



General
Osteopathic
Council

**Change to the *Notice to Osteopaths and Legal Representatives:*
Consultation**

We are seeking feedback on a proposed change to the way witnesses present their evidence in hearings held by the General Osteopathic Council's Professional Conduct Committee.

July 2011

Introduction

About the General Osteopathic Council

The General Osteopathic Council (GOsC) is the regulator for the osteopathic profession in the UK. By law osteopaths must be registered with us in order to practise in the UK. We currently register around 4,500 osteopaths.

An important part of our work is dealing with concerns and complaints about osteopaths and we have legal powers to consider cases where it is alleged that an osteopath:

- has been guilty of unacceptable conduct;
- has been guilty of professional incompetence;
- has been convicted of a criminal offence;
- is unable to practise properly as an osteopath because of his/her physical or mental health

Introduction to the Professional Conduct Committee (PCC)

The role of the PCC is to consider allegations which have been made about an osteopath and which have been referred to it for a decision. The PCC does this by hearing and weighing up the evidence and submissions made on behalf of the parties. If the allegations are upheld by the PCC it will impose a sanction on the osteopath, ranging in severity from an admonishment to an order for removal from the Register.

About the consultation

The purpose of this consultation is to seek the views of interested parties and stakeholders in the GOsC's fitness to practise procedures on a proposed change in the way that some evidence is given at hearings before the PCC. The PCC wishes to consult on a proposal to remove from its *Notice to Osteopaths and Legal Representatives* the requirement that witnesses (other than expert witnesses¹) read out their written statements so that it becomes their evidence-in-chief².

Information about the *Notice to Osteopaths and Legal Representatives*, and the proposed change can be found on page 3-4.

This consultation opens on 15 July 2011 and closes on 30 September 2011.

¹ Expert witnesses do not read out their written reports, but are subject to examination and cross-examination by the relevant legal representatives, and may also be questioned by the PCC panel. No change to this procedure is proposed.

² The evidence given by a witness for the party who called them.

Responding to the consultation

Please send your responses to the GOSc's Regulation team, no later than **Friday, 30 September 2011.**

A [consultation response form](#), together with the consultation questions is provided.

Responses should be sent to:

Notice to Osteopaths and Legal Representatives Consultation
Regulation Department
General Osteopathic Council
Osteopathy House
176 Tower Bridge Road
London SE1 3LU

We are asking some specific questions that we would like responses to, but you are welcome to offer any comment you wish on the proposal – all feedback will be taken into consideration.

Responses will be read by the PCC and by relevant staff at the GOSc, but you should be aware that unless you state otherwise we will assume you are happy for us to share your response with any other appropriate body or stakeholder.

If you are responding on behalf of a representative group, it would be helpful if you could provide a description of the size and nature of the group you represent.

Any queries about the consultation should be sent to: regulation@osteopathy.org.uk

Outcome

Responses will be considered by the PCC at a meeting to be held when the consultation period has ended.

A summary of responses showing how they have been taken into consideration, and the PCC's eventual decision, will be posted on the GOSc's website (www.osteopathy.org.uk).

If the PCC decides to go ahead with the change it will revise, and reissue, its *Notice to Osteopaths and Legal Representatives*.

The issue for consultation

The Notice to Osteopaths and Legal Representatives

A *Notice to Osteopaths and Legal Representatives* was first issued by the GOSc in November 2007, with the purpose of drawing attention to particular procedural matters in the fitness to practise process. It was reissued on behalf of the independently appointed PCC members in May 2010. See Annex for a full copy of the current Notice.

The proposal for consultation

Many aspects of the conduct of hearings before the PCC are governed by its statutory rules³, but the Osteopaths Act 1993 (the Act) also states⁴ that, subject to any provision made by or under the Act (which includes the statutory rules), each statutory committee (which includes the PCC) may regulate its own procedure. Neither the Act nor the PCC Rules prescribe the manner in which a witness's evidence must be given.

Current procedure relating to witness evidence

Currently, the procedure relating to witness evidence is that signed written statements, containing the evidence, are provided to the parties⁵ in advance of the hearing and included into the bundles of documentary evidence used by the PCC during the hearing. When witnesses are called to give evidence, they are asked to read out their signed written statements (this process is known as "reading-in"). During the course of reading-in their statement, the witness may be asked to explain or expand on particular points. The witness may then be cross-examined by the opposing party, and may be asked additional questions by members of the PCC panel hearing the case.

Proposed change to procedure relating to witness evidence

The proposed change on which the PCC is now consulting is for witnesses no longer to read out their written statements, but instead to be taken through their evidence orally. The witness would be asked questions about their evidence, which they would answer without reference to their written witness statement. Their oral evidence, rather than the contents of their written witness statement, would be their evidence-in-chief.

