



**GENERAL OSTEOPATHIC COUNCIL  
PROFESSIONAL CONDUCT COMMITTEE**

**Case No: 584/3790**

**Professional Conduct Committee Hearing**

**DECISION**

**Case of:** Mr. Michael Hammond

**Committee:** Mr. Alastair Cannon (Chair)  
Ms. Pamela Ormerod (Lay)  
Mr. Tom Bedford (Osteopath)

**Legal Assessor:** Mr. Peter Steel

**Representation for Council:** Ms. Rachel Birks

**Representation for Osteopath:** Mr. George Heimler

**The Registrant was not present at the hearing**

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

**Date of Hearing:** 20 - 21 May 2019

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**Summary of Decision:**

Allegation admitted and found proved. The Committee found that the conviction was materially relevant to the Registrant's fitness to practise osteopathy. The sanction imposed was removal of the Registrant's name from the Register. The Committee directed that the Registrar suspend the Registrant's name from the Register pending the expiry of the appeal period or the withdrawal or disposal of any appeal, whichever comes first.

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**Allegation and Facts**

The allegation (as amended) is that you, Mr Hammond have been convicted in the United Kingdom of a criminal offence, contrary to Section 20(1)(c) of the Osteopaths Act 1993 (as amended), in that:



1. On 17 July 2017, you were convicted on indictment at Caernarfon Crown Court of 'Record a person doing a private act'.
2. Following his conviction, you were sentenced at Caernarfon Crown Court on 9 August 2018 and you received the following:
  - a) 6 months imprisonment, suspended for 18 months, and
  - b) A requirement to carry out unpaid work for 150 hours before 9 August 2019, and
  - c) A requirement to undertake rehabilitation activity for a maximum of 50 days.

### **Decision:**

#### **Preliminary Matters**

1. Ms. Birks on behalf of the Council applied to amend the allegation that had been considered and referred to this Committee by the Investigating Committee. The original allegation referred to the underlying facts which had ultimately resulted in Mr. Hammond's conviction on 17 July 2017 for an offence of voyeurism, namely that he had had a sexual encounter with a female, apparently in the course of treatment at his practice, and that he had filmed that encounter using a camera concealed within a pen without the victim's consent. The fact that Mr Hammond had now been convicted of an offence meant that it was appropriate to deal with the case under section 20(1)(c) of the Osteopaths Act 1993 rather than as a conduct allegation under section 20(1)(a).
2. Mr. Heimler accepted on behalf of Mr. Hammond that the conviction allegation could be substituted for the original allegation of unacceptable professional conduct. The Committee accepted the advice of the legal assessor that under Rule 24 of the General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000 (the Rules) it could amend the allegation where it is satisfied that no injustice would be thereby caused.
3. In these circumstances, where the conviction arose from the same transaction that was referred to in the original allegation, the Committee took the view that Rule 24 was broad enough to permit what was really a substitution rather than an amendment. Mr. Heimler had agreed this course of action on behalf of the Registrant. The Committee decided that it would therefore allow the requested amendment.



## **Background**

### **Decision on the facts**

4. At the outset of the hearing, Mr. Heimler indicated on behalf of Mr. Hammond that he admitted the fact of the conviction. Ms Birks referred the Committee to a certified copy of the certificate of conviction dated 28 August 2018 in the bundle before it. The Committee therefore found the allegation proved in its entirety.
5. Mr. Hammond qualified as an osteopath in 1996. Following his qualification, he worked at a number of osteopathic practices in Liverpool, before setting up a practice in Anglesey, where he now lives. The background to his conviction was that an ex-partner of Mr. Hammond reported to the police in 2016 that there was in existence a video which had been filmed at Mr. Hammond's clinic in Liverpool. This was a covert recording of a sexual act between Mr. Hammond and an unknown female. The footage was believed to have been created between 2007 and 2009.
6. When interviewed under caution by the police, Mr. Hammond told them that he could only recall the first name of the female. She used to attend his clinic as a patient at 16 Garston Old Road, Liverpool. They began an affair and a sexual relationship which Mr. Hammond said lasted for approximately six months. He confirmed that the sexual encounter that he had filmed occurred in the front treatment room of his clinic.
7. Mr. Hammond claimed that he and his now ex-partner would talk over webcam often. The ex-partner was aware of the affair between Mr. Hammond and the female and encouraged Mr. Hammond to discuss the relationship. On Mr. Hammond's account, his ex-partner was interested in seeing "*what they got up to*". Mr. Hammond admitted purchasing a small camera device and placing it within a pen holder which was situated on the desk in the treatment room.
8. During his next meeting with the female, Mr. Hammond purposely switched the camera on prior to her attending and filmed a sexual encounter with her. The female was not aware that the encounter was being filmed (and self-evidently could not have consented to the recording). A copy of the footage was transferred onto a video tape. Although there was some dispute about how Mr. Hammond's ex-partner had come to see the recording of the



encounter, Mr. Hammond did accept that the ex-partner had seen it. Indeed, on his account, he had shared the recording with her.

