

**GENERAL OSTEOPATHIC COUNCIL**  
**PROFESSIONAL CONDUCT COMMITTEE**

**Case No: 840/7608**

**Professional Conduct Committee Hearing**

**DECISION**

**Case of:** Jessica Turner

**Committee:** Andrew Harvey (Chair)  
David Probert (Osteopath)  
Sue Ware (Lay)

**Legal Assessor:** Peter Steel

**Representation for Council:** Michael Bellis

**Representation for Osteopath:** Herself

**Clerk to the Committee:** Sajinee Padhiar

**Location:** Virtual – by remote video-conference (GoToMeeting)

**Date of Hearing:** 14 – 16 December 2022

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**Summary of Decision:**

**Stage One**

**Decision on Facts (Case No.840/7608)**

The allegation as amended is that Ms Jessica Turner (“the Registrant”) has been guilty of unacceptable professional conduct, contrary to section 20(1)(a) of the Osteopaths Act 1993, in that:

1. From 01 September 2013 to 03 August 2014 and/or 01 September 2015 to 29 February 2020 (inclusive of both dates), the Registrant:

a. was registered and/or practised as an osteopath; **Admitted and found proved**

b. failed to obtain and maintain insurance cover as required by Rule 3 of the General Osteopathic Council (Professional Indemnity Insurance) Rules Order of Council 1998 ("the 1998 Indemnity Rules"), and/or Rule 3 the General Osteopathic Council (Indemnity Arrangements) Rules Order of Council 2015 ("the 2015 Indemnity Rules"). **Not admitted in respect of 01 September 2013 to 03 August 2014. Admitted and found proved in respect of the dates 01 September 2015 to 29 February 2020 inclusive. Found proven in respect of 01 September 2013 to 03 August 2014.**

2. Between 01 March 2020 and 18 August 2021 the Registrant:

a. had the registration status of non-practising at the GOSC;

**Admitted and found proved**

b. practised as an osteopath during all or part of this period;

**Admitted and found proved**

c. failed to obtain and maintain insurance cover as required by Rule 3 of the 1998 Indemnity Rules and/or Rule 3 of the 2015 Indemnity Rules for the period of time she was practising as an osteopath. **Admitted and found proved**

3. The Registrant failed to immediately notify the GOSC that her professional indemnity insurance cover lapsed, as required by Rule 8(2) of the 1998 Indemnity Rules and/or Rule 7 of the 2015 Indemnity Rules. **Not admitted. Found proved.**

4. During all or part of the periods of 01 September 2013 to 03 August 2014 and/or 01 September 2015 to 29 February 2020 and/or 1 March 2020 to 18 August 2021 (inclusive of both dates), the Registrant:

~~a. knew that in holding herself out to the public as a registered osteopath, she was required to hold professional indemnity insurance;~~

~~b.~~ treated patients despite not having appropriate professional indemnity insurance, thereby acting to the potential detriment of such patients and placing them at risk. **Admitted and found proved**

5. By reason of the matters alleged at paragraph 1b, and/or 2b and/or 2c, and/or 3 and/or 4~~a and/or 4b~~ above, the Registrant's conduct:

a. was misleading; **Admitted and found proved** and/or

b. lacked integrity.~~and/or~~

~~c. dishonest~~ **Admitted and found proved**

6. By reason of the matters alleged in paragraphs 1b. and/or 2b. and/or.2c. above, your conduct was dishonest in that you knew that in holding yourself out to the public as a registered osteopath, you were required to hold professional indemnity insurance. Not admitted. Not proved

7. By reason of the matters alleged in paragraph 3 above, your conduct was dishonest in that you knew that you were required to notify the GOSC immediately that your indemnity insurance cover had lapsed. Not admitted. Not proved.

8. By reason of the matters alleged in paragraph 4 above, your conduct was dishonest in that you treated patients knowing you did not have appropriate professional Indemnity insurance in place. Not admitted. Not proved.

## Stage Two

## **Summary of Finding on Unacceptable Professional Conduct**

Unacceptable Professional Conduct found proved.

### **Stage Three**

#### **Sanction**

Suspension for a period of three months and with a review hearing.

#### **Details of Decision:**

#### **Preliminary Matters:**

1. The parties and the Committee introduced themselves. The Registrant indicated that she was generally known by her married name (Mrs Critchley) and that was how she was referred to throughout the hearing.

#### **Declarations:**

2. Prior to the commencement of a hearing, each member of the Professional Conduct Committee (PCC) is required to declare that they know of no reason why they should not sit upon the case. This declaration is intended to ensure that fairness is done and is seen to be done to all parties.
3. Each member of the PCC made this declaration.

#### **Bundles**

4. The Chair took the parties through the documentation to ensure everyone had the same material.

#### **Amending the Allegation**

5. Mr Bellis, acting on behalf of the Council, applied to amend the allegations as marked in red under the heading "**Summary of Decisions**" above. Mr Bellis submitted that the intention behind the amendments was to clarify and particularise the Council's case on dishonesty. Mr Bellis said that the allegation of dishonesty was contained in the initial allegations put to the Registrant. The proposed additional allegations (6, 7 and 8) simply particularised why the Council said that those actions were dishonest. This amendment was agreed by the Registrant.

6. The Committee accepted the advice of the Legal Assessor about its ability to permit amendment of the allegation under Rule 24 of the General Osteopathic Council Professional Conduct Committee (Procedure) Rules Order of Council 2000 (the Rules).
7. Having considered the proposed amendments and the oral representations the Committee concluded that there would be no injustice in acceding to the application, which had been agreed by the Registrant. The Committee accepted that the effect of the allegation was to clarify and particularise the allegation of dishonesty, about which the Registrant was already aware. It therefore allowed the amendments as set out above.

