GENERAL OSTEOPATHIC COUNCIL
PROFESSIONAL CONDUCT COMMITTEE

Case No: 864/8528

Professional Conduct Committee Hearing

DECISION

Case of:	Luke Selby
Committee:	Pamela Ormerod (Chair) Andy Howard (Lay) Jim Hurden (Osteopath)
Legal Assessor:	Tim Grey (5 – 9 January and 2 – 5 February 2026) Peter Steel (11 – 12 May 2026)
Representation for Council:	Andrew Faux
Representation for Osteopath:	Marios Lambis KC
Clerk to the Committee:	Sajinee Padhiar
Date of Hearing:	5 – 9 January, 2 – 5 February and 11 – 12 May 2026

Summary of Decision:
Facts:
Paragraphs 1, 3, 8(a), 9(a), 12(a), 12(c), 13(a), 14(d), 16, 17(a) in relation to 8(a), 12(a) and 13(a) of the Allegation were admitted and found proved.

Paragraphs 2, 4(a) – (c), 8(b), 9(b), 12(b), 13(b), 14(a), 14(c) (as it related to 14(a)), and 15 were found proved.

Paragraph 17(a) as it related to Paragraphs 2, 4(a) - (c), 8(b), 9(a) and (b), 12(b), 13(b), 14(a) and 15 was found proved.

Paragraph 17(b) as it related to Paragraphs 2, 4(a) – (c), 9(b), 12(a) and (b), 14(a) and 15 was found proved.

Paragraph 18 as it related to Paragraphs 2, 4(a) and (b), 9(b), 14(a) and 15 was found proved

Paragraph 19 as it related to Paragraphs 2, 4(a) and 4(b), 9(b), 12(a) and (b), 14(a) and 15 was found proved.

Paragraphs 11 and 14(b) were found not proved.

Paragraph 17(a) was found not proved in relation to Paragraphs 11, 12(c), and 14(b).

Paragraph 17(b) was found not proved in relation to Paragraphs 8, 9(a), 11, 12(c), 13(a) and (b), and 14(b).

Paragraph 18 was found not proved in relation to Paragraphs 13(a) and 14(b).

Paragraph 19 was found not proved in relation to Paragraphs 8(a), 11, 13(a) and 14(b).

UPC:

Unacceptable Professional Conduct was found proved.

Sanction:

The Committee suspended the Registrant from the Register for a period of 6 months with a review hearing.

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

<u>Amended Allegation following Preliminary Applications</u>

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

1. You were a Director at Fix London Clinic based at 199 Richmond Road, London, E8 3NJ ("Clinic One"), and 11 Penny Brookes Street, East Village, London, E20 1BN ("Clinic Two") from September 2013 to April 2022.

2. In or around May 2018 following Clinic 1 and 2's summer party, you kissed Colleague E while waiting for a lift.

3. Colleague E attended 10 appointments with you from 31 January 2018 to 07 November 2019 at Clinic Two ("Colleague E's Appointments").

4. During one of Colleague E's Appointments in around May and/or June 2018:
    a. you cupped your thumb and forefinger around the bottom of Colleague E's breasts;
    b. you held your hand on Colleague E's chest;
    c. you made comments to Colleague E as set out in Schedule 1 or words to that effect, after treating Colleague E.

[redacted]

[redacted]

[redacted]

8. Between around May 2019 to December 2019, on one occasion, you:
    a. undressed and changed your clothes in a treatment room at the Clinic One in Colleague D's presence;
    b. made comments to Colleague D as set out in Schedule 2 or words to that effect, whilst undressing in Colleague D's presence.

9. During Clinic One and Two's Christmas party in December 2019, you:
    a. made a comment to colleague D as set out in Schedule 3 or words to that effect;
    b. slapped Colleague I on the buttocks.

[redacted]

11. In or around October 2020 or November 2020 at the Clinic, you made comments to Colleague G as set out in Schedule 6 or words to that effect.

12. Between around October 2020 and January 2022 while at Clinic One you:

    a. put your hands on Colleague G's shoulders;
    b. squeezed and/or massaged Colleague G's shoulders;
    c. made comments to Colleague G as set out in Schedule 7 or words to that effect.

13. During a staff drinks party that occurred on a date between June 2020 and January 2022, you

    a. patted Colleague G's legs multiple times when water had spilled on her jeans;
    b. made comments as set out in Schedule 8 or words to that effect.

14. During Colleague B's Appointment on 25 November 2021:
    a. while administering treatment, you moved your hand along Colleague B's right outer ribcage, across her right and left breast;
    b. while administering treatment you moved your hand along Colleague B's left outer ribcage and across her left and right breast;
    c. you failed to obtain valid consent from Colleague B for matters set out in paragraphs 14(a) and/or 14(b);
    d. you failed to record the treatment administered to Colleague B during the appointment on 25 November 2021.

15. In or around 2021 on at least one occasion you tapped Colleague F on the side of her buttocks and/or hip area when saying goodbye.

16. Your conduct at paragraphs [redacted] 14(d) was inappropriate.

17. Your conduct at paragraphs 2, 4(a), 4(b), 4(c), [redacted] 8(a), 8(b),, 9(a), 9(b), [redacted] 11, 12(a), 12(b), 12(c), 13(a), 13(b), to 14(a), 14(b) and/or 15 was a transgression of:

    a. professional boundaries;
    b. sexual boundaries.

18. Your conduct at paragraphs 2, 4(a), 4(b), [redacted] 9(b), [redacted] 13(a), 14(a), 14(b) and/or 15 amounts to sexual touching.

19. Your conduct at paragraphs 2, 4(a), 4(b), [redacted] 8(a), 9(b), [redacted] 11, 12(a), 12(b), 13(a), 13(b), 14(a), 14(b) and/or 15, was sexually motivated.

Schedule 1 (Colleague E)

i. "do you want a hug?"

Schedule 2: (Colleague D)

i. "surely you don't mind - you're from a theatre background, you're used to people getting naked".

Schedule 3: (Colleague D)

i. "up your bum"

[redacted]

[redacted]

Schedule 6: (Colleague G)

i. "oh you have a rack on".

Schedule 7: (Colleague G)

i. "you've got a voice of gold"
ii. "your voice sounds so smooth"
iii. "such a good tone, really professional"
iv. "very forthright but still very soft"

Schedule 8: (Colleague G)

i. "Come on Colleague G bring your leg over here"

Preliminary Issues:

I. Abuse of Process

1. At the outset of the hearing Mr. Lambis KC, on behalf of the Registrant, made an application for the case to be stayed as an abuse of process.

2. As an overarching submission, Mr. Lambis reminded the Committee that the hearing process must be fair and be seen to be fair. This case, he contended, was complicated by the potential collusion between complainants that was evident on the face of the written evidence provided by a number of them and to which Mr. Lambis took the Committee. Whether that collusion was deliberate or merely tainted the evidence it was, he submitted, a significant complicating factor that, as background and taken cumulatively with the issues identified with the investigatory process, meant the Registrant could no longer receive a fair hearing, and moreover that such unfairness was irremediable.

3. Mr. Lambis further submitted that the Council had failed in its duty of disclosure, had failed to respond appropriately or at all to Defence requests for information and clarification and had failed to be transparent about the witness difficulties it had encountered, in particular with Colleague C and Patient H. From the moment the initial complaint was made to the Council, the collusion or tainting of evidence and the co-operation of the complainants were of fundamental importance.

4. Mr. Lambis submitted that the asserted collusion may undermine the Council's case or may assist the Defence case, and was evident to the Council from the outset. It should therefore have been communicated to the Registrant and his representatives forthwith, given the duty of disclosure borne by the Council.

5. Likewise a witness's reluctance satisfied the test for disclosure and should also have been communicated forthwith. That too was something known to the Council from early in the history of the case. In support of that submission Mr. Lambis took the Committee to the Defence chronology and the purported reluctance shown by colleagues E and F to be involved in the proceedings.

6. That was, he contended important information for the Defence to be aware of and should have been communicated to the Defence without the need for a request to be made. The consequent drain on the Registrant's funding arrangements of having to litigate the case in such a manner was prejudicial and unfair.

7. Mr. Lambis took the Committee through the chronology and identified periods of delay apparently caused by inaction or indecision on behalf of the Council,

a number of which were acknowledged by the Council in writing and by Mr. Faux in his response to the application.

8. In particular, Mr. Lambis drew the Committee’s attention to the Council’s production of new evidence nine months after the disclosure deadline, with the Council’s evidence being served on 12 December 2024.

9. Mr. Lambis paid particular regard to the listing questionnaire issued by the Council and the question it asked regarding whether the Registrant admitted his conduct amounted to Unacceptable Professional Conduct (UPC). This, Mr. Lambis submitted, demonstrated the attitude of the Council and its attempt to usurp the functions of the Committee, by asking a question of the Registrant that was properly within the remit of the Committee.

10. Mr. Lambis took the Committee through the chronology of Patient H seeking to exclude herself from further involvement in the case and submitted that the notification from Patient H had not been communicated to the Defence for a number of months, in spite of other communications passing between the parties in that period.

11. Mr. Lambis noted that the Council had informed the Registrant that the Allegations concerning Patient H would be the subject of an application for them to be withdrawn before the Committee, given she no longer wished to be involved in the case. That was a representation that the Registrant was entitled to and obligated to act upon. Notwithstanding that representation, the Council reviewed the case and chose to change its decision, seeking instead to adduce Patient H’s witness statement as hearsay evidence as well as that of the now reluctant Colleague C.

12. In spite of attempts to seek a listing of the case for a Preliminary meeting in order to deal with the issues of hearsay and discontinuance, the Council had refused to list the case and asserted there was no such mechanism under the Osteopaths Act 1993 (the Act) or under the General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules 2000 (the Rules) to list Preliminary Meetings.

13. The consequence, Mr. Lambis submitted, was that the process had been rendered unfair, as the Registrant still did not know what case he had to meet pending the hearsay applications being decided by the Professional Conduct Committee (PCC), did not know of the hearsay application in relation to Colleague C until very late (27 November 2025), large swaths of material before the Committee (at least 16 areas) should not have been included as that material is prejudicial, but could have been the subject of discussion and decision-making in a preliminary meeting.

14. It was, Mr. Lambis submitted, wrong to assert, as the Council had done, that it could not discontinue Allegations of its own volition and to assert that only a Committee could do so was to ascribe to the Committee greater power than that of a Crown Court Judge.

15. Mr. Lambis acknowledged that staying a case as an abuse of process was an exceptional remedy, but one that was necessary both by reason of the irremediable unfairness caused by the Council's conduct of the case to date and also by reason of the Council's conduct offending the Committee's sense of justice and propriety. In that regard Mr. Lambis took the Committee to the case of *R v Maxwell [2010] UKSC 48* and identified both limbs giving rise to potential abuse of process, making it clear that his application was based upon both.

16. In summary, Mr. Lambis submitted that the following were key points for the Committee to take into account:
    a. The case has been ongoing for 4 years;
    b. The Registrant has continued to engage in the process despite that fact and despite the history, including the effect of proceedings on him;
    c. Two complainants do not wish to continue engaging;
    d. Two further complainants have at points expressed a reluctance to engage;
    e. The Defence still seek clarification of one of the Charges relating to Patient H and the precise nature of the case the Defendant has to meet (the Committee were latterly provided with a copy of the Allegation in question);
    f. The Council has been frugal in what it has disclosed;
    g. The Defence has repeatedly sought a listing for a preliminary meeting to minimise prejudice, and have repeatedly been refused that opportunity;
    h. Large swaths of inadmissible or prejudicial material has been included in the bundle
    i. The Defence still do not know whether Patient H or Colleague C will form part of the case or not;
    j. The Defence has therefore not been in a position to serve its case to date;
    k. Such redaction as has been required to cater for both eventualities has taken up resources, added to the resource expended in having to litigate the case in the manner required by the Council's conduct.

17. The case is "a mess" and that is no fault of the Registrant's but the fault of the Council.

18. Notwithstanding that summation, Mr. Lambis conceded that the unfairness could be cured by postponing the hearing and allowing case management

decisions to be made. Whilst that might satisfy limb one of Maxwell, he submitted it would not and could not satisfy limb two.

19. Mr. Lambis therefore submitted the case should be stayed as an abuse of process.

Council's Submissions

20. In response on behalf of the Council, Mr. Faux submitted that limb one of Maxwell was not made out. A fair trial could take place and Mr. Lambis had conceded as much. In relation to limb two Mr. Faux took the Committee to the decisions of *R v Latif [1996] 1 WLR 104 and Warren and others v HM Att Gen of the Bailiwick of Jersey [2011] UKPC 10* and *R v Horseferry Road ex parte Bennett [1994] 1 AC 42* as illustrations of the high bar that needed to be reached for the Committee to be satisfied that its sense of justice and propriety would be offended, were the case to proceed further.

21. Mr. Faux further submitted that there was no statutory power for the Council to withdraw allegations of its own volition and took the Committee to s.22(1) of the Act.

22. Mr. Faux then dealt with the summary points made by Mr. Lambis in turn. In relation to Point a. he submitted that whilst the Registrant has a right to a fair trial within a reasonable time, the period of investigation and bringing the matter to a hearing was not inordinately lengthy and in any event the delay could properly be reflected in the sanction imposed, should the case get that far.

23. In relation to Point b. Mr. Faux submitted that it was of no consequence to the application that the Registrant had engaged, he was duty bound to do so and it is good that he had done so.

24. In relation to Points c. and d. Mr. Faux submitted that what the application amounted to was holding the Council to a duty to provide a running commentary on the engagement of witnesses. That was not part of the disclosure obligation, an obligation with which he submitted, the Council had complied fully. The absence of Colleague C and Patient H and its communication to the defence, created no prejudice.

25. In relation to Point e. Mr. Faux submitted that the Council's case in relation to Patient H was clear both by reference to the Allegation and to Patient H's witness statement.

26. In relation to Point f. Mr. Faux reiterated his submission that the Council had complied with its duties of disclosure in the case.

27. In relation to Point g. Mr. Faux submitted that, first there was no express statutory provision allowing for preliminary meetings to be held. Second, and more fundamental, a decision of a preliminary meeting of the Professional Conduct Committee, could not bind a differently constituted Committee hearing the case, particularly where the issue of hearsay evidence was concerned. Any newly constituted Committee would be bound to revisit the inclusion of hearsay evidence. In so submitting Mr. Faux relied upon the case of *El Karout v NMC [2019] EWHC 28 (Admin).*

28. In relation to Point h. Mr. Faux noted that the Defence had at no point identified material to be redacted from the hearing bundle. The Registrant was represented by leading counsel and solicitors and the Council could not be expected to guess how the Registrant might deploy the material in the bundle. In the absence of representations from the Defence, the Council could not anticipate what was or was not objectionable.

29. In relation to points i. j. and k. Mr. Faux submitted that the Committee were going to be provided with the full extent of the Allegations relating to Patient H and Colleague C in order for it to adjudicate upon the hearsay application, foreshadowed by the Council's skeleton argument.

30. Mr. Faux raised concern over the submission that depleting Defence funds by litigating a case could amount to an abuse of process. Even if it could Mr. Faux submitted that this was a case where that was evidently not the case, given the conduct of the Defence throughout the process.

31. In summation, Mr. Faux submitted the application was misconceived, represented a distraction and compromised the Committee's time to hear the substantive case.

32. The Committee received and accepted the advice of the Legal Assessor. That advice was provided both orally within the hearing and in writing to the parties and to the Committee, and is set out below.

