GENERAL OSTEOPATHIC COUNCIL

PROFESSIONAL CONDUCT COMMITTEE

Case No: 673/5075

Professional Conduct Committee Hearing

DECISION

Case of:	Mr Sam Winder
Committee:	Mr Alastair Cannon (Chair) Ms Morag MacKellar (Lay) Ms Helena Greenwood (Osteopath)
Legal Assessor:	Mr Jon Whitfield QC
Representation for Council:	Mr Scott Ivill
Representation for Osteopath:	Mr Aseem Ali
Clerk to the Committee:	Ms Nyero Abboh
Date of Hearing:	18 – 20 March 2019

Summary of Decision

Stage One
Summary of Findings

1. On 11 May 2018, Patient A attended an appointment with you (the Appointment).

Admitted and found proved

2. At the Appointment, you:

(a) failed to carry out an adequate assessment of Patient A prior to providing osteopathic treatment;

Admitted and found proved

(b) applied osteopathic treatment to Patient A in an inappropriately forceful way;

Found not proved

(c) did not discontinue the osteopathic treatment to Patient A when Patient A withdrew her consent to such treatment;

Found not proved

(d) asked Patient A where she was from

Admitted and found proved

(e) told Patient A that she should have an MRI scan in India.

Found not proved

3. Your conduct as alleged at paragraph 2(d) was:

(a) not relevant to the osteopathic treatment of Patient A; and/or

Admitted and found proved

(b) culturally insensitive; and/or

Admitted and found proved

(c) inappropriate; and/or

Admitted and found proved

(d) unprofessional.

Found not proved

4. Your conduct as alleged at paragraph 2(e) was:

(a) not relevant to the osteopathic treatment of Patient A; and/or

(b) culturally insensitive; and/or

(c) inappropriate; and/or

(d) unprofessional.

Found not proved in its entirety due to the dismissal of Allegation 2(e).

5. On 16 May 2018, when Patient A called you to discuss her symptoms you were abrupt and hung up the telephone on her.

Admitted and found proved

6. Your conduct as alleged at paragraph 5 was unprofessional.

Admitted and found proved

Stage Two
Summary of Finding on UPC

The Committee determined that Allegation 2(a) which was admitted and found proved does amount to UPC

Stage Three
Summary of Finding

The Committee determined to admonish the Registrant in respect of the above finding.

Preliminary Matters

The parties and the Panel introduced themselves.

Bundles

The Chair took the parties through the documentation to ensure everyone had the same material.

Allegation and Facts

Mr Ivill, Counsel for the General Osteopathic Council (GOsC) applied to amend the allegations as set out below. Mr Ali, Solicitor for Mr Winder ("the Registrant") did not object to the amendments.

Additional wording is in red type; deleted wording is struck through.

It is alleged that you, Mr Sam Winder, are guilty of Unacceptable Professional Conduct, contrary to section 20(1)(a) of the Osteopaths Act 1993, in that:

1. On 11 May 2018, Patient A attended an appointment with you (the Appointment).

2. At the Appointment, you:
    a. failed to carry out an adequate assessment of Patient A prior to providing osteopathic treatment;
    b. applied osteopathic treatment to Patient A in an inappropriately forceful way;
    c. did not discontinue the osteopathic treatment to Patient A when Patient A withdrew her consent to such treatment; ~~failed to obtain consent prior to providing osteopathic treatment~~;
    d. ~~did not discontinue the osteopathic treatment to Patient A when Patient A asked you to do so as she was in pain;~~
    asked Patient A where she was from
    e. told Patient A that she should have an MRI scan in India. ~~which Patient A considered inappropriate and offensive~~.

3. Your conduct as alleged at paragraph 2(d) was:
    a. not relevant to the osteopathic treatment of Patient A; and/or
    b. culturally insensitive; and/or
    c. inappropriate; and/or

d. unprofessional.

4. Your conduct as alleged at paragraph 2(e) was:
   a. not relevant to the osteopathic treatment of Patient A; and/or
   b. culturally insensitive; and/or
   c. inappropriate; and/or
   d. unprofessional.

5. On 16 May 2018, when Patient A called you to discuss her symptoms you were abrupt and hung up the telephone on her.

6. Your conduct as alleged at paragraph 5 was unprofessional.

Admissions

The amended allegations were read out in full at the commencement of proceedings. The Registrant made a number of admissions which were found proved as shown in bold below.

