperones for intimate examination'*. Dr McCrea confirmed that for genital, anal or breast examinations his practice was to always offer a chaperone. He said he would do this as a comfort for the patient and as a protection for him. He explained who in the practice would be able to be a chaperone and that it was nearly always the practice nurse or the person covering for her. He said he does not remember there being a situation where a chaperone was not available. He stated that at that time he may not have recorded if a chaperone was offered but declined.
87. The Tribunal also considered Mrs F's evidence that she herself had been asked to chaperone by doctors once she became a Health Care Assistant and that not all patients had wanted chaperones then. She also stated that a chaperone was always available if needed.
88. The Tribunal considered the evidence. It noted that Patient A had not asserted to the police in 2012 that she had not been offered a chaperone for this examination, just that she should have asked for the receptionist to be present. It considered Dr McCrea's clear account of his practice and Mrs F's account. Accordingly, it took the view that the Allegation that Dr McCrea failed to offer Patient A a chaperone was not made out.
89. Therefore, on the balance of probabilities, the Tribunal determined and found paragraph 1(b)(iv) of the Allegation not proved.

#### Paragraph 2 of the Allegation

90. The Tribunal considered whether paragraphs 1(a) and 1(b)(i) – 1(b)(ii) of the Allegation were not clinically indicated. It noted that paragraph 1(a) of the Allegation was not proved. Therefore, the Tribunal would only consider paragraph 1(b), 1(b)(i), 1(b)(ii) in relation to paragraph 2 of the Allegation.
91. The Tribunal considered whether the anal exam in itself was clinically indicated. It first considered Patient A's account from the police interview in 2012:

*'Q: Well I would like to know really, you have said you might have been anally raped as a child.*

*[Patient A]: well at that time I was confused about that.*

*Q: Did he explain to you what he had hoped to establish by examining your anus?*

*[Patient A]: No, it was quite – basically it was, “well would you like me to check for you?” and I said, “Yes, please” – well, no first of all, I said, “Is there a way of finding out?” and he said “Well, can I check for you. Would you like me to do that?” and I said, “Yes”.*

*Q: Did he explain what he would be looking for?*

*[Patient A]: No’*

92. The Tribunal reminded itself of Patient A’s account in her written statement:  
*‘I expressed that I was anally raped as a child and I had concerns that I had internal damage because of it. Dr McCrea said he could check for me whether I had internal damage’*
93. The Tribunal further considered the following exchange from the police interview in 2012:  
*‘Q: Did you feel that you had got pain in your anus as a result of childhood issues?  
[Patient A]: I couldn’t work it out as I was getting shooting pains from that area and I whether it was a stress because as you know, there were certain things that I did remember, so I was aware of stuff, I suppose at that time I was kind of panicking thinking, ‘oh blimey, well, if I’ve had this done to me, then does that mean I’ve had something else done to me? It was really based on that fear more than anything else.*
- Q: Did you tell Dr M you had pains in that area,  
[Patient A]: No not at all*
- Q: Okay, so he was entirely unaware  
[Patient A]: Absolutely unaware, yes.’*
94. The Tribunal accepted the opinion of both the experts’ who were agreed that an anal examination could not indicate if someone had been raped as a child many years previously. Dr J had confirmed that a female patient complaining of anal rape would raise a suspicion of alternative pathologies. He also agreed that such an examination would provide assurance to the patient who presented with anxiety.
95. It considered Dr K’s view. He stated that *‘if you accept that Patient A was anally abused, then certain pathologies are potentially linked to such abuse; anal carcinoma - and that would require an examination...’* He further stated that *‘even if you don’t hear any symptoms reported by a patient, the fact that she is anxious might suggest that there are symptoms not being explained to you so it is a matter of clinical judgment on the day, whether doing the exam has anything to offer.’* He stated there are some patients who at the time cannot be reassured without an examination and in those circumstances it would be medically legitimate to perform one.
96. It then considered Dr McCrea’s evidence. In his written evidence, Dr McCrea stated, *‘If I had undertaken an anal examination, I would have been responding to a complaint from*

*Patient A about some pathology in this area’*. In his oral evidence, Dr McCrea said that on the information provided, there was justification for the anal examination.

97. The Tribunal noted that Patient A had not asserted that Dr McCrea had indicated that he could find out from the examination if she had been anally raped as a child. It noted that there was some evidence and acceptance from Patient A that she had been suffering from fluctuating constipation over the years and shooting pains in her anus. It did not have full medical notes of Patient A available but considered that would have been available at the Practice for a doctor before any consultation, and would have illustrated repeat prescriptions for medications to treat and manage constipation. There has also been a previous sigmoidoscope detailed in the medical notes. Patient A had confirmed to the police that she thought she had previously seen Dr McCrea approximately ten times as a patient. It considered that Dr McCrea may have had prior knowledge from these records of other conditions and symptoms relating to Patient A that she may not have mentioned to him in that consultation.
98. The Tribunal took the view that on the balance of probabilities, there was a clinical indication for the anal examination, if only to rule out potential pathologies. It therefore determined that paragraph 1(b) in relation paragraph 2 was not proved.
99. In respect of paragraph 1(b)(i) of the Allegation, the Tribunal considered the expert evidence provided by Dr J and Dr K. Both experts agreed that the removal of clothing would be necessary to perform an anal examination. The Tribunal considered that when Dr McCrea had asked Patient A to remove all her clothes from the waist down prior to undertaking an anal examination that it was clinically indicated that he should do so. Therefore, it determined that paragraph 1(b)(i) in relation to paragraph 2 was not proved.
100. In relation the use of a telescope, which the Tribunal considered was more likely than not, a proctoscope, it reminded itself that its use was exploratory, to diagnose or exclude other pathologies. It had accepted the evidence of the experts and Dr McCrea. It had already determined that the anal examination was clinically indicated and it followed that the use of a proctoscope for investigative purposes would on a balance of probabilities also be clinically indicated. It therefore determined that paragraph 2 in relation to paragraph 1(b)(ii) was not proved.
101. Overall, on the balance of probabilities, the Tribunal determined paragraph 2 of the Allegation not proved.

## **Patient B**

### The entirety of paragraph 3(a) of the Allegation

102. The Tribunal assessed the evidence to determine if consultations at the Practice led to and included Dr McCrea massaging Patient B.

