

GENERAL OSTEOPATHIC COUNCIL
PROFESSIONAL CONDUCT COMMITTEE

Case No: 723/8557

Professional Conduct Committee Hearing

DECISION

Case of:	Oliver Eaton
Committee:	Nora Nanayakkara (Chair) Morag MacKellar (Lay) David Probert (Osteopath)
Legal Assessor:	Margaret Obi (4 - 7 May) Tim Grey (18, 21, 25 & 28 November)
Representation for Council:	Nimi Bruce
Representation for Osteopath:	Rosalind Scott-Bell
Clerk to the Committee:	Sajinee Padhiar
Date of Hearing:	4 - 7 May 2022 18, 21, 25 & 28 November 2022

Summary of Decision:

The Committee found Paragraphs 1 and 3 proved upon the Registrant's admission.

The Committee found Paragraphs 2 and 4 proved in their entirety.

The Committee determined that the facts found proved did amount to Unacceptable Professional Conduct (UPC).

The Committee determined that the Registrant should be removed from the Register and that it was necessary to impose an immediate interim order of suspension to cover any appeal period.

Allegation (as amended) and Facts

The allegation is that Oliver Eaton has been guilty of Unacceptable Professional Conduct, contrary to section 20(1)(a) of the Osteopaths Act 1993, in that:

1. On 7 January 2019, Mr Eaton was subject to a three month suspension order ("the order") by the Professional Conduct Committee ("PCC");
 - a. The order came into effect on 5 February 2019; and
 - b. The order lapsed on 5 May 2019;
2. Mr Eaton treated patient A as an Osteopath on:
 - a. 6 February 2019; and/or
 - b. 20 February 2019; and/or
 - c. 6 March 2019; and/or
 - d. 27 March 2019; and/or
 - e. 10 April 2019;
3. During the period of his suspension from the register of Osteopaths Mr Eaton did not inform Patient A that:
 - a. He had been suspended from practising as an Osteopath;
 - b. He was not practising as an Osteopath;
4. By reason of the matters alleged at paragraph 2 and/or paragraph 3 above, Mr Eaton's conduct:
 - a. was misleading; and/or
 - b. Demonstrated a lack of integrity; and/or
 - c. was dishonest.

Preliminary Matters:

Application to Amend the Allegation

1. At the outset of proceedings, Ms. Bruce on behalf of the Council, made an application, pursuant to Rule 24 of the Rules, to amend the Allegation in the terms set out above. She submitted that the amendment was both necessary and desirable in order to ensure clarity in the Allegation. The proposed amendments more adequately and fully reflected the nature of the referred matters, without materially altering the nature and scope of the case.

2. On behalf of the Registrant Ms. Scott-Bell did not object to the application to amend.
3. The Committee received and accepted the advice of the Legal Assessor. It was advised that its power to make such an amendment was governed by Rule 24 of the Rules. The Committee thereby had a discretion to amend the Allegation at any time if, having heard submissions and received legal advice, it considered that an amendment could be made without injustice.
4. The Committee carefully considered whether the proposed amendments might lead to any unfairness to the Registrant. Having done so, it concluded that the amendments as sought by the Council could be made without injustice and were both necessary and desirable to properly reflect the nature of the case and in order for the Committee in exercising its case management functions to effectively and expeditiously consider all matters referred to it by the Investigating Committee.

Decision:

Background

5. The Registrant is an Osteopath with specialist certification in nutritional therapy, prolozone injection therapy, psychotherapy and stretch massage therapy. At all material times he and his [REDACTED] practised from three clinics: one in London, one in Bedford, and a third in Wellingborough which closed in late 2019/early 2020.
6. On 15 August 2018 Patient A approached the Registrant for treatment as she was suffering from a back spasm and was due to take a long haul flight.
7. From November 2018 to January 2019 the Registrant provided Patient A with treatment, which included osteopathy, aimed at addressing her chronic pain caused by fibromyalgia (FM). From February to April 2019 the Registrant continued to provide Patient A with treatment, although he contended it did not include osteopathy.
8. The Registrant's registration as an Osteopath had been suspended after the Professional Conduct Committee (PCC) of the Council imposed an interim order on 7 January 2019. That order came into effect on 5 February 2019 and expired on 5 May 2019. The order was imposed for issues unrelated to the matters before the Committee and subject of this determination.
9. The Registrant therefore treated Patient A during the period of his suspension. At no point did he inform Patient A that he had been suspended

as an Osteopath. Nor did he inform Patient A that he was no longer treating her as an Osteopath in the period after 5 February 2019.

Evidence

10. The Committee was provided with a witness statement from Patient A, from Patient A's husband, hereafter referred to as Mr. A, from the Registrant and from the Registrant's wife. It was provided with numerous exhibits produced in those statements, as well as additional documents including patient records for Patient A. The Committee heard oral evidence from Patient A, Mr. A, and the Registrant. It did not hear oral evidence from the Registrant's wife.
11. In both her written evidence and her oral evidence Patient A described her decision to seek treatment with the Registrant. She had done so because on the website there were sections dealing with various injuries and conditions including FM, from which she suffered, and the clinic offered a multi-faceted approach that included osteopathy. In oral evidence Patient A explained that it was important that the treatment was provided by a registered professional, for example a Chiropractor or Osteopath. She produced two statements of account that she had received on request from the Registrant; the first was for "osteopathy" and included treatment dates from 15 August 2018 to 25 January 2019, and the second was for "Treatment administered: stretch and massage," relating to treatment dates from and including 25 January 2019 to 10 April 2019.
12. Having been to a number of treatment sessions with the Registrant, Patient A began to doubt him and found him arrogant in his manner. She found her condition progressed very little and that he gave her the same treatment at every appointment. Patient A's evidence was that the Registrant did not vary the treatment and did not provide the multi-faceted treatment expected, save for his wife's nutritional treatment that was provided by her separately.
13. Having some doubts about the Registrant's treatment, Patient A googled him and discovered he was subject to a suspension of his registration with the Council. Patient A decided to leave treatment. She did not raise the matter with the Registrant as she considered there was no point in doing so.
14. Patient A contended that the Registrant had treated her with the same techniques throughout her treatment including the use of High Velocity Thrust (HVT).
15. Patient A further contended that her husband had been present in all but one of her appointments with the Registrant.
16. In his evidence Mr. A contended the same, and expressed his concern as to the changes made to the two statements of account which he referred to as

invoices, and which were provided to Patient A. Specifically, Mr. A noted that the wording on the first invoice covering the period prior to the Registrant's suspension referred to osteopathy, while the second invoice for the period thereafter, which overlapped with the first invoice period, referred to stretch and massage as the treatment. This, Mr. A asserted was an attempt by the Registrant to mislead and withhold his suspension from Patient A. In oral evidence Mr. A told the Committee that it had been important to his wife that the treatment was provided by a registered professional, due to the potential impact of poor treatment on her chronic health condition.