1. On 11 May 2018, Patient A attended an appointment with you (the Appointment).

Admitted and found proved

2. At the Appointment, you:

(a) failed to carry out an adequate assessment of Patient A prior to providing osteopathic treatment;

Admitted and found proved

(b) applied osteopathic treatment to Patient A in an inappropriately forceful way;

(c) did not discontinue the osteopathic treatment to Patient A when Patient A withdrew her consent to such treatment;

(d) asked Patient A where she was from

Admitted and found proved

(e told Patient A that she should have an MRI scan in India.

3. Your conduct as alleged at paragraph 2(d) was:

(a) not relevant to the osteopathic treatment of Patient A; and/or

Admitted and found proved

(b) culturally insensitive; and/or

Admitted and found proved

(c) inappropriate; and/or

Admitted and found proved

(d) unprofessional.

4. Your conduct as alleged at paragraph 2(e) was:
    (a) not relevant to the osteopathic treatment of Patient A; and/or
    (b) culturally insensitive; and/or
    (c) inappropriate; and/or
    (d) unprofessional.

5. On 16 May 2018, when Patient A called you to discuss her symptoms you were abrupt and hung up the telephone on her.
Admitted and found proved

6. Your conduct as alleged at paragraph 5 was unprofessional.
Admitted and found proved

Determination on the Facts

1. The Committee considered the documentation, the oral evidence from Patient A and the Registrant, the written arguments and oral representations by Mr Ivill on behalf of the GOsC, and those by Mr Ali on behalf of the Registrant.

2. Whilst there were some limited technical matters to consider the case revolved around the difference in recollection and interpretation of a consultation attended by Patient A and the Registrant.

3. The Committee was mindful of its overarching duty to protect the public, the Osteopathic Practice Standards and it accepted in full the advice of the Legal Assessor.

4. Finally, the Committee was aware that at this stage of proceedings the burden of proving any allegation or disputed fact is upon the GOsC and that it must do so on the balance of probabilities.

Background and Summary

5. The Registrant has been an Osteopath for some sixteen years and at the relevant time practised at his clinic in his home in South Iver, Buckinghamshire. On 11 May 2018 Patient A attended his clinic complaining of severe pain in her lower back. Additional symptoms included a tingling sensation in her fingers. This was her first and only appointment with the Registrant.

6. It is common ground that, whilst the Registrant assessed Patient A prior to providing osteopathic treatment he failed to carry out any or any sufficient

investigation of the tingling in her fingers and as such he conceded that his assessment of Patient A was not adequate.

7. There are three principal areas of dispute in this case.

8. Firstly, it is alleged that when treating Patient A, the Registrant used an inappropriate level of force. Although it is not alleged this caused harm, it caused enough pain for her to ask him to stop. In general terms it is the GOsC's case that to cause that level of pain must have involved an inappropriate level of force.

9. Secondly it is the GOsC's case that in asking the Registrant to stop, Patient A indicated that she had withdrawn her consent to his continued treatment of her. The GOsC alleges that the Registrant disregarded her concerns and continued to treat her without her consent.

10. It is the Registrant's case that if a patient asks an osteopath to stop, it is a clear indicator that consent is or may have been withdrawn to treatment or that part of treatment. It was his case that Patient A did not make the request as alleged. The Registrant was clear that there was another time during treatment at which point he noted that Patient A indicated she was in pain and he immediately modified his treatment of her by moving on to another area of her body.

11. The third matter in dispute concerns parts of the conversation between Patient A and the Registrant. Patient A stated that she was born in England and is a British citizen. In her email to the GOsC of 24 August 2018 she makes plain her complaint, that the Registrant simply assumed she was from India. The Registrant has an interest in India. The verbal discourse between them included talk about India during which the Registrant is alleged to have made the two statements complained of. One, asking Patient A "where are you from", the assumption/insensitivity being that she is not English and two, suggesting that she "should have an MRI in India", the implied assumption/insensitivity being that as an Indian person she might be going to India where she could get an MRI cheaper than in the UK. To be clear it is not suggested the Registrant is or was racist, rather he made a wrongful assumption which he then rather tactlessly articulated.

12. The Registrant accepted that he made the first comment namely "where are you from?". He accepted it was not relevant to the osteopathic treatment of Patient A, was culturally insensitive and was inappropriate. He denied that it was unprofessional. The Registrant denied that he "told [Patient A] she should have an MRI scan in India" as alleged but, accepted that there may have been a conversation which included mention of the

advice given to another patient regarding going to India where MRI scans are cheaper.