103. It considered the contemporaneous GP medical records of Patient B. These featured a record on 30 December 1997 stating, *'Anxiety ++. Massage suggested. Discussed and advised, see with fiancée [sic] next week'*.
104. Additionally, the GP notes showed a recording on 6 January 1998, which was exactly a week after Patient B's consultation on 30 December 1997. It stated, *'ISQ. Due to see [psychotherapist] (has had tons in the past). Not sure whats best for her. Sleeping. Massage a help, especially with fiancée [sic].'*
105. The Tribunal noted the account of Patient B that there had been at least two consultations in the Practice where Dr McCrea had allegedly massaged her, in addition to a home visit. There were no records capable of showing double or longer appointments. There were also no other records which referenced massage other than the 2 records above.
106. Patient B had asserted that she had attended the Practice to see Dr McCrea for depression and to seek a referral for this. She stated in her statement that she thought the appointment was for 10 minutes and that *'he was going to try and sort something out for me to help me'*. She recalls that Dr McCrea asked her about her relationship but that she could not remember how intimate the questions were. Patient B also stated in her statement to the police that she remembered that there were other patients at the Practice who were waiting to be seen.
107. The Tribunal considered Dr McCrea's evidence which was to deny that he ever massaged Patient B and it would not be something that he could have forgotten. He further confirmed that he was not trained in massage, nor did he have any qualifications in it. He did state that he could have at some stage recommended it as *'not everything is medical and some things can be helped by alternative approaches, like massage, mindfulness, exercise and yoga.'*
108. Dr McCrea stated that if he deemed that someone was *'not right and struggling'* he would be suggesting *'small things around the edges'*. In relation to Patient B, Dr McCrea stated that having reviewed the notes, she was receiving all the appropriate care and that *'a bit of me would be wanting to recruit some more resources in making sure she is supported.'* He stated that the terms *'discussed and advised'* would fit in with the *'consultation model'* that he would have used at that time. Dr McCrea stated that he did not accept that the first relevant entry (30 December 1997) in the medical records demonstrated that he was arranging to see Patient B with her partner to discuss and advise upon massage but rather to support her with her anxiety.
109. The Tribunal considered that Patient B had stated that the massage together with the consultation would take in the region of 30 minutes. Both Patient B and Mrs F's evidence was that the Practice was busy, the examination room was near the kitchen that was heavily used. Ms I, who had worked in the Practice from November 1998 – November



2000, had stated in her statement, *‘There was no door between the reception desk and the area where the doctors’ rooms were situated and the building was not well sound proofed. This area was very busy as staff would move through this area to get to other parts of the practice. Patients were also moving through the premises to get through to the doctor, nurses and physiotherapist’s rooms. District nurses and other healthcare staff would often call into the practice and they would wait in this area to speak to the staff’.*

110. It noted that Mr C confirmed in his oral evidence that he was not aware of any other massages other than the one relating to the home visit.
111. Patient B had stated in evidence that she thought what had happened to Patient A was worse than what she alleged had happened to her. She confirmed that Patient A’s complaint to the police came as a shock to her and she was *‘gobsmacked’*. Patient B had also confirmed that had Patient A not been ready to make a complaint to the police, she would not have complained herself.
112. It considered Mrs F’s evidence that Patient B had attended the practice to have a *‘private word’* with her, but that Patient B had attended in relation to her friend, Patient A and it was about an *‘inappropriate consultation’* with Dr McCrea. Patient B did not accept that her approach to Mrs F was in reference to Patient A and was of the view that it was about herself and the massages that she had had with Dr McCrea. In oral evidence, however, Patient B accepted that she was confused about when she had spoken to Mrs F and whether it was once or twice that she had spoken to Mrs F and whether those conversations took place on the same day.
113. The Tribunal accepted Patient B’s account that she thought Mrs F was defensive when Patient B spoke to her. The Tribunal noted Mrs F’s answers in oral evidence, *‘I found it odd... I didn’t expect anyone to make a complaint about Dr McCrea’*. In respect of her reaction to a complaint, she stated, *‘I was really shocked because of complaint as no one really complained about Dr McCrea, quite contrary in fact everyone had nice things to say about him.’* Mrs F further stated, *‘I would have said stop there we have a procedure in place’* and stated that she passed the number for the practice manager to Patient B. Mrs F further stated that she *‘didn’t want to know’* what the complaint was about and that *‘it had nothing to do with me’*. She stated that her role was to pass on the details as to who could deal with the complaint and that was not her job. Mrs F confirmed in oral examination that she had only just found out what the alleged *‘inappropriate consultation’* was about.
114. Whilst the Tribunal could understand how Patient B was left feeling that Mrs F was *‘defensive’*, it was not convinced that Patient B had in fact made a complaint about herself and the massages as opposed to a complaint about Patient A.
115. The Tribunal has already noted that Patient B considered Patient A’s complaint more serious than her own. Patient B was a friend of Patient A, was supportive of her, and during the course of the hearing her concern for Patient A was highlighted when it was

disclosed that she had made contact with Patient A's wife during the hearing to check on Patient A's welfare.

116. Considering all these factors, the Tribunal took the view that it was probable that Patient B had only made a complaint to Mrs F about Patient A rather than herself. This, together with Mr C's evidence, that Patient B had not informed him of any other massages undertaken by Dr McCrea, and Patient B's inclination to support Patient A, left the Tribunal in doubt as to whether Patient B was massaged at the Practice by Dr McCrea.
117. Having considered the evidence, the Tribunal could not establish on a balance of probabilities that the massages at the Practice did take place as asserted by Patient B. It nevertheless considered the sub-paragraphs of the allegation 3(a).

3(a)(i) On one occasion Patient B consulted with you and you said to her:

1. What you need is some 'TLC'
2. 'Let me give you a hug' or words to that effect.

3(a)(ii) hugged her

3(a)(ix) gave her a hug before she left the consultation room

118. The Tribunal noted that Patient B recalled Dr McCrea using the acronym TLC. It considered that this word may have been used in the context of Patient B discussing with Dr McCrea, her physical relationship with Mr C. This may have been at one of the consultations at the Practice. It also considered Dr McCrea's evidence that in his medical career there have been patients who have hugged him, particularly in sad situations, but he would not instigate a hug himself. The Tribunal did not however have sufficient evidence before it to support, on a balance of probabilities, any finding that in the context on this consultation, Dr McCrea used the word TLC and then proceeded to hug Patient B.

