

**GENERAL OSTEOPATHIC COUNCIL
PROFESSIONAL CONDUCT COMMITTEE**

Case No: 688/6857

Professional Conduct Committee Hearing

DECISION

Case of:	Ms Elizabeth Treadaway
Committee:	Mr Mark Osborne (Chair) Dr Pamela Ormerod (Lay) Mr Tom Bedford (Osteopath)
Legal Assessor:	Ms Nicole Curtis
Representation for Council:	Mr Chris Gillespie
Representation for Osteopath:	Not present or represented
Clerk to the Committee:	Miss Jemima Francis
Date of Hearing:	5 February 2019

Summary of Decision:

The Committee found the facts proved. It decided that the facts amounted to unacceptable professional conduct. It decided to direct that the registrant's name should be removed from the register

Allegation and Facts

The allegation is that you, Elizabeth Treadaway, have been guilty of Unacceptable Professional Conduct, contrary to Section 20(1)(a) of the Osteopaths Act 1993 in that:

1. Between 27 May 2016 and up to and including 10 September 2018, you failed to engage with the General Osteopathic Council (GOsC)'s fitness to practise process by your failure to acknowledge and/or respond to various correspondences from the GOsC.

Decision on Preliminary Matters:

Service of Notice and Proceeding in Absence

1. The registrant did not attend the hearing. The General Osteopathic Council ("the Council") made representations to the effect that the Notice of Hearing had been properly served.
2. The Committee was satisfied that Notice of this hearing had been served on 21 November 2018 in accordance with Rules 9 and 65 of the General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules 2000 ("the Rules"). The Council had demonstrated that the Notice had been sent on 21 November 2018 by special delivery and first class post to the registrant's address as it appears on the register. The Special Delivery letter was returned to the Council as it was "not called for". A further copy of the Notice was therefore sent by special delivery and first class post, on 19 December 2018. That special delivery letter was signed for on 20 December 2018.
3. The Committee was therefore satisfied that the Notice had been properly served.
4. The Council then applied to the Committee to proceed in the absence of the registrant.
5. The Panel accepted the advice of the Legal Assessor, namely that any decision to proceed in the absence of a registrant should be taken with the utmost care and caution. The Panel had regard to the relevant Council Practice Note in relation to proceeding in the absence of a registrant. It also had regard to the criteria referred to in the case of R v Jones [2003] 1 A.C.1; R v Hayward [2001] Q.B. 862; and the guidance in the case of General Medical Council v Adeogba/Visvardis (2016) EWCA Civ 162.
6. The Committee considered that the registrant had voluntarily absented herself from the hearing. She had not asked for an adjournment, nor had she given any indication that she wished to be legally represented. The Committee took the view that no useful purpose would be served by postponing this matter, as there was nothing to indicate that she was likely to attend at some future date. The Committee noted that there was a general public interest that a hearing should take place within a reasonable time. Whilst there may be a disadvantage to the registrant in proceeding in her absence, it was the Committee's view that this

consideration was outweighed by the public interest in proceeding with this matter within a reasonable time.

7. In all the circumstances, the Committee took the view that it would be fair and appropriate to proceed in the registrant's absence.

Private/Public hearing

8. The Committee accepted the advice of the Legal Assessor, namely that in certain circumstances, it may be appropriate to hold parts of the hearing in private, and this may include where there were references to the health of the registrant. The Committee took the view that any references to the registrant's health and private life should be heard in private.