13. It is also common ground that when Patient A contacted the Registrant for a follow-up appointment he was abrupt with her and hung-up the phone. He has accepted that such conduct was unprofessional. The Registrant's case is that he was cross and upset with himself in running out of time to prepare for his vacation. By his plea he has acknowledged that he did not treat Patient A with the care and courtesy which should have been afforded to her.

14. The Committee considered the remaining allegations that had not been admitted by the Registrant in turn.

Findings

Allegation 2

At the Appointment, you:

(b) applied osteopathic treatment to Patient A in an inappropriately forceful way;

Found not proved

(c) did not discontinue the osteopathic treatment to Patient A when Patient A withdrew her consent to such treatment;

Found not proved

(e) told Patient A that she should have an MRI scan in India.

Found not proved

Allegation 3

Your conduct as alleged at paragraph 2(d) was:

(d) unprofessional.

Found not proved

Allegation 4

Your conduct as alleged at paragraph 2(e) was:

(a) not relevant to the osteopathic treatment of Patient A; and/or
(b) culturally insensitive; and/or
(c) inappropriate; and/or
(d) unprofessional.

Found not proved in its entirety by way of dismissing Allegation 2(e)

Reasons

15. The Committee noted and agreed with the observations by both advocates that this case turned in the main on the Committee's assessment of the two witnesses. Both advocates highlighted issues that they asserted impacted upon the witnesses' reliability and credibility.

16. The Committee undertook a detailed analysis of disputed points of fact, assessing these in light of the various issues raised concerning the consistency or inconsistency of the witnesses. Having done so the Committee then considered the overall reliability and credibility of each witness.

Overall reliability

17. The Committee was satisfied that Patient A sought to give honest and clear evidence as she saw it. When she gave her account she readily stated when she could or could not recall facts or suggestions put to her. She did not appear to have any 'axe to grind' and did not over-dramatise or embellish her evidence. She did not appear to act from malice or with the intent that the Registrant be punished. For example, in respect of the complaint regarding her being asked 'where are you from' she asserted that she did not consider the Registrant to be racist.

18. The Committee next considered the Registrant. The Committee was satisfied that he too sought to give honest and accurate evidence without rancor or animosity. He conceded matters in an appropriate way, for example agreeing that a patient saying 'stop' or indicating they were in too much pain would indicate the withdrawal of consent. His answers to questions were, like hers, calm and measured. He also appeared to be remembering things as best he could. One such was the discussion concerning MRI scans. The Registrant conceded that a discussion must have occurred albeit he had no clear recollection of it in the terms complained of.

Consistency or inconsistency in the areas of dispute

19. The Committee considered that Patient A was consistent in her indication of where she felt the particular pain that caused her to ask him to stop treating her, namely she was lying on her stomach with the Registrant working on her lower back. The Committee considered whether the description in her initial handwritten complaint, that the Registrant began by "moving joints vigorously" was at odds with the above description. It concluded that it was not. It accepted Patient A's explanation that she was

not familiar with the technical terms but thought of her 'tail-bone' as being a joint in her back.

20. Concerning an MRI scan, it was plain to the Committee that this topic had been discussed. Patient A was clear about this, the Registrant could not recall it but, given the detail reported by Patient A he readily accepted that a conversation took place. The fact that this was not mentioned in Patient A's first complaint is an inconsistency, but it does not detract from the overall assessment of her evidence. Patient A, for the first time in her oral evidence, related a phone-call she made to her husband. She stated that she had expressed discomfort at the alleged comment "where are you from" rather than any mention of an MRI scan.

21. The question was thus not whether a conversation took place between Patient A and the Registrant concerning an MRI scan in India, but what it comprised and/or how it was interpreted by Patient A.

22. The next issue concerned the level of pain experienced by Patient A during treatment. She was consistent in her description of this being at the higher end of what she could bear. She was also consistent in her assertion that she had asked the Registrant to stop and in her description of how he had responded to this. In the above-mentioned call to her husband Patient A does not state that she was in extreme pain during treatment. However, the Committee did not feel that this detracted from her overall reliability and her otherwise consistent description of the pain she experienced whilst undergoing treatment.

23. Looking at the issue of consistency as regards the Registrant. The Committee distinguished between matters where there may be a lack of reliability in recall from matters where the Registrant had made statements from which he later retreated as he developed insight and thereafter he admitted. This included his initial denial in his response and statements prior to the hearing, that his assessment of Patient A was inadequate but then subsequently admitting this prior to the hearing. The Committee considered that it was important to assess whether this was an inconsistency that pointed to unreliability or, whether it pointed to insight into a failing.

