

**GENERAL OSTEOPATHIC COUNCIL  
PROFESSIONAL CONDUCT COMMITTEE**

**Case No: 697/1581 & 722/1581**

**Professional Conduct Committee Hearing**

**DECISION**

**Case of:** Dinash Gaur

**Committee:** Richard Davies (Chair),  
Claire Cheetham (Osteopath)  
Pamela Ormerod (Lay)

**Legal Assessor:** Tom Kark QC

**Representation for Council:** Christopher Gillespie (Counsel)

**Representation for Osteopath:** Unrepresented

**Clerk to the Committee:** Ms Nyero Abboh

**Date of Hearing:** Monday 4 November 2019 – Wednesday  
6 November 2019

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**Summary of Decision:**

- 1 a), 3 a) are found **Proved** by admission.
- 1 b), is found **Proved**.
- 2 is found **Not Proved**.
- 3 b) is found **Not Proved**.
  
- 4 a) in respect of 1 b) is found **Proved**.
- 4 a) in respect of 3b) is found **Not Proved**.
  
- 4 b) in respect of 1 b) is found **Proved**.
- 4 b) in respect of 3 b) is found **Not Proved**.
  
- 4 c) is found **Not Proved**.
  
- 5 a) is found **Proved**.

5 b) is found **Proved**.

5 c) is found **Not Proved**.

The Committee found that the facts found proved amount to Unacceptable Professional Conduct.

The Committee determined that the appropriate sanction is one of suspension of practice for a period of twelve months with a review before the end of that period.

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**Allegation and Facts (as amended):**

The allegation is that the Registrant has been guilty of unacceptable professional conduct, contrary to section 20(1)(a) of the Osteopaths Act 1993, in that:

1. From 27 November 2016 to 19 March 2017 inclusive ("the First Relevant Period") and/or 20 March to 31 October 2018 inclusive ("the Second Relevant Period"), the Registrant:
  - a. was registered and/or practised as an Osteopath; and
  - b. failed to obtain and maintain professional indemnity insurance cover as required by Rule 3 of The General Osteopathic Council (Indemnity Arrangements) Rules Order 2015 ("the Insurance Rules").
2. In respect of the First Relevant Period and/or the Second Relevant Period, and contrary to Rule 7 of the Insurance Rules, the Registrant **deliberately** failed to immediately notify the Council that his professional indemnity insurance lapsed and did not comply with the specified requirements in the Insurance Rules.
3. During the First Relevant Period and/or during the Second Relevant Period, the Registrant: a) knew that in holding himself out to the public as a registered Osteopath, he was required to hold professional indemnity insurance; and/or b) treated patients despite knowing that he did not have appropriate professional indemnity insurance, thereby acting to the potential detriment of such patients and placing them at risk.
4. The Registrant's conduct as set out at paragraph 1**(b) and/or paragraph 2** and/or paragraph 3 **(b)**:
  - a. was misleading; and/or
  - b. demonstrated a lack of integrity; and/or
  - c. was dishonest.

5. In relation to the Second Relevant Period, submissions were made to the Council on behalf of the Registrant through his solicitor, to the effect as set out in Annex A, which:
  - a. were misleading; and/or
  - b. demonstrated a lack of integrity; and/or
  - c. were dishonest.

## **ANNEX A**

- i. [The Registrant's] ex-wife had wide-ranging control of his business administration functions, including the arrangement of his professional indemnity insurance.
- ii. [The Registrant] relied on oral representations made by his ex-wife that his professional indemnity insurance would renew automatically in March 2018 and no action was required on his part.
- iii. [The Registrant] had no reason to believe at the time that the oral representations made by his ex-wife were inaccurate.

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### **Preliminary Matters**

The Council was represented by Christopher Gillespie. The Registrant was unrepresented.

A preliminary application was made by the Council to join case 697/1581 and 722/1581.

The Registrant did not object to the application.

The Committee received advice from the legal assessor.

There was a clear nexus between the allegations which related to the two different periods that the Registrant was said to be uninsured. There was no prejudice to the Registrant which would make hearing those cases together unfair or unjust.

The application was granted, and the two sets of allegations were allowed to be joined and heard as a single case.

