



**General
Osteopathic
Council**

PROFESSIONAL CONDUCT COMMITTEE

Indicative Sanctions Guidance Third Edition [insert publication date]

INTRODUCTION

1. The General Osteopathic Council (GOsC) was established by the *Osteopaths Act 1993* (the Act) to regulate and develop the profession of osteopathy. This document relates to the GOsC's regulatory function and in particular the work of its Professional Conduct Committee (PCC).
2. This document has been produced primarily to assist the PCC in achieving a consistent and proportionate approach when determining sanctions. However, osteopaths, legal representatives, professional bodies and members of the public may also find the information contained in this document useful.
3. This document is designed to guide the PCC and to provide it with a framework within which it will make decisions about sanctions. It is not exhaustive, nor intended to restrict the PCC from exercising its own judgement. The PCC will judge each case on its particular merits and set sanctions accordingly.

PROFESSIONAL CONDUCT COMMITTEE (PCC)

4. The procedures adopted by the PCC are governed primarily by the Act and the GOsC (Professional Conduct Committee) (Procedure) Rules 2000 (the Rules). Other legislation, such as the *Human Rights Act 1998*, of course, also has an impact on the way the PCC operates and the procedures it adopts, as does common law.
5. Section 22(1) of the Act provides for the PCC to consider any allegation to the effect that the osteopath has been:
 - a) guilty of conduct which falls short of the standard required of a registered osteopath (unacceptable professional conduct);
 - b) guilty of professional incompetence;
 - c) convicted (at any time) in the United Kingdom of a criminal offence.
6. Section 22(2) requires the PCC to take one of the following steps, if it is satisfied that the allegation is well founded:
 - a) admonish the osteopath;

- b) make an order imposing conditions with which the osteopath must comply while practising as an osteopath (a 'conditions of practice order');
 - c) order the Registrar to suspend the osteopath's registration for such period as may be specified in the order (a 'suspension order');
 - d) order the Registrar to remove the osteopath's name from the register.
7. If the allegation is of the kind mentioned in 6.c) above and the PCC considers that the criminal offence in question has no material relevance to the fitness of the osteopath concerned to practise osteopathy, it may take no action (section 22(3) of the Act).

FINDINGS

8. The *Osteopathic Practice Standards*¹ (OPS) contains all the standards of conduct and competence required of osteopaths. It comprises both the standard of proficiency and code of practice. The OPS, therefore, outlines the safe, competent and ethical practice of osteopathy and it will be used as a guide by the PCC when determining unacceptable professional conduct and/or professional incompetence.

Unacceptable professional conduct

9. Unacceptable professional conduct is described in the Act as 'conduct which falls short of the standard required of a registered osteopath'. Section 19 of the Act provides for the GOsC to publish a code of practice, which lays down the standards of conduct and practice expected of a registered osteopath.

Professional incompetence

10. Professional incompetence is not specifically described in the Act although section 13 provides for the GOsC to determine the standard of proficiency that is required for the competent and safe practice of osteopathy.

Criminal offence

11. 'Convicted of a Criminal offence in the United Kingdom (UK)' refers to a determination by a criminal court in the UK. The PCC is able to consider any conviction that is referred to it, even if the offence did not relate to the osteopath's practice.
12. The purpose of considering a conviction is not to punish the osteopath for a second time. The PCC is concerned with protecting the public interest (see paragraphs 21-22) and may find that the criminal offence in question has no material relevance to the fitness of the osteopath concerned to practise osteopathy. It may, however, find that in order to protect the public interest, it is necessary for a sanction to be imposed.

¹ *Osteopathic Practice Standards*. General Osteopathic Council, 2012.

Cautions for criminal offences

13. A Caution for a criminal offence may lead to an allegation that the registrant has been guilty of unacceptable professional conduct (see paragraph 9).

Referral to the Health Committee

14. By virtue of Rule 62², where it appears to the PCC that an osteopath's ability to practise osteopathy may be seriously impaired by reason of his physical or mental condition, it may refer the case to the Health Committee for determination, whether or not the allegation has been proven or sanction applied.

Please note: unlike some other healthcare regulators, the GOsC does not currently determine whether the registrant's fitness to practise is impaired. The only findings available to the PCC are those set out above.

