

**GENERAL OSTEOPATHIC COUNCIL
PROFESSIONAL CONDUCT COMMITTEE**

Restoration Hearing

DECISION

Case of:	Mr Nicholas Jones (Applicant)
Committee:	Ms Sue Ware (Chair) Ms Melissa D'Mello (Lay) Ms Oluyinka Fabusuyi (Osteopath)
Legal Assessor:	Mr Peter Steel
Representation for Council:	Mr Andrew Faux
Representation for Applicant:	The Applicant represented himself
Clerks to the Committee:	Ms Sajinee Padhiar
Date of Hearing:	30 & 31 May 2024

Summary of Decision:

The Committee determined that the Applicant's name should be restored to the Register subject to a conditions of practice order.

Original Allegation and Facts:

Allegation and Facts - 759/8954

The allegation is that Nicholas Jones (the Registrant) has been convicted in the United Kingdom of three criminal offences contrary to section 20(1)(c) of the Osteopath Act 1993, in that:

1. On 10 July 2020, at Oxfordshire Magistrates Court, the Registrant was convicted of:

- a. Between 04 December 2019 and 07 December 2019 the Registrant pursued a course of conduct which amounted to the harassment of Person A and which he knew or ought to have known amounted to the harassment of her in that between 5th and 7th December 2019 the Registrant sent Person A emails knowing this would cause her harassment, alarm and/or distress, but the Registrant still proceeded to send them, contrary to section 2(1) and section 2(2) of the Protection from Harassment Act 1997;
- b. On 15 June 2020, the Registrant knowing or believing that a victim, namely Person A was a witness in proceedings for an offence, did an act, namely continually calling her, which intimidated, and was intended to intimidate Person A, intending thereby to cause the course of justice to be obstructed, perverted or interfered with, contrary to section 51(1) and 51(6) of the Criminal Justice and Public Order Act 1994;
- c. On 15 June 2020 the Registrant pursued a course of conduct which amounted to the harassment of Person A, and which he knew or ought to have known amounted to the harassment of her in that he was continually making phone calls to her that were unwanted, contrary to section 2(1) and section 2(2) of the Protection from Harassment Act 1997.

2. For the offences set out at particular 1, the Registrant was:

- a. committed to prison for 20 weeks, suspended for two years;
- b. subject to a Rehabilitation Activity Requirement for the duration of the supervision period of two years;
- c. subject to a Restraining Order until further order;
- d. ordered to pay compensation of £250; and
- e. ordered to pay victim surcharge of £128 and costs of £85.

Allegation and Facts – 490/7026

The allegation is that Mr Nicholas Jones (the Registrant) has been guilty of unacceptable professional conduct, contrary to section 20(1)(a) of the Osteopaths Act 1993, in that:

1. Between or around 14 May 2019 date and 29 May 2019 the Registrant provided treatment to Person A at Bodymaster Clinic.

2. On 6 June 2019 the Registrant sent an email to Person A from his work email address in which he made the statements set out in Schedule A.
3. The Registrant engaged in the conduct set out in paragraph 2 with the intent of initiating a personal relationship with Person A.
4. In or around June 2019 the Registrant: a. entered into a non-professional personal relationship with Person A; and/or b. engaged in a sexual relationship with Person A.
5. The Registrant's actions as specified at particulars 2 and/or 3 and/or 4a was (*sic*) sexually motivated.
6. During November 2019 the Registrant committed a criminal offence of harassment, contrary to s2(1) and s2(2) of the Protection from Harassment Act 1997 for which he accepted a police caution on 29 November 2019.

Schedule A

- i. "Hope you had a good trip, you managed to do some fun things and the weather was good!"
- ii. "I'm back from Scotland now, which was fun if not quite wet 😊"
- iii. "I was wondering maybe putting the treatment to one side for a bit whether you fancied joining me for a brief paddle boarding session on my local stretch near Wallingford? There aren't too many board lovers to go with in Oxford after all. No problem if not."
- iv. "All the best, Nick 😊"

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1. The Applicant sought to be restored to the Register following his removal, the above allegations having been found proved by the original Professional Conduct Committee ("PCC"), which ordered his removal from the Register.
 2. The Committee was provided with a copy of the original decision made on 5 August 2021, the full transcript of the original hearing and the Applicant's application for restoration and supporting documents dated 27 December 2023.