Legal Advice

1. This is an application concerning Abuse of Process only;
2. The burden of proof is on the applicant
3. These are Regulatory proceedings not criminal proceedings

The case of *R v Maxwell [2010] UKSC 48* is often cited as the leading authority in abuse of process arguments, not least because it distilled the wealth of case law into two clearly identifiable types of abuse of process*:*

It is well established that the court has the power to stay proceedings in two categories of case, namely (i) where it will be impossible to give the accused a fair trial, and (ii) where it offends the court's sense of justice and propriety to be asked to try the accused in the particular circumstances of the case. In the first category of case, if the court concludes that an accused cannot receive a fair trial, it will stay the proceedings without more. No question of the balancing of competing interests arises. In the second category of case, the court is concerned to protect the integrity of the criminal justice system. Here a stay will be granted where the court concludes that in all the circumstances a trial will "offend the court's sense of justice and propriety."

Type 1 - Unfairness/Prejudice

Whilst there can be any number of ways in which unfairness and the impossibility of a fair trial can be said to be made out the main types of conduct that give rise to abuse of process are:

a. Delay;
b. Promise not to Prosecute;
c. Manipulation of the Process;
d. Disclosure

Guidance on common law principles is found in *Attorney General's Reference (No. 1 of 1990) [1992] QB 630 CA* (Lord Lane) :

"Stays imposed on the grounds of even unjustifiable delay should only be granted in exceptional circumstances. Still more rare should be cases where a stay can properly be imposed in the absence of any fault on the part of the complainant or the prosecution. Delay due merely to the complexity of the case or contributed to by the actions of the defendant should never be the foundation for a stay. Where there has been no fault on the part of the prosecution there should be no stay unless the defendant shows on a balance of probabilities that owing to the delay he will suffer prejudice to the extent that no fair trial can be held, in other words, that the continuance of the prosecution amounts to a misuse of the process of the Court. In assessing whether there is likely to be prejudice, and, if so, whether it can properly be described as serious the following matters shall be borne in mind: first, the power of the Judge to regulate the admissibility of evidence; second, the trial process itself, which will ensure that all relevant factual issues arising from delay will be placed before the jury as part of the evidence for their

consideration, together with the powers of the Judge to give appropriate directions to the jury before they consider their verdict" (pp 643 - 644). The Court of Appeal reviewed the authorities relating to abuse of process applications on the grounds of delay and affirmed the principles set out in *Attorney General's Reference No. 1 of 1990.*

In *CPS v F [2011] EWCA Crim 1844*, the Lord Chief Justice said:

"When, by contrast with a submission of " no case to answer" the court is considering an application to stay proceedings on the grounds of prejudice resulting from delay in the institution of proceedings , the appropriate test was directly addressed and answered in Attorney-General's Reference No. 1 of 1990 It continues to provide the benchmark….. An application to stay for abuse of process on the grounds of delay must be determined in accordance with Attorney General's Reference (No. 1) of 1990. It cannot succeed unless, exceptionally, a fair trial is no longer possible owing to prejudice to the defendant occasioned by the delay which cannot fairly be addressed in the normal trial process".

In *Spiers v Ruddy [2007] UKPC D22,* Rose LJ identified some of the possible types of prejudice caused by delay:
(a) the unavailability of oral evidence;
(b) the unavailability of documentary evidence;
(c) the impairment of the quality of evidence due to the effect of delay upon the memories of witnesses;
(d) the prejudice caused by the 'sword of Damocles 'of a disciplinary prosecution hanging over a professional man or woman.

Promise Not to Prosecute

Every promise must share the following characteristics:

1. The Statement made must amount to a promise, undertaking or representation not to prosecute *(R v Townsend 2 Cr. App. R. 540).*
2. The promise must be specific *(R v Harris [1991] 1 HKLR 389).*
3. The promise should be given by someone with an implicit jurisdiction to give it. *(R v Croydon Justices ex parte Dean (1993) 98 Cr. App. R. 76).*
4. The promise must be unequivocal *(R v Abu Hamza [2006] EWCA Crim 2918)*.

If there is a promise then stage 1 is satisfied.

Stage 2 requires that the Registrant has relied to his detriment upon the promise.

The classic example of reliance in the circumstances of a promise occurred in *ex parte Dean*. Dean had relied on an undertaking not to prosecute given by police officers on a number of occasions. He had therefore given incriminating information to the police against interest and against others. He had agreed to the possibility of being a prosecution witness. In so doing they sought to rely on Dean's own inculpatory evidence.

The most recent statement of the position came in the Court of Appeal's judgment in *Abu Hamza* per Lord Philips*:*

"[Abuse of process] can arise if police, who are carrying out a criminal investigation, give an unequivocal assurance that a suspect will not be prosecuted and the suspect, in reliance upon that undertaking, acts to his detriment… "

Manipulation or Misuse of the Process rendering a fair trial impossible

The derivation of the proposition, that manipulation and misuse of process can lead to a stay comes directly from the ratio in *R v Derby Crown Court ex parte Brooks (1985) 80 Cr App R 164:*

"The power to stop a prosecution arises only when it is an abuse of the process of the Court. It may be an abuse of process if either (a) the prosecution have manipulated or misused the process of the Court so as to deprive the defendant of a protection provided by the law or to take unfair advantage of a technicality…" (per Ormerod LJ).

This type of abuse requires two things to be demonstrated before the Tribunal can order a stay. Firstly, that there has been a manipulation or misuse, and secondly that the misuse of manipulation deprived the Registrant of a protection provided at Law or took unfair advantage of a technicality. This line of jurisprudence is discreet from that enunciated in *ex parte Bennett.*

There are a number of other possibilities that might render a fair trial impossible and the leading case of *CHRE v Saluja [2006] EWHC 2784 (Admin)* is one such example, concerning as it did the use of undercover operatives allegedly entrapping a registrant, so too disclosure issues.

Disclosure

A total failure of disclosure that impacts the ability of the Defendant or in this case registrant to properly and fairly advance his arguments is likely to result in a stay of proceedings *R v Kenneth and others [2001] 1 Cr App R 33.*

However, that does not appear to be the case here. Rather the position is that disclosure of information concerning the status of witnesses was, the defence say provided by the Council very late.

The case of *R v R [2015] EWCA 1941* (see also Young, Corker and Summers on abuse of process in Criminal Proceedings 5th edition at 4.70) was taken by the Court of Appeal as an opportunity to give guidance on the proper approach to disclosure in criminal cases. Whilst it should therefore be read with some caution, given these are regulatory proceedings, it is of some assistance in identifying the role abuse of process plays in disclosure arguments:

1. The prosecution is and must be in the driving seat at the stage of initial disclosure;
2. The prosecution must then encourage dialogue and prompt engagement with the defence;
3. The law is prescriptive about the results, not the method;
4. The process of disclosure should be subject to robust case management by the judge, utilising the full range of case management powers and
5. Flexibility is crucial

In relation to abuse of process the Court concluded that the delay in disclosure in that case was not sufficient to warrant a conclusion that the defendants could not now receive a fair trial.

The Court also considered whether the disclosure failures were so serious as to satisfy the test of procedural impropriety (below) and concluded they were not. The Court decided that there was no deliberate misconduct, no deliberate disregard for a clear direction of the court and that to allow a successful abuse application in those circumstances would in fact provide a perverse incentive for those charged to undermine the prosecution by creating hurdles to overcome.

Of prime importance was the fact the case was treated on its own facts and that therefore a case by case approach is mandated in any consideration of abuse of process.

Type 2 - Offending the Court's Sense of Justice and Propriety

R v Horseferry Road ex parte Bennett [1994] 1 AC 42 is still the leading case concerning the second limb identified in *Maxwell.*

In the circumstances such conduct must necessarily be of the most profound and serious kind, given it envisages no unfairness as a matter of fact, and rather seeks to intervene in cases where not to do so would transmit to the state/regulator as the prosecuting authority the message that such conduct was acceptable. In other words:

"in the present case there is no suggestion that the appellant cannot have a fair trial…if the Court is to have the power to interfere with the prosecution in the present circumstances it must be because the judiciary accept a responsibility for the maintenance for the rule of law that embraces a willingness to oversee executive action and to refuse to countenance behaviour that threatens either basic human rights or the rule of law." (per Lord Griffiths at 61).

Abuse in Regulatory Proceedings

Abuse of process as a doctrine is one that as both the parties accept is one to be invoked rarely. That is all the more true in cases involving regulatory proceedings brought by non-state agents such as regulators, as opposed to the state (see *Saluja* above), in setting out the overlap of abuse in regulatory proceedings, Goldring J set out nine principles the fourth of which was to record the following:

"In the present disciplinary hearing there is no state involvement in the proceedings being brought. These are proceedings brought against a doctor by his regulator in order to protect the public, uphold professional standards and maintain confidence in the profession. These are to a significant degree different considerations from those that apply to a criminal prosecution and misuse of executive powers by the state's agents."

Ultimately it is a matter for your discretion applying the law to the facts to decide whether either limb 1, 2 or both of *Maxwell* is made out.

<u>Determination</u>

33. The Committee thereafter received a copy of the email from the Council to the Registrant's representatives regarding the application to withdraw the Allegations concerning Patient H, as well as a copy of the full Allegations, including the Allegation the Defence sought clarity upon (now numbered Allegation 7).

34. The Committee noted that the parties were in broad agreement as to the legal framework and that the advice of the Legal Assessor was not the subject of dispute by either party.

Delay

35. The Committee noted with concern that the course of the litigation of the case to date had been characterised by at times intemperate communication on both sides. It agreed with both advocates that such communication was unhelpful and should be avoided.

36. The Committee also agreed with Mr. Lambis' submission that there had been delays in the progression of the case that were the responsibility of the Council, and that a lack of expedition [redacted] should always be avoided where possible. It was unfortunate that the proceedings had been allowed to progress with what appeared to be a lack of urgency, particularly where the interests of witnesses and the Registrant may thereby be compromised. Whether that delay in this case could be characterised as inordinate or of the sort leading to the foundation of an abuse of process, the Committee doubted.

37. However, even if it had been satisfied that the delay was inordinate, or indeed amounted to a breach of the Registrant's rights, Mr. Lambis had identified no specific prejudice, over and above a general unfairness, to the conduct of the Registrant's case caused by any such delay. In the terms of *Spiers v Ruddy*, which whilst not providing an exhaustive list gave illustrative examples of the types of unfairness that might be occasioned by delay, the Committee could identify nothing that might amount to such prejudice in the Registrant's case. To the contrary, as Mr. Lambis had submitted it had been from early on in the proceedings that witnesses had shown themselves to be reluctant, which itself suggested that the delay in the case coming to a hearing was not a reason in and of itself for witnesses not wishing to attend the hearing. Nor had delay deprived the Committee of the opportunity to see and read relevant documentary evidence, or so impair witness memory that it was not possible for a fair trial to take place. To the contrary, the case management powers available to the Committee meant it could properly ensure that a fair hearing was conducted, making proper allowance for memory lapses and attaching such weight as it thought fair and reasonable to the evidence, given the time that had passed since the incidents forming the basis of the Allegations.

38. Whilst the Committee had some sympathy with the Registrant, given matters had taken time to come to a hearing, it agreed with Mr. Faux that absent real and incurable prejudice, the appropriate method of reflecting that delay was in the hearing and sanction process, should matters get to that point.

39. Whilst the delay was unfortunate, it could not be said to be anywhere close to the order of magnitude required to amount to offending a Tribunal's sense of

justice and propriety. For those reasons the Committee concluded that in and of itself delay raised no basis for asserting the case should be stayed as an abuse of process.

Breach of Promise

40. The Committee carefully considered whether the representation from the Council to the Registrant that it would apply to discontinue the case amounted to a promise not to prosecute/breach of a promise. The Committee concluded that it did not. The representation was not a representation to discontinue proceedings. It was a representation to apply to a Committee and ask the Committee to discontinue certain Allegations. Whilst the Committee does not know the precise nature of the hearsay applications the Council will seek to make in due course, arguably those applications foreshadow an application to discontinue in any event. The Committee therefore concluded that the representation was not an unequivocal promise not to prosecute and that arguably the Council was fulfilling its representation in any event.

41. Even if the Committee is wrong in its analysis of whether the promise can be said to be an unequivocal promise, Mr. Lambis did not identify, and the Committee could not identify, any specific reliance placed upon the promise by the Registrant and any detriment caused to him by such reliance. In those circumstances the Committee could find no basis for finding that there was any incurable unfairness occasioned to the Registrant's case by reason of the representation made in relation to Patient H.

42. Whilst the Committee considered it was unfortunate that the Council had chosen to give such a representation prior to reviewing the case, and thereby concluding it ought properly to make a hearsay application prior to making any invitation to the Committee to discontinue the Allegations concerning Patient H, to assert that such conduct was an affront to the Committee's sense of justice and propriety was fanciful.

43. The Committee therefore concluded there was no basis for asserting the case should be stayed either in part or at all by reason of the representation made to the Registrant by the Council.

Disclosure and Witness Reluctance

44. The reluctance of witnesses to engage in proceedings is, in the first place a matter for the parties. It is for the Council to put its evidence before the Committee in whatever form it has available. In this case that means it must make a hearsay application. It is entitled to make such an application. The Registrant is entitled to resist such an application. The Committee must decide

upon the application thereafter, cognisant of the Law concerning the admission of hearsay evidence.

45. The reality of Mr. Lambis' criticism of the Council in this regard appeared to the Committee to be in relation to the timing of the disclosure of the witness issues and the timing of the Council seeking to make the hearsay application. In relation to the former, Mr. Lambis did not identify any specific prejudice caused to the Registrant by the timing of the disclosure made by the Council. Nor is it suggested that there are specific outstanding disclosure requests in this case, albeit Mr. Lambis characterised disclosure as "frugal." It *may* be the Council can be criticised for not informing the Registrant at the earliest possible opportunity that there were difficulties in securing witness attendance. However, that has caused no identifiable, or indeed incurable/irremediable prejudice to the Registrant.

46. It might be thought the essence of Mr. Lambis' submission is reflected in the second part of the complaint as identified above, namely the timing of the hearsay application. Following the logic of Mr. Lambis submissions, it amounts to this: it is unfair to determine the hearsay application on the day of the substantive hearing because it means first that the Registrant does not know the precise nature of the case he faces until that application has been adjudicated upon. Second, it means the Committee adjudicating upon it has been in receipt of evidence that it may determine is inadmissible and thereby should not have seen. The cure, Mr. Lambis concedes, for all those ills is to conduct a preliminary meeting or for the Committee to deal with any preliminary applications and postpone the substantive hearing to another date, potentially before a differently constituted Committee. Consequently, Mr. Lambis' concession that there is a cure must mean there is no irremediable prejudice to the Registrant. Whether that is the only cure is matter for another application which are, by character, case management matters. In the Committee's judgement none of those matters amount to a sensible foundation to argue that there has been an abuse of its process in the circumstances of this case.

47. As Mr. Faux acknowledged, in the Committee's view rightly, a Registrant is entitled to know the case against him in good time so that he can answer it. The contrary argument to that advanced by Mr. Lambis is that the Registrant does know the case in its entirety. He knows the full extent of it, including the hearsay evidence and can prepare accordingly. If the application to admit that evidence is unsuccessful, then he can quite properly redact from his answers to the case he faces, any matters he no longer wishes to rely upon to meet those elements of the case that fall away.

48. Were the scope of the case to materially change, such that the Allegations were added to, over and above the full Allegations including those concerning Patient H and Colleague C, that might be a different matter, but even then it is unlikely it would amount to an abuse of process, given, as Mr. Lambis properly concedes, one "cure" could be postponement, which in turn would allow the Registrant the proper opportunity to prepare and answer the case as it is then cast. In short, even in those circumstances no incurable or irremediable prejudice would be likely to subsist.

