



**Council**  
**14 May 2015**

**Professional Conduct Committee Practice Note: Admission of Good Character Evidence**

<b>Classification</b>	Public
<b>Purpose</b>	For decision
<b>Issue</b>	The paper proposes the introduction of a Practice Note to assist the decision making of the Professional Conduct Committee.
<b>Recommendation</b>	To agree the Practice Note on Admission of Good Character Evidence.
<b>Financial and resourcing implications</b>	Met within budget
<b>Equality and diversity implications</b>	Monitoring of diversity data will form part of the Regulation Department Quality Assurance Framework.
<b>Communications implications</b>	Views from members of the Professional Conduct Committee and the GOsC Fitness to Practise Users Forum were sought and the views received were considered by the Osteopathic Practice Committee at its meeting on 12 March 2015. As the draft Practice Note reflects established case law, the Executive does not consider that there is any need to undertake a full public consultation.
<b>Annex</b>	Practice Note: Admission of Good Character Evidence
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## Background

1. In October 2013, the Council agreed to introduce Practice Notes to assist its fitness to practise committees. The Practice Note on Acting in the Public Interest will form part of a suite of Practice Notes for the fitness to practise committees.
2. The Professional Conduct considers allegations about a Registrant's fitness to practise at hearings. The procedures followed at the hearing are set out in the GOsC (Professional Conduct Committee) (Procedure) Rules 2000 (PCC Rules).

## Discussion

3. The admissibility of evidence of a registrant's good character is an issue that arises not infrequently at hearings before the Professional Conduct Committee.
4. There is a growing body of case law on this issue, and it is important that all panels of the Professional Conduct Committee take a consistent approach in relation to decisions on admissibility.
5. In order to promote such consistency, leading Counsel was instructed to produce guidance to assist the Professional Conduct Committee, in the form of a Practice Note. The draft Practice Note is set out at the Annex.

### *Views from the PCC and the FTP users' forum*

6. The draft Practice Note was considered by members of the Professional Conduct and Health Committees at their training day on 20 November 2014. The response was positive.
7. Views from the FTP users' forum were sought on the draft Practice Note (together with a further draft Practice Note on Acting in the Public Interest, which is the subject of a separate paper to Council). Four responses were received (two from legal representatives who act on behalf of the Council and two from legal representatives who act on behalf of osteopaths):

*"The two practice notes are helpful and I don't have any comments to make about either document".*

Council Representative

*"...I would like to say how impressive I think these documents are..."*

Council Representative

*"May I say as a general point that I think the opinions are drafted clearly, succinctly and in a form which leads to no ambiguity. The identity of the leading Counsel is unfortunately not included but he or she has done an excellent job."*

*In general both documents appear to lay out the generality of the situation much as I believe it currently is. In respect of the document concerning the Public Interest I felt that there was a modest tightening of the current arrangements whilst I really could find no significant alteration in the document concerning Admissibility of Good Character Evidence.*

*As always, it is important that 'Acting in the Public Interest' does not become any sort of witch hunt. I was reassured, in Point 17, that there is emphasis on the importance of not making too much of an isolated episode of misconduct against (often) many years of blameless, high quality, careful practice.*

*Overall, I do not believe that, from the perspective of someone involved in the defence of osteopaths accused of Unprofessional Conduct, that the clarifications will in themselves cause any significant difficulty."*

Registrant Representative

*"I welcome the recognition in the new good character guidance, specifically paragraph 9 (ii), that "where there is a material issue of fact to be decided between the registrant's account and that of the complainant or any other witness<sup>[1]</sup>, evidence of good character goes to the credibility of the registrant, and it might also provide an indication of the propensity of the registrant to have done what is alleged against him." and the reference to the recent Wisson judgment.*

*However, I have some serious concerns about the procedure referred to in the guidance, in particular paragraphs 21, 23 and 24"*

Registrant Representative

### *Consideration by the Osteopathic Practice Committee*

8. The draft Practice Note was considered by the Osteopathic Practice Committee (OPC) at its meeting on 12 March 2015.
9. The OPC agreed that the draft Practice Note was a useful addition to the suite of Practice Notes already developed by Council for its fitness to practise committees.
10. The OPC noted the reservations expressed by one registrant representative in relation to three paragraphs of the draft practice note. However, the OPC agreed with the Executive's view that where there was a difference of legal opinion – in relation to whether it was necessary for the panel to read the actual documents or whether a general understanding of the nature and intended purpose of the documents would suffice – the Executive was entitled to rely on the advice provided by the Queen's Counsel commissioned to draft the guidance note.

