

GENERAL OSTEOPATHIC COUNCIL
PROFESSIONAL CONDUCT COMMITTEE

Case No: 563/6062

Professional Conduct Committee Hearing

DECISION

Case of:	Ms Joanna Turner (nee Pooley)
Committee:	Mr Andy Skelton (Chair) Mr Philip Geering (Lay) Mr Kenneth McLean (Osteopath)
Legal Assessor:	Mr Tim Grey
Representation for Council:	Mr Chris Gillespie
Representation for Osteopath:	Unrepresented.
Clerk to the Committee:	Miss Jemima Francis
Date of Hearing:	25 to 26 April 2017

Summary of Decision:

The Committee concluded that in order to balance the need to protect the public and the wider public interest an order for suspension was both necessary and proportionate in all the circumstances.

In light of the Committee's conclusion that there is an ongoing risk of repetition and therefore a residual risk to the public the Committee determined to impose an immediate interim order for suspension

The Committee determined that the appropriate length of the order was one of 9 months.

Allegation and Facts

The allegation is that you, Ms Joanna Turner, are guilty of Unacceptable Professional Conduct, contrary to Section 20(1)(a) of the Osteopaths Act 1993 in that:

1. You had professional indemnity insurance with Balens Ltd from 28 January 2011 until 27 January 2013.
2. During the period 28 January 2013 to 31 August 2013 ("the first relevant period"), you:
 - a) practised as an osteopath;
 - b) failed to obtain and maintain insurance cover as required by rule 3 of The General Osteopathic Council (Professional Indemnity Insurance) Rules 1998 (the PII Rules);
 - c) failed to notify the General Osteopathic Council ("GOsC") that your insurance had ceased on 28 January 2013.
3. During the first relevant period you:
 - a) knew that in holding yourself out to the public as a registered osteopath, you were required to hold professional indemnity insurance;
 - b) treated patients in the knowledge that you did not have appropriate professional indemnity insurance;
 - c) practised as a registered osteopath in the knowledge that you had failed to provide evidence of such insurance to your regulator.
4. By reason of the matters alleged at paragraph 3 above your conduct was:
 - a) misleading and /or
 - b) demonstrated a lack of integrity and / or
 - c) dishonest.
5. You were registered as 'Non-Practising' on the GOsC Register from 1 September 2013.
6. In or around November 2015 to on or about 8 January 2016 ("the second relevant period"), you:
 - a) practised as an osteopath;

- b) failed to obtain and maintain insurance cover as required by rule 5 of The General Osteopathic Council (Indemnity Arrangements) Rules Order 2015;
 - c) failed to notify the General Osteopathic Council ("GOsC") that your insurance had ceased on 28 January 2013.
7. During the second relevant period you:
- a) knew that in holding yourself out to the public as a registered osteopath, you were required to hold professional indemnity insurance;
 - b) treated patients in the knowledge that you did not have appropriate professional indemnity insurance;
 - c) practised as a registered osteopath in the knowledge that you had failed to provide evidence of such insurance to your regulator.
8. By reason of the matters alleged at paragraph 7 above, your conduct was:
- a) misleading and /or
 - b) demonstrated a lack of integrity and /or
 - c) dishonest.
9. You contacted the GOsC Registration Department on 8 January 2016 and:
- a) made a request to update your status to 'Practising' on the GOsC Register.
 - b) advised the GOsC that you had been practising as an osteopath whilst you were registered as non-practising.
10. In a letter dated 13 January 2016 you confirmed to the GOsC that you had 'very spasmodic hours of working as an osteopath for the last few months'.
11. In an email to the GOsC dated 26 January 2016, you stated:
- a) that you returned to work in November 2015 as a sports therapist;
 - b) that you had insurance in place to work as a Manipulative therapist from mid January 2016.

12. By reason of the changing explanations you gave as to your practising status, as detailed at paragraphs 9, 10 and 11 above, your behaviour was:
- a) misleading and /or,
 - b) demonstrated a lack of integrity and /or
 - c) dishonest.
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Preliminary Matters:

Proceeding in the Absence of the Registrant

At the outset of the hearing, Mr. Gillespie on behalf of the GOsC, applied for the hearing to proceed in the absence of the Registrant pursuant to Rule 20 of the Rules. He referred the Committee to the service bundle to demonstrate the Notice of Hearing had been properly served. He submitted that not only had the Notice of Hearing and bundle been served by registered post, but that there was evidence the Registrant had received the bundle and considered it fully. He addressed the panel on what an adjournment of proceedings might accomplish. He drew the Committee's attention to the Registrant's correspondence in which she explained she would not be attending in light of [REDACTED] and [REDACTED] and submitted that the Registrant would not benefit from a postponement, given those were ongoing issues. He also drew the Committee's attention to the Council's invitation to the Registrant to consider whether she wished to apply for an adjournment and to the Registrant's positive request that the hearing continue in her absence, she being keen for matters to be resolved swiftly.

