GENERAL OSTEOPATHIC COUNCIL

PROFESSIONAL CONDUCT COMMITTEE

Case No: 769/5302

Professional Conduct Committee Hearing

DECISION

Case of:	Oliver Curties
Committee:	Alastair Cannon (Chair) Pamela Ormerod (Lay) Claire Cheetham (Osteopath)
Legal Assessor:	Mr Peter Steel (17-18 Nov 2021) Mr Jon Whitfield QC (all other dates)
Representation for Council:	Mr Peter Mant (17-18 Nov 2021) Ms Vivienne Tanchel (all other dates)
Representation for Osteopath:	Mr Kawsar Zaman
Clerk to the Committee:	Ms Susan Alisigwe (17 Nov) Mr David Bryan (18 Nov) Ms N Abboh (all other dates)
Date of Hearing:	7, 8, 15,16, 17 December 2020 20-23 April, 7 July, 17-18 Nov. 2021 Additionally, panel deliberation days on 29 April, 28-30 June, 1,2 July *All hearing dates were held remotely*

==========

Summary of Decision:

Stage One

Decision on Facts (Case No.769/5302)

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

Patient A attended a series of appointments with the Registrant between 2016 and 2020 ("the appointments").

1. While the appointments were ongoing, the Registrant:
   a. On more than one occasion met with Patient A during swimming sessions where he:
      (i) touched her foot on one or more occasions;
      Admitted (on basis of one touch). Found proved
      Second touch denied. Found not proved
      (Basis upheld)
      (ii) asked her if she was hanging around for a drink or words to that effect.
      Denied. Found not proved
   b. Suggested meeting Patient A in a non-therapeutic capacity including:
      (i) stating he could come to [redacted] with her or words to that effect;
      Denied. Found Proved
      (ii) texting her on 28 January stating "*so you're free then*" in the context of his staying alone in a hotel in [redacted].
      Admitted (on a basis). Found proved
      Basis rejected. Found proved.

2. During the appointments, the Registrant discussed aspects of Patient A's personal life with her including one or more of those items set out in Schedule 1.
   Admitted in respect of Schedule 1 paragraphs: b, d, f, l.
   Found proved

Denied in respect of Sched. 1 paragraph: h. Found Proved
Denied in respect of Sched. 1 paragraphs: a, c, e, g, i, j, k, m
Found not proved

3. One or more of the discussions and/or remarks itemised in Schedule 1 took place while the Registrant was touching Patient A.
   Initially admitted in respect of Schedule 1 paragraphs: b, d, f, l and found proved.
   Admission and finding vacated by the Committee.
   Found not proved
   Denied in respect of Schedule 1 paragraphs: a, c, e, g, h, i, j, k, m.
   Found not proved in its entirety

4. During one or more of the appointments with Patient A, the Registrant:
   a. touched Patient A in the area of her:
      (i) stomach;
      Admitted. Found proved
      (ii) groin;
      Admitted. Found proved
      (iii) upper chest area;
      Admitted. Found proved
   b. required Patient A to lie on her front although she indicated to him that she was uncomfortable with this;
      Denied. Found not proved
   c. put his hand over Patient A's hand when it was resting on her stomach;
      Denied. Found proved
   d. failed to act appropriately when Patient A told him "*stop I don't feel safe, stop touching me*" or words to that effect;

Initially admitted and found proved

Admission withdrawn. Found not proved

e. acted inappropriately when Patient A told him that he was causing her pain to her stomach and/or her foot;

Denied. Found not proved

f. used undue pressure and/or force to Patient A's stomach and/or foot area;

Denied. Found not proved

g. did not respect Patient A's privacy and/or dignity when she was undressing for treatment;

Denied. Found not proved

h. asked Patient A to remove her top;

Admitted. Found proved

i. asked Patient A to bend over;

Admitted. Found proved

j. tucked Patient A's top into her sports bra;

Admitted. Found proved

k. stood in very close and/or inappropriate proximity to Patient A including to her:

(i) front;

Admitted on the basis of very close. Found proved

Initially admitted in respect of inappropriate proximity and found proved. Admission withdrawn in evidence. Denied. Found not proved

(ii) side;

Admitted on the basis of very close. Found proved

Initially admitted in respect of inappropriate proximity and found proved. Admission withdrawn in evidence. Denied. Found not proved

(iii) back;

Admitted on the basis of very close. Found proved

Initially admitted in respect of inappropriate proximity and found proved. Admission withdrawn in evidence. Denied. Found not proved

l. while standing in very close and/or inappropriate proximity to Patient A:

(i) remarked "*stop panicking you need to relax*" or words to that effect;

Denied. Found proved as to "you need to relax"
Found not proved as to "stop panicking"

(ii) asked "*how are you really?*" or words to that effect;

Denied. Found proved

(iii) touched and/or moved Patient A's hair;

Denied. Found proved

(iv) put his hand beneath Patient A's top and touched her skin including her:

a) stomach;

Denied. Found proved

b) groin area;

Denied. Found not proved

m. while touching Patient A's stomach and/or groin area, asked if she was "*freaking out*" or words to that effect;

Denied. Found not proved

n. put his hand inside Patient A's pants and touched her;

(i) abdomen;

Denied. Found not proved

(ii) genitals;

Denied. Found not proved

(iii) asked Patient A if she was ok or words to that effect.

Denied. Found not proved

5. During one appointment, the Registrant pulled and/or turned Patient A's face to look at him.

   Admitted. Found proved

6. During the penultimate and/or one of the final appointments with Patient A, the Registrant used a massage tool:
   a. on Patient A's calf;

      Admitted. Found proved

   b. on the area between Patient A's legs;

      Admitted. Found proved

   c. while also touching Patient A's inside thigh and/or genital area with his thumb.

      Denied. Found proved as to Patient A's thigh
      Found not proved as to Patient A's genital area

7. While using the massage tool, the Registrant:
   a. pushed Patient A's legs apart;

      Admitted. Found proved

   b. asked Patient A to indicate how hard she wanted it to be or words to that effect;

      Admitted. Found proved

   c. asked Patient A to indicate if it felt weird or words to that effect.

      Denied. Found proved

8. During the final appointment with Patient A, the Registrant:
   a. told Patient A "*clothes off*" or words to that effect;

      Denied. Found proved

   b. told Patient A she should consider an open marriage or words to that effect;

      Denied. Found proved

   c. kissed Patient A.

Admitted (on a basis – 1x air-kiss). Found proved

Basis rejected.

Found proved as alleged (2x on mouth)

9. Following the final appointment with Patient A, the Registrant sent a series of SMS messages to Patient A in a non-professional capacity including:

a. to ask her how she was feeling or words to that effect;

Admitted. Found proved

b. stating "*you came to see me on a professional level and I was unprofessional*".

Admitted. Found proved

10. The Registrant's actions in respect of each or any of paragraphs (1) to (9) above were:

a. a breach of professional boundaries;

Admitted in respect of paragraphs: 5, 8c, 9(a)(b)

Found proved

Denied in respect of the remaining Paragraphs

Found proved in respect of Paragraphs: 1(b)(i)&(ii) 2(f); 6(a)(b)(c); 7(a)(b)(c); 8(b)

Found not proved in respect of Paragraphs: 1(a)(i)&(ii); 2(a)(b)(c)(d)(e),(g),(h),(i),(j),(k),(l),(m) 3; 4(a) - (n); 8(a)

b. not in the best interests of Patient A.

Denied

Found proved in respect of Paragraphs: 1(b)(i)&(ii) 2(f); 5; 6(a)(b)(c); 7(a)(b)(c); 8(b)(c); 9(a)(b)

Found not proved in respect of Paragraphs: 1(a)(i)&(ii); 2(a)(b)(c)(d)(e),(g),(h),(i),(j),(k),(l),(m) 3; 4(a) - (n); 8(a)

11. The Registrant's conduct in respect of paragraph (2) was outside of the scope of his competence.

Denied. Found proved in respect of Paragraph 2(f) only
Found not proved Paragraph 2(a)-(e) and (g)-(m)

12. The Registrant did not have valid consent in respect of his conduct as alleged at each or any of paragraphs (2) to (8) above.

Denied. Found proved in respect of Paragraph 2(f) only
Found proved in respect of Paragraph 5; 6(a)(b)(c); 7(a)(b)(c); 8(b)(c); 9(a)(b)
Found not proved Paragraph 2(a)-(e) and (g)-(m)
Found not proved in relation to Paragraph 3; 4(a)-(n); 8(a)

13. The Registrant's actions and/or omissions in respect of each or any of paragraphs (1) to (9) above were:

a. not primarily carried out in pursuit of a clinical and/or therapeutic aim;

Denied.
Found proved in respect of Paragraphs: 1(b)(i)&(ii) 2(f); 5; 6(a)(b)(c); 7(a)(b)(c); 8(b)(c); 9(a)(b)
Found not proved in respect of Paragraphs: 1(a)(i)&(ii); 2(a)(b)(c)(d)(e),(g),(h),(i),(j),(k),(l),(m) 3; 4(a) - (n); 8(a)

b. sexually motivated.

Denied
Found proved in respect of Paragraphs: 1(b)(ii); 5; 6(a)(b)(c); 7(a)(b)(c); 8(b)(c); 9(a)(b)
Found not proved in respect of Paragraphs: 1(a)(i)&(ii); 1(b)(i); 2(a)-(m) 3; 4(a) - (n); 8(a)

14. The Registrant failed to formulate and deliver a justifiable osteopathic treatment plan and/or an alternative course of action for Patient A.

Denied. Found proved on a limited basis

15. The Registrant's actions in respect of the paragraphs below were sexual.

4(a); During one or more of the appointments with Patient A, the Registrant:

touched Patient A in the area of her:

1. stomach;
2. groin;
3. upper chest area;

All Denied. Found not proved

4(c); During one or more of the appointments with Patient A, the Registrant:

put his hand over Patient A's hand when it was resting on her stomach;

Denied. Found not proved

4(l)(iii) while standing in very close and/or inappropriate proximity to Patient A:

touched and/or moved Patient A's hair;

Denied. Found not proved

4(l)(iv); while standing in very close and/or inappropriate proximity to Patient A:

put his hand beneath Patient A's top and touched her skin including her:

a. stomach;
b. groin area;

All Denied. Found not proved

5 During one appointment, the Registrant pulled and/or turned Patient A's face to look at him.

Denied. Found not proved

6 During the penultimate and/or one of the final appointments with Patient A, the Registrant used a massage tool:

a. on Patient A's calf;

b. on the area between Patient A's legs;

c. while also touching Patient A's inside thigh and/or genital area with his thumb.

All Denied. Found proved re (a) and (b)

Found proved re (c) as regards inside thigh

Found not proved re (c) as regards genital area.

7 While using the massage tool, the Registrant:

a. pushed Patient A's legs apart;

b, asked Patient A to indicate how hard she wanted it to be or words to that effect;

c, asked Patient A to indicate if it felt weird or words to that effect.

All Denied. Found proved

8(c) During the final appointment with Patient A, the Registrant:

kissed Patient A.

Denied. Found proved

Schedule 1

a. her fear of self-harm;
b. her fear of death;
c. her history of an eating disorder;
d. body dysmorphia and/or her body image;
e. the Registrant's perception of her addiction(s);
f. her relationship with her [redacted] and/or past trauma in relation to her [redacted];
g. her relationship with her [redacted];
h. matters the Registrant described as "*older issues*" or words to that effect;
i. telling her that she had regressed or words to that effect;

j. asking her when she was going to make a "*big reveal*" to her [redacted] about past events or words to that effect;
k. indicating it was acceptable for her to talk about psychological issues because he was supervised and/or a different type of osteopath or words to that effect;
l. asked her where she had gone or words to that effect;
m. indicating that the Registrant was only expressing an opinion on her mental health and/or that she did not need to do anything about it or words to that effect.

Schedule 1	***Alleg'n 2***	***Alleg'n 3***
a. her fear of self-harm;		*Not proved*
b. her fear of death;	*Admitted*	*Not proved**
c. her history of an eating disorder;		*Not proved*
d. body dysmorphia and/or her body image;	*Admitted*	*Not proved**
e. the Registrant's perception of her addiction(s);		*Not proved*
f. her relationship with her [redacted] and/or past trauma in relation to her [redacted]	*Admitted*	*Not proved**
g. her relationship with her [redacted]		*Not proved*
h. matters the Registrant described as "older issues" or words to that effect;		*Not proved*
i. telling her that she had regressed or words to that effect;		*Not proved*
j. asking her when she was going to make a "big reveal" to her [redacted] bout past events or words to that effect;		*Not proved*
k. indicating it was acceptable for her to talk about psychological issues because he was supervised and/or a different type of osteopath or words to that effect;		*Not proved*
l. asked her where she had gone or words to that effect;		
m. indicating that the Registrant was only expressing an opinion on her mental health and/or that she did not need to do anything about it or words to that effect.	*Admitted*	*Not proved** *Not proved*

Those matters in Allegation 3 marked * were originally admitted but on considering the reliability of those admissions the Committee vacated the pleas and decided the allegations on the evidence. The reason for this is dealt with in the body of this document.

Stage Two

Summary of Finding on Unacceptable Professional Conduct

The Committee found that the facts proved amounted to unacceptable professional conduct

Stage Three

Sanction

The Committee imposed the sanction of removal from the Register.

Details of Decision:

Preliminary Matters:

1. The parties and the Committee introduced themselves.

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.

Attendance of observer at hearing on 20 April 2021

5. On 20 April 2021, a member of the public who had recently been appointed as the Chair of the Council's Professional Conduct Committee participated as an observer during the day's hearing as part of his induction process. He asked whether he could also observe the Committee's 'in camera' discussion. The Committee was content that he should be allowed to do so. The parties were also canvassed, and they too were content to allow this. The observer participated for that day only. He remained on audio mute during the hearing and his camera was turned off, including the entire time the Committee were in camera. The observer took no part in the Committee's discussions and deliberations at any point.

Amending the Allegation

6. Ms Tanchel applied to amend the allegations in two stages as set out below. She submitted that the first amendment of the first stage related to changing Allegation 4(b) from referring to Patient A lying on her back to lying on her front, clarified the allegation in accordance with the expected evidence and caused no injustice. Mr Zaman raised no objection to the application.

7. The Committee accepted the advice of the Legal Assessor.

8. Having considered the proposed amendments and the oral representations the Committee concluded that there would be no injustice in assenting to the application. The amended allegations clarified and focused on the topics in issue. This accorded with the overarching principle of these proceedings, namely, to protect the public.

9. Regarding the second amendment, this involved the addition of multiple allegations of "*sexual touching*". Ms Tanchel submitted that these clarified the case and allowed for specific findings of fact to be made. She said that the Registrant had been on notice of the application it was not opposed and, it may prejudice the public interest were it not to be granted.

10. Ms Tanchel stated that it was in accordance with the recent authority of *The General Medical Council v Dr. Raied Haris [2020] EWHC 2518* in which Foster J observed in short that to simplify matters if sexual touching were alleged it should be charged as such rather than allege sexual motivation. Ms Tanchel said that the existing sexual motivation charges required proof that the Registrant acted either in pursuit of sexual gratification or in pursuit of a future sexual relationship whereas the additional charges could be proved if a touch was sexual because of its nature or because of the circumstances in which it occurred or because the purpose of the Registrant made it so.

11. The Committee questioned how the addition of so many additional charges simplified the case and how a touching with a sexual purpose was different to touching with sexual motivation which was already charged.

12. Mr Zaman conceded that he had raised no objection in writing to the application but was concerned that adding fifteen charges almost all of which were not sexual per se but may be proved as sexual by way of the Registrant having a sexual purpose added nothing to the existing allegation of sexual motivation.

13. The Committee accepted the advice of the Legal Assessor which included that: a touch can be sexual by its very nature. Alternatively, a touch may be sexual and it becomes so due to: (i) the circumstances in which it occurred or (ii) because that was the purpose of the toucher or (iii) both.

14. The Committee concluded that in respect of the alleged touching in Allegation 6c (that the Registrant touched Patient A's genital area) it was capable of being sexual both by its nature and/or by the circumstances or purpose of the Registrant. The Committee concluded the alleged touch being sexual by nature or circumstances was different to it being sexual because of the Registrant's mindset whether this is charged as purpose or motivation. The amendment may allow for a finding that clarified whether the alleged touch was sexual by way of its nature or the circumstances. It saw little if any distinction between a touch for a sexual purpose or a touch with sexual motivation.

15. In respect of the other alleged sexual touching, the Committee considered it unlikely that any of these were sexual by their nature but accepted that each may become sexual due to the circumstances in which it occurred. Again, it saw little if any distinction between sexual purpose or sexual motivation. However, bearing in mind the potential for finding an act sexual by way of circumstances the Committee found there was some limited potential to clarify the context of any facts found proved.

16. Despite the lateness of the application and the multiplicity of additional charges, since there was some potential for clarification of circumstances, the Committee acceded to the application as meeting the overarching objective namely to protect the public.

17. During the submissions and in answer to queries from the Committee the issue of "*grooming*" was raised. The Committee was concerned to know what the accusation was, what it meant and why, if that was the basis of the Council's case, it was not a specific allegation?

18. Ms Tanchel stated that it was the Council's case that the Registrant had groomed Patient A in a calculated manner over a substantial period and over 40 appointments. She said this was a clear inference that the Committee could draw from the allegations.

19. Mr Zaman submitted that whilst it may be set out in the Council's opening it was not an allegation that was pleaded. If the Committee were to be asked to draw a finding of fact that the Registrant had groomed Patient A it should be a specific allegation.

20. The Committee sought the advice of the Legal Assessor. He advised that if there was a serious allegation or finding of fact that the Committee was being asked to make it must be clearly pleaded in the Allegations. The suggestion of grooming was very serious indeed but despite this it was not contained within the Allegations. Without

a clear Allegation of grooming the Committee could not make that finding.

21. Following the above advice Ms Tanchel took instructions but then declined to apply to add an allegation of grooming.

22. The amended allegations and the Registrant's plea to the allegations are set out above under the heading "Summary of Decision". Those in blue were admitted and found proved. Some of the admissions were subsequently withdrawn or considered by the Committee to be potentially unreliable. The Committee dealt with these matters as set out in this document.

Application to hear certain matters in private

23. The Committee acceded to the application.

24. Ms Tanchel applied to hear matters that touched upon Patient A's health in private. Mr Zaman conceded this was appropriate.

25. The Committee accepted the advice of the Legal Assessor.

26. The Committee determined that owing to the sensitive nature of many aspects of the case it would be appropriate, fair and in the public interest to hear such matters in private. It further determined that given issues pertaining to Patient A's health would form much of the case it would be impractical to constantly change back and forth between a public and private hearing. As such it concluded that the whole of the evidence would be in private unless or until either the parties invited reconsideration of this issue or, it determined that it should raise this with the parties as being in the public interest.

Applications for 'special measures' (x 2)

27. The Committee acceded to both applications.

28. Ms Tanchel applied for two special measures. First that Patient A be accompanied by a friend who may provide moral support by her presence (a chaperone). Second that the Registrant attend the hearing by way of telephone link only, whilst Mr Zaman cross-examined Patient A. This would ensure that Patient A could not see the Registrant but would be able to hear her evidence. Ms Tanchel submitted that both courses of action would enable Patient A to give her best evidence. Mr Zaman accepted that these were pragmatic solutions appropriate to the current circumstances of this remote hearing. He raised no objection to the presence of a chaperone provided the Committee could be satisfied that any form of

deliberate or accidental interference with the witness during her evidence was excluded.