24. In respect of the "where are you from" comment, the Registrant has changed his viewpoint. In his first written response to the Council he suggested this was him inquiring as to her address, but in his oral evidence he explained that this may have been him asking where her family was from due to his interest in India. By his later admission he has accepted that this was inappropriate. The context and his interest in India which became apparent in his oral evidence was, the Committee concluded relevant to

assumptions he appears to have made. The Committee concluded that, whilst his stance had shifted, this context made it plausible that such a conversation took place and his latter comment was more likely to be accurate.

25. In respect of the MRI scan the Registrant asserted that he had no clear memory of this but accepted that it must have been mentioned. He was adamant that he would not have told Patient A to go to India for an MRI scan since he had no clinical reason to do so and it was not a regular or even an occasional part of his practice to recommend an MRI although he had done so once before. At most he would first suggest an X-ray but, in this case, he did not since he was in conversation with Patient A and had not even started to examine her. The Committee concluded that it would be illogical and therefore inherently implausible for the Registrant to suggest an MRI before examining this patient.

26. The Registrant has been consistent in his recollection of where he was treating Patient A when she cried-out or groaned or flinched. He indicated this was in the area of her left shoulder and that he moved to another area and returned a little later proceeding slowly and carefully.

27. In respect of another part of the treatment the Registrant conceded he could not recall whether she was at that time on her front or back and was credible in his acceptance that it could be either.

28. Given the conflict between Patient A and the Registrant in their recollection of the area where pain was indicated (she saying the lower back, he saying the shoulder) the Committee considered the possibility of whether there were in fact two such indications of pain with each witness describing the one they find most memorable. Given their overall consistency and apparent honesty the Committee concluded that this may well be the case or alternatively, it may be that there is a misinterpretation or misremembering of what prompted the indication of pain.

29. Having assessed the witnesses' evidence in detail and overall, the Committee considered each disputed allegation bearing in mind the burden and standard of proof.

Allegation 2(b)

At the Appointment, you:

(b) applied osteopathic treatment to Patient A in an inappropriately forceful way;

Found not proved

30. The Committee first considered the meaning of the word 'inappropriately' given that the osteopathic treatment given to Patient A necessarily involved the application of some force to her body. It was not suggested that the Registrant applied wrongful or unrecognized techniques, nor was it suggested that he deliberately used excess force intending to inflict or being reckless as to the infliction of discomfort. The GOsC's case was put on the basis that in attempting to treat Patient A the Registrant applied such force as caused her excessive pain. It was the degree of pain that was said to indicate the force used was inappropriate. The Registrant was clear that he would not and did not seek to inflict pain but accepted as a principle that if a technique was applied so forcefully as to inflict pain then the degree of force would be inappropriate.

31. The case against the Registrant relied upon Patient A's subjective evaluation of her pain, if or how it changed with treatment and thereafter whether this indicated an inappropriate amount of force. The difficulty with evaluating a change in pain and thereafter inferring that this indicated the excessive/inappropriate use of force is that at the time she attended the Registrant's practice, Patient A was already in considerable pain. In treating the painful areas, the Registrant necessarily applied force to areas that were already uncomfortable. This may of itself cause pain albeit that no more than a reasonable amount of force was being used.

32. Patient A alluded to a number of clicks and cracks from the manipulation of her back. It was not suggested that these were indicative of inappropriate force.

33. The Committee considered it necessary to look at both the individual techniques and the overall treatment. In so doing the Committee noted that the Registrant applied three different techniques to Patient A's sacro-iliac joint. This is in the region of the pelvis and lower back. The Committee was of the view that this indicated that the Registrant was seeking to treat an area using three different methods rather than using the same technique more and more forcefully. The Committee concluded that the method of trying a different technique was a reasonable approach if the first technique caused pain or did not bring relief.

34. The Committee accepted the Registrant's evidence regarding treating Patient A's left shoulder in that he stopped treating that area when he realised she was in pain. It saw no reason for him to act differently when treating any other part of her body. Support may be found for this in his approach to the treatment he applied to Patient A's sacro-iliac joint. Rather than repeating a technique or using greater force, he appeared to modify his approach by using three different techniques to attain the desired result.

The Registrant said he did not usually apply that number of techniques to an area and it was more than he would normally like to do.

35. The Committee was of the view that rather than applying an excess or inappropriate amount of force in any one area or technique the Registrant may instead have over-treated an area of Patient A's back causing pain to her. That was consistent with his notes, his above comment and, could explain the pain felt by the patient in the absence of excessive or inappropriate force.