49. Whilst for the purposes of assessing the application for a stay, the Committee has not embarked on any attempt to inquire into the change in the scope of the case regarding the remaining Allegations, should the hearsay evidence not be admitted, even if that scope does materially alter, it can be insured by robust case management, as conceded by Mr. Lambis, that any unfairness to the Registrant can be properly addressed to ensure that his position is not prejudiced.

Preliminary Meeting and Timing of Hearsay Application

50. The Council's refusal to hold a preliminary meeting and its basis for so refusing, was of concern to the Committee. The Committee can see merit in Mr. Lambis' submission that such a meeting could take place and that the Rules do not explicitly forbid such a meeting. Indeed the Rules envisage the Committee making interlocutory decisions in terms of disclosure and documents to be sought by the Council, and it would follow that the Committee ought properly to have robust case management powers, part of those powers being the opportunity to give directions and make interlocutory decisions whether administratively on paper, or whether through an in-person interlocutory hearing or preliminary meeting.

51. However, whether or not the Committee is right in that regard, the complaint that a failure to hold such a meeting renders the proceedings an abuse of process, is not made out, for the following reasons. First, there is no absolute right for the parties to have a preliminary meeting. Second, the absence of a preliminary meeting does not create incurable or irremediable prejudice, as Mr. Lambis conceded. Third, the refusal to convene such a meeting, in the absence of any Rule, Regulation or even guidance creating an explicit requirement to do so, cannot come close to offending the Committee's sense of justice and propriety.

52. For those reasons, the Committee has determined that the Council's decision not to hold a preliminary meeting and not to seek to make a hearsay application prior to the first day of the hearing does not amount to a basis for staying the proceedings as an abuse of process.

Registrant's Funding

53. The Committee agreed with Mr. Faux's submissions relating to the funding of the Registrant's litigation. No basis was put before the Committee to assert that the general manner of litigation and thereby its cost could amount to an abuse of process. The Committee were unable to say whether such is known at law. Even if it were, it would have to be of such an extreme example that it offended the Committee's sense of justice and propriety. Having evaluated all the material put before it, the Committee was left with the unhappy view that both the defence and the Council had engaged in intemperate correspondence at times, and that to assign blame was both unnecessary in evaluating the application for a stay and provided no basis for asserting that either party had behaved in a manner that amounted to an affront to the Committee's sense of justice and propriety.

54. The Committee was provided with no evidence at all to suggest the Registrant had been prejudiced in terms of the funding of his defence.

55. For those reasons the Committee has determined that the funding argument advanced by Mr. Lambis cannot amount to an abuse of process in the circumstances of this case.

Redaction of Inadmissible Material

56. The final issue raised by Mr. Lambis is the failure of the Council to redact what he refers to as large swaths of inadmissible material from the bundle, that it ought to have known of its own volition was inadmissible, and/or that its prejudicial effect outweighed its probative value.

57. Mr. Lambis' submission in this regard is mounted on the unattractive basis that at no point does it appear the Defence ever raised the issue of redactions with the Council in correspondence. In those circumstances it is a difficult position for Mr. Lambis to adopt to assert that the Council has failed in its duty, caused irremediable prejudice to the Registrant or otherwise offended the Committee's sense of justice and propriety. The Committee accepts Mr Faux's submission on the point to the effect that Defence representatives have an obligation and cannot abrogate that obligation by asserting the Regulator ought to have known material was inadmissible. To the contrary, if it is asserted by the Defence that material is inadmissible then the Regulator can respond either agreeing to redact the material or otherwise. If agreement cannot be reached the disputed material can be put before a Committee to make a determination as to its admissibility. In this case no such issue was raised with the Council,

which had no opportunity to agree or to object. Instead, the matter was raised before the Committee *pro tem.*

58. To assert that is unfairness caused by the Regulator is manifestly wrong. Even had there been correspondence on the topic and the Regulator refused to redact material objected to, that decision could not properly found an application for a stay absent either real irremediable unfairness, which Mr Lambis concedes is not present, or *male fides* of the sort required to offend the Committee's sense of justice and propriety. In the Committee's judgment, nothing of the sort has occurred in this instance or in this case.

Conclusion

59. The Committee has carefully assessed whether on the facts and matters before it, it can properly be said the Registrant cannot have a fair trial by reason of the conduct of the Council. The Committee has been guided by the submissions it has heard but has conducted its own inquiry into the material before it and has concluded there is no basis for such an assertion. Any unfairness that may have been created can be addressed within the case management powers available to the Committee. The application therefore fails in relation to limb one of *Maxwell.*

60. In relation to limb two, the Committee has carefully considered whether there is any evidence before it giving rise to concerns that its sense of justice and propriety might be offended. It has been guided by the submissions it has heard but has conducted its own inquiry of the material before it. The Committee has concluded there is no basis for asserting that its sense of justice and propriety is offended, such that the case must be stayed. The application therefore fails in relation to limb two of *Maxwell*.

61. For the reasons set out above the Committee has therefore determined to refuse the application to stay proceedings as an abuse of its process.

62. The issues raised by the parties in addressing this application may well be of importance in relation to subsequent applications made in this case. The Committee has assiduously considered those submissions and addressed them in the context of testing the application for a stay as an abuse of process. The Committee has reached no settled view on the impact of any of the submissions it has heard on any other applications and directions, that may now be sought by the parties.

II. Application to Amend Allegation

63. On behalf of the Council Mr. Faux sought to amend the Allegation in the terms set out within the final Allegation, subject to a hearsay application, to be decided. Mr. Faux submitted that such amendment was necessary to properly reflect the evidence in the case and was fair to both the Council and the Registrant, who had been put on notice of the proposed amendments some time before the hearing.

64. Subject to the outcome of the hearsay application, Mr. Lambis on behalf of the Registrant, did not oppose the application to amend.

65. 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 Rules. The Committee thereby had a discretion to amend the Allegation at any time if, having heard submissions and received legal advice, it considered that an amendment could be made without injustice.

66. The Committee carefully considered whether the proposed amendments might lead to any unfairness to the Registrant. Having done so, it 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 and in order for the Committee in exercising its case management functions to effectively consider the concerns arising in the case. Whilst the Allegation both in its original form and after amendment suffered from considerable prolixity, which was unfortunate, it did properly reflect the alleged mischief in the case.

67. The Committee therefore granted the application, subject to the Council's application to adduce hearsay evidence.

III. Hearsay Application/Discontinuance

68. On behalf of the Council, Mr. Faux applied to adduce the written evidence of Colleagues C and Patient H, both of whom had provided witness statements, as hearsay. In so applying Mr. Faux submitted it was an application made reluctantly, given the Council's preferred approach had been to offer no evidence in relation to parts of the Allegation concerning the two witnesses. For a number of reasons, Mr. Faux submitted that path had not been open to the Council. Mr. Faux accepted that Patient H's evidence was the sole or decisive evidence in relation to Paragraphs 5 – 7 of the Allegation. Colleague C's evidence was, he accepted, the sole or decisive evidence in relation to Paragraph 10 of the Allegation (and schedules 4 and 5 to the Allegation).

69. In relation to Patient H, Mr .Faux [redacted] was unable to assert the evidence Patient H gave in her witness

statement was demonstrably reliable, but that its reliability could be tested by reference to other evidence in the case. He further submitted that it was clear on the face of the documents before the Committee, that all efforts had been made to secure Patient H's attendance at the hearing, but to no avail. Given the Council had no address for Patient H it was not open to it to serve a witness summons.

70. In relation to Colleague C, Mr. Faux [redacted] invited the Committee to undertake the same analysis as with Patient H and ask whether the reliability of Colleague C's evidence could properly be tested by reference to other evidence.

71. If the Committee determined not to accede to his application, Mr. Faux invited the Committee to discontinue the Paragraphs associated with the witness in question, so that if it did not accede to his application concerning Patient H, Paragraphs 5 – 7 of the Allegation should be discontinued. If the Committee did not accede to his application in relation to Colleague C Paragraph 10 of the Allegation should be discontinued.

72. On behalf of the Registrant, Mr. Lambis submitted that the clear unfairness and prejudice to the Registrant subsisted by reason of the fact he would be prevented from putting matters to the two complainants about contamination of evidence, based upon admitted discussions between them both and others. Together with depriving the Registrant of his right to properly test the reliability of the evidence of each, it deprived him of the right to confront his accuser, in circumstances where Patient H had been asked to further clarify her evidence and had promptly disengaged. That, Mr. Lambis submitted, of itself raised concerns as to its reliability.

73. Mr. Lambis further submitted that Patient H had clearly asserted that she wanted to be left alone, and had arguably therefore asserted her Article 8 Rights, which the Council, could not and should not trespass upon.

74. In relation to both witnesses, Mr. Lambis submitted the admission of their sole and decisive evidence would lead to a shift in the burden of proof and would be so unfair as to render it impossible for the Registrant to have a fair trial.

75. In relation to Colleague C, Mr. Lambis invited the Committee to consider what efforts the Council had gone to, to secure her attendance. Those efforts had been significant he submitted, but had clearly demonstrated she was reluctant to participate, although why she was reluctant remained unclear.

76. In the circumstances, Mr. Lambis submitted that the application to adduce the evidence of both witnesses as hearsay should fail and that the Committee

should accede to the alternative application and discontinue the Paragraphs of the Allegation that concerned their evidence.

77. The Committee received and accepted the advice of the Legal Assessor. It was advised that pursuant to s.26 of the Osteopaths Act 1993 and the Practice Note on evidence issued by the Council on 1 May 2014, the Committee had discretion as to what evidence it could properly admit.

78. In exercising that discretion it should consider whether it was potentially relevant evidence and whether it was fair to admit the evidence. The Committee was advised to apply the principles outlined in the case of *Thorneycroft v NMC [2014] EWHC 1565 (Admin)* specifically: whether the statements were the sole or decisive evidence in support of the charge(s); the nature and extent of the challenge to the contents of the statements; whether there was any suggestion that the witnesses had reasons to fabricate their allegations; the seriousness of the charge [redacted]; whether there was a good reason for the non-attendance of the witnesses; whether the Respondent had taken reasonable steps to secure their attendance, bearing in mind the powers available to it including the power to issue witness summonses.

79. Whilst those principles were of importance, ultimately the question of admissibility was one for the Committee, taking into account the circumstances of the particular case.

80. The Committee agreed with both parties that in each case Patient H and Colleague C's evidence was either the sole or decisive evidence in support of the Paragraphs of the Allegation in question. The credibility of both accounts was clearly at issue, given the Registrant's documented assertions that witnesses had discussed their evidence on numerous occasions with one another, an assertion that appeared to be undisputed. The reliability of the evidence in each case was therefore a matter that needed to be carefully analysed. The Committee noted that there was a period in the region of four years between the original incident complained of by Patient H and the date upon which she gave her first account in evidence. In the absence of oral evidence from the two witnesses, and in particular in the absence of the safeguard that their accounts could be challenged under cross-examination, the Committee concluded it was neither fair nor safe to admit their written statements into evidence, [redacted]

81. In light of the total cessation of contact by both witnesses, and the history and age of the Allegation, the Committee determined that it was in the interests of all parties that the case be concluded as swiftly as possible. There was little

likelihood of the witnesses being located and brought before a Committee, and the delay in trying to secure witness attendance would necessarily jeopardise the hearing listing.

82. In the circumstances, the Committee determined it was both fair and proportionate to direct that the Council discontinue Paragraphs 5 – 7 and 10 of the Allegation and the associated schedule. The Committee therefore directed that the Allegation be redacted accordingly (as set out above).

IV. Special Measures

83. On behalf of the Council, Mr. Faux made a number of applications for special measures, specifically in relation to Colleagues D, F and G. In relation to Colleagues D and G the application was for them to give evidence via video link. In relation to Colleague F the application was for her to give evidence from behind a screen.

84. In relation to each application Mr. Faux submitted that there was evidence from each witness that they were concerned and stressed about giving evidence either in close proximity to the Registrant or whilst being able to see him. It was, he submitted, clear that each would be able to give their best evidence only by the provision of the appropriate special measure.

85. On behalf of the Registrant, Mr. Lambis did not oppose any of the applications made.

86. The Committee received and accepted the advice of the Legal Assessor. The Committee was advised that it should first consider whether the witness in question could properly be described as a vulnerable witness, in light of the definitions of those terms in the criminal jurisdiction. Of particular relevance in this case was the fear or distress a witness might be feeling and/or the nature of the allegation. In cases of alleged sexual misconduct the criminal law provides that complainants are considered vulnerable. In those circumstances the Committee should consider what if any measure would enable the witness to provide their "best evidence." The Committee was reminded that whether or not it granted the applications the fact of the applications should in no way affect their judgment of the evidence of any witness, of the Registrant, or of the case as a whole.

87. The Committee noted the correspondence from each witness seeking special measures. Whilst the Committee was not persuaded that any were in fear or distress, it was apparent that each was anxious and stressed about giving evidence. In light of the nature of the allegations made, the Committee concluded that each was vulnerable and that in order to secure best evidence,

special measures should properly be employed. In the case of Colleagues D and G the Committee acceded to the application that they should give evidence by video link. In relation to Colleague F it acceded to the application that she should have a screen when giving evidence. In the event by agreement between the parties Colleague F was permitted to give her evidence via video link.

The Substantive Decision:

Background

88. At all material times the Registrant worked at the Fix Clinic (the Practice) as an Osteopath and director of the practice, which was itself spread across two sites in London.

89. On 30 March 2022, Colleague B made a formal complaint to the Council, concerning the Registrant, and in particular his conduct whilst treating her on 25 November 2021. This had followed an internal complaint made to the Practice principal Helen O'Neill, and an investigation carried out into the issues Colleague B had raised. As part of that internal investigation, Ms. O'Neill had spoken to members her of staff and to patients.

90. In particular, she had identified Colleagues D, E, F and G as potentially relevant witnesses to the internal investigation. In each case those individuals made complaints concerning the Registrant's conduct towards them. In scope, the complaints concerned a period between 2018 and 2022.

91. The Council thereafter conducted its own investigation and as part of that investigation obtained witness statements from Helen O'Neill and Colleagues B, D, E, F and G. The Registrant provided his response to the complaints in a fulsome witness statement and associated exhibits.

The Evidence

92. The Committee was provided with a significant amount of evidence in written form. In particular, the Committee had before it witness statements and associated exhibits from each of the witnesses the Council had spoken to, namely Helen O'Neill and Colleagues B, D, E, F and G as well as an expert report and addendum commissioned by the Council from Jonathan Hearsey. As part of the Council's case, the Committee heard oral evidence from each witness, save for Mr. Hearsey.

93. The Committee was provided with an extensive witness statement from the Registrant and associated exhibits, numerous testimonials and an expert report commissioned by the Registrant's solicitors from Laurence Butler. During the hearing, the Committee heard oral evidence from the Registrant and was shown videos demonstrating two osteopathic techniques carried out by an expert.

94. The Committee first heard evidence from Colleague B primarily concerning Paragraph 14 of the Allegation. She adopted her witness statement and told the Committee she was a massage therapist and pilates teacher. She explained how she came to make a disclosure to Helen O'Neill concerning what had happened during the appointment on 21 November 2021, in particular that she had been very distressed a couple of days after the appointment and had opened up about the reasons why to Ms. O'Neill. She confirmed she had emailed Ms. O'Neill concerning the incident in March of 2022 following a meeting and that she had worried she was getting the incident out of proportion due to a previous traumatic incident in her past.

95. Colleague B explained that she had been seeing the Registrant as a patient for lower back pain since August 2021, but had worked at the Practice since 2016/17. She had previously seen another Osteopath and was seeing an acupuncturist and pilates teacher. The four of them had formed a WhatsApp group to discuss Colleague B's health. Colleague B explained she had felt uncomfortable around the Registrant for some time before the November appointment, but she could not identify why and continued to see him in any event.