The Council applied to amend allegation 2 to insert the word 'deliberately' between the word 'Registrant' and 'failed'. The Council also applied to amend allegation 4

to remove the reference to paragraph 2 and insert the letter 'b' after the references to paragraph 1 and paragraph 3.

The stem of charge 4 would therefore read as follows:

"The Registrant's conduct as set out in paragraph 1b and/or 3b ..."

The Registrant did not object to the proposed amendments.

The Committee considered Rule 24 and received advice from the legal assessor.

The Committee was satisfied that the amendments were desirable and by limiting the scope of paragraph 4 were helpful to the Registrant. The Committee was satisfied that no injustice would be caused by the amendments and allowed the amendments applied for. They are shown in bold on the amended allegations above.

The Registrant admitted the following allegations:

1 a)

1 b) (on the basis the failure was not deliberate)

3 a)

Being admitted allegations 1 a) and 3 a) were found **Proved**. 1 b) was considered by the Committee along with the allegations not admitted.

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## **Decision**

### **Background**

The Registrant was first registered with the Council on 8 May 2000.

He was whilst registered with the Council required by Rule 3 of the General Osteopathic Council (Indemnity Arrangements) Rules 2015 to maintain professional indemnity insurance cover.

The Registrant was advised when he commenced practice that he should forward a copy of his professional indemnity insurance to the Registration Department, which he duly did. Between 2010 and November 2015 he voluntarily relinquished his registration but regained it on 20 November 2015 (p.24/107).

In November 2017 he was served with a divorce petition by his wife.

On 23 October 2018, the Registrant contacted the Council to inform it that he had recently discovered that he had been uninsured since March 2018 (p.7/107, p.27/107).

Upon investigation by the Council it transpired that during two periods when he had been practising as an Osteopath he did not have indemnity insurance. Those periods were 27 November 2016 to 19 March 2017 (the first relevant period) and 20 March 2018 and 31 October 2018 (the second relevant period).

During the two relevant periods set out in the allegations the Registrant did not have the professional indemnity insurance he was required to have.

With regard to the second relevant period the Council's record notes that the Registrant [REDACTED] therefore not checked with his insurers, Balens, whether he was insured or not (p.27/107). When he eventually did so, he discovered that he was not.

The solicitors acting for him [REDACTED] wrote to the Council on 30 October 2018, 8 November 2018 and 15 November 2018 and made the assertions on his behalf as set out by the Council in Annex A to the allegations.

The Council's case was that the Registrant had deliberately failed to notify the GOsC when his professional indemnity lapsed in respect of the first and second period of non-insurance. Further, that he continued to treat patients knowing that he was not insured during both periods and that this was misleading, lacked integrity and was dishonest.

As described below the Registrant claimed that his wife was in charge of his finances and the administration of his business. The fact that he was uninsured was attributable to her and he was until October 2018 unaware that this was the position.

## **Evidence**

By a statement dated 18 April 2019 Matthew Redford Director of Registration and resources produced a number of documents held on the Council's records.

A statement was also produced dated 13 September 2019 from Mr Joe Balen of the insurance brokers Balens.

The bundle of documents marked 'C1' was admitted into the record and read by the Committee. It included correspondence from the Registrant's solicitors.

The Registrant gave evidence and produced one document D1, demonstrating that he held insurance from November 2018 with a firm called 'Howdens'.

On 23 October 2018 the Registrant advised the GOsC that he had found out he was uninsured since March 2018 (p.27/107).

The Council emailed the Registrant the next day, 24 October 2018 (p.29/107), asking him for a copy of the insurance that he had had in place until 18 March 2018 and the insurance that he said he had taken out on discovering that he was uninsured. This email referred to a conversation which had taken place between the writer, Lorcan McCormack-Lean and Mr Gaur.

In a letter dated 30 October 2018 and written by the Registrant's solicitors (p.30/107), an explanation was provided on behalf of the Registrant as to how the situation had arisen. In short, the Registrant through his solicitors stated that his wife, with whom he had been undergoing an acrimonious divorce, had been in systematic wide-ranging control of all his business administration functions and complete financial control of his practice together with his personal income since 1994. The Registrant stated that his wife had told him in March 2017 (by text) that she had renewed his insurance and she had given further reassurance in or around December 2017 that his insurance would renew automatically thereafter.