29. The Committee accepted the advice of the Legal Assessor.

30. Regarding the presence of the chaperone the Committee determined that this was appropriate both during the hearing and during any short break in Patient A's evidence but that: (i) in the hearing the chaperone should be visible to the Committee but not visible to Patient A to prevent any possibility of witness-interference and (ii) in any short-break if Patient A were in the company of the chaperone, a member of the Council staff should be present for the same reason. The Committee also determined that it should, in the usual way, warn Patient A not to discuss her evidence with anyone whilst she was under oath.

31. As to the Registrant participating in the hearing by way of telephone rather than video link during Patient A's evidence, the Committee was mindful that when screens are used in a customary 'in-person' hearing, a registrant would hear but not see the witness. The Registrant's advocate and the Committee would see the witness. This Registrant's participation by way of video link except during the evidence of Patient A when he would participate by telephone placed him as close to the position of a Registrant in an in-person hearing as could be achieved during the pandemic. It did not place him in a lesser position, and it enabled his participation.

32. The Committee was not concerned that it could not see the Registrant's reactions to the allegations since it would have ample opportunity to assess him during the rest of the case including during his own evidence. It was of the view that reactions and emotions are not a particularly reliable measure of veracity, rather it would concentrate on issues such as the internal and external consistency of evidence bearing in mind the burden and standard of proof.

33. The Committee concluded that the Registrant could participate in the hearing by way of telephone link during Patient A's evidence and that his interests were protected by the continued presence of Mr Zaman on the video link. If an issue arose he would be afforded the opportunity to discuss it with Mr Zaman and, if necessary, it could be raised in submission and dealt with appropriately. The Committee determined to keep the adequacy of this under review to ensure that the Registrant was not prejudiced.

34. The Committee concluded that the proposed course struck a fair balance between the public interest in enabling Patient A to give her

best evidence and the Registrant's right to attend, participate in the hearing and hear the evidence together with any challenge and response. The Committee was satisfied that this procedure enabled a timely and inclusive hearing which was fair and met the overarching objective.

Amending the Allegations

35. As noted above, Ms Tanchel applied to amend the original allegations. These are set out below for reference.

Original Allegations

1. While the appointments were ongoing, the Registrant:
a. Regularly met with Patient A during swimming sessions where he:
(i) touched her foot on one or more occasions;
(ii) asked her if she was hanging around for a drink or words to that effect
b. Suggested meeting Patient A in a non-therapeutic capacity including:
(i) stating he could come to [redacted] with her or words to that effect;
(ii) texting her on 28 January stating "so you're free then" in the context of his staying alone in a hotel in [redacted]

2. During the appointments, the Registrant discussed aspects of Patient A's personal life with her including one or more of those items set out in Schedule 1.

3. One or more of the discussions and/or remarks itemised in Schedule 1 took place while the Registrant was touching Patient A.

4. During one or more of the appointments with Patient A, the Registrant:
a. touched Patient A in the area of her:
(i) stomach;
(ii) groin:
(iii) upper chest area;
b. Required Patient A to lie on her back although she indicated to him that she was uncomfortable with this;
c. put his hand over Patient A's hand when it was resting on her stomach;
d. failed to act appropriately when Patient A told him "stop I don't feel safe, stop touching me" or words to that effect;
e. failed to act appropriately when Patient A told him that he was causing her pain to her stomach and/or her foot;
f. used undue pressure and/or force to Patient A's stomach and/or foot area;
g. did not respect Patient A's privacy and/or dignity when she was undressing for treatment;
h. asked Patient A to remove her top;
i. asked Patient A to bend over;
j. tucked Patient A's top into her sports bra;
k. stood in very close and/or inappropriate proximity to Patient A including to her:
(i) front
(ii) side
(iii.) back
l. while standing in close and/or inappropriate proximity to Patient A
(i) remarked "stop panicking you need to relax" or words to that effect;

(ii) asked "how are you really?" or words to that effect;
(iii) touched and/or moved Patient A's hair;
(iv) put his hand beneath Patient A's top and touched her skin including her:
a.stomach;
b.groin area;
while touching Patient A's stomach and/or groin area, asked if she was "freaking out" or words to that effect;
put his hand inside Patient A's pants and touched her;
(i) bladder area;
(ii) genitals beneath her bladder area;
(iii)asked Patient A if she was ok or words to that effect.

5. *During one appointment, the Registrant pulled and/or turned Patient A's face to look at him while also touching her lower stomach and/or groin area.*

6. *During the penultimate and/or one of the final appointments with Patient A, the Registrant used a massage tool:*
   a. *on Patient A's calf;*
   b. *on the area between Patient A's legs;*
   c. *while also touching Patient A's inside thigh and/or genital area with his thumb.*

7. *While using the massage tool, the Registrant:*
   a. *used his hands and/or arms and/or elbows to push Patient A's legs apart;*
   b. *b. asked Patient A to indicate how hard she wanted it to be or words to that effect;*
   c. *asked Patient A to indicate if it felt weird or words to that effect.*

8. *During the final appointment with Patient A, the Registrant:*
   a. *told Patient A "clothes off" or words to that effect;*
   b. *b. told Patient A she should consider an open marriage or words to that effect;*
   c. *kissed Patient A.*

9. *Following the final appointment with Patient A, the Registrant sent a series of SMS messages to Patient A in a non-professional capacity including:*
   a. *to ask her how she was feeling or words to that effect;*
   b. *stating "you came to see me on a professional level and I was unprofessional".*

10. *The Registrant's actions in respect of each or any of paragraphs (1) to (9) above were:*
    a. *a breach of professional boundaries;*
    b. *not in the best interests of Patient A.*

11. *The Registrant's conduct in respect of paragraph (2) was outside of the scope of his competence and/or experience.*

12. *The Registrant did not have valid consent in respect of his conduct as alleged at each or any of paragraphs (2) to (8) above.*

13. *The Registrant's actions and/or omissions in respect of each or any of paragraphs (1) to (9) above were:*
    a. not primarily carried out in pursuit of a clinical and/or therapeutic aim;

b. sexually motivated.

14. The Registrant failed to formulate and deliver a justifiable osteopathic treatment plan and/or an alternative course of action for Patient A

Schedule 1

a. her fear of self-harm;
b. her fear of death;
c. her history of an eating disorder;
d. body dysmorphia and/or her body image;
e. the Registrant's perception of her addiction(s);
f. her relationship with her [redacted] nd/or past trauma in relation to her [redacted]
g. her relationship with her [redacted]
h. matters the Registrant described as "older issues" or words to that effect;
i. telling her that she had regressed or words to that effect;
j. asking her when she was going to make a "big reveal" to her [redacted] about past events or words to that effect;
k. indicating it was acceptable for her to talk about psychological issues because he was supervised and/or a different type of osteopath or words to that effect;
l. asked her where she had gone or words to that effect;
m. *indicating that the Registrant was only expressing an opinion on her mental health and/or that she did not need to do anything about it or words to that effect.*

36. The amended allegations are set out under the heading **"Summary of Decision"**.

Admissions

37. Following the conclusion of the amendments 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

38. Ms Tanchel opened the case and submitted that over the course of treatment the Registrant 'took advantage' of Patient A in circumstances that were unprofessional and sexually motivated. She asserted that the period of time was an aggravating factor. She stated that there was a social relationship between them, the extent of which was disputed, but in any event it should have precluded a professional relationship.

39. Ms Tanchel said that the Registrant qualified as an Osteopath in 2003 and was thus of some experience. Patient A's first appointment was around four years ago but due to the lapse of time she could not provide specific dates. However, that should not undermine her evidence. She stated that Patient A had and still has ongoing mental health (MH) issues. She had pain in her knee, hip and back and despite much discussion regarding her hip, the problem was never resolved. Ms Tanchel asserted that the Registrant had said her pain was psychosomatic and that he seemed to focus on psychological issues rather than physical symptoms. He raised her MH issues and led her to believe he could help even though her problems did not fall within his remit to treat as an osteopath. There were occasions when Patient A cried. He started to treat Patient A's stomach and groin which "*triggered*" her.

40. *Note: The issue of grooming was again mentioned. Ms Tanchel was asked to clarify it and said she would return to it. At the end of her opening and following the advice outlined above the suggestion of grooming was not proceeded with*.

41. Ms Tanchel submitted the non-clinical contact between the two had increased over time, and they started to go swimming together [redacted]. Text exchanges extended this side of the relationship. When swimming the Registrant swam in the same lane as Patient A and deliberately grabbed her foot twice. There was further blurring of professional boundaries by the loan of ski and cycling equipment between them. During the treatment Patient A told the Registrant what her psychotherapist had advised, and he discussed this with her. He would regularly invite her to discuss issues regarding her [redacted] and asked whether she would disclose any issues to her [redacted]. He persisted despite the fact she was vulnerable. During some sessions he touched her groin area. When asked by the Committee to define for the purposes of clarity the meaning of "*groin area*", Ms Tanchel said that this included the following areas: "…*specifically* (inaudible) *on the inside of her legs, the base of her spine, her buttocks, her pelvic floor and her stomach.*"

42. Ms Tanchel said that during treatment sessions the Registrant did not leave the room whilst Patient A changed or removed her clothing for treatment. He stood very close to her whilst she was bending over and whispered to her to stop panicking which was not appropriate conduct. He discussed personal and intimate matters with her and on occasions put his hand or hands inside her pants and bra. Additional examples of inappropriate behaviour were putting a massage tool between her legs; placing his thumb on her thigh; using his hands or elbows to part her legs. On one occasion

she stated that he had encouraged her to join him whilst he was alone in a hotel by texting "*so you are free then*". This, she said, was evidence of his sexual motivation to pursue a relationship. She said that him kissing her on the lips was similarly motivated.

43. Ms Tanchel observed that the expert evidence of Mr McClune was confined to the issues of a treatment plan and informed consent, and his evidence was not challenged. She concluded by stating that there were multiple breaches of the Osteopathic Practice Standards (OPS) including A1, A2 and A3 and that the imbalance of power between the osteopath and the patient was exacerbated by his knowledge of her vulnerabilities. This occurred over time during which boundaries were blurred or breached. He acted outside his professional competence and his manner of touching, speaking, use of a massage tool, the kiss and the hug were all sexually motivated or examples of sexual touching.

44. The Committee requested clarification on the issue of the relationship between the Registrant and Patient A since the OPS did not prohibit the treatment of friends or family. Ms Tanchel said that not all such relationships were prohibited but, the relationship between the Registrant and Patient A made treatment inappropriate from the beginning. It was for the Committee to determine at what point the Registrant realised that.

Evidence

Patient A

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

79. [redacted]

Evidence from the Registrant

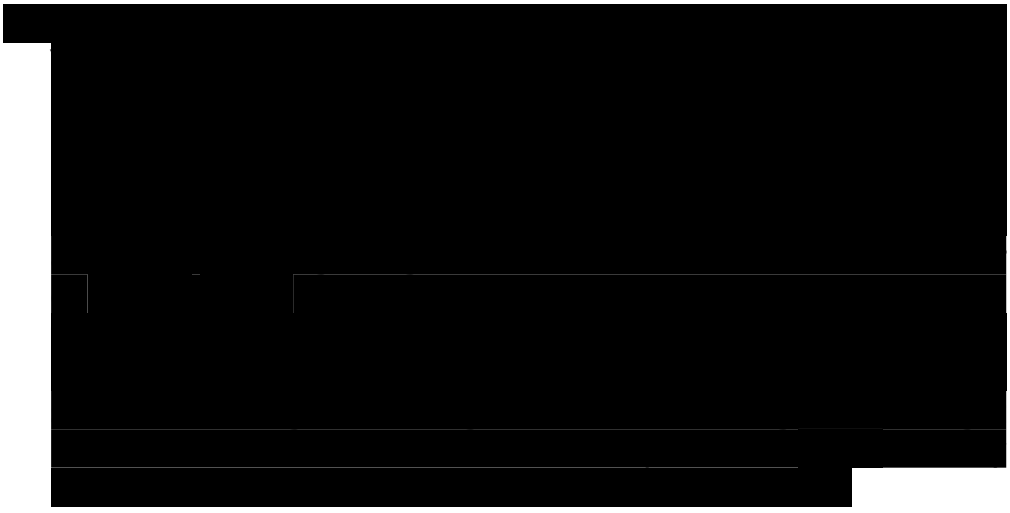
[redacted]

[redacted]

[redacted]

[redacted]

[redacted]



[redacted]

[redacted]

[redacted]

[redacted]

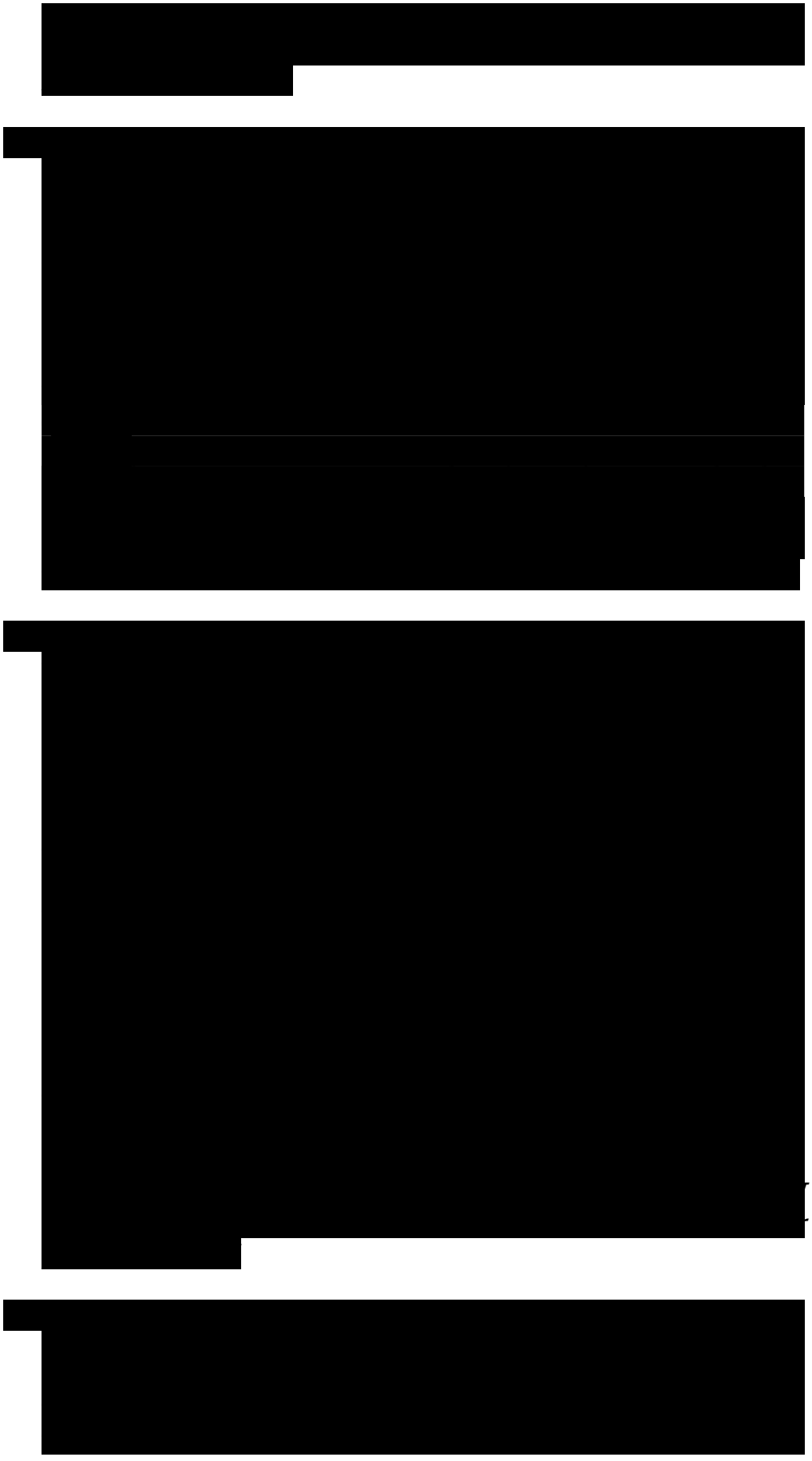
[redacted]

[redacted]

[redacted]

[redacted]

[redacted]



[redacted]

[redacted]

[redacted]

[redacted]

139. [redacted]

[redacted]

Submissions of the Parties on the Facts

140. Ms Tanchel outlined the burden and standard of proof and submitted that the case rested on the credibility of Patient A and the Registrant. She said that the Registrant had embarked upon a path outside that required by the care Patient A sought and he did so for his own sexual gratification or to enter a sexual relationship with her. She invited the Committee to believe Patient A, asserting that she came up to proof and there was very little challenge to what she said. She said many of the matters stated by the Registrant were not put to Patient A so the Committee had no idea what she would have said. She submitted that the Committee was entitled to draw inferences from the fact that matters were not put. This included the Registrant inventing his evidence on the spur of the moment. She said that the Committee should look at all the evidence 'through a prism'. Mr McClune the expert witness was not challenged in what he said, in particular that there were concerns to be answered by the Registrant, yet the Registrant did not do so, rather he disagreed with Mr McClune. It was permissible to draw an adverse inference.

141. Ms Tanchel reiterated that Patient A came up to proof and maintained her evidence which was credible and clear. The fact she could not pinpoint dates should not be held against her but was the context f the case namely the blurring of boundaries between social and professional conduct, no treatment plan, no discussion as to what next and so on. She said it was not disputed that the boundaries were blurred, the question is the extent of the blurring, how and why. She contrasted the manner and demeanour of the Registrant in giving evidence and described him as evasive, shifting his position, answering questions in a way that put him in the best light or when he thought it was safe then changing his position when he realised he had entered a pitfall. She said the shifts were at times subtle and mirrored the change in their relationship that became

inappropriate and unprofessional. She said the prism to look through was that it was an improper relationship as admitted by the Registrant and that it was his obligation to maintain proper boundaries as per the OPS. She said the suggestion that Patient A had not made a record of the appointments demonstrated that the Registrant's thought she had responsibilities in maintaining boundaries not him.

142. Turning to the trip to [redacted] Ms Tanchel said that the Registrant's position was that she raised the trip not him, he entertained the idea briefly but then thought he should not go. He said because he didn't raise it he had said nothing inappropriate. She said that he had set out in detail the effect this had all had on him but there was no apology or recognition of the effect upon her. She said that supported his lack of probity and thus his credibility and adverse inferences could be drawn against him. She said that he had conceded their friendship from the outset and, whilst there was no prohibition on treating friends it was a matter for the Committee to determine whether he made the correct judgement in treating her at all. He should never have embarked on treatment at all and he was evasive and defensive in dealing with that. Likewise, she submitted, he was evasive in his answers regarding the distinction between mental health and physical symptoms. She said it was a simple question, but his complex answers demonstrated his evasion.