36. Having carefully considered the evidence in light of the burden of proof, the Committee was not satisfied that the force used by the Registrant was at any time inappropriate. It is for this reason that the Committee found this allegation not proved.

Allegation 2(c)

At the Appointment, you:

(c) did not discontinue the osteopathic treatment to Patient A when Patient A withdrew her consent to such treatment;

Found not proved

37. The Committee considered that it needed to determine whether Patient A did at any time withdraw her consent to treatment and whether it remained withdrawn or was reinstituted. In addition, it was important to determine whether the Registrant understood any of this to have occurred and, his response(s) thereto in terms of his continued treatment of Patient A.

38. The Committee first considered what was said or done by Patient A at the time she is alleged to have withdrawn consent. Her clear evidence was that when she was face down and the Registrant was working on her lower back she felt sufficient pain to bring tears to her eyes and she asked him to stop. She stated that he responded by saying words to the effect of 'this is how I work' or 'how osteopaths work' and to give an explanation to her. She described it as 'educating her'. In her initial written complaint to the Council made approximately three weeks after the event, Patient A states that she "allowed [the Registrant] to continue thinking he knew what he was doing".

39. The Registrant's case was that she did not ask him to stop but if she had he would have terminated the treatment or sought to modify it in discussion with Patient A. The Committee had no reason to disbelieve his evidence on this issue. He said this had in fact occurred when he treated her shoulder and he realised she was in discomfort. There was support for this second event (the 'shoulder event') toward the end of Patient A's evidence when she described a time at which she "whimpered a bit but did not say anything

and cannot say if he responded in any way". Her description of no response from him at this point is in contrast to the discussion she describes when she felt pain in her lower back. The above description is in accordance with his account of the 'shoulder event'.

40. At first blush there appears to be a contradiction in the above. Patient A was clear in her evidence that she requested the Registrant to stop. The Committee determined that at that point she withdrew her consent. Equally the Committee determined that had the Registrant understood this to have occurred he would have terminated or modified treatment. The contradiction is in his assertion that she did not ask him to stop. What is interesting is her description of the events after she withdrew consent. The implication of Patient A's evidence is that the Registrant explained how he and/or osteopathy worked. Thereafter she permitted him to continue treating her.

41. This latter description of what occurred, denied by the Registrant, is in fact exculpatory of him if it was him seeking to explain and modify treatment to regain consent as appears to be the case. The Committee does not consider it likely that the Registrant would simply run roughshod over Patient A's express desire to stop treatment. The tension in the analysis is caused by the Registrant's denial that this dialogue took place since it is clearly described by Patient A and potentially exonerates him.

42. The Committee therefore asked itself the question whether the Registrant either did not hear or has forgotten this part of what occurred. He has firmly denied the possibility of mishearing or not hearing, they were after all only a foot or two apart. However, in so doing the Committee considered that he may have done himself an injustice. At the time this occurred Patient A was face-down on the couch and he may therefore not have heard all she said. It is a natural reaction for someone to say "X was not said" if they do not hear it. That may be what has occurred here. However, there is another more plausible explanation and that is simply that the Registrant's memory is at fault.

43. In respect of the MRI scan the Registrant first denied the comment in his earlier written evidence but later in his oral evidence accepted it must have occurred although he had no clear memory of it. At best at one point he said it 'rang a little bell'. It was plain that he had no clear memory of the MRI conversation despite it having occurred. It was equally plain to the Committee that this may well be the explanation of what occurred around the issue of consent and/or withdrawal of consent. The Committee concluded that it is quite plausible the Registrant has no clear memory of what actually occurred.

44. From Patient A's description of what occurred when the Registrant worked on her lower back she made a request for him to stop, that is she withdrew consent. However, she also describes the Registrant responding to this in a way he says he would respond and, crucially in the way that would be expected of him. He sought to explain to her what he was doing and/or to reassure her in order to regain her consent and to continue treatment. Patient A then describes allowing the Registrant to continue treating her thereby either reinstituting consent or, giving every indication of such by her acquiescing in his continued treatment of her back.

45. The Committee was satisfied that there would be no reason for Patient A to describe this potentially exculpatory train of events save that they occurred and, there was no reason or for the Registrant to deny them save that he has forgotten it in the same way that he has forgotten the details of the MRI conversation. It is entirely conceivable that the Registrant did not hear all of what was said by Patient A and has thus denied it being said.