3. The Committee reminded itself that in a Restoration hearing the Applicant bore the burden of proof, and that the applicable guidance and Rules it needed to consider were set out in the Council's Guidance on the arrangements and procedure for Restoration Hearings ("the Guidance").
4. During the hearing, the Committee heard evidence from the Applicant and from Mr Jon McSwiney (a registered osteopath and the owner of the clinic at which the Applicant had been employed since his removal) who gave evidence on his behalf. The Committee considered the Applicant's restoration application form and associated documents, along with an unsigned and undated statement that the Applicant submitted on the first day of the hearing.

Application:

5. Prior to the beginning of the proceedings, Mr Faux, who acted on behalf of the GOsC, indicated that Mr McSwiney was present in the hearing room.
6. Mr Faux said that the default position was that normally a witness would be excluded from the proceedings until they gave their evidence. However, Mr McSwiney was essentially a testimonial witness on behalf of the Applicant. Further Mr Faux said that it might actually be helpful to the Committee for Mr McSwiney to be present during the opening of the case so that he could understand the issues about which the Committee were interested. Given that the Applicant was representing himself, Mr Faux applied on his behalf for the witness to be allowed to remain in the hearing room.
7. Mr Faux also suggested that the Committee should consider whether to hold the entirety of the proceedings in private, given that the Applicant would inevitably have to refer extensively to [REDACTED] during the course of the hearing.
8. The Committee received and accepted the advice of the Legal Assessor. It was advised that it had the power to allow a witness to remain in the hearing room during proceedings (under Rule 57(4) of the General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules 2000 ("the Rules") and to conduct the hearing in private (under Rule 17).
9. The Committee was content that the witness Mr McSwiney be permitted to remain in the hearing room during the proceedings, on the basis that he was in essence a character witness and that it would be helpful for him to understand the questions that the Committee needed to answer in considering this application.
10. As to the question of whether the hearing should continue in private, the Committee noted that the usual position was that proceedings should be in public. In addition, the

Applicant had indicated that he was comfortable with discussing his [REDACTED] in public. Although there was likely to be some reference to confidential [REDACTED] information during the course of the hearing, the Committee concluded that that could be adequately dealt with by going into private session as and when required rather than by holding the entire hearing in public.

Submissions:

11. Mr. Faux reminded the Committee of the provisions of the Guidance and the test it had to apply.
12. Mr Faux then described the circumstances that led to the Applicant's removal from the Register in August 2021. He submitted that it was clear that the Applicant's behaviour had been considered serious by the criminal courts, as it had passed the custody threshold, albeit the sentence had been suspended. Other than the matters that had been the subject of the PCC proceedings, the Applicant was previously a man of good character.
13. Mr Faux directed the Committee to the relevant parts of the PCC transcript, in particular the plea in mitigation made on behalf of the Applicant by his then counsel. Mr Faux reminded the Committee of the reasons given by the PCC in concluding that it was necessary to remove the applicant from the register.
14. Mr Faux said that the PCC had been dealing with a registrant who was at that point still serving his criminal sentence, and so in accordance with the case of *Fleishmann* [2005] EWHC 87 it had considered that the Applicant should not be permitted to resume his practice until he had satisfactorily completed his sentence. Furthermore, the PCC was concerned by the Applicant's lack of insight or empathy for the victim and his focus on himself. The PCC had determined that the Applicant's transgression of a sexual boundary with a patient was inconsistent with his remaining an osteopath. That breach of professional standards had been aggravated by the Applicant's subsequent criminal conduct. In consequence the PCC felt at that time that it was necessary to remove the Applicant from the register.
15. Mr Faux submitted that the Committee would need to explore what had happened since the Applicant had been removed from the register and the extent to which the Applicant had come to understand why he did what he did. Mr Faux said that it was necessary for the Committee to look at that issue to decide whether there was any risk of repetition of the same behaviour.
16. Mr Faux suggested that the Committee would need to decide whether the Applicant's understanding of his health condition reassured it that he was fit to practise. Mr Faux

said that the Applicant's DBS certificate demonstrated that his conviction was now spent, which was a factor to be borne in mind, albeit applicants for registration as an osteopath were required to declare spent convictions.

