

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

**Case No: 414/2125 and 444/2125**

**Professional Conduct Committee Hearing**

**DECISION**

<b>Case of:</b>	Mr Jonathan Cove
<b>Committee:</b>	Ms Judith Worthington (Chair) Mr Nick Woodhead (Osteopath member) Ms Jean Johns (Lay member)
<b>Legal Assessor:</b>	Mr George Alliott
<b>Representation for Council:</b>	Mr Scott Ivill
<b>Representation for Osteopath:</b>	Mr Stuart Sutton
<b>Clerk to the Committee:</b>	Ms Lesley Rudd / Mr Oke Adieze / Mr Russell Bennett & Ms Marcia Scott
<b>Date of Hearing:</b>	9 – 20 February 2015

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**Allegation and Facts (as amended)**

1. On a date or dates between February 2009 and April 2009 you encouraged Derek Stevens, who worked as a physiotherapist at the Carlton Clinic (the Clinic) between approximately 18<sup>th</sup> February 2009 and ~~3<sup>rd</sup> April 2010~~ 28<sup>th</sup> January 2010, to arrange further treatments for patients, which were not clinically justified, in order to increase income.
2. Your conduct as set out in part 1 of the allegation was dishonest.
3. You failed to honour your professional financial obligations in that:
  - (i) you failed to pay Dolores Lendinez, a physiotherapist who worked at the Clinic between 21<sup>st</sup> October 2010 and 16<sup>th</sup> March 2011, the balance of ~~£3386~~ at least £772 owed to her in respect of physiotherapy consultations that she had carried out

- (ii) on or around 16<sup>th</sup> March 2011 you wrote Ms Lendinez a cheque for the amount of £500 in part payment of the said debt, which you stopped
  - (iii) you failed to ensure the prompt payment of the following amounts owed to Danielle Hay, who worked as a physiotherapist at the Clinic between approximately 8<sup>th</sup> August 2011 and 28<sup>th</sup> November 2011 in respect of physiotherapy treatment she had provided to patients whilst working at the clinic:
    - a. £537.50
    - b. £542.50
  - (iv) you failed to pay Ms Hay the outstanding balance of £92.50 owed to her in respect of physiotherapy treatment she provided to Patient MH.
4. Your conduct as set out in part 3(i)-(iv) of the allegation was dishonest.
5. You failed to communicate effectively with your colleagues and/or to treat them with respect in that you:
- (i) failed to keep appointments with Ms Lendinez to discuss the late/non-payment of money owed to her;
  - (ii) were rude and/or abrupt during discussions about the late/non-payment of money owed to Ms Lendinez;
  - (iii) failed to respond to telephone calls and emails from Ms Lendinez
  - (iv) failed to respond to communications from Ms Hay regarding the late/non – payment of money owed to her;
  - (v) failed to act in a professional manner on 17<sup>th</sup> February 2012 during a conversation with Ms Hay about the late/non-payment of money owed to her.
6. Between 1<sup>st</sup> July 2009 and 31<sup>st</sup> December 2011, with the intention of receiving payment from Injury Care Clinics Ltd (TICCS) you:
- (i) completed, or caused to be completed, the following patient reports in the name of Derek Stevens:
    - a. The report dated 23 July 2009;
    - b. The report dated 4 August 2009;
    - c. The report dated 21 August 2009;
    - d. The report dated 22 August 2009;

- e. The report dated 28 September 2009;
- f. The report dated 5 October 2009;
- g. The report dated 19 October 2009;
- h. The report dated 3 November 2009;
- i. The report dated 7 November 2009;
- ~~j. The report dated 11 November 2009;~~

(ii) completed, or caused to be completed, knowing that Dolores Lendinez had ceased to practise as a physiotherapist at the Clinic on or around 16 March 2011, the following patient reports in the name of Dolores Lendinez:

- a. The report dated 18 March 2011;
- b. The report dated 19 March 2011;
- c. Three reports dated 21 March 2011;
- d. The report dated 23 March 2011;
- e. ~~Two~~ One reports dated 18 April 2011 (as appears at pp 119-120 of the GOsC bundle);

(iii) completed, or caused to be completed, knowing that Danielle Hay had ceased to practise as a physiotherapist at the Clinic on or around 28 November 2011, the following patient reports in the name of Danielle Hay:

- a. The report dated 29 November 2011;
- b. The report dated 10 December 2011

(iv) treated the patients to whom the reports set out at parts 6(i)a.-j.i., 6(ii)a.-e. and 6(iii)a.-b. relate despite not being a qualified physiotherapist, or allowed those patients to be treated by someone other than a qualified physiotherapist

(v) submitted, or allowed to be submitted, the said reports to TICCS.

7. Your conduct as set out in part 6 (i)-(v) of the allegation above was dishonest in that:

(i) the patients to whom the reports in part 6(i)-(iii) of the allegation relate were referred to the Clinic for physiotherapy;

(ii) you knew that you did not have prior authority to provide the said patients with treatment other than physiotherapy;

(iii) you failed to ensure that the said patients were treated by a qualified physiotherapist;

- (iv) you falsely represented to TICCS that the said patients had been treated by a fully qualified physiotherapist
  - (v) you intended to receive monies from TICCS to which you knew you were not entitled.
8. Between 1<sup>st</sup> September 2012 and 31<sup>st</sup> October 2012, with the intention of receiving payment from Speed Medical Services (SMS) you:
- (i) provided treatment to a patient, reference XXX, (the patient) despite not being a qualified physiotherapist, or allowed the patient to be treated by someone other than a qualified physiotherapist on the following dates:
    - a. 13<sup>th</sup> September 2012;
    - b. 17<sup>th</sup> September 2012;
    - c. 19<sup>th</sup> September 2012;
    - d. 25<sup>th</sup> September 2012;
    - e. 2<sup>nd</sup> October 2012;
    - f. 4<sup>th</sup> October 2012
    - g. 11<sup>th</sup> October 2012
  - (ii) signed the discharge report dated 11 October 2012 in respect of the patient.
9. Your conduct in part 8 of the allegation was dishonest in that:
- (i) you knew that the patient had been referred to the Clinic for physiotherapy;
  - (ii) you knew that you did not have prior authority to provide the patient with treatment other than physiotherapy;
  - (iii) you failed to ensure that the patient was treated by a qualified physiotherapist;
  - (iv) you falsely represented to SMS that the patient had been treated by a fully qualified physiotherapist;
  - (v) you intended to receive monies from SMS to which you knew you were not entitled.

