

### Draft Practice Note: Questioning Witnesses

#### Introduction

1. This Practice Note focuses on the appropriate questioning of witnesses, including the registrant, whether they attend a hearing in person, or provide evidence remotely, before the Professional Conduct Committee (PCC) of the General Osteopathic Council (GOsC).
2. The GOsC is committed to ensuring that its adjudication function is discharged in a fair, effective and transparent manner.
3. 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).
4. 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. The PCC must have regard to the over-arching objective of the GOsC to protect the public.
5. Witnesses may attend the hearing to give oral evidence. Further details about the arrangements for giving oral evidence are set out in [Practice Note 2014/04](#).<sup>1</sup> The PCC may ask questions of the witness. This Practice Note is intended to help support this process.

#### Role of the Chair

6. All those who appear before the PCC must be treated with courtesy and consideration. The PCC Panel Chair (the Chair) should therefore ensure that all witnesses (including the registrant) are enabled to give their best evidence and engage effectively with the process. The Chair should ensure that formal introductions are made and that ground rules and housekeeping for the hearing are explained at the outset, to reassure all participants and to enable them to engage effectively at the appropriate times throughout the hearing process. The Chair should ensure questions asked are capable of being understood. The Chair should also clarify that any special arrangements, eg. the hearing-loop system, are in place. Cultural issues must also be taken into consideration. For example, where a witness may be fasting and may require additional breaks
7. The Chair is responsible for ensuring that the hearing is properly managed and progressed. The Chair should remind all parties that these are professional proceedings and that the behaviour of everyone present should reflect this. The Chair may interpose where they consider that this is required to ensure fairness of the hearing. For example, where one side's questioning of the witness is

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<sup>1</sup>Further information about giving evidence and the hearing process can be found at <https://www.osteopathy.org.uk/standards/complaints/hearings/attending-a-hearing/witness-guidance/>

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repetitive or overly aggressive or where a witness appears unduly stressed. However, generally speaking, it should not be necessary for the Chair to interrupt the parties or their representatives when asking questions. The Chair should manage the process of panellists asking questions, but each member of the PCC should have the opportunity to ask their own questions. The Chair may wish to speak to the PCC members 'in camera' (in private) before panel questions to assist with the division and ordering of questioning.

### **Role of Professional Conduct Committee**

8. Panellists should play a proactive role in fitness to practise proceedings, making sure that the case is properly presented and the relevant evidence is placed before the PCC.<sup>2</sup> The hearing should not be strictly adversarial; the PCC has an inquisitorial function. Questions should not be restricted only to clarifying matters which have arisen earlier in the evidence. This is because the objective of the hearing is to enable the panel to reach the right decision for the protection of patients and the public.
9. The PCC may admit evidence (including oral evidence) which is relevant to the allegations being considered by the PCC as long as it is fair to the parties and in the interests of justice to admit it.
10. Panellists should ask questions and explore issues which they think are of relevance, even if it appears that the parties do not intend to raise these particular issues. PCC questions need to be relevant to the issues which are in contention and the decisions which it must determine. It is appropriate for panellists to ask questions if they consider that any issue has not been adequately explored.
11. However, it is not the function of the PCC to ensure that a witness is 'cross-examined' and the style and nature of Committee members' questions should be distinct from the style which might be more appropriate for representatives who will be presenting on behalf of one of the parties.
12. It is reasonable for PCC members to test a witness's account to an appropriate extent and, if members of the PCC are concerned about whether a witness is being truthful on a particular matter, they are entitled to probe the witness about that matter and consider whether it affects their assessment of the witness's evidence.
13. Fairness requires that a registrant must be asked about all of the disputed allegations being brought against them. This will usually be done by the Presenting Officer for the GOsC, but the PCC should also ensure that the registrant is not deprived of the opportunity to explain or defend themselves against the allegation.

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<sup>2</sup> Council for the Regulation of Healthcare Professionals v General Medical Council and Ruscillo & Council for the Regulation of Healthcare Professionals v Nursing and Midwifery Council and Truscott [2005] 1 WLR 717 [79-80]

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14. A registrant is entitled to have their case heard by an independent and impartial PCC and therefore in all aspects of Committee member's conduct, including the asking of questions, the PCC must ensure that there are no circumstances which would lead a fair-minded and informed observer to conclude that there was a real possibility that the tribunal was biased.

