

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

**Case No: 802/8200**

**Professional Conduct Committee Hearing**

**DECISION**

<b>Case of:</b>	<b>NEIL CORCORAN</b>
<b>Committee:</b>	Mark Osborne (Chair) Melissa D’Mello (Lay) Claire Cheetham (Osteopath)
<b>Legal Assessor:</b>	Andrew Webster QC
<b>Representation for Council:</b>	Andrew Faux
<b>Representation for Osteopath:</b>	Stuart Sutton
<b>Clerk to the Committee:</b>	Nyero Abboh
<b>Date of Hearing:</b>	9 and 10 September 2021

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**Summary of Decision:**

Mr Neil Corcoran was found guilty of Unacceptable Professional Conduct. His registration was suspended for a period of three months.

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**Allegation**

The allegation (as amended: see below) is that Mr Neil Corcoran (the Registrant) has been guilty of unacceptable professional conduct, contrary to section 20(1)(a) of the Osteopaths Act 1993, in that:

1. Between 21 July and 5 August 2020 inclusive of those dates, the Registrant provided osteopathic treatment to Patient A on four occasions.
2. On 5 August 2020, the Registrant sent an email to Patient A, in which he made the statements set out in Schedule A.

3. By his conduct as alleged at particular 2 the Registrant;
  - a. was inappropriate and/or
  - b. failed to establish and maintain clear professional boundaries; and/or
  - c. abused his professional standing and position of trust as an osteopath.

#### Schedule A

- i. "As unprofessional as it sounds. I was wondering if you'd maybe like to meet up at some point whilst your spending time in Birmingham as I'm around quite a bit or whenever I'm in London in the near future doing CPD."
  - ii. "I hope asking this has offended anyone else and certainly hope it wouldn't change anything between us, take it as a compliment, please."
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### **DECISION:**

#### Preliminary Matters

1. Mr Faux sought to amend the allegation by the insertion of "2020" in particular 1 after "5 August"; and by the insertion of a quotation mark at the start of Schedule A, sub-paragraph i. There was no objection to that motion. The Committee allowed the amendment as being necessary to give greater specification to the allegation and being satisfied that no injustice would thereby be caused.

#### Background

2. On 28 August 2020 a patient, Patient A, submitted a complaint and declaration form to the General Osteopathic Council regarding the Registrant, practising at Diversity Chiropractic, Sutton Coldfield. Patient A stated that, as the osteopath she had been seeing was on holiday, she had been referred to the Registrant for a number of consultations that latterly included deep tissue massage to "intimate areas". Patient A stated that the Registrant then sent her an email in which she was "asked out." Patient A stated that the email left her feeling "deeply uncomfortable".

#### Findings on the Facts

3. Further to rule 27(1) of the General Osteopathic Council Professional Conduct Committee (Procedure) Rules 2000 ("the Rules"), the Registrant was asked whether he admitted the facts alleged. The Registrant admitted all of the facts

alleged. In the light of the admission the Committee recorded the following findings of fact:

1. Between 21 July and 5 August 2020 inclusive of those dates, the Registrant provided osteopathic treatment to Patient A on four occasions.

**ADMITTED AND FOUND PROVED.**

2. On 5 August 2020, the Registrant sent an email to Patient A, in which he made the statements set out in Schedule A.

**ADMITTED AND FOUND PROVED.**

3. By his conduct as alleged at particular 2 the Registrant;

- a. was inappropriate and/or

**ADMITTED AND FOUND PROVED.**

- b. failed to establish and maintain clear professional boundaries; and/or

**ADMITTED AND FOUND PROVED.**

- c. abused his professional standing and position of trust as an osteopath.

**ADMITTED AND FOUND PROVED.**

Submissions on Unacceptable Professional Conduct ("UPC")

4. Before making submissions Mr Sutton sought and was permitted to lead evidence from the Registrant. The Registrant confirmed that his two statements in the case bundle, dated 22 January 2021 and 7 August 2021 were true and accurate to the best of his knowledge; and maintained their content to be so.

5. In cross-examination he accepted that he had "broken the code of ethics as an osteopath". He stated that he recognised that his conduct undermined the public's trust in osteopaths and the "severe ramifications" of what he had done. He apologised for what he had done. He said he understood that there was scope for Patient A to have misconstrued the nature of his earlier treatment in the light of his email. He said it would never happen again. He said that if attracted to a future patient he would maintain boundaries. On invitation to say how that would be achieved, he said he would not send a similarly worded email.