17. The Registrant's evidence, both in his written statements and in his oral evidence, was in broad terms that he had not performed any osteopathic treatment during the period of his suspension. Instead he had treated Patient A only with alternative techniques, in which he was trained. He had not told Patient A of his suspension because he did not consider he had to as he was not treating her with osteopathic techniques. He had told those patients who, in his view, needed to know.
18. During the course of treatment the Registrant's evidence was that Patient A's symptoms improved to the point where by the time his suspension was effective Patient A did not need osteopathic treatment and he did not provide it. Most specifically he did not provide HVT during the period of his suspension. To that end, he exhibited Patient A's notes. HVT was recorded as last being performed on 9 January 2019.
19. The Registrant accepted that in hindsight it may have been better to inform Patient A of his suspension but that in not doing so he hadn't misled her, nor had he sought to conceal the true position from her.

Submissions of the Parties

20. Ms. Bruce, on behalf of the Council, submitted that despite being suspended the Registrant treated Patient A on five separate dates between 6 February 2018 and 10 April 2019 during the currency of the suspension. At no time did the Registrant alert Patient A to the fact that he was suspended and was not therefore practising as an Osteopath. As holding himself out as able to practise as an Osteopath when he could not do so, the Registrant's conduct was misleading, lacking in integrity and dishonest.
21. Ms. Bruce further submitted that the question at the heart of the case was whether the Registrant had held himself out to Patient A as able to practise as an Osteopath when he knew he was not able to practise in that capacity as he was suspended by his regulator.
22. Thereafter Ms Bruce summarised the evidence. In so doing she submitted that both Patient A and Mr. A had given credible and reliable evidence. She

submitted that Mr. A confirmed that he was always in the treatment room with his wife save for one occasion in the Easter holidays. He had also recalled another occasion where he had taken his daughter to an adjacent office because she had been frightened by a skeleton in the treatment room. Mr A had confirmed that the treatments he observed followed the same pattern: conversation, use of a massage machine, stretches and manipulation of the neck including "cracking."

23. Mr. A had thereafter explained that he and Patient A were attracted to the Registrant's website because he purported to specialise in Patient A's condition, namely FM and that Patient A was consulting the Registrant as an Osteopath and professional, and had booked to see him in that context.
24. Ms. Bruce noted that Patient A had confirmed that the Registrant "cracked her neck" during all her treatments, and that it was very important to her that the Registrant was treating her as an Osteopath.
25. Patient A was clear that she had talked to the Registrant "about osteopathy and that is what I had come for." Patient A went on to explain that when she discovered the Registrant had been treating her whilst suspended she was "shocked and wanted clarification that he was not supposed to see patients".
26. In relation to the Registrant's evidence Ms. Bruce noted that the Registrant had accepted that he should have told Patient A of his suspension and that he understood Patient A would naturally have felt misled.
27. The Registrant had accepted identifying himself on his website as an Osteopath and that his invoice to Patient A identified him as practising as an Osteopath and providing "osteopathy" to her. In relation to that invoice the Registrant had accepted not previously mentioning his reason for appending a description of himself as providing osteopathy as being to produce an invoice that Patient A wanted for insurance purposes.
28. Ms. Bruce reminded the Committee that the Registrant had confirmed that the defining feature of his treatment as an Osteopath involved HVT and that the absence of HVT is what differentiated his practice following his suspension. The Registrant conceded that he could not answer for how his reception team would describe him or what he was practising as at any given time.
29. Ms. Bruce further submitted that there was a dispute between the Registrant and Mr A and Patient A in relation to whether a HVT was administered in treatments post-suspension. No credible reason had been provided as to how or why Mr A and Patient A could have been mistaken about the treatment provided.

30. By contrast Ms. Bruce submitted that the Registrant had every reason not to be truthful in his account on the point as he had asserted that HVT was a defining characteristic of his osteopathic practise.
31. Ms. Bruce further submitted that the Registrant knew he had been treating Patient A as an Osteopath, as his first invoice had made clear, and there was an obvious risk that if he continued to treat her post-suspension without informing her of his changed status, Patient A would be labouring under the misapprehension that he was giving her treatment as a registered Osteopath.
32. Ms. Bruce submitted that the Registrant therefore knew that he could not hold himself out as an Osteopath and yet he continued to treat Patient A in the full knowledge that he was not entitled to do so. Given that it could not possibly have slipped his mind that he was suspended from practice by his regulator, his failure to mention this was dishonest. Further, Ms. Bruce submitted that the Registrant's conduct lacked integrity.
33. In conclusion, Ms. Bruce submitted that the Registrant's evidence lacked credibility. He was evasive and gave more than one answer in relation to why he had changed his invoice heading post-suspension. The answer, Ms. Bruce submitted, was that the Registrant knew he could not identify the treatment post-suspension as osteopathy and that was why he had identified it as stretch and massage, in spite of his massage qualification post-dating the date of the first appointment in January 2019 and his primary qualification at that point being as an Osteopath.
34. For those reasons, Ms. Bruce invited the Committee to find the outstanding paragraphs of the Allegation proved.
35. On behalf of the Registrant, Ms. Scott-Bell submitted that the Registrant and Council agreed on significant parts of the evidence. Specifically she accepted that whether the Registrant provided osteopathic treatment during the period of suspension was only indicative of whether he was treating Patient A as an Osteopath. It was conceivable that if he was holding himself out as an Osteopath during that period, he was treating Patient A as an Osteopath. However, Ms. Scott-Bell submitted there was no evidence to justify the contention that he was holding himself out as an Osteopath.
36. In those areas of evidence where there remained a dispute, Ms. Scott-Bell submitted that the Registrant's evidence was the most plausible account the Committee had received.
37. In so saying she noted that in the email before the Committee from Patient A to the Council sent on 13 May 2019 Patient A explained that "I initially decided to go to Mr Eaton because he advertised on his Prohealth Clinic website that he was a specialist in treating FM and had a holistic, many

pronged approach including osteopathy, nutrition, psychotherapy and something else, possibly pain management.” This, Ms. Scott-Bell submitted demonstrated that Patient A went to the Registrant because he was a specialist in treating FM, not because he was an Osteopath.

