



General  
Osteopathic  
Council

## **Professional Conduct Committee**

### **Practice Note 2014/04**

#### **Evidence**

**Effective from: 1 May 2014**

#### **Introduction**

1. This Practice Note sets out the evidential considerations that apply to hearings before the Professional Conduct Committee (PCC) of the General Osteopathic Council (GOsC).
2. The procedures followed by the PCC are set out in section 22 of the Osteopaths Act 1993 (the Act), and in the GOsC (Professional Conduct Committee) (Procedure) Rules 2000 (PCC Rules). Both of these documents are available in full on the GOsC website: [www.osteopathy.org.uk](http://www.osteopathy.org.uk).
3. The PCC has the power under paragraph 21 of the Schedule to the Act to regulate its own procedures. It uses this power to manage the procedures that are followed at a hearing.
4. The parties to the PCC hearing are the GOsC (bringing the case against the registrant) and the registrant. Both parties are entitled to be, and are usually, legally represented. The information in this Practice Note will assist both parties and their legal representatives in meeting the requirements of the legislation and the PCC's expectations. It is not, however, a comprehensive guide and the parties should also consult the full relevant legislation mentioned above.
5. This Practice Note should be read in conjunction with the Practice Note 'Preparing for the Hearing.'

#### **Burden of proof**

6. The burden of proving the facts alleged (the alleged events) is on the Council. The Registrant does not need to prove anything.

#### **Standard of proof**

7. The standard of proof used in regulatory proceedings to decide the facts alleged against the registrant, including those before the PCC, is the civil standard.
8. There is only one unvarying civil standard, which is the balance of probabilities. This means that if the PCC, on the evidence, is satisfied that it is more likely than not that the facts are true or the events occurred, then it will find them proved.
9. The standard of proof applies to those alleged facts that are in dispute. It does not apply to the decision as to whether the facts that have been found proved amount to the allegation<sup>1</sup>. That is decided by the PCC applying its judgment, based on its expertise and knowledge.
10. The Standard of Proof does not apply to the decision on sanction or the decision on whether or not an Interim Suspension Order should be imposed.

### **Evidence of a criminal conviction**

11. In accordance with Rule 26(b) of the PCC Rules, the production of a certified copy of a certificate of conviction is sufficient to enable the Committee to find the fact of the conviction proved.

### **Admitted facts**

12. At the start of the hearing, the allegation and facts will be read out. If the allegation is that the Registrant has been guilty of Unacceptable Professional Conduct or been Professionally Incompetent, the Chair will ask the Registrant to confirm whether they admit any or all of the alleged facts. If so, the PCC should record that those facts have been proved, in accordance with Rule 27 of the PCC Rules.

### **Affirmation and Oaths**

13. Each person who gives oral evidence will give that evidence on oath or be affirmed.

### **Summoning witnesses**

14. The PCC has the power to compel a witness to attend a hearing and give evidence and/or produce documents in their possession or under their control. These powers are set out in Rule 57.
15. The PCC can decide on its own motion to issue a witness summons. Either party can apply to the PCC for a witness summons to be issued. Such

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<sup>1</sup> Unacceptable Professional Conduct; Professional Incompetence or that a Criminal Conviction is material to the Registrant's practise of osteopathy.

applications should be made to the PCC well in advance of the relevant substantive hearing.

16. The party making the application should inform the PCC of the steps it has taken to secure the witness's attendance at the hearing. They should also explain why the witness's evidence is necessary.
17. If the summons is issued, the party seeking it will be responsible for serving the summons on the witness. This must be done at least seven days in advance of the date on which they are summonsed to appear. The party seeking the summons will also be responsible for the witness's expenses for attending the hearing.
18. Any person who is summonsed must be informed that if they fail to comply with the summons, without reasonable excuse, they will be committing an offence under section 32(2) of the Osteopaths Act 1993.

### **Admissibility of evidence**

19. When exercising its discretion to admit evidence, the PCC should consider whether the evidence on which a party seeks to rely is relevant to the allegations being considered by the PCC, and whether it would be fair to the Registrant and in the interests of justice to admit it.
20. Any questions of admissibility of evidence should be decided by the PCC, having first received advice from its legal assessor.