3(a)(iii) Suggested that you give her a massage and asked to

1. remove her clothes
2. lie on the bed

3(a)(iv) said to her 'if you go into the room and undress, I can come in and make you feel better', or words to that effect;

3(a)(v) asked her if you could undo her bra or words to that effect;

3(a)(vi) massaged her:

1. shoulder(s)
2. 2. Back, to the top of her bottom;

3(a)(vii) touched her bottom during the massage;

3(a)(viii) told her to make more appointments with you so that you could give her a massage, or words to that effect;

119. The Tribunal relied on its earlier finding that looking at the evidence in its entirety, it could not find proved that Dr McCrea had massaged Patient B at the Practice. It therefore followed that it could not find proved these sub-paragraphs of the Allegation

which were based on the premise that the consultation involving the massage had taken place at the Practice.

120. Therefore, on the balance of probabilities, the Tribunal determined and found the entirety of paragraph 3(a) of the Allegation not proved.

Paragraphs 3(b)(i) – 3(b)(iv) of the Allegation

121. The Tribunal considered whether between around 1997 and 1998, Dr McCrea, on one occasion, consulted with Patient B and he asked her to undress, given her a massage, had put his thumbs just beneath her knickers, told her *'how would you feel about taking your knickers off too?'*
122. In relation to the above sub-paragraphs, the Tribunal relied on its earlier considerations which led to the Tribunal not finding proved, that Dr McCrea massaged Patient B at the Practice. It therefore followed that it could not find these sub-paragraphs proved which were based on the premise that the consultation involving the massage had taken place at the Practice.
123. Therefore, on the balance of probabilities, the Tribunal determined and found paragraph 3(b)(i) – (iv) of the Allegation not proved.

Paragraph 3(b)(v) of the Allegation - said to her that you thought it would be a good idea if you went around and showed her fiancé how to do the massage or words to that effect.

124. The Tribunal considered the two references in Patient B's medical records that referred to 'massage'. The first reference was dated 30 December 1997 which recorded; *'Anxiety ++. Massage suggested. Discussed and advised. See with fiancée [sic] next week.'*
125. It considered Patient B's account in her written statement, *'I think during the second appointment he said he thought it would be good if he came round and showed my fiancé how to do the massage.'* In oral evidence, Patient B further confirmed, *'I don't recall whether it was in the appointment place or phone call. It makes more sense he would have said it when he was sitting there. At the end of the day, I am talking about something that happened so many, many years ago...'*
126. It considered Mr C's account in his police statement dated 2013, referring to his own appointment with Dr McCrea where he alleges Dr McCrea mentioned Patient B to him. Mr C stated, *'The doctor said that he could come around to our house and have a chat and give us some counselling and techniques to help me and [Patient B] to relax.'*
127. The Tribunal considered Mr C's evidence. It had noted certain discrepancies in the accounts of Patient B and Mr C. For instance, Patient B thought that she had informed Mr C about Dr McCrea's suggestion for a home visit whereas Mr C recollected his own appointment with Dr McCrea where Dr McCrea offered help by attending their home.

Despite some inconsistency and confusion in details, it had found Mr C to be open, frank and measured in his account, willingly accepting that he could not recall everything, such as dates of his appointment with Dr McCrea or Dr McCrea's description in 2013 when giving his account to the police. He did have a clear memory of his relationship difficulties with Patient B and his exchanges with Dr McCrea as Mr C considered those to be '*memorable*'.

128. The Tribunal was of the view that whilst Dr McCrea did not have any independent recollection of consultations with Patient B or Mr C, the 30 December 1997 contemporaneous GP record did support a discussion and an agreed plan between Dr McCrea and Patient B which alluded to Dr McCrea seeing Patient B with her fiancé, Mr C the week after. It considered the further note, made exactly a week later, which confirmed that '*massage a help especially with fiancée [sic]*'.
129. It considered that on balance, Dr McCrea did say words to the effect that it would be a good idea if he went around and showed Patient B's fiancé how to do the massage.
130. Therefore, on the balance of probabilities, the Tribunal determined and found paragraph 3(b)(v) of the Allegation proved.

#### Paragraph 3(c) of the Allegation

131. The Tribunal considered the evidence to determine if a home visit had taken place by Dr McCrea. It bore in mind Dr McCrea's good character.
132. Ms B's account to the Tribunal was that Dr McCrea had attended the home. She had maintained this core allegation relating to the home visit, in her account to Patient A, to the police and to the GMC for the purposes of this hearing.
133. The Tribunal examined Patient B's evidence. Patient B was distrusting of the questions put to her in cross examination and was trying to second guess whether there was a trick or whether she was being trapped into giving certain answers. She stated in oral evidence that she knew that an aspect of Mr C's evidence was not consistent with her account – which was also something the police had informed her. Patient B did not know what the inconsistency was and as a result was trying to ensure her answers were not portrayed as inaccurate or a lie. A question was put to her '*has anyone told you what the difference is between what he says and what you say post the police investigation?*' Patient B replied, '*No, because if they did, maybe I would think, 'Oh gosh, maybe he didn't go upstairs. Obviously, I would have written it differently and spoke to Mr C differently, but, no I didn't know what it was'*'.
134. Patient B later explained this comment. She said, '*Yes, no, I don't mean I would have written it differently as in trying to change an outcome. I just meant I would have written it differently as in I would have put you know, I now know that he actually said it never happened at all. That's exactly what I meant, nothing more than that.*'