17. Mr Faux said that the GOsC did not make any positive submission as to whether the Applicant should be restored or not. He submitted that the fact that the Applicant had been convicted remained relevant. It was a question for the Committee whether public interest in allowing competent osteopaths to practice was outweighed by the concerns raised by the Applicant's previous conduct and the public interest duty under the Osteopaths Act 1993.
18. As noted above, the Applicant gave evidence on affirmation and made submissions as to why his application to rejoin the register should be allowed. The Applicant said that there were some justifiable reasons why people might be concerned about his coming back to practise. He told the Committee that he had always had challenges with his health but had not really understood how to manage them. The Applicant described the changes that had taken place in his ability to deal with those [REDACTED] since he had received a diagnosis of [REDACTED] about a year ago.
19. In particular, the Applicant said at the time of the offences he had been taking a number of [REDACTED]. The Applicant said that while he did not blame his conduct on the [REDACTED], the [REDACTED] had a disinhibiting effect and he felt that may have contributed to his reaction to the situation.
20. The Applicant said that he had now stopped taking [REDACTED] under medical supervision and had reduced his use of [REDACTED] significantly. He was still taking an [REDACTED], and had no plans to discontinue it because it was helpful in managing his symptoms. The Applicant told the Committee that he recognised that he would have to live with [REDACTED], as well as [REDACTED]. He now had strategies in place to manage [REDACTED], including exercise and gaming. The Applicant said that he no longer drank alcohol or vaped.
21. As regards what he had done since being removed from the register, the Applicant told the Committee that other than a short period around the time of the PCC hearing, he had worked continuously at Mr McSwiney's practice, first as a manual therapist. Subsequently, the Applicant said he had retrained as a Level 5 sports remedial massage therapist, as he was conscious of the need to continue working and keep his knowledge up to date. This involved a 10-month part-time course, including practical and theoretical training and examinations.

22. The Applicant said that in many ways it would have been easier just to give up the idea of returning to osteopathy. However, despite those tough times, the Applicant felt he had coped well.
23. The Applicant submitted that he was now a different person than at the time of the offences. The Applicant said that he had demonstrated a real willingness to change in such a way that his previous behaviour could not happen again, and that he hoped the Committee would take this into consideration.
24. The Committee received and accepted the advice of the Legal Assessor. As regards the issue of 'spent convictions', the Committee was advised that the status of a conviction as spent was of no real assistance in assessing the application. Whilst it was indicative that a spent conviction occurred sometime ago and might not be reportable in many situations, a conviction's status as spent or unspent was in no way determinative of the tests the Committee needed to conduct, as applicants for registration with the GOsC were required to declare spent convictions as a result of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975. In the circumstances of this case the Committee was advised that whether the convictions in question were spent or not was of little assistance to it in assessing the application.
25. The Committee was further advised that the burden of proof in a restoration case was on the applicant, although there was no formal standard of proof. The Committee was required to apply its own judgment.
26. The Committee was advised that it should consider the various tests set out in s.3(2) of the Osteopaths Act 1993 ("The Act") as required by s.8. In so doing, the Committee was advised it should have regard to the Guidance, in particular the guidance on good character. It should then go on to consider the fit and proper person test, and as part of that, take into account the factors set out in the Guidance at paragraph 18.
27. The legal assessor noted that the "good character" test required the Committee to inquire whether the Applicant had in the past acted, or there was reason to believe that he may be liable in the future to act in such a way that puts at risk the health, safety or well-being of a patient or member of the public; in such a way that his registration would undermine public confidence in the profession; in such a way that indicates an unwillingness to act in accordance with the standards of the profession; or in a dishonest manner.
28. However, the fact that the Applicant had been subject to findings by the PCC and had been convicted of criminal offences did not automatically make him not of good character. Otherwise, no applicant who had previously been removed from the register as a result of a finding of unacceptable professional conduct ("UPC") would ever be

able to apply successfully for restoration The Committee had to consider those findings and the conviction in the overall context of what they had heard about the Applicant and his conduct since the removal.

