

**GENERAL OSTEOPATHIC COUNCIL**  
**PROFESSIONAL CONDUCT COMMITTEE**

**Case No: 525/3274**

**Professional Conduct Committee Hearing**

**DECISION**

<b>Case of:</b>	Mr Nigel Graham
<b>Committee:</b>	Professor Brian Gomes da Costa Mr Philip Geering Ms Jacqueline Salter
<b>Legal Assessor:</b>	Mr Jonathan Whitfield QC
<b>Representation for Council:</b>	Mr Chris Gillespie
<b>Representation for Osteopath:</b>	Self represented
<b>Clerk to the Committee:</b>	Miss Jemima Francis
<b>Date of Hearing:</b>	24 May 2016

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**Allegation and Facts**

It is alleged that Mr Nigel Graham has been convicted in the United Kingdom of a criminal offence, contrary to Section 20(1)(c) of the Osteopaths Act 1993, in that:

1. On 5 June 2015, Mr Nigel Graham pleaded guilty and was convicted at West Hampshire Magistrates' Court of the following offences:
  - a) On 16 August 2014, dishonestly made a false representation intending to cause loss to Southampton City Council by avoiding a fixed penalty payment contrary s.1 and s.2 of the Fraud Act 2006.
  - b) On 21 July 2014, dishonestly made a false representation intending to cause loss to Southampton City Council by avoiding a fixed penalty payment contrary s.1 and s.2 of the Fraud Act 2006.

- c) On 02 July 2014, at Kings Park Road Car Park Southampton, parked in a pay and display bay without displaying a valid pay and display ticket, a black Mercedes C200 vehicle registration mark NEG 784 and displayed a disabled person's blue badge in circumstances where a disabled person's concessions would be available to a disabled person's vehicle and the vehicle was not being used by the person to whom the badge was issued thereby obtaining parking services contrary to se.117 of the Road Traffic Regulation Act 1984.
  - d) On 8 March 2013, dishonestly made a false representation intending to cause loss to Christchurch Borough Council by avoiding a fixed penalty payment contrary s.1 and s.2 of the Fraud Act 2006.
  - e) On 23 July 2012, dishonestly made a false representation intending to cause loss to Bournemouth Borough Council by avoiding a fixed penalty payment contrary s.1 and s.2 of the Fraud Act 2006.
  - f) On 11 June 2012, dishonestly made a false representation intending to cause loss to Bournemouth Borough Council by avoiding a fixed penalty payment contrary s.1 and s.2 of the Fraud Act 2006.
- 3 Following his conviction(s) on 5 June 2015, Mr Nigel Graham was sentenced at Southampton Magistrates' Court on 26 June 2015 and he received the following:
- a) 16 weeks imprisonment (suspended)
  - b) 120 hours community service
  - c) £1050.52 costs
  - d) £70 compensation to Bournemouth Council
  - e) £70 compensation to Christchurch and East Dorset Council
  - f) £80 victim surcharge
- 4 The criminal offences specified at paragraph 1(a) to (f) above have material relevance to Mr Nigel Graham's fitness to practise osteopathy.
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## **The Facts**

1. On the 5<sup>th</sup> June 2015 allegations 1 (a) – (f) were admitted by way of a guilty plea before the West Hampshire Magistrates Court and, on the 26<sup>th</sup> June 2015, the court imposed a prison sentence of sixteen weeks