135. The Tribunal did not think that Patient B was trying to mislead the Tribunal on this aspect, it viewed her to be worried that Mr C may have given a different account to the police due to their acrimonious breakup. The Tribunal did not think that this took away from Patient B's credibility on the issue.
136. The Tribunal further examined Mr C's account that Dr McCrea had asked him about Patient B at his own appointment with the doctor. Mr C stated that at this appointment Dr McCrea had referred to counselling and techniques *'to help me and [Patient B] to relax'*. He stated, *'I went home and discussed this with Patient B. Patient B seemed up for the meeting, if it meant that the meeting would rectify mine and Patient B's relationship so we agreed. A couple of days later, the doctor turned up at our home address. I think it was 1 pm, I cannot remember the date...'*
137. The Tribunal considered Dr McCrea's evidence. He stated that he had no recollection of this appointment, but he was trained not to disclose one person's information to another person. He stated that confidentiality is a key part of his training. The Tribunal made no finding in this regard, but it did not consider that such an event necessitated a breach of confidentiality. It considered it possible and probable that Dr McCrea had already sought Patient B's consent for information sharing at the consultation on 30 December 1997 where the plan to *'see with fiancée [sic] next week'* was agreed. It viewed that on the information before it, Mr C has stated that the home visit took place *'a couple of days'* after his exchange with Dr McCrea. It also considered that Dr McCrea could have asked Mr C to talk about the relationship issues as opposed to the other way around, before offering help.
138. Mr C had stated that he did not know about the plan for the massage until the home visit. In his oral evidence he stated that he was shocked at the suggestion of a massage. In answer to Tribunal questions as to what he understood by the words *'techniques'* which he stated Dr McCrea had used when speaking to him at his own appointment, he stated, *'The word "techniques". I wasn't completely sure what the techniques were going to be. As far as I am aware, he was going to come around and give us some counselling and, like you say, techniques. I wasn't aware what techniques he was going to show us or counsel us with.'*
139. Mr C further stated that whilst he was shocked at the suggestion of a massage during the home visit, he was *'brought up to believe that you know, there are certain people in society that you trust and doctors were pretty much on top of the list so I just went ahead with it.'*
140. Overall, it considered Mr C's account about his conversation with Dr McCrea at his own appointment plausible and that he had provided the Tribunal with his best recollection.
141. In respect of the home visit, Patient B stated that Mr C took it quite well, *'We were both taken in by Dr McCrea and thought it was very nice of him to come around to our house, I*

*think we both agreed it was sort of nice to put himself out really and that he was trying to be very kind and caring to us.'*

142. The Tribunal further considered Mrs F's evidence that home visits would take place at the end of the morning surgery. Mr C had stated that the visit from Dr McCrea was around 1 pm and he had arranged to cancel his appointments with his clients for the remainder of the day.
143. Patient B's recollection was that the home visit was in the early evening.
144. The Tribunal examined the lack of some detail and inconsistencies such as the time of the home visit, the lack of recollection of the date and who opened the door to Dr McCrea. It concluded that these inaccuracies were understandable given that the event was reported to the Police approximately 15 years after the index event. It also considered Mr C's evidence, *'the fact that I could not remember the doctor's name or give an accurate description doesn't take away from the experience that I had that day'*.
145. It also considered the inconsistency in both Patient B's account and Mr C's account as to how the massage ended. Mr C stated that he had asked Dr McCrea to leave. He stated that *'after the doctor left, Patient B was quite upset'* and *'she didn't understand why I'd ask him to leave.'* Patient B was not able to recall any reaction on part of Mr C towards the end of the home visit. The Tribunal considered that Ms B would have noted and remembered Mr C's reaction if he in fact had shouted *'I think you have gone to [sic] far'* and *'I think you better go'* to the doctor.
146. However, it remained mindful that Patient B's recollection was that Mr C had gone back downstairs and that she had been left with Dr McCrea for the remainder of the massage. It also noted Mr C's oral evidence that he lacked confidence at the time and whilst it did not make a finding on this, it did cast doubt on the strength of any reaction that he displayed that day to the doctor and whether Patient B would have remembered it. The Tribunal noted that this part of the picture was not clear and made allowance for it due to the length of time passed. It remained of the view that this did not detract from the core allegation that there was a home visit by Dr McCrea and that he showed Mr C how to undertake a massage on Patient B. Both Patient B and Mr C were consistent in this regard and Patient B's medical note also provided some corroboration for this.
147. It considered Dr McCrea's evidence that he would not have forgotten, if he had carried out a home visit for the purpose of a massage. He stated that he had not done so. Having considered the disparity of the accounts, the Tribunal did reject this aspect of Dr McCrea's evidence. It was undisputed that he was considered kind and caring. Mrs F had stated that *'people only said nice things about him'*. The Tribunal took the view that Dr McCrea genuinely wanted to support Patient B with her depression and anxiety and the physical relationship problems that she had with Mr C. It acknowledged Dr McCrea's assertion that he was not trained in massage. The Tribunal took the view that the massage was not as a treatment to any medical ailment but accepted the evidence of Mr

C that it was more as a *'technique'* to assist the couple improve their physical relationship, and their intimacy.

148. The Tribunal determined that it more likely than not, that it was at the consultation on 30 December 1997 that Dr McCrea had suggested the home visit, had thereafter *'discussed and advised'* and agreed to see Patient B with Mr C the week after. Further, that applying the balance of probabilities, a home visit subsequently took place with Patient B's fiancé present.
149. The Tribunal went on to consider the sub-allegations.

Paragraph 3(c)(i) of the Allegation

150. The Tribunal considered whether between around 1997 and 1998, Dr McCrea, on one occasion, attended Patient B's home and he told Mr C *'I've come to give Patient B some TLC, a bit of a massage, you know because she's been having a really difficult time, and would you like to go upstairs with Patient B and I'll show you how to massage her properly'* or words to that effect.
151. The Tribunal remained mindful that Dr McCrea denied ever visiting Patient B and Mr C and showing them how to massage.
152. Mr C has provided this to the police in 2013, *'the doctor came to the house and all three of us, me, [Patient B] and the doctor went into the lounge. [Patient B] and the doctor sat on the sofa and I sat on the armchair. The doctor started talking and started counselling [sic] giving us ideas to help me and [Patient B] to relax How we could improve our physical relationship. The doctor must have been talking to us for about 45 minutes. After this the doctor stood up and said "if we go upstairs, I will show you some massaging methods'*.
153. In his oral evidence about the discussion held downstairs during the home visit, Mr C stated, *'it was around 45 minutes. It could have been an hour. But it was a considerable amount of time'*. He further stated, *'we were just talking about the relationship, our relationship between [Patient B] and myself, how we've got to that state, the physical relationship, how it had deteriorated to where it was, as far as I can recall, and they were the conversations. I can't recall word for word , but it was around talking about our relationship and the state it had got in, and how it had got into that state.'* *'After this the doctor stood up and said "if we all go upstairs I will show you some massaging methods"'*.
154. It also considered Patient B's account to the police in 2012, in relation to Mr C and the home visit, *'I think he was slightly confused but he totally went along with it, because he was really sort of pleased that someone was taking such, you know, care for me, is what he thought, because he was a bit helpless at the time, you know.'*



155. The Tribunal considered that it was very probable that there was a discussion at the start of the home visit which added context to any help and assistance, and massage techniques thereafter showed by Dr McCrea.
156. The Tribunal noted that the words ‘TLC’ were likely to have been mentioned during the initial conversation during the home visit. However, it was of the view that this was in a context of helping both Mr C and Patient B together as a couple and encouraging ‘tender love and care’ between them and not in the context of the doctor saying ‘*I have come to give Patient B some TLC*’
157. Therefore, on balance of probabilities, the Tribunal determined and found paragraph 3(c)(i) of the Allegation proved.

