

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

**Case No: 622/6013 and 760/6013**

**Professional Conduct Committee Hearing**

**DECISION**

**Case of: Case of:** Mr Salah Said

**Committee:** Mr P Geering (Chair)  
Ms P Ormerod (Lay)  
Mr K McLean (Osteopath)

**Legal Assessor:** Ms Margaret Obi

**Representation for Council:** Ms Nimi Bruce

**Representation for Osteopath:** Not Applicable

**Clerk to the Committee:** Ms Nyero Abboh

**Dates of Hearing:** 8-11 February 2021 & 22-23  
February 2021

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**Summary of Decision:**

The Committee found the following particulars of **Case 1** proved:  
1; 2(a), 2(b), 2(c), 3 with Schedule A (i), (ii), (iii), (iv), and (v);  
4(a), 4(b) and 4(c) in relation to 2(a), 2(b) and 2(c); 4(b) in  
relation to particular 3 Schedule A (ii); 4(a), 4(b) and 4(c) in  
relation to particular 3 Schedule A (iii), (iv) and (v).

The Committee found 4(a), 4(b) and 4(c) in relation to particular 3 Schedule A (i) not proved; and 4(a) and 4(c) in relation to particular 3 Schedule A (ii) not proved.

The Committee found the following particulars of **Case 2** proved: 1, 2(a), 2(b) 2(c), 2(d)(i), 2(d)(ii), 2(d)(iii), 2(d)(iv), 2(e); 4(a), 4(b) and 4 (c) in relation to 2(b), (c), (d) and (e).

The Committee found particular 3 and Schedule B not proved, 4(a), 4(b) and 4 (c) in relation to 2(a) and particular 3 with Schedule B not proved.

The Committee found that the Registrant's conduct amounted to unacceptable professional conduct ('UPC') and directed that his name should be removed from the Register. The Committee further directed that an Interim Suspension Order should be imposed to cover the 28 day period before the order for removal comes into effect and any subsequent appeal period.

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## **Background**

1. The Registrant is a registered osteopath who has been in practise since 2006. At the relevant time, the Registrant was predominantly practising from the "Body at Ease" clinic in Hornchurch, Essex ("the Practice"). However, one day a week he provided NHS treatment from a GP's surgery in Hornchurch.
2. Taking events in chronological order, Patient B complained of back and knee problems to her GP – Dr H. Dr H advised osteopathic treatment. He recommended the Registrant

whose main clinic, at the Practice, was based within the premises of a dental surgery run by Dr H's wife. Patient B attended at least two appointments with the Registrant. The first appointment was at the Practice on 12 June 2015. The second appointment took place approximately two weeks later at the GP's surgery.

3. On 17 June 2015, Patient B made a complaint to the General Osteopathic Council ("the Council") by telephone. The attendance note of the telephone call records the following:

*"[Patient B] doesn't like the registrants mannerism. At her appointment he asked her to lower her underwear, she then agreed to remove her underwear for treatment. For the next appointment, he asked her what color (sic) underwear she would be wearing. She felt very uncomfortable and doesn't feel it was appropriate."*

On the same day, Patient B was sent a form to complete in order to submit a formal complaint.

4. There were further telephone calls between Patient B and the Council in June and July 2015. During this period Patient B provided a handwritten witness statement to Dr H. Patient B informed the Council that Dr H would be investigating her complaint. She indicated that following the outcome of Dr H's investigation and, depending on the outcome, she would consider whether to proceed with her formal complaint to the Council. No significant progress was then made regarding Patient B's concerns.
5. Nearly two years later, on 24 May 2017, another woman, Patient A, attended Romford Police Station to make a complaint of sexual assault. She named the Registrant as the perpetrator, but a formal statement was not obtained from her at that time. On 25 May 2017, the police interviewed the Registrant under caution. He was legally represented and

denied the allegation in its entirety. On the same date, the police wrote to the Council to put it on notice that an allegation of sexual assault had been made against the Registrant. On 22 June 2017, Patient A was interviewed by the police in relation to her allegation of sexual assault with a contemporaneous written record being made of the interview.

6. Following the involvement of the police with Patient A, the Council made numerous attempts to re-contact Patient B in June 2017. There was no response and no facility to leave a message.
7. On or around 24 August 2017, the police contacted Patient B, having obtained her contact details from the Council. Patient B provided the police with a witness statement dated 31 August 2017. That same day Patient B informed the Council, during a telephone call, that her GP's surgery had informed her that the witness statement she had provided to Dr H had been destroyed.
8. The Registrant was charged with sexual assault of Patient A by penetration contrary to section 2 of the Sexual Offences Act 2003. He pleaded not guilty and therefore the matter went to trial. Patient A gave evidence at the Crown Court trial which took place in January 2019. No criminal charges were pursued in relation to Patient B and she did not give evidence at the trial. The Registrant was acquitted.
9. Following the acquittal, the Council took steps to investigate the Registrant's fitness to practise. A signed witness statement was obtained from Patient A on 3 June 2019. A witness statement was obtained from Patient B in September 2019 but was never signed ('the draft statement'). Separate Investigating Committees determined that there was a case for the Registrant to answer in relation to the complaints made by Patients A and B and it was subsequently determined

that the cases should be heard at the same time. A witness summons was obtained by the Council to secure Patient B's attendance at this hearing.

10. Patient A and B do not know each other.

11. The Allegations can be summarised as follows:

Patient A

12. During a treatment session at the Practice on 22 May 2017, the Registrant inappropriately touched Patient A. His behaviour included touching and/or massaging her clitoris under her clothing. The Registrant also faced allegations that he made verbally inappropriate remarks. The Council alleged that the Registrant's conduct was not clinically justified; a breach of professional and/or sexual boundaries and/or sexually motivated. The Council also relied on the expert evidence of Mr Tim McClune.

Patient B

13. During a treatment session at the Practice in May/June 2015 the Registrant touched Patient B inappropriately and at a subsequent appointment at the GP's surgery around the same time period, made inappropriate remarks about her underwear. The Council alleged that the Registrant's conduct was not clinically justified; a breach of professional and/or sexual boundaries and/or was sexually motivated. Mr McClune had not been instructed by the Council to provide expert opinion evidence in relation to Patient B.

**Allegation and Facts (as amended):**

Case 1 – Patient A

The allegation is that you, Mr Salah Said, are guilty of Unacceptable Professional Conduct, contrary to Section 20(1)(a) of the Osteopaths Act 1993 in that:

1) On 22 May 2017, Patient A attended an appointment with you at your clinic, Body at Ease, 261 Hornchurch Road, Hornchurch, Essex, RM12 4TG ("the appointment").

2) At the appointment, you:

- a) placed one or both hands inside Patient A's underwear;
- b) touched and/or massaged Patient A's clitoris and/or the surrounding area;
- c) sniffed your fingers after you had removed your hand from Patient A's underwear;

3) During your appointment you made the comments set out in Schedule A to Patient A, or words to the same effect.

4) Your actions as described at 2 a) and/or 2 c) and/or 2 b) and/or 3 were:

- a) Not clinically justified;
- b) A breach of professional and/or sexual boundaries;
- c) Sexually motivated

#### Schedule A

- i. "Are you on your period?"
- ii. "Normally I would need permission to do this"
- iii. "You are very dry"
- iv. "You are still very dry"
- v. "You don't have a smell"

#### Case 2 – Patient B

The allegation is that you, Mr Salah Said, are guilty of unacceptable professional conduct, contrary to section 20(1)(a) of the Osteopaths Act 1993, in that:

1. On two unknown dates in May and/or June 2015, Patient B attended two appointments with you (Appointment 1 and Appointment 2).