Neither the Registrant in his communications with the Council nor his solicitors in their letter made any reference to the fact that there had been a previous period when the Registrant had been without insurance, namely the first relevant period. This came to light when the Council contacted Balens the insurance brokers.

Mr Balen in a witness statement (p.41/107) stated that the Registrant was insured between 27 November 2015 and 26 November 2016. The Registrant had paid by direct debit. This insurance was referred to in email correspondence (p.47/107) between an email address for the Registrant and Balens. The emails purported to be from 'Dinash' the Registrant's first name and were from an email related to him.

A document [REDACTED], was headed 'Chronology and Background Summary on behalf of the Respondent' (p.33/107) [REDACTED] on the Registrant's behalf. An entry for 1 January 2016 refers to the [REDACTED] him moving out of the family home to reside alone at '[REDACTED]' which the Registrant confirmed was the address to which all his correspondence was sent.

By 19 April 2017, the Registrant's annual insurance policy had been paid for by credit card. This policy started on 20 March 2017 and ended on 19 March 2018.

Mr Balen noted that all correspondence by letter was sent to the Registrant at the address above. This included numerous policy renewal reminders.

The Registrant was uninsured with Balens between 27 November 2016 and 19 March 2017 (the first relevant period) and 20 March 2018 and 31 October 2018 (the second relevant period).

An attempt had been made to take out a policy in December 2016 but there had been a problem with the cheque that had accompanied the application. This failure of the renewal was referred to in Balen's correspondence to the Registrant between 21 November 2016 and 6 January 2017. A letter of 6 January 2017 made clear that the Registrant's insurance had been cancelled because of non-payment.

In March 2017 there was email correspondence between Balens who wrote to the Registrant by name in which there was discussion concerning renewing insurance (p.57/107) and there was an application to backdate that to November 2016 in order to cover the first relevant period. This was subsequently refused due to the amount of time which had elapsed.

The insurance was restarted and paid for by credit card. The insurance ran from 20 March 2017 to 19 March 2018.

On 12 March 2018 Balens wrote to the Registrant (p.62/107) to remind him about the need to renew his policy by 20 March 2018. On 26 March 2018 Balens wrote (p.63/107) to the Registrant to inform him that there was no insurance cover in place for any current work he was undertaking. The cover had expired on 19 March 2018. As with all other correspondence that letter was sent to the address at [REDACTED].

On 22 October 2018 the Registrant was said to have called Balens (p.44/107) in order to "double check" the state of his insurance cover. On finding he was uninsured a request was again made by the Registrant for this cover to be backdated to March 2018 but the insurers (Zurich) refused to do so for the same reasons as previously stated. Balens emailed the Registrant on 9 November 2018 (p.67/107) to inform him that cover could only start from 22 October 2018.

On 12 November 2018 the Registrant indicated in an email to Balens he had made alternative insurance arrangements (p.45/107).

In a letter dated 8 November 2018 (p.102/107 of the bundle), solicitors for the Registrant wrote to the Council and reiterated that the failure to obtain insurance in 2018 was an administrative oversight [REDACTED]. It was stated that the Registrant operated his practice for three days a

week and had undertaken 367 appointments with patients between 20 March 2018 and 23 October 2018 (essentially the second relevant period).

The solicitors also wrote to the Council on 15 November 2018 (p.103 – 104/107). [REDACTED] and specifically his reliance on her alleged verbal representation that the insurance would renew automatically in March 2018. It was stated on the Registrant's behalf that his wife took sole responsibility for the administration of his affairs including his financial dealings and the arrangement of his professional indemnity insurance throughout. Further the letter stated that in a conversation on or around 23 December 2017 his wife informed him that his insurance would renew automatically, and no further action was required on his part.

In a further letter (p.105/107) dated 3 June 2019 in relation to the first relevant period, the solicitors claimed that any emails written to Balens had been written by the Registrant's wife and, in terms, that any payment must have been made by her as well. With the letter is a document purporting to prove or demonstrate the Registrant's case: page 107/107. This document appears to be a screenshot of a text message from the Registrant's wife giving him an assurance that his insurance was in place and admitting that she accessed his private email account.