### **Admissions**

8. Following the conclusion of the application for amendments to the allegations, the Registrant made a number of admissions. These, together with the findings of fact consequent upon them, are set out under the heading "**Summary of Decisions**".

### **Background, Summary of Evidence and Submissions**

#### **Opening**

9. Mr Bellis referred the Committee to the Council's skeleton argument and explained the background to the allegations before the Committee as follows. The Registrant had first registered as an osteopath on 6 August 2010. She remained on the Register as a practising osteopath until 1 March 2020 when she requested that her registration status be changed to non-practising. The Registrant was advised her status had been changed back to practising by email dated 5 January 2022
10. The Registrant emailed the Council on 18 August 2021 and reported that she had been practising without insurance for a period of time. She indicated in correspondence with the Council that she had been treating patients during some of the time that she was without insurance.
11. Mr Bellis said that the Registrant was first insured by the British Osteopathic Association, now called the Institute of Osteopathy (IO), from 21 September 2010 and had continuous cover until her policy expired on 31 August 2013. Despite the IO sending a number of reminders, her cover lapsed on 31 August 2014. The Registrant was therefore not insured by IO or apparently by anyone else from 1 September 2013 until 3 August 2014.
12. The Registrant took out a further policy with the IO, which commenced on 4 August 2014 and ran until 31 August 2014, and subsequently a policy

which ran from 1 September 2014 until 31 August 2015. On 12 August 2015, the IO sent the Registrant an email advising her that her membership would change to a full member and reminding her to renew her indemnity insurance. In addition a renewal postcard was sent to her in August 2015. A final reminder letter was sent to the Registrant requesting that she confirm her renewal instructions in September 2015. The IO sent the Registrant a further email on 2 October 2015 advising her that as her insurance was not renewed, her direct debit would be reduced.

13. The Registrant's registration status was changed to non-practising on 1 March 2020, following her request. On 15 July 2020, the Registrant emailed the Council to request that her status be changed back to practising. The Council responded by email the following day requesting that she provide a copy of her indemnity insurance and confirm her practice details and the date she planned to return to practice.
14. On around 6 August 2020, the Registrant contacted the Council via its website stating that she had requested her status be changed back to practising, but that had not yet happened. The Council responded by email dated 10 August 2020 again stating that the Registrant needed to provide a copy of her indemnity insurance before her status could be changed back to practising. According to the Registrant, she had responded to this email providing the information and asking what was needed in relation to insurance but did not receive a reply to that email [*N.B. that further email, dated 10 August 2020 and timed at 15.09 was retrieved during the hearing by both the Council and the Registrant and by agreement was provided to the Committee*].
15. Mr Bellis told the Committee that in her explanation of events, the Registrant had said that she assumed the information she had provided to the Council was sufficient and so resumed treating patients on around 10 August 2020. As stated above, the Registrant notified the Council on 18 August 2021 that she had been practising without insurance. The Registrant had stated that she was not aware that her status was non-practising until she was required to renew her registration in August 2021.
16. The Registrant subsequently obtained insurance from Balens, which came into effect on 8 November 2021 and initially ran until 7 November 2022. The Council confirmed by email dated 5 January 2022 that the Registrant's status had been updated to practising.

## **Evidence on behalf of the Council**

### **Georgina Leelodharry**

17. Georgina Leelodharry, Head of Operations at the IO, took the affirmation and adopted her statement as true to the best of her knowledge and

belief. She was then asked some supplementary questions, confirming the details of the correspondence between the Registrant and the IO.

18. In response to a question from the Registrant, Ms Leelodharry confirmed that they had spoken by telephone in 2021. Ms Leelodharry said that there was no note of the conversation on the IO's database, but that where a member's insurance had lapsed, she always gave the same advice in terms of reporting to the GOsC. There was no recording of the telephone conversation either.
19. In response to questions from the Committee, Ms Leelodharry said that there was currently no system for recording telephone calls to the IO. Staff were generally in the habit of making notes of telephone calls.
20. Ms Leelodharry confirmed that renewal of professional indemnity insurance policies was always 12 months apart, save in one year where, as a result of a change in the renewal date from 1 September to 1 December, policies were issued for an extended period to allow this. This was not however relevant to this case.
21. Ms Leelodharry said that the copy of the insurance certificate dated 4 August 2014 in the bundle before the Committee was evidence that the Registrant had asked the IO to restart cover on 4 August 2014. She said that the reference in the email of 12 August 2015 to the Registrant's membership of IO changing to full was to her membership status with the IO, in other words it was not relevant to insurance by the IO.
22. Ms Leelodharry was asked about her confidence that the inclusion of the Registrant's name on two 2015 IO spreadsheets meant the Registrant had indeed been chased about her insurance declaration. She said that her experience was that the vast majority of emails were sent successfully. Her belief was that out of 3000 emails sent less than 1% would bounce back. Ms Leelodharry accepted that she could not say categorically that an email was sent to the Registrant, but she considered it likely, as she was not aware of any major problem.
23. Ms Leelodharry stated that there was no other correspondence held by IO from the broker or underwriters of the policy. There wouldn't ordinarily be any contact between broker or underwriter and a registrant.
24. As regards the email dated 2 October 2015 informing the Registrant that her direct debit would be reduced to £20, Ms Leelodharry said that she was unable to supply the figure before the reduction was applied without talking to colleague, as the information was held on another database. She accepted that the email did not show the reason for the reduction.

25. Finally, Ms Leelodhary confirmed that a number of the letters exhibited to her statement were templates, as copies of the actual letters sent to the Registrant had not been retained.