The Panel accepted the advice of the Legal Assessor that the decision to proceed in the absence of the Registrant is a decision to be taken with the utmost care and caution. The Panel had regard to the relevant Practice Note, the criteria set out in *R v Jones* [2002] UKHL 5 and the guidance in *General Medical Council v Adeogba* [2016] EWCA Civ 162.

The Committee noted that the formal notice of hearing and PCC bundle was sent to the Registrant on 21 March 2017 by email and posted by special delivery. The

Committee also noted that the Registrant acknowledged receipt of the same by telephone on 28 March 2017.

The Committee concluded that the Council had complied with the required service provisions set out within Rules 45 and 65 of the Rules.

The Committee went on to consider whether it was fair in all the circumstances to proceed to hear the case in the absence of the Registrant. The Committee concluded that the Registrant had voluntarily absented herself from the proceedings knowing of the time and date of the hearing. The Registrant had corresponded with the Council via email and telephone during the latter part of March into early April and was clearly made aware of the nature and extent of the proceedings. She had been advised to seek independent advice and advised of the possible outcomes of a hearing. From the content of her responses it was clear she had sought advice and was aware of the nature and possible outcomes of proceedings. The Registrant had not applied for an adjournment, to the contrary she had invited the Committee to continue with the hearing in her absence. The Registrant had submitted a detailed written response to the allegations with supporting documentation. There was nothing to indicate she was likely to attend if the matter were to be adjourned. The Panel therefore determined that it was in the public interest to deal in a timely and expeditious way with the case and to proceed in the absence of the Registrant. The Panel did not draw any adverse inference from the Registrant's absence.

Application for the Hearing to be Held in Private

The Committee determined that it would hear the case in private where reference was made to the private life or health of the Registrant. In making this decision the Panel acknowledged that there is a presumption that all hearings will be held in public. In this instance, the Panel considers that the protection of the private life of the Registrant outweighs the public interest. (Relevant passages underlined).

Observer Retiring with The Committee/ Present in Private Hearing

The Committee heard submissions from Mr. Gillespie on behalf of the GOsC regarding a member of the Professional Conduct Committee (PCC) present in the

hearing for training purposes, who the Committee were minded to allow to remain during any private sessions, and who would retire with them but take no part in the deliberations.

The Committee sought legal advice and accepted the advice of the Legal Assessor. The Committee's attention was directed to Rule 17 of the Rules, and in particular Rules 20(3)(d) and (f). Although it was not clear whether as a member of the PCC ("the member") had officer status within the meaning of (d) it was clear that (f) allowed the Chairman of the PCC discretion to allow the member to remain in the hearing during any private session. The Committee were advised to consider what if any prejudice there might be to the Registrant and the Council in such a course being taken. In particular the Committee were invited to remind the member that he was bound by the confidentiality of his office in relation to all the facts dealt with in private session.

The Committee was further advised to consider whether there was any prejudice to either party in the member remaining with the Committee during deliberations.

The Committee determined to allow the member to remain in the hearing during any private session and to allow him to retire with the Committee when they deliberated as an observer only. The Committee confirmed that the Legal Assessor would be present throughout any such deliberations and would ensure that no possible unfairness to either party would be occasioned by the presence of the member, who would take no part in the Committee's deliberations.

The Committee concluded there would be no prejudice occasioned to either party by allowing the member to remain in private session and to observe their deliberations and therefore confirmed he would do so.

Decision

Background

The Registrant was admitted to the Register on 7 March 2006. In February 2008, by application, her registration was shown as Non-Practising. Thereafter, she did not update her registration to show that she was again practising. On 9 August 2011 the Registrant contacted the Council who informed her that as from

February 2008 the Council had had no notification from her that she had returned to work. The Registrant had in fact been working since December 2010 and was able to produce evidence that she was insured. The Registrant therefore completed the Return to Practice procedure.

From 28 January 2011 to 27 January 2013 the Registrant was insured through Balens.

There were two further periods where it was alleged that the Registrant practised without the required indemnity insurance.

Council's Opening & Case

In opening the case for the Council Mr. Gillespie indicated that he would be calling no live evidence and relied upon documentary evidence, in particular the witness statements of David Balens and Matthew Redford, and their exhibits. He invited the Committee to accept his opening and the submissions made on the documents as the Council's case on the evidence before it.