The Registrant who was unrepresented gave evidence on his own behalf.

The essence of his evidence was as follows:

He was deeply sorry at what had occurred and he described it as a massive oversight on his behalf.

His wife had told him in 2017 that 'everything was fine'.

[REDACTED]

He said it was automatic for him to hand over all correspondence to his wife at her place of residence and did so every Monday having collected it at [REDACTED] and then passing it to her without examination.

All of his insurance was handled by his wife who he described as a 'sort of practice manager'. Until 1 January 2016 he had lived at the home address and he had then moved into one room at [REDACTED] which was being renovated. He said however that he did not open the correspondence which arrived there.

[REDACTED]



He said he would have no motivation to practise while uninsured and his practice consisted of treating family and friends.

█ he said that he had been reassured in December 2017 that all insurance was covered.

It was only in October 2018 that he had checked with Balens about the state of his professional indemnity cover. He discovered he had not been insured and he stopped practising straight away.

He explained that, as November had previously been his date for reregistration and reinsurance, he had expected any renewal to 'roll over' to this period.

He was therefore unaware that a March renewal was expected in 2018 and had no knowledge of the previous lapse of insurance for the first relevant period.

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### **Submissions of the Parties on the Facts**

The GOsC submitted that the Registrant's evidence was incredible, and it was not credible that he had passed total responsibility for all professional matters to his wife. Nor was it credible that his wife should impersonate him in emails as it was claimed she had.

The Council suggested that the screenshot of the text at p.107/107 should be approached with 'caution' because there was no context for it.

The Registrant submitted that he admitted he had made 'a huge mistake' but that he had not been dishonest. He had trusted his wife and been reassured by her despite the increasingly acrimonious nature of the divorce.

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### **The Committee's Determination on the Facts**

The Committee has already found allegations 1 a); and 3 a) **Proved**.

The Committee has accepted the advice of the legal assessor. All of the decisions have been made upon the balance of probabilities bearing in mind that it is the duty of the Council to prove each allegation. The Committee has considered whether there is clear and cogent evidence to establish each allegation and that

allegations which may be regarded as unusual or serious require careful consideration and clear and cogent evidence before they can be found proved.

The Committee took careful account of the Registrant's evidence. The Committee was troubled by the vagueness of some of that evidence but also had regard to the fact that he was of good character which was a significant factor in the circumstances of this particular case. The Committee also noted that the Council had called no live evidence to rebut any of the defendant's assertions about who had dealt with the Council or with Balens.

The Committee finds as follows in relation to each remaining allegation:

Allegation 1 b) is found **Proved**.

The Committee was satisfied that the Registrant had failed to maintain insurance cover, which he had a duty to hold, in relation to both relevant periods. This was admitted by the Registrant in evidence and was clearly proved by the evidence of Mr Joe Balen.

Allegation 2 is found **Not Proved**.

Particularly in relation to the second period, the Committee was very concerned about the Registrant's evidence that he had not realised he was not insured from March 2018. However, the Council has failed to adduce sufficient clear and cogent evidence as to who was dealing with the correspondence in both periods after November 2016 and March 2018. The Council was unable to controvert the Registrant's clear evidence that it was his wife.

The Committee was further troubled by the screenshot of the incomplete text conversation at p.107/107 which, if accepted, clearly indicated that the Registrant's wife was at least dealing with some type of insurance and had logged onto and used his email account stating that she had 'signed' the documents on his behalf.

The Committee also noted that the Council had decided not to call direct evidence from anyone at Balens who was said to have had direct contact with the Registrant, nor was there supporting evidence from transcripts or recordings of telephone conversations between them.

Allegation 3 b) is found **Not Proved**.

For the reasons set out above, the Committee is not satisfied that the Council has discharged the burden of proof either to the effect that the Registrant knew about the lapse of insurance in period 1 or thereafter in period 2. Despite its significant concerns about the suggestion that the Registrant had abrogated his responsibilities as comprehensively as he said he had, there is insufficient evidence to allow it to conclude that he was aware that his insurance had lapsed.

