

GENERAL OSTEOPATHIC COUNCIL
PROFESSIONAL CONDUCT COMMITTEE

Case No: 756/4146

Professional Conduct Committee Hearing

DECISION

Case of: Julian Cooper

Committee: Philip Geering (Chair)
Pamela Ormerod (Lay)
Barry Kleinberg (Osteopath)

Legal Assessor: Tim Grey

Representation for Council: Christopher Geering

Representation for Osteopath: Did Not Attend & Not Represented

Clerk to the Committee: Nyero Abboh

Date of Hearing: 19 - 21 January 2021

Summary of Decision:

The Committee found paragraphs 1 - 5 and 6a proved and paragraph 6b not proved.

The Committee determined that the conduct found proved amounted to Unacceptable Professional Conduct.

The Committee determined that the Registrant's name shall be Removed from the Register.

The Committee determined that it was necessary to impose an interim order of suspension in order to protect the public.

Allegation (as amended) and Facts:

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

1. The Registrant failed to provide the General Osteopathic Council with evidence of his professional indemnity insurance cover in force as of 10 September 2019 when requested to do so by the General Osteopathic Council.
2. The Registrant falsely stated to the GOSC that he had current indemnity insurance cover with Balens when renewing his Registration with the GOSC on the following dates:
 - a. 20 May 2016;
 - b. 10 May 2017;
 - c. 11 May 2018;
 - d. 15 May 2019
3. Between some or all of the period 1 September 2015 to 30 September 2019, ("the Relevant Period"), the Registrant:
 - a. was registered and/or practised as an osteopath, and;
 - b. failed to obtain and maintain insurance cover as required by Rule 5 of the General Osteopathic Council (Indemnity Arrangements) Rules Order 2015 ("the Order").
4. During some or all of the 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;
 - b. treated patients despite not having appropriate indemnity insurance, thereby acting to the potential detriment of such patients and placing them at risk.
5. By reason of the matters alleged at paragraph 1 and/or paragraph 2 and/or paragraph 3 and/or paragraph 4 the Registrant's conduct lacked integrity.
6. By reason of the matters alleged at paragraph 2 and/or paragraph 4 the Registrant's conduct was:
 - a. misleading; and/or
 - b. dishonest, in that he knew the information he submitted to the Council was untrue, and/or he knew he was misrepresenting himself to the public as having professional indemnity insurance.

Preliminary Matters:

1. At the outset of proceedings all the Committee members confirmed they had no conflicts in relation to the case. The Chair confirmed that in spite of sharing a surname with counsel for the Council, they are no relation to one another and were not acquainted. Thereafter, Mr. C. Geering, on behalf of the Council, made an application for the hearing to proceed in the absence of the Registrant.
2. In so submitting he took the Committee to various correspondence demonstrating that the Registrant had been notified about an allegation being raised against him in a letter of 13 January 2020. Further correspondence had been sent to the Registrant to which the Council received no response. The Registrant had answered a telephone call from the Council on 15 May 2020 and been informed of the process, confirmed his postal address for service and an email that he asserted had been hacked and was no longer accessible. He confirmed he had received all documents up to that point. The Registrant was asked to advise the Council of his new email address. At no point did he provide a new email address. The Registrant was notified of the hearing on 14 December 2020. Notification had been served by registered post to the address he had previously advised was his preferred correspondence address. It had also been served via email to his registered email address. On 23 December 2020 the Council served a copy of its skeleton argument and proposed amendments to the Allegation, via special delivery and email to the same addresses. The correspondence had been signed for. Mr. Geering therefore submitted that the service provisions set out in Rules 7, 9 and 65 of the Professional Conduct Committee (Procedure) Rules 2000 ("The Rules") had been satisfied. He further submitted that all reasonable steps had been taken by the Council to serve the notice of the hearing on the osteopath as required by Rule 20 of the Rules.
3. Mr. Geering went on to address the Committee on the fairness of proceeding in absence. He submitted that the Registrant had made no application to adjourn the case and had provided no evidence of any sort suggesting he was prevented from attending a remote hearing. Mr. Geering further submitted that balancing the public interest against the interests of the Registrant required the hearing go ahead. In light of the background, it was clear the Registrant knew the hearing could go ahead in his absence.
4. The Committee accepted the advice of the Legal Assessor that the decision to proceed in the absence of the Registrant was a decision to be taken with the utmost care and caution. The Panel had regard to the relevant Practice Note, the criteria set out in R v Jones [2002] UKHL 5 and the guidance in the case of General Medical Council v Adeogba [2016] EWCA Civ 162.

