

GENERAL OSTEOPATHIC COUNCIL
PROFESSIONAL CONDUCT COMMITTEE

Case No: 678/2212

Professional Conduct Committee Hearing

DECISION

Case of:	Mr Quentin Shaw
Committee:	Mr Richard Davies (Chair) Ms Helena Greenwood (Osteopath) Mr Colin Childs (Lay)
Legal Assessor:	Mr Tim Grey
Representation for Council:	Mr Chris Gillespie
Representation for Osteopath:	Mr Paul Grant
Clerk to the Committee:	Miss Nyero Abboh
Date of Hearing:	10 - 13 September 2019

Summary of Decision:

Factual Particular 1 was admitted and thereby found proved.

The Committee found Particulars 2 and 3 proved.

The Committee found that the Particulars proved amounted to UPC, and therefore found the Allegation proved.

The Committee imposed a sanction of admonishment.

Allegation and Facts

The allegation is that Mr Quentin Shaw (the Registrant), has been guilty of Unacceptable Professional Conduct, contrary to Section 20(1)(a) of the Osteopaths Act 1993, as follows:

1. On 25 May 2018, Patient A attended an appointment ("the Appointment") with the Registrant accompanied by her mother ("Ms B").
2. At the Appointment, the Registrant did not communicate with Ms B in an appropriate and/or professional manner, in that he questioned and challenged Ms B about her political views, using words to the effect set out in Appendix 1.
3. The Registrant's conduct, as set out at paragraph 2 and Appendix 1, put Patient A in fear of being hurt during her treatment.

Appendix 1

- a. "Are you a Brexiteer?"; and/or
- b. "[You are] a bigot"; and/or
- c. "[You are] a capitalist"; and/or
- d. "[You are] a racist"; and/or
- e. On an occasion other than that specified in (d), "[You are] a racist";
- f. "[You are] an idiot as is everyone else in the UK who voted to leave the EU"; and/or
- g. "I hate England for kicking people out"; and/or
- h. "I presume you are a conservative as well?"; and/or
- i. "You (Ms B) should get out"; and/or
- j. "The UK is a horrendous place to live as it is a country in debt and nobody wishes to live here".

Decision

Preliminary Matters

1. At the outset of proceedings Mr Gillespie, on behalf of the General Osteopathic Council ("The Council"), applied to amend the Allegation to the terms set out

above. He submitted that the amendment was both necessary and desirable in order to ensure clarity in the Allegation, and that such amendments as were proposed more adequately and properly reflected the nature of the case, and was to the benefit of all parties. On behalf of the Registrant, Mr. Grant did not oppose the application.

2. The Committee received and accepted the advice of the Legal Assessor. It was advised that its power to make such an amendment was governed by Rule 24 of the General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000 ("The Rules"). The Committee thereby has a discretion to amend the Allegation at any time if, having heard from both parties and received legal advice, it considered that an amendment could be made without injustice.
3. The Committee concluded that the amendments as sought by the Council could be made without injustice and were both necessary and desirable to properly reflect the nature of the case.
4. Mr Grant, on behalf of the Registrant applied to adduce a total of seventeen witness statements from patients treated by the Registrant. In so doing he sought to demonstrate that it was the Registrant's habitual practice to treat patients according to a particular osteopathic method. The method involved patients being treated in a number of different positions. Mr Grant submitted that the evidence demonstrated that the account given by Patient A and Ms B thereby lacked credibility, in so far as they asserted within written statements that Patient A had been treated in a face down position on the treatment table throughout the consultation.
5. On behalf of the Council Mr Gillespie resisted the application. Whilst he accepted the Committee had a wide discretion as to the material it received in evidence Mr Gillespie submitted that the evidence was tangential, and could only possibly go to the issue of credit or credibility. It did not touch on the central issues in the case. He submitted that the general approach in such circumstances, both in the Civil and Criminal jurisdictions was that the answer as to a question of credibility was generally speaking final and did not necessitate, nor should it trigger further litigation of the issue. In any event, he did not contend that the Registrant's habitual method of treatment involved placing patients in any number of positions. He contended that in this case, the Registrant did not necessarily follow his habitual process. Further, he submitted that the matter could properly be addressed by the Committee receiving the evidence of the witnesses in the room at the time, and if it considered it necessary determining the issue based upon the best available evidence, namely that of the witnesses to events.

6. The Committee received and accepted the advice of the Legal Assessor. It was taken to Rules 56 - 59 of the Rules which govern evidence. It was advised that its discretion to admit evidence was a wide one, and indeed wider than in many jurisdictions. However, the discretion should be exercised bearing in mind the relevance of the material in question. It was advised that the issue went solely to the credibility of the account given by the Council's witnesses. The Committee should consider carefully whether evidence as to the habitual practice of the Registrant was relevant to what occurred in the room at the time, particularly given that the Council did not seek to take issue with the Registrant's habitual practice, but rather with what occurred in the specific appointment in question. In that context the Committee should consider whether it was relevant to its determination of the Allegation to admit into evidence a number of statements from other patients that simply reinforced a point that was not in issue between the parties.
7. The Committee carefully considered whether the material in question was relevant to the questions it would or might have to answer in determining the Allegation. It determined that the issue was a discreet and specific one that went to an agreed issue in the case, namely that the Registrant's habitual practice was informed by a method of osteopathy and that he invariably treated patients in a specific manner. It considered that in those circumstances the evidence was not relevant to any matter in issue between the parties and would not be capable of assisting it in determining any of the Particulars in this case. The Committee therefore determined not to admit the further evidence.