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**Decision:**

### Amendment of Allegation and Facts

Before the Allegation and Facts were read, Mr. Ivill on behalf of GOsC applied to amend the wording of some of the facts alleged pursuant to rule 24 of the General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000 ("The Rules"). The deletions and additions are shown with strikethrough and underlining in the amended Allegation. Mr. Sutton on behalf of The Registrant raised no objection. In the circumstances, the Committee made the amendments as it was satisfied that no injustice would thereby be caused.

### Admissions

At the outset of the hearing Mr. Sutton indicated that The Registrant admitted the following parts of the allegation:

- Allegation 3 (ii) but not the stem
- Allegation 5 (iii) but not the stem
- Allegation 6
- Allegations 7 (i), (ii), (iii) and (iv) but not the stem
- Allegation 8
- Allegations 9 (i), (ii) and (iii) but not the stem

During the course of the hearing Mr. Sutton indicated that The Registrant also admitted:

- Allegation 5 (iv) including the stem

Accordingly the Committee recorded a finding that those facts admitted have been proved.

### The Hearing

The Committee heard oral evidence from the following witnesses:

- Mr. Derek Stevens, Chartered Physiotherapist
- Ms. Dolores Lendinez, Chartered Physiotherapist
- Ms. Paula Parr, Head of Governance in the Healthcare Sector at The Injury Care Clinic Ltd ("TICCS")
- Mr. Justin Goodchild, now husband of Ms. Hay but her partner at the material time
- Mr. Thomas Dunlop, Assistant General Counsel at Speed Medical Examination Services Ltd ("Speed")
- Ms. Danielle Hay, Chartered Physiotherapist

In addition, Mr. Ivill applied to put in evidence witness statements from the following witnesses:

- Mr. Andy Jarmin, a friend of Mr. Goodchild
- Ms. Danielle Donaldson, a former receptionist at the Carlton Clinic from October 2011 until April 2012
- Ms. Anna Lubasinska, Registration Manager, The Health and Care Professions Council
- Ms. Emma Firbank, Solicitor and Senior Regulation Officer at GOsC

Mr. Sutton did not oppose the introduction of this hearsay evidence but indicated that The Registrant did not accept or agree the contents of Mr. Jarmin's or Ms. Donaldson's statements.

In the circumstances the Committee determined that the admission of these statements in evidence would not prejudice the interests of justice and decided to admit the statements pursuant to Rule 57 (1) of the Rules. The Committee would attach such weight to this hearsay evidence as it deemed appropriate.

The following documentary evidence was placed before the Committee:

- Exhibit C1 – Council's bundle
- Exhibit C2 – Council's Skeleton Argument
- Exhibit C3 – Chronology
- Exhibit C4 – e-mail from Danielle Hay to Ms. Donaldson of October 2012
- Exhibit C5 – letter from The Registrant to the Regulation Manager (GOsC) dated 23<sup>rd</sup> August, 2013
- Exhibit D1- Registrant's bundle
- Exhibit D2 - Registrant's Skeleton Argument
- Exhibit D3 – e-mail from Pam Garbutt
- Exhibit D4 – Resignation letter from Pam Garbutt of 11<sup>th</sup> February, 2012
- Exhibit D5 – e-mail from Danielle Hay of 20<sup>th</sup> July, 2012 concerning Precision Legal Services Group
- Exhibit D6 – e-mail from Paula Parr to Emma Firbank of 13<sup>th</sup> February, 2015

The Committee carefully considered all of the evidence placed before it and the submissions of Mr. Ivill and Mr. Sutton.

The Committee accepted the advice of the Legal Assessor. He reminded the Committee that in determining whether the facts alleged have been proved the burden of proof lay on the Council and that the standard was on the balance of probabilities. He emphasised that in cases of dishonesty the Committee should apply particular care and recited extracts from *Re B (Standard of Proof) [2008] UKHL 35*, and *Moseka v Nursing and Midwifery Council [2014] EWHC 846 (Admin)*. He advised the Committee to consider each part of the allegation

separately and decide the facts on the evidence, attributing such weight to the hearsay evidence as it thought fit. He reminded the Committee of The Registrant's good character and that this could support his credibility and be relevant to his propensity or otherwise to act in any particular manner. He further advised the Committee in accordance with the case of *R v Ghosh [1982] QB1053* that before there can be a finding of dishonesty it must be established that the Registrant's conduct was dishonest by the standards of reasonable and honest people and that he himself must have realised that what he was doing was by those standards dishonest. He recited an extract from *Uddin v General Medical Council [2012] EWHC 2669 (Admin)* which emphasises that the real issue in many dishonesty cases may be whether the conduct took place, and with what state of mind. Lastly he recited an extract from *Fish v General Medical Council [2012] EWHC 1269 (Admin)* which makes clear that an allegation of dishonesty should only be found on solid grounds, given the very serious consequences of such a finding.

The Legal Assessor went on to advise the Committee that on the issue of Unacceptable Professional Conduct ("UPC") there was no burden or standard of proof and that it was a matter for the Committee's professional or value judgment. He recited from *Spencer v General Osteopathic Council [2012] EWHC 3147 (Admin)* which stated that the critical term is "conduct" and there is an implication of moral blameworthiness and a degree of opprobrium in a finding of UPC. The conduct has to be serious. He further reminded the Committee of the extract from the case of *Roylance v General Medical Council [1999] UKPC 16* wherein it was stated that "Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a medical practitioner in the particular circumstances." Lastly he invited the Committee to consider the GOsC decision making guidance as appropriate, but bearing in mind that it was only guidance.

### Background

Mr. Jonathan Cove is a Registered Osteopath who stated he had been in practice since 1985. He is a man of hitherto good character both in the sense that he has not received any convictions or cautions, and that he has never appeared before the GOsC Professional Conduct Committee in the past.

At the material time of the allegations between 2009 and 2012, The Registrant was the owner of a multi-disciplinary clinic known as the Carlton Clinic ("the Clinic") situated in Horley, Surrey. He also had other premises from which he practised, one of which was at Ringmer, Sussex.

In order to provide physiotherapy, the Clinic engaged chartered physiotherapists. These physiotherapists were engaged pursuant to licence agreements and were

self-employed. The licence agreement allowed them to use and practice from the clinic's facilities and the agreement was that fees receivable would be split between the Clinic and the physiotherapist. This would normally be on a 50:50 basis but could be 60:40 according to the individual concerned. The vast bulk of the physiotherapy work consisted of referrals from claims handling companies such as TICCS and Speed but there were some private, self-funded patients as well.

