

GENERAL OSTEOPATHIC COUNCIL
PROFESSIONAL CONDUCT COMMITTEE

Case No: 759/8954 and 797/8954

Professional Conduct Committee Hearing

DECISION

Case of: Nicholas Jones

Committee: Mark Osborne (Chair)
Nora Nanayakkara (Lay)
Helena Greenwood (Osteopath)

Legal Assessor: Mr Jon Whitfield QC

Representation for Council: Mr Paul Renteurs

Representation for Osteopath: Mr Jonathan Goldring

Clerk to the Committee: Ms N Abboh

Date of Hearing: 27, 28, 30, July,
4, 5 August 2021

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Summary of Decision:

Stage One

Decision on Facts (Case No. 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.

Admitted and found proved

- 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;

Admitted and found proved

- 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.

Admitted and found proved

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

- a. committed to prison for 20 weeks, suspended for two years;

Admitted and found proved

- b. subject to a Rehabilitation Activity Requirement for the duration of the supervision period of two years;

Admitted and found proved

- c. subject to a Restraining Order until further order;

Admitted and found proved

- d. ordered to pay compensation of £250; and

Admitted and found proved

- e. ordered to pay victim surcharge of £128 and costs of £85.

Admitted and found proved

Decision on Facts (Case No. 797/8954)

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.
Admitted and found proved
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.
Admitted and found proved
3. The Registrant engaged in the conduct set out in paragraph 2 with the intent of initiating a personal relationship with Person A.
Admitted and found proved
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.
Admitted and found proved
5. The Registrant's actions as specified at particulars 2 and/or 3 and/or 4a was sexually motivated.
Admitted and found proved
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.
Admitted and found proved

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 😊"

Admitted and found proved

Stage Two

Summary of Finding on convictions

The Committee found that the convictions admitted and found proved in case number 759/8954 are materially relevant to the Registrant's fitness to practise osteopathy.

Summary of Finding on Unacceptable Professional Conduct

The Committee found that the Registrant's conduct admitted and found proved in case number 797/8954 amounted to Unacceptable professional Conduct.

Stage Three

Sanction

For the reasons set out herein the Committee determined that the appropriate sanction is one of Removal from the Register.

Interim Suspension Order

For the reasons set out herein the Committee determined that an Interim Suspension Order was necessary to protect the public.

Details of Decision

Preliminary Matters

1. The parties and the Panel introduced themselves.

Declarations

2. Prior to the commencement of a hearing each member of the Professional Conduct Committee (PCC) is required to declare that they know of no reason why they should not sit upon the case. This declaration is intended to ensure that fairness is done and is seen to be done to all parties.
3. Each member of the PCC made this declaration.

Bundles

4. The Chair took the parties through the documentation to ensure everyone had the same material. There was some initial difficulty regarding access to documents for the Registrant and Mr Goldring (Counsel for the Registrant) however this was dealt with to the satisfaction of all parties.

Amending the Allegation

5. Mr Renteurs (Counsel for the GOsC) applied to amend the allegations in case number 797/8954. He submitted that the amendments clarified the case and caused no injustice. Mr Goldring raised no objection to the application.
6. The Committee accepted the advice of the Legal Assessor.
7. Having considered the proposed amendments and the oral representations the Committee concluded that there would be no injustice in assenting to the application. The amended allegations clarified and focused on the topics in issue. This accorded with the overarching principle of these proceedings, namely, to protect the public.

Original Allegations

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 ~~and/or 4b~~ was sexually motivated.*
6. *During ~~On~~ 26 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 ☺"*

8. The amended allegations are set out under the heading "Summary of Decision".

Admissions

9. Following the conclusion of the amendments the Registrant made full admissions to all the particulars in both Allegations. These, together with the findings of fact consequent upon them, are set out under the heading "Summary of Decisions".

Decision:

Background, Summary of Evidence and Submissions

10. From the case papers the Committee noted that in 2019 the Registrant practised as a registered Osteopath at the Bodymaster Clinic. The Registrant met Person A at his practice on or about 14 May 2019 when she sought treatment for an injury. There were several follow-up consultations to 29 May 2019. They were apparently attracted to each other and, rather than seek advice from colleagues on how to deal with the situation, the Registrant terminated his professional relationship with Person A to initiate a

personal one. On 6 June 2019 he sent her an email inviting her to put treatment to one side and join him in paddle boarding on the River Thames. Person A agreed and they exchanged contact details. This was the beginning of what became a personal and thereafter a sexual relationship.