96. In cross-examination Colleague B was asked extensive questions about the November appointment and her body position when she asserted the Registrant touched her breasts. She demonstrated where her arms were and explained that she was lying on her left hand side with her hands under head and elbows at 90 degrees away from her chest so that her chest was exposed. Colleague B was shown a video of the osteopathic technique the Registrant asserted he had used. She did not accept it properly reflected what had happened in the appointment.

97. Colleague B explained that following the appointment she had not been contacted by the Registrant concerning further treatment whether by WhatsApp or otherwise. It was put to Colleague B that there had been significant contact after the appointment, although she was unable to recall it. Colleague B accepted discussing the case with Colleague D and that she may have heard of concerns raised by others relating to the Registrant prior to the November treatment.

98. Thereafter the Committee heard from Colleague G primarily in relation to Paragraphs 11, 12 and 13 of the Allegation. She explained she had worked at the Practice as a receptionist from June 2020. She gave an account of the layout of the reception area as a busy and noisy place. The reception itself still had a Covid screen in place at the relevant time. She accepted she had been advised to "watch out" for the Registrant following an occasion reported to her by a fellow receptionist concerning an allegedly drunken incident with Colleague E.

99. Colleague G accepted that rather than saying "you have a rack on" the Registrant might have said "you have a wrap on." She was wearing a wrap type top, but didn't consider he was rebuking her for her outfit being too casual.

100. In relation to touching her shoulders, Colleague G explained that during the period of Covid she was experiencing some personal hardship and it was therefore possible that when the Registrant touched her shoulders he was seeking to be supportive. The Registrant had touched her for around fifteen to twenty seconds and had dug his fingers into her shoulders, squeezing them.

101. In relation to patting her jeans and the comments made, Colleague G confirmed she had heard the comments clearly and had considered it inappropriate. She had often felt uncomfortable in the Registrant's presence and that the comments he made concerning her voice following a phone call were not something she perceived to be professional feedback, but were personal and inappropriate. They had a visceral and unpleasant affect on her. Colleague G accepted she had suspicions of the Registrant before the incidents took place.

102. The Committee next heard from Helen O'Neill who adopted her witness statement. Ms. O'Neill thereafter explained that she had been contacted in 2025 by the Council and asked to contact the alleged victim (Colleague I) regarding what Colleague D described as a slap to the buttocks (Para. 9(b)). She had done so by telephone and had received a response form Colleague I that she had no recollection of such an incident.

103. Ms. O' Neill confirmed she was the Practice principal and had worked with the Registrant for some years prior to the complaints, he having joined the Practice in 2013, initially as a receptionist. Ms. O'Neill explained that she was strict with what reception staff wore and wanted their attire to be respectful.

104. Thereafter the Registrant had worked his way up, qualified as a registered Osteopath and become a director of the company in 2016. Until she became

aware of Colleague B's complaint Ms. O'Neill had received no other complaints concerning the Registrant.

105. When she received Colleague B's complaint, Ms. O'Neill was given to understand that there had been discussion between Colleague B and others and that there may be other issues. She thereafter initiated an external HR investigation employing the services of GAP HR.

106. Ms. O'Neill confirmed that when she informed the Registrant of the investigation and his suspension from work, he was shocked. He was just about to take a long haul flight, having just returned from a holiday.

107. In relation to the investigation interview, Ms. O'Neill explained it occurred not long after the Registrant's return. Prior to the interview he was given a paragraph in relation to each complaint, which did not identify the complainant or date upon which the alleged mischief occurred. No complainant had been warned not to speak to others about the incident(s) in which they were involved. The report made by Ms. O'Neill to the Council had been made prior to the investigatory meeting and prior to the Registrant knowing the full nature of the complaints made against him.

108. The Committee next heard from Colleague D primarily concerning Paragraphs 8 and 9 of the Allegation. She explained the arrangement of the treatment room she was in when the Registrant asked to change in the room. She was unable to recall him saying anything concerning being in a hurry, but conceded he may have been, although she might not have known. Whilst he was changing, Colleague D averted her gaze, so she was unable to say for sure how many clothes he removed, but he left in different outer garments. She recalled his use of the word "naked" which she found disparaging.

109. In relation to what Colleague D saw at the party, she explained she might have had a single drink but no more, whilst others had been drinking a considerable amount. That included Colleague I, who was unsteady on her feet, and the Registrant. When asked about the phrase "up your bum" Colleague D confirmed she did not recognise it and was not familiar with a similar phrase in her native language of French. Colleague D thereafter, explained the relative positions each person was in during the party and how Colleague I and others had crawled under the table to sit down when returning to the table.

110. Colleague I's response to the Registrant slapping her "on the bum" had been to call the Registrant naughty and to take it as a joke. Whilst Colleague D accepted she continued to refer clients to the Registrant after these events, she no longer referred female clients to him. She accepted never raising her

concerns directly with the Registrant, but that their professional relationship remained intact, and that she had received a massage from him, without raising concerns and had texted him in a positive manner concerning the practice and his own professionalism.

111. The Committee next heard from Colleague E, primarily in relation to Paragraphs 2, 3 and 4 of the Allegation. Colleague E explained the background to the complaint that the Registrant had kissed her. This, she said had occurred after the Practice's summer party in Margate. Following them leaving the party, during which she and the Registrant had both been drinking, a group of employees had got the train home. Colleague E could not remember much of the train journey but had since been told that the Registrant had been tactile with her on the train, holding hands and interlacing their fingers.

112. On arrival back in London a number of those present had decided to go to a colleague's flat to continue the party. The flat was a short walk from the station, perhaps 10 minutes. On arrival, the majority of the group had got in the lift to go up to the flat, leaving the Registrant and Colleague E waiting for the next lift. When they got that lift the Registrant had grabbed Colleague E and kissed her on the mouth. She had felt shocked and pulled away, saying she had a boyfriend. She got out of the lift and went into the flat and told two of those present what had happened.

113. Colleague E accepted she was inebriated and that there were parts of the day and evening she did not remember as a result. However, she was clear she did remember the kiss and the aftermath of it. It was not possible she was wrong, nor was it possible another colleague had kissed her instead.

114. Colleague E accepted that she subsequently saw the Registrant for treatment to a hamstring she had injured earlier that day and that she was happy with the treatment she received. She accepted she had bought him a bottle of whisky as a gift and had referred friends to him, though she was initially unable to recall which friends, but later in her evidence recalled referring a female friend from Russia to the Registrant, whom she felt "would have been able to deal with it."

115. In relation to the treatment and in particular the appointment in May/June 2018 (Para. 4), Colleague E was shown a video of the treatment the Registrant asserted had been performed. Colleague E agreed that the treatment shown on the video demonstrated a technique that was the same or similar to the treatment provided by the Registrant but that he had been less assiduous in keeping his hands free of her breasts, when treating areas in the immediate vicinity. He had held his hand on her breast for up to twenty seconds, and his touching of her breasts had not been transient. Colleague explained experience

of "cupping" did not accord with the style of the video demonstration. Colleague E accepted she had never raised concerns with the Registrant as to what he was doing and why and that she had sent him numerous messages expressing her thanks.

116. She explained that the Registrant would hug her on numerous occasions or ask if she wanted a hug. The occasion at the end of treatment was just one such occasion. Whilst it wasn't suitable, Colleague E thought they were friends, so it seemed less unsuitable.

117. Colleague E explained that she wasn't concerned about the Registrant's behaviour towards her because she never felt it was something she couldn't handle or deal with. She explained that whilst she didn't consider the Registrant's behaviour to be right, she hadn't felt the need to speak up until she had heard it was happening with others.

118. The Committee next heard from Colleague F, primarily in relation to Paragraph 15 of the Allegation. She explained that so far as she could remember she had not talked to anyone else about the incident she reported, concerning the Registrant. She might have talked to Colleague G but she was unsure.

119. Colleague F maintained that the tapping had occurred twice, although the first time might have been a mistake. On the second occasion it was inappropriate and was on an area where not even a friend would touch her, only an intimate partner. Colleague F was asked to indicate where the touch occurred, and did so, placing her hand on her upper thigh on her hip to the side of her right buttock.

120. Other than the touching, Colleague F confirmed she had a good relationship with the Registrant and found him professional.

121. Colleague F confirmed she had spoken to Colleague B and G about the incident, and that she had done so after Colleague B had raised her concerns. She sympathised with colleague B and told Colleague B "that he was quite handsy with her." Colleague F denied that she and Colleague B had discussed coming forward to make a complaint together, rather Colleague F was trying to support Colleague B by coming forward for herself. It had given Colleague F the courage to come forward about something she felt was inappropriate and uncomfortable.

122. The Committee thereafter heard from the Registrant. He gave the Committee an overview of the Practice at the time, characterising it as a welcoming and relaxed environment striving to provide good clinical care. He

described himself as a tactile person, who grew up in a happy family with two siblings. The complaints before the Committee were the first he had ever received.

123. In relation to Paragraph 2 of the Allegation the Registrant accepted that had he kissed Colleague E it would have been beyond the bounds of what would be appropriate, but that it did not happen. In answer to questions in cross examination the Registrant explained how the Margate trip had been planned and the background to it. He accepted he had been drinking and was quite drunk. He estimated that about twelve of those present had gone back to the flat in London. Helen O'Neill was not one of those present. The Registrant accepted he should have been leading by example as the only director present, and that he would now no longer drink if attending a work event.

124. The Registrant agreed he had been with Colleague E waiting for the lift, although he explained his recollection was hazy. He was unable to say with absolute certainty that it was just Colleague E and him in the second lift. When asked, the Registrant denied that he found Colleague E particularly attractive, although he explained they got on well. He had no recollection of kissing her and would have been mortified if he had. In answer to questions from the Committee the Registrant acknowledged that in his internal investigation interview he had said "I can't recall kissing Colleague E, I'm not saying I didn't…" He explained that during the interview he had not wanted to allege anyone was not telling the truth, given everyone had consumed a lot of alcohol on that occasion, but had he kissed Colleague E it would have been entirely out of character.

125. The Registrant explained that he had been married since 2008, with some ups and downs in the marriage particularly around the time of Covid and immediately thereafter. When asked, the Registrant could not account for why Colleague E would have made up a story that he had kissed her.

126. In relation to the treatment administered to Colleague E, the Registrant explained that the video provided in evidence was prepared at his instruction, and showed exactly how the Registrant had performed the technique on Colleague E. He had explained to her over a number of sessions what techniques he was using and why, and had thereby obtained valid consent. Had he inadvertently touched her inappropriately during treatment he explained he would have stopped, apologised, explained that it was incidental contact and asked if she wanted to continue with treatment. That had never happened with Colleague E. In answer to Committee questions the Registrant accepted he might have come into accidental and transient contact with Colleague E's breast area, but that he was unaware of it, if it had happened.

127. The Registrant did not accept that cupping of the breast could refer to the technique he had demonstrated, and that cupping for him meant fully supporting the breast tissue in the palm of the hand, which he said had not happened. He denied putting pressure on Colleague E's chest for about twenty seconds through her sports bra, there being no reason to do so.

128. In relation to the hug, the Registrant explained he had only ever hugged a patient once or twice in the entirety of his career. He accepted that asking a patient if they wanted a hug might be inappropriate and that he had not considered that when he asked the question of Colleague E, which he regretted. It had been a spontaneous attempt to offer support to a friend, the treatment door was open and they were both fully clothed at the time.

129. In relation to Colleague D the Registrant explained there was a culture of getting changed in front of one another, which is not uncommon in body work and movement practices. He explained that at no point had he been naked in the room with Colleague D. Instead, he had purposely walked to an area of the room in which he was not visible to her, she could have left before he changed and she could have left without walking past him. The Registrant rejected the suggestion he had used the word "naked" as it was not the sort of word he would have used, albeit he accepted he said something about getting changed and it may have involved her theatrical background.

130. In answer to Committee questions the Registrant explained that he had left his own treatment room, after cleaning it down as another practitioner needed it immediately to treat a patient. He had spoken to reception staff briefly, gone to get his coat and bag and realised he was running late. He therefore put his head into room 3 where Colleague D was, with the door ajar. He had a brief chat with her, part of which was asking if he could change in the room. Colleague D didn't express any reservation or discomfort and nor did she leave. This was not uncommon, and had happened to the Registrant and he himself had done it to others on previous occasions.

131. In relation to the Christmas party, the Registrant denied slapping Colleague I on the buttocks. Whilst he accepted saying "up your bum" as a toast, he did not accept that it was a "shocking moment" and at the time he had consumed very little alcohol as it was early in the evening. He explained he had not been drunk at any stage at that party.

132. In relation to Colleague G's evidence the Registrant explained that Helen O'Neill was correct to describe the dress code for reception staff as strict. Colleague G was wrong about that point. The Registrant did not accept the suggestion that he made a pun on the word "wrap" sounding like "rack" and that "rack" to describe breasts was not a word he would use, nor had he heard

it for many years. His comment that she had a wrap on was to do with the dress code, but because Colleague G visibly bristled at the comment the Registrant considered he would not take it any further at that stage, not wanting to deal with the confrontation, having only just arrived into work.

133. The Registrant accepted putting his hands on Colleague G’s shoulders but did not accept he squeezed or massaged her shoulders. He explained that she was sitting and he was standing and he put one hand on either shoulder, whilst she was explaining about her personal challenges. This lasted a matter of seconds before he removed his hands. When it was put to him that in his internal HR interview he appeared to accept rubbing Colleague G’s shoulders, the Registrant explained that he did not accept rubbing her shoulders, rather in the interview he was merely accepting an incident occurred when he placed his hands on her shoulders.

134. In relation to the party and water spilling on Colleague G’s leg, the Registrant explained that he recalled the party which took place after they had attended an outdoor adventure park. The Registrant did not accept he was “quite drunk” but he accepted he had a drink. There was a flurry as something spilt on Colleague G and the Registrant along with others, grabbed some tissues and patted her leg dry. The Registrant said something along the lines of “it's mostly this leg that’s wet.” The Registrant did not recall saying “bring your leg over here,” and did not think that had happened. At another point in his evidence the Registrant said it was possible he may have said it, but if he had, it would have been a light-hearted comment at a social event.

135. In relation to the comments he made concerning Colleague G’s handling of a telephone call, the Registrant explained this was to express his appreciation of the way she had managed a difficult encounter on the phone and that he accepted saying that set out in schedule 7 to the Allegation.

136. In relation to Colleague B’s evidence, the Registrant explained by reference to the treatment video how he had treated Colleague B. At no point had he touched her breasts when he came to her top half, and he could not have done so given where her arms were. The Registrant suggested that Colleague B’s evidence on the point had been inconsistent beginning with her arms being over her breasts, before she altered that to her arms being extended away from her body, which would have been an unnatural position.

137. The Registrant explained he was not aware of Colleague B’s previous trauma at the time he treated her. He would have adopted the same approach to her as to Colleague E had he inadvertently and inappropriately touched her. That had not happened in the case of Colleague B and at no time had she raised any concerns with him.

138. In relation to Colleague F's evidence the Registrant explained that he had not considered touching her on the lateral aspect of her hip was inappropriate at the time. He had not touched her buttock. The Registrant explained the layout of the reception area. He accepted he had touched Colleague F once, but did not accept it had happened on two occasions, albeit if it had been wholly accidental, he might have brushed past her with his bike helmet or some part of his clothing and not realised.

139. The Registrant explained he had touched her in order to get past her in a friendly manner. This had not been an attempt to exert power or to touch her in a sexualised manner. In a different professional environment the Registrant had worked in not long before that had been a way people signalled they were moving past someone.