2. At Appointment 1, you:

a. asked and/or indicated that Patient B should remove her clothes;

b. locked the door to the treatment room and/or indicated that you were doing so;

c. told Patient B that she could take her knickers off if it made her more comfortable or words to that effect;

d. while Patient B was lying naked on the treatment table:

i. stood behind her;

ii. placed one or more of your hands to the front of her body;

iii. repeatedly pulled her backwards towards you;

iv. repeatedly thrust your body towards her;

e. told and/or required Patient B to walk around the treatment table while undressed.

3. At Appointment 2, you commented on Patient B's knickers and/or underwear with words to the effect set out in Schedule B.

4. Your actions as described at 2 and/or 3 above were:

a. Not clinically justified;

b. A breach of professional and/or sexual boundaries;

c. Sexually motivated.

Schedule B

- i. "Oh you had pink ones on last time"
- ii. "I wonder what colour underwear you will wear next week"
- iii. "I like the colour of your underwear"

**Facts Determination**

Committee's Approach

14. The Committee was aware that the burden of proving the facts was on the Council and that the particulars of the Allegations could only be found proved, if the Committee was satisfied, on the balance of probabilities. The Registrant, present or absent, did not have to prove or disprove anything. The Committee noted that the Registrant was acquitted of sexual assault against Patient A. However, the Committee also noted the higher standard of proof required in criminal proceedings, namely, beyond reasonable doubt.
15. In reaching its decision the Committee took into account all of the documentary evidence including the expert report from Mr McClune in relation to Patient A, the Registrant's formal response during the investigation stage in relation to the allegations made by Patient A including video clips of Patient A attending his clinic and the telephone attendance notes and correspondence in relation to Patient B. The Committee noted that there was no expert evidence in relation to Patient B. The Committee determined, during the course of the hearing, that it would not be fair to adduce entirely new evidence from Mr McClune in relation to Patient B.
16. The Committee also took into account the oral evidence. The Council was mindful of the fallibility of memory particularly when it is based on the recollection of events which occurred several years ago. Therefore, the Committee placed greater



reliance on inferences that could be drawn from documentary evidence and objective facts that could be proved independently of the witnesses' recollections.

17. The Committee accepted the advice of the Legal Assessor. Her advice included the definition of sexual motivation as defined in *Basson v GMC* [2018] EWHC 505 (Admin): "*conduct done either in pursuit of sexual gratification or in pursuit of a future sexual relationship.*" The Legal Assessor also advised the Committee to take into account the guidance in *Haris v GMC* [2020] EWHC 2518 (Admin) that sexual motivation may be the only reasonable inference that can be drawn from the facts, if the touching is of the sexual organs, there is an absence of a clinical justification or any other plausible reason for the touching, there is no suggestion of it being accidental, and there is the absence of consent.

### Factual Findings

#### **Case 1 - Patient A**

##### **Particular 1: Found Proved**

*"On 22 May 2017, Patient A attended an appointment with you at your clinic, Body at Ease, 261 Hornchurch Road, Hornchurch, Essex, RM12 4TG ("the appointment")"*

18. There was no dispute that Patient A attended an appointment with the Registrant. Patient A stated in the witness statement she provided to the Council, dated 3 June 2019, that her appointment with the Registrant took place at the Practice on 22 May 2017. Her evidence was supported by the Registrant's handwritten clinical notes, his formal response to the allegation during the investigating stage and the CCTV

footage all of which confirm that the appointment took place on 22 May 2017.

19. Accordingly, Particular 1 was found proved.

**Particular 2(a): Found Proved**

*"At the appointment, you:*

*placed one or both hands inside Patient A's underwear;"*

20. Patient A stated in the witness statement she provided to the Council, dated 22 May 2017, that she had attended appointments with the Registrant 2-4 times per year since 2012. She stated that when she attended her appointment with the Registrant on 22 May 2017, she was wearing underwear, a pair of shorts, a pair of three-quarter length trousers, a bra top and a t-shirt. She stated that the appointment began as normal. She removed her three-quarter length trousers and t-shirt, lay on her stomach on the treatment table and the Registrant began treatment including massaging and stretching her back, shoulders and neck. She made general conversation with the Registrant. This part of the treatment lasted 20 to 30 minutes. Patient A stated that she complained during the treatment session that she had been having problems with her stomach. The Registrant asked Patient A to turn over and lie on her back. Patient A did so, and the Registrant began to massage her stomach area for approximately 5-10 minutes. He explained that Patient A had a large mass and may have a problem with her bowels. He then asked Patient A if he could fold over the waist band of her shorts and massage lower down. This was just above her pubic area. Patient A said "*yes, that's fine*" and the Registrant began massaging the area below her belly button and waist with both hands in a circular motion. Patient A explained that she felt '*fine at this point*'. However, during the

massage the Registrant stated, "*normally I would need permission to do this*" which Patient A thought was '*strange*'. Patient A stated that the Registrant suddenly put both of his hands inside her underwear without saying anything. During her oral evidence, Patient A stated that she had been attending the Practice for five years and that this was the first time that anything untoward had happened.

21. The Registrant, in his response to the Council's investigation, dated 31 July 2018, denied that any inappropriate behaviour had taken place.
22. The Committee accepted Patient A's evidence that the Registrant placed both his hands inside her underwear. Her oral evidence was consistent with her witness statement and her police interview. She made appropriate concessions during her oral evidence and made it clear if she could not remember a particular detail.
23. She also made it clear during her oral evidence that she regarded the Registrant as an '*excellent*' osteopath and would have continued to attend appointments with him had she not felt compelled to report him to the police. The Committee regarded it as noteworthy that, according to her evidence, Patient A had continued to receive osteopathic treatment since May 2017 choosing to attend another osteopath and choosing one who was female which made her feel more assured. In addition, her account was consistent with the Registrant's clinical notes insofar as they recorded treatment for a stomach complaint. Her subsequent actions, which included an early report to the police, attending a police interview and the criminal process, as well as engaging with these regulatory proceedings, were consistent with what she reported as having occurred. There was no evidence of malice or motive other than to tell the truth as she best understood it.

24. Given the above, the Committee concluded that her account of the appointment was measured, accurate and reliable.
25. Accordingly, Particular 2(a) was found proved to the effect that he placed both his hands inside Patient A's underwear.

**Particular 2(b): Found Proved**

*"At the appointment, you:  
touched and/or massaged Patient A's clitoris and/or the  
surrounding area;"*

26. Patient A stated in her witness statement that the Registrant, having placed his hands inside her underwear, started to massage her clitoris and the surrounding area. She stated that she was shocked and *'froze at this point'*. Patient A did not say anything. She stated that she was trying to convince herself that this must have been a part of the treatment. She stated that the Registrant continued to massage her clitoris and the surrounding area for a few minutes, but she was unable to be certain about the precise duration.
27. The Committee noted that the response, submitted on behalf of the Registrant during the investigation stage, stated that:

*"Patient A seemed happy with what he was doing. If one can imagine the navel of any person but in particular on this occasion, Patient A the Registrant moved his fingers no more than 3 to 4 inches to the right of the naval and 3 or 4 inches downwards from the naval making a square of about 4x4 inches .... He said that there was no need for him to work any lower than he had worked so far as he did not want to work on her bladder but more her intestine".*

28. Despite the Registrant's denial the Committee accepted Patient A's evidence that he massaged her clitoris and that it was not momentary. It did so for the same reasons as with Particular 2(a): her account had been consistent over time; her account was consistent with the clinical notes that recorded treatment to the stomach; there was no evidence of malice or a motive other than to tell the truth; and her subsequent behaviour was consistent with what she reported. The conduct complained of was deliberate and sustained. Patient A informed the Committee, during her oral evidence, that he did not touch her buttocks, her inner thigh, or her breasts; nor did he ask her to take off her underwear. Her description suggested opportunistic behaviour. The Committee was satisfied that Patient A's description of the touching of her clitoris was accurate and reliable.