38. She further submitted that the Registrant had no motive to hide the true position from Patient A. He was treating her at a discounted rate and he could have earned more treating another patient paying full price. Ms. Scott-Bell further submitted that the Registrant had treated Patient A because he had empathy with her and wanted to help her. He had moved other patients and had closed his osteopathic clinic, demonstrating that he was not motivated financially.
39. The lack of any motive for the Registrant to lie was, Ms. Scott-Bell submitted, significant, and provided no support to the Council’s case that the Registrant had acted dishonestly. Further, the Registrant in discharging all his osteopathic patients must have genuinely believed that was the correct course. His decision to continue treating Patient A was precisely because he believed he was able to do so, as he was treating her for FM.
40. Ms. Scott-Bell submitted that the Registrant’s willingness to try and help a patient in need was demonstrative of his integrity. Ms. Scott-Bell further submitted that Patient A’s evidence was doubtless coloured by her upset and feeling deceived, upon discovering he was suspended. However, her perception was not relevant to the test of whether the Registrant had or had not been treating Patient A as an Osteopath and in relation to whether he had behaved dishonestly.
41. Ms. Scott-Bell further submitted that the evidence was clear that the Registrant had used some osteopathic techniques when they were indicated as being necessary. Thereafter he stopped using those techniques because there was no longer a need for them, and also because he was not permitted to do them. He was not insured to do them. But he genuinely felt that he was still able to treat Patient A. The Registrant had not realised his status as an Osteopath was so important to Patient A. His honestly held view was that she was consulting him because of her FM and his experience in that field.
42. Thereafter, Ms. Scott-Bell invited the Committee to consider a number of questions in considering the issue of dishonesty: What was in the Registrant’s mind at the time? What did he genuinely consider the circumstances to be? Was he deliberately misleading Patient A? Was he trying to flout his period of suspension? Was there anything in it for him? Was he keen on keeping Patient A as a client? Did he know that he should tell her that he was suspended? Was he deliberately hiding something from her or did he genuinely feel that he did not need to inform this particular patient? Did he believe that she had attended upon him for relief from her FM? Was she well

into her treatment by the time of his suspension? Was she on a 'maintenance' phase? What did the Council tell him when he was suspended, if anything? How clear were the instructions on what he was obliged to do, if indeed he received any instructions at all? Was he trying to deceive Patient A, to keep her custom or was he treating Patient A because he had actively considered the situation and decided that because she had come to him with a specific problem – FM, and because he was no longer using osteopathic techniques on her, that it was in her best interests that the treatment continue.

43. Ms. Scott-Bell submitted that the Registrant had just been through the trauma of a hearing in which he had made admissions and was chastened. He had been suspended and had time to prepare for that suspension. In hindsight he may have done things differently. That did not mean he was dishonest.
44. Ms. Scott-Bell submitted that the evidence in relation to the invoice, contrary to the Council's case, was supportive of the Registrant's position. It demonstrated that the treatment had changed materially, in that no osteopathic treatment had been provided for the period of the second invoice.
45. In relation to the evidence from Patient A and Mr. A, Ms. Scott-Bell submitted the evidence was inconsistent and thereby unreliable between the two witnesses. Mr. A had for example been unable to confirm that HVT had been used in every appointment, whereas Patient A contended it had been. It was further submitted that the evidence given by both witnesses added significant support to the Registrant's view that Patient A had sought him out for treatment for FM, not necessarily for osteopathic treatment.
46. In her submissions regarding the evidence given by the Registrant Ms. Scott-Bell noted that he had been given no indication that Patient A had sought him out as an Osteopath, quite the reverse. She had sought him out for his treatment concerning FM. In so saying, Ms. Scott-Bell submitted that the evidence given by the Registrant in this regard was accurate, straight forward and credible.
47. In summary Ms. Scott-Bell submitted that much was made of the invoices. Both Patient A and the Registrant had agreed that the receipts were necessary for Patient A to claim on her insurance. The Registrant had explained that osteopathy was a more recognisable treatment and that was why the first sessions were marked as that. There was therefore nothing odd or nefarious in that. She further submitted that the receipts assisted the Registrant's case and pointed towards his honesty. Further, that his notes supported the contention that FM was discussed at length in the first session.

48. Ms. Scott-Bell further submitted that the Registrant should be judged on the entirety of the evidence including the fact that he had referred his 'osteopathic patients' elsewhere, and had stopped performing osteopathic techniques. He had tried to be faithful to his suspension.
49. In conclusion, Ms. Scott-Bell submitted that the Committee needed to determine whether the Council had proved its case on the balance of probabilities. There was, in this case, a degree of uncertainty and credible evidence of a possible alternative explanation to that contended for by the Council, specifically that Patient A was attracted to the Registrant because of his specialism in FM, rather than him being an Osteopath. In those circumstances Ms. Scott-Bell submitted that the question for the Committee was whether "in the light of that possible alternative explanation could it be satisfied that the Council had proved its case on the balance of probabilities?" Ms. Scott-Bell submitted that the Council had failed to satisfy the burden and standard of proof and the outstanding paragraphs of the Allegation should be found not proved.

Determination on the Facts

50. The Committee received and accepted the advice of the Legal Assessor. The Committee was advised that the Council bears the burden of proof throughout and the standard of proof is the civil standard namely the balance of probabilities. The Committee was further advised that in assessing the evidence it was entitled to draw inferences, that is it was entitled to come to common sense conclusions based upon the evidence, but that it should not speculate on the evidence.
51. The Committee was further advised that the word "misleading" referred to an objective assessment, and that a comment, a contention or a state of affairs could be misleading as a matter of fact.
52. The Committee was advised as to the definition of the term integrity, by reference to Standard D14 of the Osteopathic Practise Standards 2012 ("OPS") (and as applicable Standard D1 of the OPS 2019) and *Wingate & Others v SRA* [2018] EWCA Civ 366. The Committee was advised to adopt the definition given in the case of *Wingate* whilst seeking what assistance it could from the terms of Standard D1.
53. The Committee was advised as to the appropriate test to be applied when considering the question of dishonesty, and specifically the test set out in the case of *Ivey v Genting Casinos* [2017] UKSC 67: When dishonesty is in question the fact-finding tribunal must first ascertain:
- i) the actual state of the member's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief,

but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held.

- ii) The question whether the member's conduct was honest or dishonest is to be determined by the Committee applying the (objective) standards of ordinary decent people. There is no requirement that the Registrant must appreciate that what he has done is, by those standards, dishonest.

Paragraph 1 - Proved

- 54. The Registrant admitted Paragraph 1 of the Allegation at the outset of proceedings. Pursuant to Rule 27(1) of the General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000 ('the Rules') the Committee found Paragraph 1 proved.