Background

8. On 25 May 2018 Patient A attended the Registrant's practice in Tunbridge Wells for treatment. She was accompanied by her mother, Ms B, and her sister, who was also to be treated. Patient A went into the treatment room with Ms B acting as a chaperone, whilst her sister remained in the waiting area.
9. During the course of treating Patient A the Registrant had a conversation with Ms B about Brexit. It was alleged by the Council that during the conversation the Registrant became at points angry and addressed Ms B in an unprofessional and inappropriate manner, in light of his professional relationship with her and her daughter. The Registrant accepted there was a conversation between him and Ms B regarding Brexit but did not accept that he became aggressive. In the course of the proceedings he accepted that the conversation was inappropriate and unprofessional. He did not accept using words to the effect of those set out in Appendix 1 to the Allegation.
10. Following the appointment, Ms B made a complaint to the Council, dated 5 July 2018, regarding the Registrant's behaviour in the appointment.

The Committee's Findings On The Facts

11. At the outset of proceedings the Registrant admitted Particular 1 of the Allegation.
12. In light of the admission and pursuant to Rule 27(1) of the General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000 ("The Rules") the Committee found the facts as alleged at Particular 1 proved.

Particulars 2 and 3

13. The Committee next considered the outstanding Particulars of the Allegation namely 2 and 3.

Evidence

14. The Committee heard oral evidence from Patient A, who was 16 at the time of the incident, but 17 when she appeared before the Committee. She adopted her witness statement. She went on to explain that she had been treated by the Registrant for the second time on 25 May 2018 following a period of back pain exacerbated her posture whilst sitting her GCSEs. The first occasion had been some weeks before and had been unremarkable. When asked about her recollection Patient A accepted that she had not made a contemporaneous note, but that she had contributed to a degree to the note made by her mother Ms B.
15. At the beginning of the appointment Patient A confirmed that her mother came into the room with her - having asked Mr Shaw if she should. Patient A went into the treatment room and initially sat on a chair whilst the Registrant had a discussion with her about her presenting condition. She then removed her top and lay on the treatment table. She recalled that she lay face down for the majority of the treatment but accepted she may at points have been face up. The treatment session took some 30 minutes as a whole. Patient A recounted the conversation she heard between the Registrant and her mother, Ms B. Save for a brief 2 - 3 minute pause roughly half way through the treatment she explained that the conversation went on throughout. Patient A characterised the conversation as one sided, with the Registrant doing most of the talking and asking the odd question. Specifically Patient A heard him ask Ms B if she was a Brexiteer and if she was a Conservative. During the treatment she recalled him calling Ms B a bigot and a capitalist and using the word racist on

one occasion. She recalled the Registrant saying he hated England for 'kicking out foreigners,' and saying that England was a horrendous place to live.

16. Patient A explained that she had felt scared and uncomfortable about the situation, given that the Registrant was becoming verbally aggressive and she felt such aggression might in some way manifest itself in his physical manipulation of her. In fact, it did not.
17. The Committee next heard evidence from Ms B. She too adopted her witness statement. She explained that her initial complaint and accompanying email had been prepared from, and was an amplification of, a contemporaneous handwritten note that she had made on the evening immediately following the appointment, but that the handwritten note itself had since been destroyed. Ms B explained that when her daughter's appointment started the Registrant asked Ms B to accompany Patient A. He then conducted a brief examination before Patient A removed her top and lay on the treatment table. At that point the Registrant began a conversation about Brexit. Initially his tone was normal but as the conversation went on he became more shrill, but at no point was he shouting. In contrast she explained she remained monotone in an effort to stop the conversation and in order not to rile him further, given he was in the process of treating her daughter and that the conversation was causing him obvious agitation. Ms B's evidence in common with that of Patient A was that the conversation lasted almost the entirety of the 20 - 30 minute appointment save for a 2 - 3 minute pause half way through.
18. Ms B went on to explain that she had booked a double appointment for both her daughters, but immediately following Patient A's appointment, Ms B cancelled the second appointment. Ms B went on to explain that at the start of the conversation the Registrant had asked her if she voted for Brexit and she had confirmed she did. When asked, she also confirmed she was a Conservative voter. Whilst Ms B was unable to recall the precise order of the conversation, she did recall the Registrant calling her a capitalist, an idiot and a bigot and on two separate occasions during the conversation he called her a racist.
19. At one point Ms B asked the Registrant if he spoke to all his patients 'like this,' to which the Registrant replied that Ms B was not his patient.
20. Ms B explained that she was concerned for her daughter given that the Registrant was so irate, and might hurt Patient A physically. However, she accepted that no harm was in fact caused to Patient A. When asked about the overall tenor of the conversation Ms B explained she felt that not only was she being attacked but so too was England, and that the Registrant was being extremely rude about the UK. She accepted saying to the Registrant that if he disliked England so much then 'why didn't he return to his native South Africa.'

When challenged as to why she did not leave the treatment room with her daughter she explained that given the pain her daughter had been experiencing, it was important she received treatment.