46. Having undertaken the above careful analysis the Committee concluded that Patient A did in fact withdraw her consent. Following this the Registrant sought to regain her consent by talking to her about what he and/or osteopaths do. This either resulted in Patient A reinstating her consent following which the Registrant continued to treat her or, it resulted in Patient A appearing to reinstate her consent and the Registrant treating her.

47. Having come to the above conclusions the Committee reminded itself of the difference between informed consent, procedural consent and acquiescence. It took into account the Registrant's clear evidence of how he would stop or discuss treatment with a view to regaining consent if he thought consent had been withdrawn and, it bore in mind that this proper approach may be supported by his good character. Putting these matters in the balance and bearing in mind the burden of proof, the Committee was not satisfied that the Patient had not reinstated her consent as described. That being the case it concluded that the Registrant did not continue to treat her without her consent.

Allegation 2(e)

At the Appointment, you:

(e) told Patient A that she should have an MRI scan in India.

Found not proved

48. The Committee was satisfied that a conversation took place in which the issue of an MRI scan was mentioned. The Committee considered that the

Registrant was open and honest in his acceptance of this fact although he could not remember the detail of the conversation. On the one hand the Committee observed that Patient A clearly thought the Registrant had suggested she get an MRI scan in India. On the other hand it noted the clear rationale given by the Registrant as to why he would not have suggested this. It was not clinically indicated, there was no need or reason for him to do so and it formed no part of his practice to make such a recommendation other than the one instance indicated above for a different patient.

49. Having concluded that there was a conversation in which an MRI scan was mentioned, the Committee considered whether Patient A may have misinterpreted what the Registrant had said. In doing so it bore in mind the Registrant's clear assertion that he had no reason to recommend an MRI, be it in India or elsewhere and, the fact that he had already conceded part of the conversation was inappropriate. There seemed to be no particular benefit to him in his denying one part of a conversation already acknowledged to be inappropriate.

50. Taking the above matters into consideration the Committee concluded that there was a conversation regarding India which included the possibility of an MRI being obtained by a patient, but that was not the same as the Registrant giving a direction to this patient to do so. Given the clinical position as understood by the Registrant, his explanation that he would have no reason to make such a recommendation to Patient A and his clear evidence regarding his practice the Committee could not be satisfied that he suggested she "should have an MRI in India". It is more likely than not that the Registrant indicated a patient could obtain a scan as indeed one had done, and Patient A had interpreted this as being an indication that she should do the same.

Allegation 3

Your conduct as alleged at paragraph 2(d) was:

(d) unprofessional.

Found not proved

51. The Committee noted the Council's submission that 'not to find Allegation 3(d) would be "bold" or "set a precedent"'. This was not expanded upon. However, as a result the Committee took particular note of the way in which the allegation was framed. The Committee observed that the allegation was formed in four separate parts and that the subcategories in Allegation 3 are not cumulative. The Committee took the view that the subcategories are descriptions of the same conduct which indicate a gradation of seriousness or spectrum of insensitivity. In addition, whilst the word 'unprofessional' is

used in the allegation it does not have the very particular meaning attributed to "Unprofessional Conduct" (UPC) which requires proof of specific criteria in a later stage of these proceedings.

52. By his admissions the Registrant accepted that he made an unwarranted assumption regarding Patient A's culture or ethnicity and he acted upon that assumption. However, the Committee concluded that the Registrant's conduct was ill-considered as opposed to rooted in any form of discrimination. It noted that Patient A rejected the idea that the Registrant was racist. In effect the Registrant 'opened his mouth and put his foot in it'. That was undoubtedly insensitive and inappropriate, but the Committee was not satisfied that it could be properly described as unprofessional.

53. In reaching the above conclusion the Committee took note of the Osteopathic Practice Standards and in particular the standards regarding communication and professionalism. The Committee found no easily identifiable breaches that might arise from this one careless comment. Having considered the merits of what was said and why the Committee was not satisfied that it could properly be described as unprofessional. It might be otherwise if the comment were indicative of a repeated, systemic or attitudinal problem but the Committee was satisfied that that is not the case here.

Allegation 4

Your conduct as alleged at paragraph 2(e) was:

(a) not relevant to the osteopathic treatment of Patient A; and/or
(b) culturally insensitive; and/or
(c) inappropriate; and/or
(d) unprofessional.

Found not proved

This allegation necessarily fell-away in its entirety with the demise of allegation 2(e).

Unacceptable Professional Conduct (UPC)

54. Having made the above findings of fact the Committee next considered whether the conduct found proved amounted to UPC.