5. The Committee noted that the Registrant had been informed, by email and letter on 14 December 2020 that the hearing would be taking place and the nature of the proceedings. The Committee was conscious that Rules 9, 20 and 65 imposed a duty in terms of the timing and the manner in which service had to be effected and required that documents be served by Registered post or Recorded Delivery service at least 28 days prior to the hearing. In each case this had taken place. The Committee concluded that the Registrant had been given sufficient notice had he wished to attend and take an active part in the hearing.
6. The Committee went on to consider whether it was fair in all the circumstances to proceed to hear the case in the absence of the Registrant. The Committee concluded that the Registrant had known of the hearing date and chosen not to attend or make representations. He had therefore voluntarily absented himself from the proceedings.
7. The Committee carefully considered whether it was fair in the circumstances to proceed in the Registrant's absence. The Allegation concerned events dating back to 2015, and issues that had come to light in late 2019. The evidence presented on behalf of the Council was documentary and not reliant on witness recollection. Nonetheless, the issues raised go to public safety. There is a public interest in the timely and expeditious resolution of the concerns that have come to light. The Registrant did not seek an adjournment, and in all the circumstances the Committee concluded that there would be no merit in adjourning the case. It concluded that balancing the interests of the Registrant with the interests of the public in conducting an expeditious hearing, meant it was both fair and reasonable to proceed in absence on this occasion. The Committee drew no adverse inference from the Registrant's absence.
8. Mr. Geering made a second application, pursuant to Rule 24 of the Rules, to amend the Allegation in the terms set out above. He submitted that the amendment was both necessary and desirable in order to ensure clarity in the Allegation, and that such amendments as were proposed more adequately and properly reflected the nature of the case, without materially altering the nature and scope of the case.
9. The Committee received and accepted the advice of the Legal Assessor. It was advised that its power to make such an amendment was governed by Rule 24 of the General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000 ("The Rules"). The Committee thereby has a discretion to amend the Allegation at any time if, having heard submissions and received legal advice, it considered that an amendment could be made without injustice. It noted it had received no submissions from

the Registrant. It noted he had been informed of the majority of the proposed amendments by letter of 23 December 2020, save for the reference to Rule 5 of the The General Osteopathic Council (Indemnity Arrangements) Rules 2015 ("The Indemnity Rules") in paragraph 3b of the Allegation, and had thereby been provided with the opportunity to make any comments or submissions he may have wished to make on the proposed amendments, either in writing or orally had he chosen to attend the hearing. No such submissions had been received.

10. In light of the lack of representations made by the Registrant, and his lack of legal representation the Committee took very great care to consider whether the proposed amendments might lead to any unfairness to the Registrant. Having done so, it concluded that the amendments as sought by the Council could be made without injustice and were both necessary and desirable to properly reflect the nature of the case.

Decision:

Background

11. As part of a randomly selected insurance audit, the Council wrote to the Registrant on 10 September 2019 asking for proof he had professional indemnity insurance (PII) in place. He produced a certificate of insurance, which he had then taken out, covering the period 1 October 2019 - 30 September 2020. This did not demonstrate he had PII in place at the time he was audited. The Council requested his previous policy on a number of subsequent occasions but he has never produced it.
12. Following further investigation, it was established that in 2015 the Registrant had PII cover provided by the British Osteopathic Association ("BOA") which later changed its name to The Institute of Osteopathy ("IO"). This cover expired 31 August 2015. Despite being sent reminders, he did not renew his insurance with the BOA. In his registration renewal forms submitted between 2016 and 2019 the Registrant told the Council he had PII in place with Balens insurance. He also indicated he was in practise. Following enquiries made with Balens, it became clear the Registrant had no such PII in place with them.

Evidence

13. The Committee was presented with statements from Ms. Buckingham, a Senior Registrations Officer of the Council, Ms. Leelodharry of the IO formerly the BOA and Mr Balen, of Balens Ltd. The Committee accepted the written evidence in general terms, there being no reason before it to doubt its overall reliability and credibility.