Allegation 4 a) (misleading) in relation to 1 b) is found **Proved**.

The Committee finds that it was misleading that the Registrant continued to treat patients when he was not insured. His reliance on his wife's assurances [REDACTED] was an abrogation of his responsibility and he would not and could not have had sufficient assurance that he was insured. Knowing, as he did that it was his duty to have professional indemnity insurance, it was misleading of him to continue to treat patients without checking directly with the insurers regardless of his personal circumstances. All patients are entitled to expect the same high standards from the treating Osteopath whether or not they are family, friends or acquaintances. Any patient is entitled to assume that the treating Osteopath has complied with their professional obligation to be insured and any patient consenting to receive treatment from an Osteopath who turns out not to have been insured would in the Committee's view have been misled and have the right to complain. Professional indemnity insurance is a statutory requirement and patients are entitled to assume it has been complied with.

Having found 3 b) Not Proved, 4 a) in respect of 3 b) is also found **Not Proved**.

Allegation 4 b) (lacking integrity) in respect of 1 b) is found **Proved**.

The Committee was persuaded upon the evidence that the Registrant's reliance on his wife's assurances [REDACTED] was an abrogation of his responsibility and he should not and could not have had sufficient assurance that he was insured.

The abrogation of responsibility in this case was a significant one in relation to the issue of insurance [REDACTED]. The Committee notes that the Registrant had moved out of the family home as early as January 2016 but failed to take over responsibility for his professional affairs despite the acrimony within their relationship.

Knowing, as he did that it was his duty to have insurance, it was misleading of him to continue to treat patients without checking directly with the insurers and this demonstrates a serious lack of integrity. Any patient is entitled to assume that the treating Osteopath has complied with their professional obligation to be insured and any patient consenting to receive treatment from an Osteopath would trust the treating Osteopath to have behaved with integrity in all their dealings including being sure that the Registrant was insured to treat patients.

Having found 3 b) Not Proved, 4 b) in respect of 3 b) is also found **Not Proved**.

Allegation 4 c) (dishonesty) is found **Not Proved**.

Despite the Committee's finding as to serious the lack of integrity demonstrated by the Registrant as described above, the Committee did not have sufficient cogent evidence to allow it to conclude that the Registrant had practised as an Osteopath deliberately or knowingly not having insurance. Had it found that he did have such knowledge the Committee would have found this serious allegation proved.

The Committee, despite its concerns as described, was unable to find that the Registrant's account in respect of his wife's control of his professional affairs, including insurance, although exaggerated, was clearly untrue.

Again, the Committee took particular note of the screenshot of the text relating to 27 March 2017 in which the Registrant's wife appeared to accept responsibility for renewing some sort of insurance and admitted logging into the Registrant's email account and using his electronic signature to do so.

Having found 3 b) Not Proved, 4 c) in respect of 3 b) is also found **Not Proved**.

Allegation 5 a) (misleading in respect of the solicitors' letters) is found **Proved**.

The letters of 30 October 2018, 8 November 2018, 15 November 2018 and 3 June 2019 were written upon the Registrant's instructions. The solicitors were accordingly acting as the Registrant's agents and he is therefore responsible for factual assertions made in those letters. The Registrant accepted that principle in the course of his evidence.

The letters clearly make the assertions set out in the schedule at Annex A and state that the Registrant's wife took sole responsibility for the administration of the client's affairs and for the arrangements of his membership of the GOsC and the arrangements for his professional insurance. They also assert that he was reliant on her oral representations that his professional indemnity insurance would renew automatically.

In these respects, the Committee was satisfied that the assertions were misleading. In evidence the Registrant admitted that throughout he had access to his own mail and email, if he had chosen to look at them, and that his email account was also upon his personal telephone. Whilst his wife may have had access to his bank account, the account was in his name and with his sole signature and he had knowledge of transactions on it. It was the Registrant who in 2015 had applied for re-registration and had filled in the forms (p.14/107 to p.22/107).

It was an exaggeration for the Registrant to claim through his solicitors that his wife had as wide-ranging control as was stated, or that he was reassured that no action was required on his own behalf or that he had no reason to believe the oral representations made by his wife may have been inaccurate. The suggestion through the letters was that the Registrant did not need to do more as his wife effectively had total control of his business administration and his professional insurance. This could not be regarded as correct given his professional and statutory obligations as regards professional indemnity insurance.