21. Ms B saw the Registrant later that same day whilst the latter was in his car and Ms B was crossing the road. He gave her what she characterised as a 'death stare' or at least a look of arrogance.
22. The Committee next heard evidence from the Registrant. He too adopted his witness statement. He then went on to accept that having a conversation with Ms B about Brexit and her political views, was inappropriate and unprofessional in the context. However he explained that he did not accept he used the words Ms B had contended were used.
23. He explained that he had asked about Brexit because of the headline in the Daily Mail, the newspaper he had been reading when Patient A and Ms B first arrived in the practice, and the newspaper Ms B had then take with her into the treatment room. The Registrant accepted that Brexit was a divisive issue but that his intention in raising the subject was to make conversation with Ms B and try to make a connection with her, although he accepted that the subject matter was ill judged. The Registrant explained that he asked Ms B what she made of Brexit, Ms B had responded by saying she had voted for Brexit and couldn't wait to see 'all the foreigners leave the Country.' The Registrant explained that he felt implicated by the statement, and felt vulnerable and devalued, as he was originally from South Africa, and might be considered a 'foreigner.' The Registrant went on to explain that he had addressed Ms B on the comment because he felt it was racially discriminating and had said something to that effect.
24. The Registrant explained that he later asked Ms B if she had thought about how removing foreigners would affect the UK, and that the point of his questioning was to try to find out what was behind her thinking. He asked Ms B if she was a Conservative voter because he wanted to know whether she had an inclusive belief or ideology that foreigners should be respected, appreciated and valued in the UK.
25. The Registrant further explained that he was not seeking to challenge Ms B but to understand her views better. At no point did he call her any names. He suggested that neither Ms B's account, nor that of Patient A was accurate. The whole incident had, in the Registrant's view, been misconstrued and wrongly reported by both Patient A and Ms B. There was nothing that occurred in the his demeanour or behaviour that could, in the Registrant's view, have led Patient A to fear she would be hurt.

26. The Registrant went on to explain that he considered Ms B's complaint to the Council was motivated by Patient A's feelings of trauma and Ms B's desire to prohibit the Registrant from practising because he is a 'foreigner.'
27. In addition to the oral evidence the Council read two statements made by the Registrant's receptionist Veronica Oliver, as well as a significant amount of other material adduced on behalf of both the Council and the Registrant.

Submissions of the Parties

28. On behalf of the Council, Mr Gillespie submitted that it was beyond dispute that something had happened to cause Ms B to cancel her second appointment, that caused her to tell the receptionist she'd been abused and that caused her to complain to the Council.
29. Mr Gillespie further submitted that the Committee could and should accept the evidence of Ms B supported as it was by a description in the immediate aftermath of being verbally abused by the Registrant. Her account was bolstered and confirmed by Patient A, and was, on the basis of the evidence the only credible account explaining why Ms B behaved as she did immediately after Patient A's appointment, as borne out by the statements of the receptionist Ms Oliver.
30. Mr Gillespie further submitted that both Patient A and Ms B were careful witnesses prepared to make sensible concessions. Neither was attempting to denigrate the Registrant at every turn. They were firm and consistent in their accounts in although they did not agree on every single detail, which lent credence to their accounts.
31. Mr Gillespie reminded the Committee that the substance of the views expressed was not a matter for debate in this hearing. Further, he submitted that the views the Registrant expressed may not necessarily be uncommon but that they have no place in the consultation room. Mr Gillespie submitted that even on his own account it was difficult to see how the Registrant's comments were not a challenge to Ms B's views and that in the circumstances the Committee could be satisfied that Particular 2 had been made out to the required standard.
32. Mr Gillespie further submitted that Patient A had explained how she was made to feel by the Registrant's aggressive approach to conversation and that her evidence in that regard was clear and consistent. In the circumstances he submitted the Committee should also find Particular 3 proved.
33. On behalf of the Registrant Mr Grant submitted that there were clear and manifest inconsistencies in the evidence given by Ms B. In particular in her oral

evidence Ms B had conceded the Registrant had at no point shouted or screamed, whilst in her original complaint she had asserted the Registrant had screamed at her to leave.

34. Mr Grant further submitted that Ms Oliver had heard no raised voices, nor had she noted anything in Patient A's demeanour immediately after the appointment that suggested she was in fear.
35. Mr Grant further submitted that the Registrant had been candid and honest in his account, had accepted his shortcomings in having the conversation in the first place, and had apologised for doing so. He admitted he did ask her about Conservatism. He accepted that racism did come up but in a different manner from that suggested by the Council.
36. Mr Grant sought to distinguish questioning from challenging and submitted that the Registrant was questioning Ms B in a Socratic manner, seeking to understand and educate her, not challenge her.
37. Mr Grant further submitted that if Ms B had been truly worried about her daughter in the situation that had arisen, she would have mentioned it in her initial complaint, yet she did not.
38. In summation, Mr Grant submitted that there was insufficiently reliable evidence for the Committee to conclude the Registrant had 'challenged' Ms B and used the language she suggested had been used. There was no evidence to support the contention that Patient A was put in fear and nothing the Registrant had done could have engendered such fear. Further, the Registrant's account was credible and reliable and should be preferred.

Determination on the Facts

39. The Committee received and accepted the advice of the Legal Assessor. The Committee was advised that the Council bears the burden of proof throughout and the standard of proof is the civil standard namely the balance of probabilities. The Committee was advised to look carefully at the wording of the Allegation and each Particular in turn, in order to see precisely what the Council had charged and therefore what it had to prove.
40. The Committee first considered the oral evidence it heard from Patient A. It considered Patient A to be an honest, credible and reliable witness. She was clear in specifics, but prepared to concede when she was unable to recall details. She was careful and discriminating about how she had been made to feel and her explanations as regards any lack of clarity in her evidence were compelling.