29. Accordingly, Particular 2(b) was found proved to the effect that he touched and massaged Patient A's clitoris and surrounding area.

**Particular 2(c): Found Proved**

*"At the appointment, you:  
sniffed your fingers after you had removed your hand from  
Patient A's underwear;"*

30. Patient A stated in her witness statement that when the Registrant finally took his hands away, he sniffed his fingers. Patient A said that she felt very vulnerable and just wanted to leave as soon as she could. She stated that she got dressed, paid the fee and left which she managed to do within about two minutes from the Registrant taking his hands out of her underwear. Patient A stated that the Registrant remained relaxed as if nothing had happened.

31. The Committee did not accept the assertion made by the Registrant, in his written response during the investigation stage, that the CCTV suggests Patient A *'left without any issues at all'*. The Committee was mindful that there is no correct or appropriate way for complainant to behave following an allegation of inappropriate or sexual touching. The Committee took the view that the CCTV neither supports nor undermines Patient A's account.

32. The Committee accepted Patient A's written and oral evidence. It did so for the same reasons as with Particular 2(a): her account had been consistent over time; her account was consistent with the clinical notes that recorded treatment to the stomach; there was no evidence of malice or a motive other than to tell the truth; and her subsequent behaviour was consistent with what she reported. The Committee concluded that her evidence was accurate and reliable.

33. Accordingly, Particular 2(c) was found proved.

Particular 3, Schedule A: **Found Proved** (in its entirety)

*"During your appointment you made the comments set out in Schedule A to Patient A, or words to the same effect –*

*Schedule A*

- i. "Are you on your period?"*
- ii. "Normally I would need permission to do this"*
- iii. "You are very dry"*
- iv. "You are still very dry"*
- v. "You don't have a smell"*

34. Patient A stated in her witness statement that the Registrant made each of the above comments during her appointment

with him on 22 May 2017. Her first reference to these comments was made in her police interview on 22 June 2017. She confirmed during her oral evidence that the Registrant had made these comments. Comment (i) and (ii) were made whilst the Registrant was massaging Patient A's stomach. Comments (iii) and (iv) occurred whilst he was, or had just been, touching her clitoris and surrounding area. Comment (v) was made when the Registrant took his hands away and after he had sniffed his fingers.

35. The Committee accepted Patient A's written and oral evidence on the basis that he either used these precise words or words to the same effect. Patient A's evidence was consistent with the information she gave to the police when she was interviewed in June 2017 and the Committee concluded that it was accurate and reliable.

36. Accordingly, Particular 3 was found proved in its entirety.

Particular 4(a), (b) and (c) in relation to 2(a) (hands inside underwear): **Found Proved**

*"not clinically justified"*

*"sexually motivated"*

*"breach of professional and/or sexual boundaries"*

37. The Committee noted that Mr McClune in his expert report, dated 5 March 2020, stated that:

*Within the clinical circumstances of this case, it was not clinically appropriate and/or justified and not in Patient A's best interest, for the Registrant to place one or both of his hands inside Patient A's underwear.*

38. Mr McClune, in his report, drew the Committee's attention to the Osteopathic Practice Standards (OPS) 2012 for osteopaths:

**OPS A4:** *'You must receive valid consent before examination and treatment'.*

**C2:** *'You must be able to formulate and deliver a justifiable osteopathic treatment plan or an alternative course of action'.*

**D16:** *'Do not abuse your professional standing'.*

39. The Committee accepted the evidence of Mr Clune. The Committee was satisfied that his conclusions and the quality of the analysis which informed his opinions, were clear and well-reasoned. As a consequence, the Committee concluded that the Registrant's actions involving touching her stomach area could be clinically justified, but in placing both hands under Patient A's underwear and touching her clitoris the Registrant's actions were not clinically justified.

40. The Committee noted the Registrant's denial that any of his actions were sexually motivated. However, the Committee concluded that sexual motivation is the only reasonable inference that can be drawn from the facts. The Committee, having already determined that the placing of the Registrant's hands inside Patient A's underwear was not clinically justified, noted that there was no other plausible reason for his actions. There is no suggestion by the Patient A or the Registrant that it was accidental. The actions found proved do not involve a momentary touching of the Patient A's clitoris but sustained massaging and the Registrant could not have been mistaken about what he was doing. There is also no suggestion that the Registrant obtained informed consent.



41. In these circumstances, the Committee concluded that the Registrant's actions in placing his hands inside Patient A's underwear was sexually motivated.
42. The Committee, having concluded that the Registrant's actions in placing his hand inside Patient A's underwear was sexually motivated, concluded that his conduct was also a breach of professional and sexual boundaries. The Committee was satisfied that the Registrant did not obtain informed consent to place his hands inside Patient A's underwear. His actions breached Patient A's trust, was not in her best interests. As a consequence, the Registrant breached his professional boundaries. For the same reasons that the Committee found that the Registrant's actions were sexually motivated, it concluded that his actions also breached sexual boundaries.
43. Accordingly, Particulars 4(a), (b) and (c) in relation to 2(a) were found proved.

Particular 4(a), (b) and (c) in relation to 2(b) (touched and massaged clitoris and surrounding area): **Found Proved**

*"not clinically justified"*

*"sexually motivated"*

*"breach of professional and/or sexual boundaries"*

44. The Committee noted that Mr McClune in his expert report, dated 5 March 2020, stated that:

*"The anatomical area that was appropriate for the abdominal massage treatment, could reasonably extend to include the Hypogastric region, the Right Iliac region and the Left Iliac region... The Hypogastric region extends just below the 'belly-button' but does not extend to the genital area.*

...

*Within the clinical circumstances of this case, it was not clinically appropriate and/or justified and not in Patient A's best interest, for the Registrant to touch and/or massage Patient A's clitoris and/or the surrounding genital area."*

45. The Committee took into account OPS A4, C2 and D16. The Committee accepted the evidence of Mr Clune. The Committee was satisfied that his conclusions and the quality of the analysis which informed his opinions, were clear and well-reasoned. As a consequence, the Committee concluded that the Registrant's actions in touching and massaging Patient A's clitoris was not clinically justified.

46. For the same reasons, as stated in paragraph 40 above, the Committee concluded that the Registrant's actions in touching and/or massaging Patient A's clitoris was sexually motivated.

47. For the same reasons, as stated in paragraph 42 above, the Committee concluded that the Registrant's actions in touching and/or massaging Patient A's clitoris breached professional and sexual boundaries.

48. Accordingly, Particulars 4(a), (b) and (c) in relation to 2(b) were found proved.

Particular 4(a), (b) and (c) in relation to 2(c) (sniffed fingers):  
**Found Proved**

*"not clinically justified"*

*"sexually motivated"*

*"breach of professional and/or sexual boundaries"*

49. The Committee was satisfied that, in the absence of an explanation, there was no clinical justification for the

Registrant's actions in sniffing his fingers having removed his hands from inside her underwear.

50. For the same reasons, as stated in paragraph 40 above, the Committee concluded that the Registrant's actions in sniffing his fingers was sexually motivated. In reaching this conclusion the Committee took into account comment (iii) (*"You are very dry"*) and (iv) (*"You are still very dry"*) which were said shortly beforehand and comment (v) *"You don't have a smell"* which was said shortly afterwards.
51. For the same reasons, as stated in paragraph 42 above, the Committee concluded that the Registrant's actions in sniffing his fingers breached professional and sexual boundaries.
52. Accordingly, Particulars 4(a), (b) and (c) in relation to 2(c) were found proved.