### **Witness statements of Ben Chambers and Joseph Balen**

26. Mr Bellis invited the Committee to read the statements of Ben Chambers, Registration Manager Designate, who confirmed the date of the Registrant's first registration with the Council, the details of her application for non-practising registration in March 2020 and of the Council's correspondence with the Registrant about her registration and insurance status; and of Joseph Balen, managing director of Balens Limited, who confirmed that the Registrant had at the time of his statement only ever held one professional indemnity insurance policy with Balens, running from 8 November 2021 to 7 November 2022. The Registrant had agreed that both these statements could be read.
27. Mr Chamber's statement was supplemented in the course of the hearing by an email in which he explained how it was that the further email from the Registrant to the Council on 10 August 2020 had not appeared in the Council's database.

### **Evidence from the Registrant**

28. The Registrant took the affirmation. She told the Committee that she intended to deal with a number of points, in particular the period of non-practising, the period of not insuring and the failure to inform the Council about her insurance lapsing.
29. Dealing first with her application to be entered on the non-practising register from March 2020, the Registrant said that after the outbreak of COVID, she received generic emails from the Council and the IO that said osteopaths affected by lockdown could choose to become "non-practising". As her clinic was at that point closed, she had chosen to do this.
30. When the time for renewal of her registration came around in August 2020, the Registrant said that she decided to return to practice. In response to her inquiry, she received an email from GOsC, which requested a number of details as well as an insurance certificate. The Registrant said she responded with the requested details and asked what was required for the insurance documents. She had not received a reply and then assumed she had been accepted back on to the practising register.
31. The Registrant stated that she did not subsequently visit the Council "O-Zone" web portal to check that she was in fact registered as practising. It was only when she went back to renew her registration in August 2021



that she realised that there was a problem, as she saw that she was registered as non-practising. The Council again asked her for confirmation of her insurance. The Registrant said that as she had not been able to get the Council to confirm the information they wanted previously, she considered it better to contact the IO at that point. She had also experienced difficulties in speaking to anyone at the Council.

32. The Registrant said that it was at that point she had spoken to Ms Leelodharry at the IO. Ms Leelodharry told the Registrant that the IO had not insured her since September 2015. The Registrant said she disputed this on the basis that she had a Direct Debit in favour of the IO. Ms Leelodharry explained that the Registrant was paying for IO membership and that she would have had two separate Direct Debits if she was paying for insurance as well. The Registrant reported saying that she would have to check her bank account to see who she was in fact paying for insurance. Ms Leelodharry had rung her back to discuss and had told her that there was no insurance in place and that the Registrant would have to declare this to the Council.
33. The Registrant stated that she then immediately cancelled patients because she did not know what the situation was. From that point on, the Registrant said that she had done exactly what she was advised to do.
34. As to the lapse of her insurance in August 2015, the Registrant said that as a result of her stage of pregnancy and the subsequent birth of her first child (and some subsequent medical issues), she considered that post coming through the door may have fallen by the wayside. The entire time from that point onwards to her self-report to the Council, she thought she was insured by the IO because she carried on paying them a Direct Debit.
35. The Registrant said that she had declared that she was insured in her renewal application to the Council every year from 2015 up until 2021 because she genuinely believed she was. She had mistakenly assumed there was some checking or auditing of the declaration about insurance between the Council and the IO. However it had never been flagged back to her that she had given the GOsC incorrect information.
36. The Registrant said that when she had applied to go back onto the practising Register in August 2020, she had not understood that the emails from the Council asking for a copy of her indemnity insurance were in fact asking for her insurance certificate. As her further email of 10 August 2020 demonstrated, she had responded supplying the requested details (about her practice details and when she wanted to start work again) and had asked what document the Council wanted to see so she could request it from the IO. She did not receive a reply so took it that her application had been accepted. As a result, she did not become aware of the issue at that point and carried on.

37. In answer to questions from Mr Bellis in cross-examination, the Registrant confirmed that she was aware that she needed insurance to practise and to market herself as an osteopath. She also accepted that she would have renewed her insurance in 2011 and 2012 but did not specifically recall doing so.
38. The Registrant also accepted that her insurance had apparently lapsed in 2013 and she was not insured during 2013 - 2014. She said she had been unaware that she was uninsured during this period until she received the papers as part of these proceedings. She had been under the impression that she was paying the IO for insurance throughout this period. The Registrant said that she had paid the IO continuously for membership since 2010. She had no memory of any conversation with any one at the IO on 4 August 2014, so she could not say that she was aware of the need for insurance at that point.
39. The Registrant said she did not remember receiving the IO's email of 12 August 2015 about her insurance. This would not have been at the forefront of her mind due to the impending birth of her child. The Registrant said that lots of other policies she held, such as for car and house insurance, automatically renewed. If she had been asked about it at the time, she would have assumed the same was true of her IO policy, as she knew she was paying them for something every month.
40. In response to Mr Bellis' further questions, the Registrant maintained that she did not recall receiving the final IO's reminder on 28 September 2015. Nor had she checked her insurance when she renewed her registration with the Council. The Registrant maintained that as far as she was concerned she was insured. Each time she had renewed, she had confirmed that she was insured, because she believed she was, and the Council had not checked her declaration.
41. Nor had the Registrant been prompted to check her insurance by the email exchanges with the Council in July and August 2020 asking to see her indemnity insurance in connection with her application to return to practice. The Registrant said that she had filled in the information required on the portal as she had done every year, so had questioned exactly what the Council was after, as she had not had to provide a certificate before. As she did not receive a reply, she assumed that they had checked behind the scenes and/or her portal entry was enough.
42. The Registrant accepted that there were multiple occasions when the fact of her not being insured could have come to light, but she had not knowingly practised without insurance, nor had she knowingly practiced when not registered. She denied that she had been dishonest in any of the respects alleged.