Decision on Facts

Background

9. On 27 May 2016 the Professional Conduct Committee ("PCC") considered allegations against the Registrant in relation to failing to obtain and maintain professional indemnity insurance for a period of approximately five months (from September 2014 to January 2015) and failing to engage with the General Osteopathic Council ("the Council") for a period of four months (from February 2015 to June 2015). The Registrant attended the hearing and made a number of admissions. At the conclusion of that hearing on 27 May 2016, the PCC suspended the Registrant for a period of four months, taking into account her indicated [REDACTED] and apparent degree of insight. A review was ordered, to be heard approximately one month before the expiry of the suspension. The Committee noted, and set out, the kind of evidence that would assist the Committee at the review hearing, including that relating to [REDACTED] and engagement with the Council.
10. A review hearing duly took place on 14 September 2016. The Registrant failed to attend that hearing, and she was not represented. The Committee concluded that the Registrant had voluntarily absented herself and decided to proceed in her absence. In its decision, the Committee noted that notwithstanding the insight previously shown by the Registrant in May 2016, there now existed an increased risk of repetition, owing to the Registrant's non-engagement since that time. It noted that there was "no evidence of continued insight or of any remediation and this is aggravated by a complete absence of engagement with her regulator." The Committee decided to extend the suspension order by a period of eight months, to be reviewed

approximately one month before the expiry of that period. The Committee again listed the type of evidence that would be of assistance at a review hearing, again including that relating to [REDACTED] and engagement with the Council.

11. A further review took place on 24 April 2017. The Registrant failed to attend that hearing and the Committee again decided to proceed in her absence. The Committee concluded that notwithstanding insight shown by the Registrant in May 2016, there now existed an increased risk of repetition owing to the Registrant's lack of engagement since that time. They noted that there was no evidence of continued insight or of any remediation and that this was "aggravated by a complete absence of engagement with her Regulator for nearly a year". The Committee decided that the Registrant had "apparently ceased making tangible progress in addressing the identified failings in her conduct", and that a lengthier period of suspension would "give her the time to develop some insight into her position without being of such long duration as to mean she was de-skilled to a great degree when the period elapsed". It noted that this would "also provide sufficient time for her to re-engage with the GOsC." The Committee decided to extend the suspension order by 12 months with a review approximately one month before the expiry of that suspension. It again set out the evidence that would assist the Committee at the review hearing, again including that relating to [REDACTED] and that relating to engagement with the Council.
12. On 16 March 2018, a further review hearing took place. Again the Registrant did not attend and the Committee decided to proceed in her absence. The Committee once again noted that "notwithstanding the insight shown in May 2016 there now exists an increased risk of repetition owing to the Registrant's lack of engagement since that time". It noted that there was "no evidence of continued insight or of any remediation and this is aggravated by a complete absence of engagement with her Regulator for nearly two years."
13. The Committee decided to extend the suspension order for a further period of 12 months. This will expire in April 2019. At that point in time the Registrant will have been suspended for 3 years which is the maximum allowable under the Osteopaths Act 1993.

The Current Allegations

14. The Committee carefully considered the factual allegations against the Registrant. The Committee accepted the advice of the Legal Assessor, namely that it was for the Council to prove the facts, and that the required standard of proof was the balance of probabilities. The Council

accepted that the way in which the allegation was drafted was such that the Committee had to be satisfied that (i) there was a duty or obligation on the registrant to acknowledge and/or respond to the correspondence relied on; and (ii) she had failed to acknowledge and/or respond to that correspondence.

15. The Council has set out a chronology of correspondence that it has sent to the Registrant since the initial hearing in May 2016. This includes the following:

31 May 2016 – Letter to registered address

8 August 2016 – Letter to registered address, signed for

31 August 2016 – Email to known address, delivery receipt

13 September 2016 – Telephone call to known workplace, message left

13 September 2016 – Telephone call to known mobile number, message left

14 September 2016 – Letter to registered address

14 September 2016 – Email to known address, delivery receipt

25 January 2017 – Email to known address, delivery receipt

8 March 2017 – Email to known address

9 March 2017 – Letter to registered address, signed for

24 April 2017 – Letter to registered address

10 January 2018 – Letter to registered address

10 January 2018 – Email to known address, delivery receipt

7 March 2018 – Email to known address, delivery receipt

19 March 2018 – Letter to registered address

5 September 2018 – Letter to registered address

16. The Committee asked for copies of the above correspondence, and this was produced by the Council, in Bundle C4 (a bundle beginning with a letter of 31 May 2016 and ending with a letter of 5 September 2018).