Particular 4(a), (b) and (c) in relation to Particular 3, Schedule A - Comment (i) (*"Are you on your period"*) – **Found Not Proved**  
*"clinically justified"*  
*"breach of professional and/or sexual boundaries"*  
*"sexually motivated"*

53. The Committee having accepted that the Registrant asked, Patient A, *"Are you on your period"*, or words to the same effect, considered the expert evidence and the context in which these words were said.
54. The Committee noted that Mr McClune stated during his oral evidence that *'there was nothing wrong'* with the Registrant asking Patient A if she was on her period. The Committee accepted Patient A's evidence that the Registrant asked her this question whilst he was massaging her stomach. Mr Clune stated in his expert report that, subject to valid consent, it

was clinically reasonable and justified for the Registrant to offer Patient A massage treatment (osteopathic visceral treatment) for her abdominal area, in order to help her stomach discomfort.

55. The Committee was satisfied that the question asked by the Registrant was likely to be related to the massage treatment. Furthermore, at this point he had not demonstrated any inappropriate behaviour. Although Patient A stated, in her witness statement, that the Registrant did not obtain her consent the Committee noted that the Council had not specifically alleged lack of consent. Therefore, based on Patient's A's complaint of discomfort and the clinical appropriateness of the question during massage treatment the Committee concluded that the Registrant's enquiry was clinically justified.

56. As the Committee determined that the Registrant's question was clinically justified there was no basis for a finding that it breached professional and/or sexual boundaries. Nor was there any basis for finding that it was sexually motivated.

57. Accordingly, Particulars 4(a), (b) and (c) in relation to comment (i) in Particular 3, Schedule A were found not proved.

Particular 4(a) and 4(c) in relation to Particular 3, Schedule A - Comment (ii) ("*Normally, I would need permission to do this*") – **Found Not Proved**

*"clinically justified"*

*"sexually motivated"*

58. The Committee having accepted that the Registrant stated, "*Normally, I would need permission to do this*", or words to

the same effect, considered the context in which these words were said.

59. Patient A stated that the Registrant made the above comment whilst he was massaging her stomach. She thought it was a "*strange*" thing for him to have said and did not know what he meant. As the comment was made during the massage the Committee concluded, it was more likely than not, that it was a reference to the Registrant's failure to obtain Patient A's express consent. However, for the reasons stated in paragraph 55 above, the Committee concluded that it was appropriate to separate lack of consent from clinical justification. The Committee took the view that the words the Registrant said were not linked to the clinical justification of his actions.
60. The massage treatment itself was clinically justified and comment (ii) is ambiguous. Therefore, the Committee concluded that there was insufficient evidence that, during the massage, the Registrant had formed the intent to behave inappropriately. As a consequence, there was no basis for a finding that comment (ii) breached sexual boundaries. Nor was there any basis for finding that it was sexually motivated.
61. Accordingly, Particulars 4(a) and (c) in relation to comment (ii) in Particular 3, Schedule A were found not proved.

Particular 4(b) in relation to Particular 3, Schedule A - Comment (ii) ("*Normally, I would need permission to do this*") – **Found Proved**

*"breach of professional boundaries;"*

62. The Committee accepted the evidence of Patient A that the Registrant did not obtain her consent prior to massaging her stomach. In her witness statement, she queried why he

needed to obtain her consent and therefore the Committee concluded that it was reasonable to infer that she would have given her consent if he had asked for it. However, irrespective of Patient A's lay perspective, the Committee accepted the expert opinion evidence of Mr McClune that in order to obtain valid consent the Registrant had a duty to describe the treatment he proposed to administer, and outline any risks associated with the techniques. He was then required to ask Patient A if she was content to proceed with the treatment.

63. The Committee noted that the Registrant's comment strongly indicates that he was aware that he was required to obtain valid consent and was equally aware that he had not done so prior to commencing treatment. Valid consent is not an optional extra. OPS A4 makes it clear that valid consent is fundamental to good clinical practice and is both an ethical and legal requirement. The patient needs to understand the nature, purpose and risks of the treatment proposed and must be free to either accept or refuse the treatment. The Committee concluded that the Registrant's failure to obtain valid consent from Patient A prior to massaging her stomach was a breach of his professional duty and, as such his comment "*Normally, I would need permission to do this*" a breach of professional boundaries.

64. Accordingly, Particular 4(b) in relation to comment (ii) in Particular 3, Schedule A, was found proved.

Particular 4(a), (b) and (c) in relation to Particular 3, Schedule A - Comments (iii) ("*You are very dry*"), (iv) ("*You are still very dry*") and (v) ("*You don't have a smell*") – **Found Proved**

*"clinically justified"*

*"breach of professional and/or sexual boundaries"*

*"sexually motivated"*

65. The Committee having accepted that the Registrant stated, "You are very dry", "You are still very dry" and "You don't have a smell", or words to the same effect, considered the context in which these words were said.
66. The Committee noted that the Registrant made the above comments whilst he was touching Patient A's genital area and shortly after he had withdrawn his hands from inside her underwear. The Committee was satisfied that, in the absence of an explanation, there was no clinical justification for these words.
67. The Committee noted the Registrant's denial that any of his actions were sexually motivated. However, the Committee concluded that sexual motivation is the only reasonable inference that can be drawn from the facts. The Committee, having already determined that the placing of the Registrant's hands inside Patient A's underwear was not clinically justified, noted that there was no other plausible reason for his comments.
68. For the same reasons, as stated in paragraph 67 above, the Committee concluded that the Registrant's comments breached professional and sexual boundaries.

## **Case 2 - Patient B**

### **Particular 1: Found Proved**

*"On two unknown dates in May and/or June 2015, Patient B attended two appointments with you (Appointment 1 and Appointment 2)"*

69. Patient B's signed witness statement to the police, dated 31 August 2017, and the draft statement she provided to the Council in September 2019 confirm that her first appointment

with the Registrant took place in May or June 2015. She stated that the second appointment took place approximately one or two weeks later.

70. Although Patient B was unsure of the precise date of her first appointment, the Committee noted that the Registrant's clinical records state that an appointment took place on 12 June 2015. The Committee was satisfied that this was the first appointment because amongst the exhibits was a copy of the Registrant's diary which included an entry on 12 June 2015 with 'N/P' next to Patient B's name. The Committee concluded that it was reasonable to infer that these initials were shorthand for 'new patient'. The Committee also noted that the telephone attendance note, dated 17 June 2015, makes reference to an appointment during which the Registrant asked her to "*lower her underwear and she then she agreed to remove her underwear for treatment.*" Patient B consistently stated that this occurred during her first appointment.

71. In these circumstances, the Committee concluded that Patient B attended at least two appointments with the Registrant; the first appointment on 12 June 2015 and the second appointment was likely to be approximately a week or two later.

72. Accordingly, Particular 1 was found proved.

**Particular 2(a), (b), (c): Found Proved**

*"At Appointment 1, you:*

*a. asked and/or indicated that Patient B should remove her clothes;*

*b. locked the door to the treatment room and/or indicated that you were doing so;*



*c. told Patient B that she could take her knickers off if it made her more comfortable or words to that effect;”*

73. The Committee noted that the only signed witness statement available from Patient B was obtained by the police on 31 August 2017, more than 2 years after her last appointment with the Registrant. Her original statement (provided to Dr H) in or around June or July 2015 had been destroyed, the circumstances of which were unknown. The Committee also noted that Patient B’s draft statement was obtained in September 2019, nearly 4 years after her last appointment with the Registrant, and her oral evidence to the Committee was nearly six years after the relevant appointments. There was no evidence of malice on the part of Patient B or motive other than to tell the truth and for the Registrant to be held to account. The Committee was mindful to avoid the fallacy of supposing that, because Patient B was confident in her recollection and is honest, evidence based on that recollection is necessarily reliable and accurate. This is evident in the varying accounts she has given, for example, in her estimates as to how many appointments she had with the Registrant. In these circumstances, the Committee paid particular attention to the telephone attendance notes which contained a summary of Patient B’s first account within days of the relevant events.