43. In answer to questions from the Committee, the Registrant said that she had not been prompted by the reduction in her direct debit payment to check her insurance in 2015. She had been employed full time up until 2016 as a pension advisor and given the salary from that job, she would not have noticed a difference of £20 per month as a result of the reduction in the amount payable to the IO.
44. The Registrant also said that when she was informed by the IO that she had not been insured since August 2015, this had not made her think to check her entire insurance history. The IO had told her they had not insured her since 2015 and did not mention any other uninsured periods.
45. The Registrant said that it had never crossed her mind that she had not received any certificates after 2015. Prior to these events, her clinic had been damaged in a fire and she had lost some certificates. She had not therefore kept any paper certificates after that date.
46. Lastly the Registrant said that she had not checked the register after her exchange of emails with the Council in August 2020. Her habit was to treat the emails in her inbox as a to-do list. It would not have occurred to her, she said, to check back 3 to 5 months down the line. The Registrant said that she had learnt a lesson from this about not making assumptions.

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

### **Submissions on behalf of the Council**

47. Mr Bellis reminded the Committee that the burden of proof lay on the Council, and that the standard of proof was the ordinary civil standard. He submitted that the evidence in the bundle and the oral evidence of Ms Leelodharry gave a clear account of the documents held by the IO and about the Registrant's insurance history.
48. As regards the live evidence from the Registrant, Mr Bellis said that the key evidence concerned when the Registrant realised she was not insured and when she realised she was registered as non-practising. He submitted that the Committee should ask itself whether she had been consistent in her accounts and whether what she said was consistent with the documents.
49. As to the allegations that remained in dispute, Mr Bellis said that dealing first with the disputed part of allegation 1b, it was agreed evidence that the Registrant had first registered in 2010 and there was a period of time subsequently when she was insured by the IO.
50. The Registrant said that she only became aware of the dates when her insurance had lapsed for the first time between 1 September 2013 and 4

August 2014 when papers served in relation to these proceedings. She also said that this part of the Council's case had been not properly evidenced.

51. Mr Bellis submitted that this assertion was not correct. The evidence of Ms Leelodharry was clear that there was no IO policy for this period, Balens Limited had indicated that the Registrant was not insured by them during the period and the Registrant herself had stated that she checked her bank statements and had confirmed that she could find no evidence that she had obtained insurance elsewhere. She had not positively asserted that she held insurance with another insurer. This allegation was in Mr Bellis's submission clearly made out on the evidence.
52. As regards allegation 3, Mr Bellis said that under Rule 8(2) of the 1998 General Osteopathic Council (Professional Indemnity Insurance) Rules registrants were required to notify the Council "forthwith" of any lapse in insurance. Rule 7 of the General Osteopathic Council (Indemnity Arrangements) Rules imposed a similar requirement that registrants should inform the Council "immediately". Neither set of rules made any allowance for the date on which a registrant became aware of a lapse.
53. In the Registrant's case, Mr Bellis observed that there had been two periods of lapse, first in September 2013 and secondly in September 2015. Mr Bellis allowed that the Committee might have some sympathy about the latter lapse due to the Registrant's personal circumstances. Mr Bellis said that nonetheless the Registrant had remained uninsured until August 2021. She had renewed her registration with the Council on 6 occasions. Given that she was required to declare that she held appropriate professional indemnity insurance, each of these occasions should have been a prompt to the Registrant that she should check her insurance status and report the lapse.
54. As regards the allegations of dishonesty (allegations 6, 7 and 8), Mr Bellis submitted that the Committee needed, in line with the test set out in *Ivey v Genting Casinos (UK) Ltd (trading as Crockfords Club)* [2017] UKSC 67 to ascertain the Registrant's actual knowledge and belief as to the facts at the time and secondly decide whether her conduct was dishonest by applying the objective standards of ordinary decent people.
55. According to Mr Bellis, the salient facts were that the Registrant was aware of need to be insured and registered when holding herself out as an osteopath. As previously indicated, the Committee needed to decide when she had realised that she was not insured and when she had realised she was registered as non-practising.
56. Mr Bellis said that it was quite clear that a professional indemnity insurance policy does not auto-renew, lasted for 12 months and would require an annual application for renewal. The Registrant had prior to

2013 applied for renewal of insurance successfully. Mr Bellis submitted that the Fact that the Registrant rang the IO in 2014 and set up a direct debit for payment must indicate that she was aware that her insurance had lapsed (and that the responsibility to report the lapse then arose). To fail to do so in those circumstances was dishonest

57. When the Registrant sought to end her non-practising status in 2020, she was asked to provide a copy of her indemnity insurance on two occasions. That this did not prompt the Registrant to check her insurance status at that point was in Mr Bellis' submission implausible. The Registrant said that she had asked the Council for confirmation of the document it required and, having not received a reply, had assumed that her application had been successful. She did not apparently think to check her registration status thereafter, which Mr Bellis again suggested was implausible. The Council said that ordinary decent people would consider failing to report the lapse, failing to maintain insurance and continuing to practise in those circumstances were dishonest acts.

### **The Registrant' submissions on the facts**

58. As regards allegation 1 b. the Registrant said that she was never aware of the earlier set of dates when it was said she was uninsured (1 September 2013 and 03 August 2014) until she had received the case bundle, and on that basis she had disputed this part of the allegation. The Registrant asserted that there was no conclusive evidence from the IO.

59. As to allegation 3, namely the allegation of failing to notify the Council immediately that her insurance had lapsed, the Registrant asserted that the minute she had become aware of the situation, she had informed the Council. The Registrant said that she was not legally trained, and she accepted that the wording of the relevant Rules appeared to require immediate notification, but she questioned how she could inform someone when she was not aware of the lapse and had no knowledge of any issue prior to August 2021.