In so submitting Mr. Gillespie drew the factual distinction between the two periods during which the Registrant had no indemnity cover ("PII"). The first of those periods was in 2013. Mr. Gillespie drew the Committee's attention to the Registrant's application signed on 9 September 2013 in which she sought to change her status from a practising Registrant to a non-practising Registrant. The effective date of the change on the document was 1 September 2013. He took the Committee to a number of subsequent documents in the form of correspondence with the Council in which the Registrant re-affirmed that her status as a non-practising member had begun on 1 September 2013.

It was, he submitted, clear from the evidence of her insurers and that held by the Council that the Registrant's PII had ceased on 27 January 2013, thereby meaning she had been practising as an osteopath from 28 January 2013 until 31st August 2013 without PII cover.

He invited the Committee to infer from the date on her non-practising Registrant application form that she was in practise up until that point.

Mr. Gillespie went on to address the Registrant's alleged failure to inform the Council of her PII ceasing on 28 January 2013. He took the Committee to the Indemnity Rules applicable at the time and submitted that there was a mandatory duty pursuant to Rule 3 of the Osteopathic Council (Professional Indemnity Insurance) Rules 1998 ("the 1998 Rules") for any osteopath in practice to be insured. He further submitted that in failing to notify the Council of the cessation of her PII the Registrant had breached her duty pursuant to Rule 8(2) of the 1998 Rules.

In addressing the second period, Mr. Gillespie submitted that from November 2015 to around 8 January 2016 the Registrant again practised without PII cover. In so submitting he drew the Committee's attention to a telephone attendance note of a conversation between the Registrant and her last known insurer, Balens, on 8 January 2016. It was, he contended, clear from the content of the call that the Registrant was seeking to be insured as an osteopath in practice, and that inferentially she had not been insured up to that point.

He further submitted that the content of the call made it clear that the Registrant had been working as an osteopath in the preceding two months.

Mr. Gillespie drew the Committee's attention to a letter the Registrant wrote to the Council on 13 January 2016 in which she accepted working as an osteopath "spasmodically" for the previous few months.

The Committee's attention was drawn to the General Osteopathic Council (Indemnity Arrangements) Rules Order in Council 2015 ("the 2015 Rules"). The Committee was directed to Rule 5 which it was contended imposed a duty upon a Registrant to have in place appropriate PII cover. The Committee was further directed to Rule 9 which, it was submitted, imposed a duty upon a Registrant to notify the Council immediately upon ceasing to hold PII cover.

On 26 January 2016 the Registrant wrote again to the Council regarding her start date in practise during 2015. It was, Mr. Gillespie submitted, a letter that was misleading and dishonest. In the letter the Registrant represented that she had begun working as a sport therapist not as an osteopath treating only family and friends. The subsequent correspondence between the Registrant and Council,

was, it was contended, a further attempt by the Registrant to mislead her Regulator.

Mr. Gillespie submitted that not having PII cover whilst in practice posed a significant risk to the public. He further submitted that by reason of the Registrant being in practice she was implicitly representing to patients that she had appropriate PII cover. In light of the fact that she did not and was in practise she was, he submitted misleading the public.

He further submitted that the Registrant knew that she was required to have PII, did not have it, knew that being in practise she was representing that she did have PII and that she must therefore have known her actions were dishonest.

Mr. Gillespie further submitted that the communications between the Registrant and the Council regarding the later period in practise demonstrated someone who was misleading her Regulator, and doing so dishonestly in order to avoid censure.

Finally he submitted that in behaving in a manner that was misleading the Registrant was demonstrating a lack of integrity.

Defence Case

The Registrant submitted a response to the Allegations and GOsC's opening skeleton argument. Her case was that during the first period she did not in fact practise as an osteopath. She accepted that the non-practising application form was dated 1 September 2013. She contended that notwithstanding that form she was not in practice from January 2013, [REDACTED]

Regarding the second period of time she said that she had not been in full time practise, had treated only family and friends, was a sports therapist rather than an osteopath and was insured for a period of time by Balens as a manipulative therapist.

The Registrant submitted that due to a period of upheaval in 2014, [REDACTED]

she had not paid sufficient attention to administrative issues. She had not initially realised she needed to regularise her PII position. She reiterated that she was only working as an osteopath for friends and family, and that she advertised her services as an osteopath for a period of 4 weeks only as Christmas fell in that period.

She denied any dishonesty and submitted that the matters forming the allegations against her were largely due to a misunderstanding on her part.