143. Ms Tanchel said that the Registrant had "…*constructed a defence namely that he was not treating her mind he was treating her symptoms because the mind and body cannot be separated* [and that] *construct was because he was treating outside his osteopathic competence.*" She said that the issue of therapeutic listening was an "*artifice*" because much of what was discussed was not relevant to osteopathy. She said responding to intimate or traumatic incidents with "*uh-huh*" was incredible particularly since they were friends. She said this was a matter of degree and went beyond the bio-psychosocial model. Plainly a history was required but this went beyond that and the entire case was predicated on boundaries being continually crossed. His denial of saying anything was incredible and was constructed because he had no real answer. His comment that he could not stop Patient A talking was not acceptable and he should have maintained boundaries. Another boundary was crossed when he used his nursing training to give advice in osteopathic treatment she said this was not appropriate. His realisation of this was demonstrated by what she said was his inconsistency in his evidence. She said he was evasive when he realised he had built a trap for himself in his answers. Similarly when discussing body dysmorphia she observed that whilst he could remember details in

his statement and when transcribing his notes chose not to remember in cross-examination.

144. Ms Tanchel then took the Committee to series of what she said were examples of admissions and/or evasions and shifts in the Registrant's evidence regarding professional boundaries. She said he conceded he should never have treated Patient A, he changed his position about listening and speaking, he used his nursing knowledge in treating her. When questioned by the Chair Ms Tanchel said that it was not her case that it was wrong to use nursing skills in osteopathic treatment but that his explanation was not accepted by the Council and the discussions had nothing to do with nursing. She said he had conceded he treated Patient A differently because she was a friend. She said this was the basis of the inappropriate relationship he pursued. She said he was untruthful and changed his version as to where he treated Patient A on her thigh. She said he admitted that the text of 19 February was clearly an admission of an inappropriate relationship, but it went to the whole case not just the text. The text was awkward for him since it showed he was proceeding on a basis that the relationship was more than just clinical and it showed his agenda was one of sexual motivation. She said his admission that there was an 'enmeshed' relationship also showed it was sexually motivated and his denial of this and reference to self-admonition was incredible. He had chased her with texts because she had cut contact and he wanted to clear things up. Like the explanation for not discussing etiquette when he had touched her foot in the pool, he had apologised and had thus exposed himself and his lack of honesty. She said his explanations defied logic. An example of this was, she said, where he moved Patient A's head to open lines of communication albeit he is engaged in therapeutic listening.

145. In closing Ms Tanchel said that the Registrant's actions were inappropriate, he blurred boundaries, did not act in Patient A's best interests nor was what he did entirely for therapeutic purposes.

146. In answer to question from the Committee Ms Tanchel said that Allegation 3 was consequential on Allegation 2 and the comments were made during treatment. It was a matter for the Committee to decide if he was touching her at the time any comment was made. The ambit of Allegation 12 was discussed. Ms Tanchel said that if the Committee concluded that some of the comments were appropriate they would have needed consent to be embarked upon. She said that in Allegation 14 it was the case that the Registrant never had a treatment plan rather than the treatment exceeding a legitimate treatment plan. Regarding Allegation 6(b) she said it was

imperative the Committee understood where the tool was used on Patient A.

147. Mr Zaman started by submitting that there was no evidence to support Allegation 3. Nowhere did Patient A say the Registrant was touching her when he said the things complained of and this was typical of the scattergun case presented. It was a question of throw as many darts at the board and hope one hits the bullseye. He rejected the assertion that the Registrant had acted in the sexually motivated pursuit of Patient A. He said the fifteen allegations, sub-allegations were complex and formulated in a complex manner. Their late amendments went to the heart of the issue when even on the morning of the hearing changes were being made when there was confusion. The comment regarding Patient A not writing things down was a reference to her memory and credibility.

148. Mr Zaman submitted the Committee should use its own expertise and common sense in assessing the evidence and in that respect the case was simple and straightforward. The case involved a series of allegations made by Patient A spanning 4 years and 40 appointments during which no issues had been raised with anyone at the time. She had declined the offer of a female osteopath being content to be treated by the Registrant. Time after time she went back for treatment and that was important to the true picture. Some trigger occurred in the final appointment that had caused her to rewind these 4 years and 40 appointments and reappraise or reinterpret friendly contact and then to ascribe unjustified unbased allegations to that conduct. She said there was no clarity in her allegations, and she suffered from MH issues.

149. In respect of Allegation 1(a)(i) he said it was a case of he said one touch she said two. The Registrant had given a reliable and rational account namely he had tapped her foot. He was not flirting. In cross-examination he said Patient A said, for the first time, that he had grabbed her foot and pulled her back. This was an example of her re-analysis and inconsistency. He said there was the prospect of inadvertent contamination and of collusion in that Patient A had only complained to the Council after discussing matter with a third party and there was the potential for issues to be mistaken, magnified and distorted. He posed the question 'what was the reason for the delay in her complaint?' and said there was none. He reminded the Committee that the Registrant was of good character which went to his credibility and reliability.

150. Mr Zaman said it was clear that they had known each other and socialised for over ten years and that was perfectly innocent. He denied that the Registrant had admitted he should never have

treated Patient A, rather that in hindsight it would have been better not to. He said that she had been recommended to the Registrant by her [redacted] and had obtained his phone number and started to text him. She contacted him time after time, engaged in personal messaging and signed off with kisses. It was not him pursuing her or acting in a calculated fashion. He could have responded in a sexual way but time after time he did not. Regarding Patient A's reliability Mr Zaman said that in her statement she said she saw the Registrant for stress, tension, anxiety, and pain yet she only mentioned pain in her evidence. He said this was an indicator of her inconsistency. There were 40 appointments with gaps of two weeks, a month, one gap of three months and one of six months which contradicted her assertion that appointments ran into each other. He noted that when the Registrant suffered an injury and he could not treat patients, she waited to see him.

151. Regarding Patient A's MH, Mr Zaman said it was clear that at no point did the Registrant say he was qualified to treat this. Patient A's perception and interpretation was different to the reality of him referring her to a specialist. Doing so was hardly calculated or grooming. He took the Committee to several points in the bundle where he said the Registrant had referred her to others and reiterated that this was not the action of a calculating man nor was it motivated by anything other than a professional relationship. Likewise he said that the Registrant had advised her to improve her strength and conditioning which was caring and responsible. She had herself acknowledged that he referred her to counselling since he could not treat her MH. He said that the issue of supervision was an example of where Patient A's perception of this was different to reality. Dealing briefly with Allegation 14 Mr Zaman said that Patient A said there was no treatment plan whereas the Registrant had made it plain there was a plan that operated on a rolling basis in which he tried to moderate the effect of exercise.

152. Mr Zaman then took the Committee through the various allegations pointing out what he said were the differences between Patient A's statements and that of the Registrant.

153. Regarding Allegation 2 and Schedule 1 Mr Zaman said that the issue of body dysmorphia at (d) was discussed as the Registrant tried to protect his patient but his efforts had been misconstrued and given an ulterior motive years later. Regarding (c) and an eating disorder he said that it was entirely possible she had misremembered this and, there was no reason or motive for him to deny this having accepted that body dysmorphia was mentioned. Regarding her [redacted] (f) he pointed out that Patient A instigated the discussion and he, being concerned, would simply ask how she was

coping. He did not dig nor did he offer advice when she started to talk of past trauma instead he involved the practice manager. Mr Zaman submitted that this was hardly evidence of grooming or consistent with ulterior motives. He said it was not true nor the reality that he was ever employed at an addiction clinic.

154. As to perception of any addiction (e) he submitted it was not mentioned and Patient A again perceived things different to reality. Regarding discussing her [redacted] (g) he submitted that there was no such discussion and the Council had provided no information and no detail which was again indicative of the scattergun approach. As to 'older issues' (h) he asked what were they, what was wrong about them, what was the Council's case. He continued with the submission that there was no information regarding (l) and regression. Concerning the 'big reveal' (j) he submitted there had been a conversation, but that Patient A had misinterpreted or misremembered it and, rather than being about her [redacted], the Registrant had said that if she wanted to deal with issues related to her [redacted] it was difficult to do so if he was dead. As to the meaning of 'where had she gone' or similar (L) she had simply misconstrued matters. It was quite natural and nothing sinister to ask someone if they were OK when they did not respond during a conversation. Finally regarding (a) and self-harm Mr Zaman said that Patient A appeared to be referring to thoughts she had as a teenager and she had raised the issue, not the Registrant. He submitted that it was clear her evidence was uncertain and the Committee should find in his favour.

155. Regarding Allegation 3 Mr Zaman repeated the submission that there was no evidence to support this allegation at all.

156. Mr Zaman next turned to Allegation 4, the multiple sub-paragraphs and consequential allegations including those relating to consent and sexual motivation. Regarding 4(a) (i, ii & iii) he compared their accounts and said that he worked in the area of her stomach on the thoracic diaphragm. She consented to this and at no time said it was inappropriate or sexually motivated. He said he worked on the area of her groin, giving a credible account for so doing and had noted her positive consent. As to her upper chest, again he recognised this was potentially sensitive and had gained her consent. She made no complaint at the time and continued to go back for treatment. Regarding 4(b) he said that the reality was it was only in the last appointment that she had objected to lying on her stomach, so he modified his treatment of her. As to placing his hand upon hers (4(c) and said to be a sexual act, he suggested the reality was that this did not happen since she made no complaint and went back for further appointments. Regarding 4(d) he said that

she had asked the Registrant to stop and he had done so, thus he had done nothing wrong. As to acting inappropriately as alleged in 4(e) Mr Zaman said this was entirely subjective and he made no report but went back many times. Similarly she returned despite the allegation made now about her foot 4(f) the treatment of which she consented to.

157. On the issue of respecting her dignity 4(g), even on her account she was not bothered, and she regarded the treatment room as a safe space likewise removing her top for treatment 4(h) and, she returned subsequently. He submitted that asking a patient to bend over alleged at 4(i) was a normal and standard assessment used on all patients. He asked her to breathe and relax. He submitted it was entirely plausible that the Registrant adjusted Patient A's top for the reasons he had given. As to 4(k) and the issue of standing close, too close or inappropriately close Mr Zaman made the point that his had never been defined properly and it was obvious that osteopathic assessment and treatment required close proximity. As to 4(l)(i- iv) he submitted that the Registrant had provided a detailed rebuttal to (i), (ii) was again similar to the scattergun approach, (iii) was simply moving her hair to treat her with no ulterior motive and as to (iv) the reality was he touched her when he treated her. Regarding 4(m) he said that the Registrant was assessing if she was OK with her treatment. At this point Ms Tanchel objected to Mr Zaman's approach and suggested he was filling in the gaps in his client's case. Mr Zaman said this allegation and that at 4(n) were denied.

158. Regarding Allegation 5 Mr Zaman reminded the Committee that the Registrant had accepted that he had turned her to face him and that this was a breach of professional boundaries since, although he was trying to communicate it was over familiar. He rejected the suggestion it was sexual or sexually motivated.

159. When dealing with Allegation 6 Mr Zaman pointed to the areas where Patient A and the Registrant had spoken of this in their statements, and he had accepted use of the massage tool. He denied touching her genital area. He submitted that consent was obtained and, he had used the tool on many patients having used it on himself. After Patient A complained he suspended its use. Regarding Allegation 7 he said that the use of the tool was admitted, and the Registrant had to move Patient A's leg to work on a muscle. She consented to this. He agreed that the Registrant asked Patient A how hard she wanted use of the machine. Whilst he may have asked how Patient A felt he would not have used the words alleged. Turning to the three parts of Allegation 8, Mr Zaman said that the Registrant did not order Patient A to remove her clothing and it was denied he spoke of an open marriage. He said that the fact of a kiss

on the cheek was admitted but on the mouth was denied. Patient A had misconstrued what had occurred. As to Allegation 9 he submitted the context was clearly emotional, but it was not sexual nor was it sexually motivated.

160. In comparing Patient A and the Registrant he said that he had been cross-examined over three days and had tried to put his best foot forward. He said the expert had suggested that use of the tool was appropriate. He submitted that the Council's choice of what to include in Allegation 10(a) was inconsistent, that Patient A started text-conversations and they knew each other as friends. Finally, he said that the Committee should give weight to the character references.

161. In answer to an inquiry from the Committee as to how it should approach the admissions that had been made and withdrawn Mr Zaman said the Committee should measure that in light of all his evidence. He reiterated that the expert evidence was unchallenged and accepted. Much of the case relied upon his or her recollection.

The Committee's Determination on the Facts

162. The Committee accepted the advice of the Legal Assessor. This included advice regarding the burden and standard of proof, assessing witnesses; language; the effect of time upon memory, how an honest but mistaken witness may be convincing, consent, character, inferences, expert evidence, admissions/retractions, sexual motivation and the meaning of '*sexual*'. Regarding these latter two issues, conduct only crossed sexual boundaries if it was "*designed or intended to gratify sexual impulses or desires"*. The Legal Assessor also advised on the meaning of several of the consequential allegations said to flow from purely factual ones. This included the advice that "*in best interests*" should generally be limited to treatment not social interaction since the latter was dealt with by specific allegations and the Committee dealt with professional conduct not social conduct. Mr Zaman agreed. Ms Tanchel disagreed and submitted that "*best interests*" had no limitation. The Committee concluded that it should determine the limits of the phrase in this case as it related to individual charges that may be proved.

163. The Committee considered that this case was best dealt with by dealing with the allegations in two stages. First, the primary disputed allegations of fact, 1, 2, 3, 4, 5, 6, 7, 8, 9 & 14. Second, having made those decision the Committee addressed the numerous consequential allegations 10, 11, 12, 13 and 15.

164. The Committee rejected the suggestion made on behalf of the Council that it should look at the case through a prism namely that the relationship between the Registrant and Patient A was improper from the start. Not only did this approach colour the fair consideration of the evidence and each allegation, but it also risked a reversal of the presumption of innocence and burden of proof.

Overall reliability of witnesses, statements and documents

165. Regarding Patient A the Committee concluded that she was not as reliable as the Council portrayed. She was inconsistent in her reason for attending osteopathic treatment as between concern for her physical health and concerns over her stress or anxiety which she said the Registrant could address. Whilst it was understandable that she could not recall details of specific consultations her suggestion that they all blurred together continuously was undermined by varying gaps of between two weeks and several months between consultations and, the fact that it was Patient A who determined if or when she needed an appointment. She was six months out in recalling when consultations started (which is evidenced by the Registrant's notes, and not disputed by the Council) which raised concern as to her temporal recollection. She was also seeing other therapists at the time of some of these events and, since there was – on her own evidence - the potential for her to blur the memory of different osteopathic appointments, the Committee was concerned that there was the potential to also blur the memory of events and conversations as between practitioners.

166. The Committee noted that Patient A saw the Registrant for four years without complaint. It was only after the last appointment that she looked back over the previous forty appointments with different interpretive glasses. The Committee observed that Patient A now – following what she alleged were the unwelcome actions of the Registrant – had reviewed past events and was reinterpreting these events. This had led her to the view that there was a long-term pattern of constant abuse that was now alleged.

167. The Committee considered it implausible that Patient A had been content to attend the Registrant's clinic for four years and raise very personal and sensitive issues when she now stated she had felt uncomfortable from the second appointment onwards (ie implying she was uncomfortable for four years yet still discussed intimate details of her life). The texts suggest a relationship in which she could raise issues or ask questions if she were so minded. This raised the question 'if Patient A was so uncomfortable why continue to attend the clinic for four years?' In addition, Patient A did not complain to the Council until she had spoken to a friend who

encouraged her to do so. It was also of note that despite her understandable concern at giving evidence, Patient A was at times quite able to assert her view as to how the hearing should proceed. The Committee also found implausible the suggestion that she never understood why she was treated in any particular way. On her own account she would attend with various complaints that were discussed and, following this and a standing assessment he would direct his treatment toward relieving the pain she felt at the time.

168. Whilst the Committee did not conclude that Patient A was inventing a story it had concern that her retrospective complaint about many if not all the consultations was not as clear cut and firmly based as the Council asserted. Patient A's reinterpretation had been developed from a particular perspective which gave the event of the previous 4 years a significance and meaning that she had not associated with them at the time. This merited caution. It was of note that Patient A did not herself attribute sexual motivation on the part of the Registrant at the time of the appointments and, she did not now accept the suggestion when it was repeatedly raised with her.

169. In the Committee's view this undermined the Council's initial suggestion of a four-year sexually motivated course of conduct by the Registrant. Patient A's current view of sexual motivation was not explored. However, Patient A did perceive a change in the Registrant in late 2019.

170. As to the Registrant, it was suggested that he was evasive, defensive, and altered his stance on several occasions when questioned. One notable change in his evidence was in respect of the term "*weird*" as alleged in Allegation 7(c). In his first written response he denied using the term. In a later written response he conceded he may have used the term since he used it all too often. When questioned about this by the Committee he conceded that there was a contradiction and that he accepted he may well have used the term. He was unable to explain why the contradiction occurred other than to say he must have become confused as between statements. The Committee noted that there were times in which the Registrant had some difficulty with the questions but that frequently this was due to the binary portrayal by the Council of what were nuanced subjects. For example, the Committee considered that the Registrant was bemused by the suggestion that it was inappropriate for him to rely upon life-skills and knowledge gained during his nursing career when providing osteopathic treatment. There is no such stricture within the OPS to ignore other professional experience nor would it be reasonable to do so.

171. Whilst he appeared to avoid using the term 'mental health', the Committee considered this may have been because the Council did not clarify where in their view the boundary lay between physical symptoms and mental health and/or how he had crossed it. Rather the Council simply concentrated on rejecting his interpretation. It also appeared to be the Council's case that therapeutic listening excluded almost any communication from the practitioner. If he denied speaking and used everyday terms of acknowledgement it was suggested that was incredible. If his answers conceded or implied speech took place, his communication was criticised as being a discussion and not therapeutic listening. Rather than providing a precise assertion of what was alleged to be wrong, much of the challenge to the Registrant was repetitive, adversarial and on the somewhat extreme basis that nothing he had done was appropriate at all.

172. The Committee concluded that some of the Registrant's apparent reluctance to give full responses was because he was challenged on topics the boundaries and meaning of which were never clearly defined by Council, for example what is meant by 'mental health', and when it was permissible for an osteopath to treat a friend at all. The Council presented no positive case as to what was or was not appropriate in therapeutic listening rather he was criticised if he spoke and criticised if he did not. The Committee rejected the suggestion that therapeutic listening was an artifice or that it meant silence on the part of the Registrant. When treating Patient A, the Committee accepted the Registrant listened at times and commented at times as one may expect. He was sufficiently informed and concerned to refer Patient A to other practitioners for help on several occasions.

173. As to the suggestion that the Registrant had amended the transcription of his notes and this was only disclosed in cross-examination, the Committee noted that Mr McClune, the Council's own expert, had noted the addition and made no adverse comment. The Committee concluded that the addition (presented with the full unchanged notes) appeared to be an innocent attempt to clarify the notes. Whilst it might have been better if the Registrant had drawn attention to his minor addition to the typed-up version, both the original and the one-word expansion were included, also his explanation for the addition appeared to be both logical and valid. The Committee also noted that no allegation of inadequacy or some such criticism was laid regarding the notes themselves.