The evidence before the Committee concerning referrals from TICCS was as follows:

TICCS had a panel of providers, one of which was the Clinic. In 2006 The Registrant entered into an agreement to provide osteopathic services to TICCS. It appears that physiotherapy services were provided pursuant to individual agreements between the physiotherapist and TICCS. For example the Committee has been shown an agreement between Mr. Stevens and TICCS dated 11<sup>th</sup> May, 2009. The Committee was not shown similar agreements between Ms. Lendinez and Ms. Hay and TICCS. Patients would be referred to TICCS by a variety of different clients, for example law firms and insurance companies. TICCS would decide which provider was closest to where the patient lived. An e-mail would be sent by TICCS to the provider with the referral details and a covering letter. Providers would also be sent a consent form for the patient to complete and an initial assessment (IA) report form for the practitioner to complete and return to TICCS for approval of a course of treatment.

The Committee has been provided with numerous different copies of the TICCS IA form. This is a 3-page document. On the third page there is a section which begins "If you are recommending physiotherapy please detail ..." and there is then a section where the number of sessions required can be entered. On page 2 there is a different section which allows the therapist to recommend some other treatment. The form concludes with a section to be completed with the name of the therapist, her or his qualifications and the date of the assessment.

Upon receipt of the initial assessment report, TICCS would review it and, pursuant to delegated authority, would authorise how many sessions the patient would be covered for. The Committee heard evidence that usually the authorised sessions would be fewer than the number recommended by the therapist. If a treatment other than physiotherapy was to be provided, prior authorisation would need to be obtained from TICCS.

Upon completion of the course of treatment an End of Treatment (EOT) report was to be completed and sent to TICCS. this is a 2-page document. On the first page there is a section to be completed indicating the total number of appointments (excluding the assessment) and the dates of the appointments. The form also concludes with a section to be completed with the name of the therapist, his or her qualifications and the date.

Upon receipt of the EOT report TICCS would process the payment which would be paid during the month following the month of submission of the EOT report and, it is assumed, an invoice from the Clinic for treatment fees due for the patient in question. The Committee has assumed this as it has not seen any invoices for TICCS, but has seen an example for Speed. The Registrant supplied example remittance advice sheets from TICCS dated 2011 which suggest the payments were made on 22<sup>nd</sup> of each month.

Pursuant to the licence agreement the physiotherapist should receive their share of the fees on a 28-day cycle, that is to say on the payday following receipt of the monies from the paying agency. There was considerable confusion from The Registrant as to when this regular payday was supposed to be, and all of the payments actually made to all three physiotherapist witnesses did not follow any pattern.

All three physiotherapists involved in this case worked for the Clinic for different periods of time and were unaware of each other until well after they had each left the Clinic. Their dates of engagement at the Clinic were as follows:

- Derek Stevens – 18<sup>th</sup> February, 2009 to 28<sup>th</sup> January, 2010
- Dolores Lendinez – 21<sup>st</sup> October, 2010 to 16<sup>th</sup> March, 2011
- Danielle Hay – 8<sup>th</sup> August, 2011 to 28<sup>th</sup> November, 2011

### Findings

The Committee began by assessing and forming a view of the credibility of the witnesses, including The Registrant, who gave evidence before it. The Committee considered that Mr. Derek Stevens, Ms. Dolores Lendinez and Ms. Daniella Hay all gave measured and reliable evidence. It considered them to be clear, principled and credible. If they were unable to recall something they said so. The Committee was particularly impressed by Ms. Hay's evidence which was matter-of-fact, well prepared and she came across as a meticulous record-keeper in her own professional diary.

In contrast the Committee was not impressed with The Registrant's evidence. He prevaricated and obfuscated repeatedly. For example, on numerous occasions his response was to the effect that he could not really remember. He often referred to having had documentary evidence but produced nothing in support. Whilst The Registrant does not have to prove anything, it was noticeable to the Committee that in circumstances where there is considerable dispute concerning whether or not Ms. Lendinez and Ms. Hay had been paid the correct amounts, the only documentation he produced was a printout of the computerised clinic diary. He did produce TICCS remittance advices for 2011 but not for the periods when Ms. Hay and Ms. Lendinez were working. Such documentation would have been a definitive and easy way to interpret the source

of information as to how much each of these therapists was properly owed. Further, the Committee found The Registrant's evidence unconvincing, for example when he responded to the effect that honesty was just a dictionary word that could cover almost anything and that, when it was pointed out to him that physiotherapy treatment was specifically referred to in the initial assessment (IA) form, this was just a word and by implication of no real importance. Mr Cove's credibility was completely undermined by exhibit C5 which was his letter of 23rd August, 2013 to GOsC in response to the allegations. This letter contains a series of lies which The Registrant was forced to concede when it was put to him in exactly those terms, admitting that they were made in an attempt to avoid these regulatory proceedings. The Committee approached The Registrant's evidence with scepticism and considered him to be an unreliable witness.

Mr. Sutton, on instructions from The Registrant, has suggested to the three physiotherapists that they "had an axe to grind" and that they have "conspired with each other to make false complaints in relation to monies owed to them, the nature of documentation that gave rise to licences to practice (sic) and/or other issues". Firstly, the Committee found this to be a surprising proposition given the scope and nature of the admissions made. Secondly, the Committee decided that there was no such conspiracy. None of the three physiotherapists worked at the Clinic at the same time and did not know each other until after they had left. It appears that Ms. Hay initiated the complaint to GOsC due to the fact that she had not been paid outstanding fees of £92.50. As will become apparent in due course, the Committee has determined that this money was indeed owing to her. The Committee accepted her evidence that it was GOsC that had asked her to contact other individuals who may have had complaints against Mr. Cove. The Committee concluded that both Ms. Lendinez and Ms. Hay would have been motivated to keep accurate records of treatments undertaken in order to have their own record of payments due, especially given the fact that The Registrant has accepted that his systems for payment were, at the very least, insufficient. The Committee rejected any suggestion of a conspiracy against The Registrant.

A considerable amount of time was spent during this hearing endeavouring to ascertain which treatments had actually been provided by Ms. Lendinez and Ms. Hay and consequently how much they were properly due to be paid by the Clinic. Ms. Lendinez produced invoices detailing the number of sessions she had conducted on a month-by-month basis, based on a contemporaneous diary she had kept. The Registrant denied receiving these or seeing them at the time. The Committee did not believe The Registrant on this point. Ms. Hay produced copies of her own professional diary listing appointments and treatments undertaken which she had double-checked. In addition, she provided documents provided to her by Gayle Rogers, a receptionist at the Clinic, giving her a breakdown of the payments made by the Clinic to her detailing amounts against individual patients.

By contrast, The Registrant has produced printouts of the computerised clinic diary for the times when Ms. Lendinez and Ms. Hay were undertaking treatments.