11. In or around the Autumn of 2019 the relationship broke down with Person A wishing to end their relationship and reduce or stop communication between them. It would appear that the Registrant was unable to accept that the relationship had ended and persisted in trying to contact Person A by multiple phone-calls, voicemail messages and emails.
12. As a result of his behaviour, the Registrant was arrested on 29 November 2019, interviewed under caution, and issued with a police caution for harassment. Despite receiving this caution, the Registrant sent three further emails to Person A on 5 and 6 December 2019. He was arrested again on 8 December 2019, and charged with harassment and released on bail with conditions not to contact Person A. Despite his bail conditions, on 15 June 2020, the Registrant again made several missed calls to Person A and left a number of voicemail messages. He was arrested again on 19 June 2020, interviewed under caution by the police and, whilst he accepted the conduct, he said he did not intend to intimidate Person A, or interfere with the course of justice by persuading her not to give evidence against him. The Registrant was charged with the further offences of harassment and witness intimidation. The Registrant pleaded guilty to all three offences at Oxford Magistrates' Court on 10 July 2020 and was sentenced to 20 weeks' imprisonment, suspended for two years together with other ancillary orders including a restraining order for an indefinite period of time.
13. Mr Renteurs observed that the Committee had access to the documentation served by both parties and as such he would open the case in short form. He said that the Registrant initiated a personal relationship with Person A whilst she was a patient of his. It was clear that the Registrant anticipated Person A would continue receiving treatment and passed her case to a colleague. The relationship became a sexual relationship. Mr Renteurs observed that this conduct was clearly contrary to the requirement within the relevant Osteopathic Practice Standards (OPS) to maintain clear professional boundaries.
14. In respect of case 759/8954 Mr Renteurs reminded the Committee that this does not involve an issue of UPC. Rather the question for the Committee was whether the convictions touch upon the Registrant's practise. He submitted that they were serious since they

impacted upon the integrity and trust to be placed upon the Registrant and upon the wider profession.

Evidence

15. No oral evidence was called by either party.

Submissions of the Parties on the Facts

16. Mr Renteurs made no submissions on the facts beyond those outlined in his opening.

17. Mr Goldring made no submissions on the facts save he conceded that, whilst it is a matter for the Committee, the convictions in case number 759/8954 were relevant to the Registrant's practise as an osteopath and the allegations admitted in respect of case 797/8954 amounted to UPC.

18. During the first stage of the hearing various documents in mitigation were uploaded to the case file.

The Committee's Determination on the Facts

19. Having received full and unequivocal admissions regarding the particulars in both sets of Allegations the Committee found them proved as set out above under the heading "Summary of Decision".

20. The facts are set out in the summary of evidence above.

The Committee's Determination on UPC and the relevance of the convictions.

21. The Committee determined that it should deal with the two cases separately since the issues and decisions are different and, in date order, since the facts of case 759/8954 follow those in case 797/8954.

The Committee's Determination on UPC regarding case 797/8954

22. The Committee accepted the advice of the Legal Assessor. It 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 Osteopaths Act 1993, which defines UPC as conduct which "falls short of the standard required of a registered osteopath". It considered guidance from the GOsC and in cases such as *Spencer v*

GOsC [2012] EWHC 3147 that UPC is conduct which implies some degree of 'opprobrium'.

23. The Committee bore in mind that a departure from the Osteopathic Practise Standards (OPS) represented a useful and relevant starting point for deliberation; but that it did not create a presumption of, nor was it determinative of UPC. The Committee noted this case straddles the change from the 2012 OPS to the 2019 OPS. The former applied to Allegations 1 – 5, the latter applied to Allegation 6.
24. The Committee identified three areas of concern in the Registrant's conduct. First that he terminated a professional relationship in order to initiate a personal relationship with Person A. Second that he entered into a sexual relationship with Person A in close proximity to when she had been a patient. Third that when their relationship broke down he indulged in criminal conduct that had a deleterious effect upon Person A, causing her harassment and distress, and which resulted in him being cautioned.
25. Whilst the Committee noted that there is no absolute prohibition on personal relationships between a Registrant and patients there is firm guidance in the applicable 2012 OPS regarding establishing and maintaining professional and sexual boundaries. Standard D16 reads thus: "*Do not abuse your professional standing.*" The Guidance to the Standard includes the following:
 1. *Abuse of your professional standing can take many forms. The most serious is likely to be the failure to establish and maintain appropriate boundaries, whether sexual or otherwise.*
 2. *The failure to establish and maintain sexual boundaries may, in particular, have a profoundly damaging effect on patients, could lead to your removal from the GOsC Register and is likely to bring the profession into disrepute.*
 3. *When establishing and maintaining sexual boundaries, you should bear in mind the following:*
 - 3.1. *Words and behaviour, as well as more overt acts, may be sexualised, or taken as such by patients.*
 - 3.2. *You should avoid any behaviour which may be construed by a patient as inviting a sexual relationship.*
 - 3.3. *N/A*
 - 3.4. *It is your responsibility not to act on feelings of sexual attraction to or from patients.*
 - 3.5. *If you are sexually attracted to a patient, you should seek advice on the most suitable course of action from, for example, a colleague. If you believe that you cannot remain objective and professional, you should refer your patient to another healthcare practitioner.*

3.6. You should not take advantage of your professional standing to initiate a relationship with a patient. This applies even when they are no longer in your care.