174. In the round the Committee concluded that the Registrant appeared unable to provide clear, consistent and satisfactory explanations for important matters including for example, the

content and meaning of some of the texts; the timing and reasons for his acquisition and deployment of the massage tool. The Committee noted the Registrant's withdrawal during oral evidence, of admissions made at the start of the hearing, meant that related matters such as the basis of his admission were not fully explored with Patient A. Finally, Mr McClune's evidence was expressly stated to be unchallenged, and accordingly he was not called as a witness. However, the Registrant's evidence made it plain that he disputed important aspects of Mr McClune's findings. These were never put to Mr McClune. These factors merited careful consideration in judging the Registrant's overall reliability. In so doing the Committee took into account the Registrant's good character as a matter raised in support of his credibility and lack of propensity. This includes him having no previous allegations made against him and the broader context of the number and breadth of the character statements provided on his behalf.

The Allegations

Allegation One

Allegation 1(a)(i) **Admitted in part (1x touch foot)**
Not Proved in part (2nd touch)

175. The Registrant and Patient A attended training sessions at a swimming pool [redacted] In her statement Patient A alleged that during swim training the Registrant twice grabbed her foot. In oral evidence she expanded this to say that he had pulled her backwards on both occasions. It was the Registrant's case that he had followed 'pool etiquette' as he approached her from behind and tapped her foot once as a legitimate signal that he wished to overtake her.

176. The texts between them indicated that they were both quite competitive and communicative regarding swimming. The Committee noted that there was no comment or text about the alleged incident(s). No complaint and no banter about this, whether competitive or friendly either then or in the four years since. The Committee considered this absence of comment unlikely if the Registrant had deliberately grabbed and hindered Patient A twice as she now asserted. That would have been irritating [redacted] and may have hindered other swimmers. It was notable that Patient A did not consider anything sinister to have occurred at the time. They continued to chat about a variety of subjects and to meet when swimming. She only revisited the incident four years later as part of her reconsidering the entirety of her relationship with the Registrant.

177. At the time of the alleged events there were two people in the water both of whom were moving at different paces with arms and legs reaching and kicking respectively. The Committee considered it likely that the contact admitted by the Registrant was heavier than intended but not complaint worthy. There were two competing memories of experiences that only years later gain a prominence not previously ascribed to them. With two recollections in the balance and, bearing in mind the burden and standard of proof, the Committee concluded that the Council had not proved there was a touch beyond that which was admitted by the Registrant.

Consequential Allegations 10a, 10b, 13a and 13b Not Proved

178. The factual allegation beyond that admitted by the Registrant (which included his state of mind) not being proved, the consequential allegations said to flow from the wider unproven allegations were also found not proved.

Allegation 1(a)(ii) Not Proved (go for drink)

179. It was Patient A's evidence that on one occasion the Registrant asked her to go for a drink after swimming. He denied any such invitation. The Committee heard that [redacted] did go for a drink after swimming which made invitation possible at least as part of a group event. However, no such detail was given. Without any suggestion of impropriety in the request, the Committee concluded that there was no particular reason for Patient A to recall this. Equally there was no reason for the Registrant to deny what could be an innocuous incident other than it not happening in the way the Council inferred.

180. If there had been a general group chat regarding the pub that Patient A now recalled, and the Registrant did not, there was nothing to suggest this was in any way improper. At its highest there was the possibility of a throw-away comment with no sinister undertones ascribed to it either at the time or in the subsequent years. Again with two competing recollections in the balance the Committee concluded that the Council had not provided sufficient evidence for the Committee to be satisfied that a specific invitation was issued by the Registrant to Patient A rather than there being a general chat [redacted].

Consequential Allegations 10a, 10b, 13a and 13b Not Proved

181. The factual allegation not being proved, the consequential allegations said to flow therefrom were also not proved.

Allegation 1(b)(i) Proved ([redacted])

182. It was common ground that; [redacted]; that unfortunately her [redacted] who would normally attend with her was unable to go; that Patient A told the Registrant her [redacted] was unable to go; that she raised the topic of the [redacted]. Her evidence was that the Registrant suggested he might go to [redacted], but she regarded this as nothing more than a joke. It was the Registrant's case that whilst there was such a conversation about [redacted], he did not suggest he could go to [redacted] rather Patient A suggested it.

183. It was clear to the Committee that the Registrant entertained the idea of [redacted] at least for a short while since he discussed it with his wife. Following this discussion he did not go as they concluded it would not be appropriate.

184. Given that there was a discussion about [redacted] and Patient A's clear description of it as a remark she did not take seriously the Committee concluded it was more likely than not that the Registrant made some form of 'off-the-cuff' comment during the discussion about [redacted] that she had started. Patient A did not take it seriously and, even if the Registrant considered the possibility for a short while, he did not go nor did he seek to hide that possibility from his wife. How that may be characterised is dealt with under the consequential allegations.

Consequential Allegations 10a, 10b, 13a Found Proved
Consequential Allegation 13b Found not proved

185. The Committee found that whatever view Patient A took of the offer, namely a joke, the Registrant was at least for a short time serious otherwise he would not have discussed it with his wife. The implication of his evidence was that she told him it was not appropriate to go to [redacted], he agreed and thereafter told Patient A he would not go.

186. The Committee concluded that this was an example of the Registrant failing to recognise professional boundaries and, in making the offer to travel to [redacted] in the absence of Patient A's [redacted] he breached those boundaries. The Committee found that his conduct was thoroughly incautious and not in the best interests of Patient A. With that motivation in mind the Committee was not

satisfied that his motivation was sexual. The Committee considered whether sexual motivation could be inferred from the conduct found proved in Allegations 7 and/or 8. However with an eight-month gap prior to those events it concluded that it could not. It goes without saying that the offer was not part of clinical practice and was therefore not in pursuit of a clinical or therapeutic aim.

Allegation 1(b)(ii) Admitted & Found Proved (you're free text)

187. The fact that the Registrant sent a text to Patient A was admitted. The character and context of that text is dealt with in the consequential allegations that flow therefrom. It was the Registrant's case that it was no more than banter between friends about him going on holiday and Patient A being reluctant to go swimming.

Consequential Allegations 10a, 10b, 13a Found Proved
Consequential Allegation 13b Found proved

188. The Committee initially viewed this text in a similar light as the offer to go to [redacted]. It was at best incautious. However, whilst the text-traffic between the Registrant and Patient A was often about swimming and, on one interpretation this text was part of such a sequence, another more serious interpretation was that it constituted an invitation to meet with potentially sexual implications.

189. The Committee considered that the text comment complained of should be looked at in the context of the other texts in the chain. That chain appeared to start with a text from the Registrant about a holiday he was to depart on the next day, and swimming practise that evening. However it also contains the comment that the Registrant is alone in a hotel. The chain continues with the text comment from him "*so while your [sic] free*" the import of which is reinforced by the subsequent text which includes the phrase "*I would force you to go [swimming]... if I was going that is which I am not....*" The comment regarding being free is in the Committee's judgement potentially an invitation. Furthermore, whilst ostensibly about swimming the Committee considered that the series of dots in the latter text reinforces the implication of an invitation to Patient A. The message within the texts is that the Registrant was at a hotel, Patient A was not occupied, he wasn't going anywhere either, hence the series of dots.

190. As outlined above the Committee found the text was part of an invitation of a suggestive nature. It was reinforced in that view by reason of the events that followed only seven days thereafter when the Registrant says he misread what was happening between them and kissed Patient A. The circumstances of the kisses were disputed, and the Committee has found Patient A's complaint regarding the kisses proved - see Allegation 8(c) below. The Committee concluded that the sending of the text by the Registrant was sexually motivated since it contained a clear sexual inuendo. In so doing the Registrant breached professional boundaries. The text was not part of legitimate clinical communication and was therefore not in pursuit of a clinical or therapeutic aim nor was it sent in Patient A's best interests.

Allegation Two

191. The letter in parentheses refers to Schedule 1.

Allegation 2(a) Not Proved (self-harm)

192. The Committee considered the meaning of 'self-harm' to be somewhat ambiguous in this case. To many people it has the meaning of someone causing injury to themselves in the way described by the Registrant in his oral evidence namely cutting, burning, or injuring one's body. Patient A did not allude to any such fear and the Registrant denied discussing it. Patient A described the Registrant as having stated that he had worked with individuals who self-harmed by over-exercise and on one occasion suggesting she might 'get an endorphin kick out of hurting myself with exercise'. She said this caused her some anxiety. It was the Registrant's case that he had advised her not to over-exercise because he was concerned about the impact of that upon her health.

193. Patient A stated she told the Registrant that as a teenager she had thoughts of harming herself but gave no further detail. She was not questioned by either Counsel regarding this. There was some discussion that Patient A was indeed harming herself through over-exercise and the Registrant had concerns about her doing this. Neither Patient A's evidence nor that of the Registrant supported the conclusion of a discussion regarding her having a 'pre-existing fear of self-harm'. In the absence of detail or context regarding what Patient A might have felt as a teenager, why she said it, what she now felt about it and what if anything the Registrant said, the Committee found the allegation not proved.

Consequential Allegations 10a, 10b, 13a and 13b: Not Proved

194. The factual allegation not being proved, the consequential allegations said to flow therefrom were also not proved.

Allegation 2(b) Admitted & Found Proved (fear of dying)

195. Patient A disclosed that a friend of hers was dying and that she was worried about dying too. It would appear that the background was that Patient A feared she may have [redacted] despite being advised otherwise by her GP. The Registrant accepted that there were one or more conversations regarding Patient A fearing that she may have [redacted]. He recorded this in his clinical notes in both February and December 2016. He could not recall the detail but denied the suggestion that he was attempting to assist her with any psychological fear of death.

Consequential Allegations 10a, 10b, 13a and 13b: Not proved

196. The Committee was of the view that it was appropriate for the Registrant to ask Patient A about the basis for her concern regarding the pain she felt. It was equally appropriate for him to listen to her indeed it would be of concern if he had not. The Registrant questioned Patient A about this to some extent, but the Committee found insufficient evidence to characterise this as intrusive, nor that Patient A considered it as such at the time.

197. The Council's case appeared to be predicated on the idea that since Patient A now regarded the conversations as uncomfortable, intrusive and ones she wished she had not had, they were necessarily wrong. However, osteopaths, as with other healthcare professionals sometimes discuss, record, advise or act upon issues that patients find uncomfortable. Patient A appeared to have rejected her GP's advice. The Registrant was entitled to explore alternative diagnoses and treatment for Patient A's complaint. In addition the Council's case is based upon Patient A's recollection of conversation(s) from up to four years ago and her current interpretation of that recollection. The Registrant has clinical notes that support the conclusion this issue was raised and discussed in what appeared to be a therapeutic fashion for a therapeutic purpose.

198. The Committee was of the view that it was not inappropriate for the Registrant to engage in discussion about Patient A's fear of death when linked to the death of a friend [redacted] and Patient A's continued concern as to the pain she felt. It was in Patient A's

best interests and within the Registrant's scope of competence to discuss such matters given that they were carried out in pursuit of a clinical or therapeutic aim namely to address her pain and why she was concerned about it. It was not a breach of professional boundaries so to do.

199. Given that she raised the issue she clearly consented to the conversation from the outset. As to its continuation she either expressly or implicitly consented to clinical conversations and receiving advice upon clinical matters within the bounds of the Registrant's professional competence.

200. The Committee saw no evidence from which to conclude that the Registrant discussed Patient A's fear of death as being sexually motivated.

Allegation 2(c) Not Proved (eating disorder)

201. The Committee was doubtful as to the meaning of the term 'history' with regard to an eating disorder, whether this encompassed a period of time being discussed or whether it was the mere fact of a past disorder being mentioned. Whilst other body-issues such as weight, exercise and dysmorphia appear to have been discussed, the Registrant was adamant that an eating disorder was not. The Registrant referred or encouraged Patient A to get help for her psychological issues elsewhere and, if it were mentioned, this was no different. The Committee considered it to be significant that the Registrant's notes did not refer to an eating disorder since an eating disorder may affect other important clinical concerns such as, for example, bone-density and would therefore be an important fact for any osteopath to record. Coupled with his clear rejection of it being mentioned when he had admitted that other eating or weight related matters had been mentioned and recorded in his notes, the Committee was not satisfied that a history of an eating disorder was discussed with this Registrant.

Consequential Allegations 10a, 10b, 11, 12, 13a & 13b: Not Proved

202. The factual allegation not being proved, the consequential allegations said to flow therefrom were also not proved.

Allegation 2(d) Admitted & Found Proved (dysmorphia)

203. The fact that body dysmorphia and/or image was discussed was admitted by the Registrant. Neither Patient A nor the Registrant appeared to suggest it was a lengthy discussion it being more in the style of a comment based upon his view that she was over-exercising and losing weight whilst she felt she was overweight.

Consequential Allegations 10a, 10b, 11, 12 13a and 13b: Not proved

204. Patient A's characterised the exchange as the Registrant stating: "*That is because it's body dysmorphia*" which she felt labelled her and caused her anxiety. The Council rely first upon the accuracy of her recollection and second on the interpretation of that as a diagnosis to assert that it was outside the Registrant's competence to make such a diagnosis from which the other issues follow. No basis for sexual motivation was suggested beyond the already rejected grooming assertion.

205. The Registrant's case was that he was concerned that he could see Patient A losing weight whereas she saw herself gaining weight. He therefore signposted dysmorphia as an issue he had read about but denied that it was a diagnosis since, he conceded, to make a diagnosis would be beyond his competence. The Committee noted that Patient A said the Registrant told her to 'Google' it, meaning to look this up.

206. The Committee concluded that if the Registrant had concerns about Patient A's weight then it would not be inappropriate for him to raise that issue and/or to raise or discuss other potentially related issues. The fact that they may be upsetting does not negate the propriety of the discussion although it may determine the care and choice of language used.

207. The Committee found that there was evidence upon which the Registrant had legitimate concerns about Patient A's weight and exercise regime. Whilst the Registrant conceded he could have dealt with the issue more carefully, the Committee regarded the foundation of the allegation, namely relying upon Patient A's reinterpretation of a discussion from some years ago as insufficiently reliable to draw the adverse inferences sought by the Council. Without further context and detail to the discussion and given that it was potentially a legitimate topic to raise, the Committee was not persuaded that the Registrant had done wrong in raising it. The Committee was not persuaded that there was any evidence to suggest he was sexually motivated in so doing.

Allegation 2(e) Not Proved (understanding addiction)

208. Once again the scope and meaning of the allegation was not clear. What 'her addiction(s)' were alleged to be was not explained and the Registrant's perception of what they may be was not explored. Patient A does not disclose any addictions (in terms of substance misuse) and she did not appear to accept that she over-exercised. She described the Registrant as stating that he had previously worked with patients with eating disorders and addictions. He denies having said this.

209. The Committee noted that the Registrant appeared to have an underlying concern that Patient A was over exercising, and this was potentially detrimental to her. It would appear that Patient A believed the Registrant felt she was suffering from some form of addiction, possibly of self-harm through over-exercise. However, none of this was clear and much of the evidence centred on her understanding or perception only, which did not accord with his.

210. The Committee was not satisfied that Patient A did suffer an addiction or addictions; nor, if she did what it/they were; nor, what the Registrant thought of them; nor, whether they were discussed nor whether the Registrant referred Patient A to another practitioner. In the absence of clarity the Committee found this allegation not proved.

Consequential Allegations 10a, 10b, 11, 12 13a and 13b: Not Proved

211. The factual allegation not being proved, the consequential allegations said to flow therefrom were also not proved.

Allegation 2(f) Admitted & Found Proved ([redacted])

212. The fact that Patient A's relationship with her [redacted] was discussed was admitted by the Registrant albeit the extent of the detail and content of any such discussion as recalled by Patient A and the Registrant differed.

Consequential Allegations 10a, 10b, 11, 12 13a Found Proved
Consequential Allegation 13b Found not proved

213. In 2018 Patient A suffered an emotional release during treatment. That appears to have centred around memories regarding her [redacted]. The Registrant signposted Patient A to his practice manager in the belief that she may assist or advise Patient A who to see to deal with any prior trauma if she so chose. Patient A had apparently disclosed to the Registrant that [redacted] had been rough with her [redacted] and that their relationship was poor. It would appear she now believed the Registrant thought her [redacted] had raped her but there was little if any evidence of him holding that belief. She did in fact accept this advice and did contact a counselling service. Had the matter stopped there, it may be little of consequence. However, Patient A stated that the Registrant would frequently return to the topic of her [redacted] during their conversations. In early 2019 Patient A's [redacted] became unwell and there were conversations about this too. The Registrant's notes also record that there were conversations about Patient A's [redacted] and/or her relationship with him.

214. It was common ground that Patient A was receiving psychotherapy to help with matters including her issues with her [redacted] however, [redacted], she found these sessions to be particularly difficult and she chose to stop them The Registrant's characterisation of conversations with Patient A appeared to be somewhere between friendly advice and therapeutic listening. It was not entirely clear who started the various conversations but, given the sensitivity of the matter and the fact that she had stopped the psychotherapy due to finding the subject difficult, the Registrant should either have gently closed the conversation if she started it and, he should not himself have raised the topic. Whilst the Registrant asserted that he saw this as being carried out for a therapeutic aim, de-stressing Patient A or allowing her to 'download' the Committee found this to be beyond the reasonable ambit of osteopathy and beyond his competence. This was not a topic upon which he was required to embark or delve to meet his stated requirement to allow her to relax.

215. Whilst the Committee was not convinced he had a nefarious motive in discussing this topic to the extent he did, it was satisfied that to do so was a breach of professional boundaries, not in Patient A's best interests and was thus not something that was open to valid consent. He may have had a general clinical or therapeutic aim to help her, he was not qualified to explore the emotional impact of Patient A's relationship with her [redacted], and he was thus working outside the limits of his competence. The Committee therefore found the consequential allegations proved save for Allegation 13(b). The Committee was not satisfied that there was evidence from which to

infer sexual motivation on the part of the Registrant in discussing Patient A's relationship with her [redacted].

Allegation 2(g) Not Proved ([redacted])

216. Other than a passing reference in her witness statement to various members of her family, Patient A did not allege that she and the Registrant discussed her [redacted] or her relationship with him. In her oral evidence she said that the only mention of this "...*would have been kind of like 'how are things going' whether or not he was mindful of things that were happening to me, whether or not he was able to support me, general chat about life, I guess*."

217. The Committee noted that there was no suggestion of in-depth discussion about or criticism of her [redacted] or their relationship which might be expected if the Council's suggestion of a long-term adverse strategy by the Registrant had any foundation. It may be that Patient A's [redacted] was mentioned in chat but that is different to the criticism levelled at the Registrant that he discussed her relationship with her [redacted] in some inappropriate fashion.

Consequential Allegations 10a, 10b, 11, 12 13a and 13b: Not Proved

218. The factual allegation not being proved, the consequential allegations said to flow therefrom were also not proved.

Allegation 2(h) Proved (older issues)

219. The Committee noted that the term "*old*" appeared in the Registrant's clinical notes on two occasions. Once on 18 October 2018 and again on 12 December 2019. Where it appeared in the first instance it seemed to refer to an old physical injury. The second incident it was recorded as "*lots of emotional tension and trauma OLD*". The term "*older issues*" appears in one text from the Registrant to Patient A on 21 January 2019. That this expression was used in the text in this way suggested to the Committee that Patient A and the Registrant must have discussed issues in the past although what it or they were, was unclear. The use of the term "*OLD*" in the notes appears to refer to old injuries or other trauma but what the latter was, was unclear. One or other may have referred to Patient A's hip. The Registrant explained that the term "*old*" in the notes was a reference to old emotional tension and trauma. Patient A said

she did not know what this expression related to. The Committee found that the term was used but that the meaning of the term was unclear.