Amendment of the Allegations

The Committee considered the allegations and in light of those considerations were minded to amend Allegations 3 and 7 in the following terms:

"3. During the first relevant period you:

- a) ~~knew that in holding~~ held yourself out to the public as a registered osteopath, ~~you were required to hold~~ when you had failed to obtain professional indemnity insurance;
- b) treated patients ~~in the knowledge that you did not~~ when you failed to have in place appropriate professional indemnity insurance;
- c) practised as a registered osteopath ~~in the knowledge that~~ when you had failed to provide evidence of such professional indemnity insurance to your regulator.

7. During the second relevant period you:

- a) ~~knew that in holding~~ held yourself out to the public as a registered osteopath, ~~you were required to hold~~ when you had failed to obtain professional indemnity insurance;
- b) treated patients ~~in the knowledge that you did not~~ when you failed to have in place appropriate professional indemnity insurance;
- c) practised as a registered osteopath ~~in the knowledge that~~ when you had failed to provide evidence of such professional indemnity insurance to your regulator."

As a result the Committee invited the Council to amend in these terms.

The Committee considered that without the amendments, Allegations 3 & 7 trespassed into the state of mind of the Registrant rather than the actions or omissions of the Registrant. Whilst that was not necessarily an issue in every case, given that Allegations 4 & 8 focus on the state of mind of the Registrant in Allegations 3 & 7, considering the Allegations as a whole, the exercise would become confused unwieldy and potentially lead to injustice.

The Committee concluded that although the Registrant was not present and not represented the nature of the amendments did not and would not prejudice her position. To the contrary the Committee concluded that the amendments brought clarity to the allegation.

The Committee paid careful regard to the response and documents provided by the Registrant and did not consider that her defence was materially altered or prejudiced by the amendments being made.

Further the Committee concluded that the clarity brought by the amendments was in the interests of the Council and was in no way prejudicial to their position.

In all the circumstances the Committee determined to make the amendment having concluded there was no unfairness to either party in doing so.

Findings of Fact

In the absence of the Registrant the Committee treated all the Allegations as being in dispute.

The Committee made the following findings:

Allegation 1: PROVED

The Committee accepted the documentary evidence and witness statement of David Balens, the vast majority of which agreed that the Registrant was insured for the period alleged.

Allegation 2(a): NOT PROVED

The Committee considered that the Registrant's submission of a non-practising application form with a start date of 1 September 2013 suggested that she had ceased working by that date. The Committee accepted that in later communications with GOsC she maintained that she became a non-practising registrant on 1 September 2013. However, GOsC had presented no direct evidence to demonstrate that during the period from January 2013 to September 2013 the Registrant had in fact been working as an osteopath.

The Committee did not accept that the inference from the non-practising form and her other communications was that she ceased working on 1 September 2013. Rather the Committee concluded that it was equally likely the Registrant had regularised her position on 1 September 2013 having not worked since January 2013. Her reference to being "NP" in a telephone call with the GOsC on 1 June 2015 and in other correspondence was equally consistent with her confirming her formalised change of status as with the inference that she had ceased working on 1 September 2013.

The Committee considered that the unequivocal account of the Registrant, that she had not worked throughout the 2013 period in question because of [REDACTED], was a credible one. The independent and unchallenged confirmation of appointments she had with medical professionals in late January 2013 lent significant credibility to the account she had given.

The Committee were unpersuaded by the Council's submissions as to the date given to Balens of October 2012 for her [REDACTED] and considered this to be wholly at odds with the other evidence in the case. The Committee concluded that whatever the source for the date it was more likely than not to be an innocent error. In any event the Committee did not consider it to be of great assistance to the decision it was required to make.

In light of the lack of evidence to demonstrate the Registrant was working during the period 28 January 2013 to 28 August 2013 and her own account, which in this regard the Committee found both credible and believable, the Committee was not satisfied on the balance of probabilities that the Council had proved its case.

Allegation 2(b): NOT PROVED

In light of its findings at 2(a) above the Committee concluded the Registrant was under no duty to obtain PII cover for the period in question. Therefore there had been no culpable failing on her part.

Allegation 2(c): PROVED

The Committee considered that the Registrant was under a duty pursuant to Rule 8(2) of the 1998 Rules to notify the GOsC of any cessation of her PII cover, "for whatever reason." The mandatory nature of the duty was unaffected by the Registrant's status whether she was in fact working or otherwise.

There was clear, cogent and agreed evidence that her PII cover had ceased on 28 January 2013, and that there had been no attempt made by the Registrant to inform GOsC of that.

Allegation 3(a), (b) & (c) (AS AMENDED): NOT PROVED

In light of its findings at 2(a) the Committee found that the Registrant had not held herself out as registered osteopath, had not treated patients and had not practised as a registered osteopath during the period in question.

Allegation 4(a), (b) & (c): NOT PROVED

In light of its findings at 3 above the Committee found the entirety of Allegation 4 not proved.