*Submission on behalf of the General Osteopathic Council*

6. Mr Faux submitted that the Registrant's conduct fell short of the standard to be expected of a registered osteopath. Under reference to *Khan v Bar Standards Board* [2018] EWHC 2184 (Admin), per Warby J at § 37, he submitted that the Registrant's conduct was more than trivial or inconsequential, that it was not a temporary lapse or excusable offence and that it was serious. He referred to an Agreed Statement of Facts in which the Registrant agreed that his sending of the email was inappropriate, failed to maintain professional boundaries and amounted to an abuse of his professional standing and position of trust as an osteopath, but left the issue of whether his conduct amounted to UPC to the Committee. The Agreed Statement of Facts also agreed parts of Patient A's Witness statement. He submitted under reference to the agreed parts of the Witness Statement of Patient A that in the context of the treatment previously provided by the Registrant to Patient A, which included work in the upper thigh and groin area, the email sent by the Registrant had undermined the trust placed by Patient A in the treatment provided. Adopting his skeleton argument, he submitted that the Registrant's conduct failed to comply with the requirements of Standard D2 of the Osteopathic Practice Standards (effective from 1 September 2019) ("OPS").

*Submission of behalf of the Registrant*

7. Mr Sutton also invited the Committee to have regard to the Agreed Statement of Facts. He submitted that the allegation was an isolated matter, with no prior or subsequent allegation having been made against the Registrant by the Council. Under reference to *Spencer v General Osteopathic Council* [2012] EWHC 3147 (Admin) and *Shaw v General Osteopathic Council* [2015] EWHC 2721 (Admin) he submitted that not all breaches of the OPS amount to UPC. He agreed that the Registrant's conduct was neither trivial nor inconsequential. He submitted that the Registrant's conduct amounted to a "temporary lapse" when he was [REDACTED]. The Registrant was remorseful and extremely sorry, had demonstrated insight and had undertaken remedial training. He submitted that the Registrant's admitted and proved conduct did not have to amount to UPC, leaving the decision whether it did for the Committee. He submitted that it was open to the Committee to issue advice to the Registrant if it did not find that there had been UPC.

Findings on UPC

8. The Committee had regard to the submissions made to it and accepted the advice of the Legal Assessor. The Committee reminded itself that UPC is conduct which falls short of the standard required of a registered osteopath and which

coveys to an ordinary intelligent citizen an implication of moral blameworthiness and a degree of opprobrium. Any implication of moral blameworthiness and opprobrium should be such as would justify, at least, an admonishment of the Registrant's conduct if found established.

9. The Committee also had regard to the OPS. The OPS sets out standards of conduct and practice expected of a registered osteopath that are relevant to the assessment of whether conduct amounts to UPC. The OPS states that "*must' is used where osteopaths are expected to comply. Failure to do so may put the osteopath at risk of fitness to practise proceedings.*" Whilst recalling that not every failure to comply with the OPS necessarily constitutes UPC, the Committee proceeded on the basis that departure from the OPS is a starting point and was a relevant consideration, although not determinative nor presumptive of UPC.

10. The Committee determined that the Registrant had breached OPS D2: "*You must establish and maintain clear professional boundaries with patients and must not abuse your professional standing and the position of trust which you have as an osteopath*". It did so having regard to the supporting narrative in paragraph 5 of D2: "*[when] establishing and maintaining sexual boundaries ... words and behaviour as well as more overt acts, may be sexualised, or regarded as such by a patient ... (paragraph 5.1); that "you should avoid any behaviour which may be construed by a patient as inviting a sexual relationship or response" (paragraph 5.2); that "it is your responsibility not to act on feelings of sexual attraction to or from patients" (paragraph 5.4); and that "you must not take advantage of your professional standing to initiate a personal relationship with a patient. This applies even when the patient is no longer in your care ..." (paragraph 5.6).*

11. The Committee determined that the Registrant's conduct was serious. The Registrant sought, via email, a non-professional meeting with Patient A, whom he considered to be attractive. This was done in terms, which in the view of the Committee, implied a desire to establish a personal relationship of a sexual nature. In reaching that view the Committee had regard to the Registrant's Witness Statement of 7 August 2021 in which he stated:

"I have treated many female patients over many years as an osteopath and never, whether that woman has been an attractive woman or otherwise, have I so much as thought about sending her an email or asking her out in any way shape or form.

"It I (*sic*) obvious by the fact that I sent the emails that I found Patient A attractive.

"Although it is no excuse I have recently had a traumatic time in my own life. A

████████████████████ and whether that had any bearing on my thinking or not I am not sure. However I obviously took the step to send a message to Patient A.”

12. He did so shortly after his last consultation with Patient A, indeed on the same day. He did so, having recognised in his own email that there were, at the least, issues of professional propriety raised by him doing so. His conduct failed to comply with the OPS Standard D2 as outlined above. Despite being an experienced osteopath of 9 years standing, he failed to maintain appropriate professional boundaries.