Consequential Allegations 10a, 10b, 11, 12 13a and 13b: Not proved

220. The Council's case was predicated on the supposition that "*older issues*" related only to psychological or MH issues and were thus outside the competence of the Registrant and all the consequential allegations flow from that. No basis for the sexual motivation was clearly articulated beyond the overall suggestion of grooming that has already been rejected.

221. In the absence of any clear meaning to the term and, given that Patient A had old and older injuries, the Committee had insufficient evidence from which to draw any conclusions adverse to the Registrant. The Committee found no evidence to suggest that this related to sexually motivated conduct.

Allegation 2(i) Not Proved (regressed)

222. This allegation rested specifically on the use of the word "*regressed*" which Patient A said had been used by the Registrant to explain her reaction to treatment.

223. Given the particular word complained of the Committee was concerned at the Allegation containing the phrase "*or words to that effect*" which implied a potential doubt even in the Council's case. Patient A's complaint was not that 'words to the same effect' had been used so the Committee could not understand why this allegation was drafted in this way.

224. Once again with no complaint at the time and with reliance placed entirely upon Patient A's recollection of a specific word in a conversation from years past, the Committee were not satisfied on balance of probabilities that the word complained of was used.

Consequential Allegations 10a, 10b, 11, 12 13a and 13b: Not Proved

225. The factual allegation not being proved, the consequential allegations said to flow therefrom were also not proved.

Allegation 2(j) Not Proved (big reveal)

226. The Committee observed that the Registrant was clear in his evidence that he did not speak to Patient A about her [redacted] but had spoken about her [redacted] in terms that if Patient A wanted to deal with any historical matters she could only do so [redacted]. It was his case that she had misinterpreted or misremembered this.

227. Patient A said the Registrant had talked about a big reveal as regards [redacted] and the implication that [redacted] had condoned and was complicit in [redacted] drinking. The Committee considered it was likely she would have discussed this with the psychotherapist she was seeing at this time and that her specific recall years after the fact, that it had been the Registrant she discussed this topic with was not reliable. With these doubts in mind the Committee could not be satisfied as to what was said nor about whom.

Consequential Allegations 10a, 10b, 11, 12 13a and 13b: Not Proved

228. The factual allegation not being proved, the consequential allegations said to flow therefrom were also not proved.

Allegation 2(k) Not proved (supervision)

229. Patient A uses the term 'supervision' in her statement with reference to her work with children and special needs. Patient A said that for her it means the oversight of one practitioner by another when dealing with psychological issues. However, the Registrant spoke of an informal well-being system within the practice of practitioners sharing or discussing difficulties they experienced. It was for the benefit of the practitioners. He referred to this as supervision.

230. The Committee considered that there was scope for a misunderstanding between Patient A and the Registrant as to the meaning and import of the term. In her oral evidence Patient A said that when the Registrant used the term 'supervision' she presumed that it meant oversight of his work in the way that she was accustomed to understand it.

231. From the totality of the evidence it was apparent that Patient A was comfortable talking about psychological issues prior to the

mention of supervision and, that she was clear that the Registrant could not treat her MH. Whilst there appears to have been some form of discussion between them regarding different strands of osteopathy such as structural and functional osteopathy as well as the relief of psychosomatic symptoms, provided this discussion is related to the osteopathic treatment of symptoms it is permissible. The Committee was not satisfied of a causal link between the Registrant's use of the term 'supervision' or the description of his own practice and discussions surrounding her psychological issues. The Committee concluded there was insufficient evidence to prove that Patient A was discussing her psychological issues 'because' of what the Registrant may have said.

Consequential Allegations 10a, 10b, 11, 12 13a and 13b: Not Proved

232. The factual allegation not being proved, the consequential allegations said to flow therefrom were also not proved.

Allegation 2(l) Admitted & Found Proved (where gone)

233. The fact that the Registrant asked Patient A 'where she had gone' or words to that effect was admitted. The Registrant described this as him asking her what she had been thinking about, was she alright, and with the purpose bringing her focus back onto the treatment. The Committee considered that explanation as reasonable and something that may have occurred. It understood the words to refer to Patient A 'drifting off' or being uncommunicative for a short time during a treatment session and the Registrant inquiring about that. The Committee did not detect anything sinister in this.

Consequential Allegations 10a, 10b, 11, 12 13a and 13b Not proved

234. The Committee found that it was reasonable and appropriate for the Registrant to use a colloquial term to ask Patient A what she had been thinking and/or if she was alright. The Committee was satisfied that such reasonable inquiry formed part of the treatment to which Patient A consented and, having detected nothing inappropriate or sinister the Committee rejected the consequential allegations said to flow from this inquiry.

Allegation 2(m) Not proved (referral)

235. The Committee found this allegation somewhat opaque since there was no context to the specific allegation. The Council appeared to be putting this allegation on the basis that the comment showed the Registrant wrongfully discussing Patient A's MH with a view to treating it or, discouraging her from obtaining treatment elsewhere. However, the Committee noted that Patient A said she realised the Registrant could not treat her MH because he has said as much and accepted that he did not discourage her seeking help elsewhere. Indeed the Registrant encouraged and/or referred Patient A to seek alternative help including counselling, physical treatment, and relaxation techniques and he recorded this in his notes.

236. Whilst the Committee concluded that there were discussions regarding Patient A's wellbeing including her psychological wellbeing, if a comment such as this was made, there was no detail from which to understand the context or meaning of the comment. Without this the Committee could not determine whether the allegation referred to aspects of Patient A's personal life, how she felt on a specific day, whether it was an off the cuff remark or an attempt to dissuade patient A from seeing someone else and so on. There was insufficient evidence from which to conclude that he was expressing an opinion on her MH directly or discouraging he from seeking help elsewhere.

Consequential Allegations 10a, 10b, 11, 12 13a and 13b: Not Proved

237. The factual allegation not being proved, the consequential allegations said to flow therefrom were also not proved.

Allegation Three Not proved

238. This allegation covered all of Schedule One with the distinction from Allegation Two that it was alleged the Registrant was touching Patient A when each of the alleged statements was uttered. At no point did Patient A say that a specific remark or remarks was said whilst the Registrant touched her.

239. The high point of the allegation with reference to Schedule 1(l) was the alleged comment "*where did you go*" which was described as being said during treatment (as indeed were all comments at the Registrant's practice). Treatment may include periods of talking, movement, demonstration, and touching however no detail was

given as to what 'during treatment' meant in this or any other instance.

240. At the end of the evidence the Committee inquired of Ms Tanchel whether there was any direct evidence to support any of the matters in this Allegation. She could point to none. Mr Zaman did not make a submission of no case to answer at the close of the Council's case but, in his closing speech he submitted there was indeed no evidence.

241. Neither Counsel referred to the admissions made by Mr Zaman on behalf of the Registrant in respect of Allegation 2 and Schedule 1(b), (d), (f) and (l) which he said were also made regarding Allegation 3 (including the apparent acceptance of touching). That process conducted remotely was somewhat protracted and the number of allegations appeared at times to cause confusion. This was one such time and, on reviewing the transcript as part of its deliberations the Committee noted that the admissions were made following inquiry of Mr Zaman by the Chair. The process was not easy, and the transcript highlighted that. The fact that neither Counsel could point to any direct evidence to support the disputed Allegations or the purported admissions reinforced the Committee's misgivings regarding the admissions made namely (b), (d), (f) and (l). It concluded that where there was a doubt as to the validity of those admissions and in the interests of justice and consistent with the overarching objective it should vacate them and consider the allegations afresh. In so doing it found there was no evidence to support touching in respect of any of Allegation 2 and it dismissed all of them.

242. In testing whether the above process was consistent with the overarching objective and the interests of justice, the Committee took into account that the consequential allegations (Allegations 10, 11, 12, 13) in respect of these Allegations had already been dismissed as they related to Allegation 2. It would have been perverse to find otherwise in respect of Allegation 3. It also considered that nothing would be served by finding these proved and then dismissing them for the same reasons. The safer course was to treat the admissions as equivocal and test the evidence in light of the whole case with which it was seized.

Consequential Allegations 10a, 10b, 11, 12 13a and 13b: Not Proved

243. The factual allegation of touching not being proved in respect of any matter complained of in Schedule 1, the consequential allegations said to flow from Allegation 3 were also not proved.

Allegation Four

Allegation 4(a)(i)	**Admitted & Found Proved (stomach area)**
Allegation 4(a)(ii)	**Admitted & Found Proved (groin area)**
Allegation 4(a)(iii)	**Admitted & Found Proved(upper chest)**

244. The Registrant agreed that he touched Patient A in the areas alleged.

Consequential Allegations 10a, 10b, 11, 12 13a, 13b & 15: All not proved

245. Patient A made no contemporaneous complaint regarding the Registrant touching her in the locations alleged and, neither the basis of his admission nor the foundation of her complaints was explored in evidence. The Committee thus had no evidence regarding the date or dates of any incidents to which these complaints related. The Committee could therefore not investigate the legitimacy or otherwise of any treatment taking place at the relevant time..

246. The Committee was left with the simple fact that at some time during four years the Registrant touched Patient A's body on the named locations. The Council now made complaint about that. With no detail regarding any of the circumstances the Committee had insufficient evidence to draw any conclusions adverse to the Registrant.

Allegation 4(b) Not Proved (lie on front)

247. Whilst the Allegation used the term "*required*" which implies an imperative, Ms Tanchel stated that the meaning placed on this by the Council was that it was a request, not an order.

248. The Committee found Patient A to be inconsistent in her description of how or when this occurred and of the Registrant's conduct at the time. In her witness statement she described the final, or one of the final treatment sessions in which he asked her to lie on her front and when she declined he accepted this. This matched the Registrant's own clear evidence regarding her request and his response which was to modify his treatment and state that she must inform him of such things. In her oral evidence Patient A

said that he made her to lie on her front many times and that she was always uncomfortable in so doing.

249. The Committee found that her oral description of multiple occasions and discomfort did not sit well with the fact that she returned for treatment time and time again. It was also inconsistent with her evidence in relation to Allegation 4(d) below that when she asked him to stop doing something he did so. The Committee found it more likely that on one or possibly more occasions the Registrant asked Patient A to lie on her stomach but when she expressed reservation he modified his treatment of her and did not treat her against her wishes.

Consequential Allegations 10a, 10b, 11, 12 13a, 13b
Not Proved

250. The factual allegation not being proved, the consequential allegations said to flow therefrom were also not proved.

Allegation 4(c) Found Proved (hand on hand)

251. The Committee noted that Patient A said in her statement that, "*As time went on, O would put his hand over my hand or next to my hand on my stomach (where I would be resting my hand). I feel that it was a very subtle growing of physical contact over time that felt very mixed in to his treatment and not at all separate to it."* However, when asked about this in cross-examination she said she made no complaint about this rather she had found it "*comforting*" and this was one of the reasons she returned for treatment.

252. The Committee considered it plausible that the Registrant may place his hand on or adjacent to Patient A's hand particularly when dealing with issues of breathing or invasive abdominal techniques. It was not disputed that the Registrant treated Patient A's abdomen. The Committee found it more likely than not that as he treated her abdomen, if she had her hand on her stomach, he put his hand on her stomach or, on her hand as it lay on her stomach.

Consequential Allegations 10a, 10b, 11, 12 13a, 13b & 15:
Not proved

253. Whilst Patient A refers to a growing physical contact "*as time went on*" there was no timescale regarding this nor any evidence as to what this may involve. She made no complaint at any time and even

now did not suggest there was anything sexual about this or any of the actions alleged against the Registrant.

254. The Committee concluded that, as with Allegations 4(a)(i-iii) with no detail as to when or why this occurred, no context of what treatment was undertaken and no complaint at the time, there was insufficient evidence to measure the circumstances or from which to now draw the adverse inferences contended for by the Council.

Allegation 4(d) Not Proved (inappropriately continued)

255. At paragraph 19 of her statement Patient A said something along the lines of, "*Stop, I don't feel safe, stop touching me*" and he responded by saying, "*Ok what's the matter....*". She repeated this in her evidence. The clear implication of her statement and evidence is that when she asked the Registrant to stop he did so.

256. The Registrant had initially admitted this allegation but in evidence when asked about this he said he recalled being asked to stop and he did so. He denied failing to act appropriately and appeared somewhat bemused that he had originally been recorded as admitting this allegation. He explained he had admitted that she had asked him to stop, and he had done so, not that he had failed to do so.

257. The Council did not suggest that this allegation referred to any conduct on the part of the Registrant other than him stopping treatment or not when she asked. Given that Patient A said the Registrant stopped when he was asked to do so, the Committee was of the view that his initial admission was most likely a misunderstanding. Having heard his evidence which confirmed her account of him stopping treatment when requested, the Committee found the allegation not proved.

Consequential Allegations 10a, 10b, 11, 12 13a, 13b
Not Proved

258. The factual allegation not being proved, the consequential allegations said to flow therefrom were also not proved.

Allegation 4(e) Not Proved (inappropriate pain)

259. The Committee found this Allegation somewhat opaque in that whilst the Registrant was said to have acted inappropriately, the Council did not assert what it was he was he did. The Allegation appeared to be that either the Registrant deliberately caused unwarranted pain to Patient A or, did not stop when he caused pain whether deliberate or not, or that he caused unwarranted pain at a previous appointment and did so again. Patient A's statement contained comments to such effect.

260. The Committee was aware that some treatment or diagnostics may cause discomfort and yet be appropriate and, different patients have different pain-thresholds. The Registrant described Patient A's foot as being tight and painful. The Committee inferred that treatment was likely to be uncomfortable but there was no evidence to suggest it was inappropriately so.

261. In response to questions from the Committee regarding the treatment of her stomach, Patient A said that when the treatment caused her pain she asked him to stop and "*he did*". Patient A expressed no inhibition to her requesting him to stop nor any delay in him doing so. The Committee considered it implausible that Patient A was inhibited from asking him to stop treatment if it hurt her foot and no reason for him to continue despite this.

262. With no evidence of inappropriate treatment, clear evidence of a request complied with in respect of part of the Allegation and nothing from which to infer a change of behaviour regarding the remainder, the Committee found this Allegation not proved.

Consequential Allegations 10a, 10b, 11, 12 13a, 13b
Not Proved

263. The factual allegation not being proved, the consequential allegations said to flow therefrom were also not proved.

Allegation 4(f) Not Proved (undue pressure)

264. The Committee first observed that the Council provided no evidence as to the meaning of "*undue pressure and/or force*". As stated above, different patients have different pain thresholds and responses and, examination or treatment that causes some pain or discomfort may still be legitimate. As such, whilst pain may be an indicator of undue force or pressure it was not of itself conclusive.

265. In respect of the treatment of Patient A's stomach, whilst she described an incident which caused her pain, there was no evidence and no expert opinion as to whether that was because undue force or pressure was applied or whether it was an uncomfortable part of appropriate examination or treatment. Regarding Patient A's foot she described the pain she felt as causing her to feel sick and sweaty. It was his case that they had agreed what pain-levels were acceptable and that he kept a watch on this. It was her evidence that they did not. As stated above, Patient A's foot was described as being tight and painful. As such any treatment was likely to be painful and, given how sensitive the foot is, it can be excruciating. However, that would not of itself necessarily mean the treatment involved undue force or pressure. It might do so if the Registrant had continued despite indication from Patient A that she was in pain, but the Committee did not find that to be the case for the reasons set out above.

266. In the circumstances the Committee found that there was insufficient evidence from which to conclude that a disproportionate level of pressure was exerted by the Registrant or that he continued with what might be legitimate but very painful treatment for an excessive length of time.

Consequential Allegations 10a, 10b, 11, 12 13a, 13b
Not Proved

267. The factual allegation not being proved, the consequential allegations said to flow therefrom were also not proved.

Allegation 4(g) Not Proved (dignity)

268. It was the Registrant's case that whilst he did not recall having a specific conversation with Patient A about changing facilities. He thought she may have changed her clothing in the practice toilet at times but that at other times she removed an item of clothing whilst in his consultation room. One such was a jumper. It seemed clear that she wore clothing underneath this comprising a vest and/or a sports bra. She also appears to have attended consultations wearing yoga-pants (ie stretch-overclothing) or worn leggings under her jeans.

269. It appeared to the Committee be the case that if she did remove a piece of clothing he remained in the room. She stated: "*I was not bothered by this*".

270. The Committee did not accept what the Council appeared to suggest that a registrant should leave his (or presumably her) consulting room every time any patient removes any piece of clothing. The Committee was of the view that reasonable conduct regarding patient dignity was both patient specific and clothing specific. The Registrant and Patient A were well known to each other and had been [redacted] swimming [redacted] for some time. Whilst this is of course not a professional environment, there was evidence that Patient A was not discomforted by the Registrant seeing her in a swimming costume. There was positive evidence that she was "*not bothered*" by removing or changing an item of clothing in his presence. She certainly did not suggest her dignity or modesty was offended.

271. Whilst the Committee found that the Registrant could have left the room when Patient A took an item of clothing off or could have regularly reminded her that she could change in the toilet, in the absence of any discomfort it was difficult to conclude that him not doing so constituted a "*failure*" as regards her dignity.

Consequential Allegations 10a, 10b, 11, 12 13a, 13b
Not Proved

272. The factual allegation not being proved, the consequential allegations said to flow therefrom were also not proved.

Allegation 4(h)	**Admitted & Found Proved**	**(remove top)**
Allegation 4(i)	**Admitted & Found Proved**	**(bend over)**
Allegation 4(j)	**Admitted & Found Proved**	**(tucked top in)**

273. The Registrant agreed that he asked Patient A to remove her top; that he asked her to bend over and that on one occasion he tucked her top into her sports bra.

Consequential Allegations 10a, 10b, 11, 12 13a, 13b:
Not proved

274. Similar to Allegations 4(a) and (c) there were no contemporaneous complaints and little exploration of the events now complained of. The Committee concluded that there was insufficient evidence to measure the circumstances or come to any conclusions adverse to the Registrant.

Allegation 4(k)(i)(ii) & (iii) Admitted & Found Proved (v close)

Found not proved (inappropriately close)

275. The Committee considered that Allegation k was put on the basis that it referred to one or more of the standing assessments of Patient A by the Registrant during four years and forty consultations. He admitted that on one or more such occasions he stood in very close proximity to Patient A to her front side and back. He denied anything wrong in so doing.

276. Osteopathic treatment requires proximity between osteopath and patient. The Council did not define "*inappropriately close*" for any given action or circumstance. When asked, Ms Tanchel said it meant standing closer than was necessary when treating Patient A. The Committee considered that rather begged the question 'what moment in time did the Allegation refer to and what was happening by way of assessment or treatment at that moment?'

277. In her statement Patient A refers to the Registrant standing very close to her and looking at her in what appeared to be a clinical assessment of her when she arrived for each appointment. Patient A described this as controlling and making her anxious. The Committee was of the view that this description of his proximity and her anxiety was inconsistent with their friendship and with her attending for treatment forty times over four years.