26. Having considered the above, the Committee was of the view that there were breaches to the Standard and the applicable guidance in particular paragraphs 1, 2, 3, 3.2, 3.4, 3.5 and 3.6. It is notable that rather than not acting upon his own feelings (3.4) the Registrant initiated the relationship (3.6) and, whilst he may have referred Person A to a colleague, the Committee had received no evidence to suggest the Registrant had taken advice or considered her osteopathic needs as opposed to his own feelings (3.5).
27. In addition, Standard D17 provides that an osteopath should "*Uphold the reputation of the profession through your conduct.*" The guidance continues:
1. *The public's trust and confidence in the profession, and the reputation of the profession generally, can be undermined by an osteopath's professional or personal conduct. You should have regard to your professional standing, even when you are not acting as an osteopath.*
28. It was not entirely clear to the Committee when the sexual relationship between the Registrant and Person A ended. The Committee has thus referred to the 2012 OPS which subsisted until September 2019. For the avoidance of doubt, if the sexual relationship persisted into September 2019, the 2019 OPS contain similar Standards and Guidance regarding such conduct.
29. The Committee was of the view that the Registrant's conduct in engaging in a personal relationship and then a sexual relationship with Person A adversely affected his own reputation and the wider standing of the profession as focusing on caring for patients.
30. The Committee noted that Allegation 6 related to an offence of harassment contrary to Section 2(1) and 2(2) of the Protection from Harassment Act 1997 for which the Registrant was cautioned. The behaviour which constituted that offence included the Registrant sending a number of emails to Person A between 13 and 14 November 2019, making 39 calls to Person A's phone on 14 November 2019 and leaving 10 voicemail messages. In his police interview the Registrant described this as 'pestering' and he accepted he had been 'unkind' toward Person A. He said that he had found it difficult to accept the relationship was over.
31. The Committee concluded that this conduct breached the requirements and guidance of the 2019 OPS standards, in particular Standard D7 and the requirements to:

2. *[Uphold] the reputation of the profession may include:*
 - 2.1 *[act] within the law at all times (criminal convictions could be evidence that an osteopath is unfit to practise)*
 - 2.2 *[show] compassion to patients*
 - 2.7 *not [behave] in an aggressive or violent way in your personal or professional life*

32. The Committee next considered the questions posed by Smith LJ in the Fifth Shipman Inquiry Report and cited in the case of *CHRE v NMC and Grant [2011] EWHC 927* namely:

Has the Registrant (a) in the past acted and/or is he liable in the future to act to put a patient or patients at unwarranted risk of harm. (b) in the past brought and/or is liable in the future to bring the profession into disrepute. (c) in the past breached and/or is liable in the future to breach one of the fundamental tenets of the profession. (d), Has in the past acted dishonestly and/or is liable in the future to act dishonestly. The Committee concluded that the answer to the first three questions was yes. Dishonesty was not alleged in this case.

33. From the above it can be seen that the Committee considered the Registrant to have breached relevant Standards and the applicable Guidance in several ways. The breaches, and each of them, were serious owing to the centrality of the need for clear personal and sexual boundaries in professional practice. They were also serious owing to their impact upon Person A, the Registrant's personal standing and the standing of the profession.

34. Having considered the conduct in its own right and the breaches to established standards and guidance the Committee was satisfied that the conduct found proved did amount to UPC.

35. In coming to the above conclusion the Committee has taken account of the overarching objective to protect patients and the public interest, which includes the maintenance of public trust and confidence and the declaring and upholding of professional standards. The Committee was satisfied that, given the nature and circumstances of the Registrant's conduct, fellow practitioners, patients, and members of the public would be concerned by the Registrant's serious departure from expected standards.

The Committee's Determination on the relevance of the convictions in case number 759/8954

36. The Committee determined that the convictions are of material relevance to the Registrant's fitness to practise.

37. These convictions result from the Registrant's conduct following the matters set out in the case 797/8954. On 29 November 2019 the

Registrant received a caution for his criminal conduct in harassing Person A during that same month (Allegation 6 in case 797). Within a week the Registrant contacted Person A and further harassed her (Allegation 1a). In so doing he broke his bail conditions. In June 2020 he again broke his bail conditions by contacting Person A, harassing her (Allegation 1c) and intimidating her as a witness in the case he faced (Allegation 1b). This course of conduct resulted in the Registrant's bail being revoked and being remanded in custody for three weeks. He was subsequently sentenced to a term of twenty weeks imprisonment suspended for two years as well as other ancillary orders. It is plain from this that the court took a very serious view of these allegations. It rejected the suggestion made by the Probation Service that this case was of a lesser seriousness and may be dealt with by a community penalty.

38. The Committee was of the view that fitness to practise encompassed both the Registrant's position as an individual osteopath and the wider interests of the profession. The Committee was of the view that the convictions were materially relevant to both. The Registrant met Person A when in professional practice and she was his Person. He then ended his professional relationship with her to initiate a personal one. The relationship foundered, yet he pursued Person A in breach of bail conditions and on repeated occasions which culminated in him being remanded in custody and convicted of serious offences namely harassment and witness intimidation. The Registrant's conduct was abusive of Person A and involved repeated criminal conduct.

39. In the Committee's view there was a degree of determination and aggression to the Registrant's conduct. This was evident from his use of different email addresses, his use of an email-tracker from which he may see if Person A had read his emails, and her approximate location at the time and, the reference in a voicemail to Sicily with its implication of the mafia and violence. The conduct was evidently in his own self-interest in persuading her not to give evidence against him. The Committee concluded that again there were breaches of the OPS standards, in particular Standard D7 and the requirements to:

2. *[Uphold] the reputation of the profession may include:*
 - 2.1 *[act] within the law at all times (criminal convictions could be evidence that an osteopath is unfit to practise)*
 - 2.2 *[show] compassion to patients*
 - 2.7 *not [behave] in an aggressive or violent way in your personal or professional life*

40. The Committee determined that the conduct which resulted in these convictions arose from his professional and then personal relationship with Person A. It was thus materially relevant to his own

professional practice. In addition, the Committee was of the view that the convictions are serious in nature and antipathetic to the tenets of osteopathy as a caring profession. As such they are materially relevant to the wider public interest and the standing of the profession. The Committee was thus satisfied that the convictions had material relevance to all aspects of the Registrant's fitness to practise.