13. The relationship between any health care professional, including an osteopath, and a patient depends upon confidence and trust. The Committee found that the Registrant’s conduct was indeed a serious abuse of confidence and trust.

14. Further, the reputation of the osteopathic profession is at risk of being seriously undermined if the trust placed by the public in registered osteopaths is abused. The Committee also found that the Registrant’s conduct, in failing to maintain appropriate professional boundaries, seriously undermines that public trust. The Committee noted that as a result of the Registrant’s actions, Patient A in retrospect questioned the propriety of the otherwise unchallenged treatment provided by the Registrant. Whilst there was no suggestion before the Committee that the treatment provided by the Registrant was in any way inappropriate, his subsequent conduct undermined Patient A’s trust in him, and left her “uncomfortable” and “panicked.” The Committee reminded itself that an isolated incident of misconduct need not amount to UPC, but a grave singular action may. The Committee determined that the Registrant’s conduct, although isolated, amounted to a failure to maintain a fundamental tenet of osteopathic care and proper professional boundaries and, as such, seriously undermined the confidence of the public in the osteopathic profession.

15. In that light, the Committee determines that the Registrant’s conduct involved the requisite degree of moral blameworthiness and drew the opprobrium required to justify a finding of UPC.

### Sanction

16. Mr Faux referred the Committee to the Hearings and Sanctions Guidance issued by the Council and urged the Committee to impose the least severe sanction that meets the public interest. He stated that protection of the public interest included an interest in maintaining osteopaths in the profession. He commended to the Committee consideration of the guidance issued by the Professional Standards Authority for Health and Social Care (PSA) (formerly the

Council for Healthcare Regulatory Excellence) *Clear sexual boundaries between healthcare professionals and patients: guidance for fitness to practise panels* (2008). He acknowledged that in his skeleton argument the Council had observed that, absent any significant concerns, the Registrant's admitted behaviour was unlikely to attract a sanction that would immediately prevent the Registrant continuing in practice.

17. Mr Sutton referred the Committee to the skeleton argument presented by the Council and submitted that it appeared that the Council did not consider that suspension or removal of the Registrant's name from the Register was appropriate. He submitted that the Registrant had demonstrated appropriate insight and was remorseful. Further, the Registrant had attended relevant courses, including professional boundaries, to address his conduct and had acknowledged in evidence that he would not send an email similar to the one sent to Patient A. He submitted that the Registrant had learnt a salutary lesson; but otherwise had an exemplary professional reputation. The conduct of concern had not been repeated. He accepted the Registrant's conduct was an abuse of a professional position but in context was about sending an email. There was no finding of sexual motivation or impropriety in the treatment provided to Patient A.

18. Mr Sutton submitted that the majority of factors relevant for an admonishment, as set out in the Hearings and Sanctions Guidance, were met. In the light of the courses attended by the Registrant, it was difficult to conceive what further course could be required of him to justify imposing conditions on his practice. Suspension of registration and removal of the Registrant's name from the Register was not justified on the whole circumstances. Having been invited by Mr Sutton to explain the content of the courses attended by him, and then in response to a request for clarification from the Committee, the Registrant was unable to recall if the courses included any content in relation to the need to maintain appropriate professional boundaries.

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

20. The Committee took into account the guidance in the GOsC's *Hearings and Sanctions Guidance* and the PSA guidance *Clear sexual boundaries between healthcare professionals and patients: guidance for fitness to practise panels* (2008) and *Clear sexual boundaries between healthcare professionals and patients: responsibilities of healthcare professionals* (2008).

21. With regard to aggravating factors, the Committee determined that the Registrant's conduct was a serious abuse of his professional position. Additionally, by attempting to establish a personal relationship with Patient A, he

had caused emotional upset to her and had also caused her to distrust consulting osteopaths in the future. Furthermore, the Registrant's conduct was embarked upon by him when conscious that there was scope for his conduct to be construed as unacceptable, yet he proceeded none the less. Additionally, there was no evidence before the Committee that the Registrant had raised his conduct with his employer or colleagues, nor that he had followed OPS Standard D2, 5.5, namely, to take advice from colleagues as to how to deal with feelings of attraction towards a patient if it occurs.

22. In respect of mitigating factors, the Committee determined that the Registrant's conduct involved an isolated incident for which the Registrant offered early admissions of fact and an apology. The Committee's view, having regard to the Registrant's statements and his evidence to the Committee, was that the Registrant was genuinely remorseful of his conduct. It also noted the absence of any subsequent concerns as to the Registrant's conduct.