278. With no specificity to the Allegations and no evidence that to stand close to Patient A was unnecessary when the Registrant assessed her, the Committee was not satisfied that he stood inappropriately close to Patient A.

279. Whilst by his own admission the Registrant stood very close to Patient A, there was insufficient evidence from which to infer that this was in some way wrong, or that he had an ulterior motive in so doing.

Consequential Allegations 10a, 10b, 11, 12 13a, 13b: Not Proved

280. With the factual allegation of "*inappropriate proximity*" not being proved and that of "*very close proximity*" being proved but with no contemporaneous complaints and no exploration of the events now complained of, the Committee had insufficient evidence from which to measure the circumstances or come to any conclusions adverse to the Registrant.

Allegation 4(l)(i) **Proved ("relax") Not proved ("panicking")**

Allegation 4(l)(ii) **Proved ("how are you")**

281. The Committee considered that Allegation 4(l) followed on from Allegation 4(k) and referred to an instance or instances of standing assessment.

282. The Committee noted that Allegation (l)(i) combined the two utterances of "*stop panicking*" and "*you need to relax*" as reported by Patient A in her statement. However, in cross-examination the combined statement was put to her, and it was suggested that the Registrant did not say this. She replied, "*He did say that, yes*". It was not clear to the Committee whether the question was intended to imply that both statements were made at the same time (as per the allegation) or that the answer was intended to adopt this implication.

283. Given the number of appointments attended by Patient A and the fact that she was at times upset and/or discomforted, the Committee found it more likely than not that the Registrant would have asked her to relax. However, owing to the lack of clarity in the evidence it was not satisfied that he asked her to stop panicking at the same time.

284. Patient A appears to describe these comments being made after she has reacted to a request to bend over. There is no evidence from which to infer that such a requirement was itself wrong and whilst Patient A now questions this, there was insufficient evidence from which to conclude that it was anything other than part of the Registrant's assessment of Patient A.

285. Dealing with the issue of "*words to that effect*", the Committee found the assertion by Patient A that she was always asked to bend over and always found this embarrassing to be inconsistent with her years of attendance. However, if on occasion she felt discomforted the Committee did not consider there to be sufficient evidence from which to conclude it was inappropriate for the Registrant to ask her to relax or similar such comment.

286. As to Allegation (l)(ii) and the question, "*How are you really?*" (or words to that effect), the Registrant agreed that he would have asked something similar to that. The Committee thus found it likely that he did so. Once again with no specificity as to the Allegation and no evidence that if or when the Registrant spoke to Patient A it

was not necessary or reasonable for him to do so, the Committee was not satisfied that to do so was wrong.

287. Whilst by his own admission the Registrant at times stood very close to Patient A, there was insufficient evidence from which to infer that this was inappropriately close if/when he spoke to her or that he had an ulterior motive in speaking to her.

Consequential Allegations 10a, 10b, 11, 12 13a, 13b:

288. The factual allegation of "*inappropriate proximity*" not being proved and that of "*very close proximity*" being proved but with no detail from which to draw any adverse conclusions regarding the comments complained of, the consequential allegations said to flow therefrom were also not proved.

Allegation 4(l)(iii) Proved in Part (moved hair)
Not Proved in part (inappropriately close)

289. Patient A said in her statement that the Registrant 'sometimes' moved her hair. It was not disputed that the Registrant saw Patient A forty times for a variety of complaints and that he assessed and/or treated her while she stood. This included assessing her spine and treating her neck on a number of occasions. The Committee thus found it probable that on occasion the Registrant did move her hair including when they were stood up.

290. Whilst Patient A now appeared to query the bona-fides of this she made no complaint at the time. In cross-examination she confirmed she did not think it was sexually motivated at the time. No identifiable instance was complained of and in the absence of any detail as to when, how or why he may have moved her hair, and with no context as to the assessment or treatment then occurring the Committee could not simply infer that the Registrant did anything wrong simply because he moved her hair.

291. For the same reason, whilst it may be inferred that the Registrant was standing close, or even very close to Patient A if/when he moved her hair, there was nothing from which to infer this was inappropriately close.

Consequential Allegations 10a, 10b, 11, 12 13a, 13b: 15

292. The factual allegation of "*inappropriate proximity*" not being proved and that of "*very close proximity*" being proved but with no

detail from which to draw any adverse conclusions regarding moving Patient A's hair, the consequential allegations said to flow therefrom were also not proved.

Allegation 4(l)(iv)(a) Found proved (stomach)

293. In her statement Patient A said the Registrant "*sometimes*" touched her stomach. She gives two descriptions. One of touching her from behind that "*at time felt almost seductive*" the other of touching her stomach and talking to her "*making out*" that he was helping her anxiety when she now seems to suggest he was not. As stated above Allegation 4(l) appeared to be aimed at the standing assessments. It was not disputed that the Registrant saw Patient A forty times for a variety of issues and that he assessed and/or treated her while she stood. Whilst there was at least one occasion when Patient A's top was hitched up and it was therefore unlikely the Registrant put his hand beneath it to touch her stomach, given the number of attendances and standing assessments the Committee found it likely that on one or more of the other occasions (when her top was not hitched up) the Registrant did touch her stomach under her top.

294. Osteopathic assessment and treatment does frequently necessitate close proximity and verbal interaction. Whilst Patient A now appeared to query the bona-fides of him touching her stomach from behind she made no complaint at the time. She described what appeared to be recognisable osteopathic treatment or assessment namely movement of her spine. No identifiable instance was complained of and in the absence of any detail as to the assessment or treatment then occurring the Committee could not simply infer that the Registrant did anything wrong by touching her stomach.

295. For the same reasons, whilst it may be that the Registrant was standing close, or even very close to Patient A if/when he touched her stomach, there was nothing from which to infer this was inappropriately close.

Consequential Allegations 10a, 10b, 11, 12 13a, 13b: 15

296. The factual allegation of "*inappropriate proximity*" not being proved and that of "*very close proximity*" being proved but with no detail from which to draw any adverse conclusions, the consequential allegations said to flow therefrom were also not proved.

Allegation 4(l)(iv)(b) Found not proved (groin area)

297. Patient A did not assert that the Registrant placed his hand on her groin during these standing assessments. He may have done so at other times, but they did not form part of this allegation.

298. The term 'groin area' was not defined save that Ms Tanchel appeared to suggest it was intended to include almost every part of the body between waist and thighs both front and back. The Committee was of the view that the groin is a specific part of the body and, if something is said to be in the area of the groin it required proximity beyond a general notion of below the waist particularly in proceedings such as these.

299. With that lack of precision in mind, no contemporaneous complaint and no detail with which to assess what was occurring by way of assessment or treatment the Committee found this allegation not proved.

Consequential Allegations 10a, 10b, 11, 12 13a, 13b, 15

300. The factual allegation not being proved, the consequential allegations said to flow therefrom were also not proved.

Allegation 4(m) Not Proved (stomach/groin area & freak out)

301. In this allegation it is suggested the Registrant used specific words at a time when he touched Patient A's stomach or alternatively her groin area. In her statement Patient A makes no reference to her stomach rather she mentions her groin area and an intimate area the meaning of which was not clarified in evidence.

302. In the absence of any evidence that the Registrant used the words complained of whilst touching Patient A's stomach the Committee found this part of the allegation not proved.

303. Regarding the alleged use of the term whilst touching her groin area the Committee adopts the above comments regarding the vagueness of that term. The Registrant stated that it is a term he would not use, however the Committee noted elsewhere that the Registrant had been contradictory in his statements about an expression he claimed to use both frequently and never at all. The

Committee also noted that the term 'freaking out' was used by Patient A in a text to the Registrant.

304. Irrespective of the vagaries in the use of expressions, the Committee was of the view that it was more likely this was a term Patient A used or, how she now interpreted and expressed some other comment by him. It was not satisfied that there was sufficient evidence he used the term as alleged.

Consequential Allegations 10a, 10b, 11, 12 13a, 13b
Not Proved

305. The factual allegation not being proved, the consequential allegations said to flow therefrom were also not proved.

Allegation 4(n)(i) Found Not Proved (pants/abdomen)

306. Allegation 4(n) was complicated by the fact that Patient A was wearing what were referred to as "*yoga-pants*" as well as pants meaning underwear. She also uses the term "*knickers*" to describe underwear. However, from the cross-examination of the Registrant it appeared to the Committee that the term "*pants*" was intended to mean underwear.

307. In her witness statement Patient A said that at times the Registrant's treatment of her became "*very personal, sometimes too personal, for example [he] would put his hand on the inside of my pants...*" However she made no complaint and has also asserted that at the time she did not think his actions were sexually motivated. It is not inconsistent for him to do something that she was uncomfortable with, but for which she gave him the benefit of the doubt. Having said that, the Committee did not find her to be someone incapable of questioning an act she disliked indeed, it found that when she did not like something she said so and he stopped.

308. The Registrant denied deliberately putting his hand inside Patient A's underwear at all. Indeed he said he never even saw her underwear, because she always wore yoga-pants. However, the Committee noted that the Registrant described and recorded treating Patient A on her abdomen in areas very close to her underwear. The Committee concluded that it was possible the Registrant may have inadvertently put his hand too close to Patient A's underwear such that it was underneath to some extent. However, as with so many of these allegations, without any

information as to what was happening at any given time, no complaint and no detail as to the treatment then taking place the Committee could not determine on the balance of probability whether the Registrant had in fact done so.

Consequential Allegations 10a, 10b, 11, 12 13a, 13b
Not proved

309. The factual allegation not being proved, the consequential allegations said to flow therefrom were also not proved.

Allegation 4(n)(ii) Not Proved (genitals)

310. This allegation is quite specific as indeed it must be given the seriousness of the suggestion that the Registrant put his hand inside Patient A's underwear and touched her on the genitals. Patient A did not support this allegation in her written statement asserting that he moved his hand toward her genitals. The Registrant denied deliberately putting his hand inside Patient A's underwear at all (indeed he said he never saw her underwear because she wore yoga-trousers at all times) let alone doing so and touching her on the genitals.

311. Given the fact that she did not make the assertion as alleged and his express denial the Committee found this allegation not proved.

Consequential Allegations 10a, 10b, 11, 12 13a, 13b
Not Proved

312. The factual allegation not being proved, the consequential allegations said to flow therefrom were also not proved.

Allegation 4(n)(iii) Not Proved (if Patient A was ok)

313. The Committee were unable to ascertain during which alleged touching of Patient A this question was said to have been asked. Whilst the Registrant agreed he would at times have asked Patient A if she was ok or words to that effect he flatly denied doing so whilst his hands were inside her underwear. Having seen Patient A and the way she dealt with cross-examination the Committee was not convinced that had this question been asked in the circumstances she alleged she would have been unable to answer it. The Committee was not satisfied on balance of probability that

the question was asked in the circumstances as alleged. It therefore found this allegation not proved

Consequential Allegations 10a, 10b, 11, 12 13a, 13b
Not Proved

314. The factual allegation not being proved, the consequential allegations said to flow therefrom were also not proved.

Allegation 5 Admitted & Found Proved

315. The Registrant accepted that on one occasion he turned Patient A's head toward him during his treatment of her. He said that he did so to gain eye contact and facilitate communication between them. On one account he described her as being close to tears in considerable distress on another she was in deep emotional thought. He said her emotions were a response to his treatment and he turned her head because she was a friend. He would not have done so to any other patient because he now agreed that it was a breach of professional boundaries, hence his admission to Allegation 10a. He said in evidence that he did ask Patient A if she was alright, but she did not respond, and he should have left it at that. He agreed it was an inappropriate action but denied he was sexually motivated.

316. It was Patient A's evidence that the Registrant did this whilst he was treating her as she lay on her back, and he had his hands on her stomach or groin area. Something was upsetting her and she was panicky at the time. He therefore forced her to have eye contact with him. She could not say in which consultation this occurred save that it was not the final one. She attended for treatment following this incident.

Consequential Allegations 10a **Admitted on a basis**
Basis Rejected
Found Proved
Consequential Allegations 10b, 11, 12 13a, Found Proved
Consequential Allegations 13b, 15 Found not proved

317. The Registrant accepted that he had breached professional boundaries in turning Patient A's head to face him however he did so on the basis that it was a friendly overstepping of the mark during treatment.

318. The Committee considered that to take hold of Patient A's head in this way was both intrusive and controlling. She was not engaging

with him and had not responded to his voice, but he wanted her to look at him so he turned her head. In the Committee's view he did this for himself and not for her benefit since she did not wish to look. This formed no part of appropriate clinical treatment and was not in her best interests nor was it primarily carried out for a clinical or therapeutic aim. It was therefore not something to which she gave valid consent even by implication.

319. Both Patient A and the Registrant described her lying on her back, being treated in the middle of her abdomen and apparently having a reaction to that treatment. That might indicate this occurred earlier in her course of treatment as Patient A suggested. In contrast the Registrant's evidence was that he thought this occurred in the last appointment – something Patient A refuted.

320. This was a very personal gesture but with conflicting recollections as to when it occurred and no other detail to assist the Committee in determining when exactly this took place, the Committee had insufficient evidence to conclude that it was a sexually motivated or sexual gesture. It had insufficient evidence to conclude that it occurred in, or sufficiently proximate to the last two appointments to infer this.

Allegation 6(a) Admitted & Found Proved (calf)
Allegation 6(b) Admitted & Found Proved (between legs)

321. The Registrant accepted that he used a massage tool on Patient A's calf and on the area between her legs during his treatment of her. It was his case that he was using the tool as a legitimate adjunct to appropriate treatment. It was the Council's case that he was not.

322. For the avoidance of doubt the Committee noted that the term used was 'area between her legs'. Whilst the area between the legs is an intimate part of the body the Committee treated this as excluding Patient A's genitals since such a serious accusation would require precision in the allegation. Rather, it determined that 'area between her legs' in this case meant the inner thigh; that which is in between the genitals and the knee. The Registrant confirmed to the Committee that it was upon this meaning that he had made his admission to the Allegation.

Allegation 6(c) Found Proved in part (thigh)
Found not proved in part (genital area)

323. Like many of the allegations in this case, Allegation 6(c) contained two alternatives namely touching Patient A's "*inside thigh*" and/or "*genital area*" with his thumb whilst using a massage tool. As with the term "*groin area*", the compass of what the Council meant by the term "*genital area*" was not defined.

324. It was not in dispute that the Registrant used a massage tool on Patient A's upper leg including between her legs as admitted above. Patient A described lying on her stomach and/or her side the Registrant using the tool in one hand, accompanied by using what she thought was his thumb on the inside of her thigh. The impression from the description is of him using his thumb to palpate her thigh or guide the tool. The Committee found it likely that he did indeed palpate and therefore touch Patient A's inner thigh with his thumb whilst using the tool.

325. Regarding the suggestion that his thumb touched her "*genital area*", the meaning and extent attributed by the Council to this term was not explained. The Committee concluded that it excluded the genitals themselves since such a serious allegation must be specifically pleaded. In considering the term "*area*", the Committee was of the view that what was "*in the area of*" to one person may be "*a distance away*" to another. That was made plain in the Council's explanation of the term "*groin area*".

326. In her statement Patient A described lying on her front and the tool as "*so powerful it was hard to feel exactly what he was doing with the other hand*". She says the tool was used "*next to my genitals*" not his thumb. In answer to questions from the Committee, when it was pointed out that the allegation used the term "*genital area*" she said she was lying on her front and he had his hand on, or in extremely close proximity to her genitals on the inside of her thigh and most of the pressure was from his thumb. When asked if he was touching her genitals she said, "*Yes, in and around*". She also said she could not see him using his thumb but made it plain from what she felt that this was what she concluded he had done.

327. The Committee noted that Patient A's evidence changed from being uncertain as to what was happening because she could not see and her sense of what was happening was affected by the tool, to being more confident in her recollection that he used his thumb to touch her genitals or genital area. The Committee was of the view that if Patient A had been sure that the Registrant had touched her genitals she would have said so from the outset and it would have been charged as such. It considered it possible that the change in her evidence was the result of her revisiting events and

unconsciously adjusting her description to meet the charge rather than being an accurate recollection.

328. The Committee also concluded that the imprecision of the charge meant that there was a danger of double-jeopardy. It therefore found this element of the charge not proved.

Consequential Allegation 10a 10b, 11, 12, 13a, 13b, 15
Found proved in respect of 6(a)(b)(c)

329. The Committee first considered that these events were not so distant as to question the reliability of Patient A's memory, rather they appear to be part and parcel of what concerned her. She did not resile frm that in evidence. In her statement Patient A alludes to feeling uncomfortable and guarded with the Registrant. The Committee concluded that she had perceived a change in him at some point in time over the course of four years. From the evidence it determined that his change had most likely occurred toward the end of 2019 and early 2020. Whilst she did not voice it as such, the implication (borne out by later events) was that he was becoming enamoured of her, and his actions or comments were thus more personal and/or intrusive. On 6 February 2020 Patient A texted to her friend that the Registrant had "*overstepped a bit the other day*" and said that on the 6 February 2020 itself there were boundary issues and, "*He wasn't so professional*". Finally, the Registrant sent suggestive and sexually motivated texts to Patient A on 28 January 2020, the week before he kissed her and, in explaining himself after the event of the kisses, he disclosed that he perceived (wrongly) a change in their relationship because he texted to say he thought something had been happening "*between them*".

330. In the Committee's judgement by late 2019 and certainly by the date of the last two appointments in January and February 2020 the Registrant had feelings of intimacy toward Patient A. Rather than stop treating her he then acted upon those feelings. The tool complained of in these allegations was used on the penultimate and the final appointments being 9 January and 6 February 2020 respectively.

331. The Committee looked at the Registrant's reason for purchasing the tool and when he bought it. He said it he bought it because he injured his hand and he tested it on himself for two months before using it on twenty patients, then using it on Patient A. That places the purchase in or around November 2019. However, the Committee noted that within the text-messages there was reference to his hand being injured prior to January 2019. Patient A said that he told her he got it for Christmas 2019 which contradicted his use of it for two

months prior to 9 January when it was first deployed. The Registrant also appeared to say that he used the tool on Patient A as his first patient to obtain her feedback on its use as a friend before using it on other patients.

332. The Committee found these differing versions of events by the Registrant to be inconsistent and it regarded him as less reliable on the important aspect of when the tool was obtained and deployed. Conversely Patient A described his use of the tool as being with little if any warning and without her consent. She did not resile from that and, given when it occurred and her response to his actions the Committee found on balance that her evidence was more reliable and probative.

333. The Committee was concerned that the tool was first used at a time when the Registrant's emotions were conflicted. It was also used in a way that was questionable. Whilst he may have started its use at Patient A's lower leg he deployed the tool in a way that surprised and discomforted Patient A on or very near intimate parts of her body. The Committee concluded that his reasons for using the tool and using it the way that he did were now influenced by his feelings toward Patient A and that his motivation was by now at least in part sexual. He started treated with the massage tool on her lower leg and worked up to an intimate area for his own gratification and/or in the hope of pursuing a sexual relationship.

334. Having concluded that on 9 January and 6 February 2020 the Registrant's motives were to some extent sexual, the Committee concluded that his actions in continuing to treat her were not in her best interests, not in pursuit of a clinical or therapeutic aim and they were in breach of professional boundaries.

335. Given the circumstances in which the tool was deployed namely on a prone patient between her legs and with little or no warning the Committee concluded that the Registrant's conduct was sexual.