60. Dealing with the dishonesty allegations, the Registrant accepted that she was in the wrong in letting her insurance lapse, but she did not knowingly do so, nor did she knowingly treat patients without insurance or without being properly registered. In the Registrant's view, the most obvious point she should have become aware was August 2020, but for the reasons she had already described, she did not question her insurance status and believed she had been readmitted onto the practising Register. She said that she had no reason to go into the Council's O-Zone portal afterwards.

61. The Registrant said that she had made the assumption that she was okay to carry on as she was. She said that there were processes in place in the companies she dealt with that were questionable, but she was not passing the blame. She said she would not knowingly have turned up in

clinic and treated someone if she had been uninsured. The Registrant said that she could say with a clear conscience that she did not knowingly treat patients without insurance.

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

62. 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 Legal Assessor advised the Committee on the effect of the Registrant's previous good character on its approach to her evidence.
63. The Committee was also advised as to the appropriate test to be applied when considering the question of dishonesty, and specifically to the test set out in the case of *Ivey v Genting Casinos* [2017] UKSC 67.
64. Having accepted that advice, having received the oral evidence as set out above and having carefully considered all the written evidence in the case and closing submissions on the facts prepared by each party, the Committee found as follows:

1. *From 01 September 2013 to 03 August 2014 ... (inclusive of both dates), the Registrant:*

- ...  
b. failed to obtain and maintain insurance cover as required by Rule 3 of the General Osteopathic Council (Professional Indemnity Insurance) Rules Order of Council 1998 ("the 1998 Indemnity Rules"), and/or Rule 3 the General Osteopathic Council (Indemnity Arrangements) Rules Order of Council 2015 ("the 2015 Indemnity Rules").*

**Found proved.** The Registrant apparently believed that she had been insured by the IO throughout this period. The evidence provided by Ms Leelodharry of the IO was clear in establishing that the Registrant's insurance had lapsed on 31 August 2013 and that the Registrant had subsequently applied for and been granted cover by the IO on or about 4 August 2014. The witness statement of Joseph Balen confirmed that the other main insurer of osteopaths had not insured the Registrant during this period. The Registrant had not produced anything that established she had insurance cover provided by any other insurer during the relevant period. She had told the Committee that having reviewed her bank statements after the discovery of the more recent lapse in her insurance cover she could not establish that she was paying any other insurer. The Committee was therefore satisfied on the balance of probabilities that this allegation was made out.

3. The Registrant failed to immediately notify the GOSC that her professional indemnity insurance cover lapsed, as required by Rule 8(2) of the 1998 Indemnity Rules and/or Rule 7 of the 2015 Indemnity Rules.

**Found proved.** As a matter of fact, the Registrant had not notified the Council at all of the 2013 – 2014 insurance lapse, and had not declared the September 2015 to February 2020 lapse until 18 August 2021. The Committee accepted Mr Bellis' submission that the wording of both the 1998 Rules and 2015 Rules did not make allowance for a registrant's state of knowledge as to the existence or otherwise of insurance cover. There was no doubt that in neither instance had the Registrant immediately or forthwith notified the Council as the Rules required. The Committee therefore found this allegations proved.

6. By reason of the matters alleged in paragraphs 1b. and/or 2b. and/or 2c. above, your conduct was dishonest in that you knew that in holding yourself out to the public as a registered osteopath, you were required to hold professional indemnity insurance.

**Not proved.** The Committee had no sense during the Registrant's evidence that she was being disingenuous or attempting to mislead it. On the contrary, the Committee found her straightforward in her evidence and she robustly maintained that she had no reason at any point after the lapse in 2015 to question her insurance status, as a result of her mistaken belief that her continuing payment to the IO was in fact her insurance payment.

It seemed to the Committee that having persuaded herself through the original erroneous assumption that she was indeed paying the IO for cover which would renew automatically, she ignored evidence that might have corrected matters sooner, such as the lack of certificates or the fact that the Council asked her annually to confirm that she was appropriately insured. The Committee did allow that the email from the IO dated 2 October 2015 was perhaps confusing to her, as it did refer to the direct debit continuing and did not explicitly confirm that it was not a payment in respect of insurance. Similarly, the Registrant had reason at that time to be distracted for the reasons she had explained.

The Registrant's actions to remedy the situation after matters were brought to her attention in August 2021, particularly in ceasing to treat patients, suggested to the Committee that she thought she was insured throughout that period. The Committee therefore accepted her assertion that she genuinely believed that was insured throughout the period from 2015 until her eventual report to the Council in 2021, despite a number of prompts that might have alerted a more cautious and diligent registrant to check the insurance situation earlier.

The reasons for the lapse in 2013-2014 were entirely unclear. The Registrant could not recall anything about this and said that she had not been aware of the lapse until averted to it by the Council as part of these proceedings. However, similarly the Council did not produce any evidence, such as correspondence between the Registrant and the IO, that demonstrated her state of knowledge as to the situation at the time, other than the telephone note and insurance certificate indicating that she had applied for cover on or about 4 August 2014. This did not, in the Committee's view, establish a dishonest (rather than negligent) failure on the Registrant's part to maintain her insurance.

The Committee considered that the Registrant's behaviour might objectively be considered foolish, ill-considered and lacking integrity (as had been admitted by the Registrant). It did not think however that in either instance the Registrant's conduct in failing to maintain her insurance or hold herself out as an osteopath while uninsured was dishonest by the standards of ordinary, decent people. It therefore did not find this allegation proved.

