

GENERAL OSTEOPATHIC COUNCIL
PROFESSIONAL CONDUCT COMMITTEE

Case No: 618/7631

Professional Conduct Committee Hearing

DECISION

Case of:	Ms Marietta Olson
Committee:	Mr Alastair Cannon (Chair) Ms Morag MacKellar (Lay) Mr David Propert (Osteopath)
Legal Assessor:	Mr Peter Steel
Representation for Council:	Mr Chris Gillespie
Representation for Osteopath:	Not present and unrepresented
Clerk to the Committee:	Mr Farhan Kabir
Date of Hearing:	2 to 3 July 2018

Summary of Decision:

Application to proceed in absence granted. Allegations 1 – 5 found proved in their entirety. In the light of the findings on facts, the Committee found Unacceptable Professional Conduct proved and imposed a Suspension Order for a period of 12 months on the Registrant's registration.

Allegation and Facts

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

1. On 2 December 2016, you visited the Unique Skin Clinics near Forres.

2. When Ms A was leaving the clinic in her car, you approached her car and put one arm across the windscreen and one arm on the wing mirror.
 3. When Ms A shouted at you to get away from the car, you said words to the effect of, "You aren't leaving".
 4. You reached into the car and:-
 - a. grabbed Ms A's arm and dragged it out of the car;
 - b. turned the steering wheel and turned the switch which stopped the engine.
 5. At the front door to the clinic, when Ms A was looking for the keys, you:-
 - a. ran at Ms A;
 - b. grabbed Ms A's wrists;
 - c. pulled Ms A's arms above her head;
 - d. tried to get the keys from Ms A;
 - e. squeezed Ms A's hand with the keys in.
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Decision:

Application to proceed in the Registrant's absence

1. The Registrant did not attend the hearing and was not represented. Mr Gillespie on behalf of the Council applied that the hearing proceed in her absence.
2. The Committee were referred to a service bundle which contained the Notice of hearing dated 30 April 2018, which had been sent by Special Delivery to the Registrant at her registered address. The service bundle also contained email correspondence between the Registrant and the Council from which it was clear that she had received the Notice, was aware of the date of the hearing and had been informed of her right to attend and/or be represented.
3. In a letter to the Council dated 10 June 2018, the Registrant had indicated that she would not be at the hearing, which she confirmed in a subsequent email dated 25 June 2018.
4. The Committee carefully considered the submissions of Mr Gillespie on behalf of the Council and the documents in the service bundle. It took into account the Council's Guidance on proceeding in absence and the relevant case law, in

particular the case of *General Medical Council v Adeogba; General Medical Council v Visvardis [2016] EWCA Civ 162*. The Committee accepted the advice of the legal assessor.

5. In the Committee's assessment, the Registrant had plainly waived her right to appear at the hearing. She had not applied for an adjournment. Given her correspondence with the Council, it was not clear that adjourning the hearing would secure her attendance in any event. Further there was a general public interest in hearings taking place expeditiously; and in not inconveniencing witnesses unduly (the Committee were told that the witness for the Council in this case would attend to give evidence).

6. The Committee were satisfied both that the Council had properly served the Notice of Hearing on the Registrant in accordance with the GOsC (Professional Conduct Committee) (Procedure) Rules 2000 (the Rules) and that in all the circumstances it was fair to proceed to hear the case in her absence.

Background

7. The Registrant is an osteopath first registered with the Council on 19 August 2010. The essence of the complaint against her was that on 2 December 2016 she had assaulted Witness A on 2 occasions.

8. Witness A runs a private clinic treating patients with skin damage. Given the sensitive nature of this work and the importance of privacy to her patients, Witness A employs no staff and leaves 15 mins between appointments so patients will not encounter each other.