74. Patient B stated in her police witness statement that during the first appointment the Registrant asked her to remove her clothes and lay down on the treatment table. She stated that she removed her clothing including her bra but kept her knickers on. Patient B went on to state that the Registrant proceeded to massage and exercise her knee. In her police statement, Patient B stated that the Registrant then asked her to remove her underwear. She did as he asked. During her oral evidence, Patient B explained that her knickers were “cutting” into her whilst the Registrant was manipulating her

legs into different positions and he told her she could remove her knickers if she wanted to make herself more comfortable. The most contemporaneous record of Patient B's account is the telephone attendance note dated 17 June 2015, which states, "...he asked her to lower her underwear, she then agreed to remove her underwear for treatment." The attendance note, dated 30 June 2015, states: "[d]uring the treatment he said, "Can you pull your knickers down?". In her draft statement Patient B indicated that she remained completely naked until after the Registrant had completed the 'thrusts'. He then offered her a small brown towel.

75. Patient B makes no reference to the Registrant locking the door in her police statement; this is mentioned for the first time in her draft statement. In that statement Patient B states that after the 'leg exercises' the Registrant told her to lay on her side which meant that she had her back to him and said, "I better lock the door in case someone walks in". He then locked the door and came back to the treatment table. Patient B repeated this during her oral evidence.
76. The Registrant denied any wrongdoing in the email sent by his legal representative on 19 January 2021. In his clinical note he records that Patient B removed her underwear and that he said, "There is no need for this" or words to that effect and covered her with a towel.
77. The Committee noted that Patient B was a reluctant witness, in that she had to be summonsed to appear at the hearing. However, the Committee accepted her explanation that she experienced a serious health issue in July 2020 and has had ongoing health concerns. She stated that she was stressed and wanted "to forget about it" particularly after the Registrant had been acquitted.
78. The Committee accepted Patient B's evidence. The Committee was mindful that the telephone attendance notes were not a

verbatim record of the account Patient B provided to the Council in June 2015, and that its accuracy depends on the understanding and interpretation of the person that took the note. However, the telephone conversation, on 17 June 2015, took place within a short time of the first and/or second appointments. At this time the events were likely to be fresh in Patient B's mind. The Committee took the view that, although not identical, the telephone attendance note is consistent with the signed witness statement she provided to the police, the draft statement, and her oral evidence. Furthermore, her evidence that she was completely naked on the treatment table is corroborated by the Registrant's handwritten clinical notes.

79. The Committee concluded, it was more likely than not, that the Registrant asked Patient B to remove her clothes. She had not been to see an osteopath before, and the Committee accepted her evidence that she did not know what to expect. In these circumstances, it is likely that she would have responded to instructions from the Registrant. The Committee also accepted that in response to encouragement from the Registrant Patient B removed her knickers and was therefore completely naked on the treatment table at some stage when the '*leg exercises*' were performed. The Committee took the view that a naked patient on a treatment table was likely to cause concern if someone else unexpectedly entered the room. Therefore, the Committee accepted Patient B's evidence that the Registrant locked the door.

80. In reaching these conclusions, although the Committee considered whether there were reasonable alternative interpretations, it noted that as the Registrant was not present and not represented at the hearing, the details of Patient B's account were not challenged by him.

81. Accordingly, Particulars 2(a), (b) and (c) were found proved.

Particular 2(d)(i), (ii), (iii), (iv) : Found Proved

*"while Patient B was lying naked on the treatment table:*

*i. stood behind her;*

*ii. placed one or more of your hands to the front of her body;*

*iii. repeatedly pulled her backwards towards you;*

*iv. repeatedly thrust your body towards her;"*

82. Patient B stated in her police witness statement that whilst she was lying on her side, naked, with her back to the Registrant, he stood behind her and started to thrust himself into the side of the table. She stated that his hands were on her side, as he rocked her back and forth. She described it as a thrusting movement which lasted for about 30-60 seconds. She provided a similar account in her draft witness statement and during her oral evidence. The only significant difference in the draft statement was that Patient B said that the Registrant placed his hands over the front of her tummy.

83. The Committee concluded, it was more likely than not, that the events occurred as Patient B described. Although the first available reference to the sequence of events, culminating in the thrusting movement, appears in the police witness statement the Committee concluded that her account was clear and consistent with the concern she raised with the Council on 17 June 2015 that she felt uncomfortable and did not feel that the treatment was conducted appropriately.

84. In reaching these conclusions, although the Committee considered whether there are reasonable alternative interpretations, it noted that as the Registrant was not present and not represented at the hearing, the details of Patient B's account were not challenged by him.

85. Accordingly, Particulars 2(d)(i), (ii), (iii) and (iv) were found proved.

**Particular 2(e): Found Proved**

*"told and/or required Patient B to walk around the treatment table while undressed"*

86. Patient B made no mention of walking around the treatment table naked in her police witness statement. This information appears for the first time in her draft statement. In the draft statement she states that the Registrant said, *"get up and walk around the bed and see how you feel"*. Patient B got up, left the towel on the bed and walked around the bed twice. Patient B confirmed this account during her oral evidence.

87. The Committee concluded, it was more likely than not, that the events occurred as Patient B described. The Committee concluded that her account was clear, was consistent with the concern she raised with the Council on 17 June 2015 that she felt uncomfortable and did not feel that the treatment was conducted appropriately.

88. In reaching this conclusion, although the Committee considered whether there were reasonable alternative interpretations, it noted that as the Registrant was not present and not represented at the hearing, the details of Patient B's account were not challenged by him.

89. Accordingly, Particular 2(e) was found proved to the effect that he told her to walk around the treatment table while undressed.

Particular 3 in relation to Schedule B, Comments (i) - *"Oh you had pink ones on last time"* (ii) - *"I wonder what colour*

*underwear you will wear next week; and (iii) "I like the colour of your underwear": Found Not Proved*

*"At Appointment 2, you commented on Patient B's knickers and/or underwear with words to the effect set out in Schedule B."*

90. There is consistent evidence that the Registrant commented to Patient B about her knickers and commented about the colour of her knickers. This evidence is consistent through the early telephone attendance notes recording Patient B's concerns expressed to the Council shortly after the events complained about, consistent with her police statement, consistent with her later telephone call to the Council and in the draft statement written after she had been interviewed by the Council and her oral evidence. It is also clear to the Committee that Patient B regarded the Registrant's comments in this respect as inappropriate and one of the reasons leading her to feel sufficiently uncomfortable about his conduct to have then contacted the Council. The panel is also clear that it would, ordinarily, be inappropriate for an osteopath to comment about the colour of a patient's underwear in the way that is alleged to have occurred.

91. What is not clear is what exactly was said and/or when things were said. The various accounts are inconsistent in the detail as to what was said and/or when the comments were said. Patient B has stated that she cannot, overall, be sure of exactly what and/or when things were said. Whilst the allegation is drafted in terms of "*you commented...with words to the effect [of]*" it is also drafted as being specific to "*Appointment 2*". The Committee concludes that the Registrant may well have commented with words to the effect "*I like the colour of your underwear*" but there is some evidence that he may have said this at appointment 1

not appointment 2. Whilst he may well have commented on the colour of Patient B's knickers that she had worn "*last time*", and therefore by inference not said at appointment 1 but possibly said at appointment 2, it is not clear whether he was referring to "*pink*" knickers (as alleged, relying on Patient B's draft statement and her oral evidence) or "*black*" knickers (as referred to in her statement to the police closer in time to the events). Similar difficulties arise determining when the Registrant may have commented on what knickers she would wear "*next week*": the panel cannot conclude that this was said at appointment 2 when there is evidence he may have said it at appointment 1.