7. *By reason of the matters alleged in paragraph 3 above, your conduct was dishonest in that you knew that you were required to notify the GOSC immediately that your indemnity insurance cover had lapsed.*

**Not proved.** As noted above, there was scant evidence in respect of the 2014 insurance lapse, save for the inference from the telephone note and insurance certificate that the Registrant had at some point in August 2014 realised that she was without cover, had contacted the IO, and been granted cover from 4 August until 31 August 2014 (and also for the following indemnity year). Though the Registrant accepted that she knew of her duty to report the lapse, she said she could recall nothing of these events and was not aware that her insurance had lapsed during this period. Though this was not a satisfactory explanation, the Committee was not convinced on the balance of probabilities that the Registrant had deliberately failed to notify the Council on this occasion and thereby acted dishonestly.

As to the later lapse, the Committee accepted that the Registrant had proceeded under a genuine, if mistaken belief, that she was indeed insured. The Registrant had clearly exhibited carelessness and negligence over a considerable period of time in the arrangements for her professional practice, but her prompt actions after matters came to light in August 2021 again persuaded the Committee that she had not deliberately concealed her lack of insurance or deliberately failed to report it to the Council. The Registrant's further email of 10 August 2020 querying what documentation she was required to send the Council to prove her insurance status (which had come to light during



the hearing) supported to some degree her contention that she had at that point believed herself to be insured. The Committee did not therefore find this allegation proved.

8. *By reason of the matters alleged in paragraph 4 above, your conduct was dishonest in that you treated patients knowing you did not have appropriate professional Indemnity insurance in place.*

**Not proved.** For the same or similar reasons to those set out above, the Committee did not find this allegation proved. There was no evidence that the Committee could identify that the Registrant had treated patients knowing that she did not have professional indemnity insurance in place during 2013 – 2014. In contrast, the Committee accepted the Registrant’s evidence to the effect that she believed that she was insured during the period 2015 – 2021. In neither instance did the Committee conclude that her conduct could objectively be considered dishonest, though it was certainly negligent.

## **Submissions on Unacceptable Professional Conduct (“UPC”)**

### **Submissions on behalf of the Council**

65. Mr Bellis reminded the Committee of the relevant law. He submitted that breaches of the Code and Osteopathic Practice Standards did not automatically lead to a finding of UPC but should be taken into account by the Committee in their deliberations.
66. Mr Bellis said that the conduct found proved in respect of allegations 1, 2 and 4 could be considered together. The Registrant had been uninsured for a period of over 5 years, subsequent to which she had practised without being properly registered and insured for a period of a further 18 months. During those periods she had treated patients without insurance cover.
67. Mr Bellis submitted that this was a clear breach of the relevant parts of the Osteopathic Practice Standards effective from 1 September 2012 (the 2012 Standards), in particular D11 paragraph 1.3; and of the Osteopathic Practice Standards effective from 1 September 2019 (the 2019 Standards), in particular C5 paragraph 4.
68. Mr Bellis said that practitioners were required to have indemnity insurance for good reason. Knowingly practising without insurance was evidently more serious than doing so unwittingly, but practising without insurance in any circumstances was a serious matter in that it put patients at risk. An ordinary, intelligent member of the public would undoubtedly agree that such conduct was morally blameworthy and attracted a degree of opprobrium.

69. Mr Bellis accepted that the conduct found proved in respect of allegation 3 (the failure to notify immediately the Council immediately of the lapses in insurance) was in effect a matter of strict liability and could not of itself amount to UPC in circumstances where the Committee did not find that the Registrant was aware of the lapses.
70. Lastly, Mr Bellis submitted that in respect of allegation 5, even if the conduct was not deliberate, patients and the Council had been misled as to the Registrant's insurance and practising status, and this was something that could amount to UPC. As regards the findings of lack of integrity, Mr Bellis said that there was a heightened requirement on professionals to act with due diligence in maintaining both insurance and their registration. The Registrant's failure to comply with these fundamental professional requirements over an extended period was clearly conduct that was morally blameworthy and capable of amounting to UPC.

### **Submissions by the Registrant**

71. The Registrant said that she did not have much to say in the way of submissions. She said she knew that insurance was required but her failure to maintain it was not dishonest. She said that she had followed all the advice given to her by the Council and by the IO. In short she agreed with Mr Bellis that she had fallen short of the required standards and was in breach of the Rules, albeit unknowingly. The Registrant acknowledged that if a patient issue had arisen, there would have been no insurance in place, though her approach to treating her patients had not changed regardless of whether she had insurance in place or not.

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

72. The Committee accepted the advice of the Legal Assessor. The Committee bore in mind that there is no standard of proof and that a determination as to whether the threshold for UPC has been reached is a matter of judgment. The Committee had regard to Section 20 of the Osteopathic Act 1993, which defines UPC as conduct which "falls short of the standard required of a registered osteopath". It considered guidance from the Council and the matters set out in *Spencer* that Unacceptable Professional Conduct is conduct which implies some degree of "moral blameworthiness". It bore in mind the case of *Shaw v General Osteopathic Council* [2015] EWHC 2721 (Admin), which indicated that although conduct had to be serious to reach the required threshold, it did not need to be so serious that imposing an admonishment would be too lenient.
73. The Committee considered that the facts found proved collectively demonstrated a serious departure from the standards required of an osteopath. The Committee's findings demonstrated that, in summary, the

Registrant had practised for an extended period without indemnity insurance, thereby exposing patients to an unjustifiable risk of harm. For part of the same period, she had also not been registered to practise. While the Committee acknowledged that her failures to report the lapses in her insurance would not in themselves constitute UPC, the Registrant had demonstrated an approach to the management of her professional practice that was on the best view negligent and which verged on recklessness.

