



General
Osteopathic
Council

Notice to Osteopaths and Legal Representatives

PROFESSIONAL CONDUCT COMMITTEE

APPROVED 16 NOVEMBER 2007

Please read this Notice carefully as it contains information relevant to osteopaths and legal representatives who become involved in the General Osteopathic Council's (GOsC's) fitness to practise (FTP) process. For the remainder of this document the term 'Osteopath' shall include reference to the osteopath's legal representative, unless the context otherwise requires.

The purpose of this Notice is to provide advanced information about the expectations and attitudes of the FTP Committees - Investigating Committee (IC) and Professional Conduct Committee (PCC) – on matters relating to the FTP process. It is hoped that this will help Osteopaths comply with the most commonly breached procedural rules and reduce some of the anxiety that naturally arises from involvement in any arbitration process. It will also help to maintain process efficiency, to the benefit of all concerned.

This Notice applies when it has been alleged that the osteopath has been:

- > guilty of unacceptable professional conduct;
- > guilty of professional incompetence;
- > convicted of a criminal offence in the United Kingdom

The Legislation

The GOsC's FTP process is governed primarily by the following legislation:

- > Osteopaths Act 1993 (the Act);
- > GOsC (Investigation of Complaints) (Procedure) Rules 1999 (the IC Rules); and
- > GOsC (Professional Conduct Committee) (Procedure) Rules 2000 (the PCC Rules).

Statutory time limits

The legislation mentioned above sets various statutory time limits that must be met by both the GOsC and the Osteopath. The time limits set out below are the ones most commonly breached. They do not represent all relevant time limits. Osteopaths should, therefore, familiarise themselves with all relevant statutory requirements.

Investigating Committee

The Act

- > An osteopath has 28 days beginning with the day on which notice of an allegation is **sent** to him to submit his observations about the allegation (s.20(9)(a)).

Professional Conduct Committee

PCC Rules

Prior to the Hearing, the Osteopath must:

- > provide the GOsC with the names of the witnesses he will call, no less than 6 clear days before the day of the hearing. Witnesses whose names have not been so provided may be called only with the permission of the PCC (r.12(2));
- > provide the GOsC with any documentary evidence he wishes to rely on at the hearing, which has not previously been provided, no less than 3 clear days before the day of the hearing. Such evidence not so provided will be admitted at the hearing only with the permission of the PCC (r.13).

The exercise of discretion by FTP Committees

1. Requests to disapply the statutory time limits

The FTP Committees will enforce the statutory time limits unless there is good reason supported by evidence not to. The FTP process has suffered considerable disruption in the past due to failures to abide by the statutory time limits. A delay caused by one party in a case can cause frustration and injustice to the other party and extra expense to the GOsC (which is funded by osteopaths' subscriptions), taking funding from projects that may benefit the profession and public. Also, a delay in one case invariably has a knock-on effect to the progress of subsequent cases, causing more frustration, injustice and expense further along the line.

The FTP Committees have a duty to treat all parties fairly and equally, which requires them to balance the competing rights of the parties when assessing the reasonableness of requests to disapply the statutory time limits. To achieve this, they require a timely application, citing a good reason and supported by satisfactory independent evidence before they can properly consider granting the Osteopath an adjournment or extra time to comply with a stage of the process.

PERMISSIONS

A FTP Committee will not usually grant a required permission unless the Osteopath shows to the committee's satisfaction that he has made an application that is in accordance with the criteria set out under the heading 'Applications'.

APPLICATIONS

The FTP Committees will consider each application on its individual merits and all applications must:

- > be made as soon as reasonably practicable once the applicant knows that he cannot comply with the particular statutory time limit;
- > be in writing;
- > clearly state the reason why he cannot comply with the particular statutory time limit;
- > be accompanied, where possible, by cogent independent evidence in support of the application.

GOOD REASON

The FTP Committee will only exercise its discretion in favour of the applicant if the reason cited is a 'good reason'. A 'good reason' can be any circumstance that in the opinion of the FTP Committee is genuine, beyond the applicant's control and can reasonably be expected to render the applicant's compliance with the statutory time limits impracticable. There has, therefore, been no attempt to provide a list of circumstances that would amount to a good reason. The concept is, perhaps, better illustrated by listing (below) commonly cited reasons that are not regarded as 'good reasons'.

CIRCUMSTANCE THAT ARE NOT GOOD REASONS

- > Treating the FTP processes with insufficient priority: - for example, an osteopath who seeks legal representation at a late stage risks leaving his legal representative with insufficient time to prepare his case. This is entirely the osteopath's fault and insufficient reason to delay the FTP process.
- > Holidays: - whilst the Committees may empathise with an osteopath who had booked a holiday before receiving notification of the allegation, they will have less empathy for those who book holidays after such receipt. Osteopaths are advised to liaise with the FTP team, who will be able to give an indication of whether certain dates are likely to clash with the statutory time limits.
- > A lawyer's workload or holiday: - a lawyer's unavailability or lack of capacity to diligently pursue an osteopath's instructions is rarely, if ever, a good reason to delay the process. Such matters are regarded as being purely between the lawyer and his osteopath client (if the osteopath's case is compromised due to the solicitor's lack of capacity, the osteopath may have a claim in negligence against the solicitor). However, an application made on such basis may be reported to the Law Society, as the solicitor's code of conduct states:

"... you must refuse to act or cease to act for a client ... where you have insufficient resources ... to deal with the matter" (Rule 2).

The osteopath may mitigate this situation by exercising his right to change his solicitor, even if paid for under an insurance policy. Such action may be viewed empathetically by the FTP Committees.

- > Unavailability of a witness: - whilst the unavailability of a vital witness may be a good reason, the importance of the witness to the applicant's case and the reason for the lack of availability will be material to a Committee's exercise of discretion. Unavailability of a witness who is not vital to the case or whose absence is due to the Osteopath's failure to provide sufficient notification of the hearing may not be a good reason.
- > Anxiety: - a mere statement to the effect that the osteopath cannot attend the hearing due to anxiety is not usually regarded as good reason, as anxiety is a natural consequence of FTP proceedings. For anxiety to be a good reason, it must be unusually severe, and verified by independent medical evidence.

2. To approve measures for witnesses with special needs

The GOsC is concerned to provide for the comfort of witnesses with special needs, which may arise, for example, due to a witness' age, physical or mental disability, fear or language. The GOsC will seek to accommodate the needs of witnesses on an individual basis but requires sufficient notice of the witness' condition and needs in order to do so. Therefore, as soon as reasonably practicable after becoming aware that a witness has special needs, the relevant party should make an application to the FTP Committee for appropriate special measure to be provided.

So that all witnesses are treated fairly and consistently, the applicant must, where possible, provide independent evidence in support of the claim to special needs that justifies the special measures sought. The FTP team will be happy to advise on such applications.

Procedure at PCC Hearings

The PCC, in exercising its inherent jurisdiction to determine its own procedure, has decided that:

WITNESS STATEMENTS AS EVIDENCE-IN-CHIEF

- > Written witness statements should stand as evidence-in-chief. The witness should be asked to read their statement into the record and collateral questioning will still be allowed, as appropriate, with permission from the PCC.
- > the Parties should submit witness statements to the PCC 6 clear days before the day of the hearing.

SKELETON ARGUMENTS

- > the Parties should submit skeleton arguments to the PCC 6 clear days before the day of the hearing.



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If you have any difficulty reading or accessing this document,
contact the General Osteopathic Council on
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