The Registrant has sought to rely on the entries in these diaries as definitive, has added up the treatments recorded, and presented figures to suggest that little or anything is owed to either of them.

It is quite clear to the Committee that Ms. Lendinez's invoices and Ms. Hay's professional diary are extensively at variance with the clinic diary. Even including the occasions when patients did not attend, this variance between the two sets of diaries is not explained. For example, it is clear to the Committee that in relation to patient YH Ms. Hay was paid for 5 sessions and 5 sessions are recorded in her professional diary. By contrast, there are 10 sessions for patient YH recorded in the Clinic diary. The Clinic diary is either inaccurate in that someone else provided the treatment to YH or Ms. Hay's diary is inaccurate and she is still owed for 5 sessions for treating YH. The Committee decided that Ms. Hay was a meticulous record-keeper and that she did not treat YH for the second course of 5 sessions. Similarly, the Clinic diary only records one session for patient LH whereas there are 8 references to patient LH in Ms. Hay's diary and she was paid for 8 treatments.

The Registrant was vague as to how, and who, compiled the clinic diary and was unable to explain the numerous discrepancies between this and the therapists' own contemporaneous records. The Committee concluded that the Clinic diary was completely unreliable and accepted the evidence and records of Ms. Hay and Ms. Lendinez as to the treatments they provided.

### **Determination on the Facts**

The Committee considered each allegation separately.

1. On a date or dates between February 2009 and April 2009 you encouraged Derek Stevens, who worked as a physiotherapist at the Carlton Clinic (the Clinic) between approximately 18<sup>th</sup> February 2009 and 28<sup>th</sup> January 2010, to arrange further treatments for patients, which were not clinically justified, in order to increase income.

### **The Committee found Part 1 proved.**

Mr. Stevens gave evidence that shortly after joining the Clinic he saw two patients who, in his clinical judgment, did not need further treatment. When he saw them The Registrant was away. On the Registrant's return Mr. Stevens stated that the Registrant accused him of losing the two patients for no reason and that in future further treatments should be arranged in order to increase income. He stated that this went against his ethical principles to the extent that he wrote a letter dated 27<sup>th</sup> April 2009 pointing this out, stating that he was unwilling to act in that manner and terminating his services at the Clinic. He sent this in the post. He stated that the Registrant brushed off the letter as a little

misunderstanding and hoped that Mr. Stevens would remain, which he agreed to do.

The Registrant's evidence was that he made no such suggestion and that he never received the letter. He stated that any conversation between them at this time was in relation to the assessment of two patients and how one of them had apparently complained to a receptionist that they had not been impressed with the service.

The Committee did not accept the evidence of the Registrant and considered this was another example of him obfuscating. The Committee believed Mr. Stevens' account of what had been said and that the letter of 27<sup>th</sup> April, 2009 had been written and sent at that time.

2. Your conduct as set out in part 1 of the allegation was dishonest.

**The Committee found Part 2 proved.**

The Committee considered that arranging to treat and treating patients when it is not clinically justified with sole intention to increase income would be regarded as dishonest by the standards of ordinary reasonable people. Further, the committee decided that The Registrant himself must have realised it was dishonest by those standards when he made the suggestion to Mr. Stevens. Further, in his evidence, The Registrant accepted that such conduct if it occurred was a serious matter and dishonest.

3. You failed to honour your professional financial obligations in that:
  - (i) you failed to pay Dolores Lendinez, a physiotherapist who worked at the Clinic between 21<sup>st</sup> October 2010 and 16<sup>th</sup> March 2011, the balance of at least £772 owed to her in respect of physiotherapy consultations that she had carried out

**The Committee found Part 3 (i) and the stem proved.**

It was a matter of common ground that Ms. Lendinez was paid at various times sums totalling £6,035. The Committee found that the monthly invoices produced by Ms. Lendinez were submitted at the time she says and were accurate, based on her diaries, recording 547 treatments. Ms. Lendinez had examined the Clinic diaries which record 527 patient treatments and had agreed to accept this figure. The Registrant has calculated that the Clinic diary indicates that she undertook 458 treatments. The difference between the two calculations is that The Registrant has added up only those treatments on days marked "Lola" (Ms. Lendinez) whereas Ms. Lendinez has added up all treatments in the Clinic diary and asserts that she had conducted all of these. The Committee has already found that the Clinic diary is unreliable and that Ms. Lendinez's invoices are

probably correct. On the correct daily rates, and based on 527 treatments, the Clinic owed Ms. Lendinez at least £6807. Deducting the £6035 actually paid results in a balance of at least £772 still owed to her. Further, the Committee decided that in failing to pay Ms. Lendinez this sum the Registrant failed to honour his professional financial obligations.

(ii) on or around 16<sup>th</sup> March 2011 you wrote Ms Lendinez a cheque for the amount of £500 in part payment of the said debt, which you stopped

**The Committee found Part 3 (ii) and the stem proved.**

**Part 3**

(ii) has been found proved on The Registrant's admission. The Committee decided that stopping a cheque properly given in part payment of the debt to Ms. Lendinez was a failure by The Registrant to honour his professional financial obligations.

(iii) you failed to ensure the prompt payment of the following amounts owed to Danielle Hay, who worked as a physiotherapist at the Clinic between approximately 8<sup>th</sup> August 2011 and 28<sup>th</sup> November 2011 in respect of physiotherapy treatment she had provided to patients whilst working at the clinic:

a. £537.50

b. £542.50

**The Committee found Part 3(iii) a and the stem proved.**

**The Committee found Part 3(iii) b not proved.**

The sum of £537.50 was paid on 7<sup>th</sup> February, 2012. It related to treatments undertaken in October 2011. In accordance with the procedure explained to the Committee, the EOT forms for that month should have been sent to TICCS by the end of October with payment made to the Clinic in November (probably 22<sup>nd</sup> November) and a reasonable expectation by Ms. Hay that she would be paid by the end of December. This would roughly fit into the pattern of previous payments, albeit that the "system" was erratic and variable. The Registrant accepted in evidence that the payment on 7<sup>th</sup> February was not prompt and advanced a number of varied and implausible excuses such as that maybe he was on holiday, that it was Christmas and slippage in TICCS administration. The Committee has reached the firm conclusion from all of the evidence that the Registrant deliberately delayed paying most people as a matter of routine and made it difficult for the recipients of payments to establish how the sum, when paid, had been calculated. The Committee decided that there was a failure to pay the sum of £537.50 promptly in that the Clinic could and should have done

so earlier and did not do so. It considered that this was a failure by the Registrant to honour his professional financial obligations.