Submission of the Parties

14. Mr. Geering on behalf of the Council submitted that the evidence before the Committee bore out the factual aspects of the Allegation in its entirety. He submitted that as an experienced professional the Registrant knew he was required to have insurance in place when practising. It was a requirement which was made plain each year with his registration renewal form. The fact he falsely stated he had PII with Balens indicated he knew he was supposed to have insurance cover and he chose to hide this deficiency with a lie.
15. Mr. Geering further submitted that the registration renewal forms the Registrant completed, indicated that he was seeking insurance as a practising osteopath. He therefore submitted that it could be inferred that the Registrant was treating members of the public during the time period 2016 - 2019.
16. In relation to the alleged lack of integrity, Mr. Geering submitted that integrity connotes an adherence to the high professional standards required of a professional. He submitted that the Registrant had fallen far short of the ethical, legal and professional duties expected of him. He had practised for years in a way which exposed patients to risk. He had been holding himself out as having PII cover which he did not have. He had gone further and provided inaccurate information to his regulatory body by claiming to have insurance in place when he did not.
17. In relation to the alleged dishonesty, Mr. Geering submitted that in respect of paragraph 2, it was plain that the Registrant knew he did not have insurance with Balens. He knew the information he was presenting was false. In respect of paragraph 4, Mr. Geering submitted that the Registrant knew he was misrepresenting himself to the public by practising without insurance. In relation to both paragraphs Mr. Geering submitted that both demonstrated a dishonest state of mind and a dishonest course of conduct.
18. Finally, Mr. Geering clarified that the use of the word "falsely" in paragraph 2 of the Allegation did not imply or infer any subjective or mental element to that paragraph. He submitted it related solely to the accuracy of the information provided, and invited the Committee to approach paragraph 2 on that basis.

Determination on the Facts

19. The Committee received and accepted the advice of the Legal Assessor. The Committee was advised that the Council bears the burden of proof throughout and the standard of proof is the civil standard namely the balance of probabilities. The Committee was advised as to how it should approach the issue of the Registrant's absence, and in particular that it should draw no adverse inference from such absence. The Committee was further advised

that it should bear in mind it had heard no submissions made on his behalf and should therefore identify any points which may be of assistance to the Registrant, when assessing the evidence.

20. The Committee was further advised as to the definition of the term integrity, by reference to Standard D14 of the Osteopathic Practise Standards ("OPS") and *Wingate & Others v SRA* [2018] EWCA Civ 366. The Committee was advised to adopt the definition given in the case of *Wingate* whilst seeking what assistance it could from the terms of Standard D14.
21. The Committee was 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.

Paragraph 1

22. In considering paragraph 1 the Committee noted the evidence of Ms. Buckingham in particular. It noted that she had written to the Registrant on 10 September 2019 asking for a copy of his current PII certificate. The Registrant did not respond to the letter immediately, was sent a reminder letter, and when on 23 October 2019 he did respond, he failed to provide the information Ms. Buckingham had sought. Instead he responded with a copy of a certificate covering the period 1 October 2019 to 30 September 2020 which he had latterly obtained from Balens Ltd. On 6, 12 and 25 November 2019 Ms. Buckingham repeated her request for a copy of the previous policy. She also attempted to make contact by phone. No policy was ever provided to cover the date 10 September 2019, when the audit was undertaken.
23. The Committee accepted Ms. Buckingham's evidence in this regard. On the balance of probabilities the Committee concluded that the Registrant by his failure to respond with regard to PII cover for 2019/2020, had not provided evidence of PII as requested by the Council as he was required to do. His failure in doing so was therefore a culpable failing.
24. The Committee therefore found paragraph 1 proved.

Paragraph 2

25. In considering paragraph 2 the Committee noted Ms. Buckingham had exhibited the Registrant's PII renewal declarations for the years 2016 - 2019. The returns unambiguously stated the Registrant had PII cover with Balens Ltd. The Committee further noted that the witness statement provided by Mr Balen stated that as a matter of fact the Registrant held no PII with Balens at any point between 1 May 2009 and 30 September 2019. In relation to each of the renewals exhibited by Ms. Buckingham the Committee noted the dates. In

relation to paragraphs 2a. b. and c. the dates the documents were received by GOsC accorded with those in the specific paragraph.