Allegation 5: PROVED

The Committee accepted the evidence of Matthew Redford and that of the Registrant, both of whom agreed that the Registrant was registered as 'non-practising' on the GOsC register from 1 September 2013.

Allegation 6(a): PROVED

The Committee considered the evidence from David Balens and in particular his email of 27 April 2016, in which he reported a conversation with the Registrant on 8 January 2016. In that conversation she confirmed she had by that stage been practising as an osteopath "for the last couple of months" and also reported having clients booked in.

The Committee noted that in her response to the GOsC on 15 June 2016 she accepted having worked as an osteopath in the period in question.

The Committee next considered the Registrant's representations. It noted that she acknowledged working as an osteopath in treating friends and family, and that she had undertaken or had permitted someone on her behalf to engage in some form of advertising of her as an osteopath.

The Committee therefore concluded that on the balance of probabilities the Registrant was working as an osteopath in the relevant period. The nature and extent of that work was not clear, though it appeared that she may well have started with "family and friends" to get back into practice, and that between November 2015 and early January 2016 had engaged with a business and had paying clients with signs, business cards and advertising to promote her practice as an osteopath.

Allegation 6(b): PROVED

The Committee considered that in light of Rule 5 of the 2015 Rules the Registrant was under a duty to maintain adequate PII cover when working. There was clear and unchallenged evidence that she did not have PII cover during the period in question. The Committee accepted the evidence of David Balen in this regard. Whilst the Committee were mindful of the fact that although she was not insured by Balens during the period, she could have been insured elsewhere, it considered that her enquiry of Balens on 8 January 2016 when she sought backdated cover led to the irresistible inference that she did not have cover for the period in question.

Allegation 6(c): NOT PROVED

The Committee noted that the Registrant had spoken to Ben Chambers at GOsC on 8 January 2016. During that call she had told him she had no PII cover and had not had any since January 2013.

The Committee considered that although there was a duty to notify the GOsC of her lack of PII cover "immediately" upon it ceasing, under the 2015 Rules, the Allegation required the GOsC to prove the Registrant had not notified the GOsC during the period November 2015 to on or about 8 January 2016. In light of the

telephone conversation the Registrant had with the GOsC on 8 January 2016 the Committee found as a fact that she had notified the GOsC during the period in question.

Consequently the allegation was not proved.

Allegation 7(a) (AS AMENDED): PROVED

In light of the Committee's findings at 6(a) and (b) above the Committee determined that as part and parcel of practising as an osteopath the Registrant necessarily held herself out as an osteopath. The Committee noted the Registrant's own admission that she had advertised her services as an osteopath, and she had appointments pending that she mentioned to Balens and GOsC during the telephone conversations she had with both on 8 January 2016 .

Allegation 7(b) (AS AMENDED): PROVED

In light of its findings at 6(a) and (b) above the Committee found this allegation proved.

Allegation 7(c) (AS AMENDED): PROVED

The Committee took careful note of the duties pursuant to the 2015 Rules and concluded that the Registrant was under a duty to provide evidence of her PII cover to the GOsC during the specified period.

In light of the Registrant's admission that she did not have PII cover during the period in question, and the Committee's finding at 6(b) above, the Committee found this allegation proved.

Allegation 8(a): PROVED

The Committee considered the submission of Mr. Gillespie on behalf of the GOsC, and determined that there was a clear inference to be drawn by the public that a practising osteopath was insured against the risk of harming patients. Whilst the Committee did not necessarily consider the public would be aware of the precise nature of the insurance an osteopath might have, it considered it implicit that in practising as a healthcare professional one was holding oneself out as having PII cover.

It followed that in not having cover for a period of time when she was holding herself out as an osteopath, either by treating patients or otherwise, the Registrant's actions in so doing were misleading on an objective basis.

The Committee therefore found that on the balance of probabilities the allegation was proved.

Allegation 8(b): PROVED

The Committee reminded itself of the definition of integrity within the Osteopathic Practice Standards 2012. In particular the Committee noted the definition at Standard D14 which defined integrity as acting with honesty and sincerity.

The Committee considered that the Registrant had been less than careful in her attempts to return to professional work in 2015, so far as the administrative aspects of her career were concerned. The Committee considered [REDACTED]

[REDACTED] the Registrant rushed through the process of seeking to return to osteopathy and that led directly to the failures identified in her PII provision.

Those failings were both unprofessional and failed to consider in a sincere and careful manner the potential risk her status posed to her patients.

As a result the Committee considered that on the balance of probabilities her conduct did demonstrate a lack of integrity. They therefore found the allegation proved.