Paragraph 2 - Proved

- 55. The Committee noted that at the time Patient A sought out the Registrant he was holding himself out as an Osteopath also offering holistic treatment for conditions such as FM. This was consistent with all of the documentary evidence before it including the Registrant's witness statements.
- 56. The Committee found Patient A and Mr. A's evidence consistent, that Patient A had initially approached the Registrant because of his professional status as a registered Osteopath, who could treat her back spasm. The Committee found this to be more likely than not as Patient A had previously been treated by other registered professionals, and had, at one time, been a registered professional herself. The Committee accepted that being treated by a registered professional was important to her due to the impact that poor treatment could have on her chronic health condition, and provided her and Mr. A with the comfort of knowing the Registrant was a member of a regulated profession. Although she had originally attended for treatment for a back spasm, Patient A was impressed by the Registrant's experience in, and testimonials relating to, his treatment of FM. She then began seeing him regularly from 16 November 2018.
- 57. When the Registrant began treating Patient A he performed osteopathic treatment amongst other modalities, and through his websites and professional qualifications he made it clear that he was a registered Osteopath. The Registrant stated that he had explicitly told Patient A at the outset that he used multiple techniques including osteopathy to treat chronic pain and specifically FM.
- 58. When his registration as an Osteopath was suspended, the Registrant provided no information to Patient A to inform her of his changed professional

status. The Registrant had no discussion with Patient A as to the scope of the treatment he could provide, in light of his changed professional status. The Registrant provided Patient A with no information to enable her to understand the revised nature of his osteopathic registration. Patient A did not know and could not have been expected to know that the Registrant's registration as an Osteopath had been suspended, as he had not told her.

59. The Committee determined that the Registrant was under a duty to inform Patient A of his changed status for a number of reasons, not least so that she could make an informed decision about her future treatment. The Registrant not doing so represented a culpable failing leading Patient A to labour under the misapprehension she was continuing to be treated by an Osteopath in unrestricted practise, when in fact she was being treated by an Osteopath whose registration was suspended.
60. The Committee accepted this was not a contractual issue, but it nonetheless considered the situation was akin to the Registrant contracting with Patient A on the basis he was an Osteopath in unrestricted practice and then failing to inform her he could no longer fulfil the contract as he had lost that status.
61. Whilst the Committee accepted that the Registrant was also certified in disciplines other than osteopathy, at no point did he represent to Patient A he was treating her solely with treatments aside from osteopathy. Even had he done so the Committee doubted this would provide him with a defence. It was incumbent upon him to communicate a material change in his professional status to Patient A, before continuing to treat her, regardless of the treatment administered.
62. Absent such an explicit communication, the Registrant allowed a state of affairs to persist in which he was holding himself out as an Osteopath in unrestricted practise to Patient A during the period 5 February 2019 to 5 May 2019. It follows that he was consequently treating her as an Osteopath in the absence of any explicit communication with her to the contrary. The Registrant's status at the time of treating was the over-arching consideration rather than the technique used.
63. The Committee considered that it was therefore immaterial to its conclusions in relation to Paragraph 2 of the Allegation, precisely what treatment was administered in the period February to April 2019. It therefore did not need to resolve the issue of when HVT was used for the purposes of determining this part of the Allegation.
64. The Committee therefore determined that Paragraph 2 was proved in its entirety.

Paragraph 3 - Proved

65. The Registrant admitted Paragraph 3 of the Allegation at the outset of proceedings. Pursuant to Rule 27(1) of the General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000 ('the Rules') the Committee found Paragraph 3 proved.

Paragraph 4(a) - Proved

66. The Committee noted that there was no dispute between the parties that the Registrant had not told Patient A of his suspension from the Register. Patient A had begun treatment with the Registrant and been both implicitly and explicitly told he was an Osteopath capable of providing osteopathic treatment alongside other complimentary techniques.

67. By treating Patient A or purporting to treat her as an Osteopath the Registrant was necessarily implicitly representing he had the statutory status to do so. By reason of his suspension he did not have such a status. The Committee therefore determined that the Registrant's treatment of Patient A as an Osteopath during the period of his suspension was misleading.

68. The Committee further determined that in failing to inform Patient A that he had been suspended from practising as an Osteopath Patient A was likewise placed in a misleading situation. A state of affairs existed that was objectively misleading.

69. The Committee therefore found Paragraph 4(a) proved.

Paragraph 4(b) - Proved

70. The Committee next considered whether, in treating Patient A whilst suspended, and not informing her of his suspension, the Registrant had behaved in a manner that lacked integrity.

71. The Committee reminded itself that a lack of integrity has, on occasion been equated with recklessness. It reminded itself that "conduct is reckless to a particular result where a professional is aware of a risk that the result will occur, and it is, in the circumstances known to him unreasonable to take that risk." Brett v SRA [2014] EWHC 2974 (Admin).

72. The Committee noted that there was no dispute as to whether the Registrant was aware when treating Patient A that he was suspended. He knew he was. He must have known that without telling her of his changed status, there was a risk Patient A would not know and would be treated by him without that knowledge. In the circumstances as he knew them to be, it was not only unwise but represented a failing for him not to tell Patient A of his change in status such that it was unreasonable for him not to have done so. The

Registrant therefore ran the risk of Patient A knowing nothing of his suspension and of his continuing to treat her as an Osteopath when suspended, when it was unreasonable for him to take that risk.

73. The manner of mitigating the risk was straight forward in that it required only a short conversation with Patient A to inform her of the position. In spite of that, the Registrant took no action and ran the risk. In the circumstances the Committee determined that the Registrant's behaviour was reckless.
74. The Committee reminded itself that it should not simply equate recklessness with a lack of integrity, but that a finding of reckless behaviour was indicative of a lack of integrity. The Committee noted the definition of integrity given in the OPS 2012 (and 2019) and the definitions provided in the case of *Wingate & Others v SRA*. In being reckless as to the risk that Patient A would be treated by a suspended osteopath and that she would be unaware of his status, the Committee considered the Registrant had failed to put Patient A's interests first. By way of example, he accepted in oral evidence that he assumed and understood that his osteopathic insurance was invalid whilst his registration was suspended. Nonetheless, he had not provided Patient A with material information to enable her to make decisions about her continued treatment and care. He had not been straight forward and transparent in his dealings with her.
75. That lack of straight forward and transparent behaviour, reckless as it was, represented a significant departure from a steady adherence to the ethical principles underpinning the practice of osteopathy. In common with other healthcare professions osteopathy is a patient-centred discipline. The Registrant's actions represented a departure from that principle and the Committee therefore concluded that applying the definitions of integrity contained both in the Case Law and in the OPS the Registrant's conduct in conducting Patient A's treatment as an Osteopath and in not telling Patient A he had been suspended, demonstrated a lack of integrity.

76. The Committee therefore found Paragraph 4(b) proved.

Paragraph 4(c) - Proved

77. The Committee next turned to consider whether the Registrant's conduct was dishonest. It reminded itself that there was no evidence before it of a motive for the Registrant to have been dishonest, but that establishing a motive was not a prerequisite to a finding of dishonesty.
78. The Committee reminded itself of the test in *Ivey v Genting Casinos*.
79. In relation to the Registrant's treatment of Patient A as an Osteopath, the Committee considered the Registrant must have known that Patient A was

under the misapprehension he was an Osteopath in unrestricted practise. He continued to treat Patient A whilst holding himself out as such. As a matter of fact that representation was wrong. The Committee further determined that the Registrant must have known that he could not hold himself out as an Osteopath able to treat patients in circumstances where his registration was suspended, regardless of whether he considered the treatment itself to be "osteopathic" or otherwise. His belief to the contrary was so unreasonable as to be beyond the bounds of a belief that could be considered genuine.