As regards the payment of £542.50, this was paid on 17th February, 2012 and related to treatment undertaken in November 2011. Adopting the same reasoning in relation to the payment of £537.50, Ms. Hay could reasonably expect payment by the end of January. In her own evidence she suggested she was expecting receipt of a cheque in January/February 2012. The Committee did not consider that payment on 17<sup>th</sup> February, 2012 was sufficiently late such that the Council has proved that it was not prompt.

(iv) you failed to pay Ms Hay the outstanding balance of £92.50 owed to her in respect of physiotherapy treatment she provided to Patient MH.

**The Committee found Part 3 (iv) and the stem proved.**

Patient MH had been referred by MedicoTherapy (another claims handling company) and so fell outside the TICCS payment regime. Ms. Hay's diary confirms that in October and November 2011 she had an initial assessment with Patient MH and 5 follow-up sessions. The Registrant challenges that there were 5 sessions as only 4 were recorded in the Clinic diary but the Committee found that she had conducted 5 sessions. The 4 breakdowns of the patients and amounts paid to Ms. Hay supplied to her by Gayle Rogers of the clinic do not contain a reference to MH. Accordingly the Committee determined that Ms. Hay was not paid £92.50 due to her for the treatment of MH. Mr Cove has sought to argue that Ms. Hay was overpaid for other patients and that no monies are due. On the wording of the charge this is irrelevant but in any event the Committee rejects the Registrant's argument as it is based on the wholly unreliable Clinic diary entries. The Committee notes that after repeated and reasonable requests for payment of this sum by Ms. Hay there was agreement by the Clinic to pay it, but this did not happen. The Registrant's evidence was that he forgot. The Committee considered that this was a failure to honour the Registrant's professional financial obligations.

4. Your conduct as set out in part 3(i)-(iv) of the allegation was dishonest.

**The Committee found Part 4 proved in relation to Parts 3 (i), (ii) and (iv).  
The Committee found Part 4 not proved in relation to Part 3 (iii) a**

As regards part 3 (i) the Committee considered whether the failure to pay was incompetence or a wilful act to deprive Ms. Lendinez of money due to her. The Registrant has asserted that the money was not due but the Committee has found that it was. The Committee considered that by the standards of ordinary and reasonable people the failure to pay at least £772 was dishonest and that

The Registrant must have known that by those standards he was acting dishonestly.

As regards Part 3(ii), The Registrant has admitted stopping the cheque in part payment of monies due to Ms. Lendinez. The Registrant claims that he stopped the cheque as it was an advance and that Ms. Lendinez did not come in to work the next day. The Committee has rejected that it was an advance. The Committee accepted the evidence of Ms. Lendinez that she left without notice due to her exasperation with the continual failure to pay her money promptly. The Committee determined that in stopping the cheque The Registrant was acting petulantly and indeed spitefully, intending to prevent her from obtaining monies that were rightfully hers. The Committee considered that by the standards of ordinary and reasonable people stopping the cheque was dishonest and that The Registrant must have known that by those standards he was acting dishonestly. As regards Part 3(iii), a the Committee decided that delaying payment is not, of itself, necessarily a dishonest act.

As regards Part 3 (iv) it is clear to the Committee that the Registrant knew that £92.50 was due and owing to Ms. Hay and that despite her repeated polite and reasonable requests he failed to pay it. The Committee does not accept that he genuinely forgot about it. The Committee concluded that this was a deliberate act to deprive her of monies due to her. The Committee considered that by the standards of ordinary and reasonable people the failure to pay the £92.50 was dishonest and that the Registrant must have know that by those standards he was acting dishonestly.

5. You failed to communicate effectively with your colleagues and/or to treat them with respect in that you:

- (i) failed to keep appointments with Ms Lendinez to discuss the late/non-payment of money owed to her;

**The Committee found Part 5 (i) and the stem proved.**

Ms. Lendinez's evidence was that she tried informally to engage in discussions about late or non-payment of money owed to her with The Registrant on numerous occasions and he frequently told her he would give her 5 minutes when he finished work. However she stated that he would then leave without letting her know. The Registrant's evidence was that he had no fixed appointment with her to miss and that he did not remember such incidents. The Committee accepted the evidence of Ms. Lendinez and concluded that the Registrant was deliberately failing to meet Ms. Lendinez at the appointed time. Further, the Committee decided that this constituted a failure to communicate effectively with a colleague and a failure to treat that colleague with respect.

(ii) were rude and/or abrupt during discussions about the late/non-payment of money owed to Ms Lendinez;

**The Committee found Part 5 (ii) and the stem proved.**

Ms. Lendinez's evidence was that when she did eventually speak to the Registrant about late or non-payment of monies due he was rude and abrupt. She explained that following a trip to Spain to visit her mother who was convalescing after major surgery the Registrant responded dismissively saying words to the effect of how could she carry on asking for payment when she could pay for a flight and go on holiday. The Registrant acknowledged that he had made a comment along the lines of 'you have just taken two weeks off work – when I was young and needed money I didn't take time off'. The Committee considered this to be both abrupt and rude. Further, the Committee decided that this constituted a failure to communicate effectively with a colleague and a failure to treat that colleague with respect.

(iii) failed to respond to telephone calls and emails from Ms Lendinez

**The Committee found Part 5 (iii) and the stem proved.**

The Registrant has admitted Part 5 (iii). The Committee decided that this constituted a failure to communicate effectively with a colleague and a failure to treat that colleague with respect.

(iv) failed to respond to communications from Ms Hay regarding the late/non – payment of money owed to her;

**Part 5 (iv) and the stem has already been found proved on the admission of The Registrant.**

(v) failed to act in a professional manner on 17<sup>th</sup> February 2012 during a conversation with Ms Hay about the late/non-payment of money owed to her.

**The Committee found Part 5 (v) and the stem not proved.**

The Committee was not clear as to the way that the Council was alleging the failure to act in a professional manner. Initially it appears to be on the basis of a push or a brushing-off gesture by the Registrant on Ms. Hay in the pub car park near his Ringmer clinic premises. However, although Mr. Goodchild gave some evidence on this, Ms. Hay, who was far closer, described it as being moved away as the Registrant tried to get something from inside his car. Later the Council appeared to put its case more broadly on the basis that the Registrant refused payment, making a series of conflicting statements such as TICCS have not paid and that the cheque was already in the post. It is clear to the Committee that

emotions were running high on both sides and there was considerable scope for misinterpretation. Given the changing nature of this allegation the Committee was not satisfied the Council had made out its case.