Sanction

Submissions on sanction

41. Mr Renteurs directed the Committee's attention to the case of *CHRE v GDC and Fleischmann [2005] EWHC 87* and the general principle stated therein that a Registrant who had been convicted of an offence and sentenced should not resume their practice until they had satisfactorily completed their sentence. The reason for this was not to punish but that 'good standing' must be earned to maintain the reputation of the profession. Mr Renteurs observed that the principle was in accord with the GOsC's own sanctions guidance that sanctions are intended to be protective rather than punitive. He reminded the Committee that the Registrant is subject to a suspended sentence until 20 July 2022.
42. Mr Renteurs invited the Committee to consider the above-mentioned guidance and the issue of mitigating and aggravating circumstances in the case. He conceded that the Registrant had made frank, full and detailed admissions, had reflected, and demonstrated a certain amount of insight into his failings. It was a matter for the Committee to determine how much insight. He observed that the Registrant had struggled with issues at the time of the allegations and appeared to have taken steps to address this such that he was now in a better position. However, he suggested that their impact upon his conduct should be assessed with care. Mr Renteurs submitted that the duration of events and escalation of seriousness was an aggravating feature. A seemingly consensual relationship had deteriorated to the point where the Registrant was cautioned for harassment. He then committed a further offence in December 2019 and, despite being on bail, committed further offences in June 2020. Finally, he said the voicemail messages were menacing and disturbing for Person A.
43. Mr Goldring suggested that support for the above proposition was found in the fact that the conduct was out of character for the Registrant. There was no evidence to suggest he routinely harassed women or ignored police warnings, rather it was as the Registrant's father had said, a 'perfect storm'. His rapid fall from grace was the result of stupid drunken telephone calls. Mr Goldring emphasised that the fact the conduct occurred in isolated bursts of activity

supported the conclusion that these were singular events and out of character. Mr Goldring referred to Person A as being a great source of comfort to the Registrant whose anxiety had escalated since the death of his mother. He became dependent upon her and panicked when she wished to end the relationship. He said this was not an excuse but implied it explained events and reminded the Committee that the Registrant had pleaded guilty and been punished for his conduct.

44. Turning directly to the issue of sanction, Mr Goldring said that the question was 'if the Registrant was allowed to continue in practise, what would the public make of that?' He suggested there were six issues to consider which he addressed in turn.
- (i) Why this had occurred – he submitted this was because of the Registrant's immaturity and poor judgement. There was no evidence of a deep-seated attitudinal problem and, whilst he accepted the behaviour was threatening it was out of character.
 - (ii) Future risk – he said was, frankly, zero. The Registrant would not be in the same position again of a first relationship with all that entails
 - (iii) Maturity – the Registrant had matured in the last two years.
 - (iv) Sentencing – the Registrant had spent three weeks on remand prior to sentence and, was the subject of a suspended sentence for another year.
 - (v) Insight - Finally and most compelling he said that the Registrant had learned how destructive his behaviour had been, not just to himself but to Person A who he had bombarded with communications. Mr Goldring said that the Registrant had made very early admissions, he had pleaded guilty, reflected, sought counselling, had self-referred to the GOsC and had cooperated fully. He had done all he could to acknowledge and put right his wrongdoing.
45. Looking to the issue of breaching sexual boundaries, Mr Goldring observed that it was interesting to note Person A had specifically refused to permit her police statements to be used in the disciplinary proceedings. Much of the information had instead come from the Registrant himself. He fully accepted he should not have breached boundaries and he had not sought to minimise his part in so doing. He said that the Registrant fully understood the imbalance of power between practitioner and patient, but it was also important to note that Person A was a confident person, able to end the relationship and was not particularly vulnerable as sometimes happens in cases such as these. There remained no evidence that she was particularly vulnerable and no evidence that she was distressed by the relationship. Her distress was caused by his subsequent conduct.

46. When considering the CHRE guidance Mr Goldring submitted that there were three areas of importance, the nature of the previous relationship; the length of the professional relationship and time between that ending and the personal relationship starting; vulnerability. Regarding points one and two he said there was no evidence of intimate treatment or personal information being disclosed, the professional relationship involved four appointments over two weeks and there was a gap of a week before the Registrant's personal email to Person A. He said that the Registrant regarded the treatment as finished with the last appointment and no further treatment was intended at this time. In addition there was a short period prior to the relationship becoming intimate. He submitted that this was not the type of case where a patient ended a relationship and the imbalance was laid bare, rather it was the Registrant who could not cope with the relationship ending.
47. In essence Mr Goldring said that the Committee was dealing with an osteopath at the infancy of his career. He was a good osteopath and, by all account in the references a good man. He was desperate not to be a poor partner and turned to alcohol. This 'explosive' period of his life was now a matter of genuine regret and remorse since he now had criminal convictions and had brought shame upon himself and the profession. He said the Registrant was not dishonest but had been direct and open having provided much of the information and evidence to the GOsC.
48. When considering the principle enunciated in *Fleischmann* that any sanction must take account of any outstanding criminal sentence Mr Goldring said this did not preclude the Registrant from continued practise. Mr Goldring invited the Committee to take note of the fact that the Registrant had been working since these events and that it could consider a conditions of practice order as appropriate. He asserted that erasure would be disproportionate. The relationship between Person A and the Registrant post-dated treatment, it was consensual, she was not vulnerable, he had shown insight and remorse and there was nothing to suggest fundamental incompatibility with practise. Whilst he acknowledged that the public would be rightly concerned at this case, they would, he said, take account of all the issues. The risk of repetition was very low. Had it been otherwise there would have been an interim order. The fact that there was not indicated the GOsC recognised the Registrant was not a risk.
49. Mr Goldring submitted that if the Registrant were to continue in practice then the sanction would have to be either suspension or conditions. The former would achieve nothing and be little more than a gesture particularly after all this time. He suggested it would in all the circumstances of the case be disproportionate owing to its