Paragraphs 3(c)(ii) and 3(c)(iii) of the Allegation

158. The Tribunal considered whether between around 1997 and 1998, Dr McCrea, on one occasion, attended Patient B’s home and told Patient B to go upstairs and get undressed, or words to that effect. The Tribunal also considered whether Dr McCrea went to Patient B’s bedroom with Mr C and showed Mr C how to massage Patient B.
159. The Tribunal relied on its earlier considerations in relation to paragraph 3(c)(i) of the Allegation, in which it accepted Mr C’s evidence. It considered that a conversation took place between Dr McCrea, Patient B and Mr C in relation to the difficult time that Patient B was having and advice and techniques that Dr McCrea could give the couple to improve their physical relationship. It continued to bear in mind Dr McCrea’s good character and his denial of this home visit.
160. It was not in dispute that the bedroom was upstairs in the home of Patient B and Mr C. It followed logically that Dr McCrea would have asked Patient B to go upstairs and get undressed in readiness for the massage.
161. Patient B stated to the police, ‘*Dr McCrea said to go upstairs and lie on the bed*’. Her recollection was that she had been asked to go upstairs on her own initially and then a couple of minutes later both Dr McCrea and Mr C had followed. Mr C stated that as far as he could recall they all went up together.
162. Patient B stated to the police, ‘*Well, I think he [Dr McCrea] came around to the other side of the bed and sort of stood over me...because I think [Mr C] sat on the bed on the other side and Dr McCrea was just showing him this massage, you know*’. She also stated that Dr McCrea stated, “*this is how you should massage [Patient B]*” ...and then Mr C ‘*had a go*’.
163. Mr C’s account to the police in 2013 was that ‘*The doctor sat on the edge of the bed. The doctor was talking to me talking about building a scenario where you are both*



*comfortable and relaxed. The doctor then started massaging [Patient B's] neck whilst talking to me. I could see his reasoning for this'.*

164. It also considered it both plausible and probable that after an initial discussion, downstairs, Dr McCrea went to Patient B's bedroom with Mr C and showed Mr C how to massage Patient B.
165. It did not consider that a minor inconsistency as to whether Patient B went upstairs first or if they went up together was material in this regard.
166. Therefore, on the balance of probabilities, the Tribunal determined and found paragraphs 3(c)(ii) and 3(c)(iii) of the Allegation proved.

#### Paragraph 3(c)(iv) of the Allegation

167. The Tribunal considered whether between around 1997 and 1998, Dr McCrea, on one occasion, attended Patient B's home and failed to record the home visit in Patient B's medical records.
168. The Tribunal considered its overall assessment of evidence before it. It considered the 30 December 1997 GP record where massage was suggested along with '*Discussed and Advised. See with fiancée [sic] next week*'. The subsequent record, a week later on 6 January 1998 which recorded '*massage a help esp with fiancée [sic]*' was more likely than not to have been the home visit.
169. Although, the home visit was not explicitly indicated within the record, the Tribunal considered the remainder of the notes. It could not see consistent use of codes by doctors, for instance, to indicate whether a record was for a prescription, an attendance at the Practice or a home visit.
170. It considered Mrs F and Dr McCrea's evidence in respect of how the home visits would be recorded.
171. It noted the experts' joint view that it was not uncommon for Lloyd George entries to be missing.
172. The Tribunal considered that the medical note on 6 January 1997 could be a note from a consultation at the Practice. However, this note was a week after the previous consultation where the plan had been agreed for Dr McCrea to see Patient B with '*fiancée [sic] next week*'. The Tribunal considered that this note could equally be the note of the home visit. It considered the brevity of the note, that it did not specify the type of attendance, however it did contain Dr McCrea's findings from the visit, in that the massage was a help, '*esp with fiancée [sic]*'. Accordingly, as it considered that it was equally possible for this note to be a recording of the home visit, it could not find proved that Dr McCrea had failed to record the home visit in Patient B's medical notes.

173. Therefore, on the balance of probabilities, the Tribunal determined and found paragraph 3(c)(iv) of the Allegation not proved.

Paragraph 3(d) of the Allegation

174. The Tribunal considered whether between around 1997 and 1998, Dr McCrea, on one occasion, consulted with Patient B and carried out another massage.

175. The Tribunal relies on its earlier consideration of the evidence and its findings relating to paragraphs 3(a) of the Allegation. It remained of the view that on the evidence before it, it could not find proved that massage/s had taken place during a consultation in the Practice.

176. Therefore, on the balance of probabilities, the Tribunal determined and found the entirety of paragraph 3(d) of the Allegation not proved.

Paragraph 5 of the Allegation

177. The Tribunal considered whether Dr McCrea's actions as described in paragraphs 1, 2 and 3 were sexually motivated. It bore in mind Dr McCrea's good character and his experience and work as a doctor at the time period in question.

178. The Tribunal noted that the only paragraphs it could consider in relation to paragraph 5 of the Allegation were paragraphs 1(b)(i), 1(b)(ii) and 3(b)(v) and 3 (c)(i) to 3(c)(iii). The rest of the allegations were already determined as not proved by the Tribunal.

179. In relation to paragraphs 1(b)(i) and 1(b)(ii) of the Allegation, the Tribunal considered its earlier findings. It was of the view that there was a clinical indication for the anal examination, the insertion of a 'telescope', and that there was adequate consent. Patient A's concern about any internal damage was one of the precursors to the examination. It also found that there was a valid reason for Patient A to remove her clothes from the waist down to enable the anal examination.

180. Therefore, the Tribunal determined that paragraph 5 is not proved in relation to paragraphs 1(b)(i) and 1(b)(ii) of the Allegation.