92. Comments (i), (ii) and (iii) appear in the draft statement that she provided to the Council. However, it is apparent from the draft statement that Patient B is not sure whether these comments were made in the second or third appointment if there was a third appointment. The Committee took the view that this was unsurprising given the passage of time. In the absence of an authoritative written contemporaneous account, the Committee could not resolve the inconsistencies.

93. Accordingly, whilst the Committee is satisfied on a balance of probabilities that the Registrant made comments about Patient B's knickers and the colour thereof, that Patient B was caused concern by the comments, and that most probably such comments were inappropriate, the Committee cannot be satisfied, even on a balance of probabilities, that the comments were made as alleged and at Appointment 2.

94. Accordingly, Particular 3 was found not proved.

Particular 4(a), (b) and (c) in relation to Particular 2(a) ('remove clothes') – **Found Not Proved**

*"Not clinically justified;*

*A breach of professional and/or sexual boundaries;  
Sexually motivated."*

95. The Committee, having found that the Registrant asked and/or indicated that Patient B remove her clothes, went on to consider the context.

96. The Committee noted that osteopathic treatment often includes movement and manipulation of the patient's body and limbs. Therefore, it can be appropriate for an osteopath to ask a patient to remove some clothing. The Committee took the request to 'remove clothing' to mean outer clothing, not underwear.

97. The Committee noted that Patient B attended because of problems associated with her knees and back. It was reasonable and appropriate for the Registrant to examine these areas of her body and therefore asking Patient B to remove her outer clothing was clinically justified.

98. As the Registrant's request that Patient B remove her outer clothing was clinically justified there was no basis for a finding that his actions breached sexual boundaries. Nor was there any basis for finding that it was sexually motivated.

99. Accordingly, Particulars 4(a), (b) and (c) in relation to Particular 2(a) were found not proved.

Particular 4(a), (b) and (c) in relation to Particular 2(b) ('locked door') – **Found Proved**

*"Not clinically justified;  
A breach of professional and/or sexual boundaries;  
Sexually motivated."*



100. The Committee noted that for at least part of the treatment session Patient B was lying naked on the treatment table.
101. The Committee took the view that, ordinarily, an osteopath treating a patient who is significantly undressed may legitimately be concerned that someone could walk into the room and therefore decide to lock the door to maintain privacy. The issue for the Committee was to determine whether the Registrant's frame of mind supported that legitimate explanation for locking the door or whether, on a balance of probabilities, his mind was by that stage set on an improper course of conduct. On Patient B's account, the Registrant did little to protect Patient B's modesty whilst she was removing her clothes or whilst he was treating her, and according to Patient B's account the Registrant locked the door after prompting her to remove her knickers without clinical justification (as found below). The panel took the view that the locking of the door, and the sequence of events in this regard with her being completely naked, was a significant and distinct action about which Patient B was unlikely to have been confused.
102. The Committee concluded that the Registrant's mind-set when locking the door was not that of a professional with clinically justifiable reasoning, but that of a Registrant who had already set upon an opportunistic course of improper action. It reached this conclusion given the sequence of events, and the Committee's finding below that the locking of the door came after the clinically unjustified prompting for Patient B to remove her knickers.
103. The Committee was therefore satisfied that at the stage of locking the door, the Registrant was knowingly acting inappropriately. Therefore, locking door was not done with clinical justification and was an act that breached professional

and sexual boundaries and was done with a sexual motivation in mind.

104. Accordingly, Particulars 4(a), (b) and (c) in relation to Particular 2(b) were found proved/not proved.

Particular 4(a), (b) and (c) in relation to Particular 2(c) ('remove underwear'), 2(d) ('repeated thrusts') 2(e) ('walking around the table naked') – **Found Proved**

105. The Committee noted that Patient B removed her bra without prompting when only removal of her outer clothing would have sufficed. The Committee accepted her evidence that she did not know what to expect when she attended the appointment on 12 June 2015. The Registrant could have, and should have, reassured her that removal of her underwear was not necessary. The treatment could have been undertaken whilst Patient B was wearing her underwear.

106. Although Patient B indicated that her knickers were causing her discomfort the Registrant should have found a solution to the problem. If removal of her knickers was necessary the Registrant could have offered her a gown, or a towel. Alternatively, he could have re-arranged the appointment having advised her of suitable garments to wear on the next occasion.

107. The Committee concluded that the Registrant did little to protect Patient B's modesty and dignity. He took advantage of the fact that this was her first osteopathic treatment. The Committee took the view that the Registrant's actions were opportunistic and by the time he suggested that Patient B could remove her knickers he had crossed the professional boundaries threshold. The Committee noted that the Registrant may have purported to be treating Patient B with

a high velocity thrust and/or muscle energy techniques whilst she was lying on her side on the treatment table but as she was unnecessarily naked it is more likely that he was gaining sexual gratification from his actions. He then asked Patient B to walk around the treatment table whilst naked and again did nothing to preserve her modesty or dignity.

108. The Committee concluded that there was no clinical justification for a treatment session with a naked patient. The Registrant breached the duty of trust and intruded on Patient B's privacy by permitting her body to be exposed in circumstances when it was not necessary or in her best interests. The Committee noted the Registrant's denial that any of his actions were sexually motivated. However, the Committee concluded that sexual motivation is the only reasonable inference that can be drawn from the facts.

109. Accordingly, Particulars 4(a), (b) and (c) in relation to Particular 2(c), (d) and (e) were found proved.

Particular 4(a), (b) and (c) in relation to Particular 3, Schedule B, Comments (i) - "Oh you had pink ones on last time" (ii) - "I wonder what colour underwear you will wear next week; and (iii) "I like the colour of your underwear" – Found Not Proved

*"Not clinically justified;*

*A breach of professional and/or sexual boundaries;*

*Sexually motivated."*

110. As the Committee was not satisfied that comments (i), (ii) and (iii) were made by the Registrant at the second appointment, it did not go on to consider Particulars 4(a), (b) or (c) in relation to Particular 3 and Schedule B.

111. Accordingly, Particular 4 was found not proved in relation to Particular 3 and Schedule B.
112. In reaching its conclusions on the facts, the Committee did not place any weight on the facts of one case being evidentially supportive of the other. The cases were some significant time apart.
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### **Unacceptable Professional Conduct**

#### Committee's Approach

113. The Committee took into account the submissions made by Ms Bruce, on behalf of the Council, and accepted the advice of the Legal Assessor.
114. The Committee had regard to Section 20 of the Osteopaths Act 1993, which defines Unacceptable Professional Conduct (UPC) as conduct which "*falls short of the standard required of a registered osteopath*". The Committee considered the Council's guidance on UPC and the observation made by Irwin J in Spencer v GOsC [2012] EWHC 3147 that UPC is conduct which implies '*moral blameworthiness*' and some degree of '*opprobrium*'. The Committee also considered the OPS 2012 standards in assessing the behaviour expected of registered osteopaths and the guidance on sexual boundaries published by the Council for Healthcare Regulatory Excellence.
115. The Committee was mindful that in determining whether the Registrant's behaviour amounts to UPC there is no

standard of proof; whether the threshold has been met is a matter of independent judgment. The Committee also bore in mind that the conduct must be serious. The Committee noted that a departure from the standards is a useful starting point for deliberation. However, it does not create a presumption of UPC; nor is it determinative of UPC.