23. However, the Committee determined that the mitigating factors did not materially detract from the seriousness of the concerns identified by it as aggravating considerations. The Committee noted that the Registrant had engaged with his regulator and shown a willingness to give evidence on oath. Whilst evidence was placed before the Committee of steps taken by the Registrant to address the concerns raised, the Committee was not satisfied that the content of those courses dealt with the issue of professional boundaries despite it appearing from the Registrant's response document of 22 January 2021 that he admitted that he had "*failed to establish and maintain clear and professional boundaries (D2 + D7)*". The Committee noted the absence of reference to professional boundaries listed in the course content on the relevant certificates of CPD activity undertaken by the Registrant. Moreover, the post-course reflection sheets were left blank on the reasons for attendance, what had been learnt and how the Registrant would apply this learning to his osteopathic practice. The Committee was also concerned that, when questioned, the Registrant had no recollection of whether the maintenance of professional boundaries was included in the training that he had undertaken. Furthermore, in relation to remediation of his UPC, there was no evidence of any independent reading or study that the Registrant had undertaken over the last year. The Committee therefore determined that the Registrant, by endeavouring to address the concerns raised in further training, had some insight, but that it was limited insight, into the unacceptable nature of his conduct. The Committee determined that the Registrant's conduct found proved had not been remediated. In the light of that the Committee determined that there remained a risk of repetition, although that risk was relatively low.

24. The Committee also recalled that the purpose of a sanction is not to be punitive, although it may have that effect. Rather, its purpose is to protect

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

25. The Committee first considered whether to admonish the Registrant. In the absence of convincing evidence of any relevant learning having been undertaken by the Registrant, and his limited insight, the Committee concluded that he presented an ongoing material risk to the public. Were that risk to materialise, there was potential for the significant adverse impact experienced by Patient A to be repeated. The Committee concluded that the seriousness of the Registrant's conduct was such that an admonishment would not meet the particular circumstances of this case.

26. The Committee went on to consider whether a conditions of practice order would be appropriate. The Committee concluded that conditions of practice would not be appropriate nor proportionate to address the seriousness of the Registrant's conduct. The Committee determined that the conduct of concern was not such as could be addressed by a workable condition as it concerned a violation of professional boundaries outside of clinical practice, and raised behavioural issues. Further, the need to maintain public confidence in the profession rendered conditions inadequate.

27. The Committee determined that the Registrant's conduct, his limited insight, and the absence of convincing evidence of any relevant further learning was of such seriousness that only a suspension order would address the concerns raised. Having regard to the Registrant's past conduct, the isolated nature of the Registrant's conduct, and his willingness to engage in remedial action, the Committee concluded that the Registrant's conduct was not fundamentally incompatible with continued registration. However, based on his written and oral evidence, the Committee was not satisfied that the Registrant had a true and meaningful insight into his conduct. His responses to questions, whilst demonstrating remorse, did not, in the view of the Committee, demonstrate understanding of the fundamental importance of maintaining professional boundaries and the potential adverse impact on patients if they were not so maintained. Whilst the Registrant had admitted the facts of the case and engaged in what he considered to be remedial action, those courses had not been shown to deal with the concerns that led to the Committee concluding that the Registrant's actions amounted to UPC. In the opinion of the Committee, the Registrant's insight into his conduct was limited. A period of suspension would allow the Registrant the opportunity to consider further the consequences of his actions, the need to maintain professional boundaries and how this could be achieved. Further, the Committee concluded that there was a need to send a message to the Registrant, the profession, and members of the public that the Registrant's conduct was unacceptable for any registered osteopath.

28. The Committee determined that the Registrant should be suspended from the Register for a period of 3 months. In determining that period the Committee had regard to the seriousness of the Registrant's conduct and the extent to which his conduct had brought the reputation of the profession into disrepute. It also had regard to the period of time it considered reasonable for the Registrant to engage in further relevant remediation actions, such as an accredited professional boundaries training course, online training, reflective reading, self-directed study, or a combination of such actions, which the Committee recommends he undertake.

29. A Committee will review the case at a review hearing before the end of the period of suspension. Prior to the review hearing the Registrant should prepare a reflective statement for the Committee detailing the insight he has gained during the period of suspension as to the effect of his actions on Patient A and on the reputation of the profession; and of the learning he has gained from any further training undertaken as to (i) the need for the maintenance of professional boundaries in osteopathy, (ii) what he has learned, and (iii) how he would reflect that learning in his future practice.

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

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

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

Section 22(13) of the Osteopaths Act 1993 requires this Committee to publish a report that sets out the names of those osteopaths who have had Allegations found against them. The 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.