80. The Committee took careful account of the fact it was required to assess the Registrant's genuine belief at the time of the events in question.
81. Just prior to his suspension taking effect, but after he had been made aware of the decision to suspend his registration, Patient A's records included reference to HVT, which the Registrant regarded as a classic osteopathic technique. After the suspension took effect there were no further references to HVT in Patient A's clinical notes.
82. The Registrant had asserted that after 9 January 2019 there was no requirement for HVT as Patient A's condition had plateaued. However, this assertion was not supported by the clinical notes, which continued to make reference to restricted movement in Patient A's neck. The Registrant had given this as the justification for using HVT in the first place.
83. In oral evidence the Registrant offered a second explanation as to why he ceased using HVT for Patient A. He stated that he did not continue to record HVT in her notes as he had ceased performing the technique once his suspension had taken effect. This was contradicted by Patient A's evidence as outlined above. Further, the Committee considered this reason to be inconsistent with the Registrant's evidence that HVT was no longer clinically justified. The Committee therefore found the Registrant's account to be lacking in credibility.
84. Patient A's evidence was that HVT continued to be administered. This assertion was supported by Mr. A's evidence, albeit he was not always in the treatment room with her, having been absent for up to two of the appointments. Patient A was clear she had actively disliked HVT but knew she had to have it to get better and that she therefore recalled having it on each occasion she saw the Registrant. Patient A gave clear and cogent evidence of hearing a distinctive crack that she associated with the administration of HVT at each appointment. Patient A was familiar with the nature and extent of the technique having had HVT administered by other practitioners prior to her treatment with the Registrant.

85. The Committee considered Patient A's evidence was credible and reliable in consequence. It therefore preferred her evidence to that of the Registrant in relation to the Registrant's use of HVT.
86. The statements of account, referred to as invoices, produced by Patient A are demonstrative of the Registrant's state of mind at the time. It was clear efforts were made to differentiate between treatments performed prior to and after his suspension order came into effect.
87. The Registrant's evidence concerning invoices was inconsistent and at times difficult to follow. In the first place he suggested his wife was in charge of invoicing and he could not account for any changes between the invoices. Thereafter, he asserted that he had deliberately removed all references to "osteopathy" because he was aware he could not practice in osteopathy during much of the period of the second invoice. Finally he had explained that he had been trying to help Patient A with her insurance claim for the treatment and had therefore simplified the first invoice to read "osteopathy" as that was a recognised treatment modality and easier to explain to insurers rather than the multi-faceted, holistic approach he was in fact employing for her throughout the course of treatment.
88. The Committee found that it was more likely than not that the contradictory explanations provided by the Registrant to justify the differences in the invoices, are most likely to be due to the second invoice having been prepared in order to misrepresent that the Registrant had not provided "osteopathic treatment" when in fact he had. The Committee reminded itself of the evidence contained in the clinical notes, and the evidence provided by Patient A. It noted it had found that on the balance of probabilities the Registrant had administered osteopathic treatment during the period of his suspension.
89. The Registrant had sought to conceal his treatment of Patient A as continuing to be that of an Osteopath by relying on an invoice that was incorrect and as a matter of fact, misleading. He had sought to rely on the absence of HVT in certain entries in Patient A's clinical notes to this same effect. Those attempts were predicated upon his assertion that he had not in fact treated Patient A with "osteopathic techniques" whilst he was suspended. The Committee had found both of those evidential assertions to be fallacious.
90. In the Committee's judgment they were both intentional attempts by the Registrant to exculpate himself should the risk of discovery of his continuing treatment of Patient A as an Osteopath be realised. The weight of the evidence referred to above lends support to the fact that the Registrant's genuine belief at the time of the alleged dishonesty was that he was required to cease treating Patient A as an Osteopath but that nonetheless, regardless of that genuine belief, he persisted. In so doing he deliberately

misrepresented to Patient A that he was an Osteopath in unrestricted practise when he knew that was not the case.

91. Having determined the Registrant's genuine belief, the Committee thereafter asked itself whether by the standards of ordinary decent people the Registrant's behaviour was dishonest. In holding himself out as an Osteopath able to treat Patient A, knowing he was not entitled to hold himself out as such, the Committee determined the Registrant's behaviour was dishonest by the standards of ordinary, decent people.
92. The Committee next considered whether the Registrant's failure to inform Patient A of his suspension was dishonest. The Committee considered that the Registrant knew he was suspended. His genuine belief was that he was treating Patient A in a multi-faceted manner, with part of that treatment having been osteopathy. This was a central part of the Registrant's defence. On his own admission, the Registrant considered it necessary to tell other patients of his suspension. The Registrant's assertion that he told them because they were osteopathy patients and Patient A was not, was a tortuous one, lacking in any credibility both in and of itself and in light of the evidence relating to the invoice and the use of HVT.
93. The Committee found as a fact that the Registrant did treat Patient A as an Osteopath in the period during which his registration was suspended. The Committee determined that the Registrant's assertion that he was treating her in his FM clinic and therefore he was not treating her as an Osteopath was so unreasonable as to be beyond the bounds of a genuinely held belief.
94. Having treated Patient A as an Osteopath and holding no genuine belief to the contrary, there can have been no doubt in the Registrant's mind as to whether he was required to tell Patient A of his change in status. Clearly he was required to do so.
95. The Committee therefore determined that the Registrant's genuine belief was that he had not informed Patient A of his suspension, but was required to do so. In spite of that belief he chose not to inform her.
96. The Committee then asked itself if, in light of the Registrant's conduct he was dishonest by the standards of ordinary decent people. The Committee determined that it was, given the Registrant knew he was treating Patient A as an Osteopath, and that his registration was suspended. The Registrant had knowingly allowed Patient A to be misled as to his professional status. The Committee therefore concluded that the Registrant's conduct in that regard would be considered dishonest by the standards of ordinary decent people.
97. The Committee therefore found Paragraph 4(c) proved.

Unacceptable Professional Conduct (“UPC”)

Submissions of the Parties

98. Ms. Bruce submitted that the facts found proved amounted to UPC. Specifically she submitted that the Committee’s findings in relation to lack of integrity and dishonesty were so serious that they could amount to no less than UPC.
99. Ms. Bruce further submitted that the Registrant’s conduct represented a breach of the OPS 2012, specifically Standards A2, C3, D7, D14 and D15.
100. Ms. Scott-Bell, on behalf of the Registrant, submitted that UPC represented a high threshold and that the Committee should ask itself whether the facts as found proved were sufficiently serious as to attract moral blameworthiness or opprobrium. In so submitting she referred the Committee to the cases of *Shaw v GOsC* [2015] EWHC 2721 (Admin), *Spencer v GOsC* [2012] EWHC 3147 and *CHRE v Grant* [2011] EWHC 927 (Admin).
101. Ms. Scott-Bell further submitted that the Registrant had accepted making the wrong decision and that he understood in failing to tell Patient A of his suspension she may have felt misled. She invited the Committee to look at the Registrant’s culpability, and noted that there was no proven motive for his dishonesty.
102. Ms. Scott-Bell submitted that whilst a finding of UPC was likely to be inevitable, the Registrant’s conduct was limited to one patient, having re-assigned the cases of all his other patients.