140. When asked questions about his managerial experience, the Registrant explained he had received some training in previous roles but not specifically in management skills.

141. When asked questions about the Allegations in totality, the Registrant explained that he was not sexually motivated in any of his conduct. The gestures and comments were friendly in nature from a tactile person. He explained that he is married with a family and that he had wanted to apologise to all those involved if he had made anyone feel uncomfortable.

142. In relation to the internal HR process the Registrant explained that prior to and during his interview, he had been provided with no medical records or full details. He had seven anonymised paragraphs, it was a terrible shock. He had been advised he was not entitled to bring anyone to the interview. The Registrant expressed his concern that after nine years and a huge range of colleagues and patients, he had not been provided with sufficient detail to enable him to provide an account; things such as dates, times, treatment notes, corroborative information were not available, meaning it was extremely unfair to expect him to comment.

143. In concluding his evidence, the Registrant explained that he was not behaving as an arrogant and entitled man touching women when he felt like it. He had tried to be a compassionate, caring and empathetic member of the team and any touching of colleagues was done in a well-intentioned way.

Submissions of the Parties

144. On behalf of the Council, Mr. Faux submitted that the Registrant was not conscious of the imbalances in play and the job of a director of the business.

That, coupled with his admissions, raised the very real possibility that the Allegation was borne out in its entirety. Whilst Mr. Faux accepted that the passage of time would doubtless have affected witness recollection, notwithstanding that, all the factual witnesses had given cogent and reliable evidence and the Committee could repose confidence in their accounts.

145. The transgressions in the case were of professional boundaries and on occasion sexual boundaries. Exploring motive is always slightly more complex and Committee's very rarely have direct evidence of sexual motivation. Mr. Faux submitted that the Committee was entitled to draw inferences and invited the Committee to draw such inferences at it deemed it could, concerning the Registrant's conduct.

146. Mr. Faux further submitted that the Committee should bear in mind that victims of unwanted sexual behaviour do not all behave in the same way and that there is no correct response to such conduct. He invited the Committee to think about the explanations each witness gave. In each case they were, he submitted, human understandable and compelling.

147. In terms of cross-admissibility, Mr. Faux clarified his earlier written submissions and no longer invited the Committee to consider cross-admissibility on the basis of rebuttal of coincidence. That was not a defence advanced by the Registrant and therefore not a basis of admitting the evidence. Rather Mr. Faux invited the Committee to consider cross-admissibility on the basis of propensity only.

148. On behalf of the Registrant Mr. Lambis submitted that there were numerous matters not in dispute that were of considerable importance to the Committee's decision: First, the Registrant made admissions not just before the Committee but also before Helen O'Neill when he knew nothing about the case against him. He was open and eager to assist despite being obviously disadvantaged by not knowing who the complainants were and having no access to medical records.

149. Second, until Colleague B raised concerns no one had previously raised any concerns to the Registrant or to Helen O'Neill concerning the Registrant. Third, The Registrant was a respected practitioner.

150. Fourth, at one stage the Complainants did discuss matters between themselves. This particular factor, Mr. Lambis submitted, required the Committee to tread with caution. That, taken together with the fact that the complainants not only continued to interact with the Registrant, but did so in a manner that was inconsistent with the current complaints, praising his work

and professionalism, buying him a bottle of whisky and so on meant the Committee had to tread with additional care.

151. The Registrant's attitude was also, Mr. Lambis submitted, important. He had accepted he was as a tactile person and that his behaviour went too far. He had apologised for that and shown reflection and insight. However, because of the post-incident conduct of the complainants, he had no indicators that what he was doing was wrong. Whilst it could be said he should have known, the external indicators were that all was well.

152. Mr. Lambis then addressed each Complainant in turn beginning with Colleague B. Whilst the Registrant may be a brilliant osteopath, Mr. Lambis submitted that Colleague B had been free to attend someone else if she had concerns about him following the treatment in November 2021. Colleague B herself could not put a finger on her discomfort around the Registrant. In relation to her evidence of the treatment, this Mr. Lambis submitted, had changed. She had changed her evidence on where her arms were during treatment after it had been pointed out to that her arms were covering her breasts.

153. Following treatment, between December 2021 and February 2022 she sent messages to the Registrant and others and at no point did she raise any concerns in those messages.

154. In relation to Colleague G, Mr. Lambis submitted that it was not unusual for her to wear the kind of tops she was wearing on the day the Registrant was alleged to have made the "rack" comment to her. She had accepted there was a ramp in the reception area and it created a lot of noise. She accepted she had discussed the Registrant with colleague E and another colleague, and she accepted the covid screen was in place. Her evidence was inconsistent in terms of the strictness of the dress code when compared with that of Helen O'Neill who said she was "absolutely strict about what they wear [on reception]."

155. Mr. Lambis further submitted that clearly Colleague G was given instructions by Helen O'Neill concerning attire and cannot now remember them. That affects the credibility of her evidence. In any event she accepted she may have misheard what the Registrant said to her that morning.

156. In relation to her evidence concerning the hand on the shoulders, Mr. Lambis submitted that the Registrant had accepted putting his hands on her shoulders. Colleague G was experiencing some significant personal issues, which is why he did it. It was done in a public area.

157. In relation to the remarks concerning the telephone call, Mr. Lambis submitted these were collegiate and an attempt to provide positive feedback to an employee.

158. In relation to Helen O'Neill's evidence, Mr. Lambis submitted that she had been told by Colleague I that Colleague I had no recollection of the" slap on the buttocks." Nor had she herself seen anything that concerned her in the Registrant's behaviour. She had referred members of her family to the Registrant, but apparently could not recall doing so. Moreover, she had failed to ensure the evidence of the complainants was not contaminated in the investigation process, thereby tainting its reliability.

159. In relation to Colleague D, Mr. Lambis submitted her evidence was weak given the alleged victim in relation to Paragraph 9(b) of the Allegation didn't recall the event and that in turn necessarily affected the credibility of Colleague D both specifically and in general terms.

160. She too had sent numerous complimentary messages to the Registrant after the events in question,

161. In relation to Colleague E Mr. Lambis urged caution. He submitted that she had on her own admission consumed a large amount of alcohol on the day of the trip to Margate, such that she could not recall the return train journey. After the alleged inappropriate kiss she still saw the Registrant, sent him numerous text messages and sent him a bottle of whisky which is, at the very least, odd. She did not need to go on seeing someone who has done something wrong, and she did not need to purchase him a gift. It was, Mr. Lambis submitted, only after she had spoken to Colleague B that Colleague E felt it was necessary to complain.

162. In relation to Colleague F, Mr. Lambis submitted that on her own evidence the first touch may have been accidental, which is perfectly consistent with his assertion that he touched her only once. If it were accidental he may not know he touched her at all.

163. In relation to the Registrant, Mr. Lambis reminded the Committee he had given evidence, in spite of not being required to do so. Mr. Lambis submitted he had been transparent, forthcoming and straight forward, on occasion making admissions against interest. He was a witness but not like any other witness. He had to contend with all the stress anxiety and concern that comes from being "the accused." Mr. Lambis invited the Committee to make allowances for how stressful giving evidence must have been for him.

164. To his credit, Mr. Lambis submitted, the Registrant had fully embraced the regulatory process and engaged in reflection and remediation.

165. In conclusion, Mr. Lambis took the Committee to the testimonial evidence. He submitted that this evidence and those that gave it were fundamentally important. Unlike any other witness they had no agenda. No one, he submitted, can force people to say nice things about them, if they don't want to they don't. Those witnesses had taken the trouble to write to the Committee to assist. They had done something that was fundamentally important to assist the Committee in building a three-dimensional picture of the Registrant. Character witnesses paint the real perspective of the man.

166. The inevitable question therefore is why would someone of such standing and professionalism act in a manner so out of character? The answer, Mr. Lambis submitted, was that he would not and that the Committee should therefore find the outstanding Paragraphs of the Allegation not proved.

The Committee's Findings on the Facts

167. 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 further advised that in assessing the evidence it was entitled to draw inferences, that is it was entitled to come to common sense conclusions based upon the evidence, but that it should not speculate on the evidence. The Committee had read evidence from experts. It was not bound to accept that evidence and should treat it with the same careful analysis as any witness evidence, whilst bearing in mind that experts bring to bear their knowledge and expertise in a particular field.

168. The Committee was directed to the case of *Montgomery v Lanarkshire* [2015] UKSC 11 as to the definition of consent, and was directed to the case of *PSA v GMC and Garrard* [2025] EWHC 318 (Admin) in relation to cross-admissibility. In that regard the Committee was reminded that the Council sought to admit the evidence of one complaint in relation to another on the basis of propensity only. It was therefore only open to the Committee to admit evidence of one complaint when considering another, if it had found a particular complaint proved. Even, then it must satisfy itself that there is sufficient connection between the two as well as the other factors listed in *Garrard.*

169. The Committee was advised as to how it should treat the Registrant's good character, both in terms of assessing his propensity to commit acts of the sort alleged and in assessing the reliability and credibility of his evidence.

170. The Committee was invited to apply the following definitions:

- In relation to sexual touching - s.8 of the Sexual Offences Act 2003 as per *GMC v Haris [2020] EWHC 2518 (Admin)*;
- In relation to sexual motivation - *Basson v GMC [2018] EWHC 505 (Admin)*;
- In relation to Sexual boundaries PSA Guidance - A transgression of sexual boundaries occurs when a healthcare professional displays sexualised behaviour towards a patient. Sexualised behaviour is defined by the PSA as *"acts, words or behaviour designed or intended to arouse or gratify sexual impulses or desires;"*
- In relation to Professional Boundaries - generally speaking, professional boundaries are the legal, ethical and regulatory limits to the healthcare professional/patient relationship.

171. The Committee was advised that in the case of *Dutta v GMC [2020] EWHC 1974 (Admin)* Warby J cautioned first instance tribunals against placing too much reliance on the demeanour of a witness giving oral evidence. In assessing the reasons, the Judge pointed out that the tribunal's reasons did not clearly or sufficiently acknowledge the fluidity of memory, or the fact that an honest witness can construct an incorrect memory. *"It was a fallacy that confident evidence from an honest witness is necessarily accurate evidence and that contemporaneous documents are often a more reliable source of evidence than recollection."* The Committee was further advised that whilst it ought to exercise caution when assessing demeanour and manner, neither is wholly irrelevant. The Committee should simply take care not to assign undue weight to factors such as demeanour and manner.

172. The Committee bore in mind throughout all it had heard and read, there was significant concern raised by the Registrant in relation to two areas of evidence. First, that the evidence of witnesses had been tainted by conversation and discussion that had taken place between them. Second, that the original investigative process had been unfair to the Registrant, given the limited disclosure he received prior to his interview. The Committee bore both points high in mind throughout its analysis of the evidence.

173. The Committee also kept well in mind that the Registrant was of "good character" and that whilst that did not provide him a defence it was important in assessing the likelihood of events such that those alleged occurring. The Committee also reminded itself of the numerous positive testimonials provided on his behalf. The Committee was therefore particularly mindful of the need to identify evidence of real cogency before finding a fact or matter proved.

174. The Committee thereafter considered each Paragraph of the Allegation in turn.

Paragraph 1 – Admitted and Found Proved

175. The Registrant admitted Paragraph 1 of the Allegation at the outset of proceedings. Pursuant to Rule 27(1) of the General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000 ('the Rules') the Committee found that Paragraph proved.

Paragraph 2 – Found Proved

176. The Committee carefully considered the account given by Colleague E in her witness statement and in her oral evidence, as well as the Registrant's account in his witness statement and in the internal HR investigation. The Committee considered that Colleague E's evidence had been clear and consistent throughout and that whilst she had consumed significant quantities of alcohol earlier in the day, her recollection of the events in and around the lift, were cogent and reliable.

177. The Registrant's memory was, by his own frank admission, "hazy." His initial account in the HR interview, although not based on full disclosure, was far from unequivocal: *"I don't recall kissing [Colleague E]. I'm not saying I didn't…"* Whilst the issue of disclosure in the context of the HR interview might be of some impact, it was clear that the Registrant knew of the identity of the alleged victim and clearly there would have been no medical records to disclose, given the events did not occur during or in relation to a patient appointment.

178. The account given by the Registrant in his witness statement and in oral evidence was a more definite denial, albeit he remained unable to remember with any clarity the events in the lift, saying that, had he behaved in such a manner, it would have been totally out of character.

179. The Committee bore in mind his previous good character and that behaving as alleged would be a departure from his usual conduct. However, the Committee noted that the Registrant was in drink, he had potentially become less inhibited, and indeed it appeared to be undisputed that he had been behaving in a flirtatious and overly tactile manner with Colleague E on the train immediately prior to the incident.

180. Given Colleague E's clear and cogent evidence and the Registrant's equivocation on the point, the Committee determined that on the balance of probabilities he had taken the opportunity when alone with Colleague E and uninhibited through drink, to kiss her.

181. The Committee therefore found Paragraph 2 proved.

Paragraph 3 – Admitted and Found Proved

182. The Registrant admitted Paragraph 3 of the Allegation at the outset of proceedings. Pursuant to Rule 27(1) of the General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000 ('the Rules') the Committee found that Paragraph proved.

Paragraph 4(a) & (b) – Found Proved

183. The Committee considered the evidence it had heard to be in part consistent as between Colleague E and the Registrant. In his oral evidence the Registrant explained that he did not consider the action he was undertaking amounted to cupping, it being his belief that cupping meant supporting the breast in a different way.

184. The account given by Colleague E did not assert holding of the breast in its totality.

185. Paying close regard to the evidence and the wording of the sub-Paragraph of the allegation, the Committee determined that the action of treating Colleague E in the manner demonstrated, necessarily amounted to cupping of the breast. Whether that was a legitimate contact in the context of this particular treatment technique or whether the Registrant exceeded the boundaries of what was reasonable and impinged on Colleague E's breast was not a matter that needed to be resolved in relation to this part of the Allegation. Rather, because of the disjointed drafting of the Allegation, that element subsisted in Paragraphs 17 – 19 of the Allegation.

186. On the basis of the sub-Paragraph as pleaded, the Committee therefore determined that whichever evidence it preferred the Paragraph was made out. It therefore found Paragraph 4(a) of the Allegation proved.

Paragraph 4(b) - Proved

187. The Committee again took careful note of the evidence it had heard and the wording of the sub-Paragraph. The Registrant's account was that he had held his hand on Colleague E's chest in a legitimate and recognised osteopathic technique.

188. Colleague E asserted that the Registrant had held his hand on her chest for up to twenty seconds or so, and had been in sustained contact with her breast tissue.

189. On whichever account the Committee preferred, the facts alleged in this sub-Paragraph were made out. Resolving the dispute between the two accounts subsisted in Paragraphs 17 – 19 as set out in relation to 4(a) above.

190. The Committee therefore determined that for the purposes of sub-Paragraph 4(b) there was no dispute in the evidence and the sub-Paragraph was therefore proved.

Paragraph 4(c) - Proved

191. The Committee carefully noted the evidence of both Colleague E and the Registrant. The Registrant's evidence in his witness statement was that he did ask Colleague E if she wanted a hug on an occasion after treatment. The Registrant thereafter provided context for the offer and considered it might have happened when Colleague E was struggling with a close family bereavement.

192. In her witness statement Colleague E linked the incident to receiving treatment for a hamstring injury, and appeared clear in her account that this was the occasion upon which it occurred. Colleague E's dating of the incident was leant weight by the clinical records of the treatment she received to her hamstring which occurred on 26 June 2018.

193. On the balance of probabilities and given Colleague E's clear evidence on the point and the Registrant's partial admission that he had offered Patient E a hug on an occasion following treatment, the Committee determined that it was more likely than not he had offered such a hug, that it had occurred after treatment when both the Registrant and Colleague E were fully clothed with the door of the treatment room open, and that it more likely than not occurred in June 2018, when Colleague E had received treatment for a hamstring injury.