181. It next considered paragraphs 3b(v), 3(c)(i), 3(c)(ii) and 3(c)(iii) and whether Dr McCrea's actions were sexually motivated.

182. The Tribunal considered the evidence before it, to determine whether Dr McCrea's motivation in a) suggesting a home visit as a good idea to show Patient B's fiancé how to massage, b) carrying out the home visit and c) showing Mr C how to massage Patient B in her bedroom, was sexually motivated.

183. It considered Patient B's police interview. She confirmed that there were no signs of verbal sexual gratification or any outward signs either. In response to whether she thought Dr McCrea got anything out of it sexually, she said *'I have no doubt now that he did, yes'*. This was a view she came to retrospectively.
184. The Tribunal also considered Mr C's evidence that he had made the following comment to Patient B once Dr McCrea had left their home, *'you know what he is going to do, he is going to the nearest layby and have a wank'*.
185. In response to Tribunal questions, Mr C explained why he had made the comment. He said *'Because Patient B was a very attractive young lady, with a beautiful physique, and the doctor had – you know, at the doctor's instructions she'd stripped down to her bra and pants. He'd massaged her, from neck to feet and back up to the top of her thighs and at that stage, I wasn't – to be honest, I wasn't comfortable with it all along. But because, as I say, I was brought up to believe that you should trust your doctor, a GP is a person that you should trust, and that's the only reason that it carried on, until it got to the stage where he was, to my mind, invading her personal space too far. That's when I said, "Stop". At that point, I was angry; I was angry at myself, for letting it get that far. I was disappointed in myself not being strong enough to actually stop it, not say anything'*.
186. The Tribunal further considered that it was not alleged that Dr McCrea had touched any private parts of Patient B, nor was there any evidence to suggest sexual gratification on his part.
187. It noted the view of the experts. Dr J's view was, *'In my opinion, whilst massage from a third party can be beneficial in the management of anxiety and depression, it should be undertaken by professionals with the appropriate training and skills'*. He further stated, *'I do not consider that there was any clinical indication for Dr McCrea to undertake massage personally, either in the Surgery or at his home. I do note that there is no suggestion that an intimate examination took place.'* Dr K's view was that massage is a recognised treatment for musculoskeletal pathologies and may be helpful for mental health pathologies.
188. It also further considered the extensive evidence of Mr C, which illustrated the physical problems that existed within their personal relationship. Mr C has stated in oral evidence, *'I could see his reasoning, I could see where he was getting, what he was getting to, to try and make the situation between [Patient B] and myself from being distant, to joining together and trying to relax, as a couple. So at the start of the consultation, I could see understand where he was coming from, to try and bring some intimacy back into our relationship, into our physical side of our relationship.'*
189. It noted Dr McCrea was referred to as *'supportive'* by Ms I who considered herself to be vulnerable at the time she worked at the Practice. Patient B had referred to Dr McCrea as kind, caring and sympathetic. It noted that Mr C was grateful for the help that was offered as he was reported as feeling *'helpless'*.

190. Taking all of the above evidence into account, the Tribunal considered that it was more likely than not that Dr McCrea’s motivation was to help and assist both Patient B and Mr C. He knew that at that point all the referrals were in place for Patient B, yet she had pronounced anxiety, and that he was trying to provide support ‘*around the edges*’.
191. The Tribunal noted that both Patient B and Mr C had consented to the home visit and to Dr McCrea showing Mr C how to carry out the massage. They had allowed Dr McCrea to enter their home, have a discussion with them and agreed for him to show Mr C how to perform a massage on Patient B.
192. The Tribunal noted that Dr McCrea seeking to involve Mr C, to enable him to massage Patient B, was demonstrative of a lack of sexual motivation on his part. The Tribunal considered that if Dr McCrea’s actions were sexually motivated, it would not be plausible that he would actively encourage Mr C to be involved in the care and support for Patient B. It viewed Dr McCrea’s actions in involving Mr C as an act to assist both him and Patient B’s relationship and any anxiety on part of Patient B.
193. Therefore, the Tribunal determined that there was no evidence before it, there was nothing to suggest that Dr McCrea’s actions were sexually motivated. Accordingly, paragraph 5 is not proved in relation to paragraphs 3(b)(v), 3(c)(i), 3(c)(ii) and 3(c)(iii) of the Allegation.
194. Accordingly, the Tribunal determined that paragraph 5 of the Allegation is not proved in its entirety.

### The Tribunal’s Overall Determination on the Facts

195. The Tribunal has determined the facts as follows:

That being registered under the Medical Act 1983 (as amended):

#### Patient A

1. Between around 1996 and 1998:
  - a. on one occasion during a consultation with Patient A you asked her one or more inappropriate questions about her sex life, including those set out in Schedule 1, or words to that effect;  
**Determined and not proved**
  - ~~b. on one occasion, Patient A consulted with you regarding heart palpitations and you:~~

- ~~i.~~ took her to another room and asked her to undo her bra;  
**Amended and withdrawn under Rule 17(6)**
  
- ~~ii.~~ undertook an intimate examination of Patient A's breasts ('the Breast Examination') where you:
  - ~~1.~~ cupped her breasts one at a time;  
**Amended and withdrawn under Rule 17(6)**
  
  - ~~2.~~ lifted up her breasts to place a stethoscope underneath;  
**Amended and withdrawn under Rule 17(6)**
  
- ~~iii.~~ failed to:
  - ~~1.~~ obtain consent from Patient A for the Breast Examination;  
**Amended and withdrawn under Rule 17(6)**
  
  - ~~2.~~ offer Patient A a chaperone for the Breast Examination;  
**Amended and withdrawn under Rule 17(6)**
  
- ~~b. e.~~ on one occasion, Patient A consulted with you and you undertook an intimate anal examination ('the Anal Examination') where you:
  - i. asked Patient A to remove all her clothes from the waist down;  
**Determined and found proved**
  
  - ii. inserted a telescope into Patient A's anus;  
**Determined and found proved**
  
  - iii. failed to obtain adequate consent from Patient A for the Anal Examination, in that you did not:
    - 1. provide Patient A with an explanation as to why it would help with a diagnosis;  
**Determined and not proved**
  
    - 2. explain to Patient A what the Anal Examination would involve;  
**Determined and not proved**
  
  - iv. failed to offer Patient A a chaperone for the Anal Examination.  
**Determined and not proved**