Moreover, the evidence demonstrates that the Registrant did still exercise a degree of control over his registration with the GOsC as well as over his mail, bank accounts, email and telephone.

It was therefore misleading to exaggerate his wife's control in the way that was done through the solicitors' letters.

Allegation 5 b) (lacking integrity) is found **Proved**.

For the reasons given above the Committee is persuaded that the Registrant exaggerated the degree of his wife's control over his professional affairs and his reliance on her oral representations and thereby implicitly minimised his own responsibility. The letters were written to the Registrant's professional regulatory body in an attempt to cast his failure to hold insurance in a more favourable light. This demonstrated a lack of integrity.

Allegation 5 c) (dishonesty) is found **Not Proved**.

Although the solicitors were no doubt acting upon the client's instructions and writing the letters on the Registrant's behalf, as the Registrant admitted, there is no evidence that the Registrant specifically approved the wording of the letters rather than that they reflected his general instructions. Although the effect of letters was misleading and lacked integrity, in the sense that they exaggerated his wife's degree of control over his financial and business affairs, and his reliance upon her oral representations, in the correspondence and in his oral evidence he accepted his responsibility to ensure insurance was in place. Thus, the Committee did not have sufficient evidence to satisfy it that it was the Registrant's specific intention deliberately to mislead his regulator through the assertions made in the letters.

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### **Submissions on Unacceptable Professional Conduct ("UPC")**

The Council submitted that the facts found proved amount to UPC.

It accepted that there was no evidence of actual harm to patients but submitted that patients were nevertheless put at risk by being treated by the Registrant when there was no indemnity insurance in place.

The Council pointed out that there were two separate lapses and an abrogation of the Registrant's duties.

Mr Gillespie pointed out that there were a number of breaches of the Osteopathic Practice Standards (2012) which included D14 acting with integrity and D17 upholding the reputation of the profession through your conduct.

The Registrant submitted three testimonials (D2-D4) which the Committee read.

He submitted that having reflected upon the matter overnight he could see objectively how the case might be viewed by the public. The Registrant did not wish to make submissions upon the issue of UPC and wished to leave it up to the discretion of the Committee.

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### **The Committee's Findings on UPC**

The Committee received further advice from the legal assessor and accepted that advice. It recognised that at this stage it must exercise its own judgment. It also accepted that not every departure from Osteopathic Practice Standards automatically results in a finding of UPC. It acknowledged its obligation to uphold the overarching objective as regards the public interest.

The Committee finds that the facts found proved do amount to UPC.

Here there were repeated serious breaches which included breaches of integrity which the Committee was particularly concerned about.

The facts found proved showed that the Registrant had treated a large number of patients during both relevant periods when he was not indemnified. The Committee had also found that patients who were treated during these periods would have been misled because they would have assumed that he had complied with the legal obligation to hold professional indemnity insurance.

Had any harm been caused during either of these periods there was a risk that the patient concerned would have had no redress or recompense.

There were 'red flags' which the Registrant ignored as regards the relationship with his wife as it affected the validity or existence of his professional indemnity

insurance. There was a failure by him to accept what was his personal responsibility.

There were clear breaches of standards D14 and D17.

D14 requires Registrants to 'act with integrity in your professional practice'.

D 17 refers to upholding 'the reputation of the profession through your conduct'.

The Committee further considered that standard A4 was engaged. Patients may not have consented to treatment if they had known that, should something go wrong, they might be unable to obtain compensation.

This was not mere inadvertent inattention, nor was it momentary; the Registrant consciously chose to abrogate his professional obligations by transferring responsibility to his wife.

Further there was a serious lack of integrity in condoning the application of his signature and declarations made on his behalf on important legal documents without any personal oversight.

The Committee also found that the letters written by his solicitors to his professional regulator were misleading and lacked integrity in that they exaggerated the role his wife had adopted in an attempt to minimise his professional responsibility.