194. The Committee therefore found Paragraph 4(c) proved.

Paragraph 8(a) – Admitted and Found Proved

195. The Registrant admitted Paragraph 8(a) of the Allegation at the outset of proceedings. Pursuant to Rule 27(1) of the General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000 ('the Rules') the Committee found that Paragraph proved.

Paragraph 8(b) - Proved

196. The Committee noted that Colleague D was extremely clear and unwavering in her evidence on the point. She recalled the Registrant asking if he could change and referring to her theatrical background and seeing people naked.

197. In his oral evidence the Registrant accepted he said something to her concerning getting changed and her theatrical background, but did not accept he used the word "naked." Rather, he referred to using the phrase "getting his kit off" as a more likely phrase he would have used.

198. The Committee noted that the Paragraph contained the phrase "…or words to that effect." In the Committee's judgment the use or absence of the word "naked" was incidental to the mischief charged. Whether the Registrant said he was going to get changed or was going to get naked, was of no material relevance to the Paragraph as pleaded.

199. Notwithstanding its analysis above, the Committee preferred the evidence given by Colleague D on the point, given she was extremely clear about the surprise caused to her by the use of the word "naked" and her description of it as "disparaging." The Committee therefore determined that Paragraph 8(b) was proved and that whilst not determinative of the sub-Paragraph, on the balance of probabilities, the word "naked" had been used by the Registrant.

Paragraph 9(a) – Admitted and Found Proved

200. The Registrant admitted Paragraph 9(a) of the Allegation at the outset of proceedings. Pursuant to Rule 27(1) of the General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000 ('the Rules') the Committee found that Paragraph proved.

Paragraph 9(b) - Proved

201. The Committee noted the account given by Colleague D and that given by the Registrant. It noted that Colleague I, the alleged victim of the slap, had no recollection of it taking place and that there was no direct evidence before the Committee from the alleged victim.

202. Colleague D's evidence was that she was sober and had a clear from where she was seated of the incident in question. It was not disputed that numerous people were crawling under the table to gain access to the seating on the other side, and that Colleague I had done likewise. Colleague D gave evidence, which was not disputed, that Colleague I was unsteady on her feet through drink and was, in her opinion, drunk.

203. The Registrant accepted he had taken a drink, or possibly two but did not accept that he was drunk. He was clear that he had not at any point slapped Colleague I's buttocks.

204. The Committee considered the absence of evidence from Colleague I and her lack of any recollection to be of limited significance, given she was, on the evidence available, in a state of significant inebriation.

205. Colleague D's recollection struck the Committee as detailed, clear and cogent. She was subjected to detailed cross-examination on the point and her evidence tested by the Committee.

206. The Registrant's evidence in contrast was less definite, and based upon the unlikelihood of him behaving in such a manner. Whilst the Committee placed limited weight in the manner and demeanour of the witnesses in giving their evidence, it was persuaded that Colleague D's account was a reliable one based upon the detail and clarity she provided.

207. It therefore concluded that on the balance of probabilities Colleague D was right when she said she saw the Registrant slap Colleague I on the buttocks.

208. The Committee therefore found Paragraph 9(b) proved.

Paragraph 11 – Not Proved

209. The Committee noted the oral evidence given by Colleague G. It noted that she had conceded she might have misheard the Registrant and that he might have been commenting on her wearing a wrap, rather than said anything concerning a rack. This was particularly so, in circumstances where the reception area was noisy and the Covid screen was potentially masking her ability to hear the Registrant clearly.

210. The Registrant's account that he was concerned by her top, given the Practice policy that reception staff should dress smartly, was both credible and reliable, particularly in light of Helen O'Neill's evidence supporting the proposition. The words attributed to the Registrant made little sense if he had said "rack" rather than "wrap."

211. The Committee concluded that, on the balance of probabilities, insufficient evidence had been adduced to prove that the Registrant had used the word "rack" rather than "wrap." The Committee therefore found Paragraph 11 not proved.

Paragraph 12(a) – Admitted and Found Proved

212. The Registrant admitted Paragraph 12(a) of the Allegation at the outset of proceedings. Pursuant to Rule 27(1) of the General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000 ('the Rules') the Committee found that Paragraph proved.

Paragraph 12(b) - Proved

213. The Committee noted the evidence both of Colleague G and the Registrant. In particular, the Committee noted that the Registrant accepted placing his hands on Colleague G's shoulders and in the internal HR interview accepted rubbing her shoulders: *"I did once rub Colleague G's shoulders. And I accept that I've rubbed her shoulders colleagues have done that to me before…"* Notwithstanding the lack of disclosure prior to that interview, the Registrant had been given Colleague G's identity and there would have been no patient records of such an encounter, given it was unrelated to treatment.

214. The Committee was therefore concerned by the apparent inconsistency in the Registrant's accounts. That inconsistency was all the more apparent in the Registrant's oral evidence, in which he denied having his hands on Colleague G's shoulders other than lightly for more a moment or two.

215. By contrast, Colleague G's written and oral evidence was consistent. She described the Registrant placing his hands on her shoulders and using his fingertips to squeeze or massage her back.

216. On balance, the Committee considered the account given by Colleague G to be the more reliable one. The Committee concluded that whilst there was no evidence consistent with a massage as it would be understood by an Osteopath, there was cogent evidence that the Registrant had squeezed Colleague G's shoulders.

217. The Committee therefore concluded that it was more likely than not that the Registrant did squeeze Colleague G's shoulders and that therefore Paragraph 12(b) was proved.

Paragraph 12(c) – Admitted and Found Proved

218. The Registrant admitted Paragraph 12(c) of the Allegation at the outset of proceedings. Pursuant to Rule 27(1) of the General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000 ('the Rules') the Committee found that Paragraph proved.

Paragraph 13(a) – Admitted and Found Proved

219. The Registrant admitted Paragraph 13(a) of the Allegation at the outset of proceedings. Pursuant to Rule 27(1) of the General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000 ('the Rules') the Committee found that Paragraph proved.

Paragraph 13(b) – Proved

220. The Committee noted that Colleague G had a clear recollection of the comment made by the Registrant. The Registrant's evidence was that he had no memory of making the comment as alleged, but that had it occurred, he accepted it would have been inappropriate. Whilst he asserted he would not have used the language alleged, the Registrant accepted that it was possible he had done so, but that he had no recollection of doing so. Had he done so, it would have been intended to be a light-hearted comment or "banter."

221. The Committee determined that Colleague G's evidence on the point was clearer and of greater cogency than the Registrant's, which was equivocal on the point.

222. The Committee determined that in the circumstances it was more likely than not that the Registrant had made the comment as alleged or words to that effect. On the balance of probabilities, the Committee therefore found Paragraph 13(b) proved.

Paragraph 14(a) - Proved

223. The Committee noted that it was not disputed that Colleague B was lying on her left side on the treatment table and that the Registrant moved his hand along the right side of her outer rib cage. The Registrant disputed the account given by Colleague B, in part because he asserted, he could not have touched her breast as her arms were covering them as she assumed the prayer position. In his oral evidence and in submissions made on his behalf, the Registrant further asserted and submitted that Colleague B had changed her evidence in this regard, starting with her arms in a position that did not allow him to have touched her breasts, to a position that allowed him so to do, when pressed in cross-examination.

224. The Committee reviewed Colleague B's evidence that had been recorded, as result of the special measures granted in relation to her evidence. including her demonstration of her arm positions. The point raised by the Registrant in submissions was examined carefully by the Committee. The Committee noted that Colleague B had initially been answering questions related to the

placement of her hands and then subsequently questions as to the position of her upper arms. Having done so, the Committee determined that Colleague B's evidence in this regard had remained consistent throughout. Her evidence had been subject to robust and quite proper challenge, through cross-examination, but had not changed on the relevant point of where her upper arms were in relation to her chest. The position articulated by Colleague B and accepted by the Committee allowed scope for contact to have occurred as alleged.

225. Whilst the Committee was content that Colleague B's evidence had not changed in that regard, that was of limited assistance in answering the dispute on the facts.

226. The Registrant's position was initially somewhat equivocal. In his HR interview he had difficulty recalling the incident, and asserted it was not deliberate if it had happened. In his witness statement and oral evidence his position appeared to have hardened, that he had not and could not have touched Colleague B's breasts during the appointment, although in answer to Committee questions he did not discount the possibility it could have happened inadvertently.

227. The equivocation of the Registrant's account when compared to the consistent and cogent account given by Colleague B, lead the Committee to prefer Colleague B's account of the incident. On the balance of probabilities, the Committee therefore found Paragraph 14(a) proved.

Paragraph 14(b) – Not Proved

228. The Committee noted that in one of his accounts the Registrant had referred to Colleague B being on her right hand side. That was clearly erroneous, given both Colleague B and the Registrant agreed in all other accounts that she was on her left hand side, which was also reflected in the video reconstruction of the treatment.

229. In consequence, the Registrant could not have been treating Colleague B's left outer rib cage, which would have been inaccessible.

230. The Committee therefore found Paragraph 14(b) not proved.

Paragraph 14(c) – Proved in relation to 14(a); not proved in relation to 14(b)

231. It followed from the Committee's findings at 14(a) and (b) that given the Registrant had touched Colleague B's breasts, he had not obtained valid

consent to do so. Indeed, it was not asserted by him that he had obtained such consent.

232. The Committee therefore found 14(c) as it related to 14(a). Given the Committee's determination in relation to 14(b) it found 14(c) not proved in relation to 14(b).

233. The Committee therefore found Paragraph 14(c) proved in relation to Paragraph 14(a) and not proved in relation to Paragraph 14(b).

Paragraph 14(d) – Admitted and Found Proved

234. The Registrant admitted Paragraph 14(d) of the Allegation at the outset of proceedings. Pursuant to Rule 27(1) of the General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000 ('the Rules') the Committee found that Paragraph proved.

Paragraph 15- Proved

235. The Committee noted that the Registrant accepted tapping Colleague F on the area around the upper hip albeit not fully on the buttocks. The demonstration the Committee was given by Colleague F accorded with a position to the right of the buttocks on the upper hip area and therefore appeared to be consistent with the account given by the Registrant.

236. Whilst the Committee noted the dispute in evidence between Colleague F and the Registrant was to the number of occasions upon which this took place, the Committee did not consider it was required to decide the matter in order to find this Paragraph proved, given it charged at least one occasion of touching.

237. To the extent it was required to resolve the point, the Committee considered that there was evidence to suggest another tap had occurred but that this could have been accidental, and thereby unknown to the Registrant, but felt by Colleague F.

238. The Committee therefore found Paragraph 15 proved.

Paragraph 16 – Admitted and Found Proved

239. The Registrant admitted Paragraph 16 of the Allegation at the outset of proceedings. Pursuant to Rule 27(1) of the General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000 ('the Rules') the Committee found that Paragraph proved.

Paragraph 17

240. The Committee noted the manner in which Paragraph 17 had been drafted, which required it to make thirty separate and distinct decisions.

241. In so doing it did not embark on decisions concerning Paragraphs 11, 12(c), and 14(b) as those Paragraphs had been found not proved.

242. The Committee noted that the Registrant had admitted his conduct in relation to Paragraphs 8(a), 12(a) and 13(a) was a transgression of professional boundaries and on that basis alone admitted part of Paragraph 17(a). The Committee accepted those admissions as set out below.

Paragraph 17(a) – Professional Boundaries

243. In considering this Paragraph and thereby issues related to Professional Boundaries, the Committee noted that the Registrant was one of the Directors of the Practice, in addition to his role as an Osteopath. In the Committee's judgment, these positions created an expectation of a level of professionalism that ought to have been displayed by him to more junior members of staff who he may or may not have had direct line management responsibility towards.

Paragraph 2

244. The Committee considered that there was a clear breach of professional boundaries in circumstances where on a work outing, the Registrant had become intoxicated and kissed a more junior member of staff.

245. On the balance of probabilities, such action transgressed professional boundaries, and the Allegation was therefore proved.

Paragraph 4(a) and (b)

246. The Committee considered it should take Paragraphs 4(a) and (b) together, in light of the fact they related to the same treatment session.

247. The Committee determined that if the Registrant had touched Colleague E's breast tissue, other than by accident, there was no clinical justification for doing so and in doing so, whether through complacency of poor technique it was likely to amount to a breach of professional boundaries.

248. The Committee considered that the nature of the treatment the Registrant was undertaking was a legitimate technique and that if his account was or might be right it was reasonable.

249. The Committee carefully assessed the evidence given by Colleague E in this regard and that given by the Registrant. In doing so the Committee was struck by the context of the treatment and the date the treatment took place. It noted that the treatment occurred shortly after the Registrant had kissed Colleague E in the aftermath of the Margate party in May 2018. The Committee then also noted Colleague E's unchallenged evidence that subsequent to the kiss, the Registrant became more "touchy feely" to her and that "he would come over and give me a hug. He never used to hug me before the Fix Party in May 2018." The Committee considered that to be significant and that it leant weight to the context and the credibility of the account given by Colleague E that the registrant had touched her breasts during the treatment in June 2018.

250. Whilst the Committee did not consider it was identifying propensity in the terms of *Garrard*, it did nonetheless apply its mind to the principles therein. In so doing it found that by reason of the timing and the common complainant in both instances there was sufficient connection from the admitted and contested elements of Paragraph 2 to provide support in relation to Colleague E's complaint in Paragraph 4.

251. The Committee therefore determined that it should accept Colleague E's evidence in this regard.

252. Colleague E's account of prolonged contact with her breast which was not clinically indicated and the Registrant's cupping of her breast in circumstances where his fingers were making contact with her breast tissue, therefore represented a transgression of professional boundaries and Paragraph 17(a) was proved in relation to Paragraphs 4(a) and (b).

Paragraph 4(c)

253. In relation to Paragraph 4(c), the Committee determined that whether the Registrant offered Colleague E a hug when she was a "patient" or when she was a "more junior member of staff" was wholly illusory. Whatever capacity she occupied at the time, offering Colleague E a hug demonstrated limited real understanding of the power imbalance in both relationships. The Registrant made assumptions about the acceptability of his actions in circumstances where refusal may have caused offence. In this context, the Committee determined it was more likely than not that offering Colleague E a hug in the context it was offered, was a transgression of the professional boundaries between a patient and/or a junior member of staff.

254. It therefore found Paragraph 17(a) proved in relation to Paragraph 4(c).

Paragraph 8(a)

255. The Registrant admitted that his undressing and changing his clothes in a treatment room at the Practice in Colleague D's. presence amounted to a transgression of professional boundaries. The Committee respectfully agreed, and thereby found Paragraph 17(a) proved in relation to Paragraph 8(a).

Paragraph 8(b)

256. The comments made by the Registrant immediately prior to changing his clothes in the same room as Colleague D referenced her professional past and were thereby potentially demeaning. Together with the clear power imbalance between a director of the Practice and a more junior employee, the context in which the comment was made was likely to oblige Colleague D to allow the Registrant to change in front of her, or at least in the same room, regardless of whether she felt comfortable with that state of affairs. In this regard the Registrant made assumptions about the acceptability of his conduct.

257. Acting in apparent ignorance of that power imbalance did, on the balance of probabilities, represent a transgression of professional boundaries.

Paragraph 9(a)

258. The Committee determined that making the comment "up your bum" whilst not the most egregious sort of language, did nonetheless represent language that to some colleagues could be perceived as offensive. Whilst that did not in itself mean the comment was more likely than not to transgress professional boundaries, making the comment at a work party, in front of those assembled as one of, if not the most senior member of the team present was on balance a transgression of professional boundaries. The Committee therefore found Paragraph 17(a) proved in relation to Paragraph 9(a).

