



General
Osteopathic
Council

Indicative Sanctions Guidance

PROFESSIONAL CONDUCT COMMITTEE

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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, their legal representatives, professional bodies and members of the public may also find the information contained in this document useful.
3. It was produced at a time when the GOsC is able to draw on an analysis of past cases, although it should be recognised that the GOsC is still a relative newcomer, in regulatory terms, and regulation of the osteopathic profession will continually develop. The guidance given in this document will, therefore, be reviewed and updated on a regular basis with the most up-to-date version available on the GOsC website www.osteopathy.org.uk.
4. This document is designed to guide the PCC but it is not exhaustive, nor intended to restrict the PCC from exercising its own judgement. The aim of this document is not to set a tariff, which would be contrary to legal principle. Every case, even if it contains similarities to other cases, is unique to some degree, whether in severity or surrounding circumstances. The PCC will judge each case on its particular merits and set sanctions accordingly.

PROFESSIONAL CONDUCT COMMITTEE (PCC)

5. 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.
6. Section 22(1) of the Act provides for the PCC to consider any allegation to the effect that:
 - a) the osteopath has been guilty of conduct which falls short of the standard required of a registered osteopath (unacceptable professional conduct);
 - b) the osteopath has been guilty of professional incompetence;
 - c) the osteopath has been convicted (at any time) in the United Kingdom of a criminal offence.

7. 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.
8. 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

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'. The Code of Practice, which is published in accordance with section 19 of the Act, lays down the standards of conduct and practice expected of a registered osteopath and is often used, therefore, as a guide when determining unacceptable professional conduct.

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. Standard 2000 (S2K) is the current standard of proficiency and is often used as a guide when determining professional incompetence.

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 18 and 19) 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.

Referral to the Health Committee

13. By Rule 62, if 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.

DECISION-MAKING PROCESS

14. The decision-making process is in three parts:

- a) **Finding of facts** – at this stage, the Committee must decide which version of events it prefers, 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 Committee will deliberate in private and reach its finding of facts;
- b) **Finding on allegation** – after deciding its findings of fact, the Committee must decide whether, in its judgment, the facts 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 Committee find 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. 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.

DECISION-MAKING CONSIDERATIONS

Individual case

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

Legal Assessor

16. 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

17. In deciding what sanctions to impose, the PCC must apply the principle of proportionality – this means that the PCC must not choose a harsher than necessary sanction with the intention of making an example of the particular osteopath but must choose the least severe sanction that will adequately deal with the issues in the particular case.

Public interest

18. 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) protect the reputation of the osteopathic profession
 - d) declaring and upholding appropriate standards of conduct and competence among osteopathic professionals
19. 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

20. 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
 - f) evidence of steps taken to avoid a repetition

References and testimonials

21. Often an osteopath will present references and testimonials to support his/her 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.
22. Testimonials should only be heard in mitigation, after a finding of unprofessional conduct, professional incompetence or that a criminal conviction is material to the practice of osteopathy. They may not be used in defence of allegations.

Reasons for decisions

23. The decision given by the PCC should be written such 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 him. Therefore, 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.

24. Before considering the imposition of sanctions, the PCC will already have made findings of fact and decided that the osteopath's conduct amounted to unprofessional conduct or incompetence, or that a criminal conviction is materially relevant to an osteopath's fitness to practise. The PCC will then have given its reason for such determinations, explaining what facts were found and why the osteopath's conduct had amounted to unprofessional conduct or incompetence, or why the criminal conviction was materially relevant to the osteopath's fitness to practise.
25. After the PCC has heard the parties' submissions on mitigation, the PCC must consider the imposition of sanctions (see paragraphs 26 to 29) 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

26. 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.
27. 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.
28. The sanction must address the particular deficiencies highlighted by the case. For example, whilst an Admonishment might address certain unprofessional conduct, where the osteopath had 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.
29. 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 severity, namely, admonishment, conditions 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

30. 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.
31. An admonishment may be considered as a suitable sanction 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 an insight into his/her failings
 - c) the behaviour was an isolated incident
 - d) the behaviour was not deliberate
 - e) the osteopath had acted under duress
 - f) the osteopath has genuinely expressed remorse
 - g) there is evidence that the osteopath has taken rehabilitative/corrective steps
 - h) the osteopath has previous good history
32. The decision to admonish an osteopath will not take effect before the end of the period of 28 days, beginning with the date on which notification of the decision is served on the osteopath. Or, where an appeal against the decision has been duly made, the appeal is withdrawn or otherwise disposed of.

CONDITIONS OF PRACTICE ORDER

33. A Conditions of Practice Order (the Order) allows the osteopath to continue practising whilst providing protection for the public and patients. This sanction will affect the osteopath's practice and may be appropriate when most or all 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) the osteopath has shown evidence of a potential and willingness to respond positively to conditions
 - d) the conditions will protect the public during the period they are in force
 - e) it is possible to formulate appropriate and practical conditions of practice that can be easily verified and monitored
34. 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.

35. The objectives of the conditions should be made sufficiently clear for the osteopath to know what is expected of him. 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
36. 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.
37. 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 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.
38. An Order will not take effect before the end of the period of 28 days, beginning with the date on which notification of the decision is served on the osteopath. Or, where an appeal against the decision has been duly made, the appeal is withdrawn or otherwise disposed of.
39. At any time while an Order is in force, the PCC may:
 - a) extend the period for which the Order has effect (to a maximum of 3 years);
 - 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

40. 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 is no evidence of harmful deep-seated personality or professional attitudinal problems
 - b) there is evidence of a repetition of the behaviour
 - c) the osteopath has not shown insight and poses a significant risk of repeating the behaviour
 - d) patients' interests are sufficiently respected
 - e) it is possible to formulate appropriate, practicable and assessable action that can be recommended to be undertaken during the period of suspension
41. 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.
42. An osteopath's ability to practise may be affected by prolonged periods of suspension, although there is a requirement for him for maintain CPD (with restrictions) if he intends to return to the Register in the future.
43. At any time while a Suspension Order is in force, the PCC may (whether or not of its own motion):
 - 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 s/he resumes the practice of osteopathy after the end of his/her period of suspension.
44. A suspension order will not take effect before the end of the period of 28 days, beginning with the date on which notification of the decision is served on the osteopath. Or, where an appeal against the decision has been duly made, the appeal is withdrawn or otherwise disposed of. 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 47 and 48 on page 10.

REMOVING THE OSTEOPATH'S NAME FROM THE REGISTER

45. A removal is the highest 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) serious departure from the relevant professional standards outlined in the Code of Practice and/or Standard of Proficiency
 - b) doing serious harm to others (patients or otherwise), either deliberately or through incompetence and particularly where there is a continuing risk to patients
 - c) abuse of position/trust (particularly involving vulnerable patients) or violation of the rights of patients
 - d) convictions or findings of a sexual nature, including involvement in any form of child pornography
 - e) a serious level of dishonesty (especially where persistent or covered up)
 - f) persistent lack of insight into seriousness of actions or consequences
46. An order to remove an osteopath's name from the Register will not take effect before the end of the period of 28 days, beginning with the date on which notification of the decision is served on the osteopath. Or, where an appeal against the decision has been duly made, the appeal is withdrawn or otherwise disposed of. 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 47 to 48 below.

INTERIM SUSPENSION ORDERS

47. 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.
48. 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.

RESTORATION TO THE REGISTER

49. 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.
50. On granting an application for Restoration, the PCC may make a Conditions of Practice Order (see paragraphs 33 to 39).



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If you have any difficulty reading or accessing this document,
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