DECISION-MAKING PROCESS

15. The decision-making process is in three parts:
 - a) **Finding of facts** – at this stage, the PCC must decide which facts are proved, based on the evidence before it, and taking account of the burden and standard of proof that the GOsC must satisfy. After close of the osteopath's case (which is presented second), the PCC will deliberate in private and reach its finding of facts;
 - b) **Finding on allegation** – after deciding its findings of fact, the PCC must decide whether, in its judgment, the facts proved amount to unacceptable professional conduct, professional incompetence or whether a criminal conviction is material to the practice of osteopathy. It will deliberate this in private and announce its finding in public;
 - c) **Finding on sanction** – if the PCC finds that the facts amount to unacceptable professional conduct, professional incompetence or that a criminal conviction is material to the practice of osteopathy, it will hear any additional circumstances leading up to the allegations and as to the character and previous history of the osteopath from the GOsC's solicitor. The Committee will then hear mitigation from the osteopath's lawyer. It will also hear and take account of submissions made by each party on the sanction to impose. The Committee will consider the mitigation critically (not merely at face value) and then deliberate in private as to the appropriate sanction. The Committee will then announce the sanction in public.

² GOsC (Professional Conduct Committee) (Procedure) Rules 2000.

RESPONSIBILITY FOR DECISIONS

16. The GOsC has overall responsibility for the regulation of the osteopathic profession. It does not however make decisions on individual cases, as this role is specifically given to the independent fitness to practise committees, including the PCC.
17. This guidance does not affect the separate responsibilities of the GOsC and the PCC. It provides a crucial link between the two key regulatory roles of the GOsC – setting standards for the profession and of taking action on registration when a registrant's fitness to practise is called into question because those standards have not been met.

DECISION-MAKING CONSIDERATIONS

Individual case

18. Each case that is heard by the PCC is different and should, therefore, be decided on its facts and merits.

Legal Assessor

19. When appropriate, the Legal Assessor will advise the PCC on questions of law, including questions about the use of this guidance. The Legal Assessor may advise the PCC on legal matters only. However, legal advice may include matters that the PCC should or should not take into account during deliberations. The Legal Assessor should, therefore, attend the PCC during its private deliberation. Any legal advice given in private should be repeated in public.

Proportionality

20. In deciding what sanctions to impose, the PCC must apply the principle of proportionality. This means weighing the interests of the public with those of the osteopath. The PCC should consider the sanctions available starting with the admonishment and choose the least severe sanction that will adequately deal with the issues in the particular case.

Public interest

21. The PCC exists to protect the public interest, which includes:
 - a) the protection of patients, colleagues and the wider public from the risk of harm
 - b) maintaining public confidence in the osteopathic profession
 - c) declaring and upholding appropriate standards of conduct and competence among osteopathic professionals.
22. The public interest also requires:
 - a) the osteopath to receive a fair and impartial hearing; and

- b) in appropriate cases, to be given the opportunity to return to safe and competent practice.

Mitigation

- 23. The PCC will need to consider any mitigation and the extent to which this should influence the PCC's judgement on the sanction to be imposed, which is dependent on the individual circumstances in each case. Mitigation may include:
 - a) evidence of the circumstances leading up to the incidents in question
 - b) evidence of good conduct following the incident in question, particularly any remedial action
 - c) evidence of the osteopath's previous good character
 - d) evidence of remorse shown/insight/apology given
 - e) time lapsed since the incident and absence of any subsequent allegation
 - f) evidence of steps taken to avoid a repetition

References and testimonials

- 24. Often an osteopath will present references and testimonials to support their standing in the community and/or osteopathic profession. The absence of such references or testimonials should not count against the osteopath. When considering such references, the PCC should consider factors such as how recent they are and whether the writers were aware of the allegations against the osteopath and that their letters would be put to the PCC in mitigation.
- 25. Testimonials are usually only heard in mitigation, after a finding of unacceptable professional conduct, professional incompetence or that a criminal conviction is material to the practice of osteopathy. If, however, there is an allegation of dishonesty, it may be appropriate to take into account testimonial evidence as to the osteopath's good character at the fact finding stage.

Reasons for decisions

- 26. The decision given by the PCC should be written in a way that members of the public would understand the decision and the reasons for it. In addition, the right of appeal will be rendered illusory if the osteopath does not know the basis for the decision against them. The PCC must explain its reasons in such detail that the public, parties to a hearing and the appellate court can understand why the PCC reached its decisions.
- 27. Before considering the imposition of sanctions, the PCC will already have made findings of fact and decided that the osteopath's conduct amounted to unacceptable professional conduct or incompetence, or that a criminal conviction is materially relevant to an osteopath's fitness to practise. The PCC will have given its reasons for its decisions.