impact upon the Registrant, and his finances. He submitted that the criteria for suspension (continued risk, no remediation, little insight) were not met. In contrast, the overarching objective could be met by conditions the criteria for which were all met. Mr Goldring then set out four conditions which, he submitted, met the overarching objective. (1) continued compliance with interventions; (2) Supervision by his employer Mr McSwiney with whom he had a close and supportive relationship and who was best placed to monitor the Registrant; (3) A full training course on sexual boundaries. He had in mind a three-day face to face course; (4) Continued compliance with the suspended sentence which would mean that the GOsC would be informed of any issues. Finally he said that above all the Registrant proffered his sincerest apologies to Person A.

50. In answer to questions from the Committee Mr Goldring confirmed that despite the Registrant's difficulties and use of alcohol at the time of these events there was no suggestion it affected the quality of his practise. Indeed he had not paused in his work, and he remained in work to date. These events had impacted his personal life not his professional practise.

51. It was noted that the Registrant was sentenced to a 10-day Rehabilitation Activity Requirement (RAR) Order as part of the sentence imposed upon him. The Committee inquired if this had been complied with. Mr Goldring was permitted time to take instructions and thereafter advised that this was 10 days spread over the two-year suspended sentence and it had not yet been completed owing to the current pandemic. Mr Goldring submitted that the Committee should not hold this against the Registrant the implication being it was a matter beyond his and the supervising officer's control, but which would be addressed.

52. The Legal Assessor advised that the RAR requirement was at the lowest end of the spectrum of such orders. It was aimed at supporting the Registrant rather than the lengthy type of course as in the case of *Fleischmann* which was aimed at challenging and changing the attitudes of the Registrant to protect the public.

Decision on Sanction

53. The Committee accepted the advice of the Legal Assessor. It took account of the submissions by both Counsel, and it reminded itself of the documentation submitted on behalf of the Registrant.

54. The Committee recognised that the purpose of sanctions is to meet the overarching objective of public protection. It further recognised that their purpose is not to punish, even though they may have a punitive effect. Because of this it kept proportionality at the forefront

of its mind. The Committee considered the two cases before it both individually and in the round. The cases were clearly connected since they both related to Person A and the Registrant's conduct with and toward her. It considered the question of mitigating and/or aggravating factors, breaches of the OPS and then considered the sanctions in ascending order of seriousness.

55. In terms of mitigating factors the Committee noted that prior to these events the Registrant was of good character. At the start of these proceedings he made full and frank admissions regarding the Allegations, acknowledged his fault, expressed contrition, and apologised. The Committee was advised that the Registrant had been practising as an osteopath throughout these proceedings. He provided written statements, medical statements, and references. However, neither the Registrant nor any of his witnesses were called to give evidence. The Committee did not draw an adverse inference from this fact. However, it meant that the Committee had no opportunity to explore or test the assertions contained in the various documents including the witness statements provided by the Registrant, that he now understood where he went wrong, had learned by what had occurred and did not present a risk to patients or to the profession.
56. Regarding the friendship and the sexual relationship, although the Registrant took the initiative by sending the first email to Person A, the Committee noted that at the time, the Registrant thought their professional relationship had concluded with the final treatment session the week before. The Committee found that he was wrong in that belief since an osteopath has a continuing duty toward patients and ex-patients. Whilst it may be that he did not set out with a view to deliberately break boundaries in a predatory fashion as may occur in cases of sexual conduct, he paid no regard to his duties regarding relationships with a patient. He was ignorant of his continuing duty and the care with which it should be considered. Whilst there is always the possibility of a power-imbalance between osteopath and patient, there was no evidence to suggest Person A was especially vulnerable and no evidence of grooming during treatment. The relationship did not start as an abusive relationship in terms of the Registrant pursuing, persuading, or taking advantage of Person A.
57. Regarding seriousness and aggravating factors, sexual misconduct is always serious since it undermines the trust that patients feel they can place in osteopaths. It was an abuse of the Registrant's professional position to initiate the personal relationship. The fact that the Registrant did not appear to understand the OPS and his continuing duty is, on one view, an aggravating feature. That said, had this case only been about a socially and sexually inexperienced

osteopath forming an apparently equal and consensual relationship with a patient it might have been less serious than similar cases but, that is not the full picture.