74. The Registrant had misled the Council and patients as to her insurance and registration status over an extended period, albeit unknowingly, and had failed to show the steady adherence to the Standards that both the profession and the public would expect from a registered osteopath. The Committee had no doubt that viewed overall, both the public and fellow members of the profession would view this with a significant degree of moral opprobrium
75. The Committee considered there had been a clear breach of Standards D11 and D14 of the 2012 Standards and Standards C7 and D1 of the 2019 Standards in respect of the matters it had found proved. It was cognisant of the fact that a breach of the OPS does not automatically constitute unacceptable professional conduct. However, in this case there had been a clear and significant failure by the Registrant to protect patients and herself in failing to maintain her insurance and registration.
76. The Committee was clear that by her conduct the Registrant had failed to uphold the reputation of the profession and appropriate professional standards. Having regard to the overarching objective, the Committee was of the opinion that a finding of unacceptable professional conduct was justified on the grounds it was necessary to protect the public, maintain confidence in the profession and promote proper standards of conduct.
77. In the Committee's judgment, the conduct of the Registrant fell seriously short of the standard required of an osteopath. It therefore found that the facts proved amounted to unacceptable professional conduct.

## **Submissions on sanction**

### **Submissions on behalf of the Council**

78. Mr Bellis submitted that the appropriate sanction in this case was a matter of judgment for the Committee, based on what it had heard in this case and informed by the guidance contained in the Council's Hearing and Sanctions Guidance 2019 ('HSG').
79. In arriving at its determination, Mr Bellis said that the Committee should act proportionately, having regard to the Council's overriding objective,

namely the protection of the public which in turn involves protecting, promoting and maintaining the health, safety and well-being of the public; promoting and maintaining public confidence in the profession of osteopathy; and promoting and maintaining proper professional standards and conduct for members of the profession.

80. Mr Bellis fairly conceded that there were a number of mitigating factors that the Committee might take into account in arriving at its decision of sanction, including the facts that the Registrant had self-declared and taken prompt steps to put matters right, there was no evidence of any harm to patients and that she was of good character.

### **Submissions by the Registrant**

81. The Registrant said that Mr Bellis had covered most of the mitigating factors. In answer to questions, she said that she had done a full audit of her practice and had participated in CPD since the problems came to light. She had told her regular maintenance patients about the issues and had been completely candid with them. She said that there had been no patient issues or complaints at all so far as she was aware.
82. The Registrant submitted that her approach to participation in the profession has not changed at all as a result of the problems that led to this case. As a result, in her view there was no higher likelihood of insurance being required at any point during the chronology of events.
83. The Registrant said that it had been a very stressful and worrying time for her. She had been coping with the responsibility of caring for her children and husband, and all had suffered COVID. The COVID pandemic had had a financial impact on her, but she was fortunate that her husband was able to pick up the slack financially.
84. The Registrant had stated that this case had led to a degree of soul searching on her part about what she wanted to do in the future, which depended on the potential outcomes of this hearing. She had worked hard and had had two jobs since she was 16. She said that she loved osteopathy and it was "upsetting and gutting" to think if anything had happened to a patient, things could have been much worse.
85. The Registrant accepted that her conduct reflected on more than just her, as she was part of a profession. She said that this was obviously disappointing. She reiterated that she had never received a complaint. As regards run-off cover, she had been told by the IO that they could not provide any backdated cover, and the IO subsequently declined to provide any cover at all. Balens had not been able to help with run-off cover either, though the Registrant said she would welcome advice on where she might get such insurance cover.

86. In terms of her approach to practice administration, the Registrant said that she now used an app called Time Entry for her clinic diary, and this permitted her to set relevant reminders for the renewal dates. She now kept monthly, 6-monthly, and annual checklists to help her keep on top of administrative matters. She was confident that matters such as post and email correspondence would not be overlooked in the future.

### **The Committee's Decision on Sanction**

87. The Committee had regard to the submissions of the parties and accepted the advice of the legal assessor on sanction.

88. The Committee took into account the guidance in the Council's Hearings and Sanctions Guidance

89. With regard to aggravating factors, the Committee considered that the length of time over which the breaches had occurred, and the repeated lapses, aggravated the seriousness of the Registrant's conduct. Further, the Committee noted that although the Registrant accepted that what she had done was wrong and was sorry that it had happened, that did not seem to prompt an apology from her. Overall, the Committee did not gain the sense that the Registrant understood the extent of her own failings, given the number of references she made to the deficiencies of her insurers and the Council. Nor did she provide meaningful acknowledgement of the effect of her conduct on the profession and on public confidence in osteopathy.

90. In respect of mitigating factors, the Committee noted that the Registrant had self-reported the issues when she became aware of them. Since these matters had come to light, she had undertaken some remediation. The Committee noted that the lack of insurance had not to date resulted in any complaints, harm or loss. Overall, the Committee considered that the risk of any repetition of similar conduct was slight, despite the fact that the Registrant had not yet secured any run-off cover.

91. The Registrant was of previous good character, and the Committee accepted that there were personal circumstances at the time of some of the events, now over, that to some extent excused her inattention to her professional duties. It also noted the absence of any subsequent concerns as to the Registrant's conduct. Lastly, the Committee was reassured by the Registrant's actions after the discovery of the second insurance lapse that she would in the future be considerably more careful in her dealings with her insurer and the Council.

92. However, viewed overall, these mitigating factors did not entirely outweigh the seriousness of the concerns raised by this case. The Committee recalled that the purpose of a sanction is not to be punitive, although it may have that effect. Rather, its purpose is to protect patients

and the wider public interest. The Committee bore in mind the necessity for any sanction to be proportionate, taking into account both the Registrant's interests and the need to uphold the public interest.