The Committee has found both in respect of the failure to have professional indemnity insurance and in relation to the content of the solicitors' letters that the Registrant's behavior lacked integrity. Integrity expresses the higher standards which society expects of professional persons, and professions expect from their own members.

His conduct has also damaged the reputation of the profession. Other members of the profession would regard this behavior as deplorable.

In all the circumstances the Committee views this behavior, which was serious, as a clear case of UPC.

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## **Submissions on Sanction**

In relation to the issue of sanction the Council submitted as follows.

Referring to the Hearings and Sanctions Guidance (applicable from 31 January 2018) the Council referred to the following aspects.

(Page 7 para 26) The Public Interest relates to the overarching objective which includes the protection of the public and maintaining public confidence in the profession, as well as declaring and upholding appropriate standards.

The Council reminded the Committee of the importance of proportionality and reminded the Committee to start with the lowest sanction and to work upwards in so far as that might be necessary - choosing the least severe sanction which would appropriately deal with the case.

The Committee was reminded that it should look for insight and consider remediation.

It was pointed out that the Registrant did express contrition and did apologise for the fact that he had not been insured for the two periods.

In relation to aggravating and mitigating features the Council submitted that there was an issue of patient safety in this case. The aggravating features were that the Registrant's shortcomings had arisen on more than one occasion and both were prolonged.

The Council submitted that there were also mitigating factors which included evidence of the Registrant's personal circumstances leading up to the allegations.

- The Registrant's shortcomings had arisen at a time of considerable personal stress.
- He did take steps to arrange insurance when he was advised he was uninsured;
- He expressed his apologies to the Committee;
- There was no actual harm to patients;
- There was no repetition of the behavior since the last incident.
- The Registrant was of previous good professional character until these incidents and has been since.

The Council submitted that this would not be an appropriate case for a conditions of practice order.

It was pointed out that in relation to suspension this was appropriate for more serious offences, where there has been a serious breach of the standards but the conduct is not fundamentally incompatible with membership of the profession.



The Council specifically submitted that the Registrant's behavior in this case was not fundamentally incompatible with membership of the profession and added that this is not therefore a 'removal case' which was the most serious sanction which could be applied.

The Registrant submitted that:

- He accepted the Committee's findings fully;
- The Council had been very fair;
- He made a 'wholehearted' apology and said that he understood that the offences were of his own making;
- He said he now had full and total control over his own affairs and had synchronized insurance renewal and his professional registration for November each year together with arranging diarised reminders;
- He said he had learned a very big lesson;
- He said he had no savings and suspension would put an enormous financial pressure upon him;
- He relied again upon his character references;
- He urged the Committee to impose no more than an admonishment;

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## **Determination on Sanction**

Before retiring to consider the question of sanction the Committee received legal advice and accepted that advice.

The Committee took fully into account its duties when considering sanction in relation to the public interest in upholding the standards of the profession as well as proportionality, weighing up the public interest with the interests of the Registrant. Further it reminded itself that the purpose of sanction is not to be punitive although it may have a punitive effect. It had regard to the relevant Hearings and Sanctions Guidance.

The Committee regarded the aggravating features here to be:

- the repeated breaches of the duty to have professional indemnity insurance -each relevant period being of some notable length;
- the number of patients admitted to have been put at risk;
- the recklessness with which the Registrant had abrogated his professional responsibility over a long period of time which resulted in two lengthy periods when he was without professional indemnity insurance.

The mitigating features were:

- there was no actual harm to patients;

- at the time of these matters the Registrant's life was subject to considerable personal stress;
- the testimonial evidence attesting to the Registrant being hardworking, honest and trustworthy and to his professional knowledge;
- there was a measure of remorse and apology;
- he acted promptly to take out insurance upon being told after the second period that he was uninsured;
- the Registrant was of good character in the sense that he had an unblemished history having been in practice for a long time;
- the Registrant had engaged with these proceedings and made some admissions which represented an indication of emerging insight.

As regards insight the Committee considered that at a late stage in these proceedings there were signs that its depth and quality had begun to develop. However, the Committee did not consider this was comprehensive in relation to the dangers to which patients were subject by his abrogation of responsibility. The Committee considered his insight as regards the implications of his conduct for patients and the reputation of the profession to be superficial. He was imprecise in addressing the seriousness of the facts found proved. In these circumstances the Committee could not be properly satisfied that the risk of repetition could be regarded as insignificant.