9. One of the treatments Witness A offers involves a vibrational plate, which clients are only able to use when Witness A is on the premises. Clients are required to book to use this and the Registrant did so for the first time on 17 June 2016. The Registrant attended Witness A's premises to use the machine on a number of occasions between then and 2 December 2016. Witness A became concerned that the Registrant frequently arrived and left late thereby potentially compromising other patients' privacy. This led to Witness A changing her appointment system so as to leave 30 minutes free either side of the Registrant's appointments.

10. The Registrant had apparently used a window ledge in the treatment room to support herself while she stretched. This had damaged the window ledge. Witness A had asked the Registrant to desist from using the window ledge to support herself. On her account the Registrant had continued to do so. The Registrant disputed this account.

11. It was not in dispute however that on 2 December 2016, the Registrant had attended to use the vibrational plate. Witness A spoke to the Registrant prior to her session about her use of the window ledge and the damage that it had caused. The Registrant then said that she was leaving. Their accounts differed as to the nature of the conversation. The Registrant described a heated discussion in her response. Witness A reported a relatively calm exchange.

12. The Registrant left in her car but later returned, apparently to collect her winter shoes which she had left in the porch of Witness A's premises. As she approached the driveway of the premises on foot, Witness A was leaving in her car. It was then that the incident which forms the basis of the charge against the Registrant took place.

13. Witness A complained to the police about the incident, who, while they interviewed the Registrant, did not take any further action. She then complained to the Council on 26 January 2017.

Decision on the facts

14. The Committee heard in opening from Mr Gillespie on behalf of the Council. It heard evidence from Witness A and read carefully all the documents provided to it, including the Registrant's written response to the allegations and the various testimonials provided on her behalf, which it took into account in assessing the Registrant's credibility and propensity to do the sort of acts alleged. The Committee accepted the advice of the legal assessor.

1. On 2 December 2016, you visited the Unique Skin Clinic near Forres

15. **Proved.** This allegation was not apparently in dispute (the Registrant said in her response: "*I contacted her again in December and on 2nd December came to her house to use the equipment again.*" This was also the evidence of Witness A)

2. When Ms A was leaving the clinic in her car, you approached her car and put one arm across the windscreen and one arm on the wing mirror.

16. **Proved.** The Committee recognised that there was a fundamental conflict in the evidence presented to it between the Registrant's account of the incident and that of Witness A. The Committee had the opportunity to hear Witness A's account in person and to question her about it. Having done so, it had no reason to doubt her credibility nor was there any inconsistency between her oral evidence and the accounts of the incident she had provided in her witness statement or in her original complaint to the Council. The Committee was assisted by her explanation of the photographs she had provided of the clinic and its surroundings. Her account of the events in question had remained

constant since making her complaint and did not in the Committee's eyes contain any inherent implausibilities.

17. While Witness A did become upset in recalling some details of the incident, her evidence was coherent and delivered in a calm and measured way. She dealt appropriately with the questions asked by the Committee.

18. The Committee also considered in detail the Registrant's account of the incident. It noted that in respect of allegation 2, the Registrant denied that she had put her arm across the windscreen or the mirror. She said that Witness A had driven her car into her at low speed, leaving the Registrant "*unhurt, but stunned*".

19. The Committee took the view that this was inherently unlikely, given the relatively low key disagreement about the window sill that had precipitated the Registrant's departure. Further, were the Registrant's account true, it was hard to understand why she would then continue a confrontation with someone she described as being "*unstable and highly unpleasant*" and had tried to run her down, simply to retrieve a pair of shoes.

20. Overall, the Committee found Witness A to be the more credible source and wherever there was a factual dispute between her and the Registrant, it preferred Witness A's account. Accordingly it found this allegation proved to the required standard.

3. When Ms A shouted at you to get away from the car, you said words to the effect of, "You aren't leaving".

21. **Proved.** As with the previous allegation, there was a straight dispute on the facts between the Registrant and Witness A. As previously, the Committee took care to assess whether there were any inconsistencies or inherent implausibilities in Witness A's account of this element of the allegations and did not detect any. It preferred Witness A's account and therefore found this allegation proved to the required standard.