The proposed change would not affect the requirement that names of witnesses and their written statements must be provided to the parties in advance of the hearing.

³ The General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules 2000

⁴ Section 21 of Part II of the Schedule

⁵ The 'parties' are the GOSc (putting the case against the registrant) and the registrant (putting his/her own case forward). The parties are usually, but not always, represented by lawyers during PCC hearings.

If the proposal were incorporated into the revised *Notice to Osteopaths and Legal Representatives*, the relevant paragraph would read as follows:

“Evidence-in-Chief and Written Witness Statements

Witnesses’ oral evidence will stand as their evidence-in-chief. It is expected that written witness statements will be made available to the Committee as part of the Council’s or Registrant’s evidence bundles. Witnesses are not to read their written statement. Witnesses will be taken through their evidence orally without access to their written statement.

The Parties should submit written witness statements to the PCC six clear days before the day of the hearing.

Oral evidence-in-chief and written witness statements should be addressed solely to the allegation and should not address matters which are not relevant to the allegation. Matters which are not relevant include personal mitigation where it is not relevant to the allegation.

Expert witnesses will also not read their written reports as their evidence-in-chief. However, they will be allowed access to their written report when giving oral evidence.”

Why make the change?

Having considered the case for and against reading-in, the proposed change is thought on balance by the PCC to be a fairer way of assessing the evidence given by witnesses and of assisting the assessment of credibility which is a significant factor in cases.

Some of the arguments for and against reading-in are set out overleaf. These were all considered by the PCC when deciding to consult on a change to the current practice. (Note: references to ‘witness’ includes both the registrant and complainant.)

Witnesses should be asked to read-in their written statement because...

- The reading-in of the written witness statements, combined with the asking of questions as witnesses go through their statements ensures fairness in that witnesses have the opportunity to give their full account of events, without sole reliance on recall in a situation of considerable stress. This relieves some pressure on witnesses and can help to steady their nerves and tends to produce more reliable evidence.
- Witnesses' evidence can be fully tested either through questions put to them after they have read out their statement or during cross-examination. Representatives are not allowed to ask questions which lead the witness by referring them to part of their written statement.
- PCC hearings are held in public (for the most part) and openness, transparency and accountability is assisted by reading-in. Without reading-in, it is more difficult for a person observing the hearing to understand the proceedings as they do not have access to the written statement.
- Removal of the requirement to read-in would deprive registrants (and other witnesses) of the opportunity to give their evidence in public on a matter of personal importance and sensitivity.
- Reading-in enables the complainant to hear a full account of what the registrant has to say in response to their complaint.
- Reading-in does not add time to hearings. It can in fact reduce time taken as statements are generally more focussed and read in a shorter time, than if the legal representative took the witness through their evidence by asking questions.

Witnesses should not read-in their written statement because...

- If there are stark conflicts of evidence (for example between a patient and an osteopath) the best testing of the available evidence may be achieved by requiring witnesses to recall what happened without their written statements in front of them.
- Requiring witnesses to recall what happened without access to their written statement reflects long-established practice in the courts, the effectiveness of which has been tested through appeals to higher courts.
- As written witness statements are seen beforehand by the PCC their reading-in adds little to the evidence heard by the PCC and takes extra time, which could be regarded as poor case management.
- The reliance on the reading-in of written witness statements may be associated with the parties' representatives asking fewer questions of witnesses. As a result, the PCC may be obliged to ask more questions itself in order to test witnesses' evidence.

Removing the requirement would encourage representatives to ensure full exposition and testing of the evidence thus assisting fairness to both sides.

As set out above, there are cogent arguments for and against the reading-in of written witness statements as evidence-in-chief. This consultation is crucial therefore, in helping the PCC to make a final decision on this important matter which is in the best interests of all parties involved in the hearing, as well as the public.

Consultation questions

Question 1: Do you agree with the proposed change to the practice of witnesses reading out their written statements, as set out in the revised Notice, or do you think that the existing practice of reading out witness statements should be continued?

Question 2: Do you consider that the proposed change will increase, decrease, or have no impact on, fairness in the assessment of credibility and evidence?

Question 3: Do you consider that the proposed change will have an impact, adverse or helpful, on an unrepresented registrant?

Questions 4: What impact, if any, do you think that the proposed change will have on time management in proceedings?

Question 5: Do you consider that the proposed change will adversely impact on witnesses or others in relation to their gender, race, disability, age, religion or belief, sexual orientation or any other aspect of equality? If so, please make suggestions about how the impact could be reduced.

Question 6: If the practice of reading out written witness statements were to be stopped, do you think witnesses should have access to their statement when being questioned?

Question 7: Are there any other comments you would like to make?

You need not respond to all of the questions, and we would welcome any views that you may have on aspects of the subject matter that are not covered in the questions.



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