The Committee considered that although this was not evidence that had previously been included in the Council's Bundle, and had not therefore been served on the registrant in relation to this hearing, it was fair and appropriate to admit this into evidence. In the Committee's view, no prejudice would be caused to the registrant by its admission into evidence, as it constituted correspondence that had previously been sent to her; and it was correspondence that had been referred to in the chronology within the Bundle.

17. The Council has relied on a signed statement of Ms Sheena Wynn, Senior Regulation Officer in the Council's Regulation department. Ms Wynn confirms that the correspondence as set out in the chronology (and as listed above) had been sent to the registrant. She further confirmed that as at 31 January 2019, there had been no response from the registrant to any of that correspondence. She states that the last date on which the registrant had communicated and engaged with the Council was at the hearing on 27 May 2016.
18. The Committee first considered whether there was a duty or obligation on the registrant to acknowledge and/or respond to the correspondence in question. It noted the Council's submission that there was a general duty on a registered professional to engage with and co-operate with his or her regulator. The Committee agreed that there was such a duty. It further noted that the background to and context of the correspondence in question was a series of hearings relating to concerns about the registrant's ability to practise safely. The Committee noted that at the initial hearing in May 2016, for example, the registrant had raised issues [REDACTED], and that later correspondence had referred to the fact that at the next hearing the Committee would wish to see evidence that she had addressed issues [REDACTED]. Despite repeated reminders in relation to this, the registrant had not provided any further information as to her circumstances. The Council has submitted that when one looks at the context of the letters and emails, it was clear from the repeated letters being sent to her that an acknowledgement or response was required. The Committee agrees that this was implicit from the nature and extent of the repeated communications, and the context in which they were sent.
19. The Committee noted in addition that there were examples within the correspondence of explicit requests made by the Council for a response. In a letter dated 31 May 2016, the Registrant was asked in terms to "forward to us your certificates of registration and any identity cards that you may have". The Committee found that there was a clear duty on the registrant to acknowledge or respond to this letter.

20. In an email dated 26 January 2018, the registrant was asked to confirm whether she would be attending the Review Hearing on 16 March 2018. There was no reply, and she was sent an email on 7 March 2018 asking whether she would be attending the review hearing on 16 March 2018. The Committee found that in relation to these two emails, there was a specific request for a response and there was therefore a corresponding duty on the registrant to acknowledge or respond.
21. Even in relation to those letters or communications where there is no specific request for a reply, the Committee considered that there was an implicit requirement that she should respond or acknowledge the communications being sent to her. This duty arose, in the Committee's view, from the context of the on-going regulatory process. The fact that a response was required was in the Committee's view further reinforced by the nature of the type of information that was being referred to in the letters, for example information that would be of assistance to future Committees, and which only the registrant could provide.
22. The Committee was therefore satisfied on the balance of probabilities that there was a duty on the registrant to acknowledge and/or respond to the correspondence in question.
23. The Committee went on to consider whether the Registrant had failed to acknowledge or respond to the correspondence sent to her. The Committee was satisfied on the basis of the evidence of Ms Wynn that the Registrant had been sent the correspondence contained in C4 (and, as set out in the chronology above), and that she had not made any acknowledgement or response to that correspondence. The Committee noted that further enquiries had been made during the course of the hearing to check whether there had been any responses, in particular with regards to provision of certificates and identity cards, as requested in the letter of 26 May 2016; and that the Council had confirmed that there had been no such response.
24. The Committee was therefore satisfied on the balance of probabilities that the registrant had failed to acknowledge and/or respond to the relevant correspondence from the Council.

Decision on Unacceptable Professional Conduct

25. The Committee went on to consider whether the facts that had been proved amounted to unacceptable professional conduct. The Committee accepted the advice of the Legal Assessor to the effect that there was no standard of proof to be applied at this stage, and that the Committee should consider the facts in light of the relevant statutory provision,

namely that unacceptable professional conduct was conduct which falls short of the standard required of a registered osteopath. It also took account of the direction in the case of *Spencer v The General Osteopathic Council* (2012) 1 WLR 1307 to the effect that unacceptable professional conduct implied a degree of "moral blameworthiness" and "opprobrium".