### **Documentary evidence**

21. Rule 57 of the PCC rules provides for the PCC, if it is satisfied that the interest of justice will not be prejudiced, to admit into evidence without strict proof, copies of documents which are themselves admissible, photographs, certificates of conviction and sentence, the records and Registers of the GOsC, notes of proceedings before the PCC and before other tribunals, or any other material.
22. The bundle of documentary evidence before the PCC will often contain:
  - Signed witness statements
  - Medical records or reports
  - Expert reports and a joint statement prepared by the experts.
23. All written witness statements must be signed and dated, and must contain a statement of truth.
24. The evidence of some witnesses, as set out in the statement of the witness, may not be disputed and may be agreed by the parties in advance of the hearing without the need to call the witness.

25. All documentary evidence should be provided to the other party and the PCC in advance of the hearing and in accordance with Rule 13. Any party who wishes to rely on documentary evidence which has not been served in accordance with this Rule, will need the PCC's leave to admit that evidence. The PCC should hear from both parties and seek advice from its legal assessor before deciding whether to provide or refuse its leave.

## **Oral evidence**

26. Witnesses may attend the hearing to give oral evidence. Oral evidence is generally given in four stages: the witness will first give their evidence in chief; they may then be cross-examined by the other party; they may then be re-examined and the PCC may also ask questions of the witness. With the leave of the Chair, the legal assessor may also ask questions of the witness. The parties may ask further questions arising from any questions asked by the PCC or the Legal Assessor.
27. Unless the witness is the Registrant or an expert witness, they should not be allowed to observe the hearing until they have completed their evidence and been formally released by the PCC.
28. The party calling the witness shall decide whether to examine the witness orally or whether to let the witness statement of that witness stand as their evidence-in-chief and then tender the witness for cross examination by the other party. However, there is a very strong presumption that all witnesses should first be examined by the party calling them.
29. When there is a break in the witness's oral evidence, the Chair should warn the witness that they remain under oath and must not talk to anyone about the case until they have completed their evidence and been formally released by the PCC.

## **Evidence provided via a video-link**

30. A party may apply to the PCC for a witness to give their evidence via a video-link. This may be because the witness is vulnerable or because of the witness's location.
31. Video-link facilities are not routinely provided at GOsC hearings and applications for evidence to be given this way should be made well in advance of the hearing. The GOsC will need to be satisfied that the arrangements are of a suitably high quality; the use of Skype is not currently permitted. Applications made during the hearing may be refused or may result in an adjournment of the hearing.
32. When considering an application for the use of a video-link for a vulnerable or intimidated witness, the PCC should refer to the section on vulnerable witnesses and special measures in this Practice Note.
33. When considering an application for the use of a video-link for non-vulnerable witnesses, the PCC should consider whether video-link evidence will be more likely to be beneficial to the efficient, fair and economic disposal of the case. For example, there may be arguments in favour of receiving evidence via a video link from a witness based overseas and where the cost of the individual's travel to the hearing would be expensive.

34. The PCC should hear from both parties and receive advice from its legal assessor before making a decision on whether the application to use a video-link should be granted.
35. Witnesses give evidence in a controlled environment and it is important that this environment remains when witnesses give their evidence via a video-link. Normal practice, such as administering oaths and ensuring that the witness has access to any documents to which the parties will refer during their evidence, must be maintained.
36. Before they begin giving evidence, the witness should be asked to identify any person who is in the room with them and give the reason for that person's presence. A valid reason for the presence of another person would include the provision of support for a vulnerable witness. It is important that the person present is not also a witness in the case.
37. Provided that there is no reason why the person should not be present whilst the witness gives their evidence, the Chair should ensure that the person understands that they cannot speak to, pass notes or give any signals to the witness whilst they give their evidence. The person should be asked to sit where they can be seen by the panel.
38. It is the responsibility of the party calling the witness to ensure that the witness has access to the relevant documents. It is also the responsibility of that party to identify a suitable video link facility and location. The party calling the witness will be responsible for the costs of the facility and location.