2. Your actions as described at paragraphs 1a and 1bi-1bii and ~~1ci-1cii~~ were not clinically indicated. **Amended under Rule 17(6)**  
**Determined and not proved**

**Patient B**

3. Between around 1997 and 1998:

a. on one occasion, Patient B consulted with you and you:

i. said to her:

1. 'What you need is some TLC':  
**Determined and not proved**

2. 'Let me give you a hug';  
**Determined and not proved**

or words to that effect:

ii. hugged her;  
**Determined and not proved**

iii. suggested that you give her a massage and asked her to:

1. remove her clothes;  
**Determined and not proved**

2. lie on the bed;  
**Determined and not proved**

iv. said to her 'if you go into the room and undress, I can come in and make you feel better', or words to that effect;  
**Determined and not proved**

v. asked if you could undo her bra, or words to that effect;  
**Determined and not proved**

vi. massaged her:

1. shoulder(s);  
**Determined and not proved**

2. back, to the top of her bottom;  
**Determined and not proved**

- vii. touched her bottom during the massage;  
**Determined and not proved**
- viii. told her to make more appointments with you so that you could give her a massage, or words to that effect;  
**Determined and not proved**
- ix. gave her a hug before she left the consultation room;  
**Determined and not proved**
- b. on one occasion, Patient B consulted with you and you:
  - i. asked her to undress;  
**Determined and not proved**
  - ii. gave her a massage;  
**Determined and not proved**
  - iii. put your thumbs just beneath her knickers;  
**Determined and not proved**
  - iv. said to her ‘how would you feel about taking your knickers off too?’, or words to that effect;  
**Determined and not proved**
  - v. said to her that you thought it would be a good idea if you went around and showed her fiancé how to do the massage, or words to that effect;  
**Determined and found proved**
- c. on one occasion, you attended Patient B’s home and you:
  - i. said to Mr C ‘I’ve come to give Patient B some TLC, a bit of a massage, you know because she’s been having a really difficult time, and would you like to go upstairs with Patient B and I’ll show you how to massage her properly’ or words to that effect;  
**Determined and found proved**
  - ii. told Patient B to go upstairs and get undressed, or words to that effect;  
**Determined and found proved**
  - iii. went to Patient B’s bedroom with Mr C and showed Mr C how to massage Patient B;  
**Determined and found proved**

- iv. failed to record the home visit in Patient B’s medical records;  
**Determined and not proved**
- d. on one occasion, Patient B consulted with you and you carried out another massage.  
**Determined and not proved**
- 4. At all materials times, Patients A and B were vulnerable due to their mental health.  
**Admitted and found proved**
- 5. Your actions as described at paragraphs 1, 2 and 3 were sexually motivated.  
**Determined and not proved**

And that by reason of the matters set out above your fitness to practise is impaired because of your misconduct.

**To be determined**

#### **Determination on Impairment - 13/07/2023**

196. The Tribunal now has to decide in accordance with Rule 17(2)(l) of the Rules whether, on the basis of the facts which it has found proved as set out before, Dr McCrea’s fitness to practise is impaired by reason of misconduct.

#### **The Evidence**

197. The Tribunal has taken into account all the evidence received during the facts stage of the hearing, both oral and documentary.

#### **Submissions**

198. On behalf of the GMC, Mr Horgan, Counsel submitted the GMC does not make any positive submissions in relation to misconduct and impairment. Mr Horgan referred the Tribunal to the relevant case law. He said that with regards to Patient A, the Tribunal’s findings reflect that the anal examination was clinically indicated. In relation to Patient B, Mr Horgan submitted that the Tribunal found that Dr McCrea had suggested to go to Patient B’s house and to show Patient B’s fiancé how to massage Patient B and he did just that. Mr Horgan said that Dr McCrea was not trained in massage and both experts opined that whilst massage could be a legitimate treatment for clinical anxiety, it should be performed by appropriately trained person. Nevertheless, Mr Horgan submitted that both experts opined that Dr McCrea’s actions were below but not seriously below the standard of a reasonably competent GP, given that an intimate massage did not take place.



199. Mr Horgan submitted that, in relation to impairment, these events occurred some 25 years ago and there is no evidence of any repetition. He also stated that the Tribunal was provided with testimonial evidence, which attested to Dr McCrea's character.
200. On behalf of Dr McCrea, Mr Brassington, Counsel submitted that the findings in respect of Patient A amount to no more than a clinically indicated examination. However, he submitted that, in relation to Patient B, Dr McCrea was simply attempting to help and assist Patient B. Mr Brassington referred the Tribunal to the relevant case law in this case. He also referred the Tribunal to the unchallenged evidence and its analysis that Dr McCrea had always been a kind and caring GP seeking to do the best for his patients.
201. Mr Brassington submitted that, in those circumstances, there can be no finding of misconduct in this case and accordingly there can be no consideration of current impairment. However, Mr Brassington still referred the Tribunal to the length of time since the events occurred and the absence of any repetition. He also said that Dr McCrea is a man of impeccable character and, with respect to the findings made, Dr McCrea's character remains impeccable.

### The Relevant Legal Principles

202. The Tribunal reminded itself that at this stage of proceedings, there is no burden or standard of proof and the decision of impairment is a matter for the Tribunal's judgement alone.
203. In approaching the decision, the Tribunal was mindful of the two-stage process to be adopted: first whether the facts as found proved amounted to misconduct and then whether the finding of that misconduct which was serious, could lead to a finding of impairment.
204. The Tribunal had regard to the case of *Roylance v General Medical Council (No.2) [2000]1 AC 311 (UKPC)* which states:
205. Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a [medical] practitioner in the particular circumstances. The misconduct is qualified in two respects. First, it is qualified by the word professional which links the misconduct to the profession [of medicine]. Secondly, the misconduct is qualified by the word serious. It is not any professional misconduct which would qualify. The professional misconduct must be serious.
206. The Tribunal also had regard to the case of *Nandi v General Medical Council [2004] EWHC 2317 (Admin)* in which serious misconduct was described as '*...conduct which would be regarded as deplorable by fellow practitioners.*'

## The Tribunal's Determination on Impairment

### Misconduct

207. The Tribunal began by assessing the facts it had found proved.

208. In relation to Patient A, and paragraphs 1(b)(i) and 1(b)(ii) of the Allegation, the Tribunal considered its findings on facts. The Tribunal found that an anal examination took place and that Dr McCrea had asked Patient A to remove all her clothes from the waist down. In addition, the Tribunal found that during the anal examination, Dr McCrea had inserted an instrument referred to as a telescope into Patient A's anus. The Tribunal had determined that there was a clinical indication for these events and that Dr McCrea's actions were not sexually motivated.