11. The OPC considered that paragraph 20 of the draft Practice Note should be amended to refer to the failure of a witness to appear 'without good reason', and that paragraph 23 should be amended to remove the reference to submissions on admissibility being made only at the end of the registrant's case.
12. Subject to these and other minor drafting points, the OPC recommended that the draft should be approved by Council.
13. The draft at Annex A incorporates the amendments suggested by the OPC.
14. Given that the Practice Note reflects existing and well established case law, the executive does not consider that it is necessary to undertake a public consultation on the Practice Note.

**Recommendation:** to agree the Practice Note on Admission of Good Character Evidence.

**GENERAL OSTEOPATHIC COUNCIL**

**PROFESSIONAL CONDUCT COMMITTEE AND THE HEALTH COMMITTEE**

**PRACTICE NOTE: 2015/2**

**ADMISSION OF GOOD CHARACTER EVIDENCE**

**EFFECTIVE: 14 May 2015**

**Introduction**

1. This Practice Note provides a summary of the law and practice relating to the admission of evidence of good character to the proceedings of the Professional Conduct Committee [PCC] of the General Osteopathic Council [GOsC]. It does not cover the topic exhaustively, nor is it intended to restrict the judgment of the PCC when performing its duty to consider allegations.
2. The GOsC was established by the Osteopaths Act 1993 (the Act) to regulate and develop the profession of osteopathy. The procedures followed by the PCC are set out in section 22 of the Act, and in the GOsC (Professional Conduct Committee) (Procedure) Rules 2000 (the Conduct Rules). Both of these documents are available in full on the GOsC website: [www.osteopathy.org.uk](http://www.osteopathy.org.uk)
3. This Practice Note should be read in conjunction with the GOsC's *Practice Note: Evidence* (1 May 2014), and *Practice Note: Preparing for PCC Hearings* (October 2013). Both are available on the GOsC's website.

Evidence of good character

4. The PCC should only consider evidence that is relevant to the issues at the stage of the proceedings under consideration.
5. Evidence of good character, which includes positive evidence of the osteopath's competence and conduct, sometimes before and after the time when the allegation/s took place, will usually be provided on behalf of the osteopath at the sanction stage of the proceedings. Such evidence will form part of the osteopath's mitigation, and will be relevant to penalty.
6. In some cases, however, evidence of good character may also be relevant and admissible at an earlier stage, namely when the PCC is required to determine the facts.
7. Evidence of good character is never relevant and admissible to the PCC's consideration of whether the facts found proved amount to unacceptable professional conduct or professional incompetence, or whether a criminal

conviction is materially relevant to the fitness of the osteopath concerned to practice osteopathy.

### Admissibility at fact-finding stage

8. In order to determine the admissibility of evidence of good character at the fact-finding stage, the nature of the evidence and the issue to which it is relevant must be identified.
9. Evidence of good character may be admissible in the following circumstances:
  - (i) where the GOsC seeks to prove the registrant's guilty mind, for example, in a case alleging dishonesty, evidence of honest conduct and integrity will be admissible, to support the credibility of the registrant (if he or she has provided an account of the events in question) and it will be admissible as to his or her propensity to act dishonestly (that is, that he or she might be less likely than otherwise might be the case to have acted dishonestly);
  - (ii) where there is a material issue of fact to be decided between the registrant's account and that of the complainant or any other witness<sup>1</sup>, evidence of good character goes to the credibility of the registrant, and it might also provide an indication of the propensity of the registrant to have done what is alleged against him or her.
10. Evidence of good character cannot afford a defence in itself, but, if admissible, it must be taken into account when considering the facts in the ways described above.
11. The weight to be attached to such evidence is a matter for the PCC, assessing it in all the circumstances of the case.
12. If the Council challenges the evidence of good character, and requires the author of the relevant statement to attend to be cross-examined about it, and he or she fails to appear, this will not necessarily preclude the PCC from admitting the statement into evidence, but it might, depending on the circumstances, reduce the weight that the PCC attach to it.