29. The Committee was advised that it was not bound to limit its consideration to those factors alone and could take account of all the information it had before it in deciding whether it was satisfied that the Applicant was a fit and proper person. The Committee was reminded that it should give reasons for its decision.

Decision:

Factors at s.3(2) of the Act Including Good Character

30. The Committee first considered whether it was satisfied that the provisions of s.3 of the Act had been satisfied, as modified by s.8 of the Act. The Committee proceeded on the basis that the Registrant had satisfied s.3(2)(a) of the Act and had paid the prescribed fee.

Section 3(2)(b)

31. The Committee then turned to consider whether it was satisfied that the Applicant met the requirement of good character in s.3(2)(b). In so doing the Committee noted the definition of "good character" set out in the Guidance.
32. The Committee considered that both the breach of professional boundaries found proven by the PCC and the conviction giving rise to the relevant Allegations had been serious matters. The court that had sentenced the Applicant reflected the seriousness of the Applicant's conduct by imposing a custodial sentence. This behaviour had been directly connected to the Applicant's practice of osteopathy, given that it arose from his interaction with a patient and therefore had a direct bearing on maintaining public confidence in the profession.
33. However, the Committee observed that both Allegations were the product of the Applicant's relationship with Person A. The Applicant's admitted unacceptable behaviour had been given some context by his subsequent conduct and by the recent diagnosis of his [REDACTED]. The Committee also noted that the offences were committed in the region of 5 years ago and that the conviction was now spent.
34. In the period since his removal from the Register, the Applicant had continued to work with a range of female and male patients of varying ages. The Applicant had told the

Committee that there had been no complaints about his work in that time, nor had there been any other incident in either his professional or personal life.

35. The Committee gave particular weight to the evidence of Mr McSwiney, an experienced osteopath and educator, who had known the Applicant since 2013 having taught him during his osteopathic studies. Mr McSwiney confirmed that the Applicant had worked without any problem in his practice and spoke of the Applicant's clinical skill, describing him as "an excellent practitioner"
36. Significantly, Mr McSwiney told the Committee that the Applicant had been entirely candid with his patients at the time of the disciplinary and criminal proceedings. Many of those patients continued to support the Applicant and seek treatment from him.
37. Mr McSwiney expressed his wholehearted support for the Applicant's application. He confirmed that he considered the Applicant to be of good character.
38. The Committee further noted the efforts the Applicant has made to rehabilitate himself by continuing to seek appropriate treatment, and by continuing to work as a manual therapist and then as a sports remedial massage therapist under the supervision of (and at the practice) of Mr McSwiney.
39. The Committee concluded that since his removal from the Register, the Applicant had not behaved in a way that was inconsistent with the Osteopathic Practice Standards or the exercise of the profession of osteopathy nor had he demonstrated any disposition towards such conduct or behaviour. Viewed in the full context, the Committee did not consider that the PCC's findings, or the Applicant's conviction, would be considered so egregious by an informed member of the public that his registration would now undermine public confidence in the profession.
40. The Committee was therefore satisfied that the Applicant was of good character for the purposes of s.3(2)(b).

Section 3(2)(c)

41. The Committee next considered whether it was satisfied that the Applicant met the requirement to be in good health both physically and mentally.
42. The Committee had regard to the oral evidence of the Applicant, regarding the [REDACTED] [REDACTED] with which he had struggled and which he asserted led in part to his unacceptable professional conduct.

43. The Applicant told the Committee that his diagnosis of [REDACTED] and [REDACTED] about a year ago had helped him understand how to manage his challenges better. Mr McSwiney in his evidence described how the diagnosis had been a “revelation” to the Applicant and how he had noticed a significant improvement in the Applicant’s overall wellbeing.
44. The Applicant informed the Committee that his [REDACTED] had been reviewed since his conviction and that he remained under the care of a [REDACTED]. It noted the letter provided by the Applicant’s general practitioner, Dr. Lyon, dated 29 November 2023. The letter expressed the view that the Applicant was fit to practise at that point in time, though might require reasonable adjustments at work due to his diagnoses.
45. The Committee was equally mindful of the GOsC’s public sector equality duty under the Equalities Act 2010 which requires it wherever possible to reduce disadvantages suffered by people because of a protected characteristic. It therefore concluded that s.3(2)(c) was satisfied and noted that the GOsC did not contend otherwise.