209. The Tribunal determined that in these circumstances, there was no breach of GMP (1995 edition) nor would his actions be regarded as deplorable by other medical practitioners. In those circumstances, the Tribunal considered that Dr McCrea's actions did not amount to misconduct.

210. In relation to Patient B, and paragraphs 3(b)(v), 3(c)(i), 3(c)(ii) and 3(c)(iii) of the Allegation, the Tribunal considered its findings on facts. It had found proved that Dr McCrea had suggested the home visit to show Mr C how to massage Patient B, had carried out the home visit and had a discussion with Mr C and Patient B, asked Patient B to go upstairs for the massage and had proceeded to how show Mr C how to carry out the massage.

211. The Tribunal considered paragraph 3 of Good Medical Practice (1995 edition) (GMP) as potentially relevant:

#### *3. In providing care you must:*

- *recognise the limits of your professional competence;*
- *be competent when making diagnoses and when giving or arranging treatment;*

212. The Tribunal noted that Dr McCrea was not a qualified masseur and had not had any training in massage either. There was, on the face of it, a breach of paragraph 3 of GMP (1995 edition). However, the Tribunal considered that whilst Dr McCrea should have recognised the limits of his expertise, this breach was a 'benign breach'. There has been no reported harm that Patient B had come to from the massage and that Dr McCrea was genuinely trying to help and support Patient B and Mr C and provide support 'around the edges'.

213. The Tribunal considered the expert opinion of both Dr J and Dr K. Both experts agreed that if an untrained GP performed a massage, this would represent a standard below but not seriously below the standards expected of a competent GP.

214. The Tribunal determined that in the absence of any improper motive from Dr McCrea's point of view, his actions in relation to Patient B, in the circumstances of this case, would not be regarded as a serious departure of GMP nor considered to be deplorable by other medical practitioners. In those circumstances, the Tribunal considered that Dr McCrea's action did not amount to misconduct.

215. Therefore, the Tribunal determined that the facts found proved in this case did not amount to misconduct.

### **Determination on Warning - 13/07/2023**

216. The Tribunal determined that Dr McCrea's actions did not amount to misconduct and as such, his fitness to practise was not impaired. It invited both Counsel to make submissions on whether a warning was necessary.

217. On behalf of the GMC, Mr Horgan, Counsel, submitted that given the Tribunal's determination, the GMC does not make any positive submissions that the test for issuing a warning can be satisfied in this case.

218. On behalf of Dr McCrea, Mr Brassington, Counsel, concurred with the submissions made by the GMC. He added that given the Tribunal's determination, it would be disproportionate and inappropriate in the circumstances for a warning to be issued.

### **The Tribunal's Decision on Warning**

219. The Tribunal accepted the LQC's advice and had regard to Rule 17(2)(m) and paragraph 16 of Guidance on warnings (March 2021):

*16 A warning will be appropriate if there is evidence to suggest that the practitioner's behaviour or performance has fallen below the standard expected to a degree warranting a formal response by the GMC or by a MPTS tribunal. A warning will therefore be appropriate in the following circumstances:*

- *there has been a significant departure from Good medical practice.*

220. In finding no misconduct by Dr McCrea, the Tribunal has therefore found no significant departure from GMP. It therefore considered that there was no basis to issue a warning.

221. XXX.

222. That concludes the case.

ANNEX A – 26/06/2023

**Application to adjourn the hearing**

223. Mr Brassington, Counsel, on behalf of Dr McCrea, made an application pursuant to Rule 29(2) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), that the hearing should adjourn until 30 June 2023.

224. Mr Brassington submitted that the reason for the adjournment is due to XXX. He also stated that if the application were to be granted, he could send an update to the Tribunal on Thursday, 29 June 2023.

225. XXX.

226. Mr Horgan, Counsel, on behalf of the GMC, submitted that the GMC have every sympathy with Dr McCrea and took a neutral stance in relation to the application.

**Tribunal's Decision**

227. The Tribunal took account of the submissions from both Counsel, advice from the Legally Qualified Chair and Rule 29(2) of the Rules, which states:

*(2) Where a hearing of which notice has been served on the practitioner in accordance with these Rules has commenced, the Committee or Tribunal considering the matter may, at any stage in their proceedings, whether of their own motion or upon the application of a party to the proceedings, adjourn the hearing until such time and date as they think fit.*

228. The Tribunal bore in mind that it was required to strike a balance between fairness to Dr McCrea as well as fairness to the GMC, and the need to deal with the hearing fairly, justly and take into consideration the over-arching objective and in particular the public interest.

229. The Tribunal noted that it had already heard oral evidence from all but one of the GMC's witnesses. The remaining evidence on behalf of the GMC was from their expert

witness, Dr J. In addition, the other witnesses who are due to give evidence on behalf of Dr McCrea are all available to attend and give evidence from Monday, 3 July 2023.

230. The Tribunal considered that given the circumstances relating to XXX, it was of the view that there will be potential injustice to Dr McCrea if it refuses the application to adjourn the hearing. The Tribunal considered that such circumstances could affect Dr McCrea's state of mind and the quality of evidence he may give during the proceedings.

231. The Tribunal bore in mind the need to strike the balance between fairness to all the parties as well as the public interest and determined that it would only be fair to adjourn this hearing until Friday 30 June 2023.

232. The Tribunal directed that the Tribunal and parties will reconvene virtually by MS Teams on 10:30am Friday, 30 June 2023, for an update as to whether the hearing will proceed as planned on 3 July 2023 or a further adjournment will be sought by parties.

233. The Tribunal made it clear that if a further adjournment is sought, it would require any documentary XXX evidence that is being relied on by Dr McCrea in respect of his ability to participate in these proceedings.

234. The hearing has now adjourned until 10:30 am on Friday, 30 June 2023.

**SCHEDULE 1**

1. If Patient A enjoyed oral sex with her husband.
2. How far Patient A would go.
3. If Patient A would allow her husband to ejaculate in her mouth.
4. If Patient A enjoyed cunnilingus and fellatio.
5. How often Patient A has sex with her husband.