### The PCC's determination

13. Where evidence of good character is admitted at fact-finding or sanction stage, the PCC's determination should set out the Committee's approach to

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<sup>1</sup> See *Wisson v HCPC* [2013] EWHC 1036 (Admin), para. 44-47 "if he has provided an account of the events in question" and "between the registrant's account," rather than "if he has given evidence before the PCC" or "the registrant's evidence", because, though unlikely, it is possible that the registrant relies, for example, on evidence of what he said at the time about the events, and does not give evidence; if such evidence is admitted, character evidence will nevertheless be relevant and admissible on both limbs. See also the Crown Court Bench Book.

the evidence, stating how it has taken it into account and what weight it has attached to it, and why<sup>2</sup>.

### Procedure

14. The PCC has power under paragraph 21 of the Schedule to the Act, to regulate its own procedures. It has used this power to set additional requirements regarding the admission of good character evidence that should be complied with when preparing for a hearing. These are identified below.
15. There is a requirement for the registrant to provide to the PCC's Clerk and to the GOsC, written witness statements for those witnesses that he or she intends to call and to serve skeleton arguments, at least 6 days before the first day of the hearing<sup>3</sup>.
16. Where the registrant proposes to rely on evidence of good character, such evidence in the form of witness statements should also be provided to the PCC's Clerk and the GOsC at least 6 days before the first day of the hearing, accompanied by a skeleton argument identifying:
  - (a) whether the facts are in dispute, and / or whether it is disputed that the facts, if proved, amount to unacceptable professional conduct or professional incompetence;
  - (b) the witness statements that purport to go to character; and
  - (c) in general terms, the basis for admissibility.
17. In cases in which the facts are disputed, and/or it is disputed that the facts, if proved, amount to unacceptable professional conduct or professional incompetence, the witness statements going to character will not be added to the hearing bundle provided to the PCC prior to the start of the hearing, unless the GOsC agrees that the evidence is admissible.
18. Such agreement, or otherwise, and an indication as to whether the GOsC wishes the witness/es as to character to attend to give evidence, should be submitted to the registrant and to the Clerk to the PCC at least three days before the first day of the hearing.
19. If the GOsC agrees that the evidence of good character is admissible, it may be added to the hearing bundle and read by the PCC prior to the start of the trial.
20. The registrant will be warned that if the attendance of the witness to give character evidence is required by the GOsC, and the witness fails to attend

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<sup>2</sup> Note: paras 7-13 are derived from *Donkin v Law Society* [2007] EWHC 414 (Admin) *Bryant and another v Law Society* [2007] EWHC 3043 (Admin) [2009] 1 WLR 163; *Fish v GMC* [2012] EWHC 1269 (Admin); *Wisson v HCPC* [2013] EWHC 1036 (Admin) paras 32-45, 52 – 55.

<sup>3</sup> See Practice Note: Preparing for PCC Hearings at p2.

without good reason, the evidence might not be admitted, or the failure to attend might detract from the weight the PCC attaches to it.

21. Where the facts are in dispute, and/or it is disputed that the facts, if proved, amount to unacceptable professional conduct or professional incompetence, no testimonials will be provided to the PCC unless and until the issue of sanction arises.
22. Every effort should be made to resolve the issue of admissibility between the parties.
23. However, where agreement cannot be reached, the PCC will hear submissions on admissibility.
24. By this time the issues will have been identified, and admissibility can usually be determined on the basis of a general description of the type of evidence contained in the statements and its relevance to the issues in the case (that is without the PCC reading the statements).