6. Between 1<sup>st</sup> July 2009 and 31<sup>st</sup> December 2011, with the intention of receiving payment from Injury Care Clinics Ltd (TICCS) you:

(i) completed, or caused to be completed, the following patient reports in the name of Derek Stevens:

- a. The report dated 23 July 2009;
- b. The report dated 4 August 2009;
- c. The report dated 21 August 2009;
- d. The report dated 22 August 2009;
- e. The report dated 28 September 2009;
- f. The report dated 5 October 2009;
- g. The report dated 19 October 2009;
- h. The report dated 3 November 2009;
- i. The report dated 7 November 2009;

(ii) completed, or caused to be completed, knowing that Dolores Lendinez had ceased to practise as a physiotherapist at the Clinic on or around 16 March 2011, the following patient reports in the name of Dolores Lendinez:

- a. The report dated 18 March 2011;
- b. The report dated 19 March 2011;
- c. Three reports dated 21 March 2011;
- d. The report dated 23 March 2011;
- ~~e. One reports~~ e. One reports dated 18 April 2011 (as appears at pp 119-120 of the GOsC bundle);

(iii) completed, or caused to be completed, knowing that Danielle Hay had ceased to practise as a physiotherapist at the Clinic on or around 28 November 2011, the following patient reports in the name of Danielle Hay:

- a. The report dated 29 November 2011;
- b. The report dated 10 December 2011

(iv) treated the patients to whom the reports set out at parts 6(i)a.-j., 6(ii)a.-e. and 6(iii)a.-b. relate despite not being a qualified physiotherapist, or allowed those patients to be treated by someone other than a qualified physiotherapist

(v) submitted, or allowed to be submitted, the said reports to TICCS.

**Part 6 has already been found proved on the admission of The Registrant.**

7. Your conduct as set out in part 6 (i)-(v) of the allegation above was dishonest in that:

(i) the patients to whom the reports in part 6(i)-(iii) of the allegation relate were referred to the Clinic for physiotherapy;

(ii) you knew that you did not have prior authority to provide the said patients with treatment other than physiotherapy;

(iii) you failed to ensure that the said patients were treated by a qualified physiotherapist;

(iv) you falsely represented to TICCS that the said patients had been treated by a fully qualified physiotherapist

(v) you intended to receive monies from TICCS to which you knew you were not entitled.

**The Committee found Part 7 (i), (ii), (iii), (iv) and (v) and the stem proved.**

Parts 7 (i), (ii), (iii), and (iv) were found proved on the admission of The Registrant.

As regards part 7 (v) it is clear beyond doubt that the Registrant intended to receive monies from TICCS in submitting End of Treatment (EOT) forms and invoices for payment. Thus the only issue is whether the Registrant knew he was not entitled to those monies. Taking the Registrant's admissions in the round, it is apparent that in relation to 16 patients The Registrant undertook a series of treatments on them when he knew they had been referred for physiotherapy, he knew he did not have prior authority to provide them with any treatment other than physiotherapy, he knew that he could not provide physiotherapy himself and he completed Initial Assessment or End of Treatment reports in the names of physiotherapists. He has accepted that this conduct was a false representation to TICCS that they had been treated by a physiotherapist. In the Committee's judgment the only explanation for this conduct was because he knew he was not entitled to receive monies for these treatments from TICCS. Dealing with the question of dishonesty in the stem, the Committee considered the Registrant's case. He has suggested that TICCS had, in the past, consented to osteopathy being provided to patients instead of physiotherapy and that his motivation was to save time and paperwork by not seeking prior authorisation for a change of treatment from physiotherapy to osteopathy and treating them as an osteopath. He invited the Committee to conclude that as he had provided some treatment, so there was no dishonest intent. The Committee notes that this was

a sustained course of conduct over a period of at least 3 ½ years involving 3 physiotherapists and 16 patients. The Committee has no doubt that the Registrant was deliberately and intentionally treating patients who had been referred specifically for physiotherapy and then falsifying the documentation to make it appear to TICCS that they had indeed been treated by physiotherapists so as to be paid. The Committee rejected the suggestion that this was innocent, inadvertent or in some way an understandable short cut to minimise administration. The Committee has no doubt that by the standards of the ordinary and reasonable person such conduct was dishonest and that The Registrant must have known that by those standards his actions were dishonest.

8. Between 1<sup>st</sup> September 2012 and 31<sup>st</sup> October 2012, with the intention of receiving payment from Speed Medical Services (SMS) you:

(i) provided treatment to a patient, reference R2/6316186/R2, (the patient) despite not being a qualified physiotherapist, or allowed the patient to be treated by someone other than a qualified physiotherapist on the following dates:

- a. 13<sup>th</sup> September 2012;
- b. 17<sup>th</sup> September 2012;
- c. 19<sup>th</sup> September 2012;
- d. 25<sup>th</sup> September 2012;
- e. 2<sup>nd</sup> October 2012;
- f. 4<sup>th</sup> October 2012
- g. 11<sup>th</sup> October 2012

(ii) signed the discharge report dated 11 October 2012 in respect of the patient.

**Part 8 has already been found proved on the admission of The Registrant.**

9. Your conduct in part 8 of the allegation was dishonest in that:

(i) you knew that the patient had been referred to the Clinic for physiotherapy;

(ii) you knew that you did not have prior authority to provide the patient with treatment other than physiotherapy;

(iii) you failed to ensure that the patient was treated by a qualified physiotherapist;

(iv) you falsely represented to SMS that the patient had been treated by a fully qualified physiotherapist;

(v) you intended to receive monies from SMS to which you knew you were not entitled.

**The Committee found Part 9 (i), (ii), (iii), (iv) and (v) and the stem proved.**  
Parts 9 (i), (ii) and (iii) were found proved on the admission of The Registrant.

As regards Part 9 (iv), it is not entirely clear to the Committee why this has been denied given the Registrant's admission to Part 7 (iv). In the Committee's judgment the evidence is even clearer on this point as Speed Medical Services made it quite clear in the referral letter for each patient that "no other services/products (other than the sessions) are to be provided without authority from us". The evidence from Speed was that the agreement with the Clinic was restricted to treatment by a "manipulative physiotherapist, chartered physiotherapist and registered acupuncturist". The Registrant signed the discharge report on 11<sup>th</sup> October, 2012 under the statement "to be completed by the therapist where treatment has been completed". The Committee has decided that in all the circumstances the signing of the discharge report was a false representation that the patient had been treated by a physiotherapist.