#### UPC Determination

116. The Committee noted that upholding professional boundaries is fundamental to effective practise as an osteopath. It is essential that registered osteopaths, whilst performing their professional duties act in the best interests of their patients at all times. It is also essential that members of the public have trust and confidence that registered osteopaths uphold the highest standards of conduct and behaviour. Sexualised behaviour towards patients is inevitably serious as it strikes at the heart of the patient/practitioner relationship.

117. The Committee noted its findings that the Registrant pursued a course of conduct in relation to two separate patients which involved skin to skin touching that was sexually motivated. In relation to Patient A it also included touching of her genitals and sexualised comments. In both instances the sexual contact was not momentary; it was sustained for a significant period of time. Both patients were vulnerable. Patient B was particularly vulnerable as it was her first appointment with an osteopath. Therefore, she did not know

what to expect when the Registrant asked her to remove her clothing and she was prompted by him to lie on the treatment bench completely naked which was not necessary or appropriate. The Registrant abused his position of trust and the significant imbalance of power, in relation to both patients, for his own sexual gratification. Both patients were upset by what had happened to them and each took steps to address their concerns: Patient A by finding a female osteopath and by making a complaint to the police and Patient B by making a complaint to the GP that had referred her to the Registrant and by contacting the Council.

118. In these circumstances, the Committee had no hesitation in concluding that the Registrant's behaviour although opportunistic was nevertheless abhorrent and fell far below the standards expected of a registered osteopath. In reaching this conclusion the Committee took into account the standards referred to in its determination of the facts (A4 (valid consent), C2 (justifiable treatment plan or alternative course of action), D16 (do not abuse professional standing) but took particular account of the following standards:

**C6** - Respect your patients' dignity and modesty;

**D16** - Do not abuse your professional standing; and

**D17** - Uphold the reputation of the profession through your conduct.

119. The Committee took the view that members of the public would be extremely concerned to learn that a registered osteopath had exploited his professional position for his own sexual gratification on two separate occasions. In so doing, the Registrant brought the profession into disrepute. The Committee concluded that the public interest, which includes protection of patients, maintenance of public trust and confidence and the upholding of professional standards, requires a declaration that the Registrant's sexualised behaviour towards Patient A and Patient B and sexualised comments in relation to Patient A were wholly unacceptable.

120. Accordingly, the Committee found the Registrant guilty of unacceptable professional conduct in relation to Patient A and Patient B.

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## **Sanction**

### Committee's Approach

121. The Committee took into account the submissions made by Ms Bruce, on behalf of the Council. She submitted that the Registrant's name should be removed from the register.

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

123. The Committee noted that Section 22(2) of the Act requires the Committee to impose a sanction, as it has found the Registrant guilty of UPC. The Committee was aware that

the purpose of any sanction is not to be punitive, though it may have a punitive effect. The Committee bore in mind that its primary function is to protect the public, while reaching a proportionate sanction, taking into account the wider public interest and the interests of the Registrant. In doing so, the Committee took into account the Hearings and Sanctions Guidance of 2018 (SG).

### Sanction Determination

124. The Registrant's UPC was serious and constitutes a significant departure from the standards expected of a registered osteopath. Maintaining proper professional boundaries is self-evidently a fundamental obligation of all registered osteopaths. Exploiting vulnerable patients for sexual gratification breaches trust and confidence at the highest level. Such improper conduct is likely to cause significant and enduring harm to patients; damage patient trust and public confidence; and may impair professional judgement to the patient's detriment.
125. The Registrant's sexual exploitation of Patient A caused actual harm in that she experienced feelings of embarrassment and confusion. Harm was also caused to Patient B, who stated that she was left feeling stressed and worried.
126. The Committee identified the following aggravating factors:
- The Registrant sexually motivated behaviour involved two separate patients within a period of approximately two years;
  - The sexualised behaviour involved skin to skin contact and the touching of Patient A's genitals;
  - Patients A and B were vulnerable;



- The abuse and exploitation were not momentary; at each appointment it persisted for a significant period of time.

127. The Committee was unable to identify any mitigating factors other than the Registrant's previous good character and the absence of any regulatory history.

128. The Committee noted that sexually motivated behaviour is difficult to remediate because it strikes at the very heart of the patient/practitioner relationship. As the Registrant did not attend the hearing and was not represented there was no evidence before the Committee that he had developed any meaningful insight into his exploitative behaviour, there was no evidence of remorse and no evidence that the Registrant has taken any steps towards remediation of his conduct. The Committee was satisfied that the absence of meaningful insight and remorse was a strong indication that the risk of repetition is high.

#### Admonishment

129. The Committee noted that an admonishment has no direct effect on an osteopath's practice. The Committee concluded that, in view of the nature and seriousness of the Registrant's conduct and behaviour, an admonishment would be wholly inappropriate. It would be insufficient to protect the public, maintain public confidence and uphold the reputation of the profession.

#### Conditions of Practice Order

130. The Committee concluded that it would not be possible to formulate workable or practicable conditions that would adequately address the Registrant's attitudinal deficiencies and his exploitative sexualised behaviour towards Patients A

and B. The Registrant's sexualised behaviour is indicative of a harmful deep-seated attitudinal deficiency which is not amenable to conditions. Even if appropriate conditions could be formulated, the Registrant's decision to absent himself from these proceedings and the lack of meaningful insight, meant that the Committee could not be satisfied that he would co-operate with such an order.

### Suspension

131. The Committee next considered a Suspension Order. A Suspension Order would, to a degree, re-affirm to the Registrant, the profession and the public the standards expected of a registered osteopath. However, the seriousness of the misconduct in this case was significant and the Committee was not satisfied that a Suspension Order would therefore give a sufficiently clear signal to the public and the profession. The Committee noted that a Suspension Order would also prevent the Registrant from practising as an osteopath during the suspension period, which would therefore provide protection to service users and the public. However, the Committee took the view that a Suspension Order would only be appropriate if there was a realistic prospect of a return to practice at some point in the future.

132. The Registrant breached one of the fundamental tenets of healthcare; the requirement to act in the patient's best interests. His sexually motivated behaviour caused actual harm to Patients A and B and as a consequence significantly undermined trust and confidence in the profession. Furthermore, the Registrant has failed to demonstrate, any personal development to address his attitudinal failings and his propensity for sexualised behaviour towards patients. He continues to present a risk to patient safety and has demonstrated no insight and no potential for remediation.

133. In these circumstances, the Committee concluded that a Suspension Order, would be wholly insufficient to protect the public and uphold the wider public interest.

#### Removal from the Register

134. The Committee was driven to the inevitable conclusion that the Registrant's conduct and behaviour, his attitudinal deficiencies, lack of insight and remorse and the absence of remediation giving rise to a risk of repetition were fundamentally incompatible with continued registration. In reaching this conclusion the Committee took into account paragraph 49 of the HSG which states:

*"Where sexual misconduct is proven, especially in circumstances where there has been a breach of professional boundaries involving vulnerable patients, ...this should be regarded as very serious by the PCC, where removal from the register is likely to be considered an appropriate and proportionate sanction."*

135. The Committee also took into account the following criteria as set out in paragraph 78 of the HSG all of which apply in this case and support the finding that removal is the only proportionate and appropriate outcome:

- a. A reckless or intentional disregard for the principles set out in the Osteopathic Practice Standards and for patient safety.*
- b. A serious departure from the relevant professional standards outlined in the Osteopathic Practice Standards which is incompatible with continued registration.*

- c. The osteopath poses a risk of harm to others (patients or otherwise), either deliberately or through incompetence, particularly where there is a continuing risk to patients.*
- d. Serious abuse of position/trust (particularly involving vulnerable patients) or serious violation of the rights of patients.*
- e. ...findings of sexual misconduct.*
- ...
- h. Persistent lack of insight into seriousness of actions or consequences.*

136. The Committee was mindful of the impact a removal order may have upon the Registrant. However, the Committee was satisfied that the Registrant's interests were significantly outweighed by the need to protect the public, maintain confidence in the profession and the regulatory process, and to uphold professional standards.