28. After the PCC has heard the parties' submissions on mitigation, the PCC must consider the imposition of sanctions and give its reasons for any such imposition. These reasons should include:
- a) the factual basis for the decision, identifying any mitigating or aggravating factors, making reference, where appropriate, to the parties' submissions on mitigation.
 - b) the legal jurisdiction used – any sections of the Act or Rules that form the legal basis for the decision.
 - c) confirmation or otherwise that legal advice given by the Legal Assessor has been accepted.
 - d) an explanation of the extent to which this guidance has been taken into account in the decision-making.

SANCTIONS

29. Sanctions are there to protect the public interest, which includes the protection of members of the public, maintenance of public confidence in the profession and declaring and upholding proper standards of conduct and competence.
30. The PCC must impose a sanction when it finds unprofessional conduct, professional incompetence or that a criminal conviction is material to the practice of osteopathy.
31. The sanction must be proportionate and address the particular deficiencies highlighted by the case. For example, while an admonishment might address certain unprofessional conduct, where the osteopath has shown insight and is unlikely to repeat it, it will not address an inadequacy of practice premises or incompetence. A Conditions of Practice order requiring remedial action would address such issues.
32. When determining an appropriate sanction in each case, the PCC should consider each sanction in turn, beginning with the least severe and continuing in order of least severity, namely, admonishment, condition of practice order, suspension, and removal from the Register. The least severe sanction that deals adequately with the identified issues should be chosen.

ADMONISH THE OSTEOPATH

33. An admonishment is the lowest sanction that can be applied and may, therefore, be appropriate where the offence is at the lower end of the spectrum. An admonishment has no direct effect on an osteopath's practice and should only be taken if the osteopath is fit to continue practising without any restrictions. An admonishment is publicised and will remain on the osteopath's fitness to practise record.
34. An admonishment may be appropriate where most of the following factors are present (this list is not exhaustive):

- 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) the behaviour was not deliberate
- e) there has been no repetition of the behaviour since the incident was complained about
- f) the osteopath had acted under duress
- g) the osteopath has genuinely expressed remorse
- h) there is evidence that the osteopath has taken rehabilitative/corrective steps
- i) the osteopath has previous good history

35. The decision to admonish an osteopath will take effect in 28 days, beginning with the date on which notification of the decision is served on the osteopath, unless there is an appeal against the decision.

CONDITIONS OF PRACTICE ORDER

36. A Conditions of Practice Order (the Order) allows the osteopath to continue practising while providing protection for the public and patients. This sanction will affect the osteopath's practice and may be appropriate when most of the following factors are apparent (this list is not exhaustive):

- a) it is possible to identify discrete aspects of the osteopath's practice that are problematic
- b) 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
- c) there is no evidence of harmful deep-seated personality or attitudinal problems
- d) the osteopath has shown insight into their failings and evidence of a potential and willingness to respond positively to conditions
- e) the osteopath has shown willingness to be open and honest with patients if things go wrong
- f) the conditions will protect the public during the period they are in force
- g) it is possible to formulate appropriate and practical conditions of practice that can be easily verified and monitored.

37. The conditions may prevent the osteopath from practising in a certain way or on a particular category of patient. The osteopath may be required to undergo

additional training on specific areas of his practice and possibly be required to pass an independent and objective test of competence. When formulating conditions, the PCC will have regard to the *Guidance for the Professional Conduct Committee on formulating Conditions of Practice Orders*.

38. The objectives of the conditions should be made sufficiently clear for the osteopath. The PCC should identify each of the shortcomings in turn and explain how the conditions are intended to address them. The PCC should also explain any proposals for future review hearings. The conditions should be:
 - a) necessary in order to protect the public
 - b) relevant to the shortcomings
 - c) proportionate to the shortcomings
 - d) workable
 - e) measurable
 - f) should be addressed to the osteopath and not a third party.
39. The Order should be set for a specific period, which must not exceed three years and should be the minimum that the PCC considers necessary for the protection of the public.
40. The PCC should consider whether it will require the osteopath to pass a test of competence and/or whether the Order will be reviewed at a specified time and inform the osteopath of this when the Order is imposed. The Rules (Rule 37) require that the PCC shall indicate that it will review the case at a review hearing before the Order ends. The PCC will also indicate what information it will require at the review hearing, such as evidence to show the successful outcome of any retraining that the osteopath has undertaken.
41. An Order will not take effect for 28 days, beginning with the date on which notification of the decision is served on the osteopath, unless there is an appeal against the decision.
42. At any time while an Order is in force, the PCC may:
 - a) extend the period for which the Order has effect;
 - b) revoke or vary any of the conditions;
 - c) require the osteopath to pass a test of competence;
 - d) reduce the period for which the order has effect;
 - e) revoke the order.