9. Mr. Hammond was therefore charged with an offence of voyeurism under section 67(3) of the Sexual Offences Act 2003 to which he pleaded guilty at Caernarfon Crown Court on 17 July 2017. On 9 August 2018, he was sentenced to 6 months imprisonment suspended for 18 months, to complete 150 hours of unpaid work and to undergo rehabilitation activity during the period of the sentence.

### **Material relevance of the conviction to the Registrant's fitness to practise osteopathy**

10. Ms. Birks on behalf of the Council submitted that Mr. Hammond's conviction for voyeurism was clearly relevant to the Registrant's fitness to practise osteopathy. Even on his own account, the victim of the offence was an ex-patient. The circumstances of the offence were also relevant. It had taken place in a treatment room at the Registrant's practice. It was a serious sexual offence involving an abuse of the Registrant's position. The sentencing remarks of the judge, HHJ Rees referred to the opinion of the probation officer who had prepared the Pre-Sentence Report to the effect that the Registrant posed a medium risk of psychological harm to adult females but that the risk of sexual harm could not be dismissed.
11. Mr. Heimler invited the Committee to consider carefully the basis on which it decided the question of whether the conviction had any material relevance to the Registrant's fitness to practise osteopathy. Without attempting to extenuate or excuse Mr. Hammond's behaviour, the factual basis on which he might be found wanting was important.
12. The Registrant said in his statement to the Committee that the victim was not his patient at the time of the offence. Mr. Hammond had not violated Standard D16(3.6) of the Osteopathic Practice Standards (September 2012) (OPS) in that he had not taken advantage of his professional standing to initiate a relationship with a patient.
13. Mr. Heimler further submitted that the offence did not take place within the context of treatment. It was also a one-off offence, which dated back some considerable time. The basis on which Mr. Hammond had pleaded guilty was that he had not made the recording for his own sexual gratification, rather he had done so with the intention that a third party (namely his ex-partner) would look at it for the purpose of obtaining sexual gratification. The Court did not make a sexual harm prevention order against Mr. Hammond,



- which was an indication of its view of the context of the offence and of the risk presented by Mr. Hammond.
14. The Committee listened carefully to the submissions by both parties. It accepted the advice of the legal assessor. The Committee noted that the question of whether the admitted conviction had any material relevance to Mr. Hammond's fitness to practise was a matter of judgment for it.
  15. Having done so, the Committee was in no doubt that Mr. Hammond's conviction for voyeurism was of material relevance to his fitness to practise osteopathy. Regardless of whether the victim was a patient of Mr. Hammond's or not at the time of the offence, she had been a patient at some point. The offence had taken place in a treatment room at an osteopathic practice, with the sexual contact occurring on a treatment table. These facts were likely to impact on public perceptions of the osteopathic profession in any event.
  16. In his sentencing remarks, the judge HHJ Rees made specific reference to Mr. Hammond's professional status and the fact that his "*professional future is very much in the balance*". It would be odd indeed if the Committee were to decide that despite this, Mr. Hammond's conviction was not materially relevant to his fitness to practise.
  17. The conviction was for a serious sexual offence, involving an abuse of trust. It was noted by the judge that the offence called into question Mr. Hammond's attitude to women in general and that he had been assessed as presenting a medium risk of harm to adult females. These matters were also clearly relevant to questions of fitness to practise, the public interest and public protection. Indeed Mr. Heimler effectively accepted this in submitting to the Committee that the conviction engaged Standard D17 (Uphold the reputation of the profession through your conduct) of the OPS and stating that his client's offending might be considered to be egregious.
  18. The Committee therefore concluded that the conviction, which had been admitted and found proved, was materially relevant to Mr. Hammond's fitness to practise osteopathy and therefore proceeded to consider sanction.

### **Decision on sanction**

19. The Committee listened carefully to the submissions of Ms. Birks on behalf of the Council and to those of Mr. Heimler on behalf of the Registrant. The Committee took account of the extensive range of testimonials and other material provided on behalf of the Registrant including his statement dated



16 May 2019. It considered the Council's Hearings and Sanctions Guidance, as well as the CHRE guidance: *Clear sexual boundaries between healthcare professionals and patients: guidance for fitness to practise panels* dated January 2008. It noted and accepted the advice of the legal assessor, in particular as to the principles it should apply in considering sanction in a case involving sexual misconduct to be drawn from the recent case of *Arunachalam v GMC* [2018] EWHC 758, which included: (i) the Committee should make and demonstrate in its determination a proper evaluation of the mitigating factors in deciding on sanction; (ii) personal mitigation counts for less than in other contexts because of the need to maintain public confidence in the profession (*Bolton v Law Society* 1994 1 WLR 512); (iii) the law did not require that in all sexual misconduct cases, removal from the Register should follow. The severity of the sanction required to maintain and preserve public confidence in the profession "must reflect the views of an informed and reasonable member of the public" *Giele v GMC* [2006] 1 WLR 942; and (iv) despite a zero tolerance attitude towards sexual misconduct, the law is not so inflexible that every transgression of this kind must be met with removal from the Register.