93. The Committee first considered whether to admonish the Registrant. The matters at issue in this case were serious. They did not represent an isolated incident and occurred over a protracted period. In the Committee's view, the Registrant's insight was limited. The Committee concluded that all these factors meant that an admonishment would not meet the particular circumstances of this case.
94. The Committee went on to consider whether a conditions of practice order would be appropriate. The Committee concluded that conditions of practice would not be appropriate nor proportionate to address the seriousness of the Registrant's conduct. The Committee determined that the conduct of concern was not such as could be addressed by a workable condition as it concerned a failure to attend to basic practice requirements. Further, the need to maintain public confidence in the profession rendered conditions an inadequate sanction.
95. As the Committee had identified above, the failures in this case amounted to a serious breach of the 2012 and 2019 Standards. Given the circumstances, and the Registrant's efforts at remediation so far, the Committee concluded that those failures were not however fundamentally incompatible with her continued registration. The Registrant would no doubt be extremely careful in her future professional practice and the public interest in appropriate regulation of osteopaths did not, in the Committee's view, require her removal from the register.
96. The Committee recognised the need to send a message to the Registrant, the profession and the public that such behaviour was unacceptable. A short period of suspension would allow the Registrant the opportunity to consider further the consequences of her actions and the need to act professionally in administering her practice.
97. The Committee determined that the Registrant should be suspended from the Register for a period of 3 months. In determining that period the Committee had regard to the seriousness of the Registrant's conduct and the extent to which her conduct necessarily impacted on the reputation of the profession and public confidence in osteopathy. It also had regard to the period of time it considered reasonable for the Registrant to engage in further relevant remediation actions.
98. A Committee will review the case at a review hearing before the end of the period of suspension. At the review hearing, the Committee would be assisted by seeing evidence of the attempts the Registrant had made to obtain insurance cover for the periods for which she was not insured; as well as evidence of her professional development activity during the

period of suspension. This might include a reflective piece setting out what she has learned from the events of this case, in particular in respect of the impact of her actions on patients, the public and the reputation of osteopaths generally. The Committee directed that she supply such evidence to the Council in advance of any resumed hearing.

### **Application for Interim Suspension Order**

99. Mr Bellis, on behalf of the Council, applied for an interim suspension order (ISO) under s.24(2) of the Osteopaths Act 1993 on the grounds that it was necessary for the protection of the public.
100. He submitted that the grounds for such an order were to be found in the Committee's concerns about the Registrant's limited insight. Mr Bellis submitted that while there had been no recurrence of the issues that had resulted in this case, that lack of insight presented a continuing risk to patients who might seek the Registrant's help in a professional context.
101. Mr Bellis suggested that it must flow from that finding that an ISO was required now to protect the public, rather than after the expiry of the appeal period or pending the determination of any appeal that the Registrant was minded to bring, which might take a considerable length of time.
102. The Registrant told the Committee that whether she was suspended for 28 days prior to the taking effect of the substantive suspension or not was neither here nor there so far as she was concerned. She said that she had no further patients booked and was not planning to treat any patients from now until such point as she was told she could resume practice.
103. The Committee listened carefully to the submissions of both parties. It referred to the Council's guidance to Committees on ISOs. It accepted the advice of the Legal Assessor as to the test to be applied in considering whether to impose an ISO.
104. The Committee understood that the correct approach to that test is that the Committee must be satisfied there is a real continuing risk, whether actual or potential, to patients, colleagues or other members of the public if an interim suspension order is not made. The Committee must therefore look forward in the light of its own final determination of the allegations regarding the Registrant's past conduct.
105. In assessing the risk, the Committee considered first the nature and seriousness of the allegations. The allegations were, as it had found in its determination above, serious in that they represented a significant departure from acceptable professional standards, albeit that there had been no recurrence of the same issues and it was common ground between the parties that the Registrant was now registered and insured.

As the Committee had found, there was no evidence of actual harm having resulted as a result of the Registrant's failings

106. The Committee next considered the likelihood of the conduct being repeated if the ISO was not imposed. The Registrant had practised without restriction since 5 January 2022, when her registration status had been changed to "practising" shortly after matters came to light.
107. The fundamental concern in this case was that the Registrant had negligently failed to maintain her insurance and registration status and had as a result unwittingly treated patients while uninsured.
108. However, once she became aware of her error, her subsequent actions suggested that she had acted promptly to remedy matters. All those facts were apparent from the outset of these proceedings, and notwithstanding the Committee's concerns about the degree of the Registrant's insight, it was not apparent that the risk of harm recurring had changed in any material way since then. The Council had not apparently considered it necessary to apply for an ISO pending this hearing.
109. As the Committee had found earlier, there was little likelihood of the conduct being repeated, partly because the Registrant was likely to be much more attentive to the administration of her practice in future.
110. In any event, the Registrant had indicated that she did not intend to see any patients from the conclusion of this hearing until such time as the Council informed her she could return to practice.
111. If a registrant practises uninsured, there is inevitably a potential for serious harm. As stated above, the Committee assessed the likelihood of this Registrant repeating her conduct, and therefore, the prospective risk, as low.
112. As to the weight of the information or evidence available to it, this Committee had made factual findings against the Registrant based on detailed consideration of the oral and written evidence and having had the benefit of submissions from her and Mr Bellis.
113. The Committee noted that although the Registrant was sanguine about the consequences of an ISO during the appeal period, there would inevitably be at least one negative consequence for her if an ISO was imposed, namely that she would experience a longer period of suspension. It balanced this consequence against the slight risk to the public that flowed from its findings set out above
114. Overall, the Committee did not consider that the Council had convincingly demonstrated that it was necessary to impose an ISO at this stage to protect members of the public. The Committee therefore declined



to make the registration of the Registrant subject to an ISO during the appeal period or pending the determination of any appeal against the decision in this case.

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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 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.*