Allegation 7(a) Admitted & Found Proved (parted legs)
Allegation 7(b) Admitted & Found Proved (how hard)

336. The Registrant accepted that when he used the massage tool he pushed Patient A's legs apart and that he asked Patient A to indicate how hard she wanted it meaning the degree of pressure she was comfortable with.

Allegation 7(c) Found Proved (weird)

337. Patient A's evidence was that the Registrant twice asked her to tell him if his use of the tool felt "*weird*". Once as part of her guiding him in his use of the tool and second because it was close to her "*private parts*".

338. In one written response the Registrant states that he would not have used a colloquial term such as weird rather he would have used words such as "*Tell me if you do not feel comfortable*". However in a subsequent response the Registrant states that he would have asked if she was "…*ok or a term that I use (perhaps too frequently) 'if it felt weird*"". In his evidence the Registrant agreed that there was a conflict in the two statements and, whilst he was not '*happy*' with his use of the term he agreed he may have done so.

339. Given Patient A's evidence that the term was used, the Registrant's second statement that he could well have said it because he uses the term frequently and his concession in his evidence that he probably did the Committee found it more likely that he did indeed use the term weird as alleged.

Consequential Allegation 10a 10b, 11, 12 13a, 13b, 15

340. The Committee found these allegations proved for the reasons set out in relation to Allegation 6 namely that he had become enamoured of Patient A, and his actions were sexually motivated at least in part. The phrase "*how hard do you want it*" has clear sexual undertones, all the more so when using a vibrating tool very close to and on intimate parts of the body. In the Committee's judgment the Registrant was well aware of the potential stimulative effect of the tool by reason of his asking her to say if it felt "*weird*"". Actions such as pushing apart someone's legs and, using phrases such as "*how hard*" and "*felt weird*" are themselves potentially sexualised. In the Committee's judgement the Registrant's action is so doing and his use of the terms at the time of using the tool were indeed sexually motivated.

341. The Committee also concluded that in all the circumstances his action in pushing her legs apart and making the above comments when using the tool were sexual. As such his actions were not in her best interests, not in pursuit of a clinical or therapeutic aim and they were in breach of professional boundaries.

Allegation 8(a) Found Proved (clothes off)

342. The Committee noted that Patient A had a clear recollection of the term "*clothes off*" being used by the Registrant.

343. It was not disputed that the two had a long-standing friendship which, on the Registrant's own account affected the way he treated her albeit he denied using this phrase. Examples of him adjusting his language and treatment because she was a friend include using the colloquial term weird and the action of turning her head.

344. The Committee found it more likely than not that owing to their existing friendly relationship he used a colloquial term in the way alleged rather than a more professional form of request.

Consequential Allegation 10a 10b, 11, 12 13a, 13b, 15
Found Not proved

345. The Committee noted that the Registrant treated Patient A on her leg(s), foot and on her back. It was not unreasonable for him to request she remove her jumper in anticipation of him moving treatment from her foot to her back rather than stop the treatment, Patient A get up, remove her jumper and then the Registrant continue.

346. Given that there may have been a clinical reason for the request to Patient A to remove her jumper (to treat her back), the Committee was not satisfied that the consequential allegations were made out. The Committee were more inclined to the view that whilst this form of address was crass and insensitive to Patient A's concern with her body image, it was an off-the-cuff remark between friends rather than a comment with any sinister intent. The language was an indication of their familiarity but of itself was not sufficiently serious to merit the adverse findings contended for by the Council.

347. As to the issue of consent, Patient A attended for treatment, including to her back, albeit treatment may have started on her leg. It was not suggested that the Registrant asked Patient A to take her undergarments off indeed she only removed her jumper. She wore a vest underneath this. The Committee found that Patient A was by this appointment aware that treatment may include the Registrant asking her to remove her jumper. Her attendance in those circumstances at least implied her consent to a request to remove such items of clothing as were necessary and/or helpful to facilitate treatment. Her action in complying with the request indicated that Patient A did consent since she was, in the Committee's view, quite capable of speaking her own mind and refusing if she did not like something or did not consent. In the absence of clear evidence that

the Registrant's request was driven by an ulterior motive the Committee were not persuaded that her consent was invalid.

Allegation 8(b) Found Proved (open marriage)

348. The Committee considered the circumstances in which the suggestion of an open marriage was said to have been made by the Registrant. Patient A was insistent that it was said, the Registrant was equally insistent that it was not. This conversation was said to have occurred at one of the last consultations, if not the last one when he kissed her. The Committee found that by this date the Registrant's conduct was motivated at least in part by the view he expressed in his text of 19 February that there was something happening between them. The clear implication is that he thought there was a growing intimacy between them. This was clearly demonstrated by the Registrant kissing Patient A in the way she alleged.

349. Given the above, rather than being "*taken aback*" by Patient A's disclosure of an affair, the Committee found it more probable that the Registrant suggested she consider an open marriage because this was what he wanted. He was no longer motivated simply by his ability to treat her, or because he saw her as a friend (however inappropriate that may be). In the Committee's view, he was now motivated at least in part to pursue an intimate relationship with her. He thus referred to an open marriage in the way alleged and shortly thereafter he acted upon it by kissing her.

Consequential Allegations 10a 10b, 11, 12, 13a, 13b, Found Proved

350. Having found that the Registrant made the alleged suggestion and that it was for the purpose of pursuing an intimate relationship with Patient A, the Committee concluded that it was sexually motivated. It was a breach of professional boundaries, not in Patient A's best interests and not carried out for a clinical or therapeutic aim. Whilst Patient A may have initiated the conversation regarding her marriage it was for the Registrant to curtail such discussion, not to comment in the way he did. Being sexually motivated the suggestion formed no part of osteopathic practice and was not a comment or a conversation that Patient A could validly consent to him continuing.

Allegation 8(c) Admitted on a basis (1 air-kiss)

Basis rejected
Found Proved (2 kisses)

351. The Committee noted that in the texts between Patient A and a friend, patient A says that the Registrant was unprofessional albeit she does not say that the Registrant kissed her in the way she now describes. The comments are somewhat guarded and contain the comments: "*strange osteopath session; a hazy boundary; he just overstepped a bit; Wasn't so good today tbh. He wasn't so professional."* When the friend responded to Patient A and asks "*Physically*?" Patient A replied with a sad emoji face and asked "*what is it with me. Do I have a massive sign on me that says please mess with me..wanted* [sic]*to tell him how disappointed I was*."

352. It is plain from the above that something out of the ordinary happened to Patient A, it was physical and she was sufficiently disturbed to report it to a friend at the time and not just months or years after. Four days later when the Registrant attempted to make telephone and then text contact Patient A rebuffed his efforts. By text she asked him not to contact her again. The Registrant's response was to send another text saying: "*You came to see me on a professional level and I was unprofessional. I totally miss read* [sic] *what was happening between us..."*

353. The Committee concluded that something serious happened as Patient A reported on the day and the Registrant knew it was serious. His first texts appeared to be 'testing the water' to try and establish communications and could appear innocuous. However, when that was met by Patient A cutting contact, he began to have serious concerns and made a clear admission of wrongdoing, namely that he had misread the situation between them and had acted as alleged. The Committee was of the view that there was no other reasonable interpretation of the text. The clear import of the phrase "*miss read* [sic] *what was happening between us*" is that he did think there was more than a professional relationship between them and acted upon that belief in a significant, unprofessional and serious manner. His text was an attempt to limit the damage of his actions.

354. The Committee was of the view that an '*air-kiss*' between friends, as described by the Registrant would not generate the response by Patient A to text her friend in the terms that she did or cut what had then been four years of contact with the Registrant. Nor would it explain his subsequent text. What does explain all of that is unwanted and repeated advances in the way Patient A described in her evidence (summarised at Paragraph 70 above) and in her statement namely: "*[he] bent his head down and kissed me on my*

lips and then said "there", as though he meant 'there we go'. [the Registrant] was stood on my right next to the treatment bed that I was lying on." and, as she left the consultation, *"[the Registrant] tried to kiss me on my mouth. I moved my head to the side, but my arms were under his arms, which were wrapped around me, and with his left hand from behind me he pulled my head back by my hair to face him and he kissed me on my mouth*."

355. The Committee concluded on the balance of probabilities that the Registrant kissed Patient A twice in the way she described.

Consequential Allegation 10a **Admitted on a basis**
Basis rejected
Found proved

Consequential Allegations 10b, 11, 12 13a, 13b, 15
Found proved

356. Having concluded that two kisses occurred as described by Patient A and, noting the Registrant's own view that something "*was happening between* [them]", the Committee considered what conclusions and inferences could be drawn.

357. The Registrant admitted that the limited conduct he conceded (an 'air-kiss') was a breach of professional boundaries. It was clear to the Committee that the more intimate and insistent kisses found proved were a breach of professional boundaries. They, and in particular the second more insistent kiss were far more serious than the conduct admitted by the Registrant namely an air-kiss.

358. In the Committee's view the conduct found proved was plainly not in the best interests of Patient A. It goes without saying that such conduct forms no part of any clinical or therapeutic aim.

359. As to the issue of consent, her immediate reaction to the first kiss of freezing and not responding indicated that she did not consent to that kiss, let alone the second kiss with which he persisted, by taking hold of her when she stood up; turning her to face him when she had turned away and holding her head by her hair before kissing her on the mouth.

360. The Committee next considered whether one or other of the kisses was sexually motivated or, in the alternative, sexual - the meaning of which was limited *in this case* to sexual by reason of circumstances.

361. Whilst the Committee noted that the Registrant's conduct in kissing Patient A followed her revelation that she had feelings for

another woman, the Committee found that the manner of both the kisses (on her mouth) were intimate, and that the second was insistent. The Committee concluded on the balance of probability he either derived sexual gratification from kissing her in this way or, having learned that her marriage was unstable, he acted with a view to taking the friendship as he perceived it into the realms of a sexual relationship with her. The Committee thus concluded his actions were sexually motivated. Given the power-balance between practitioner and patient, the Committee concluded that the kisses could not have been consensual. However, given the circumstances of the type and repeated nature of the kisses the Committee was also of the view that his conduct was sexual.

Allegation 9(a) Admitted & Found Proved (how feel text)

362. The Registrant admitted that he sent a text to Patient A on 10 February 2020. This was four days after the final appointment.

Consequential Allegations 10a	**Admitted on a basis** **Basis rejected** **Found Proved**
Consequential Allegations 10b, 13a,	**Found Proved**
Consequential Allegation 13b,	**Found Not Proved**

363. When cross-examined about another earlier text, the [redacted] Hotel text referred to in Allegation 1(b)(ii), the Registrant explained that he now believed sending any texts to a patient was a breach of professional boundaries. When cross-examined about the text of 10 February he agreed that it was an informal text sent to Patient A as a friend and it was something he would not do to another patient. It thus appeared that his admission to Allegation 10(a) in relation to the 10 February text was on the basis that all texts to patients were a breach of professional boundaries. It was not an admission on the basis that texts themselves were generally permissible, but this text went beyond what was professional.

364. The Committee rejected the Registrant's suggestion that all texts sent by a professional to a patient are a breach of professional boundaries and rejected this as a basis for his admission. It did not consider this to be a plausible basis for his admission since texts are now as ubiquitous as phone-calls and emails. There is nothing in the Osteopathic Standards nor was the Committee aware of any social or professional etiquette to suggest that texts are an impermissible form or communication between clinician and patient.

365. The Committee considered it far more likely that, rather than send a text primarily for the perfectly reasonable clinical or therapeutic aim of inquiring after his patient, the Registrant was trying to contact her as part of a damage-limitation exercise following a significant incident on 6 February 2020 for which he knew he was responsible. By trying to open a line of communication the Registrant was acting in his own best interests rather than hers. The text was not sent in her interests, nor was it carried out for any clinical or therapeutic aim nor indeed was it sexually motivated. It was motivated by his own interest of self-preservation.

Allegation 9(b) Admitted & Found Proved ("I was unprofessional text")

366. The Registrant admitted that he sent a text to Patient A on 19 February 2020. This was thirteen days after the final appointment and three days after Patient A texted to say he should neither message nor call her.

Consequential Allegations 10a	**Admitted on a basis** **Basis rejected** **Found Proved**
Consequential Allegations 10b, 13a	**Found Proved**
Consequential Allegations 13b	**Found Not Proved**

367. The Committee came to the above conclusions for reasons similar to those set out in relation to Allegation 9(a).

368. This text was sent after Patient A cut all contact with the Registrant. The Committee considered that action to be a very clear signal to the Registrant that there was no way back from his conduct and, he received it at such. He thus responded by making a clear admission of wrongdoing to try and mollify her. The Committee rejected his suggestion that he was somehow trying to prevent her from blaming herself for anything. It was the Committee's conclusion that the text was sent to try and limit the damage he had done. The text was not sent in her interests, nor was it carried out for any clinical or therapeutic aim nor indeed was it sexually motivated. It was motivated by his own interest of self-preservation.

Allegation 14 Found Proved on a limited basis

369. At the outset of the case the Council appeared to put this charge on the basis that the Registrant did not have a justifiable treatment plan for the entire four years of treating Patient A. This was either on the basis that he had an ulterior sexual motive namely grooming Patient A and thus never had a justifiable treatment plan or, was predicated upon Patient A's evidence that she never understood what was happening; what treatment she received or why; what the expected goal of treatment was, and she was never given 'a plan'.

370. The Registrant was cross-examined both on the basis that he did not have an overarching treatment plan nor did he have treatment plans for the individual appointments. The Registrant denied both assertions stating on the one hand that the plan [in a general sense] did not change over 40 appointments but that each appointment would start with ten minutes of discussion which was part of the process by which he formulated what he intended to do. He stated that he always had a treatment plan that he followed, he did not treat Patient A "*willy-nilly*".

371. At the close of submissions the Committee remained in some doubt about what the Council's case was as regards 'a justifiable treatment plan'. It appeared, and this was reinforced by the wording of the particular, that the Council was stating that the Registrant should have formulated a treatment plan that spanned the whole course of appointments over the 4 years. If that was indeed the basis of the Council's case, this was not a proposition with which the Committee could agree. Firstly, because there was nothing in the OPS (in the then version or the current version) to suggest that to have this evidenced in the clinical notes was a requirement. Secondly, such an approach would be difficult, if not impossible, in a situation where a patient attended irregularly over time presenting with a varying number of symptoms and issues, some new and some recurring.

372. Patient A confirmed that the Registrant would ask how she had been and then provide treatment but stated in varying ways that there was no plan: *"There was no plan shared with me"*; there was *"never a plan or a discussed end-point"; "never an outcome, there wasn't a clear outcome".* She did not accept the proposition that her treatment changed with her injury so it was treatment on a rolling basis albeit she subsequently accepted that proposition. Conversely Patient A said that each time she attended for treatment there was *"…an initial conversation ... about what had been going on, how I was doing and what I wanted the treatment session to focus on ... [the Registrant] would look at his screen and reflect on what the previous treatment included and ask me how I had been."* Patient

A also describes undertaking a standing assessment on each occasion.

373. The Committee noted that whilst Patient A appeared now to believe that she should have been presented with a document, or documents from the Registrant which was a 'treatment plan', there was no such requirement in the (then) OPS to prepare a written treatment plan and it did not consider that the absence of any such written plan, whether presented to the patient or within the clinical notes, was evidence that there was no such plan or plans at appointments. In addition, her description of a discussion, assessment and reflection concurred with the Registrant's evidence that he had a plan each time he treated her. The Committee did not find credible her assertion that for 4 years and 40 appointments she did not know what the Registrant was doing in terms of treatment or why.

374. From both Patient A's and the Registrant's accounts the Committee found there was evidence to support the existence of an overall plan to address Patient A's needs on a rolling basis and to address those needs as she reported them and attended for treatment. However, theirs was not the only evidence in the case. The Committee had before it the unchallenged evidence of Mr McClune whose opinion impacted upon a narrower interpretation of Allegation 14, namely whether at any individual appointments across the 4 years there appeared to be no justifiable treatment plan for the treatment delivered.

375. The Committee considered that Mr McClune had two separate areas of concern. Firstly as regards what he considered to be deficient – on the basis of the Registrant's notes - at the first appointment. Mr McClune stated in his addendum report that whilst the Registrant has supplied a subsequent explanation of what he did at the first appointment, he (Mr McClune) remained concerned because this detail was not evidenced in the Registrant's notes from that appointment. However he did accept that, if the Registrant had done what he said he had done, then the treatment plan would have been adequate and that it was a matter for the Committee to decide this based on its assessment of the Registrant's evidence.

376. The Committee concluded that because (as Mr McClune confirmed) on subsequent appointments the clinical notes recorded that the Registrant had undertaken appropriate follow up questioning and examination, and then proceeded to deliver appropriate treatment, the Registrant's explanation that he had done so at the first appointment but had failed to record it properly was as a matter of probability correct. It could find no good reason

why the Registrant would not have done so at the first appointment given that he did so subsequently.

377. The other area of Mr McClune's concern was the treatment of the area around the pubic ramus. He was unpersuaded despite the Registrant's two explanations in which he detailed his rationale that the Registrant's treatment to this intimate area was appropriate. That this area was treated was recorded in the Registrant's notes for several appointments in 2018 and until April 2019. The notes record that consent was sought and obtained in recognition that this was an intimate area. Mr McClune was of the view that other options for treatment were available and more appropriate and should therefore have been pursued. The Registrant's case was that he had previously tried other options and this option had proved effective and he had obtained the appropriate consent.

378. The Committee considered that the explanation provided by the Registrant had sufficiently justified his treatment of the area around the pubic ramus on Patient A at the relevant times and so this plan of treatment was justified.

379. Finally having reached further findings of facts as regards the consequential allegations, and in particular that of sexual motivation, the Committee returned to the matter of whether the Registrant's treatment plan was justifiable throughout.

380. Having determined that the Registrant acted with a sexual motivation during the final two appointments, his treatment and any plan of treatment in those two appointments was not justifiable. Accordingly it found allegation 14 proved on this limited basis.

Submissions on Unacceptable Professional Conduct ("UPC")

381. The parties had provided written submissions on UPC in advance of the resumed hearing on 17 November 2021, at which the Council was represented by Mr Peter Mant.

382. Mr Mant submitted that the facts found proved by the Committee in this case were a clear breach of the relevant Osteopathic Practice Standards ("OPS"), and that the course of the Registrant's conduct would be regarded by fellow professionals as deplorable, would carry an implication of moral blameworthiness and would convey a degree of opprobrium to an ordinary intelligent citizen.

383. The Registrant's submissions accepted that "*some*" of the facts as proved "very clearly amount to UPC".

The Committee's Findings on UPC

384. The Committee considered whether the facts found proved in the case as set out above amounted to unacceptable professional conduct. The Committee took into account the submissions from both parties and the advice of the Legal Assessor which it accepted. In coming to its determination, the Committee had regard to the relevant guidance, including the OPS and the CHRE Guidance on Clear Sexual Boundaries.

385. 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 transgressed appropriate professional boundaries with a vulnerable patient and had not acted in her best interests. He had done so without valid consent and had carried out treatment in respect of the last two appointments that did not apparently have a therapeutic aim, and which was not part of a justifiable treatment plan. Most seriously he had been sexually motivated in some of his actions and had behaved in a sexual way with his patient.