41. The Committee next considered the evidence it had heard from Ms B. It considered her to be an honest witness, who gave clear and reasonable answers. She too was prepared to concede those points where her memory was indistinct. However, the Committee noted that Ms B did become animated at times, and had a tendency to intemperate language that was open to interpretation. Whilst this did not render her evidence incredible, it did lead to some ambiguity and potentially a limited degree of unreliability. The Committee noted that she was at times inconsistent between her written accounts and her oral evidence, in particular in relation to the issue of whether the Registrant raised his voice. Overall the Committee concluded that she was seeking to assist it in reaching a fair determination and was in general terms a credible witness.
42. The Committee next considered the Registrant's evidence. It considered him to be a thoughtful and considered witness, who was prepared to accept his mistakes as he characterised them. Whilst the Committee did not consider he was seeking to mislead, it did consider his answers to be, at times defensive and his explanations to be at times a little artful and self-serving, which conditioned the Committee's assessment of his credibility and reliability. When challenged the Registrant's responses were vehement and determined, and it was clear he felt passionately about the issues at hand.

Particular 2 - Found Proved

43. The Committee then turned to the specific Particulars that remained in dispute. In the first place it considered Particular 2. It noted that the Registrant accepted that he had not communicated with Ms B in an appropriate and/or professional manner, and that he accepted having questioned her. The Committee was content that those elements of the Particular were borne out by the evidence to the required standard. The Committee next turned its attention to the list in Appendix 1 and found as follows:

"Are you a Brexiteer?" - Found Proved

44. The Committee noted that both Patient A and Ms B gave consistent accounts of the Registrant beginning the conversation in these terms. In his witness statement and in his oral evidence the Registrant accepted he asked Ms B about the issue of Brexit, with words to the effect of "Ah Brexit. What do you make of Brexit?" The Committee considered that on his own case this amounted to an invitation for Ms B to indicate how she had voted in the EU referendum. The Committee therefore determined that whether the Registrant used the precise phrase "are you a Brexiteer?" or the phrase he himself recalled or something

in between the two was not crucial. On the balance of probabilities the Registrant had sought to establish Ms B's voting record with words to the effect of "Are you a Brexiteer?" The Committee therefore found Appendix 1 a. proved.

"[You are] a bigot" - Found Proved

45. The Committee noted that Patient A had confirmed this was said both in her written evidence and in her oral evidence. Ms B noted the same in her initial complaint email, that itself was prepared with the assistance of her contemporaneous note. The Registrant denied ever using the words. The Committee determined that the phrase or words to the effect had been consistent with the tenor of the conversation that had developed between Ms B and the Registrant. The Committee preferred the evidence of Patient A and Ms B in this regard and therefore determined that on the balance of probabilities Appendix 1 b. was proved.

"[You are] a capitalist" - Found Proved

46. The Committee noted the evidence of Patient A and Ms B both of whom said the word capitalist was used, Patient A remarking that at the time it stood out to her as she did not know what it meant. The Registrant denied using the word as it was not connected to the subject of the conversation, namely Brexit. The Committee considered the word was part of the context of the Registrant's question to Ms B as to whether she was a Conservative or not, a matter that was broadly conceded by the Registrant. In any event the Committee determined that Patient A's evidence in this regard was clear and compelling and preferred it to the account given by the Registrant. It therefore determined that Appendix 1 c. was proved.

"[You are] a racist" - Found Proved

47. The Committee noted that Patient A recalled the Registrant calling Ms B a racist on one occasion, and Ms B herself recalled it happening on two occasions. The Registrant accepted that he had said in answer to Ms B's comments about foreigners that "it is a racially discriminatory attitude you have there." The Committee considered that to construe the Registrant's admitted comments as anything other than an accusation of racism was illusory. It therefore concluded that even on his own account the Registrant had used words to the effect of accusing Ms B of being a racist or of holding racist views. It therefore determined that Appendix 1 d. was proved.

On an occasion other than that specified in(d), "[You are] a racist" - Found Not Proved

48. The Committee noted the inconsistency between the evidence of Patient A and Ms B in this regard. Patient A heard the word racist used on one occasion, Ms B asserted it was used twice. The Committee noted therefore that there was an inconsistency at the heart of the Council's case. On that basis it determined that the Council had failed to satisfy it that on the balance of probabilities the Registrant had used words to the effect of 'you are a racist' on a second occasion. Appendix 1 e is therefore not proved.

"[You are] an idiot as is everyone else in the UK who voted to leave the EU" - Found Not Proved

49. The Committee noted Patient A had no recollection of the word idiot being used by the Registrant. It noted that Ms B asserted it was used, whilst the Registrant denied he called Ms B an idiot. In light of the inconsistency in the Council's evidence the Committee determined that it had not established on the balance of probabilities that the Registrant referred to Ms B and all leave voters as idiots or words to that effect. It therefore found Appendix 1 f. not proved.