The Committee’s Findings on UPC

103. The Committee received and accepted the advice of the legal assessor. The Committee was advised that the question of UPC was a matter for its own judgment and that there was, as distinct from the fact finding stage, no burden of proof. The Committee was advised that not every falling short of the standards amounts to UPC. For UPC to be found the act or omissions should be serious: *Roylance v GMC* [2000] 1 AC 311 & *Nandi v GMC* [2004] EWHC 2317. The Committee was further advised that in the terms of *Spencer v GOsC* [2012] EWHC 3147 the allegation should amount to conduct that can be considered deplorable and therefore worthy of the moral opprobrium and the publicity which flows from a finding of UPC.
104. The Committee was further advised of the case of *Shaw v GOsC* [2015] EWHC 2721 (Admin) in which the Court made it clear that the bar for a finding of UPC was not so high as to make the lowest form of sanction meaningless. For UPC to be found the conduct must be serious but not of

such gravity that the lowest powers of sanction would be inappropriate. The Committee was further advised that to restrict the definition of UPC to acts or omissions that represent a transgression of professional or sexual boundaries was a far too limited definition in light of the case law.

105. The Committee accepted that not every falling short of the standards would amount to misconduct, the Registrant's treatment of Patient A whilst suspended from the register had the effect of causing Patient A to unknowingly continue to receive treatment from an Osteopath who was suspended from practice, who was likely not to be insured to provide the treatment he was administering, who failed to give Patient A sufficient key information to make decisions about her future care, and who misrepresented to her that she was being treated by a statutorily recognised practitioner.
106. In considering the OPS as applicable at the time of the Allegation, specifically the OPS 2012, the Committee determined that the Registrant's conduct represented a breach of Standard A3: 'Give patients information in a way they can understand.' The profound nature of the information as to his status that the Registrant withheld from Patient A, meant that she was unknowingly taking material and significant risks.
107. The Committee determined that the Registrant's conduct also represented a departure from Standard A5: 'Working in partnership with patients to find the best treatment for them.' The Committee accepted that there was no evidence to suggest the Registrant had failed to refer other patients to other Osteopaths when he was suspended. However, that provided no consolation in the case of Patient A. Patient A had been provided no opportunity to make decisions about her future care and treatment, based on the most appropriate course, precisely because of the Registrant's dishonesty in failing to inform her of his suspension and his continued treatment of her as an Osteopath.
108. The Committee considered that the Registrant's conduct marked a departure from Standard B3: 'Work within the limits of your training and competence.' The Committee accepted there was no Allegation of the Registrant providing poor clinical treatment. However, it could not ignore the fact that he provided treatment in circumstances where he lacked the legal competence and/or status to do so, in that his statutory registration had been suspended.
109. The Committee considered that honesty and integrity were fundamental requirements of a registered Osteopath, and that the Registrant's conduct in being dishonest and behaving with a lack of integrity in his interactions with a patient went to the very heart of the Osteopath/patient relationship.
110. The Committee accepted the submission that the motive for the Registrant's conduct was unclear. However, that provided no mitigation to the seriousness

of his actions and omissions. In the context of Standards D14 and D17 it was clear that in acting as he had done, the Registrant had demonstrated a disregard for the concept of integrity in his professional practice and had failed to uphold the reputation of the profession through his conduct. The Committee therefore determined that he had breached both Standards.

111. The Committee determined that the Registrant's conduct as found proved represented a serious and significant departure from the standards expected of an Osteopath. The Committee further determined that the Registrant's dishonesty and lack of integrity, combined with its effect, in keeping the true position from Patient A and continuing with treating her regardless, represented conduct that other members of the profession would consider deplorable. It was therefore worthy of a degree of moral blameworthiness.
112. The Committee therefore determined that in all the circumstances, the Registrant's conduct did amount to UPC.

Sanction

Submissions of the Parties

113. The Committee was provided with documents relating to the Registrant's previous fitness to practise history. That history concerned a single case determined on 7 January 2019 in which the Registrant had been found to be dishonest and lacking in integrity in relation to advertising himself as holding a Masters degree in osteopathy, when he did not. The conduct found proved amounted to UPC and a sanction of suspension for 3 months had been imposed on the Registrant's registration. The Committee was provided with the determination of the original Professional Conduct Committee ("PCC") and the decision of the Reviewing PCC which met on 16 April 2019 and determined to allow the 3 month suspension to lapse with no further order on the basis that the Registrant was unlikely to repeat the conduct found proved.
114. In relation to sanction, Ms. Bruce did not make a positive submission as to the sanction that should be imposed. Rather, she submitted that in considering the Council's "Hearings and Sanctions Guidance" ("the Guidance") the Committee should ensure that the sanction it imposed was proportionate and should be the minimum necessary to fulfil the Committee's overriding objective, namely to protect the public and the wider public interest.
115. Ms. Bruce submitted that of the aggravating factors listed within the Guidance, the Registrant's case demonstrated dishonesty; further that his conduct at the hearing in denying the Allegations could be considered as an aggravating feature. It was her submission that this constituted "behaviour at the hearing."

116. Ms. Scott-Bell, on behalf of the Registrant, submitted that the Committee should take careful account of all the evidence in assessing the proportionate sanction to impose, but in particular invited the Committee to take account of six factors: (i) there had been a significant delay in proceedings, with two listings postponed. The effect was that there had been an 18 month delay between the evidence the Committee had heard, and the submissions and determination on the facts. The events were now three and half years ago, and that this was something the Committee could and should take account of. The Registrant had been through extraordinary pressure in consequence. In so submitting Ms. Scott-Bell relied upon the case of GMC v Webberley [2021] EWHC 3620 (Admin); (ii) the case involved a single patient. The dishonesty found proved related to the Registrant's communication with Patient A only, he having discharged all his other osteopathic patients in the appropriate manner. This, Ms. Scott-Bell submitted, made the dishonesty less egregious than might otherwise be the case; (iii) the Council had not adduced any evidence of motive, and there was none found proved. There was, Ms. Scott-Bell submitted no financial benefit at all for the Registrant in treating Patient A, something he was doing at a discount in any event. Rather his treatment was provided out of a genuine concern for Patient A given her chronic condition and his personal familiarity with the condition; (iv) the Registrant changed his processes and adapted following the complaint. He no longer referred to himself as an Osteopath and had altered his websites and marketing literature as a result. He had also amended his entry on the Register to show himself as a non-practising Osteopath; (v) the Registrant showed insight in the hearing by understanding that Patient A would have felt misled when she discovered his suspended status, and that in hindsight he would do things differently and tell the patient of his change in status. He had accepted that it was his lack of communication that was responsible for the situation arising; (vi) whilst there had been a finding of dishonesty against him previously that gave rise to the suspension that was the background to this case, the Registrant had been given no rulebook or guide as to how to manage his suspension.