137. The Committee was satisfied that the only appropriate and proportionate means of protecting the public and the wider public interest was by imposing a removal order. Therefore, the Committee determined that the Registrant's name should be removed from the register.

138. The Committee therefore directs that the name of the Registrant, Salah Said, be removed from the register.

### **Interim Suspension Order**

139. Ms Bruce, on behalf of the Council, invited the Committee to impose an Interim Suspension in accordance with Rule 40(1)1(b) of the Rules to cover the appeal period. She

submitted that such an order is necessary to protect the public.

140. The Committee accepted the advice of the Legal Assessor and had regard to the Council's Guidance entitled 'Interim Suspension Orders'.
141. The Committee determined that it was necessary to impose an Interim Suspension Order, due to the Registrant's sexually motivated conduct towards two patients as it represents a serious departure from the high standards expected of registered practitioners and there is an ongoing risk of repetition that could cause serious harm. The Committee concluded that the Registrant represents an unwarranted risk of serious harm to the public.
142. Accordingly, the Committee imposes an Interim Suspension Order on the Registrant's registration. The interim order will be for the appeal period of 28 days or, if an appeal is made, until such appeal is heard or otherwise determined.
143. This concludes the Committee's determination in this case (save for the Annex A below, 'Preliminary Matters').

## **Annex A - Preliminary Matters**

### Service and Proceeding in Absence

1. The Committee noted that the General Osteopathic Council Rules ("the Rules") have been amended, as a consequence of the Covid-19 pandemic, to allow the Council the flexibility to send notifications to registrants by email. The Committee was provided with written confirmation that, on 18 December

2020, the Notice of Hearing had been sent by email to the email address shown for the Registrant on the Council's register. The Notice was sent more than 28 days in advance of the hearing. Therefore, the Committee was satisfied that Notice had been served in accordance with the Rules and that Council had taken all reasonable steps to bring this hearing to the attention of the Registrant.

2. Ms Bruce, on behalf of the Council, made an application for the hearing to proceed in the Registrant's absence. The Committee accepted the advice of the Legal Assessor. The Committee took into account the guidance, that the power to proceed in absence should be "*exercised with the utmost care and caution*", as set out in the House of Lords judgement in *R v Jones* [2002] 1 AC 1 and endorsed in the case of *Adeogba v GMC* [2016] EWCA Civ 162.
3. The Committee determined that it was reasonable and in the public interest to proceed in the Registrant's absence for the following reasons:
  - a) The Registrant has engaged with the regulatory process, in that through his legal representative he has responded to correspondence from the Council. In a letter from the Registrant's legal representative, dated 19 January 2021, it is stated that:

*"Although [the Registrant] protests his innocence in relation to both patients (whether or not Patient B attends on summons or otherwise) but having been through a Crown Court trial ██████████ together with ISO hearings and the thought of many days at a PCC, even though it is virtual, ██████████*

*He has asked me to prepare this correspondence and send it to you to confirm that he will not be in attendance at the PCC hearing.*

*That means of course that my instructions are removed and therefore I shall no longer be involved in this case..."*

The Committee determined that in these circumstances it was fair and reasonable to conclude that the Registrant's absence was deliberate and demonstrated a voluntary waiver of his right to be present and to participate in the hearing.

- b) The letter from the Registrant's legal representative further reads *"I would however be obliged if, once the matter is concluded, you would send me a copy of the final outcome..."*. In context, the Committee concluded it could reasonably be inferred that the Registrant's expectations were for the hearing to proceed.
- c) Although the legal representative referred to health matters in the email, dated 19 January 2021, no medical evidence was provided and there was no application to adjourn. As a consequence, there was no indication that the Registrant would be willing to attend the hearing on any future date. Therefore, re-listing the hearing case would serve no useful purpose.
- d) The Committee noted that two factual witnesses and an expert witness had been scheduled to give evidence. In the absence of a good reason the Committee concluded that the evidence of these witnesses should not be delayed nor should they be unnecessarily inconvenienced. In reaching this conclusion the Committee was mindful that the

evidence of Patient A relates to events which took place in 2017 and the evidence of Patient B relates to events dating back to 2015.

- e) Any disadvantage to the Registrant, in not being able to challenge the Council's case or present his defence, is significantly outweighed by the strong public interest in ensuring that the allegations are heard and considered expeditiously.

#### Private Hearing

- 4. During the course of the hearing, the Chair on behalf of the Committee exercised its discretion to direct that if it became necessary to refer in detail to (a) the health of the Registrant or (b) the health of the witnesses other than health issues directly concerned the allegation, or (c) the health of a third party, the evidence would be heard in private to protect the individual's right to a private life.

#### Application to Amend

- 5. Ms Bruce, on behalf of the Council, made an application at the outset of the hearing under Rule 24, for the allegations to be amended. She informed the Committee that the Allegations, as originally drafted, had been served on the Registrant together with the Notice of Hearing on 18 December 2020. She stated that the proposed amendments were served on the Registrant on 1 February 2021. The proposed amendments were sent to the Registrant directly, as by then, the Council had been put notice that he would no longer be legally represented. Ms Bruce submitted that the proposed amendments have '*honed and streamlined*' the Council's case but do not increase the seriousness.



6. The Committee accepted the advice of the Legal Assessor. The Committee noted that the Registrant was provided with a copy of the proposed amendments 7 days prior to the commencement of the hearing and had not raised any objections.
7. The Committee concluded that the proposed amendments to the allegations:
  - provided helpful clarification;
  - avoided ambiguity;
  - corrected typographical errors;
  - did not alter the substance or meaning of the allegations as originally drafted and did not widen the scope of the Council's case.
8. As a consequence, the Council concluded that the amendments would cause no injustice to the Registrant as they were minor in nature and/or more accurately reflected the Council's case.

#### Application to Adduce Additional Evidence

9. During the hearing Ms Bruce made an application to adduce additional evidence: (i) telephone attendance notes and correspondence between the Council and Patient B; and (ii) four video clips relating to Patient A's arrival and departure from the Registrant's 'Body at Ease' clinic on 22 May 2017.
10. Ms Bruce informed the Committee that the telephone attendance notes, and correspondence had been served on the Registrant on 18 December 2020 together with the Notice of Hearing. She also informed the Committee that these documents were served on the Registrant again in January 2021 as part of a bundle relating to the Council's application for a witness summons to secure Patient B's attendance at

the hearing. Ms Bruce submitted that the evidential weight of these documents may be limited but would assist the Committee with regards to the chronology and context.

11. Ms Bruce drew the Committee's attention to the fact that the CCTV evidence had been provided by the Registrant during the Council's investigation stage.

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

13. The Committee concluded that the telephone attendance notes, and correspondence are relevant to the issues to be determined. The Committee noted that the content of these documents was likely to assist with the chronology. They also contain Patient B's first accounts of the events that took place and was likely to be evidentially significant. The Committee noted that the Registrant had been provided with these documents in advance of the hearing and was therefore aware of their existence and potential significance. The Committee was mindful of its duty to rely on the best evidence available and to prevent injustice. The Committee concluded that no injustice would be caused to either party by admitting the documents into evidence.

14. The Committee concluded that the CCTV clips were also relevant as the Registrant had suggested during the investigation state that the images of Patient A leaving the clinic undermined her complaint. In fairness to the Registrant the Committee concluded that it should review the images for itself.

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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 nature of the Allegations and the steps taken by the Committee in respect of the osteopaths so named.