Allegation 8(c): NOT PROVED

The Committee considered the issue of dishonesty applying the test in the case of R v Ghosh. The Committee determined that in relation to the first part of the Ghosh test, the Registrant's behaviour in treating patients and holding herself out to be able to treat patients when uninsured, was by the standards of reasonable and honest people, dishonest. The Committee concluded that the inference that an osteopath was insured was a significant and clear one, and that the correlation between the inference and the state of mind of a member of the

public, would lead a reasonable and honest person to consider such holding out to be dishonest.

In light of their decision in relation to the first limb, the Committee went on to consider the second limb of the Ghosh test. The Committee reminded itself of the somewhat haphazard and unprofessional manner in which the Registrant had sought to restart her career. The Committee took account of the evidence from David Balen regarding the apparently confused nature of the Registrant's enquiries in January 2016, and her seeming confusion as to her status with the GOsC. The Committee did not consider there was any excuse for a professional to demonstrate such a chaotic approach. However, in consequence of her approach the Committee concluded that on the balance of probabilities the Registrant was unlikely to have had in mind and therefore known or believed that her conduct in holding herself out and practising as an osteopath would be considered dishonest by the standards of reasonable and honest people. The Committee could identify no cogent evidence of such a state of mind at the time.

Therefore on the balance of probabilities the Committee determined that the allegation was not proved.

Allegation 9(a) and (b): PROVED

The Committee considered the telephone calls between the Council and the Registrant on 8 January 2016 and although it did not consider that the Registrant explicitly requested a change in her status from non-practising to practising it was implicit in the communication that she was asking the GOsC to make such a change. That inference was lent weight by the email sent the same day to the Registrant from GOsC attaching a return to practice self-assessment form.

The telephone attendance note of the call is clear on its face that the Registrant did confirm she had been working as an osteopath whilst uninsured.

The Committee considered the Registrant's response. In light of that consideration it appeared to the Committee that the evidence in this regard was unchallenged.

The Committee therefore considered the allegation to have been proved to the requisite standard.

Allegation 10: PROVED

The Committee considered the letter sent by the Registrant to GOsC on 13 January 2016. The Committee concluded that it did contain the words in the allegation. Therefore as matter of fact the committee found the allegation proved.

Allegation 11(a) and (b): PROVED

The Committee considered the email sent by the Registrant to GOsC on 26 January 2016. The Committee concluded that it did contain the words in the allegation. Therefore as matter of fact the committee found the allegation proved.

Allegation 12(a): PROVED

The Registrant gave a number of different descriptions of what she was doing during the period in question. The Committee considered each in turn. In so far as the descriptions subject of allegation 10 are concerned the Committee did not necessarily consider those to be inconsistent with the descriptions given in Allegation 11. However, the Committee did conclude that the description of herself as a sports therapist, and the assertion that she had insurance in place as a manipulative therapist from mid January were both statements that were at odds with her other communications and capable of misleading the reasonable person.

The Registrant's response did nothing to assist in clarifying the position, and if anything caused further inconsistency.

In consequence the Committee considered that on the balance of probabilities the communications and explanations given within the three documents were confused and were misleading to the recipient, namely GOsC.

Allegation 12(b): PROVED

For the reasons set out below in relation to 12(c) the Committee considered that the 3 documents referred to in Allegations 9 - 11 lacked sincerity and honesty. The Committee found that in the case of the communications on 13 and 26

January 2016 they represented attempts by the Registrant to retreat from her previous admissions made on 8 January 2016 as to the extent of her work as an osteopath in the period. Those admissions were made in the context of an apparent level of naivety by the Registrant as to the possible seriousness of her position.

Once she was made aware by both Balens and the Council of the possible consequences of those admissions against interest, the Committee found that she sought to exculpate herself and distance herself from the admissions, through the two later pieces of correspondence identified.

On the balance of probabilities the Committee therefore concluded that the Registrant had demonstrated a lack of integrity in her communications, and therefore found the allegation proved.

Allegation 12(c): PROVED

The Committee found that on 8 January 2016 the Registrant became aware of the fact that if she had practised as an osteopath without PII cover the possible consequences could be serious. The correspondence between her and the GOsC and her and Balens could have left her in no doubt about that.

Whilst the Committee accepted as credible her account up to and including 8 January 2016, the Committee found that her correspondence thereafter was confused and contradictory, lacked clarity and was a deliberate attempt by the Registrant to extricate herself and distance herself from previous admissions she had made about her working position in the period in question.