58. The Committee was of the view that the subsequent criminal conduct was a serious aggravating feature to the issue of the relationship and its impact upon Person A as well as being serious in its own right. Whilst the Registrant provided reflective statements, much of these statements concern himself and his own difficulties. There is little to suggest that he has fully understood the impact of his actions upon Person A.
59. The Committee was also concerned that, despite clear published guidance on professional boundaries, warnings, police and court-imposed boundaries, the Registrant escalated his conduct. The Registrant first breached professional and sexual boundaries designed to restrain or discourage inter-personal relationships with patients. Once the relationship came to an end, the Registrant broke both societal and professional boundaries harassing Person A to the point that he received a police caution. However, that did not stop him and within a matter of days the Registrant was harassing Person A again. He was arrested, charged with harassment, and bailed. That appears to have given him pause for thought however, as his case approached, the Registrant again contacted Person A and committed yet further offences, this time of an extremely serious nature. Witness intimidation goes to the heart of the criminal justice system.
60. Thereafter, the fact that the Registrant started drinking rather than seek guidance from his professional support may have contributed to a limited extent to the conduct that resulted in the caution in November 2019. Thereafter it was the Registrant's own assessment in his witness statement that in December he knew his conduct in further harassing Person A (after the police caution) was wrong, but he could not let it go. His subsequent conduct in June 2020 does not appear to be linked or, at best the link is marginal.
61. In taking an overview of the case, the Committee found there to be a pattern of conduct, namely the Registrant being unable to control his emotions and, when agitated or distressed, being unable or unwilling to adhere to boundaries, placing his needs above the needs of Person A. His conduct in harassing Patient A in 2020 appears to have been precipitated by being told that a 'non-conviction order' was not possible and that the December 2019 case of harassment would be going ahead before the magistrates' court. Within a very short time of being told this, the Registrant started contacting Person A. In an email to the GOsC the Registrant stated that he was

not acting out of obsession but out of anxiety and panic over the impact the case may have upon his registration. He panicked and drank heavily that night. The Committee was of the view that he was at that time focussed on himself and, despite all the support, warnings and boundaries he acted in his own self-interest by seeking to intimidate Person A. The Registrant's comments were not a misplaced, contrite plea to Person A (which would be bad enough) they were threats that escalated and were intimidatory.

62. The Committee observed some change in the Registrant's stance between his police interviews when he seems to show little concern for the impact of his actions to now having some awareness. Professor Vetere in her letter of 26 April 2021 opined that the Registrant now "fully realises" that harassment is a choice. However, as stated above, that awareness was not explored in evidence, nor has it been demonstrated or built upon through continued professional development or personal reflection.
63. In terms of insight, the Committee found little evidence of this regarding the impact the Registrant's actions had upon Person A. There were statements to suggest he was sorry for "bombarding" her but little detail as to what he now thought of his actions and the significant distress he undoubtedly caused her. There was rather more understanding of the impact upon himself, how he had let down his mentors and his profession.
64. The Registrant did not focus on what he had done to Person A.
65. The Committee concluded that the Registrant still appeared to be minimising his responsibility for his decisions, his actions and the impact they have had on public confidence. Whilst there may have been an element of "an innocent abroad" when he first became enamoured of Person A, he was and is a professional person who should take responsibility. In his witness statement he appeared at times to be more concerned about his own reputation. In addition, the Committee was concerned that in a case as serious as this, the Registrant had undertaken no practical verifiable remediation. He said he had read the OPS, sections of which he had cut and pasted into his statements but, the Committee received no evidence of any personal reflection, online learning, or face-to-face learning. The latter had apparently not been undertaken due to the cost and the uncertainty of these proceedings. Owing to this lack of remediation the Committee was concerned as to the extent and depth of the Registrant's understanding of his failings and his commitment to change. Again none of this was explored in evidence with the Registrant.

66. Whilst the Committee was of the view that the course of events - the caution, arrest, period in custody, convictions, suspended sentence and now these proceedings would normally serve to reduce the risk of such behaviour, the Committee also noted that the Registrant breached several of these boundaries when acting as he did. The Committee could not be confident that if the Registrant was again confronted with personal stressors it would not trigger further episodes of poor judgement and poor decisions. This concern was exacerbated by his acknowledged lower threshold in coping with stress and, his continued incomplete acknowledgement of responsibility. Overall the Committee concluded that there was insufficient evidence of insight and/or personal responsibility for both the sexual misconduct and the criminal conduct to conclude that the risk of the Registrant repeating either was low.
67. The Committee next considered the sanctions in ascending order taking account of the overarching objective, the submissions by both Counsel and the sanctions guidance provided by the GOsC and the CHRE.
68. The Committee first considered admonishment and the relevant guidance including the following factors and the suggestion therein that most should be met for admonishment to be appropriate.
- a. *There is no evidence to suggest that the osteopath poses any danger to the public.*
 - b. *The osteopath has shown insight into their failings.*
 - c. *The behaviour was an isolated incident*
 - d. *(repeats the above)*
 - e. *"*
 - f. *"*
 - g. *The behaviour was not deliberate.*
 - h. *There has been no repetition of the behaviour since the incident.*
 - i. *The osteopath had acted under duress.*
 - j. *The osteopath has genuinely expressed remorse.*
 - k. *There is evidence that the osteopath has taken rehabilitative/corrective steps.*
 - l. *The osteopath has previous good history.*
69. Whilst the Committee noted the Registrant's previous good history and his expression of remorse, it concluded that (other than 'i' which is irrelevant to the case) the other factors potentially indicative of this sanction were not met. As stated above, the Committee was unable to rule out risk to the public; the Registrant has shown limited insight; the behaviour was not isolated rather it was episodic and spread over several months; the behaviour was deliberate; to date he had taken no rehabilitative or corrective steps or learning regarding his failure to adhere to appropriate boundaries or abide by the strictures of the OPS which include not committing criminal

offences. It concluded that admonishment was neither sufficient nor appropriate to the seriousness of the case.