As regards Part 9 (v) it is clear beyond doubt that the Registrant intended to receive monies from Speed in submitting the discharge report and invoice for payment. Thus the only issue is whether the Registrant knew he was not entitled to those monies. Taking the Registrant's admissions in the round, and the Committee's finding on Part 9 (iv), it is apparent that in relation to this patient (R2) the Registrant undertook a series of treatments on R2 when he knew R2 had been referred for physiotherapy, he knew he did not have prior authority to provide R2 with any treatment other than physiotherapy, he knew that he could not provide physiotherapy himself and he completed the discharge report purporting to be the treating physiotherapist. The Committee has found this was a false representation to Speed that R2 had been treated by a physiotherapist. In the Committee's judgment the only explanation for this conduct was because he knew he was not entitled to receive monies from Speed.

Dealing with the question of dishonesty in the stem, the Committee considered The Registrant's case. He has suggested that this was not a dishonest act because he had signed the discharge report in his own name and that Speed documents were not specific as to the treatment authorised. The Committee rejected his explanation such as it was. The Speed documents are clearer than the TICCS ones that the treatment being authorised was physiotherapy. The Registrant's signature, even in his own name, was a false representation that R2 had been treated by a physiotherapist. He invited the Committee to conclude that as he had provided some treatment, there was no dishonest intent. The Committee has no doubt that the Registrant was deliberately and intentionally treating R2 who had been referred specifically for physiotherapy and then falsifying the documentation to make it appear to Speed that R2 had indeed been

treated by a physiotherapist so as to be paid. The Committee rejected the suggestion that this was innocent, inadvertent or in some way an understandable short cut to minimise administration. The Committee has no doubt that by the standards of the ordinary and reasonable person such conduct was dishonest and that the Registrant must have known that by those standards his actions were dishonest.

### **Unacceptable Professional Conduct**

At the outset and in the course of the hearing, the Registrant admitted a number of the matters alleged including stopping a cheque made in part payment to Ms. Lendinez, failing to respond to telephone calls and emails from her, completing patient reports in the names of physiotherapists, both during and after they had left the Carlton Clinic, treating patients named in those reports whilst not a qualified physiotherapist and submitting those reports to TICCS and Speed.

It was also admitted by the Registrant that the patients had been referred to the Carlton Clinic for physiotherapy by TICCS and Speed and that he did not have prior authority to provide those patients with treatment other than physiotherapy, that he failed to ensure that they were treated by a qualified physiotherapist and had falsely represented to TICCS and Speed that they had been treated by a fully qualified physiotherapist.

The Committee found proved that in so doing the Registrant had intended to receive monies to which he was not entitled and that his conduct in relation to the completion of patient reports, the treating of the patients named in them, and his dealings with TICCS and Speed was dishonest.

The Committee also found proved that the Registrant encouraged Derek Stephens to arrange further treatments for patients that were not clinically justified in order increase income and that this was a dishonest act.

Furthermore, it has been found proved that the Registrant failed to pay the sums of £772 to Ms. Lendinez and £92-50 to Ms. Hay and failed to ensure the prompt payment of £537-50 to Ms. Hay, which were owed to them for their work at the Carlton Clinic.

The Committee has found that stopping the cheque to Ms. Lendinez and failing to pay her the outstanding amount was dishonest. It also found that the failure to pay Ms. Hay the outstanding amount due to her, having agreed to do so, was dishonest.

In respect of the Registrant's colleagues, it has been found proved that he failed to communicate effectively with them or to treat them with respect.

The Registrant's conduct extending over a period of at least three and a half years, as summarised above, amounts to widespread and serious breaches of the codes and standards applicable at the relevant times (Code of Practice 2005, Osteopathic Practice Standards 2012):

The Code of Practice (May 2005) at paragraph 9 states: "In all financial and commercial activities you must be honest and reliable. Your business affairs must not influence your attitude toward your patients or compromise the care you provide".

Furthermore, in relation to dishonesty, at paragraph 84 of the Code of Practice it states "Proper personal standards are essential. Significant lapses can lead to fitness to practise proceedings by the GOsC. For example, acts of dishonesty ..... may have serious consequence even if not directly connected to your professional practice".

In relation to patient R2 who was treated in September and October 2012, when the Osteopathic Practice Standards (2012) applied, the relevant sections are: D14: acting with integrity in one's professional practice, D15, being honest and trustworthy in one's financial dealings, and D17 upholding the reputation of the profession through one's conduct, in particular, not falsifying records or other documents and behaving honestly in one's professional dealings.

At paragraph 119, the Code of Practice states: "when writing reports, completing forms or otherwise providing any information, you must always be honest and accurate. You must take reasonable steps to verify the information you provide and not mislead by omitting relevant information".

The Committee has found that the Registrant intentionally completed reports in the names of Derek Stevens, Dolores Lendinez and Danielle Hay using their names as physiotherapists in order to represent that the patients had been treated by a physiotherapist, and to obtain payment for treatment that he had carried out himself.

These were not single breaches and they occurred over a long period of time, related to a total of 16 patients and involved business dealings with two claims handling companies. In respect of TICCS, one of the claims handling companies, the Committee heard from Paula Parr of the trust placed in providers to do what they are asked to do and the confidence they need to place in them to ensure that the treatments authorised are provided by the appropriately qualified therapist. She described how any such failure could damage the reputation of her company.

Furthermore, the Registrant's behaviour had serious consequences for his three professional colleagues. In particular, his misrepresentation to TICCS that Derek Stevens had routinely requested significantly more treatments than the six to

eight that would be considered normal, resulted in Mr. Stevens being removed from TICCS's list of providers and the consequent loss of work and damage to his standing with the company. For Ms. Lendinez and Ms. Hay, there were significant financial implications as a result of the position in which the Registrant's failure to pay them the money to which they were entitled placed them, such as being unable to pay rent and fares and to meet their own financial commitments.

Furthermore, the Registrant's failings in communication with his colleagues by repeatedly not responding to their attempts to discuss their concerns about payments due was undoubtedly a cause of much anxiety and frustration for them. The Committee heard how the Registrant had repeatedly and deliberately avoided direct contact with them by leaving messages with reception staff and failing to meet Ms. Lendinez as promised. On the rare occasions when a discussion did take place, such as with Ms. Lendinez on her return from visiting her sick mother in Spain, the Registrant's behaviour demonstrated a lack of respect and a high degree of insensitivity. When Ms. Hay finally took the unusual step of attempting to meet the Registrant at the Ringmer practice, feelings ran high on both sides. This situation could have been avoided had the Registrant responded to Ms. Hay at an earlier stage in the courteous and respectful manner expected of a professional osteopath.