26. In relation to paragraph 2d. the full date was not visible on the screenshot provided to the Committee. It was clear on its face that it related to 2019. The Committee noted the assertion in Ms. Buckingham's statement that it was a renewal completed online on 15 May 2019. In circumstances where the Committee had no reason to believe Ms. Buckingham's evidence to be unreliable on the point, whether by reason of the computer system involved or by reason of the manner in which Ms. Buckingham constructed her statement by reference to the documents, it concluded it could rely upon the date Ms. Buckingham had provided for the completion of the return.
27. The Committee accepted the evidence provided by Ms. Buckingham and Mr. Balen and on the balance of probabilities determined that the Registrant did not have PII cover with Balens as he had asserted, and that such assertions could properly be described as false, applying an objective test, as submitted by the Council.
28. The Committee therefore found paragraph 2 proved in its entirety.

Paragraph 3a

29. In considering paragraph 3a, the Committee noted the declarations made by the Registrant on his annual registration renewal submitted to the Council. In each case he held himself out as being a registered osteopath. Ms. Buckingham had stated that the Registrant had been registered without interruption since 1999. The hard copy registration renewal forms the Registrant completed, contained an opportunity for him to specifically indicate if he was no longer in practice. At no point had he indicated he was non-practising.
30. The Committee bore in mind that he had PII cover for "medical malpractice" in place continuously from 1999 - 2015. Shortly after hearing from the Council in September 2019, he obtained similar PII cover. The Committee considered it inherently unlikely that the Registrant would have had such cover for the periods in question, had he not been practising as an osteopath.
31. In light of his sustained period of cover before and after the period in question, the declarations on his renewal forms and his status as a registered osteopath throughout the period in question, the Committee concluded it could safely infer that the Registrant had practised as an osteopath for at least part of the period between 1 September 2015 and 30 September 2019.
32. The Committee further noted that the Registrant had spoken to the GOsC in a telephone call on 15 May 2020, in contemplation of these proceedings. It

considered that had he not been practising for the period 1 September 2015 to 30 September 2019, the Registrant might reasonably be expected to have mentioned it in the conversation. Whilst the Registrant's failure to mention anything about his practise status during the call did not found the inference the Committee drew, it added support to the plausibility of the inference still further. The Committee therefore concluded that on the balance of probabilities the Registrant was both registered and practising for some or all of the period from 1 September 2015 to 30 September 2019.

33. The Committee therefore found paragraph 3a proved to the extent that the Registrant was both registered and practising in the relevant period.

Paragraph 3b

34. In each of the declarations the Registrant made to the Council between 1 September 2015 and 30 September 2019, he asserted he was insured by Balens Ltd. In his witness statement Mr. Balen confirmed the Registrant had not been insured with Balens Ltd at any point between 1 May 2009 and 30 September 2019. The Committee considered that the evidence provided by Mr. Balen was both reliable and credible in this regard. In the circumstances it concluded that the declarations made by the Registrant had been incorrect. The Committee could find no evidence of any other PII cover the Registrant held during the period. The Committee therefore considered it could properly infer that the Registrant had no PII cover during the period 1 September 2015 to 30 September 2019.
35. The Committee therefore found Allegation 3b. proved on the balance of probabilities.

Paragraph 4a

36. In considering paragraph 4a the Committee noted the content of the registration renewal forms the Registrant had signed in successive years from 2016 - 2019. The hard copy forms set out the statutory duty that a registrant has to maintain valid PII cover. Even if the Registrant had failed to read the form, in submitting the form to the Council it was inconceivable he had not appreciated that he needed PII cover. In addition, the Committee noted that when he was asked for proof of his PII cover in September 2019, without protestation the Registrant sought to obtain such cover within the month.
37. The Committee concluded that in light of the evidence before it, it could reasonable infer that the Registrant knew that in holding himself out to the public as a registered osteopath he was required to hold PII cover.
38. The Committee therefore found paragraph 4a proved.

Paragraph 4b

39. In light of its determination that the Registrant was practising between 1 September 2015 and 30 September 2019 in paragraph 3, the Committee had little doubt that it could properly infer the Registrant had treated patients in the same period.
40. The Committee further considered that a Registrant treating patients without holding appropriate PII cover was necessarily acting in a manner that would be detrimental to the patient's opportunity to make a claim against the Registrant should the need arise. Such a situation necessarily put patients at risk.
41. The Committee therefore found paragraph 4b. proved on the balance of probabilities.