### **Appropriate questions**

15. It is important that questions are asked of a witness at the appropriate stage in the proceedings. However, it can be reasonable for the PCC to ask questions that may be relevant to a potential later stage of their deliberations as it is unusual for a witness or the registrant to be recalled to provide further evidence at any such later stage.
16. Therefore, if questions relate to a potential stage, such as asking questions of the registrant around insight and remediation, the panellist should be careful in how the question is framed to avoid the perception they have pre-judged any of the earlier issues or stages.
17. Questions should:
- a) be relevant, justified and necessary for the PCC to be able to determine the issues in the case
  - b) be expressed in an open-minded way
  - c) be questions and not statements
  - d) be straightforward, and use words the witness could be expected to understand
  - e) keep, wherever possible, to chronological order
  - f) be asked one at a time and
  - g) should provide the witness time to answer fully, without interruption.
18. PCC members may find it helpful to refer witnesses to documents if these form the basis of the question. This may include referring to a document which presents an alternative account of events, to enable the witness to address any discrepancies.
19. Questions may be probing and as a result may cause the witness to feel uncomfortable.
20. Questions should not be:
- a) hostile or aggressive
  - b) unnecessarily repetitive, having regard to questions asked already by the representatives and other PCC members.
21. PCC members should be aware of their (and others) non-verbal communications during the hearing and particularly during questions. Pointing or wagging fingers, a raised voice, tone of voice, sighing or grimacing or other aggressive postures may make otherwise acceptable questioning inappropriate.

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22. Any agreed reasonable adjustments for witnesses must continue to be accommodated throughout questioning. This may encompass the PCC ensuring the time estimates provided allow for special arrangements such as frequent breaks to ensure concentration levels remain adequate or to enable a witness to observe religious or cultural needs, for example, set times for prayers.
23. In some circumstances, the Chair may also direct a short adjournment to enable the PCC to agree in advance questions they wish to ask a witness to enable any questions to be focused, sensitive, and to avoid potential re-traumatisation.
24. If a witness becomes confused or distressed, or appears to be overly tired, the Chair or Legal Adviser may suggest a short adjournment. Witnesses should be reminded that they remain on oath or under affirmation during such breaks. The PCC should be particularly mindful if the hearing is being held remotely, that individuals who do not communicate regularly in a remote setting, can become disconcerted and may struggle to follow what is happening in an already unfamiliar legal process. Body language and signs of distress might also be more difficult to pick up in a remote hearing. The Chair may find it helpful to ask regular 'check in' questions of the witness throughout their evidence.<sup>3</sup>
25. The PCC should be careful to ensure, where a witness might be speaking in their second language, that questions are properly understood. The PCC should be mindful that a witness may require the use of a translator during their evidence (if this has not been arranged in advance of the hearing).<sup>4</sup>
26. The Chair or Legal Assessor should intervene during questioning if this is necessary to preserve the integrity and fairness of the proceedings. Any concerns either the Presenting Officer or the Registrant's representative may have should be raised directly with the Chair.

### Further information

27. This Practice Note is part of a set of Practice notes produced by the GOsC.
28. For further information about the PCC's procedures and guidance, please see the GOsC's website – [osteopathy.org.uk](https://osteopathy.org.uk) – or contact the Regulation Department on +44 (0)20 7357 6655 x224

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<sup>3</sup>The GOsC provides an Independent Support Service for all witnesses, including registrants. This service is independent of the GOsC and run by volunteers from the charity Victim Support. Witnesses can speak to the GOsC and ask to be referred into the service, or alternatively can self-refer into the service by calling 0300 303 1964. The helpline is open 24/7, 365 days a year, with caseworkers available to provide ongoing support Monday-Friday 8am-6pm (excluding bank holidays).

<sup>4</sup> Our in person hearings are held in England and through the medium of English. Prior to hearings concerning osteopaths practising in Wales, members of the public who are to be called as witnesses will be offered the choice of addressing the hearing in Welsh and appropriate interpreting arrangements will be made.