Paragraph 9(b)

259. The Committee determined that on the balance of probabilities slapping a more junior member of staff on the buttocks at a work party did represent a transgression of professional boundaries.

Paragraph 12(a) and (b)

260. The Registrant admitted that putting his hands on Colleague G's shoulders was a transgression of professional boundaries. The Committee respectfully agreed.

261. In thereafter squeezing Colleague G's shoulders the Committee considered that on the balance of probabilities, the Registrant had further transgressed professional boundaries.

262. The Committee therefore considered it more likely than not that in relation to 12(a) and (b) the Registrant's conduct had transgressed professional boundaries.

Paragraph 12(c)

263. The Committee considered that whilst the precise language used by the Registrant in providing feedback to Colleague G might not have been as rigorously formal as it might have been, it was a reasonable and legitimate method of providing such feedback to an employee. In and of itself, providing feedback to a member of staff could not amount to a transgression of professional boundaries. The Committee therefore concluded that on the balance of probabilities the conduct at Paragraph 12(c) did not satisfy Paragraph 17(a) and was not proved.

Paragraph 13(a) and (b)

264. The Registrant admitted that patting Colleague G's leg amounted to conduct that transgressed professional boundaries. The Committee respectfully agrees. In addition, elevating that conduct by commenting on where Colleague G should put her leg, even if meant in jest, added further context to the transgression, and thereby on the balance of probabilities the Committee determined that the conduct reflected at Paragraphs 13(a) and (b) of the Allegation did amount to a transgression of professional boundaries.

Paragraph 14(a)

265. Touching a patient's breast during treatment, without any clinical justification, on the balance of probabilities represented a transgression of professional boundaries. The Committee therefore found Paragraph 17(a) proved in relation to Paragraph 14(a) of the Allegation.

Paragraph 15

266. The Committee determined that in tapping Colleague F in a relatively intimate area, in circumstances where the Registrant could have attracted her

attention in other ways, or simply asked her to move did, on the balance of probabilities, represent a transgression of professional boundaries. The Committee therefore found Paragraph 17(a) proved in relation to Paragraph 15 of the Allegation.

Paragraph 17(b) – Sexual Boundaries

267. The Committee reminded itself of the definition of a transgression of sexual boundaries provided by the PSA in the following terms: A transgression of sexual boundaries occurs when a healthcare professional displays sexualised behaviour towards a patient. Sexualised behaviour is defined by the PSA as *"acts, words or behaviour designed or intended to arouse or gratify sexual impulses or desires;"*

Paragraph 2

268. In relation to the Registrant's actions in kissing Colleague E, the Committee determined that the Registrant had acted out of a spontaneous and immediate desire for gratification of a sexual impulse, whilst under the influence of alcohol. The Committee therefore determined that on the balance of probabilities its findings in relation to Paragraph 2 did amount to a transgression of sexual boundaries. The Committee therefore found Paragraph 17(b) proved in relation to Paragraph 2 of the Allegation.

Paragraphs 4(a) and (b)

269. The nature of the Registrant's conduct reflected in Paragraphs 4(a) and (b) was, in the Committee's judgment, part of a pattern of behaviour, which occurred close in time to the events reflected in Paragraph 2. Whilst the Registrant was not under the influence of alcohol and thereby uninhibited when he treated Colleague E in June 2018, as he had been when he kissed Colleague E, he took the opportunity, albeit likely on the spur of the moment, to touch her in intimate areas. The Committee concluded that on the balance of probabilities this represented a transgression of sexual boundaries given it amounted to the Registrant seeking gratification for a sexual impulse. The Committee therefore found Paragraph 17(b) proved in relation to Paragraphs 4(a) and (b) of the Allegation.

Paragraphs 8(a) and (b)

270. Whilst the Committee considered the Registrant's conduct in changing and asking to change in a room occupied by Colleague D did transgress professional boundaries, and was an awkward and crass way to behave, the Committee did

not consider that there was sufficient evidence before it to enable it to properly infer that the Registrant had acted in such a manner out of anything other than a rush to leave the Practice and the inadequacy of the changing facilities available to him at the time. The Committee therefore found Paragraph 17(b) not proved in relation to Paragraphs 8(a) and (b) of the Allegation.

Paragraph 9(a)

271. The Registrant's use of the phrase "up your bum" in the context it was used was misplaced and inappropriate, but there was no evidence it was intended to be a sexual comment, or indeed that it was specifically aimed at Colleague D or any other individual, notwithstanding it was a comment made to Colleague D (and others). The Committee accepted that it was an ill-thought through use of a phrase intended to be a slang toast and that there was no evidence from which it could properly be inferred that there was any sexual element to it. The Committee therefore found Paragraph 17(b) not proved in relation to Paragraph 9(a) of the Allegation.

Paragraph 9(b)

272. The Committee determined that in slapping Colleague I's buttocks, albeit a spur of the moment act, was one from which it could properly infer the Registrant was seeking gratification for a sexual impulse, however low level such an impulse might have been, and however that impulse may have been combined with an ill-thought out attempt at humour. On the balance of probabilities, the Committee therefore concluded that amongst the other motivations the Registrant had for behaving in such a fashion, one was more likely than not to be sexual. The Committee therefore found Paragraph 17(b) proved in relation to Paragraph 9(b) of the Allegation.

Paragraphs 12(a) and (b)

273. The Committee considered that treating the facts giving rise to Paragraphs 12(a) and (b) of the Allegation separately was an artifice of the drafting of the Allegation when it came to questions of motivation. Both were so inextricably linked in place and time as to be part of the same event. The Committee noted that the touching and squeezing of Colleague G's shoulders had occurred in a public place and in relation to a conversation between Colleague G and the Registrant concerning challenges in Colleague G's personal life.

274. The Committee took careful account of that context and considered that if the Registrant had intended to offer support to a troubled junior staff member he could and should have done so in a private space, in circumstances where she could confide if she felt comfortable doing so. The context of their

conversation in reception was significantly less structured and in the Committee's judgment was in the nature of general conversation, albeit the subject matter might have warranted empathy and sympathy from the listener. In that context the Registrant's conduct in touching and squeezing a female staff member's shoulders, was more likely than not him taking an opportunity to seek gratification for sexual desires under the guise of providing sympathy and support. The Committee was reinforced in that view, by the evidence it heard from Colleague G as to how the touching and squeezing made her feel, which in itself leant support to the inference that the Registrant was seeking some form of sexual gratification. The Committee therefore found Paragraph 17(b) proved in relation to Paragraph 12(a) and (b) of the Allegation.

Paragraph 12(c)

275. Whilst the Committee considered the choice of some of the language employed by the Registrant in offering praise to Colleague G to have been unusually florid in the context of professional feedback, it did not consider that there was any evidence that could allow it to infer a sexualised motive for such comments. The Committee therefore found Paragraph 17(b) not proved in relation to Paragraph 12(c) of the Allegation.

Paragraphs 13(a) and (b)

276. The Registrant's conduct in patting Colleague G' legs and in commenting she should "bring her leg over here" was, in the Committee's judgment and given the context, consistent both with him having sought to be more intimate than necessary and making a lewd comment, and consistent with him displaying a potentially over-emphasised concern for Colleague G, either through some, if limited consumption of alcohol, or through general ebullience and party spirit and seeking to assist her, whilst making a potentially ill-judged but flippant comment. In circumstances where the Committee could not conclude that one possibility was more likely than the other, it bore in mind the burden of proof the Council carried. In the circumstances, the Committee therefore found Paragraph 17(b) not proved in relation to Paragraphs 13(a) and (b) of the Allegation.

Paragraph 14(a)

277. The Committee revisited the evidence given by Colleague B and that given by the Registrant, including in written form. In so doing, the Committee was struck by the fact the two accounts were, in certain material particulars, irreconcilable. The Registrant maintained he could not have touched Colleague B's breasts, but that if he did, it was accidental. Colleague B's account that the Committee had accepted was clear that the Registrant had been treating her

lower back and then moved his hands to her breasts. The gratuitous act of moving his hands to a part of Colleague B's body, was in the Committee's judgment, a deliberate act intended to cause contact with her breasts.

278. The natural inference from such contact, absent a clinical justification, for which none had been suggested, was that he did so in order to gratify a sexual impulse. Whilst the Committee considered it more likely than not that the Registrant had acted on the spur of the moment, with little if any premeditation, it considered that in all the circumstances the natural inference meant it was more likely than not that he had acted to gratify a sexual impulse. The Committee therefore found Paragraph 17(b) proved in relation to Paragraphs 14(a) of the Allegation.

Paragraph 15

279. The tap to Colleague F's upper right hip area was, in the Committee's judgment, both unnecessary and gratuitous. It was described by Colleague F as an area that she would only expect to be touched in by an intimate partner, not even by a friend. The context of the tap was material. The Registrant could have touched or tapped her in a less intimate area, or could simply have asked her to move so he could get past, had that been his intention. Instead, the Committee determined he had used the situation to touch Colleague F in a more intimate manner. The Committee concluded it could properly infer from that touching that he acted in such a manner in order to gratify a sexual impulse. The Committee therefore found Paragraph 17(b) proved in relation to Paragraph 15 of the Allegation.

280. The Committee therefore found Paragraph 17(a) proved in relation to Paragraphs 2, 4(a) - (c), 8(a) (admitted) 8(b), 9(a) and (b), 12(a) (admitted) 12(b), 13(a) (admitted) 13(b), 14(a). The remainder was found not proved.

281. The Committee found Paragraph 17(b) proved as it related to Paragraphs 2, 4(a) – (c), 9(b), 12(a) and (b), 14(a) and 15.

Paragraph 18

282. The Committee noted that Paragraph 14(b) had been found not proved. It therefore did not consider it any further in relation to Paragraph 18. In so far as it related to Paragraph 14(b), Paragraph 18 of the Allegation was found not proved.

283. The Committee reminded itself of the definition of sexual touching as provided in s.78 of the Sexual Offences Act 2003: "*penetration, touching or any*

other activity is sexual if a reasonable person would consider that whatever its circumstances or any person's purpose in relation to it, it is because of its nature sexual, or because of its nature it may be sexual and because of its circumstances or the purpose of any person in relation to it (or both) it is sexual."

Paragraph 2

284. The Committee was in little doubt that kissing Colleague E was touching that a reasonable person would consider to be sexual, both because of its nature and the context in which it occurred. The Committee therefore found Paragraph 18 proved in relation to Paragraph 2 of the Allegation.

Paragraphs 4(a) and (b)

285. Deliberately touching Colleague E's breasts, whether under the guise of administering treatment or otherwise, was, in the Committee's judgment, touching that by its very nature was sexual, absent a clinical justification for such touching. No such justification had been advanced or suggested. The Committee therefore found Paragraph 18 proved in relation to Paragraphs 4(a) and (b) of the Allegation.

Paragraph 9(b)

286. In light of its determination that slapping Colleague I on the buttocks was a transgression of sexual boundaries, and in the context it occurred, the Committee concluded that the slap did amount to sexual touching as defined in s.78 (above). The Committee therefore found Paragraph 18 proved in relation to Paragraph 9(b) of the Allegation.

Paragraph 13(a)

287. In light of its conclusion above regarding transgression of sexual boundaries, the Committee could not properly infer, nor was there any contextual evidence to support a finding that patting Colleague G's leg amounted to sexual touching. The Committee therefore found Paragraph 18 not proved in relation to Paragraph 13(a) of the Allegation.

Paragraph 14(a)

288. The Registrant's gratuitous touching of Colleague B's breasts was, by its very nature sexual, absent a clinical justification for doing so. No such justification had been advanced or suggested. The Committee therefore found Paragraph 18 proved in relation to Paragraph 14(a) of the Allegation.

Paragraph 15

289. Given the Committee's determination that the tap to Colleague F's upper hip area was a transgression of sexual boundaries, the context of the touching was of considerable importance. Whilst not necessarily by its nature alone a sexual touch, the context and the intimacy it sought did in the Committee's judgment meet the definition provided in s.78 (above). The Committee therefore found Paragraph 18 proved in relation to Paragraphs 15 of the Allegation.

290. The Committee therefore found Paragraph 18 proved in relation to Paragraphs 2, 4(a) and (b), 9(b), 14(a) and 15 of the Allegation. The remainder was found not proved.

Paragraph 19

291. The Committee noted that Paragraphs 11 and 14(b) had been found not proved. It therefore did not consider those Paragraphs any further in relation to Paragraph 19. In so far as it related to Paragraphs 11 and 14(b), Paragraph 19 of the Allegation was found not proved.

292. The Committee reminded itself of the definition of sexual motivation: *"conduct carried out either in pursuit of sexual gratification or in pursuit of a future sexual relationship."*

Paragraph 2

293. In light of its findings in relation to Paragraph 17(b) above the Committee determined that the Registrant had kissed Colleague E in pursuit of sexual gratification. Whilst there was some evidence to suggest he was seeking to pursue a future sexual relationship, (for example his flirtatious behaviour on the train and the proximity in time to the treatment in June 2018) the Committee was not persuaded this was made out on the balance of probabilities. However, on the basis of the first limb of the definition, the Committee found Paragraph 19 proved in relation to Paragraph 2 of the Allegation.

Paragraphs 4(a) and (b)

294. In light of its findings in relation to Paragraph 17(b) above the Committee determined that the Registrant had touched Colleague E's breasts in pursuit of sexual gratification. The Committee therefore found Paragraph 19 proved in relation to Paragraphs 4(a) and (b) of the Allegation.

Paragraph 9(b)

295. In light of its findings in relation to Paragraph 17(b) above the Committee determined that the Registrant had slapped Colleague I on the buttocks in pursuit of sexual gratification. The Committee therefore found Paragraph 19 proved in relation to Paragraph 9(b) of the Allegation.

Paragraphs 13(a) and (b)

296. In light of its findings in relation to Paragraph 17(b) above the Committee determined that the Registrant had not touched Colleague G's legs and made a comment about her moving her leg, in pursuit of sexual gratification or in pursuit of a future sexual relationship. The Committee therefore found Paragraph 19 not proved in relation to Paragraphs 13(a) and (b) of the Allegation.

Paragraph 14(a)

297. In light of its findings in relation to Paragraph 17(b) above the Committee determined that the Registrant had touched Colleague B's breasts in pursuit of sexual gratification. The Committee therefore found Paragraph 19 proved in relation to Paragraphs 14(a) of the Allegation.

Paragraph 15

298. In light of its findings in relation to Paragraph 17(b) above the Committee determined that the Registrant had tapped Colleague F's upper hip area in pursuit of sexual gratification. The Committee therefore found Paragraph 19 proved in relation to Paragraphs 15 of the Allegation.

Submissions of the Parties on Unacceptable Professional Conduct ("UPC") and Sanction

299. Mr Faux, on behalf of the Council, said that the Parties had agreed that, in the light of the factual findings, they would address the Committee on both UPC and Sanction together. The Legal Assessor advised the Committee that there was no difficulty with the Parties approaching matters in that way.

300. Mr Faux told the Committee that it had been obliged to consider an overly complicated set of allegations, which had led to a complicated determination on the facts. Mr Faux said that the essence of the case was that the Registrant had acted on his sexual impulses on a number of occasions with colleagues. An ordinary, intelligent member of the public would undoubtedly

agree that such conduct was morally blameworthy and attracted a degree of opprobrium.

301. Mr Faux submitted that it was clear that these findings would inevitably lead to a finding of UPC. Mr Faux accepted that this case was not at the most serious end of the spectrum of sexual misconduct, but the Registrant had nonetheless sought sexual gratification involving sexual touching of colleagues in a number of instances.