Paragraph 5

42. The Committee paid careful attention to the definition of integrity in the case of *Wingate & Others v SRA* [2018] EWCA Civ 366, as well as the terms of the Standard D14 of the OPS. It considered that the Registrant's failure to adhere to his statutory duty to communicate with the Council about his PII position, demonstrated an absence of professionalism regarding an issue that was both fundamental to the practice of osteopathy and fundamental to the safety and security of patients. In turn such an absence of professionalism in the circumstances of this case could amount to no less than a failure to adhere to the ethical standards of the profession and thereby demonstrated a lack of integrity in relation to paragraph 1.
43. For four consecutive years, the Registrant had incorrectly asserted that he had PII cover. He was at the very least negligent in ensuring he was correctly representing the position to his regulator, as required both by statute and by practice standards. Such a prolonged and fundamental failure to ensure he was providing correct information, demonstrated a lack of ethical adherence to the standards of the profession, such that it demonstrated a lack of integrity in relation to paragraph 2.
44. The Registrant practised as an osteopath without PII cover for a period of 4 years. During that period he treated patients. He did so in circumstances where he knew he was required to have PII cover and failed to obtain it, thus for a prolonged period put patients at risk. Such a position demonstrated a concerning level of behaviour that amounted to a lack of integrity in relation to paragraphs 3 and 4.

45. The Committee determined that on the balance of probabilities the Registrant's behaviour as found proved in paragraphs 1,2, 3, and 4 lacked integrity.

46. It therefore found paragraph 5 proved in its entirety.

Paragraph 6a

47. The Committee was in no doubt that the registration renewal returns provided by the Registrant in 2016, 2017, 2018 and 2019 showed his insurer to be Balens Ltd. That was not correct and the documents were therefore misleading as a matter of fact.

48. By holding himself out as a registered osteopath the Registrant was implicitly confirming his right to work as a registered osteopath. In order to work as a registered osteopath he was required to hold PII cover. For the period 1 September 2015 to 31 September 2019, he did not hold PII cover and was therefore working other than in accordance with the duties and obligations of a registered osteopath.

49. In working other than in accordance with the duties and obligations of a registered osteopath but holding himself out as such, the Registrant's conduct was misleading.

50. The Committee therefore found paragraph 6a proved in so far as it related to paragraphs 2 and 4.

Paragraph 6b

51. In considering paragraph 6b the Committee noted that there was no direct evidence of dishonesty, it was a matter the Council invited the Committee to infer. However, the Committee carefully considered all the evidence before it, and noted that the Registrant had, for a period of 4 years, failed to have PII cover. It noted the evidence provided by his previous insurer from Ms. Leelodharry, in particular that reminder letters would likely have been sent to the Registrant when his PII cover was due to lapse in 2015. In addition his direct debit payments would have reduced markedly, and it appeared he had received a small refund reflecting the balance of his cover. All those matters indicated that the Registrant might genuinely have known he did not have PII cover and that his representations to the contrary might therefore have been dishonest, both to his regulator and in holding himself out to the public as having such PII cover.

52. However, the Committee also noted that the Registrant had been in practice for 16 years prior to September 2015 without any issues concerning his PII cover. He had sought to obtain PII cover within a month of being asked to

show proof of PII by the Council. There appeared no credible evidence to explain why the Registrant would knowingly cease payments for a period of 4 years, when he had complied with his obligations both before and after the fact. Such a situation was equally consistent with the Registrant knowing he did not have PII cover as with the Registrant not realising until his lack of PII cover was pointed out to him by the Council's request for evidence of such cover.

53. Whilst the period of 4 years was a long one, and one that might be consistent with the Registrant deliberately and dishonestly seeking to submit dishonest information to the Council or hold himself out as having PII when he knew he did not, it was equally consistent with a Registrant who had failed to have the proper regard to the administration of his practice, and had thereby recklessly proceeded on the basis that he had PII cover, when in fact it had lapsed in 2015.
54. The Committee gave anxious consideration to this matter and reminded itself of the need for cogent evidence before it could determine, on the balance of probabilities, that the allegation had been made out. The Committee could not identify any such evidence. In the circumstances the Committee determined that there was insufficient evidence before it to satisfy it to the requisite standard that the Registrant had behaved dishonestly in submitting the PII returns from 2015 - May 2019 and in holding himself out as a registered osteopath in the same period.
55. It therefore found paragraph 6b. not proved.