26. The Committee took the view that it is of great importance that a registered osteopath responds to and acknowledges communications from the Council. This enables the Council to fulfil its regulatory obligations in order to protect the public, and to maintain public confidence in its regulatory processes.
27. The Committee is satisfied that as a result of the Registrant's failure to engage with the Council's requirements and processes over a period of more than two years, there was a potential for public confidence in its statutory processes to be undermined. These were important processes with regards to the protection of patients, upholding public confidence in the profession, maintaining the reputation of the profession and declaring and upholding appropriate standards of conduct within the profession.
28. The Committee noted that the conduct had been sustained over a lengthy period of time. The Committee took the view that this conduct was serious, that it fell short of the expected standards, and that it attracted a degree of moral blameworthiness. In all the circumstances the Committee is satisfied that the Registrant's conduct amounts to unacceptable professional conduct.

Decision on Sanction

29. The Committee then considered what sanction to impose in this case. The Committee accepted the advice of the Legal Assessor with regards to the principle of proportionality and the fact that the purpose of a sanction was not to punish the registrant, but rather to protect the public and the wider public interest, including maintaining public confidence in the profession and declaring and upholding proper standards of conduct. The Committee also accepted the advice of the Legal Assessor with regards to giving the registrant credit for the fact that previous committees had previously taken into account the registrant's failure to engage when they had decided on the appropriate outcome in relation to reviews of the existing suspension order.
30. The Committee first considered whether an admonishment would be sufficient to meet the public interest in this case. It decided that it would

not. It considered the Council's Hearings and Sanctions Guidance and noted that the registrant had shown no insight into her conduct, that her behaviour was not isolated, but was rather sustained over a considerable period of time. It further considered that there was no expression of remorse, and the registrant had a previous finding of unacceptable professional conduct for a very similar allegation of failure to engage with the Council. In light of all these features, the Committee was satisfied that an admonishment was not sufficient to meet the public interest requirements in this case.

31. The Committee went on to consider whether a conditions of practice order would be appropriate in this case. It noted that in the absence of any engagement by the registrant, it would not be possible to formulate appropriate or practical conditions. It further took the view that a lack of any demonstrable insight, together with the serious nature of the conduct, meant that conditions of practice would not be appropriate in this case.
32. The Committee went on to consider whether a suspension order would adequately meet the public interest. The Committee noted that there had been no demonstration of remediation or retraining by the registrant. There had been no demonstration of insight or remorse. There had been a persistent and serious lack of engagement with the Council. A Committee had previously imposed a suspension order for matters which included a failure to engage with the Council, and so an attempt had already been made to send a message to the registrant, but in the Committee's view, this had been ineffective, as the registrant had continued to fail to engage with the Council for a period of over two years since the original Suspension Order.
33. The Committee took the view that the registrant's persistent lack of engagement was fundamentally incompatible with registration. In its view it was a grave matter not to have engaged with the Council's regulatory processes for more than two years. The Committee was of the view that the registrant's conduct had potentially undermined public confidence in the Council's performance of its regulatory responsibilities. The Committee considered that it was a fundamental principle of professional regulation that a registrant should respond to his or her regulator. In its view, the registrant's conduct represented a very serious departure from the expected standards of a registered osteopath.
34. The Committee had regard to the fact that previous Committees had taken into account the registrant's lack of engagement when considering whether to extend a previous suspension order. It noted however that those previous Committees had not been considering a separate

allegation of failure to engage with the Council over a period of more than two years. It also noted that there was a period of some six months which had not been considered by a previous Committee. In any event, the Committee took the view that regardless of the fact that previous committees had to some extent taken the registrant's lack of engagement into account, the conduct that the Committee had found proved in this case was so serious and so sustained, and the registrant had demonstrated such a persistent lack of insight, that removal was the only sanction that met the public interest in this case.

35. The Committee took the view therefore that in all the circumstances removal was both necessary and proportionate.

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

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

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

Section 22(13) of the Osteopaths Act 1993 requires this Committee to publish a report that sets out the names of those osteopaths who have had Allegations found against them. The Registrant's name will be included in this report together with details of the allegations we have found proved and the sanction that we have applied today.