The allegations found proved demonstrated that during two significant periods the Registrant practised Osteopathy upon patients when he was not insured and thus put them at risk. The Committee has found that the breaches by the Registrant demonstrated a lack of integrity.

Further, after the periods when the Registrant did not have professional indemnity insurance his solicitors, upon his instructions, wrote misleading letters in an attempt to minimise the Registrant's responsibility for what had occurred.

The Committee approached the question of sanction in the way advised, considering first the lowest sanction possible which was admonishment. Admonishment is appropriate when the allegations are at the lower end of the spectrum.

The Committee first considered admonishment. This was not an isolated incident. Not having insurance is a fundamental breach of an Osteopath's duties. In the circumstances of this case the Registrant similarly breached his duties as an Osteopath in demonstrating a lack of integrity. In light of the potential harm to a large number of patients the Committee does not consider that admonishment would be sufficient to meet the gravity of what occurred. It was not a case at the lower end of the spectrum.

Again, the Committee was not persuaded that the Registrant has full insight into his behaviour. He chose to abandon his responsibilities and he acted without integrity where integrity is intrinsic to the practice of osteopathy. The Committee considered that the public interest outweighs those of this individual practitioner. He began to address the seriousness of what had occurred at a very late stage in these proceedings. In any event the Committee considered admonishment wholly insufficient to mark the gravity of what occurred.

The Committee then considered imposing conditions of practice. The Committee did not consider that conditions of practice were appropriate. No practical conditions could be devised which met the misconduct found proved. Further, the allegations found proved were too serious to be marked by conditions of practice.

The Committee then considered suspension. The Committee again reminded itself that it must apply the least possible sanction sufficient to meet the public interest and that if it imposed suspension it should impose the shortest period that it properly could in the circumstances of the case.

The lack of integrity is a significant finding and should be marked by a sanction that properly reflects the damage done to the reputation of the profession by this conduct.

Having regard to paragraph 71 of the Hearing and Sanctions Guidance the Committee considered that there had been a serious breach of the Osteopathic standards but given the Registrant's developing insight the conduct was not fundamentally incompatible with continued registration. The Committee considered that suspension would be sufficient to protect the public and maintain confidence in the profession. It determined that the sanction of suspension was appropriate to send a message to the Registrant, the profession and the public that the Registrant's conduct was deplorable and cannot be countenanced.

The Committee did have regard to the factors which may indicate removal from the register. It noted that two of the criteria listed in paragraph 78 were present in this case namely 78 (a) and (b). However, it did not consider that removal would be proportionate because the public interest could be appropriately satisfied by the imposition of a suspension order. The Committee recognised that it should impose the least severe sanction compatible with its obligations to uphold the public interest while simultaneously taking account of the Registrant's own interest.

The Committee also noted that the Council had stated categorically that in its view this is not a case for removal from the register and also noted that the Registrant had now taken steps to ensure he was insured (D5).

The Committee determined that a lengthy period of suspension is necessary and proportionate as a signal to the profession that choosing to abrogate responsibility in the way the Registrant had done was completely unacceptable. The necessity to impose such a period outweighs the Registrant's interests despite the adverse effects it may have upon him.

Taking into account the seriousness of the findings made, the aggravating and mitigating features as well as the risk posed to patients, the least period of suspension possible which properly marks the behavior, sends a signal to the profession, and permits the time necessary for the Registrant further to develop his insight is one of 12 months.

A review will be required prior to the expiry of this suspension.

The information that may be of assistance to the Reviewing Committee would include:

- a reflective statement on the lessons learnt from undergoing these proceedings setting out the Registrant's understanding of his obligation to protect patients and the reputation of the profession and to ensure he behaves with integrity;
- details on the measures he has put in place to ensure he maintains control of critical matters of administration pertinent to the Osteopathic Practice Standards;
- any references he might wish to submit from any other employment whether paid or unpaid.

This suspension will take effect will take effect after 28 days from the date of this decision being notified to the Registrant unless an appeal is lodged.

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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 the 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 the Committee has applied today.