70. The Committee next considered the sanction of a Conditions of Practice Order including those conditions suggested by Mr Goldring and the following guidance. Again there was the suggestion within the guidance that most factors should be met for this sanction to be appropriate.

- a. It is possible to identify discrete aspects of the osteopath's practice that are problematic.*
- b. Conditions are the most appropriate and proportionate way of addressing the PCC findings.*
- c. Any incompetence found is not to such a degree that patients will be put at risk directly or indirectly as a result of continued registration with conditions.*
- d. There is no evidence of harmful, deep-seated personality or attitudinal problems.*
- e. The osteopath has shown insight into their failings and there is evidence of a willingness to respond positively to conditions that improve the quality of their work and promote patient safety.*
- f. The osteopath has shown willingness to be open and honest with patients if things go wrong.*
- g. The conditions will protect the public during the period they are in force.*
- h. It is possible to formulate appropriate and practical conditions that can be easily verified and monitored*

71. On examining Mr Goldring's suggested conditions, they appeared to amount to the Registrant, not reoffending and undertaking training to address boundaries. Whilst training may address some of the Registrant's shortcomings the Committee noted that he could have undertaken training to date but had chosen not to. The Committee doubted his commitment to training and/or his ability to change.

72. In addition, this case was not so much about the clinical setting, but about conduct, boundaries and criminal convictions resulting from the Registrant's inability to accept the end of a relationship, to take responsibility and react positively to boundaries. Some of his conduct was akin to controlling behaviour. It was harassing to Person A, it was serious, it was persistent, and in his own interests. These public interest issues would not be met by conditions.

73. In considering the above factors, the Committee noted that this case was not about clinical practice; it did not agree that conditions were the most appropriate and proportionate sanction; the case did not concern clinical competence; the Committee was unable to dismiss 'd' (personality or attitudinal problems) given the lack of any opportunity to explore the Registrant's evidence; the Registrant's

insight was limited and, given his previous breaches of boundaries and declining to undertake development and training, there was little evidence of a willingness to respond to conditions. The Committee was not satisfied that conditions could be formulated that were verifiable, open to monitoring or that would protect the public. A lack of openness or honesty was not averred in this case.

74. The Committee concluded that a Conditions of Practice Order was neither sufficient nor appropriate to the seriousness of this case. It did not address the issue of upholding the standards and standing of the profession in the face of serious criminal conduct.

75. The Committee next considered the sanction of suspension and the above-mentioned guidance which includes the suggestion that this may be *appropriate for more serious offences and when some or all the following factors are apparent.*

- a. There has been a serious breach of the Osteopathic Practice Standards, but the conduct is not fundamentally incompatible with continued registration.*
- b. Removal of the osteopath from the Register would not be in the public interest, but any sanction lower than a suspension would not be sufficient to protect members of the public and maintain confidence in the profession.*
- c. Suspension can be used to send a message to the registrant, the profession and the public that the serious nature of the osteopath's conduct is deplorable.*
- d. There is a risk to patient safety if the osteopath's registration were not suspended.*
- e. The osteopath has demonstrated the potential for remediation or retraining.*
- f. The osteopath has shown insufficient insight to merit the imposition of conditions or conditions would be unworkable*

76. The Committee was of the view that there had undoubtedly been several serious breaches of the OPS. These included a particularly serious breach of professional boundaries with Person A and subsequent serious criminal offences directed toward her for which the Registrant had received a twenty-week custodial sentence suspended for two years. The Committee was of the view that such conduct would be regarded as deplorable by the public and fellow practitioners. It was fundamentally incompatible with continued registration as an osteopath. In the Committee's view a lower sanction would not be sufficient to protect the public, nor would it maintain confidence in the profession. Notwithstanding the above conclusion regarding compatibility the Committee considered the notion that registration might still be appropriate in cases where a registrant had shown exceptional insight into their failings and had made every effort to remediate such that the public could see and

be confident of any necessary change(s) to merit being trusted as an osteopath and for the profession to be trusted.