SUSPEND THE OSTEOPATH'S REGISTRATION

43. A Suspension Order will prevent the osteopath from practising as an osteopath for the length of the Order. This sanction is appropriate for more serious offences and when some or all of the following factors are apparent (this list is not exhaustive):

- a) there has been a serious breach of the *Osteopathic Practice Standards*³
- b) the osteopath's conduct is not fundamentally incompatible with continued registration
- c) complete 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 the public interest
- 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) there is no evidence of harmful, deep-seated personality or attitudinal problems
- g) the osteopath has shown insight and does not pose a significant risk of repeating the behaviour
- h) there has been failure to engage in the fitness to practise process.

44. The Suspension Order should not exceed three years and should be set for the minimum that the PCC considers necessary for the protection of the public. The Rules (Rule 37) require that the PCC shall indicate that it will review the case at a review hearing before the end of the period of suspension. The PCC will also indicate what information it will require at the review hearing, such as evidence to show the successful outcome of any retraining that the osteopath has undertaken.
45. An osteopath's ability to practise may be affected by prolonged periods of suspension, although there is a requirement for them to maintain CPD (with restrictions) if they intend to return to the Register in the future.
46. At any time while a Suspension Order is in force, the PCC may:
- a) extend, or further extend, the period of suspension (to a maximum of 3 years)
 - b) make a Conditions of Practice Order with which the osteopath must comply if they resume the practice of osteopathy after the end of their period of suspension.
47. A Suspension Order will take effect in 28 days, beginning with the date on which notification of the decision is served on the osteopath, unless there is an appeal. The PCC should, therefore, consider whether, in order to protect patients and members of the public, it is necessary to impose an interim suspension order – see paragraphs 52-54.

³ *Osteopathic Practice Standards*. General Osteopathic Council, 2012.

REMOVING THE OSTEOPATH'S NAME FROM THE REGISTER

48. A Removal is the most severe sanction that can be applied and should be used where there is no other means of protecting the public and/or maintaining confidence in the osteopathic profession. This sanction is likely to be appropriate when the behaviour is fundamentally incompatible with being an osteopath and involves any of the following (this list is not exhaustive):

- a) a reckless 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*
- c) the osteopath poses a risk of harm to others (patients or otherwise), either deliberately or through incompetence and 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) a serious level of dishonesty (especially where persistent or covered up)
- g) persistent lack of insight into seriousness of actions or consequences
- h) there has been a serious lack of competence and no evidence of improvement following a period of continuous suspension or conditions of practice.
- i) there has been a failure to engage in the fitness to practise process.

49. An order to remove an osteopath's name from the Register will take effect in 28 days, beginning with the date on which notification of the decision is served on the osteopath, unless there is an appeal. The PCC should, therefore, consider whether, in order to protect patients and members of the public, it is necessary to impose an interim suspension order – see paragraphs 52-54.
50. An osteopath may apply for restoration to the Register (Restoration) after a period of 10 months. When determining an application for Restoration, the PCC will need to be satisfied that the applicant:
- a) has paid the prescribed fee;
 - b) is in good health, both physically and mentally;
 - c) is of good character; and
 - d) having regard to the circumstances which led to the removal, is a fit and proper person to practise the profession of osteopathy.
- 51.** On granting an application for Restoration, the PCC may make a Conditions of Practice Order. (See paragraphs 36-42).

Annex A – Other powers of the Professional Conduct Committee

INTERIM SUSPENSION ORDERS

52. The PCC has the power, in accordance with section 24 of the *Osteopaths Act 1993*, to order the Registrar to immediately (interim) suspend an osteopath's registration. This step can be taken when an allegation against an osteopath is referred to the PCC and the Committee has not reached a decision on the matter.
53. The PCC also has the power to order the Registrar to immediately (interim) suspend an osteopath's registration when it has reached a relevant decision. This provision should be considered when the PCC has decided that the allegations are well founded and it has imposed one of the following sanctions:
- a) order the Registrar to suspend the osteopath's registration for such period as may be specified in the order (a 'suspension order');
 - b) order the Registrar to remove the osteopath's name from the Register.
54. Please refer to the *Interim Suspension Order Guidance*.