Section 3(2)(d)

46. The Committee did not consider s.3(2)(d), given the provision of s.8(4)(b).

Fit & Proper Person Test

47. The Committee next considered whether it was satisfied the Applicant was a fit and proper person to be registered. In so doing, it took account of the factors listed within the Guidance at paragraph 18.

a. The reasons for removal at the substantive hearing

48. First, the Committee considered the reasons given by the original PCC at the substantive hearing that caused it to direct removal. It noted that the Applicant had admitted the allegations against him in their entirety and the PCC had on that basis found the facts giving rise to the allegations proved.
49. In considering sanction the Committee noted that the PCC considered the following to be relevant. The Applicant had transgressed sexual and professional boundaries in initiating and pursuing a relationship with Person A. The conviction resulted from the Applicant’s conduct following the breakdown of his relationship with Person A. On 29 November 2019, the Applicant received a police caution for his criminal conduct in harassing Person A during that same month. Within a week the Applicant contacted Person A and further harassed her. In doing so, he breached his bail conditions. In

June 2020, he again breached his bail conditions by contacting Person A, harassing her and intimidating her as a witness in the case he faced. As a result, the PCC noted that the Applicant's bail had been revoked and he was remanded in custody for three weeks. The Applicant later received a sentence of twenty weeks' imprisonment suspended for two years along with other orders.

50. The PCC took the view that fitness to practise encompassed both the Applicant's position as an individual osteopath and the wider interests of the profession. The PCC considered that the conduct which resulted in the convictions arose from the Applicant's professional and personal relationship with Person A and was therefore materially relevant to his professional practice. h. The PCC stated that the Applicant's conduct had been abusive of Person A and had involved repeated criminal conduct. It identified a number of breaches of the OPS standards by the Applicant, in particular Standard D7.

51. The Committee concluded that while the PCC's reasons for removal were serious, as noted above, the Applicant's admitted unacceptable conduct had to be viewed in context of the information available to the Committee today. This included both the Applicant's evidence and the evidence of Mr McSwiney as to his efforts to rehabilitate himself. It noted the Applicant's statement to the effect that the PCC hearing and the punishment he had received had in fact been a prompt to take responsibility for his behaviour and change for the better.

b. Insight and Remorse

52. Second, it considered the level of insight and remorse the Applicant had shown into the matters that led to removal. The Committee considered that in his written and oral evidence to it, the Applicant had shown limited insight into the effects of his behavior on others and the confidence that the public could repose in osteopaths.

53. The Committee acknowledged that the Applicant had been candid enough to explain that he struggled with empathy as a result of his [REDACTED]. However he had expressed remorse for his behaviour, in particular that leading to the conviction and the effect of his behaviour on Person A and his willingness to change for the better.

c. What the Applicant has done since his name was removed from the Register

54. Third, it considered what the Applicant has done since his removal. It noted that since his removal from the register the Applicant had continued working first as a manual therapist and subsequently qualification as a Level 5 Sports Remedial Massage

therapist. Mr McSwiney gave evidence to the effect that he had continued to supervise and mentor the Applicant. Mr McSwiney had noted a significant change for the better in the Applicant since he had received his diagnosis. There had been no complaints and Mr McSwiney attested to his conduct and general health during that period.

d. What the Applicant has done to keep his professional knowledge and skills up to date

55. Fourth, the Committee considered the steps the Applicant had taken to keep his professional knowledge and skills up to date. The Applicant had continued to provide treatment as a manual therapist and interact with patients. He had obtained a Level 5 Sports Remedial Massage Therapist qualification following a 10-month period of part-time study including assessment and examinations. The Applicant stated that he had completed an online professional boundaries course (although he acknowledged he might benefit from longer training in professional boundaries) and had familiarised himself with the OPS, particularly Standards D1 – D12. In his evidence, the Applicant said that he was confident that his professional knowledge was up to date, which was endorsed by Mr McSwiney.