- suspended for twelve months and an order to perform 120 hours of unpaid work.
2. Mr Graham was ordered to pay £140 in compensation, a victim's surcharge of £80 and, costs in the sum of £1050.52.
  3. In imposing this sentence the Court remarked that these were "*despicable dishonest offences committed ... over a long period of time with no regard to bona fide blue badge holders.*"
  4. On behalf of the GOsC Mr Gillespie (Counsel) placed the following matters before the Committee, based upon the facts as found proved at the criminal court. He did so in writing and orally.
  5. On the 2<sup>nd</sup> July 2014 Mr Graham used his deceased mother's blue badge in order to avoid parking charges in Southampton. A Penalty Charge Notice (PCN) was issued to Mr Graham's car due the blue badge's being improperly displayed such that its validity could not be determined. The GOsC asserted that the reason it was not clearly displayed was because it was invalid. The badge had been applied for after the death of his mother. It could not be said who applied for the blue badge. The badge had expired on 20<sup>th</sup> June 2005.
  6. On the 3<sup>rd</sup> July 2014 Mr Graham challenged the PCN, claiming to have driven a severely disabled passenger from London and that he stopped in Southampton. He provided a photocopy of the badge and time clock. However, the expiry date and serial number of the badge had been tampered with using biro and Tipex and, the City Council rejected his challenge. The penalty charge was paid on 22<sup>nd</sup> July 2014.
  7. On the 21<sup>st</sup> July 2014, the day prior to paying the charge, Mr Graham spoke to Ms Herrington, a parking fraud investigator. He informed her that the badge holder was 'Dora', the aunt of a friend, AG, who lived in Buenos Aires. He claimed that Dora had telephoned him to take her to Bournemouth. He did not know Dora's surname or contact details. He claimed she had given him her blue badge. He said he had taken a copy of the blue badge. Mr Graham then purported to supply contact details for AG in Argentina. He was unable to explain why Dora had his mother's expired, posthumously granted blue badge.
  8. On the 12<sup>th</sup> September 2014 Mr Graham was interviewed by Ms Herrington, under caution. He said he did not recall his mother had a blue badge. He asserted that he had made the photocopy in a shop. He could not explain the tampering with the blue badge.

9. On 17<sup>th</sup> September 2014 Ms Herrington wrote to AG in Argentina. Some days later, a Ms A.G telephoned, advising that she lived at a similar address in Argentina to that provided by Mr Graham. The number of her home is No. 45 rather than No.85. AG did not live there and she did not have an aunt called Dora. She called again and was informed that Mr Graham is an osteopath at which point she said that she, too, is an osteopath and that her Argentinian address is shown on the register with the erroneous number 85 entered rather than No.45. Mr Gillespie asserted that the suggestion there could be two AG's living near to each other in Buenos Aires was "*a coincidence too far*".
10. Enquiries revealed that Mr Graham had challenged other PCNs when his car had displayed a blue badge in Bournemouth. On 11<sup>th</sup> June 2012 an enforcement officer saw a blue badge which was un-laminated and displayed face down. The name and photograph of the holder were hidden by the time clock. Mr Graham challenged the notice and produced a blue badge in the name of RL. This was not the same badge as the one that had been seen in his car.
11. A second PCN was issued. Mr Graham challenged this using the same badge he had submitted before. Again it was different from the badge displayed in the car.
12. Blue badges are allocated to individuals, they are for personal use and are not transferable to others. As a matter of fact, RL had died before the first PCN was issued and could not therefore have been responsible for using the blue badge when the PCNs were issued.
13. Another PCN was issued in Christchurch on 1<sup>st</sup> March 2013. Again Mr Graham challenged the notice using RL's blue badge. The Registrant wrote to the Traffic Penalty Tribunal stating, "*Both my father-in-law Mr J (R) L and myself, together with other members of my family, felt strongly that the PCN be strongly challenged and it is sad that my father in law has since died.*" In fact RL died before the first PCN was issued.
14. Mr Gillespie asserted that Mr Graham continued to lie to the Council. In a letter written by the Registrant on 26<sup>th</sup> June 2015 he describes himself as a "naughty man". He claimed that he regularly drove disabled friends from London to Bournemouth. They did not have their disabled badges with them. Mr Gillespie suggested that the letter displayed a remarkable lack of insight on Mr Graham's behalf.

**Decision:**

15. The above facts 1 (a) – (f) and the sentence of the court were read to the Committee and were put to Mr Graham. Mr Graham accepted them in full and without reservation.
16. Mr Gillespie submitted that, in accordance with Sections 20 and 22 of the Osteopaths Act convictions may be of “material relevance” to Mr Graham’s ability to practice and that Mr Graham’s conduct was in breach of the fundamental tenet of honesty. He referred to breaches of the current and previous standards of the profession.
17. Mr Gillespie asserted that Mr Graham’s ability to practise is compromised since his conduct had brought the profession into disrepute.
18. Mr Graham then addressed the Committee (on oath) regarding the above facts and allegations. He was invited to concentrate on fact 4, as set out above and on the question of whether the convictions “have material relevance to [his] fitness to practice osteopathy”
19. Mr Graham explained that he had registered and worked as an osteopath since 1982 and was “held in high esteem” being a previous president of the British Osteopathic Association, the predecessor of the Institute of Osteopathy. He said that he had thought of the convictions as a misdemeanour, just a parking offence and was shocked to have a suspended sentence imposed upon him. He said he took acts contrary to the standards of the profession seriously and he wrote to the GOSc’s head of professional regulation advising he had been a ‘naughty man’.
20. Mr Graham explained that he had been represented by different solicitors when advised and when at court, he had been told that his offences only merited a financial penalty. He said he was an honest man and this was the first time he had been dishonest. He said that people who knew him realised this.
21. Mr Graham explained that a Mr and Mrs F (Dora) were long standing patients and friends and, the parking tickets were issues when he had been parking in disabled bays to facilitate their shopping. He accepted that he had used a duplicate of his mother’s blue-badge. He said he had given this to Dora since she wanted a photograph of his mother and this was the only one he had. Mr and Mrs F did not carry their own blue badges, so when it came to parking up, he used his mother’s duplicate card held by Mrs F.