4. You reached into the car and:-

a. grabbed Ms A's arm and dragged it out of the car;

b. turned the steering wheel and turned the switch which stopped the engine.

22. **Proved** in its entirety. Again, the Committee preferred Witness A's account, which had been consistent since the start of her complaint. It further noted that the Registrant accepted in her response that she had reached into the car and switched the engine off.

5. At the front door to the clinic, when Ms A was looking for the keys, you:-
- a. ran at Ms A;
 - b. grabbed Ms A's wrists;
 - c. pulled Ms A's arms above her head;
 - d. tried to get the keys from Ms A;
 - e. squeezed Ms A's hand with the keys in.

23. **Proved** in its entirety. The Committee preferred Witness A's evidence about the incident and therefore found this allegation proved on the balance of probabilities. It again noted that there was some partial corroboration of Witness A's description of this part of the incident in the Registrant's response (in that the Registrant said that she had touched Witness A "to get her to focus on my words"; that Witness A had said that she would call the police; and that the Registrant had put her fingers in her ears and sang "la la la..." at one point) despite the fact that the Registrant denied all 5 sub-heads in allegation 5.

24. Having found the above factual allegations proved, the Committee then went on to consider whether they amounted to Unacceptable Professional Conduct.

Decision on Unacceptable Professional Conduct

25. Mr Gillespie on behalf of the Council referred the Committee to the relevant law, in particular the guidance on the meaning of Unacceptable Professional Conduct given by Irwin J in *Spencer v General Osteopathic Council* [2012] EWHC 3147 (Admin); *R(Shaw) v General Osteopathic Council* [2015] EWHC Admin 2721; and section 19 of the Osteopaths Act 1993 which set out the required approach to failures to comply with the Osteopathic Practice Standards (OPS) in proceedings under the Act.

26. He also referred to the cases of *Roylance v GMC (No. 2)* [2001] 1 AC 311 and *R (Remedy UK Ltd) v GMC* [2010] EWHC 1245 (Admin) which supported the proposition that a finding of serious professional misconduct (in the context of GMC proceedings) could arise as a result of behaviour which does not occur within the actual course of a person's professional practice.

27. Mr Gillespie submitted that the facts found proved by the Committee demonstrated a breach of Standard D17 (Uphold the reputation of the profession through your conduct) of the OPS. D17(1) stated that the public's trust and confidence in the profession, and the reputation of the profession generally, can be undermined by an osteopath's personal conduct and that osteopaths should have regard to their professional standing even when not acting as an osteopath. D17(2.3) made it clear that upholding the reputation of the profession may

include not behaving in an aggressive or violent way in either one's professional or personal life.

28. The Committee accepted the advice of the Legal Assessor. The Committee bore in mind that there is no standard of proof and that a determination as to whether the threshold for Unacceptable Professional Conduct has been reached is a matter of judgment. The Committee had regard to Section 20 of the Osteopathic Act 1993, which defines Unacceptable Professional Conduct as conduct which "falls short of the standard required of a registered osteopath". It considered guidance from the Council and the matters set out by Irwin J in *Spencer v GOsC* [2012] EWHC 3147 that Unacceptable Professional Conduct is conduct which implies some degree of "moral blameworthiness".

29. The Committee's findings were that the behaviour demonstrated by the Registrant fell far short of the required standard of a registered osteopath. Her conduct was a breach of the OPS and clearly had the potential to undermine public trust and confidence in the profession. Though the Registrant was not acting as an osteopath at the time of the events in question, she was by her own account researching use of the vibrational plate with a view to recommending it to her own patients. The Committee therefore noted that her presence at Witness A's clinic was not wholly unconnected to her professional practice.