Unacceptable Professional Conduct ("UPC")

Submissions of the Parties

56. On behalf of the Council Mr. Geering submitted that the facts found proved amounted to breaches of the OPS 2012 Standards D14 and D17, and of the OPS 2019, Standards D1 and D17. He conceded that not every falling short of the Standards would amount to UPC, but that in the circumstances of this case, the Registrant's conduct clearly crossed the threshold for a finding of UPC.
57. Mr. Geering further submitted that this was not an isolated incident but a course of conduct spanning 4 years. It was a breach of a duty that is fundamental to the profession and to the safety and security of patients. In light of the Committee's determination that it demonstrated an absence of professionalism and demonstrated a lack of ethical adherence to the standards expected of a registered osteopath, Mr. Geering submitted that finding of UPC was inevitable in the circumstances of this case.

The Committee's Findings on UPC

58. The Committee received and accepted the advice of the legal assessor. It was advised that the question of UPC was a matter for its own judgment and that there was, as distinct from the fact finding stage, no burden of proof. The Committee was advised that not every falling short of the standards amounts to UPC. For UPC to be found the act or omissions should be serious: *Roylance v GMC* [2000] 1 AC 311 & *Nandi v GMC* [2004] EWHC 2317. The Committee was further advised that in the terms of *Spencer v GOsC* [2012] EWHC 3147 the allegation should amount to conduct that can be considered deplorable and therefore worthy of the moral opprobrium and the publicity which flows from a finding of UPC.
59. The Committee was further advised of the case of *Shaw v GOsC* [2015] EWHC 2721 (Admin) in which the Court made it clear that the bar for a finding of UPC was not so high as to make the lowest form of sanction meaningless. For UPC to be found the conduct must be serious but not of such gravity that the lowest powers of sanction would be inappropriate.
60. The Committee was reminded that in the Registrant's absence it should ensure that anything which was to his advantage was taken into account in assessing the question of whether conduct proved amounted to UPC.
61. The Committee first considered the Registrant's failings in providing misleading information to the Council. Not only did his failure to provide accurate information amount to a breach of his statutory obligation, but it also undermined the Council's ability to properly regulate the profession of osteopathy. The Council, in common with all professional regulators, must be able to rely upon the information provided by those it regulates and know that such information is accurate and can be relied on in order to give effect to the public interest it serves. The fact that in this case the Registrant provided misleading information over a prolonged period of 4 years and at no point sought to correct the accuracy of the information he was providing, made his failing in this regard serious and profound. The Committee noted that the Registrant failed to respond to the initial enquires made of him in September 2019 and considered that aggravated the seriousness of his overall misleading and poor communication with the Council.
62. When the Registrant had been notified of the Council's randomly selected audit, rather than check and clarify his position with the Council, he initially provided no response at all and later provided no substantial response. In and of itself that failure, was in the Committee's judgment, an abrogation of his duty to inform the Council of significant and important information regarding his conduct and competence. It amounted to a failure to co-operate

with a repeated request for information, and a failure to comply with his regulatory requirements.

63. In practising as an osteopath and in treating patients during a period when he was not insured, the Registrant put any patient he treated at significant risk. Patients ought to be able to trust registered osteopaths to have fulfilled the fundamental basics of their professional duties and obligations. In failing to ensure he had sufficient PII cover in place when treating patients for a period of 4 years, the Registrant clearly undermined public trust.
64. Whilst recognising that the Registrant's conduct was not dishonest, the Committee considered that taking his conduct as a whole it showed a reckless disregard for the interests of his patients, the profession of osteopathy and his statutory obligations and could properly be described as insincere in putting patients interests before his own, and overall acting unprofessionally.
65. It therefore determined that his conduct breached Standards D14, D17 and D18 of the OPS 2012 and Standards D1, D7 and D12 of the OPS 2019 as applicable during the relevant period.
66. The Committee reminded itself that not all breaches of the Standards amounted to UPC. However, in the circumstance of this case, the Committee determined that the Registrant's behaviour represented a profound and serious falling short of those Standards over an extended period of time, such that it would be considered deplorable by fellow members of the osteopathic profession and worthy of moral opprobrium in the eyes of the public.
67. The Committee therefore determined that the Registrant's conduct amounted to UPC in all the circumstances.