117. Ms. Scott-Bell referred the Committee to the case of Sawati v GMC [2022] EWHC 283 (Admin) as authority for the principle that not admitting facts did not amount to a lack of insight, and that findings of dishonesty did not necessarily require an imposition of a sanction of removal from the register.

118. In conclusion, Ms. Scott-Bell invited the Committee to balance the public interest in retaining a clinically capable and good Osteopath against the public confidence in the profession. She therefore invited the Committee to consider the imposition of a period of suspension on the Registrant's registration, rather than consider the ultimate sanction of removal.

Determination on Sanction

119. The Committee received and accepted the advice of the Legal Assessor. It was reminded that in deciding upon sanction it should have regard to the Guidance published by the Council, and apply the principle of proportionality, weighing the interests of the public with those of the practitioner and taking the minimum action necessary to protect the public and the wider public interest. It was advised how to approach the issue of delay and that the case of *Selvarajan v GMC* [2008] EWHC 182 (Admin) made clear that delay could in certain circumstances be a mitigating factor.
120. The Committee was further advised that *Sawati v GMC* was a helpful case and authority for the proposition that a Registrant was entitled to robustly defend a case, without an adverse finding about their level of insight, and that the Committee should pay particular regard to the four factors outlined by the Court in approaching any issue around the defence put forward by a Registrant to the case.
121. The Committee was advised that it should adopt an approach of considering sanctions in ascending order of seriousness beginning with the least draconian and ask whether the sanction it was considering met the need to protect the public and wider public confidence in the profession. If it did not then the Committee should then and only then consider the next sanction in order of seriousness. The fact that dishonesty had been found proved in this case did not alter that approach.
122. The Committee began by identifying the aggravating and mitigating factors present. In doing so it took note of the Guidance, remembering that it was guidance only.
123. In terms of mitigating factors, the Committee accepted that the Registrant had removed mention of himself as an Osteopath from all his publications and marketing, although it noted that had initially been required of him by reason of the suspension. However, he had not sought to re-advertise as an Osteopath in the period since the suspension had been imposed in January 2019. The Committee also accepted the Registrant had been dishonest only in his dealings with Patient A. The Committee noted that in now accepting he would have done things differently in hindsight, he had gone some way to accepting his errors. The Committee did not consider this represented any meaningful insight, but rather an acceptance by the Registrant that a repetition of similar conduct had brought him before his Regulator for a second time. The Committee took into account that the direct financial benefit in treating Patient A was minimal, and that this did not appear to be the motive for his conduct. The Committee also noted that it had been three and half years since the events took place. It noted the patient testimonials provided to the PCC in advance of the PCC review hearing in April 2019, attesting to the Registrant's honesty and ability as an Osteopath.

124. In terms of aggravating factors, the Committee considered that the insight shown by the Registrant had been minimal, such that it was an acknowledgement that things had gone wrong, but represented no real understanding of his own behaviour and what caused him to act in the manner he had. He had demonstrated no contrition or embarrassment at his behaviour and had offered no apology to Patient A. The Registrant's conduct had represented an abuse of his professional standing in that he understood Patient A was a chronic sufferer of FM and she was dependent on finding clinicians able to treat her condition. The registrant had failed to be candid with her about his position and his suspension, such that he had abused the trust that existed in the patient/Osteopath relationship.
125. The Committee noted the nature of the Registrant's previous history and considered the dishonesty and lack of integrity he had exhibited in those proceedings to be similar to the conduct in this case. Of particular concern to the Committee was the fact that on 16 April 2019 the Registrant had assured the PCC that he had recognised his own failings and had put in place, "through his faith values together with the values and philosophy of the profession, trust in his faith to guide him, his membership of the Institute of Osteopathy to which he could turn for guidance, GOsC, and other healthcare professionals including those who practised at the GP practice [from which his parents-in-law worked] where a high level of conduct was expected."
126. The Committee considered that was a troubling position for the Registrant to take since the he had last treated Patient A 6 days prior to the review hearing and had undertaken the course of treatment under the dishonest guise of being an unrestricted registered Osteopath, entitled to treat patients. The Committee determined that the juxtaposition of those two events was of some significance in understanding the level of insight the Registrant had into what was or was not required of a Registrant in a regulated profession.
127. The Committee further noted that through his representative the Registrant had submitted he had not been given a guide as to what to do when had received his original suspension. The Committee was extremely concerned that such a position suggested the Registrant had failed to take up the opportunity presented to him by the period of suspension to engage with the Institute of Osteopathy and understand the fundamentals of his professional duties, in spite of his assurance to the PCC that he would seek out their assistance if needed. Further he had been encouraged to engage systematically with fellow Osteopaths as it had been recognised by the PCC that he may be missing out on the protection, support and mentoring available to him through other practitioners. The Committee noted that the Registrant had done nothing to acquaint himself with the fundamentals of good practice when it came to honesty and integrity, such that he had displayed conduct of a similar nature both shortly after his original PCC hearing and shortly before his review hearing in which he had given the PCC

assurances as to his honesty and integrity. Whilst the Committee bore in mind the mitigating effect of the delay on the Registrant it also noted that it had provided him with a period of over three years in which to develop some insight into his conduct, but there was nothing before the Committee that suggested he had taken that opportunity.

128. The Committee was concerned by the Registrant's attitude towards, and understanding of, the duties required of a member of a regulated profession. Throughout the hearing he sought to explain his actions by relying on his assertion that he was not "solely" providing osteopathic treatment. His perspective on osteopathy was explained in oral evidence: "I value the profession and I do practise osteopathy as an adjunct to the prolozone therapy if I deem it suitable and if I feel that it would potentially enhance the effects of prolozone therapy but I do not offer it as a sole service." The Committee concluded that the Registrant regarded osteopathy as ancillary to his main business and paid little regard to the title of Osteopath as indicating he was a regulated professional, with the obligations and responsibilities that come with it.

129. The Committee therefore felt unable to repose any confidence in the Registrant's insight into his behaviour in this case, or his insight into the concepts of honesty and integrity generally.