77. In this case the Committee found that the Registrant had not demonstrated the potential for remediation or retraining indeed he had undertaken none to date. He had demonstrated little insight into his failings and his own deliberate choices. He had shown little understanding of the impact his conduct had upon Person A. He had chosen not to attend potentially relevant training courses, nor had he provided any evidence of in-depth personal reflection, particularly regarding the consequences of his actions upon Person A.
78. Whilst a lengthy suspension could send the general message to the public and the profession that serious conduct is met with a serious sanction; the Committee was not satisfied that a suspension was of itself sufficient to mark the gravity of the Registrant's transgressions. In addition, it would not address the Committee's concern about the Registrant's continued reluctance or inability to accept responsibility and remediate. The Committee concluded that Suspension was neither sufficient nor appropriate to the seriousness of this case and the public interest.
79. Finally the Committee considered the sanction of Removal and the above-mentioned guidance. This includes the comment that *this sanction is likely to be appropriate when the behaviour is fundamentally incompatible with registration with the GOsC as an osteopath and involves any of the following.*
- a. *A reckless or intentional disregard for the principles set out in the Osteopathic Practice Standards and for patient safety.*
 - b. *A serious departure from the relevant professional standards outlined in the Osteopathic Practice Standards which is incompatible with continued registration.*
 - c. *The osteopath poses a risk of harm to others (patients or otherwise), either deliberately or through incompetence, particularly where there is a continuing risk to patients.*
 - d. *Serious abuse of position/trust (particularly involving vulnerable patients) or serious violation of the rights of patients.*
 - e. *Convictions or cautions for sexual offences, including involvement in any form of child pornography, or findings of sexual misconduct.*
 - f. *Offences involving violence.*
 - g. *A serious level of dishonesty (especially where persistent or covered up).*
 - h. *Persistent lack of insight into seriousness of actions or consequences.*
 - i. *A serious lack of competence and no evidence of improvement.*

80. Whilst the Committee was of the view that the allegations concerning the Registrant's sexual relationship with Person A might be viewed in a less-serious light than some sexual transgressions, it was firmly of the view that the subsequent conduct of harassment and witness intimidation was fundamentally incompatible with registration in a caring profession such as osteopathy. As stated above there was no evidence to suggest the Registrant had addressed this incompatibility.
81. In looking at the above criteria the Committee concluded that several were met. These included a reckless or intentional disregard for the principles set out in the OPS – particularly in committing criminal offences; a serious departure from relevant professional standards, incompatible with continued registration – again in respect of the criminal offences; the risk of harm to others including patients could not be excluded due to the Registrant's lack of insight, insufficient personal responsibility for his conduct and lack of remediation; his pursuit of Person A was a serious abuse of trust and violated her rights both as an individual and an ex-patient; whilst the offences did not involve violence they included emotional intimidation and the implied threat of violence. They struck at the heart of the criminal justice system. The Registrant had shown some insight into the seriousness and consequences of his actions as regards himself, but there was a persistent lack of insight into this from Person A's perspective.
82. Having considered the above the Committee was of the view that in the round, this case involved a Registrant who had committed serious criminal conduct that the public and fellow osteopaths would regard as deplorable, and which were incompatible with continued registration. He had demonstrated little insight into, and no remediation of his conduct and the Committee could therefore not exclude the risk that he would be liable to act in the same way in the future. The Committee was of the view that both the public and fellow professionals would be appalled by the Registrant's conduct and no lesser sanction than Removal would meet the public interest in upholding standards and protecting patients.
83. In coming to the above conclusion the Committee took full account of the adverse impact this order may have upon the Registrant. However, the Committee concluded that the principle declared in *Bolton v Law Soc 1994 1 WLR 512*, that the public interests of declaring and upholding standards in the profession outweighed the interests of the Registrant, applied fully to this case.

Interim Suspension Order (ISO)

Submissions on ISO

84. Mr Renteurs invited the Committee to consider imposing an interim suspension order pending expiry of the twenty-eight-day period during which the Registrant may appeal the findings and sanction in this case. He submitted that the test was one of necessity to protect the public. He observed that the Committee had made findings of fact that included reference to risk of harm and a lack of insight and remediation.
85. Mr Goldring said that the application was resisted. He submitted that the Registrant was not a risk to the public as demonstrated by the fact that he had been practising for nearly two years without incident. He said that the Registrant was not a risk now or in the future and that the psychiatric evidence that he had been practising safely had not been challenged.

Decision on ISO

86. The Committee determined that an ISO was necessary for all the reasons outlined in its findings relating to UPC and sanction. Based on all the evidence and submissions the Committee could not be confident that there was no risk posed by the Registrant to the public.
87. The Committee was not minded to speculate as to why there was no ISO prior to this hearing – whether there had been an application and if so on what information any decision was made. It had now heard all the evidence and made findings adverse to the Registrant including on the issue of risk.
88. The Committee noted Mr Goldring's submission that psychiatric evidence to the effect that the Registrant was now practising safely had not been challenged by the GOsC. However, that is to miss the point that the Committee determined this is not a case concerning impairment through mental health, it is a conduct case. In addition, the Committee was not inclined to place much weight upon Dr Luk's opinion in this regard since it mirrored what he said in May 2020, namely that the Registrant was doing well when only a month later he committed the serious offences of witness intimidation and harassment. This occurred just over one year ago not two.
89. The Committee identified the risk in this case as one of the Registrant acting unprofessionally when under personal stress and not as a result of mental health. He has done so in the past resulting in serious harm to Person A. The risk to others could well be equally serious should the conduct be repeated. Recently the Registrant and

his conduct may have been supported and/or constrained by the existence of the suspended sentence and these proceedings. However the Committee could not be confident that such constraints would remain effective given the Registrant's continued lack of insight, remediation, or an apparent unwillingness to remediate.

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.