In light of the number of breaches of the Codes and Standards applicable at the time, the serious nature of those breaches including repeated dishonesty, and the impact of those breaches on others, the Committee is clear that the Registrant's conduct is morally blameworthy. His conduct fell significantly below the standards to be expected of a Registered Osteopath and the Committee determined that the Registrant is guilty of Unacceptable Professional Conduct.

### **Sanction**

The Committee next considered what sanction to impose.

The Committee may admonish the Registrant, impose a Conditions of Practice Order, Suspend the Registrant from the Register or Order the Registrant's name to be removed from the Register.

The Committee considered the submissions of Mr. Ivill and Mr. Sutton. The Committee took into account the GOsC Indicative Sanctions Guidance (2013)

The Committee accepted the advice of the Legal Assessor. He advised the Committee that it should consider the sanctions in ascending order of seriousness and apply the principle of proportionality, balancing the interests of the public and the profession with those of the Registrant. He reminded the Committee that the purpose of a sanction is not punitive although it may have that effect. The purpose of a sanction is the protection of patients and the wider

public interest in the maintenance of public trust and confidence in the profession and the declaring and upholding of proper standards of conduct and behaviour. He cited extracts from the cases of *Atkinson v General Medical Council [2009] EWHC 3636 (Admin)* and *Parkinson v Nursing and Midwifery Council [2010] EWHC 1898 (Admin)*.

The Committee took into account the following mitigating and aggravating factors.

#### Mitigating:

- The Registrant made some admissions
- The facts proved did not involve direct patient harm
- Time elapsed since the incidents and the absence of any subsequent allegations
- Belated apology and offer to pay Ms. Lendinez and Ms. Hay
- The Registrant's long and hitherto unblemished career in osteopathy and his previous good character
- The fact that temporary or permanent removal from the Register will cause financial hardship to the Registrant and his dependents
- The Registrant has downsized his practice and no longer deals with claims handling companies on behalf of other professionals

#### Aggravating

- The dishonesty involved in the falsification of the patient reports in order to obtain money the Registrant was not entitled to was deliberate, persistent, and took place over a period of 3 ½ years. It was not isolated in its duration or range
- The Registrant's behaviour towards other healthcare professionals was inexcusable and not isolated
- The facts proved did have the potential for patient harm. The patients were referred for physiotherapy and were not being treated by an appropriately qualified practitioner
- The Registrant has demonstrated no real insight into the impact of his actions on others or the extent and seriousness of his dishonesty, or the effect of his actions on public perception of the profession of osteopathy
- Despite Mr. Sutton's submissions, the Committee does not accept that the Registrant has shown genuine remorse or apologized
- When first invited to respond to the allegations by his regulator the Registrant lied repeatedly in writing in August 2013

Although Mr. Sutton submitted that there had been no repetition since 2012, the Committee disagreed having taken into account the Registrant's letter in August 2013. Further, the Committee concluded that the fact that the Registrant claims to have ceased to practise in the same way that he used to provides little or no evidence of remediation.

The Committee noted that no testimonials or character references have been placed before it.

The Committee considered sanction in ascending order of seriousness.

### **Admonishment**

The Committee does not consider these failings to be at the lower end of the spectrum. They were not an isolated incident and the Committee is not satisfied that an admonishment is sufficient or proportionate in the circumstances.

### **Conditions of Practice Order**

The Committee does not consider that the failings can adequately be addressed by a Conditions of Practice Order. Firstly, dishonesty is by its very nature a matter that cannot appropriately be addressed by a Conditions of Practice Order. Secondly, the Committee has concluded that the Registrant's failings are fundamentally attitudinal which again means that workable and practicable conditions of practice cannot be formulated. Thirdly, the Committee considers that the misconduct is too serious for a Conditions of Practice Order.

### **Suspension**

The misconduct and in particular the dishonesty, was a very serious breach of the Code of Practice. The Registrant has not placed before the Committee any evidence of remediation. The Registrant has shown insufficient insight into his failings. The Committee has concluded that the Registrant's failings are attitudinal and fundamentally incompatible with remaining on the Register.

Accordingly the Committee is not satisfied that a Suspension Order is a sufficient or proportionate sanction.

### **Removal**

The Registrant has exhibited a serious departure from and disregard of the professional standards set out both in the Code of Practice (2005) and Osteopathic Practice Standards (2012), including repeated and deliberate acts of

dishonesty towards other healthcare professionals and the falsification of documents.

The Committee concluded that the failures amount to a fundamental disregard for the principles set out in the Codes of Practice, are a serious departure from appropriate professional standards and undermine the reputation of the profession and the confidence the public are entitled to place in osteopaths. There is a continuing potential for harm to others with no evidence of remediation. The Registrant seriously abused his position of trust both towards the claims handling companies and patients in his care. This was a very serious level of dishonesty which was both persistent and covered up. The Registrant has shown a persistent lack of insight into the seriousness of his actions and their consequences. The Committee considered that there would be public disquiet if the Registrant were to remain on the Register.

The Committee took into account the case of *Atkinson v General Medical Council*[2009] EWHC 3636 (Admin) in which Blake J stated "... erasure is not necessarily inevitable and necessary in every case where dishonest conduct by a Medical Practitioner has been substantiated. There are cases where the Panel, or indeed this Court on appeal, have concluded in the light of the particular elements, that a lesser sanction may suffice and it is the appropriate sanction, bearing in mind the important balance of the interests of the profession and the interests of the individual. It is likely that for such a course to be taken, a Panel would normally require compelling evidence of insight and a number of other factors upon which it could rely that the dishonesty in question appeared to be out of character or somewhat isolated in its duration or range, and accordingly there was the prospect of the individual returning to practice without the reputation of the profession being disproportionately damaged for those reasons."

The Committee has already found a lack of insight and that the dishonesty was not isolated in its duration or range.

Accordingly, for all these reasons, the Committee is satisfied that the Registrant's behaviour is fundamentally incompatible with continuing registration and that removal from the Register is the only appropriate and proportionate sanction.

The Committee orders the Registrar to remove Mr. Cove's name from the Register.

### **Interim Suspension Order**

Mr Ivill invited the Committee to make an immediate Interim Suspension Order pending any appeal period on the ground of public protection.

The Committee is satisfied, given its view as to the seriousness of the failings and the continuing risk to the public that the Registrant presents, that it is necessary in order to protect the public to impose an immediate suspension order.

The Committee repeats its reasoning and conclusions as to the real risk of harm that it considers the Registrant presents as set out in the Committee's substantive decision above. This Order is imposed immediately until the expiry of the appeal period or, if an appeal is made, until that appeal is withdrawn or otherwise disposed of.

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

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

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 that we have applied today.