130. In considering the issue of remediation, the Committee accepted that remediating non-clinical failings was usually a harder task than remediating those of a clinical type. It accepted that remediating issues around integrity and honesty could be the most difficult. However, it considered that the Registrant had provided no evidence at all of any remediation. He had provided no evidence of CPD, no evidence of ethics training or mentoring, no evidence of attempts to address communication with patients, or anything else that might have enabled the Committee to identify attempts to remediate. The Registrant had demonstrated no flexibility in his thinking about how the duties and standards that apply to regulated Osteopaths are engaged when treating patients with a variety of modalities. The Committee was therefore forced to the conclusion that the Registrant had done nothing to attempt to remediate nor demonstrate that he understood, and had engaged with, the obligations and responsibilities of an Osteopath in a "multi-faceted" practice.

131. In light of the Registrant's persistent lack of insight and lack of any attempts at remediation, along with his recent similar previous history, the Committee considered the risk of the Registrant repeating the conduct in this case or similar to be a very significant one.

132. The Committee noted that the Registrant had acknowledged treating Patient A whilst he was uninsured. Notwithstanding his acknowledgement of that in

evidence he had treated her anyway and run the risk. That presented a very real risk to Patient A. Moreover, the Committee determined that by misrepresenting the true position to Patient A he had caused significant distress and mental anguish to her when she did eventually find out, through her own investigations, that he had been suspended. It had knocked her confidence in healthcare professionals and had caused her to question her future treatment. That was concerning, particularly so in a patient with a chronic condition that needed ongoing treatment and management. The Committee therefore concluded that in light of the likelihood of repetition and the nature of the facts found proved the risk of harm to the public posed by the Registrant was also significant.

133. The Committee next considered the appropriate sanction to impose. In doing so it paid careful attention to the Guidance, and approached the question of sanction in ascending order of seriousness.

134. The Committee first considered whether a sanction of admonishment would be sufficient to protect the public and the wider public interest. It determined that admonishment, whilst sending out a signal to the profession, did nothing to reflect the seriousness of the conduct found proved in the Registrant's case, and did nothing to protect patients and the public from the risk of recurrence.

135. The Committee next considered a conditions of practice order. The Committee concluded that conditions in the present case did not reflect the seriousness of the conduct found proved. Moreover, the Committee was unable to say with any confidence that any conditions imposed would be relevant, proportionate, workable, measurable and capable of being monitored.

136. The Committee next considered a sanction of suspension. The Committee carefully considered the guidance set out at paragraphs 71 - 77. In so doing the Committee reminded itself that it was guidance only, and that the factors listed at paragraph 71 were non-exhaustive. In considering those factors the Committee was in no doubt that the Registrant's conduct was a serious breach of the OPS. Equally, the Committee was in no doubt that based upon the lack of evidence before it, regarding remediation and insight, there remained a real risk to patient safety if the Registrant were to be allowed to remain in practice.

137. The Registrant had provided no evidence of remediation or retraining, and had shown extremely limited insight, if any, into his failings. The Committee was therefore unable to conclude that a period of suspension would do enough to protect the public. The Committee further determined that the nature and extent of the Registrant's breaches, in the context of a previous finding of dishonesty, were so serious that a suspension would be insufficient

to maintain public confidence in the profession and declare and uphold standards.

138. The Committee next considered removal of the Registrant's name from the register. In doing so it paid close attention to paragraphs 78 - 80 of the Hearings and Sanctions Guidance, whilst acknowledging it was guidance only and the list at paragraph 78 was a non-exhaustive one.
139. In light of its findings on the facts, the Committee was in no doubt that the Registrant's conduct had been both reckless in certain particulars and intentional in others. On the basis of what the Committee had heard and read, it determined that the Registrant had little regard to the obligations and duties that come with membership of a regulated profession.
140. Whilst the harm caused to Patient A was limited to her mental anguish, the disregard shown by the Registrant to the fundamental principles of honesty and integrity meant that the harm or type thereof occasioned to Patient A was of less significance than might otherwise have been the case. Such a level of disregard for his duties and obligations for the second time in short order is, in the Committee's judgment, incompatible with continued registration in any caring profession, osteopathy being no exception.
141. In all the circumstances the Committee determined that the only sanction that protected the public, upheld public confidence in the profession and declared and maintained standards was one of Removal from the register.
142. The Committee therefore determined the Registrant's name should be removed from the register.
143. Having determined to remove the Registrant's name from the Register, the Committee invited submissions from the parties as to the need for an interim suspension order to cover the appeal period.

Interim Suspension Order

144. Ms. Bruce on behalf of the Council, submitted that an interim order for suspension could be imposed upon the Registrant in circumstances where there was a need for public protection. In light of the Committee's determination, Ms. Bruce submitted there was such a need in this case to cover the statutory appeal period. The consequent risk of not doing so was that the Registrant would be admitted to unrestricted practise and the public would not be afforded protection.
145. Ms. Scott-Bell on behalf of the Registrant, submitted that an interim order was not necessary in the circumstances, given the Registrant had not

practised since 2019 and offered the Committee an assurance he would not practise as an Osteopath during the currency of any appeal period.

146. The Committee received and accepted the advice of the Legal Assessor. It was advised that Rule 40 of the Rules governed the approach to be taken and in particular Rule 40(1)(b) specifically gave the Committee power to impose an interim suspension order after making a substantive determination of removal from the register, to cover any appeal period. The only grounds for imposing such an order was that it was necessary to impose such an order to protect members of the public.

147. The Committee carefully balanced the interests of the Registrant with those of the public. It noted the Registrant had ceased advertising himself as an Osteopath in 2019. There was therefore no immediate requirement for him to adjust his circumstances to make allowance for patients he is currently treating as an Osteopath, as there are none. The Committee considered its role was to ensure the public was protected. As a matter of principle, the Committee could not abrogate that responsibility by accepting a Registrant's assurance, whether or not such assurance could be relied upon.

148. The Committee further determined that given the extant risk to patients and the public posed by the Registrant's identified failings, which were fundamental to the practice of osteopathy, it was necessary to impose an order of interim suspension upon his registration

149. The Committee therefore determined that an interim order for suspension be imposed upon the Registrant's registration expiring 28 days after the date upon which notice of this decision is served upon him, or for a period extending until any appeal is withdrawn or otherwise finally disposed of, whichever is the longer.

Under section 31 of the Osteopaths Act 1993 there is a right of appeal against the Committee's decision.

The Registrant will be notified of the Committee's decision in writing in due course.

All final decisions of the Professional Conduct Committee are considered by the Professional Standards Authority for Health and Social Care (PSA). Section 29 of the NHS Reform and Healthcare Professions Act 2002 (as amended) provides that the PSA may refer a decision of the Professional Conduct Committee to the High Court if it considers that the decision is not sufficient for the protection of the public.

Section 22(13) of the Osteopaths Act 1993 requires this Committee to publish a report that sets out the names of those osteopaths who have had Allegations found against them, the nature of the Allegations and the steps taken by the Committee in respect of the osteopaths so named.