### **Vulnerable or intimidated witnesses**

39. The PCC Rules do not identify a category of person who may be considered vulnerable or intimidated. The PCC can be guided, however, by the definitions provided in the Youth Justice and Criminal Evidence Act 1999, Safeguarding Vulnerable Groups Act 2006 and Protection of Freedoms Act 2012. It can also be guided by the Rules of other regulatory bodies. These include the following categories of witness as vulnerable or intimidated:
  - Any witness aged 17 or under at the time of the hearing; or
  - Any witness whose quality of evidence is likely to be diminished because they:
    - are suffering from a mental disorder as defined by the Mental Health Act 1983,
    - have a significant impairment of intelligence and social functioning,
    - have a physical disability or are suffering from a physical disorder; or
  - Complainants in cases where the allegation against the Registrant is of a sexual nature.

40. The decision to allow special measures is at the discretion of the PCC. When a vulnerable witness is to give evidence at a hearing, the party calling that witness can apply to the PCC for a special measure or a combination of measures to be used. The PCC, in deciding whether to grant the application, will want to be satisfied that the special measure or combination of special measures is likely to maximise the quality of the witness's evidence.

### **Special measures**

41. Special measures are designed to help a vulnerable or intimidated witness give their best evidence and to help relieve some of the stress associated with giving evidence. These measures can apply to both parties' witnesses, but not the Registrant.
42. Special measures are used at the discretion of the PCC and may include:
- Use of a screen to shield the witness from the Registrant and public
  - Use of a video-link so that the witness can give their evidence from a different room or location to the hearing
  - The ability to give evidence in private, as set out in Rule 17 of the PCC Rules
  - A video recorded interview as the witness's evidence-in-chief<sup>2</sup>
  - Use of communication aids, such as an interpreter or intermediary.

### **Cross-examination of complainants in cases of a sexual nature**

43. In cases involving allegations of a sexual nature, the accused Registrant should not be allowed to cross-examine the complainant.
44. If the Registrant is representing themselves at the hearing, they should be asked to appoint a legally qualified person to cross-examine the witness on their behalf. If the Registrant cannot appoint such a person, the GOsC will appoint one to act on their behalf and to cross-examine the witness. In such circumstances, the GOsC will pay the reasonable costs of legal representation for this limited purpose.

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<sup>2</sup> Where a witness gives evidence by way of recorded interview, the Committee will attach such weight to that evidence as it sees fit, in the light of any arrangements for the testing of such evidence by way of cross examination.

## **Expert evidence**

45. Either party may appoint an expert to provide an opinion on the matters that are within their expertise to assist the PCC. Opinion evidence of an expert is admissible when it relates to a matter that requires specialised knowledge.
46. The requirements placed on an expert witness who appears before the PCC are set out in the Practice Note: Requirements on expert witnesses in fitness to practise proceedings.
47. Expert witnesses are not required to read their report into the record.
48. Where each party instructs an expert, those experts will be asked to produce an agreed joint statement setting out the areas that are agreed upon and those that remain in dispute. This joint statement and each expert's written report must be provided to the PCC in advance of the hearing.
49. Although an expert may comment on the ultimate question – that is whether the Registrant has been guilty of Unacceptable Professional Conduct or Professional Incompetence – this decision is a question of judgment for the PCC.
50. Where there are two experts who give conflicting evidence, the PCC must decide whose evidence and opinions it accepts. The PCC should explain in its reasons why it preferred the evidence of one expert over another.

## **Character evidence and testimonials**

51. Evidence as to the Registrant's character will usually be provided at the sanction stage of the proceedings and as part of the Registrant's mitigation. In some cases, however, this evidence may be relevant and admissible at an earlier stage.
52. Where the facts alleged require proof of a state of mind, such as dishonesty or sexual motivation, then evidence of good character may be relevant and taken into account by the PCC when deciding whether the alleged facts are proved.

## **Advice provided by the Legal Assessor**

53. All advice provided by the Legal Assessor should be provided (or repeated) in public.
54. The parties shall have the opportunity of commenting on the advice provided by the Legal Assessor before the Committee makes a decision based upon that advice.



### **Further information**

55. This Practice Note is part of a suite of Practice notes produced by the GOsC Council.
56. For further information about the PCC's procedures and guidance, please see the GOsC's website - [www.osteopathy.org.uk](http://www.osteopathy.org.uk) – or contact the Regulation Department on 020 7357 6655 x224.