Submissions on UPC

55. Mr Ivill on behalf of the GOsC submitted that there were two general areas of concern. The first was the inadequacy of the Registrant's assessment of Patient A. The second was what he termed a general concern regarding the Registrant's communication skills. He referred the Committee to the Osteopathic Practice Standards (OPS) and to what he alleged were breaches thereof and were thus indicative (although not determinative) of UPC. He acknowledged that whether a proven fact amounted to UPC was a matter for this Committee to determine.

56. Mr Ali on behalf of the Registrant reminded the Committee that the events complained of surrounded one consultation. He pointed to the fact that the Registrant had reflected upon the allegations and had made appropriate admissions both in respect of his assessment and his language. He submitted that the Registrant had only omitted one relatively minor facet of the assessment, but he had accepted that even this rendered it inadequate. Bearing in mind the admissions and insight which he said this demonstrated, Mr Ali submitted that the facts did not reach the threshold of UPC.

Findings on UPC

57. The Committee went on to determine whether the facts found proved amounted to UPC. The Committee bore well in mind the overarching objective of these proceedings, namely the protection of the public. It reminded itself that the three limbs of that objective are: *protecting and promoting the health, safety and wellbeing of the public; promoting and maintaining public confidence in the profession;* and *promoting and maintaining proper standards and conduct for members of the profession*.

58. The Committee accepted the advice of the legal assessor and had regard to Section 20 of the Act and the well-known case of *Spencer v GOsC [2012] EWHC 3147*. From this it is clear that UPC is conduct which "falls short of the standard required of a registered osteopath" and it is of sufficient seriousness to attract a degree of "moral blameworthiness". The Committee also bore in mind that there was no standard of proof to be applied at this stage and that consideration as to whether the threshold for UPC had been reached was a matter for its own independent judgment. In coming to this

judgment the Committee took account of its findings of fact and, in particular the expert report referred to by Mr Ali. Finally, it considered each allegation on its merits to determine whether it amounted to UPC alone. It then considered the allegations collectively to determine whether they together indicated a serious underlying problem that could amount to UPC.

59. The Committee first considered Allegation 2a. It then considered Allegation 2(d) in light of the admitted descriptions thereof as set out in Allegation 3(a), (b) and (c). It next considered Allegation 5 in light of the admitted description thereof in Allegation 6. Finally, it considered the allegations collectively to determine whether they were indicative of a serious systemic problem.

Allegation 2a

60. The Committee was of the opinion that this failing was serious and does amount to UPC.

61. The Committee asked itself the question 'how serious might the impact be of missing such an assessment?' Amongst other symptoms, Patient A complained of tingling in her fingers. There are a number of potential causes, of varying seriousness as set out in the documentation seen by the Committee. Undertaking manipulation upon a patient with such problems could cause injury.

62. Whilst the Registrant appears to have undertaken some investigation of this symptom, the expert evidence is clear that this was not sufficient and, the Registrant has admitted as such. Mr Ali drew the Committee's attention to paragraph 34 of the expert report however, the Committee also reminded itself of paragraph 36 thereof and paragraphs 2 – 9 of the expert's addendum report. From this it is plain that, whilst there was in fact no harm done in this case, the potential for harm flowing from this omission was grave. The expert described the omitted neurological assessment that could and should have been carried out as simple to undertake and "the minimum required".

63. An inadequate assessment has a number of effects. It may limit appropriate diagnosis, cause misdiagnosis or cause an osteopath to deploy an inappropriate technique on a patient. Without a full assessment the Registrant did not place himself in the best position to make a full evaluation and thereby deploy the most appropriate methods of treatment and therefore exposed Patient A to potential harm.

64. The Committee considered the OPS and in particular:

Standards C1 as amplified in the notes
Standard C1: "*You must be able to conduct an osteopathic patient evaluation sufficient to make a working diagnosis and formulate a treatment plan"*
Note 1.1 "Take and record a detailed case history of the patient and make an analysis of their presenting complaint(s),"
Note 1.4 *"Select and conduct appropriate clinical investigations for your patient, taking into account the nature of their complaint(s) and their case history"*
Note 1.5 *"Formulate appropriate diagnostic hypotheses to explain the patient's presenting complaint(s) and use your osteopathic skills to develop a working diagnosis"*)

Standard C7 as amplified in the notes:
Standard C7 *"Provide appropriate care and treatment*"
Note 1.1 "*taking a full case history"*
Note 1.2 "*Conducting appropriate clinical investigations*."
Note 1.3 "*Formulating a working diagnosis and treatment plan".*

65. For these reasons the Committee concluded that whilst it was one incident, it was serious and does meet the threshold of UPC.