In particular the Committee found that the Registrant's assertion that she had only "very spasmodic hours of working as an osteopath" was at odds with the other communications between the Registrant and GOsC. Although not directly at odds with the 8 January 2016 phone call it was, the Committee concluded, an attempt in part to mitigate or avoid the consequences of having worked as an osteopath without PII cover. It was a misleading statement when compared to her correspondence with Balens and her telephone call with GOsC on 8 January 2016 in seeking to minimise the extent of her practice. Moreover it was an attempt to mislead that would be by the standards of honest and reasonable people

be considered dishonest, and further the Registrant must have known that by those standards her representation would be considered dishonest.

The Committee further considered that the assertion she made that she was practising as a sports therapist was deliberately misleading and was an attempt to limit the previously admitted scope of her practise. The Committee concluded that her further assertions that she had just treated family and friends lacked any real credibility when in the same document she had made admissions about working for a business, engaging in advertising apparently through the business, and had admitted to GOsC on 8 January 2016 having clients booked in to see her shortly thereafter.

The Committee concluded that in relation to the assertion that she was working as a sports therapist not an osteopath the Registrant's assertion would be considered dishonest by the the standards of honest and reasonable people. The Committee further determined that there was, by this stage of events, no realistic suggestion that the Registrant did not understand the importance of the distinction between sports therapist and osteopath; that she did not know that what she was representing was not true; and that she did not therefore know that by the standards of honest and reasonable people such a representation was dishonest.

The Registrant's further attempts to extricate herself from the situation she now realised was potentially serious, went further. The Committee found her assertion that she had PII cover as manual therapist since mid-January 2016 in that profession, to be both factually incorrect and a deliberate attempt to mislead the GOsc as to the true position.

The Registrant's cover for manipulative therapy began on 28 January 2016. Had the issue of PII cover not been the central subject of all her correspondence with Balens and the GOsC at this time, the distinction might have been forgiven as a generalised comment. However, the subject matter of her correspondence with her Regulator was aimed precisely at regularising her PII position. The assertion that she had cover from mid-January was wrong and she knew it to be so. Albeit such a representation did not provide a full period of cover whilst working, it was an effort to minimise the period and thereby her failings. That attempt was

dishonest by the standards of reasonable people and the Registrant must have known it to be so.

On the balance of probabilities the Committee therefore found Allegation 12(c) proved.

Unacceptable Professional Conduct (“UPC”)

The Committee then went on to consider whether the facts as found proved amounted to UPC. In embarking upon that course the Committee invited submissions from Mr. Gillespie on behalf of the Council.

GOsC Submissions

The Council submitted that having found that the registrant had been dishonest in her communications with the Regulator such conduct was extremely serious and would attract a degree of moral opprobrium. He submitted that dishonesty of any sort is serious and falls far short of the standards required of an osteopath. He further submitted that the dishonesty was in this case aggravated by being dishonesty directed towards the Registrant’s regulator. He submitted that the Regulator is under a duty to protect the public and the wider public interest. Therefore an attempt to mislead the regulator and frustrate its functions can be seen as a direct attack on the public interest. In and of itself Mr. Gillespie submitted that the Registrant was guilty of UPC by reason of the dishonesty alone.

Mr. Gillespie further submitted that the finding of a lack of integrity based as it was on a rush to get back into work for amongst other things financial motives, was a serious abrogation of the responsibility owed by the Registrant to the public.

The final submission Mr. Gillespie made was that the simple action of practising without PII cover was so serious in terms of the implications for patient safety and the protection of the public that in and of itself it amounted to UPC.

Finding on UPC

The Committee accepted the advice of the Legal Assessor. The Committee was directed to s. 20 of The Osteopaths Act 1993 ("the Act") which provides that 'Unacceptable Professional Conduct' is 'conduct which falls short of the standard required of a registered osteopath.' However the Committee was reminded of s.19(4) of the Act which makes it clear that not every falling short amounts to UPC. The Committee were directed to the authorities of *Roylance v GMC* [2000] 1 AC 311 and *Nandi v GMC* [2004] EWHC and advised that the act or omission in question needed to be serious.

The Committee were taken to the authorities of *Spencer v GOsC* [2012] EWHC 3147 and *Shaw v GOsC* [2015] EWHC 2721 (Admin) and reminded the conduct needed to be a serious falling short to a degree that attracted moral opprobrium.

The Committee were also taken to the Osteopathic Practice Standards 2012 ("The Standards"), and in particular standards D13 and 14 relating to professionalism.

In determining the question of UPC the Committee exercised its own judgment and bore in mind all those elements relied on by the Registrant in her evidence before them.