"I hate England for kicking people out" - Found Proved

50. The Committee noted that Patient A recalled the Registrant making a remark to the effect of that at Appendix 1g. It also noted Ms B recalled a similar statement being made by the Registrant. The Committee noted that in his witness statement the Registrant accepted that there had been a conversation regarding his returning to South Africa. The Committee determined that this added credence to the recollection of Patient A, and that the topic of disliking England was consistent with Ms B suggesting the Registrant might wish to return to South Africa if he so disliked it. Whilst the Registrant did not accept saying anything to the effect of hating England for kicking people out in this regard the Committee preferred the evidence of Patient A and Ms B and therefore determined that on the balance of probabilities Appendix 1g was proved.

"I presume you are a Conservative as well?" - Found Proved

51. The Committee considered that the evidence it had received from the Registrant himself amounted to an acceptance that he had asked Ms B about her political allegiance and how she had voted at the last election. In the circumstances it considered that such a question amounted to words to the effect of those particularised at Appendix 1h. The Committee therefore found this proved.

"You (Ms B) should get out" - Found Proved

52. In both his written and oral evidence the Registrant accepted making a comment that he had intended would be a joke. On his account Ms B had said words to the effect that if Jeremy Corbyn won the next election she would leave England. The Registrant responded "Let's hope he does then." Whatever the Registrant's intention, the effect of this remark was to imply that Ms B should 'get out of the country.' On his own account therefore the Committee determined that the Registrant had used words to the effect of those at Appendix 1i. The Committee therefore found this proved.

"The UK is a horrendous place to live as it is a country in debt and nobody wishes to live here" - Found Proved

53. The Committee noted that Patient A recalled the first part of the quote at Appendix 1j. but did not recall the second. Ms B recalls the entirety being said. The Registrant accepts a conversation about his return to South Africa did occur and that added support to the contention that he said something regarding his disquiet about the UK itself. Whilst the Committee was concerned as to the inconsistency between Patient A and Ms B it considered this could be attributed to the passage of time and differences of recollection. In this regard it therefore preferred the evidence given by Ms B which was both clear and consistent. The evidence was that the Registrant's remarks resulted in Ms B feeling that not only she, but the UK, was being attacked. The Committee therefore found Appendix 1j. proved.

54. The Committee next turned its attention to the outstanding elements of the stem of Particular 2 and specifically whether those elements found proved in Appendix 1 could be said to have challenged and questioned Ms B's political views.

55. The Committee had little doubt that the Registrant, in using words to the effect of those found proved at Appendix 1 was challenging and questioning Ms B's political views. The Committee noted that the Registrant felt it was his duty "to counter discriminatory remarks" as he perceived them to be, and that in those circumstances it could not properly be argued that he had done anything other than challenge Ms B's political views. The Committee further noted that the Registrant accepted in his witness statement that his words "were addressing her attitude." The Committee concluded that addressing and countering someone's political views necessarily required challenging and questioning those views, and that the Registrant had done exactly that in behaving as he did. The Committee therefore found Particular 2 proved along with Appendix 1 a - d and g - j.

Particular 3 - Found Proved

56. The Committee paid close regard to the evidence it heard and read from Patient A. It considered she was clear and compelling in terms of recounting how she had felt during the conversation between the Registrant and Ms B. It paid heed to her age at the time, she being 16, which meant that she was potentially more vulnerable than an adult patient.
57. The Committee noted that the Registrant had been described by Patient A and Ms B as "irate" and "riled" and considered that Patient A's feelings of fear were a direct result of the Registrant's conversation with Ms B. The Committee accepted that the Registrant may not have been aware of the effects of his behaviour on Patient A, and indeed the Committee accepted that in fact Patient A came to no harm. However it determined that Patient A had been put in fear of being hurt during treatment by the Registrant's conduct in the appointment. It therefore found Particular 3 proved.

Unacceptable Professional Conduct ("UPC")

58. The Committee next considered whether the Particulars found proved amounted to UPC.
59. On behalf of the Council, Mr Gillespie submitted that the facts found proved amounted to breaches of paragraphs A1, D4 and D17 of the Osteopathic Practice Standards 2018 ("OPS").
60. Mr Gillespie further submitted that, whilst not every falling short of the OPS amounted to UPC, in the circumstances of this case the seriousness of the conduct exhibited by the Registrant would lead to a degree of moral opprobrium such that his conduct did amount to UPC. He said so for six reasons. Firstly, the Registrant revealed his personal and political views when he had no reason to, and when to do so would be inappropriate and unprofessional. Secondly, he challenged Ms B's views. Mr Gillespie submitted that even if Ms B did make a racist remark as the Registrant maintained, he did not have any right to challenge a patient's views or the views of a patient's chaperone in a professional context. Thirdly, he challenged Ms B in an offensive manner. Whether he intended that or not, his behaviour was offensive and he did offend. Fourthly, the Registrant's conduct had a negative effect on Patient A who was caused stress. Fifthly, this was not just a single comment but a prolonged interaction. Finally, Ms B's second daughter went without treatment, and whilst not a major factor, Mr Gillespie submitted that a patient should not be deprived of treatment as a result of the conduct of an osteopath.
61. In the circumstances he therefore submitted that the conduct found proved could amount to no less than UPC in the circumstances.