56. Further Mr McSwiney, who had taught the Applicant during the latter's studies, indicated that they met at least weekly and undertook CPD activity together. He spoke positively of the Applicant's clinical skills, both as an osteopath and in the more limited roles he had undertaken since his removal. He expressed his confidence that the Applicant would be able to resume practice as an osteopath, assisted by the support network available to him.

e. The passage of time and evidence of remediation

57. The Committee took full account of the relatively short period of time since the Applicant had been removed from the register, though the Osteopaths Act 1993 only requires a period of 10 months following removal before an application for restoration can be made. It also took account of the fact that the Applicant's conviction had only become spent relatively recently.

58. The Committee noted the Applicant's evidence of the steps he had taken to remediate himself, particularly in management of his health issues, and attempts to understand professional boundaries and improve his communication skills.

59. The Committee also gave some weight to the very positive assessment of the Applicant's clinical skills provided by Mr McSwiney, and the evidence of the supportive environment provided by the latter's practice. Further, there had been no report since

the Applicant's removal from the register of any patient issues, during a period where he continued to treat patients in a therapeutic setting, nor had any other problems emerged.

Other Factors & Conclusion

60. The Committee was mindful of the fact that it was not restricted in its consideration of the fit and proper person test simply to those matters listed in the Guidance.
61. It considered that overall, the Applicant had made considerable progress towards remediating his previous conduct and addressing his previous failures as a professional osteopath. The Committee concluded that, while that process was still underway, the Applicant had demonstrated sufficient understanding of the responsibilities and obligations that come with registration.
62. While the conduct that had led to his removal was undoubtedly deplorable, it had to be viewed in the light of the Applicant's [REDACTED] issues, the fact that there had been no repetition of such conduct, the continuing support he received from Mr McSwiney and the trust that patients continued to place in him. The Committee noted that the Applicant's osteopathic clinical skills had never been called into question. The Committee gave particular weight to Mr McSwiney's evidence and his willingness to support the Applicant back into safe and effective practice. The Committee considered that possessed of all the facts and the relevant context, an ordinary member of the public would not consider that the Applicant's registration would undermine confidence in the profession of osteopathy.
63. In the circumstances the Committee determined that the Applicant had satisfied it of his good character for the purposes of registration and was a fit and proper person to practise the profession of osteopathy.
64. The Committee observed that the Applicant's remediation had been in no small measure due to the support offered by Mr McSwiney and his practice. It considered that the Applicant had benefited, and would continue to benefit, from the continuation of some degree of supervision and mentoring.
65. Conscious of its responsibility to balance the public interest in a competent individual being permitted to practise his profession, and its duty to uphold the GOsC's responsibility to protect the health and safety of the public, the Committee determined that the Applicant's name should be restored to the Register subject to the following conditions of practice order for a period of 12 months:

1. You must place yourself under the supervision of a registered osteopath who you should meet at intervals of not less than one month and allow the supervisor to prepare a report on: (i) your compliance with this conditions of practice Order (ii) the management of your caseload. This report should be sent to the GOsC two months prior to the expiry of this Order. The costs of supervision, if any, must be met by you;
2. You should, prior to the expiry of this Order, identify with the assistance of your supervisor and attend suitable face-to- face (i.e. in person) training on maintaining clear professional boundaries with patients in accordance with Standard D2 of the OPS. You shall be responsible for the costs of such training;
3. This Order will be reviewed at a hearing before it expires. At the review hearing the Committee will wish to see the following evidence: (i) the report of your supervisor as set out at 1. above; and (ii) evidence of completion of the training required by 2. above. You should provide this evidence to the GOsC two months prior to the expiry of this Order.

In making this Order the Committee is cognisant that any registered osteopath supervisor is required under the Osteopathic Practice Standards to report promptly any concerns about the Applicant's health or conduct that may arise during the course of supervision.

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.