On the question of dishonesty the Committee determined that the dishonesty was extremely serious in the context of the Registrant's communication with her Regulator. The Committee accepted the submission made by the Council that the dishonesty was aggravated by that fact. The Committee was conscious that all Regulators depend to a degree upon the openness and honesty of their membership, and that such openness and honesty is one of the fundamental responsibilities of becoming a member or registrant of a regulated profession. The dishonesty was, certainly worthy of the moral opprobrium of the profession. The Committee therefore had little hesitation in concluding that on its own the dishonesty elements found proved amounted to UPC.

The Committee further determined that the demonstrable lack of integrity the Registrant showed in returning to work in the manner she did, occurred against a background of challenges in her personal life, [REDACTED]

The Panel found that the Standards it had been referred to had been breached.

However, the Committee did not accept that there was anything in the facts of the case presented to it that rendered the Registrant's behaviour in this regard anything other than serious and deplorable. The Registrant had put her own financial interests ahead of the safety of her patients and of the public at large by failing to take any sufficient steps to ensure she was working in accordance with the rules and regulations applicable to her profession. That lack of integrity was aggravated by the nature of the failing, namely the Registrant's failure to hold PII cover.

The Committee considered that the failure to hold appropriate PII cover put the public at significant risk, and damaged the reputation of the profession as a whole.

The Committee carefully considered whether any of the information provided by the Registrant altered their view as to the question of UPC. Whilst having some sympathy for the Registrant's personal circumstances during 2014 - 2015 the Committee concluded that there was nothing within the evidence provided by the Registrant that altered their determination of UPC in relation to the matters set out above.

In all the circumstances of the case the Committee were clear that the conduct found proved could amount to no less than UPC.

Sanction

The Committee considered the issue of sanction having heard submissions on behalf of the Council. The Committee accepted the advice of the Legal Assessor. The Committee considered the Indicative Sanctions Guidance and approached the process from the least restrictive sanction up.

The Committee paid careful attention to the personal mitigation presented by the Registrant. It noted in particular that the conduct found proved occurred at a time when the Registrant was trying to re-establish her personal life

The Committee bore in mind the lack of any previous complaints or findings against the Registrant.

The Committee had not seen evidence as to whether the Registrant had sufficient insight into her failings to enable it to conclude that there was no longer a real risk of a repetition of the behaviour found proved.

The Committee further considered that the serious nature of the behaviour found proved needed to be marked by a sanction that clearly marked the gravity of the offending behaviour thus ensuring public confidence in the profession would be maintained.

Admonishment

The nature of the conduct found proved was of such gravity that the Committee considered admonishment did not meet the public interest in this case.

Conditions

The Committee did not consider that the findings made allowed it to formulate workable and measurable conditions.

The Committee further found that there was insufficient evidence of insight to enable the Committee to conclude that the Registrant would comply with any conditions the Committee might formulate.

In any event the Committee concluded that the findings made were too serious to be dealt with by conditions.

Suspension

The Committee concluded that the least sanction necessary in the circumstances was one of suspension.

The Committee considered that the manner in which the Registrant came to be practising without PII and the period of time during which the Registrant practised without PII (in the region of 2 months) put her failings and consequent lack of integrity into a middle category. It could not be described as minor, but nor was it of the worst kind, particularly as dishonesty had not been found in this regard.

The Committee bore in mind that the Registrant's personal circumstances when returning to practice were not of her own making and provided a sufficient background for the Committee to comprehend how it was she found herself failing in her duties as a registered osteopath.

Whilst the Committee viewed the offence of dishonesty seriously it concluded that the dishonesty was reactive, not persistent and did not demonstrate to the Committee deep-seated, incurable, attitudinal issues.

Rather the Committee considered that it could be addressed by the Registrant during a period of suspension of sufficient time to enable her to properly reflect on her conduct, develop a real level of insight into the issues giving rise to that conduct and put in place mechanisms to ensure she did not behave in such a manner in the future.

The Committee concluded that in order to balance the need to protect the public and the wider public interest with the Registrant's own interests in getting back into work where possible an order for suspension was both necessary and proportionate in all the circumstances.

The Committee determined that the appropriate length of the order was one of 9 months.

Removal

Having concluded that suspension was the proportionate sanction in all the circumstances, the Committee thereafter concluded that removal was not necessary in the public interest.

There will be a review of the suspension approximately 1 month before its expiry.

On that occasion the PCC will be assisted by the following:

- Evidence in the form of reflective writing demonstrating a level of honesty, reflection, candour and insight into the nature of her failings, and the extent and effect of those identified behaviours;
- Evidence of steps she has taken to ensure she does not risk practising in the future without PII cover.

In light of the Committee's conclusion that there is an ongoing risk of repetition and therefore a residual risk to the public the Committee determined to impose an immediate interim order for suspension.

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 Registrant's name will be included in this report together with details of the allegations we have found proved and the sanction that that we have applied today.