22. Mr Graham explained that AG, who is Dora's nephew does exist and that the address he gave was the last known temporary address in Buenos Aires.
23. Mr Graham said he did not realise that the charges he faced were so serious when he pleaded guilty.
24. Mr Graham stated that the convictions did not have any effect on his ability to physically do the job of an osteopath (something the GOsC conceded) but agreed it was a serious offence of which he was ashamed and that it did affect the 'public interest' in the profession. He said he originally thought it was a parking offence but now realised it was 'a bit more than that'.
25. Mr Graham conceded that an order may be appropriate but not one as serious as, for example, erasure. Whilst it is a matter for this Committee, it understood this to be an acceptance by him that his ability to practice may be materially affected by these convictions.

### **Material Relevance – Found Proved**

26. The Committee considered that the above allegations, the submissions of Mr Gillespie and the evidence of Mr Graham. It accepted the advice of the Legal Assessor.
27. The Committee found that the criminal offences specified at Paragraph 1(a)-(f) above do have material relevance to Mr Graham's fitness to practise osteopathy.
28. The decision of the Committee was based on several factors, including the nature, gravity, spread of dates and persistence of the offences. These are not simply 'parking offences'. Mr Graham has dishonestly misused a facility extended to disabled persons. Having been issued with PCN's he has thereafter sought to avoid payment by a series of fraudulent means.
29. The offences and the surrounding conduct breach what is central to the profession namely honesty. This is set out in both the 2005 and 2012 Codes of Practice. Both codes were clearly breached in this case.
30. The Committee concluded that Mr Graham's conduct undermined public confidence in the profession, brought it into disrepute and compromised its standards in an egregious way. It clearly had relevance to his fitness to practise. The Committee noted the strong language used by the court when passing sentence describing the offences as "despicable" and "so

serious" that only a custodial sentence would meet the seriousness of the case (albeit that the sentence was thereafter suspended).

### **Procedural Matter**

31. Mr Graham did not attend the afternoon session of this Committee. The Committee was informed by Mr Gillespie and Mr Whitfield QC that he had told them that he had a list of patients to attend to this afternoon and did not wish to let them down. He said that he had returned from abroad yesterday and expected these proceedings to be concluded in about two hours, after which he would see his patients.
32. Mr Graham was advised by Mr Whitfield QC (in the presence of Mr Gillespie) that this was a matter for him to weigh up but that, although no adverse inference would be drawn against him if he left proceedings, there would be nothing from him to counter any submissions made by the GOsC, should an adverse finding be made regarding material relevance.
33. He was informed that if he wished to leave he could place a written document before the Committee and it would give such weight as it considered appropriate to this document.
34. It was made clear that should this reach the sanctions stage the GOsC would apply for an order removing him from the register. Mr Graham expressed no desire to delay or adjourn the hearing.
35. The Committee was advised that Mr Graham had absented himself. It considered the right of a registrant to be present at a hearing against the public interest in holding matters in an organised and timeous fashion. The Committee concluded that Mr Graham had voluntarily absented himself from the proceedings and that they should proceed in his absence.

### **Sanction**

36. The Committee has taken full account of the submissions made by Mr Gillespie, Mr Graham's earlier comments and his letter of today's date to the Committee. It has accepted the advice of the legal assessor. It draws no adverse inference from Mr Graham's absence at this stage of the proceedings
37. The Committee is aware that the purpose of any sanction is not to be punitive, though it may have a punitive effect. The Committee has borne in mind that its primary function, at this stage, is to protect the public, while reaching a proportionate sanction, taking into account the wider

public interest and those of the Registrant. The Committee has taken account of the Indicative Sanctions Guidance and applied it to Mr Graham's case on its own facts and circumstances.