62. On behalf of the Registrant, Mr Grant submitted that in light of the Committee's findings on the facts, the Registrant's only identified failing was in having an inappropriate conversation with Patient A's mother. He submitted that the Committee had not reached a conclusion on how long the conduct lasted, but that it could have been as brief as 5 - 10 minutes as the Registrant stated, and occurred on a single occasion. Mr Grant conceded that the Registrant had breached a number of the Standards of the OPS, in particular A1, C4, D4 (with sub-para. 3 arising) and D17. However, he submitted that those breaches did not in and of themselves amount to UPC, and in the circumstances were sufficiently minor so as not to amount to UPC.
63. Mr Grant further submitted there had been no clinical implications, that the Registrant had admitted acting unprofessionally and inappropriately from the outset, and that the treatment had itself been of a good standard. Mr Grant further submitted that the Committee should not judge the Registrant by a superlative standard but by the standards of the ordinary osteopath.
64. In the circumstances Mr Grant submitted that the Registrant's conduct would not adversely affect the public confidence in the profession of osteopathy, to the extent that it could be described as causing moral opprobrium. Rather, this was just an unfortunate sequence of events and a clash of views. He therefore submitted that the Committee should find that the facts as found proved did not amount to UPC, but acknowledged this was a matter entirely at the Committee's discretion.

Determination on UPC

65. The Committee received and accepted the advice of the Legal Assessor. It was advised that there was no burden or standard of proof in determining UPC. This was a matter for the judgment of the Committee. For a finding of UPC to be made, the facts found proved must amount to a serious falling short of the standards required of an osteopath. The Committee was reminded of the case of *Spencer v GOsC* [2012] EWHC 3147 (Admin) in which it was said for a finding of UPC to be made the conduct found proved must be worthy of the moral opprobrium a finding of UPC would bring.
66. The Committee was also referred to the case of *Shaw v GOsC* [2015] EWHC 2721 (Admin) and advised that in considering UPC the bar was not so high as to render its lowest form of sanction redundant.
67. The Committee first considered the OPS in its entirety, including the Standards it was referred to by the Council and the Registrant. It concluded that in light of its determination, the Registrant's conduct did amount to a departure from Standards A1; A2, in particular sub-para. 4; C4; D4, in particular sub-para. 3; and D17, sub para. 1. However, the Committee reminded itself that not every

falling short of the standards amounts to UPC. The Committee bore in mind its over-arching obligation to uphold the public interest which includes the protection of patients, the maintenance of proper standards and sustaining the reputation of the profession.

68. Therefore, the Committee next asked itself whether the conduct found proved was of sufficient seriousness to amount to UPC. The Committee did not consider the length of time the conversation took to be determinative of the issue of UPC. The conversation was clearly inappropriate and unprofessional regardless of whether it lasted 5 - 10 minutes or 20 - 30 minutes.
69. The Committee noted that the conversation the Registrant engaged in took place within the practice consulting room during treatment. It had no clinical justification; was tendentious in tone; and had the potential to have distracted the Registrant's attention from treating Patient A. Whatever his motivations, the Registrant's conduct was self-regarding. He gave vehement expression to his own intense feelings of frustration and concern about matters of politics and public policy. He did so in circumstances in which his primary concern should have been to demonstrably give priority to the welfare and care of Patient A. The Committee considered this abrogation of his central duty marked a serious departure from the minimum acceptable standard expected of an osteopath. Such a departure did, in the judgment of the Committee, damage the reputation of the profession.
70. Patient A was herself a 16 year old girl who was put in fear by the Registrant's conduct. The Committee accepted that the treatment was, in fact, successful, as she fairly acknowledged, and Patient A was in no way harmed. Nonetheless, the Registrant's disregard for his patient's feelings elevated the nature and extent of his failings. The Registrant lost professional focus and self-command. The Committee determined that in the totality his conduct did cross the threshold and amounted to UPC.
71. The Committee therefore determined that the Allegation of UPC was found proved.

Sanction

72. Having found the Allegation of UPC proved the Committee turned to consider the necessary and proportionate sanction.
73. The Committee received additional material from both parties. There had been no previous intimation of their intention to present this. The Council provided evidence of the Registrant's disciplinary history, relating to a previous finding in 2015, in which the Registrant's communication with a patient was the subject of criticism. The case resulted in the Registrant receiving an admonishment.

On behalf of the Registrant, Mr Grant provided a significant number of testimonials, all attesting favourably to the Registrant's character and professionalism. He also provided a further statement from the Registrant and statements relating to the Registrant's method of treating patients. The Committee took time to read all the material before it.

74. The Committee heard further oral evidence from the Registrant. He explained that in light of the previous finding against him in 2015, he undertook 18 months of psycho-therapy to unpack the trauma of that case. He explained that it helped him establish the pathways between thoughts and feelings and vice versa and enabled him to be more 'conscious, and able to respond more clearly and appropriately to the public at large.'
75. He went on to inform the Committee about a more recent course he had undertaken since the events giving rise to the present case. He also described the development work he undertaken online and through The Marshall Rosenberg programme on non-violent communications.
76. The Registrant distinguished the previous case from the present case, in that the previous case took place in the clinical setting with a patient. The present case had arisen after what he considered to be a provocative remark was made to him by Ms B about 'foreigners going home.' He explained this had been deeply offensive to him and that he was extremely sensitive to it, having grown up in South Africa, and experiencing the divisiveness of racism. Additionally, he had always had a deep-seated need to feel that he 'belonged,' and the comment had seemed to him at the time to be like a personal attack. He stressed his remorse and apologies for the events that had occurred, even though he could not accept he had spoken to Ms B in precisely the way found proved. He went on to explain that suspension for any length of time would be the end of his clinic and career.
77. The Registrant detailed the effect the proceedings had had on him, both in 2015 and 2018 and his deep disappointment in his own behaviour. In particular he explained that he would never intentionally disgrace his family as they were his life and would never deliberately damage his profession, as osteopathy was his vocation.
78. If faced with the same situation today he explained he would be far more contextually aware and would stop any conversation on a divisive or controversial topic immediately. The Registrant did not accept that his conduct was the result of a personality flaw, but rather characterised it as a cultural difference in his upbringing as a native of South Africa. He accepted that he could be direct in manner but never intended to be abrasive.