302. Mr Faux acknowledged the need for the Committee to take into account the delay in prosecuting the case in line with the case of *Selvarajan v GMC [2008] EWHC 182 (Admin)* but observed that in light of the nature of the misconduct, a severe sanction might still be appropriate to maintain standards and uphold the reputation of the osteopathic profession.

303. Mr Faux also acknowledged the need for the Committee to act proportionately as well as the public interest in retaining the services of competent practitioners. Nonetheless his primary submission was that on the findings the Committee had made, the issues of standards and the reputation of profession were likely to be of most significance in determining sanction.

304. Mr Lambis accepted on behalf of the Registrant that the facts found proved amounted to UPC. He submitted that it was to the Registrant's credit that he made that concession. Mr Lambis told the Committee that the Registrant did not challenge either what the Council had submitted on the question of sanction. However, he said that in this particular case, sanction of erasure or removal would be a disproportionate outcome.

305. Mr Lambis reminded the Committee that the Registrant had participated fully in proceedings despite the enormous personal, mental, practical and physical burden of doing so. The case had not proceeded smoothly and the delays had had a direct impact on him and his family. Mr Lambis said that these factors should be considered by the Committee in assessing the issue of proportionality.

306. Mr Lambis then addressed the Committee on the Council's overarching objective of protecting the public. He submitted that in the circumstances of this case, neither maintaining public confidence in the profession of osteopathy nor promoting and maintaining proper professional standards and conduct for members of the profession required the ultimate sanction of removal for the Registrant.

307. Mr Lambis reminded the Committee of the words of Lord Hope in the case of *Helow v Secretary of State for the Home Department* [2008] UKHL 62 as to

the characteristics of the fictional "fair-minded and informed observer". He invited the Committee to read that quote carefully and submitted that when doing so, the Committee would accept that such an observer understands all elements of the case. The fair-minded and informed observer is not a vindictive individual holding the sword of Damocles over anyone who has made a mistake, but is decent, reasonable and fair.

308. Mr Lambis observed that the Registrant had given evidence to the Committee. This had demonstrated the Registrant's openness. Indeed the Registrant had been so open that he occasionally made admissions against his own interest. Mr Lambis asserted that the Registrant had also demonstrated that he was full of contrition, humility and remorse. Despite stress of proceedings, the Registrant had answered all of the questions put to him on behalf of the Council and by the Committee.

309. Mr Lambis said that registrants are human beings and therefore made mistakes. He said that the Registrant had shown his true colours in documents contained in the bundle before the Committee which set out his reflection and remediation. Mr Lambis referred the Committee to various of those documents. He submitted that, other than not having committed the offences in this case in the first place, the Registrant could not have done more than he had to illustrate his reflection, remediation and humility.

310. Mr Lambis said that this reflection and remediation work had to be considered in the context of a practitioner who had been operating under significant strain. Mr Lambis also referred to a number of training courses taken by the Registrant, which included one-to-one boundary training by Julie Stone, who had helped draft the CHRE Guidance on Clear Sexual Boundaries.

311. Further, the Registrant's reflection and learning was demonstrated by the Practice Forms he had completed, and by the reflective writing provided to the Committee.

312. Mr Lambis submitted that the process of reflection had worked in this instance, in that the documents indicated how the Registrant had changed his thinking, even when his reflective comments were sometimes manifestly against his own interest. The reflective writing demonstrated that the Registrant's insight and learning had been manifested in a positive manner and had been embedded in the Registrant's working practices. Mr Lambis suggested they were a "model of their kind" and should act as a template for others.

313. Mr Lambis reminded the Committee that the case of *Giele v GMC [2005] EWHC 2143 Admin* was authority for the proposition that the public interest

also includes not depriving the public of the services of a competent practitioner. In that context, Mr Lambis invited the Committee to take careful account of the testimonials provided on behalf of the Registrant.

314. Mr Lambis also said that this case was a success story for regulatory intervention in that it showed that regulation had achieved its purpose in addressing the Registrant's behaviour and attitudes.

315. Mr Lambis told the Committee that in the period since it had last been in session, the Registrant had continued working in a limited and non-clinical role for a company involved in developing motorsport drivers. The role had involved a considerable amount of safeguarding work and developing guidance for the company in the context of professional sport.

316. In terms of the impact of proceedings on his client. Mr Lambis said that the Registrant had already suffered a very substantial drop in income. It remained uncertain whether the Registrant could stay working with his current employer depending on the sanction imposed by the Committee. Mr Lambis said the Registrant's removal from the Register would be catastrophic and his employer had indicated if that occurred he would be dismissed.

317. Mr Lambis said that the Registrant had exhausted not only his insurance cover but also his savings. He and his wife had been forced to borrow money from family. In total, the Registrant had spent more than £10,000 on remedial training and work. He continued to have a substantial mortgage on his house and so needed to remain in employment. The events had put a considerable strain on the Registrant's marriage, and he and his wife had undertaken couples counselling.

318. In terms of CPD activity since the hearing adjourned, the Registrant had completed the NSPCC Child Protection in Sport and Physical Training course and was undertaking further training.

319. Mr Lambis referred the Committee to the parts of its determination above in which the Committee had commented upon the delays in the case. He invited the Committee to accept that the delay should be reflected in the Committee's decision on sanction as it went to the issue of proportionality. Mr Lambis observed that certain of the allegations dated back more than 8 years.

320. As regards the appropriate sanction in this case, Mr Lambis stated that the Committee has a wide discretion and what is a proportionate sanction will always depend on the facts of the individual case: *Bawa-Garba v GMC [2018] EWCA 1879* at paragraphs 83 and 85.

321. Mr Lambis submitted that in this particular case it would be unfair and disproportionate to erase the Registrant and to do so would simply be punitive. Too long a period of suspension would also be disproportionate.

322. Mr Lambis then referred the Committee again to the overarching objective of the Council and what acting in the public interest meant. Looking at the first of the factors comprised in the definition of public interest in the PCC's Hearings and Sanctions Guidance – the protection of patients, colleagues and the wider public from the risk of harm – Mr Lambis said there was no evidence that the Registrant was anything but a competent practitioner.

323. Considering the other two factors, namely maintaining public confidence in the osteopathic profession and declaring and upholding appropriate standards of conduct and competence among osteopathic professionals together, Mr Lambis submitted that regulatory process in this case has already served its purpose by precipitating the remediation work and reflection that the Registrant had undertaken.

324. Mr Lambis submitted that the appropriate disposal in this case would be suspension, but not to the fullest extent of the Committee's powers.

325. In deciding on sanction, Mr Lambis said that the Committee ought to take into account a number of mitigating matters, including: the background to events and the fact that the Registrant has always been an honest person and a good and competent practitioner; the events since proceedings had been initiated, which included the Registrant participating throughout, notwithstanding the effect on him his admissions to some of the allegations. Further, there had been no repetition of any misconduct and the Registrant had demonstrated his remediation.

326. In light of this, Mr Lambis questioned whether it would serve any proper purpose to remove the Registrant from the Register. Were the Committee not to give some credit for the remedial work the Registrant has undertaken, Mr Lambis said that would send entirely the wrong message to the public and to the profession.

The Committee's Findings on UPC

327. 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 UPC has been reached is a matter of judgment. The Committee had regard to Section 20 of the Osteopathic Act 1993, which defines UPC as conduct which "*falls short of the standard required of a registered*

osteopath". It considered guidance from the Council and the matters set out in *Spencer v General Osteopathic Council* [2012] EWHC 3146 (Admin) that Unacceptable Professional Conduct is conduct which implies some degree of "*moral blameworthiness*". It bore in mind the case of *Shaw v General Osteopathic Council* [2015] EWHC 2721 (Admin), which indicated that although conduct had to be serious to reach the required threshold, it did not need to be so serious that imposing an admonishment would be too lenient.

328. The Committee took into account Mr Lambis's concession on behalf of the Registrant that the facts found proved amounted to UPC. It nonetheless considered the question independently. The facts of the case demonstrated a serious departure from the standards required of an osteopath in that it had found that while in a position of responsibility, the Registrant had breached professional and sexual boundaries with three colleagues and had sexually touched colleagues in pursuit of sexual gratification.

329. The Committee had no doubt that both the public and fellow members of the profession would view such behaviour with a significant degree of moral opprobrium.

330. The Committee considered there had been clear breaches of Standards D16 and D17 of 2012 OPS and Standards D2 and D7 of the current OPS in respect of the matters it had found proved. It was cognisant of the fact that a breach of the OPS does not automatically constitute unacceptable professional conduct. However, in this case the Registrant had abused his position of trust as a director of the Practice, and had behaved in an intolerable way towards colleagues.

331. The Committee was clear that by his conduct the Registrant had failed to uphold the reputation of the profession and appropriate professional standards. Having regard to the overarching objective, the Committee was of the opinion that a finding of unacceptable professional conduct was justified on the grounds it was necessary to protect the public (which included his colleagues), maintain confidence in the profession and promote proper standards of conduct.

332. In the Committee's judgment, the conduct of the Registrant fell seriously short of the standard required of an osteopath. It therefore found that the facts proved amounted to unacceptable professional conduct.

The Committee's Decision on Sanction

333. The Committee had regard to the submissions of the parties and accepted the advice of the Legal Assessor on sanction, including as to the Committee's

ability to consider the question of delay in the case when deciding on sanction as per the cases of *Selvarajan v GMC [2008] EWHC 182 (Admin)*; and *Ujam v GMC [2012] EWHC 683 (Admin)*.

334. The Committee took into account the guidance in the Council's Hearings and Sanctions Guidance, as well the CHRE Clear Sexual Boundaries Guidance for Fitness to Practise Panels.

335. With regard to aggravating factors, the Committee considered that the following were relevant:

- The Registrant had by his conduct abused his professional position as a director of the Practice;
- The proven allegations included sexual misconduct perpetrated on more than one victim and over an extended period of time. While the Committee acknowledged that the misconduct was towards the lower end of the scale of seriousness of sexual misconduct, the Registrant had transgressed sexual boundaries with colleagues who on occasion he was treating as patients, and had done so apparently in pursuit of a sexual relationship.

336. As regards mitigation, the Committee noted:
- There was significant evidence that the Registrant had not only conducted himself appropriately since the incident in question, but had also undertaken considerable remedial work related to professional boundaries and aimed at addressing the underlying causes of his unacceptable behaviour;
- The Registrant was of previous good character, and the Committee took account of the substantial amount of testimonial evidence attesting to his personal qualities and professional skills (though these were not written in full knowledge of the findings of fact);
- The Registrant had apologised for his behaviour and the Committee accepted that the reflective writing and remediation work he had undertaken demonstrated a considerable degree of insight;
- A significant amount of the time had elapsed since the incidents in question. The Committee also took into account the effect of the unfortunate delay in progressing this case and the inevitable strain this created for the Registrant while the matters remained unresolved; and
- The Registrant had maintained his professional knowledge by undertaking CPD and courses.

337. The Committee gave careful regard to the risk of the Registrant repeating such behaviour. The Committee accepted there was some merit to Mr Lambis's submission that the Registrant had done as much as he could, bearing in mind

the admissions that he had made, to address the underlying behaviour that had precipitated this case.

338. The evidence of training about professional boundaries and the reflective writing which the Registrant had supplied assured the Committee that the Registrant now had a greater understanding of the unacceptability of his behaviour, and of the responsibilities imposed by his professional position. His reflective writing also strongly suggested that the Registrant was both capable of learning, and had learnt, from this experience. Further there was evidence that he had made some effort to embed his understanding of his misconduct within his day-to-day practice. The Committee therefore concluded that the risk of repetition was low.

339. However, viewed overall, these mitigating factors did not entirely outweigh the seriousness of the concerns raised by this case. The Committee recalled that the purpose of a sanction is not to be punitive, although it may have that effect. Rather, its purpose is to protect patients and the wider public interest. The Committee bore in mind the necessity for any sanction to be proportionate, taking into account both the Registrant's interests and the need to uphold the public interest.

340. The Committee first considered whether to admonish the Registrant. The matters at issue in this case were obviously serious. They did not represent an isolated incident and occurred over a protracted period. The Committee concluded that all these factors meant that an admonishment would not meet the particular circumstances of this case.

341. The Committee went on to consider whether a conditions of practice order would be appropriate. The Committee concluded that conditions of practice would not be appropriate nor proportionate to address the seriousness of the Registrant's conduct. The Committee determined that the conduct of concern was not such as could be comprehensively addressed by workable conditions. Further, the need to maintain public confidence in the profession rendered conditions an inadequate sanction.

342. As the Committee had identified above, the failures in this case amounted to a serious breach of the 2012 and 2019 Standards. Given the circumstances, and the Registrant's efforts at remediation so far, the Committee concluded that those failures were not, however, fundamentally incompatible with his continued registration. The Committee accepted that the Registrant had demonstrated some insight into the seriousness of his actions and had assured it to the extent he was able that there would be no further repetition of such conduct.

343. As noted above; in considering the question of proportionality, the Committee had given appropriate weight to the partial admissions made by the Registrant, the effect of delay in the case, as well as what it had heard of the consequent financial and social effect on the Registrant. Balancing that against the public interest in appropriate regulation of osteopaths did not, in the Committee's view of the facts of this case, require his removal from the Register.

344. The Committee recognised the need to send a message to the Registrant, the profession and the public that such behaviour was entirely unacceptable. A period of suspension was the least restrictive sanction that in the Committee's view would appropriately mark the seriousness of the case.

345. The Committee determined that the Registrant should be suspended from the Register for a period of 6 months. In determining that period the Committee had regard to the seriousness of the Registrant's conduct and the extent to which his conduct necessarily impacted on the reputation of the profession and public confidence in osteopathy. Though the Hearings and Sanctions Guidance indicates that in many instances, sexual misconduct will lead to removal from the Register, in the individual circumstances of this case, the Committee narrowly concluded that to do so in the Registrant's case would be disproportionate and merely punitive.

346. A Committee will review the case at a review hearing before the end of the period of suspension. At the review hearing, the Committee may be assisted by seeing evidence of the Registrant's continuing reflection and remediation work, in particular to address the impact on patients and colleagues of transgressions of sexual boundaries by practitioners. Similarly, it may assist for the Committee to see any updated testimonials from employers or others. The Committee directed that he supply any such evidence to the Council in advance of the resumed hearing.

Application for Interim Suspension Order (ISO)

347. Mr Faux on behalf of the Council applied under Rule 40(1)(b) of the General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules 2000 for an ISO on the basis that this was necessary for the protection of the public.

348. Mr Faux acknowledged that the Committee had found that the risk of the Registrant repeating his conduct was low. However, he "cautiously" observed that, although low, the risk of repetition was nonetheless present. Further, Mr Faux observed that the Registrant's rehabilitative work preceded the finding by

the Committee that the Registrant had acted on sexual impulses, which he had contested.

349. Mr Lambis said that the Registrant was not going to be working in a clinical capacity during the next 28 days, so from a practical point of view, the Registrant did not contest the application.

350. The Committee accepted the advice of the legal assessor as to the test of necessity it was required to apply under section 24(2) of the Osteopaths Act 1993. Having done so, it concluded that in this case, although it had assessed that the continuing risk to patients or others was relatively slight, it was still necessary to impose an ISO during the appeal period. There remained some work for the Registrant to do (as the Committee had identified in its determination above), including about sexual boundaries. Were the Registrant to appeal, the Committee considered that it would be necessary for the protection of the public or others to provide the assurance of an ISO.

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

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

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

Section 22(13) of the Osteopaths Act 1993 requires this Committee to publish a report that sets out the names of those osteopaths who have had Allegations found against them, the nature of the Allegations and the steps taken by the Committee in respect of the osteopaths so named.