30. The Committee's findings were that the Registrant had assaulted Witness A on two occasions on 2 December 2016. Witness A had been left severely shaken and distressed by the Registrant's actions. The Committee had no doubt that the facts of the case would certainly convey a degree of opprobrium and moral blameworthiness to the ordinary, intelligent citizen. It therefore found that the facts and particulars found proved amounted to Unacceptable Professional Conduct by the Registrant.

Decision on sanction

31. The Committee listened carefully to the submissions of Mr Gillespie on behalf of the Council. The Committee accepted the advice of the Legal Assessor. The Committee took account of all the testimonials provided on behalf of the Registrant and considered the Council's Hearings and Sanctions Guidance. It considered carefully the mitigating and aggravating factors of this case.

32. Having found the Registrant guilty of Unacceptable Professional Conduct, the Committee has to decide what sanction to impose. The Committee commences at the lowest sanction, and only if it decides that sanction is not appropriate does it move to the next level of sanction.

33. The Committee considered that the following mitigating factors were present. Firstly the facts found proved related to a single episode on a single day and the Registrant was previously of good character. Secondly, the Committee took into account the excellent testimonials provided for the Registrant by a wide range of people, which speak to her general integrity and good character. Lastly, there has been no suggestion of any similar behaviour since this complaint came to light.

34. The Committee found the following aggravating factors present. Firstly, the Registrant had acted with violence. Secondly, her apparently unprovoked assault had caused significant distress to Witness A, who told the Committee that following the incident she now felt the need to lock the door of her premises between clients. Lastly, she had not demonstrated any significant insight. Her behaviour remained entirely unexplained.

35. The Committee considered first of all whether an Admonishment was appropriate. The Committee had determined that the Registrant's conduct fell far short of the standard to be expected of a registered osteopath. The violent incident found proved was obviously not minor in nature. The Committee concluded therefore that an Admonishment would not meet the seriousness of the situation.

36. The Committee therefore went on to consider whether a Conditions of Practice Order would be appropriate in this case. The Committee concluded that conditions of practice would not be appropriate or proportionate to address the seriousness of the case. There was no condition of practice that would address the Registrant's unacceptable behaviour in her personal life. In addition, the Committee were concerned that the Registrant had not demonstrated sufficient insight to merit the imposition of conditions.

37. The Committee then considered whether a Suspension Order would address the facts of the situation. It concluded that it would. This was plainly a serious matter and one that had the potential to reflect badly on the profession as a whole. However, taking into account the isolated nature of the incident and the numerous positive testimonials on behalf of the Registrant, the Committee did not consider that the Registrant's conduct on this one occasion was fundamentally incompatible with her continued registration nor was it in the public interest to remove her from the Register permanently.

38. The Committee was of the view that a period of suspension was appropriate to mark the seriousness of its findings and to send a message to the Registrant, the profession and members of the public that the personal behaviour

demonstrated by this case was unacceptable for any registered osteopath. The Committee took the view that no sanction lower than suspension was sufficient to maintain confidence in the profession.

39. Having considered all the relevant factors, including the potential effect on the Registrant's patients and livelihood, the Committee determined that the Registrant's registration with the Council should be suspended for a period of 12 months.

40. The Committee will review the case at a review hearing to be arranged before the expiry of the period of suspension. Prior to the review hearing, the Registrant should prepare a reflective report for the Committee, the purpose of which is to demonstrate the insight she has acquired into her behaviour during the period of suspension, including details of any remediation she may have undertaken.

41. Having heard submissions from Mr Gillespie on behalf of the Council, the Committee did not consider it necessary for the protection of the public to impose an Interim Suspension Order. The incident which had led to the Committee's findings had occurred in the Registrant's private life, not when she was acting as an osteopath. It was not evident that suspension of the Registrant's professional registration pending the coming into force of the substantive suspension order would achieve the aim of protecting the public from any repetition of such behaviour. The Committee had not been made aware of any complaint about the Registrant's professional practice either before or after the complaint in this case. The Committee therefore determined that the test of necessity in Rule 40 of the Rules was not met.

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.