

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

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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.

<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.

## 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 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.

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

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).