20. Having found the Registrant has been convicted as alleged and that conviction is materially relevant to his fitness to practise osteopathy, the Committee has to decide what sanction to impose. The Committee commences at the lowest sanction, and only if it decides that sanction is not appropriate does it move to the next level of sanction. It acknowledged its obligation to apply the principle of proportionality and to uphold the public interest. The latter includes the protection of patients; the maintenance of public confidence in the profession; and upholding appropriate standards of conduct.
21. The Committee carefully considered the mitigating and aggravating factors of this case. The Committee considered that the following mitigating factors were present. Firstly, the Registrant was previously of good character with no other criminal convictions or adverse regulatory history. The Committee took into account that Mr. Hammond had cooperated with the Council in its investigation and had admitted the allegation against him. The Committee also read the testimonials provided for him by a wide range of patients, which speak to his professional competence and good character.
22. The Committee also noted Mr. Heimler's submissions that the conviction was an isolated incident and that there had been no repetition of similar misbehaviour. The events underlying the conviction dated back some considerable time. The Committee accepted that Mr. Hammond had



demonstrated a degree of contrition and some very limited insight in that he accepted in his statement that what he had done was “*totally wrong*”.

23. The Committee found the following aggravating factors to be present. Firstly, this was a conviction for a sexual offence which had resulted in a custodial sentence, albeit suspended. Any such conviction inevitably undermined public trust in the profession of osteopathy. Furthermore, the judge sentencing Mr. Hammond had assessed his conduct as falling within the most serious category of the offence of voyeurism, because of the following aspects of the offending: the recording was made available to others; the degree of planning; the recording of the images; and the obvious abuse of trust. Mr Hammond himself had accepted that his behaviour was disgraceful and abhorrent.
24. Secondly, as noted above, the circumstances of the offence were also highly damaging to the standing of osteopaths generally. The sexual encounter and the filming of it took place in Mr. Hammond’s treatment room within his then practice. In the view of the Committee, these details would rightly be seen as especially appalling by an informed and reasonable member of the public.
25. Lastly, whether the victim was Mr. Hammond’s patient or not at the time of the offence, for him to invade her privacy in the way he had was a gross abuse of her trust. The Committee considered this in itself a significant aggravating factor.
26. The Committee considered first of all whether an Admonishment was appropriate. The Registrant accepted that he had no real explanation for his actions. His misconduct was obviously substantial and grave. The Committee concluded therefore that an Admonishment would not meet the seriousness of the situation.
27. The Committee therefore went on to consider whether a Conditions of Practice Order would be appropriate in this case. The Committee concluded that conditions of practice would not be appropriate or proportionate to address the seriousness of the case. There was no condition of practice that would practically address the Registrant’s unacceptable behaviour or protect the public. In addition, the Committee was clear that Mr. Hammond had not demonstrated any insight sufficient to merit the imposition of conditions. Mr. Hammond’s statement to the Committee contained little to suggest that he had considered in any meaningful way the effect of his behaviour on his profession and the public. In fact, the statement focused to a greater degree on the negative effects on Mr. Hammond.



28. The Committee then considered whether a Suspension Order would address the facts of the situation. It concluded that it would not. Despite taking into account all the mitigation offered on behalf of the Registrant, including the numerous positive testimonials and the passage of time, the Committee considered that the Registrant's conviction for a serious sexual offence represented the clearest possible departure from professional standards.
29. Membership of the osteopathic profession is a privilege, which among other things, accords members a trusted status in the eyes of the public. Mr. Hammond's conviction, and the behaviour that led to it, are particularly corrosive to that trust. In the light of the assessment of the Probation Service in the Pre-Sentence Report in the summer of 2018 that the Registrant presented a medium risk of harm to adult women, the Committee was clear that his conviction must raise an ongoing issue of public protection, despite Mr. Heimler's submissions to the contrary.
30. Having considered the nature and severity of the offence, the Committee took the view that the Registrant's conviction was fundamentally incompatible with his continued registration. The public interest in this case could only be protected by the imposition of the sanction of removal from the Register. No lesser sanction could appropriately reflect its seriousness in order to maintain confidence in the profession and uphold professional standards.
31. The Committee therefore determined that the Registrant's name should be removed from the Register.

### **Decision on Interim Suspension Order**

32. Ms. Birks applied for an Interim Suspension Order in accordance with section 24 of the Osteopaths Act 1993 and Rule 40 of the Rules, suspending the Registrant's name from the Register pending the expiry of the appeal period or the conclusion of any appeal, whichever came first. Her grounds for seeking the Order were that the Committee had identified in its determination above that the Registrant continued to present an ongoing risk to the public and it was therefore necessary in order to protect members of the public.
33. Mr. Heimler conceded that he could not argue against the application either in fact or in law.
34. Having considered the submissions of both parties and having accepted the advice of the legal assessor as to the test to be applied under section 24 of



the Osteopaths Act 1993, the Committee concluded that it was necessary to protect members of the public to order the Registrar to suspend the registration of the Registrant pending the expiry of the period for bringing an appeal against this decision or pending the withdrawal or other disposal of any appeal, whichever comes first. Its reason for doing so was that the Registrant had been recently assessed as posing a medium risk to adult women and the Committee had not seen any evidence to suggest that risk had abated.

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

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

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

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