38. The Committee found that this was not the simple contravention of parking regulations. This case involved repeated fraud over a lengthy period and, thereafter, it involved repeated attempts to dishonestly explain these matters away. Mr Graham misused the names of his dead mother and dead father in law and he has used the registered address of another osteopath, Ms A.G. in Buenos Aires, as that of the person he names as AG.
39. This was not an 'isolated incident'; it was a persistent course of conduct over a lengthy period and deliberate. Mr Graham has displayed no insight into his conduct. Rather, he has persisted in explanations that are contradictory and lacking credibility to the extent that the Committee has concerns as to their truthfulness. His expression of remorse appeared simply to be self pity. He appeared to focus upon his own embarrassment, the impact upon himself and his relief that these allegations are not widely publicised, rather than any developed sense of the wider impact his dishonesty may have.
40. The Committee was provided with no evidence of rehabilitation or even that Mr Graham recognises the need for rehabilitation.
41. The Committee noted that the suspended sentence imposed upon Mr Graham remains operative until the 26<sup>th</sup> June 2016 and that Mr Graham explained he is still paying the financial orders.
42. The Committee has found that Mr Graham has repeatedly breached the standards of conduct expected of an osteopath.
43. The Committee has considered whether there are any matters to be weighed in mitigation. It noted the matters set out in Mr Graham's letter as referred to above. It takes account of his previous good history and the high offices he has held. It notes that Mr Graham pleaded guilty at the magistrates' court and that he accepted the allegations before it today. However, the weight to be applied to the plea and admissions was reduced on account of Mr Graham's sustained attempts to explain away his dishonesties.

### **Admonishment**

44. Admonishment is wholly inappropriate. It would be entirely insufficient to mark the seriousness of the Committee's findings or address the gravity of the misconduct. It would not uphold standards or protect adequately the wider public interest.

### **Conditions of Practice Order**

45. This is a case of generalised systemic dishonesty. Mr Graham's evidence before this Committee left it with concern that he does indeed have endemic attitudinal problems, particularly as to the necessity to be honest, open and explain matters truthfully in all his dealings.

46. A Conditions of Practice order would not meet the seriousness of the conduct or protect the public interest.

47. The Committee concluded that it would not be possible to formulate workable or practicable conditions that would adequately address the issues identified or uphold the public interest. There is also the difficulty of formulating appropriate workable or measurable conditions relevant to Mr Graham's identified failings. Furthermore, his lack of insight means that the Committee cannot be satisfied that Mr Graham would co-operate with any such order.

### **Suspension**

48. The Committee accepted that there is no evidence that Mr Graham presents any physical danger to patients. However, his serial and serious dishonesty, in and of itself, is detrimental to the profession.

49. Mr Graham has shown no ability to remediate, given that even today before the Committee he continued to obfuscate. As stated above he has shown no insight into the seriousness of his criminality including the potential impact it may have had upon bona-fide blue-badge holders, its effect on the profession and on the public confidence therein.

50. Suspension serves no useful purpose because Mr Graham has demonstrated no remorse, no insight and no credible explanation for his conduct. The Committee has no confidence that he is capable of remediation. As such, the risk remains that he would return to practice just as he is now, a convicted criminal, who lacks insight. These factors take the case well beyond suspension from practice.

## **Removal from the Register**

51. The Committee weighed the implications for the reputation of the profession given that the public is entitled to trust practitioners and have confidence in them as against the effect removal from the register may have on the registrant. The Committee also weighed the need to uphold standards within the profession and to deter others from such serious dishonesty.
52. The Committee concludes that the degree and persistence of Mr Graham's dishonesty is fundamentally incompatible with practice as an osteopath. He is guilty of serious dishonesty and dishonest attempts to cover this up. He has persisted in this. He has failed to engage honestly with the fitness to practice process. The Committee finds that his explanations and evidence were not worthy of belief.
53. The convictions, coupled with the attitudinal issues, lack of insight, lack of remorse and lack of remediation are fundamentally incompatible with Mr Graham remaining on the register. The Committee is mindful of the personal and financial impact this order will have upon him. However, it is satisfied that removal is an appropriate and proportionate sanction. The need to protect the public interest, declare and uphold professional standards and maintain confidence in the profession outweighs the impact upon Mr Graham.
54. In light of the above, the Committee is satisfied that this is the appropriate and proportionate sanction in this case. No lesser sanction will protect the public interest.

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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.

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 that we have applied today.