

GENERAL OSTEOPATHIC COUNCIL
PROFESSIONAL CONDUCT COMMITTEE (PCC)

Notice to Osteopaths and Legal Representatives

(Approved: 16 November 2007; amended 10 May 2010; revised 1 November 2011)

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

This amended Notice takes effect from 1st January 2012. It applies to all hearings which start on or after this date.

The purpose of this Notice is to provide advanced information about the expectations and attitudes of the PCC on matters relating to its 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 hearing process. It will also help to maintain process efficiency, to the benefit of all concerned.

The PCC's objective is to ensure that before the first day of the hearing all issues - evidential or procedural - that can be resolved are so resolved. The PCC panel hearing the case will wish to be clear from the outset what arguments are to be made and the evidence that is to be relied upon.

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

- guilty of unacceptable professional conduct (conduct which falls short of the standard required of a registered osteopath);
- guilty of professional incompetence;
- convicted of a criminal offence in the United Kingdom

The Legislation

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

- Osteopaths Act 1993 (the Act); 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.

**Professional Conduct Committee
PCC Rules**

Prior to the hearing, the osteopath must:

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- provide the GOsC with the names of the witnesses he or she 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 or she 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).

Please note that these are the *last* days upon which names of witnesses and any documentary evidence *not previously provided* are to be provided. It is the PCC's expectation that names and documents will be provided well before these statutory end dates.

The exercise of discretion by the PCC

Requests to disapply the statutory time limits

The PCC will enforce the statutory time limits unless there is good reason supported by evidence not to. The PCC's 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 PCC has a duty to treat all parties fairly and equally, which requires it to balance the competing rights of the parties when assessing the reasonableness of requests to disapply the statutory time limits. To achieve this, it requires a timely application, citing a good reason and supported by satisfactory independent evidence before it can properly consider granting the osteopath an adjournment or extra time to comply with a stage of the process.

Permissions

The PCC will not usually grant a requested permission unless the osteopath shows to the Committee's satisfaction that he or she has made an application that is in accordance with the criteria set out under the heading "Applications" .

Applications

The PCC 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 or she cannot comply with the particular statutory time limit;
- be in writing;
- clearly state the reason why he or she cannot comply with the particular statutory time limit;
- be accompanied, where possible, by convincing independent evidence in support of the application.

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Good reason

The PCC will only exercise its discretion in favour of the applicant if it would cause potential injustice not to do so or the reason cited is a "good reason". A "good reason" can be any circumstance that in the opinion of the PCC 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* normally regarded as "good reasons".

Circumstances that are not normally regarded as good reasons

Treating the PCC's 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 the osteopath's responsibility and is normally insufficient reason to delay the FTP process.

Holidays: - whilst the Committee may sympathise with an osteopath who had booked a holiday before receiving notification of the allegation, it will have less sympathy for those who book holidays after such receipt. Osteopaths are advised to liaise with the GOsC's Regulation 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 a good reason to delay the process. Such matters are regarded as being purely between the lawyer and his/her 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 a basis may be reported to the Solicitors Regulation Authority, as the solicitor's code of conduct states:

"... you must refuse to act or cease acting for a client ... where you have insufficient resources ... to deal with the matter" (Rule 2.1).

In the case of a barrister, such an action may be reported to the Bar Standards Board. The Code of Conduct of the Bar Council states:

"A barrister must not accept any instructions if to do so would cause him to be professionally embarrassed and for this purpose a barrister will be professionally embarrassed.....if having regard to his other professional commitments he will be unable to do or will not have adequate time and opportunity to prepare that which he is required to do." [603 (b)]

The likelihood of a report to the relevant Regulatory Authority may be greater if a number of such applications are made by a solicitor or barrister. Each instance will nonetheless be treated on its merits.

The osteopath may mitigate this situation by exercising his right to change his legal representative, even if paid for under an insurance policy. Such action may be viewed sympathetically by the PCC.

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. This also applies to expert witnesses. Unavailability of a witness

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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 PCC proceedings. For anxiety to be a good reason, it must be unusually severe, and verified by independent medical evidence.

Measures for witnesses with special needs or who are vulnerable

The GOsC is concerned to provide for the comfort and access of witnesses with special needs, which may arise, for example, due to a witness's age, physical or mental disability, fear or language. The GOsC is also concerned to make appropriate arrangements for vulnerable witnesses and, for example, can arrange the use of screens where the allegation involves a matter of a sexual nature.

The GOsC will seek to accommodate the needs of witnesses on an individual basis but requires sufficient notice of the witness's condition and needs in order to do so. Therefore, as soon as reasonably practicable after becoming aware that a witness has special needs or is vulnerable, the relevant party should make an application to the PCC for appropriate special measures 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 or vulnerability that justifies the special measures sought. The GOsC's Regulation team will be happy to advise on such applications.

Procedure at PCC Hearings

The PCC, in exercising its specific statutory power enabling it to regulate its own procedures, has decided that:

Evidence-in-Chief and Written Witness Statements

Written witness statements may stand as evidence-in-chief. In such circumstances, 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.

Witness statements as evidence-in-chief 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 are not required to read their report into the record.

Skeleton Arguments

The PCC requires representatives of the parties to submit skeleton arguments. These should be submitted to the PCC 6 clear days before the day of the hearing. The purpose of a skeleton argument is to identify and summarise the party's case, not to argue it fully on paper. Skeleton arguments should contain an outline of the argument each party will present together with an outline of the evidence upon which each party's argument will rely. They should also contain anything which the party would expect to be taken down by the Professional Conduct Committee during the hearing, such as relevant case law,

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chronologies of events, lists of dramatis personae and, where necessary, glossaries of terms. The party concerned will serve its skeleton argument on the other party at the same time as service on the PCC. Failure to serve the skeleton argument within the due time will be addressed by the PCC at the outset of proceedings when the party concerned will be expected to explain the failure.

A failure by a legal representative to comply with any of these requirements without good reason may lead to a report to the appropriate Regulatory Authority where such failure is considered to be a possible breach of that Authority's Code of Conduct.

The PCC accepts that it may not be possible for a registrant who is not represented to submit a skeleton argument or to submit one in the form stated above. In such circumstances it will assist the PCC if a simple statement is prepared but this is not a requirement.