79. Following protracted evidence as to the coping mechanisms he had been able to develop following the psychotherapy course and Marshall Rosenberg programme, the Registrant explained that he had learnt to deal with issues that threatened to 'disconnect' him from others by withholding comment, waiting until he was outside the professional environment, and speaking more openly to colleagues, friends or family members about them.

Submissions

80. Mr Gillespie on behalf of the GOsC made no positive submission as to the specific sanction the Committee should impose, but noted that having found UPC proved the Committee was required to impose a sanction. He submitted that the Committee's core function was to protect the public interest and in this case, the primary areas of the public interest that arose as regards the Registrant's conduct were public confidence in the profession of osteopathy and the need to uphold and maintain standards in the profession. However, Mr Gillespie submitted that the question of patient safety and protecting the public was also engaged to an extent, in light of the fear Patient A had felt during treatment, and the Registrant's acknowledgement that the conversation had the potential to distract him from the treatment he was providing.

81. Mr Gillespie went on to submit the following general points:

- (a) The Registrant did not fully accept the Committee's findings. Whilst that was not in and of itself an aggravating feature and should not to be held against him, it might raise a query into the level of his insight;
- (b) The Registrant's previous disciplinary finding in 2015 related to communication, as did this incident. The Registrant's attempts to remediate through psychotherapy in 2015 - 2018 had clearly had limited success;
- (c) Whilst the psychotherapy and the Marshall Rosenberg programme the Registrant had undertaken might be relevant to the underlying issues in both cases, the Registrant demonstrated only limited learning from them, and demonstrated only limited development of coping skills as a result. In consequence the Committee may not be comforted that the same or a similar incident would not occur again in future;
- (d) The Registrant termed his issue a cultural one, as a result of what he saw as being the typical directness of South Africans, which was 'in his blood.' If so could he ever truly remediate? Might the issue arise instead from a personality flaw which, on occasion, allowed his emotions to get the better of him or lead to him choosing the wrong method to interact with people;

- (e) The previous case before the Committee represented an aggravating feature not simply because it existed but also because of the similarities - the underlying problematic feature common to both being the question of communication;
- (f) Personal mitigation and the personal effect of a particular course is relevant but has less relevance than in the criminal jurisdiction for example. Membership of a profession carries benefits and privileges, but that comes with responsibility that cannot be ignored. In general terms where there is a conflict between the interests of the Registrant on the one hand and the profession on the other, the public interest will invariably come first;
- (g) Being a professional osteopath involves dealing with the public, some of whom might be found to be obnoxious. However, it is not the professional's place to remonstrate with them.

82. Mr Gillespie then took the Committee through the relevant parts of the Hearings and Sanctions Guidance ('the Guidance') effective from January 2018, in particular highlighting the principle of proportionality and the effect of insight and remediation on the Committee's judgment. In conclusion he submitted that it was a matter for the Committee to judge the appropriate level of sanction taking into account all the Registrant's circumstances, and any aggravating and mitigating factors it considered relevant to the identified failings.

83. On behalf the Registrant, Mr Grant submitted that the appropriate and proportionate sanction was one of admonishment. In so saying, Mr Grant accepted that the Registrant's previous disciplinary finding had a bearing on the present case. He acknowledged that the psychotherapy treatment the Registrant had undertaken had not been completely effective. However, the principal effect had been positive in that the Registrant had sought to tackle his failings and there had been no repetition of the issues between 2015 and 2018. It was of course a source of deep regret to all that a further incident had occurred, not least to the Registrant. The Registrant's contrition and disappointment at his own behaviour was, submitted Mr Grant, genuine and honest.

84. Mr Grant further submitted that there was no suggestion in either instance that the Registrant had set out to be deliberately rude, abrupt or brusque, nor was he trying to cause harm or offence.

85. Mr Grant noted that the appellate judgment upholding the 2015 findings, specifically found that the Registrant's behaviour caused no danger to the

public. Mr Grant urged the Committee to accept that this case raised no issue of danger either.

86. In addressing the previous case, Mr Grant accepted that it related to communication as did the present case, but sought to distinguish the two. He submitted that the previous case involved patient interaction, whereas the present case involved interaction with the chaperone about unrelated and non clinical matters. It was borne out of the Registrant's own sensitivity about feeling he had been discriminated against, and a deep-seated wish to 'belong.'
87. Mr Grant submitted that a sanction of suspension or removal would have a profound and serious effect, not just on the Registrant but on those he employed, on the continuity of patient care and on his family.
88. In terms of remediation and insight, Mr Grant submitted that the Registrant had shown significant insight and had done much to remediate the position.
89. In addressing the possibility of repetition, Mr Grant submitted that the Registrant was a contemplative man who had learnt to take his personal emotions away from the professional context and channel them into engagement with colleagues or family.
90. In conclusion Mr Grant submitted that the Registrant had demonstrated, through a wealth of testimonials, that he was an extremely able professional. He further submitted that in 30 years of practice the Registrant had had two relatively minor incidents, and that in the circumstances the proportionate sanction was one of admonishment.