386. Professions rightly require a high standard of conduct from their members. The Registrant developed a sexual attraction for a patient, which he acted upon and sought to turn into an intimate personal relationship. It is self-evident that boundaries are important in a therapeutic relationship and breaching them carries a risk of harm to patients. Both the public and fellow members of the profession would view this with a significant degree of moral opprobrium.

387. The Committee considered there had been a clear breach of Standards A4, A6 D2 and D7 of the OPS in respect of the matters it had found proved. It was cognisant of the fact that a breach of the OPS or the CHRE Guidance does not automatically constitute unacceptable professional conduct. However, in this case there had been a clear and significant transgression of both appropriate personal and professional boundaries.

388. The Committee was clear that by his conduct the Registrant had abused his professional position, transgressed professional boundaries, and had failed to uphold the reputation of the profession. 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.

389. 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.

Evidence at sanction stage

390. In advance of his submissions on sanction, Mr Zaman provided the Committee with further documents on behalf of the Registrant. Those documents consisted of:
- A CPD certificate attesting to the Registrant's participation in a webinar on Communication and Consent given by the University College of Osteopathy on 9 October 2020;
- A letter from the Registrant's GP addressed "To whom it may concern" and dated 10 August 2021;
- A report by Steven Vogel DO Hons summarising the online one to one learning sessions he had undertaken with the Registrant that took place online on 30 October 2020 and 20 November 2020 dealing with communication and consent, managing boundaries, patient dignity and modesty and reflective practice;
- A CPD certificate attesting to the Registrant's participation in a webinar on Mental health awareness for health professionals given by the University College of Osteopathy on 5 December 2020; and
- Further testimonials from the Registrant's wife and from two female patients.

391. The Committee did not receive any further oral evidence at the sanctions stage.

Submissions on sanction

392. Mr Mant on behalf of the Council confirmed that the Registrant had no previous regulatory history. He submitted that the appropriate sentence 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').

393. In arriving at its determination, Mr Mant said that the Committee should have 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.

394. So far as the aggravating factors in the case were concerned, Mr Mant submitted that the matters found proved by the Committee demonstrated that the Registrant had abused his position of trust with regard to Patient A. In addition, Patient A was vulnerable, and the Registrant knew that she was vulnerable. Lastly the conduct in question had occurred over a period of time. Mr Mant submitted that that it was clear that the Registrant had developed intimate feelings for Patient A in late 2019 which continued into early 2020 and led to the "kissing" incident.

395. As regards mitigation, the Council accepted that the Registrant was of good character. Further, there had been no repetition of similar or any misconduct since these matters came to light and the Registrant had provided evidence of steps taken to avoid a repetition.

396. Mr Mant invited the Committee to consider carefully the question of insight. The Council accepted that admission of the allegations in any case is not a pre-condition for insight. Nonetheless, the Registrant's denial of the alleged sexual behaviour and apparent lack of reflection since the Committee's findings on fact must raise some question about his level of insight.

397. Mr Mant drew the Committee's attention to paragraphs 49 – 52 of the HSG, which deals with sexual misconduct. He asserted that the findings in this case were not perhaps at the highest end of the scale of seriousness (such as criminal convictions for sexual offences) but were nonetheless serious and clearly the circumstances were such that they might undermine confidence in the profession of osteopathy.

398. Lastly, although it was not the Council's intention to argue for a particular sanction, Mr Mant questioned whether any order for conditions could be appropriate or workable in these circumstances.

399. Mr Zaman on behalf of the Registrant mentioned first what he said was the scattergun approach the Council had adopted in the charges before the Committee, which he likened to throwing a number of darts at a target in the hope that one would stick. A significant amount of the case had fallen away. For instance, the Council had put its case on the basis of grooming from the outset, a proposition which ultimately this Committee had rejected.

400. Similarly, despite the Council's submission that the case had been aggravated by the prolonged period over which behaviour took place, this was something that the Committee had rejected in its

findings. The Committee had also rejected the premise that the relationship between Patient A and the Registrant had been inappropriate from the start. Mr Zaman asserted that the serious aspects of charge which had been found proved related only to a limited part of the overall period of treatment. Mr Zaman submitted that what the Council had alleged and what was found proven were very different and Committee should take this into account in deciding on sanction.

401. Mr Zaman said that this case represented a unique set of circumstances. The Registrant was known to Patient A for some 10 years prior to the events in question, and her [redacted] was a previous patient. Their families were known to each other. There was a degree of familiarity in their conduct towards each other. Patient A was the one who first obtained the Registrant's telephone number. These were important matters for the Committee to take into account in considering the risks and likelihood of reoccurrence.

402. Similarly following the findings on facts in the case the Council had made an Interim Suspension Order application. A different Professional Conduct Committee looking at what was the same factual matrix as this Committee had found it unnecessary to impose any order or even to accept undertakings from the Registrant, who had been prepared to offer to see patients with a chaperone.

403. Mr Zaman said that the Registrant had been practising completely unfettered for a period of more than 2 years since these matters came to light. The Committee was able to assess his conduct in that time. The Registrant had not received a single complaint in that time, and this was an important point in considering the risk or possibility of reoccurrence. During that time, the Registrant had treated some 150 patients and conducted over 2,500 appointments with both men and women.

404. The Registrant had worked in the caring professions for over 30 years, first as a nurse and latterly as an osteopath. Mr Zaman told the Committee that the Registrant was a family man, having met his partner in 2016 and married in 2018. He was [redacted] to two stepdaughters. The family had had to cope with the medical issues of one of their children in recent years and this had precipitated a lot of stress. This case itself had caused considerable stress to the Registrant and his wife. The Registrant's own mental health has been impacted, causing him to suffer suicidal thoughts, anxiety, poor sleep and depression. These had been exacerbated by the prolonged nature of this hearing, which had been hanging over him for some considerable time.

405. Mr Zaman invited the Committee to consider the testimonial statements in the original bundle, as well as those more recent ones he had provided. He also outlined the CPD the Registrant had undertaken since the outset of this case, which had in particular been directed at consent and boundaries issues.

406. Mr Zaman said that the Registrant had found himself heavily unprotected in the circumstances of this case and had put himself in a vulnerable position. This had caused him to learn a number of lessons. As a result of his experience, the Registrant had now ceased to treat family or friends. As the Committee had seen from the report provided by Mr Vogel, the Registrant had sought and received advice and guidance from a leading expert addressing the particular problems identified in this case and had done so before knowing the outcome of the case. This had included consideration of Patient A's account of the case, even though the Registrant disputed much of it, which was a point Mr Zaman considered the Committee should take into account in assessing the Registrant's insight.

407. Referring to the HSG, Mr Zaman emphasised that it was no more than guidance. Therefore the Committee had to exercise its own judgment and judge each case on its own merits. The reason the Committee was constituted with lay people and professionals rather than lawyers was so that those members could bring their wider experience to bear in considering cases.

408. As to the guidance offered by the HSG, Mr Zaman dealt first with the question of sexual misconduct. He acknowledged that the HSG indicated that cases involving sexual misconduct were very serious and that removal from the register was likely to be considered an appropriate outcome. However, the Committee was by no means bound to follow that guidance.

409. In Mr Zaman's submission, this was not a case which had reached the threshold for either suspension or removal. He asserted that there were features of this case which were unique. The Registrant had been practising for two years since the concerns were raised without complaint. This must feature in the Committee's eventual determination on risk and likelihood of reoccurrence. Nor was this a case where removal from the Register was appropriate. The HSG indicated that a removal is the most severe sanction and should be imposed where there is no other means of protecting the public. Mr Zaman said that in this case there were other means of reassuring and protecting the public.

410. While the HSG suggested suspension may be appropriate where there was a serious breach, Mr Zaman said that the Registrant had

shown ample insight and remediation. Mr Zaman agreed with the Council's submissions that it was hard to see what conditions could appropriately be imposed on the Registrant at this stage, given he had practised unfettered for over 2 years.

411. As regards the criteria which the HSG suggested were appropriate for the application of an admonishment, Mr Zaman submitted that this case was an isolated incident. There was absolutely no suggestion that the Registrant presented a wider danger to the public. He had clearly expressed remorse and had taken steps to address the identified problems. Mr Zaman urged the Committee to consider carefully all the available sanctions.

Legal Advice

412. The Committee heard and accepted the advice of the Legal Assessor. He reminded the Committee that, having found that the Registrant's actions amounted to unacceptable professional conduct, it was required to impose a sanction. The available sanctions are set out in Section 22 of the Osteopaths Act 1993.

413. The Legal Assessor reminded the Committee that it should take into account the guidance in the Council's Hearing and Sanctions Guidance 2019. The Legal Assessor reminded the Committee of the guidance contained in the well-known case of *Bolton v Law Society 1994 1 WLR 512* which underlined purpose of imposing a sanction was not to punish a registrant, but to protect the public, maintain confidence in the profession and promote proper standards of conduct and behaviour. The collective reputation of a profession is more important than the fortunes of an individual member.

Determination on Sanction

414. The Committee took into account the submissions of the parties. The Committee considered the available sanctions from the bottom upwards on the scale of seriousness. It bore in mind that the sanction imposed must be proportionate, weighing the Registrant's interests with the public interest.

415. The Committee considered that the following aggravating features were present:
    - The case involved sexual misconduct;
    - The Registrant had abused his position of trust as an osteopath;
    - The most serious elements of the misconduct (the sexually motivated use of the massage tool and the kissing incident)

had taken place within a clinical setting that Patient A had considered a "safe space";
- Patient A was vulnerable, and the Registrant knew this; and
- The findings of the Committee reflected a deliberate course of conduct by the Registrant towards Patient A which extended over a period of time. This was not a single momentary lapse, and thus not, in the Committee's judgment, an "isolated incident".

416. The Committee took careful note of the mitigation offered on behalf of the Registrant, in particular the testimonials indicating the support he maintained from both patients and colleagues. It accepted that the Registrant was of previous good character and there had been no complaints or other issues in the period since this case came to light. It gave the Registrant some credit for his remediation work and other CPD he had undertaken. The Committee also took account of the effect of these proceedings on the Registrant and the potential impact of any sanction it might impose but bore in mind that its fundamental duty to protect the public might necessarily have unfortunate consequences for individual practitioners. The Committee acknowledged that this complaint involved only one patient, though it considered that fact was not in itself a mitigating factor.

417. While the Committee acknowledged that there was some degree of insight by the Registrant, it was presented with no evidence of insight by the Registrant into the most serious factual findings, namely the findings of sexually motivated misconduct. There was no evidence he had accepted the findings in this case as to his unacceptable behaviour towards Patient A (while conceding they could amount to UPC, the submissions presented on his behalf indicated his disappointment at the Committee's findings). Nor was there any clear expression of regret about the effect of that conduct on Patient A, other than that reported by Mr Vogel in the latter's summary report (which precedes the Committee's findings).

418. With regard to remediation, the Committee noted that, despite having had ample opportunity, there was no evidence before it that the Registrant had done anything specifically to address the principal concerns arising from the facts found proved against him, namely his sexualised behaviour towards Patient A. Neither has he addressed the harmful effects of such behaviour upon Patient A, or the potential damage to public confidence in the osteopathic profession.

<u>Admonishment</u>

419. Paragraph 63 of the HSG states that an admonishment is the lowest sanction that can be applied and may therefore be appropriate where the failing or conduct is at the lower end of the spectrum.

420. The Committee concluded that, in view of the nature and evident seriousness of the Registrant's conduct, an admonishment would not be an appropriate sanction. It would be insufficient to protect the public, maintain public confidence in the profession and uphold professional standards.

Conditions of practice order

421. The Committee went on to consider a conditions of practice order. The Committee took the view that it would not be possible to formulate workable or practicable conditions that would adequately address the misconduct in this case. The essence of the issues identified by the Committee in this case was the Registrant's harmful behaviour stemming from an attitudinal problem. The Registrant knew or should have known what inappropriate behaviour was in the circumstances, but nonetheless persisted in his unacceptable conduct. Moreover, the Committee was of the view that a conditions of practice order would not be appropriate in light of the serious nature of the Registrant's conduct and would not adequately address the public interest concerns in this case.

Suspension order

422. The HSG states that a suspension order is appropriate for more serious offences and where some or all of the following factors are apparent:

a. There has been a serious breach of the Osteopathic Practice Standards but the conduct is not fundamentally incompatible with continued registration.

b. Removal of the osteopath from the Register would not be in the public interest, but any sanction lower than a suspension would not be sufficient to protect members of the public and maintain confidence in the profession.

c. Suspension can be used to send a message to the registrant, the profession and the public that the serious nature of the osteopath's conduct is deplorable.

d. There is a risk to patient safety if the osteopath's registration were not suspended.

e. The osteopath has demonstrated the potential for remediation or retraining.

f. The osteopath has shown insufficient insight to merit the imposition of conditions or conditions would be unworkable.

423. As the HSG also makes clear, proven sexual misconduct, especially in circumstances where there has been a breach of professional boundaries involving a vulnerable patient, should be considered as very serious and removal from the register is likely to be considered an appropriate and proportionate response.

424. In this case, the Registrant had pursued an intimate relationship with a vulnerable patient, had used a massage tool on her in a sexualised way and had made a repeated attempt at kissing her. These matters were a gross abuse of his position of trust and placed the case at the higher end of seriousness so far as the Committee was concerned. The Registrant's conduct in the case had clear potential to undermine public confidence in osteopaths generally.

425. The Committee was not persuaded by the Registrant's submission that the sexual misconduct and the boundary transgressions arose from a "*unique set of circumstances*", namely the longstanding friendship claimed by the Registrant to exist before Patient A became his patient. The OPS at D2 (5.9) references just such a situation, which suggested to the Committee that it could not be a unique occurrence. Further, the Registrant had told the Committee that he had ceased treating other friends and family. In any event, this claimed friendship in advance of becoming a patient was denied by Patient A.

426. In light of the concerns it retained about the Registrant's level of insight and lack of relevant reflection, the Committee was not persuaded that the harmful attitudes which had led the Registrant to act in a sexualised way with a vulnerable patient had been remedied, even if such attitudinal issues were capable of remediation. The Committee therefore considered that the Registrant presented a continuing risk to other vulnerable patients who might seek his help in a professional context, as a result of those attitudinal problems. In any event, his sexualised conduct and transgression of boundaries in the case of Patient A was, in its view, fundamentally incompatible with his continued registration as an osteopath.

427. The Committee therefore concluded that the only appropriate and proportionate sanction to protect the public and mark the seriousness of this case was to order that the Registrar of the Council remove the Registrant's name from the register.

428. The Committee considered that to impose a lesser sanction for the behaviour exhibited by the Registrant in this case would send a potentially harmful message to the public and other practitioners about acceptable professional standards in osteopathy and would not satisfy the public interest.

Application for Interim Suspension Order

429. Mr Mant, 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.

430. He submitted that the grounds for such an order were to be found in paragraph 426 of the Committee's determination that, in light of its concerns about the Registrant's lack of relevant insight and remediation, he presented a continuing risk to other vulnerable patients who might seek his help in a professional context, as a result of his attitudinal problems. Mr Mant said 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.

431. Mr Zaman on behalf of the Registrant opposed that application. He told the Committee that the Registrant took issue with a number of the Committee's conclusions about the seriousness of his behaviour, its criticism of his 'attitudinal problems', its rejection of his claim that his case represented a "*unique set of circumstances"* and about the extent of his insight and remediation.

432. Mr Zaman submitted there was no necessity for an ISO. Two previous panels of the Professional Conduct Committee considering ISO applications had not identified any risk that required the imposition of an ISO. The risk assessment had not changed as a result of this Committee's findings. The other panels had, unlike this Committee, accepted that this was indeed a unique set of circumstances, given the Registrant's long friendship with Patient A and the period of safe practice he had demonstrated after the complaint had come to light. This too demonstrated that any risk presented by the Registrant was low.

433. Mr Zaman further submitted that an ISO would have a considerable and disproportionate effect on the Registrant and others. The Registrant had candidly revealed his mental health problems including the fact he had experienced suicidal thoughts. The effect of an ISO would be to increase the stress upon the Registrant to an extent that Mr Zaman feared for the Registrant's well-being. Secondly, the Registrant's income was all that kept his business afloat. If unable to practise, even to the extent of having the 28 days period allowed

for an appeal to get his affairs in order, this would have a catastrophic effect on the finances of his clinic and would lead to others losing their employment, as well as to financial difficulties for the Registrant personally. If it would reassure the Committee as an alternative to an ISO, the Registrant was prepared to offer undertakings as to his future practice, such as not to treat female patients.

434. The Committee listened carefully to the submissions of both parties. It referred to the GOsC guidance to Committees on ISOs and the GOsC's Practice Note 2014/1 regarding Undertakings at ISO Hearings. It accepted the advice of the Legal Assessor as to the test to be applied in considering whether to impose an ISO.

435. 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.

436. In assessing the risk, the Committee considered first the nature and seriousness of the allegations. Having heard from the witnesses and having considered all the written evidence, including the testimonials and mitigation supplied on his behalf, the Committee had concluded (as set out above) that the Registrant was guilty of sexual misconduct with a vulnerable patient which was serious enough to justify his removal from the Register.

437. The Committee next considered the likelihood of the conduct being repeated if the ISO was not imposed. Notwithstanding the length of time the Registrant has practised without restriction since the complaint was raised, the Committee had concerns about the Registrant's lack of insight into his sexually motivated conduct and absence of relevant reflection and remediation concerning its findings. Consequently, it had concluded there was a continuing risk to vulnerable patients who might seek his care. It followed there was a likelihood of that conduct being repeated.

438. Given the nature of the matters found proved by the Committee, any repetition of the same conduct was likely to result in severe harm to a patient.

439. 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 full argument by the advocates on each

side. The Committee was obliged to observe that it was in no way bound by the decision of any other panels of the Professional Conduct Committee and was required to come to an independent view on the facts of this case.

440. Furthermore, the panels that had considered the earlier ISO applications could not have come to any binding factual conclusion on this case (including whether there was in fact a 'unique set of circumstances' as was submitted by Mr Zaman in this hearing, but previously rejected by this Committee), because that is expressly not the function of any panel considering an ISO at the interim stage. This is made clear by the relevant GOsC Guidance and caselaw. In addition, the panels hearing earlier applications for an ISO were not in a position (nor was it their role) to reach a finding, as this Committee had done, regarding the matter of the Registrant's insight, reflection and relevant remediation in light of its factual findings.

441. While the Committee acknowledged the Registrant's willingness to provide undertakings as to his conduct, it did not see how these could be adequately monitored or enforced in circumstances where this Committee had made its final determination of the allegations against the Registrant and therefore the case would not return before it. In its view, any such undertakings would not obviate the necessity for an ISO.

442. The Committee noted the adverse personal and professional consequences that it had been asserted would follow for the Registrant and others in the event that it imposed an ISO. While it was regrettable that this should be so, the Committee, as it was required to do, had carefully weighed the potential negative effects on the Registrant resulting from an imposition of an ISO against the need for public protection.

443. In light of the facts found proved, and the judgments reached as to the Registrant's insight, relevant reflection and remediation, the Committee concluded that it was necessary for the protection of the public to order that the registration of the Registrant be subject to an ISO during the appeal period or pending the determination of any appeal against the decision in this case.

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.