Allegation 2d (as described by Allegation 3(a),(b) and (c))

66. This allegation involved the Registrant making an inappropriate assumption about Patient A. It was inappropriate and unfortunate that he framed part of his discourse with Patient A around that assumption. However Patient A asserted, and the Committee accepted, that this was not intended to be racist and does not indicate that he is racist. It was at worst the Registrant making a clumsy and ill-judged comment upon a topic that the Registrant has an interest in. It was not driven by any animus or prejudice and is a single unfortunate comment. Given these findings the Committee considered that the conduct was, as admitted, irrelevant, insensitive and at worst inappropriate but it did not amount to UPC.

Allegation 5 (as described by Allegation 6)

67. The Registrant's conduct amounted to his being 'abrupt' with Patient A during a short phone-conversation and hanging up on her. Whilst he admitted this conduct the Committee noted that the Registrant did provide some advice to her. It was a single event on one day with one patient when the Registrant had put himself under time pressure for personal reasons.

There was no obvious risk to Patient A and no harm appears to have emanated from this incident.

68. Whilst the Committee concluded that the Registrant's conduct breached a number of standards within the OPS (Standards A1, A2 as amplified in notes 1 and 4, C2 as amplified by note 1.8; C4 as amplified by note 1), was regrettable and let himself and the profession down, it was not so serious as to amount to UPC.

Allegation 2d and Allegation 5 together

69. Having determined that these allegations did not in themselves amount to UPC the Committee next considered whether they, being issues of communication, indicated that there was a serious underlying or systemic problem with the Registrant's methods of communication or practice.

70. The Committee concluded that they did not indicate this. The two instances of poor communication were short-lived and different in nature. One was a clumsy and inadvertent use of language, the other was a failing born of irritation with himself. There is no indication that they represent a serious underlying pattern of behaviour or prejudice and therefore did not amount to UPC.

Sanction

Submissions on Sanctions

71. Mr Ivill on behalf of the GOsC submitted that sanction was a matter for the Committee and the GOsC made no specific submissions save that any sanction must be proportionate to the seriousness of the allegation found proved. Regarding those matters not proved it was open to the Committee to give words of advice.

72. Mr Ali on behalf of the Registrant invited the Committee to read a bundle of testimonials and take note of a training course the Registrant had already booked in light of these proceedings. He submitted that there were no aggravating factors in this case but that most if not all of the mitigating features listed in the Sanctions Guidance were present. He submitted that the Registrant was remorseful, insightful and apologetic. Mr Ali submitted that admonishment was the appropriate sanction and that words of advice may be given by the Committee if it considered it appropriate.

Decision

73. The Committee determined that the appropriate sanction is one of admonishment.

74. The Committee determined that it was not necessary in addition to proffer formal words of advice on those matters not found proved as UPC.

Reasons

75. The Committee again took note of the overarching objective as set out above, it considered the Sanctions Guidance provided by the GOsC and the submissions of both advocates. It accepted the advice of the legal assessor.

76. The Committee has found one instance of UPC based on facts that were admitted by the Registrant, in an otherwise unblemished practice. It has received a number of testimonials from patients who are aware of these proceedings. The breadth and scope of the testimonials reinforce the conclusion that this was an isolated event.

77. In assessing the Registrant, the Committee has found him to be honest in his approach and his evidence appeared designed to assist the tribunal rather than simply promote his own interests. The Committee was satisfied

that he has shown acceptance and insight into where he has gone wrong. He has booked a standardised education course in cervical-spine risk assessment and consent. He has taken the trouble to investigate an appropriate and tailor-made course, both provided by the University College of Osteopathy, which is a recognised provider of osteopathic education. The Committee had no doubt that he would attend these courses and would learn from them.

78. Having identified the one instance of UPC and the risk to patients that flows therefrom, the Committee considered whether the Registrant recognised his failings and had addressed or begun to address these issues. Given its findings as to his character and demeanour, the Committee is satisfied that he has begun that process and the public are protected by his having done so.

79. The Committee considered that this case is at the lower end of the spectrum of seriousness. There is no evidence to suggest that the Registrant poses a danger to the public. He has shown insight. This was an isolated incident and there has been no repetition. The Committee accepts the Registrant's remorse and apology as genuine. He has taken steps to address and rehabilitate his failing and he has a previous good history.

80. Given all of the above, the Committee determined that the appropriate and proportionate sanction is one of admonishment. Any more severe sanction would, in the view of the Committee be disproportionate.

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

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

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

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