Determination on Sanction

91. The Committee received and accepted the advice of the Legal Assessor. The Committee was advised that, as with UPC, in considering sanction there is no burden or standard of proof. The question of sanction is a matter for the Committee's judgment. The Committee was advised that having found UPC proved, it was required to impose a sanction. It was advised that the purpose of sanctions is not to be punitive but to protect patients and the public interest in the wider sense, namely to maintain public confidence in the profession of osteopathy, and to declare and uphold standards.
92. The Committee was reminded that in deciding upon sanction it should have regard to the Guidance, and apply the principle of proportionality, weighing the interests of the public with those of the practitioner and taking the minimum action necessary to protect the public and the wider public interest.

93. The Committee began by considering the level of insight and remediation the Registrant had demonstrated. The Committee noted his evidence in that regard and determined that he had demonstrated considerable insight into what caused his behaviour. It noted the efforts he had made to remediate and ensure that further occurrences of the same kind could not occur in future.
94. The Committee noted his contrition and remorse for what had happened, particularly in light of the previous disciplinary findings against him. The Committee was concerned by the previous finding and carefully considered whether the two findings together demonstrated a pattern of behaviour that might tend to suggest repetition was made more likely than if the Registrant had no previous history. Whilst the Committee accepted that both related, in broad terms, to 'communication issues,' it noted that the underlying basis for both was materially different. In the previous case it appeared that the comments were borne out of frustration with a patient and impatience at her perceived lack of co-operation with treatment. In contrast, the present case arose out of the Registrant's deep seated and strongly held beliefs, which were offended by comments made to him by Ms B. To that limited extent the Committee concluded that the Registrant was subject to some unintended provocation, resulting from Ms B's comment that she could not wait for 'all the foreigners to go home.'
95. The Registrant's behaviour, including his exasperation and asperity, could not be excused by what was said, but it could be explained. The explanation for it was, in the judgment of the Committee, materially different from the explanation for the conduct exhibited in the 2015 case.
96. In light of the distinction between the two instances and the remediation the Registrant had undertaken, which the Committee considered to be an ongoing and organic process, it was satisfied that a repetition of the conduct exhibited in the present case was highly unlikely.
97. The Committee next referred to the Guidance. In so doing, it reminded itself that it was guidance only and not to be slavishly followed. In particular the Committee considered the aggravating and mitigating factors listed at paragraph 33. It noted that there was a previous disciplinary finding, but that otherwise there were no other specified aggravating factors present, nor could the Committee identify any of its own volition.
98. In terms of mitigating factors, the Committee noted that the Registrant had undertaken remedial action; had shown remorse from the outset; had offered apology for what had occurred (indeed had done so from June 2018); and had done a good deal to prevent any possibility of repetition. It noted that no actual harm had been caused to a patient, but accepted that when distracted as the

Registrant had been, there will always be the potential for harm to be caused. Nonetheless the treatment administered had been effective and was not the subject of criticism by the patient, Ms B, or the Council.

99. The Committee also noted that for twenty years before 2015 the Registrant had had an unblemished career. It noted that between 2015 and 2018 there had been no complaints made against him. It noted that since the events giving rise to this case there had been no further incidents. The Committee considered that in the context of his treating in the region of 2400 patients a year, the previous periods of good history were material to its considerations.
100. The Committee took account of the large number of character references it had seen, from the Registrant's colleagues and patients, which attested to the reliance placed upon him, and the esteem in which he was held within the profession. The Committee was satisfied that the Registrant readily understood the standards of communication expected of an osteopath, as set out in the OPS themselves.
101. The Committee next considered what sanction to impose.
102. The Committee approached the issue of sanction in ascending order working from least restrictive upwards. It reminded itself that the primary purpose of sanctions was to protect the public and the wider public interest.
103. In the Committee's judgment, whilst there might have been a low risk of harm to the public from the Registrant's behaviour, in light of the remediation he had undertaken, the risk of the Registrant repeating his conduct was now so low as to render the risk negligible. However, the Committee did consider the Registrant's conduct would have the effect of undermining public confidence in the profession. It further determined that in breaching the Standards (as it had found in considering the issue of UPC), there had been a manifest failure in upholding and maintaining standards in the profession. Any sanction it sought to impose would have to mark those dual elements of the wider public interest. There was no indication that the training and development the Registrant had undertaken was itself deficient. It was now for him to exercise his own professional responsibility and to apply the lessons he had learnt in practice.
104. The Committee first considered whether an admonishment would be sufficient to mark the Registrant's UPC in this case. It noted that an admonishment was the appropriate sanction in dealing with conduct towards the lower end of the spectrum. The Registrant's conduct arose out of a deeply unfortunate set of circumstances that he should have managed better. His

failure to do so was both unprofessional and inappropriate. At the time he had failed to recognise the potential effects on his patient.

105. However, the Committee determined that in light of the Registrant's background in the profession, taking his record in the round; the esteem in which he was held by colleagues; the extent and genuineness of his insight; and his efforts to remediate, the wider public interest could properly be protected by marking his conduct with a sanction of admonishment. Having so determined the Committee did not go on to consider any other sanctions.

106. The Committee therefore determined to admonish the Registrant.

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 that we have applied today.