Sanction

Submissions on Sanction

68. Having determined that the conduct found proved did amount to UPC, the Committee next considered what sanction to impose.
69. On behalf of the Council, Mr. Geering made no positive submission as to the appropriate sanction, but rather invited the Committee to carefully evaluate all the evidence and approach the matter assisted by the Hearings and Sanctions guidance (effective from January 2018), with the principle of proportionality high in mind.
70. Mr. Geering invited the Committee to begin by considering the aggravating and mitigating factors present. He submitted that the following aggravating features were present. First, the Registrant had misled the public and his regulator and exposed patients to risk. Second, he had shown a lack of

integrity in his conduct. Third, the period involved was a long one of 4 years. Fourth, the Registrant had not engaged in any meaningful way with proceedings.

71. In considering mitigating factors, Mr. Geering submitted that the Registrant did take out PII cover shortly after the Council contacted him in September 2019. He also accepted that the Registrant had PII cover properly in place from 1999 - 2015, and that there was no evidence of any actual harm caused to a patient or patients as a result of the Registrant's conduct.
72. Mr. Geering invited the Committee to consider the issues of insight and remediation. He submitted that the Committee had been presented with no evidence of any sort by the Registrant demonstrating insight. There was no evidence of engagement, or apology, and no acknowledgement of the seriousness of the conduct in question.
73. Whilst Mr. Geering submitted that attitudinal failings, such as ensuring administrative compliance is prioritised may be less easy to remedy than other types of failing, in this case there was no evidence at all that the Registrant had engaged with trying to address the underlying causes of his UPC. In those circumstances Mr. Geering submitted there must remain a real risk to the public.
74. Mr. Geering submitted the Committee should carefully consider the sanction that was necessary to protect the public, uphold public confidence in the profession and maintain and declare standards.

Determination on Sanction

75. The Committee received and accepted the advice of the legal assessor. The Committee was advised that in considering sanction there is no burden or standard of proof. The question of sanction is a matter for the Committee's judgment. The Committee was advised that having found UPC proved, it was required to impose a sanction. It was advised that the purpose of sanctions is not to be punitive but to protect patients and the public interest in the wider sense, namely to maintain public confidence in the profession of osteopathy, and to declare and uphold standards.
76. The Committee was reminded that in deciding upon sanction it should have regard to The Hearings and Sanctions Guidance published by the Council, and apply the principle of proportionality, weighing the interests of the public with those of the practitioner and taking the minimum action necessary to protect the public and the wider public interest.
77. The Committee began by identifying the aggravating and mitigating factors present. It considered that the conduct was aggravated by the length of time

it persisted namely 4 years, and reflected 4 separate misleading registration renewals. The Registrant had never provided answers to the some of the questions asked of him by his regulator and in so failing showed a cavalier attitude to his regulatory obligations and duties. His conduct had misled not only the public but his regulator and thereby frustrated the regulatory process.

78. The Committee considered that although it seemed likely the Registrant had only rectified his position after receiving the Council's request for proof of PII cover in September 2019, he did rectify it in fairly short order, taking out a policy with Balens Ltd a month or so later in October 2019. The Committee also noted that for the period 1999 - 2015 there had been no issues with the Registrant's PII cover, and that he had no previous disciplinary history. All of those factors were in his favour.
79. The Committee also noted that there was no evidence of actual harm being caused to a patient, but considered that in the circumstances that was more through luck than the Registrant's judgment. Whilst it did not aggravate the conduct, the Committee concluded as a factor it did not provide any significant mitigation.
80. The Committee next considered the questions of insight and remediation. The Registrant had chosen not to engage in any meaningful way with the disciplinary process, and the Committee therefore had no information before it that would suggest the Registrant had any insight of any sort into the nature, consequences and seriousness of his conduct. Whilst the Committee was aware the Registrant had regularised his PII position for 2019-2020 this was at best partial evidence of remediation. There was no evidence before the Committee that the Registrant had sought advice or guidance on the administration of his practice, had undertaken appropriate CPD aimed at practice management issues and compliance with the rules governing registered osteopaths. There was no evidence before the Committee to suggest the Registrant's attitude to PII, that had led to him being reckless in its provision for 4 years, had changed in any meaningful manner.
81. Whilst the Committee reminded itself that attitudinal failings were harder to remediate, in this case the Registrant had provided no evidence of any kind demonstrating he had even acknowledged his errors, let alone the seriousness of those errors. Nor had he demonstrated any attempt to remediate, save by seeking to satisfy his regulator he had PII cover for the purposes of the randomly selected audit.
82. In light of the lack of any evidence of insight or remediation the Committee determined that there remained a risk to patient safety and thereby to the public.

83. The Committee next considered the appropriate sanction to impose. In doing so it paid careful attention to the Hearings and Sanctions Guidance, and approached the question of sanction in ascending order of seriousness.
84. The Committee first considered whether a sanction of admonishment would be sufficient to protect the public and the wider public interest. It determined that admonishment, whilst sending out a signal to the profession that a lack of PII was serious, did nothing to reflect the significant length of time the issue had remained outstanding in the Registrant's case, and did nothing to protect patients and the public from the risk of recurrence.
85. The Committee next considered a conditions of practice order. The Committee concluded that conditions in the present case did not reflect the seriousness of the conduct found proved, and in the absence of the Registrant from the entirety of the disciplinary process, the Committee was unable to say with any confidence that any conditions imposed would be workable, measurable and capable of being monitored.
86. The Committee next considered a sanction of suspension. The Committee carefully considered the guidance set out at paragraphs 71 - 77. In so doing the Committee reminded itself that it was guidance only, and that the factors listed at paragraph 71 were non-exhaustive. In considering those factors the Committee was in no doubt that the Registrant's conduct was a serious breach of the OPS. Equally, the Committee was in no doubt that based upon the lack of evidence before it there remained a real risk to patient safety if the Registrant were to be allowed to remain in practice.
87. However, the Registrant had demonstrated no potential for remediation or retraining, and had shown no insight into his failings, which themselves demonstrated a lack of integrity. The Committee was therefore unable to conclude that a period of suspension would do enough to protect the public. The Committee further determined that the nature and extent of the Registrant's breaches were so serious that a suspension would be insufficient to uphold public confidence in the profession and declare and maintain standards.
88. The Committee next considered removal of the Registrant's name from the register. In doing so it paid close attention to paragraphs 78 - 80 of the Hearings and Sanctions Guidance, whilst acknowledging it was guidance only and the list at paragraph 78 was a non-exhaustive one.
89. In light of its findings on the facts, the Committee was in no doubt that the Registrant's conduct had been reckless in the application of the OPS and in the application of his statutory duties, such that he put patient safety at direct risk for 4 years. In light of its assessment of the lack of any insight or remediation, the Committee considered there remained an extant risk to

patient safety, there being no reassurance that the Registrant had understood his conduct was serious, its potential effects and the need to ensure it could not recur in the future.

90. Whilst no actual harm was caused to a patient, the reckless disregard shown by the Registrant to the obligations he had, which were there to protect patients' interests, had led to a lengthy period during which patients had been misled, and his regulator had been prevented from ensuring patients and the public at large were safe in his care.
91. Such a level of disregard for his duties and obligations as a registered osteopath was, in the Committee's judgment, incompatible with continued registration in any caring profession, osteopathy being no exception.
92. In all the circumstances the Committee determined that the only sanction that protected the public, upheld public confidence in the profession and declared and maintained standards was one of Removal from the register.
93. The Committee therefore determined the Registrant's name should be removed from the register.
94. Having determined to remove the Registrant's name from the Register, the Committee invited submissions from the parties as to the need for an suspension order to cover the appeal period.

Interim Suspension Order

95. Mr. Geering on behalf of the Council, submitted that an interim order for suspension could be imposed upon the Registrant in circumstances where there was a need for public protection. In light of the Committee's determination, Mr. Geering submitted there was such a need in this case to cover the eventuality should the Registrant appeal, the course of which might well run beyond the period of his current PII cover. Whilst the Registrant does have current PII cover, there was clearly a real risk he might not renew in the future and given his behaviour the Council and the public could have no confidence it would be informed if he did not. The consequent risk from a failure to renew is a real and significant one.
96. The Committee received and accepted the advice of its legal assessor. It was advised that Rule 40 of the Rules governed the approach to be taken and in particular Rule 40(1)(b) specifically gave the Committee power to impose an interim suspension order after making a substantive determination of removal from the register, to cover any appeal period. The only grounds for imposing such an order was that it was necessary to impose such an order to protect members of the public.

97. Having heard submissions from the Council, the Committee determined that notwithstanding the Registrant currently has PII cover, he had once again failed to communicate that when he had taken it out in October 2020. In light of both the ongoing failure to communicate, that has in part contributed to the risk to patient safety, and the risk that the Registrant may not obtain PII cover in the future, at a time when appeal proceedings may be extant, there remained a need to protect the public and therefore it was both necessary and proportionate to impose an interim order for suspension.

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

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

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

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

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