



Council
31 January 2018
Standard Case Directions – draft Practice Note

Classification	Public
Purpose	For decision
Issue	This paper proposes the introduction of standard case management directions for the progression of cases from referral by an Investigating Committee to a final hearing before a Professional Conduct Committee.
Recommendation	To agree to consult on the draft practice note on standard case directions.
Financial and resourcing implications	The introduction of standard case directions has the potential to reduce hearing costs.
Equality and diversity implications	None identified.
Communications implications	A short public consultation with Stakeholders will be required
Annex	Standard Directions for the progression of cases from referral by an Investigating Committee to a final hearing before a Professional Conduct Committee
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Background

1. In our Corporate Strategy 2016-19, we state that we will continue to seek to identify improvements in our fitness to practise processes. As part of our reform programme for 2017-18, we continue to explore options and implement reforms which we consider could improve efficiency and streamline our processes but which do not require changes to our legislation. The GOsC Business Plan for 2017-2018 states that we will, 'develop and implement Standard Case Directions for all cases referred to PCC'.
2. As the Osteopaths Act and the associated rules date back some time, they do not accord with the current approach to case directions and management of a case that is found in more modern healthcare regulatory legislation, as there is limited provision for the advanced and timely disclosure of documents and evidence.
3. In summary, GOsC is required to serve its case 28 days before a hearing with the osteopath required to serve their bundle seven days before a hearing. This can lead to: last minute adjournments arising out of the late disclosure of evidence, extended preliminary argument at the commencement of a hearing or the defence calling last minute witnesses which can all lead to hearings going part heard. Because of the unavailability of the Professional Conduct Committee (PCC) members and defence counsel it is not uncommon for a hearing to take several months to resume. This is not in either the public interest or the osteopath's interest.
4. The aim of standard case directions on the referral of a case from the Investigating Committee (IC) to a final hearing before the PCC is to encourage a case to run smoothly while promoting the timely listing of a case for a final hearing via sensible liaison between the GOsC regulation team and the osteopath and his/her representatives.

Discussion

5. Many healthcare regulators and other court services impose standard directions on both presenters and respondents in cases. Explicit provision within the statutory scheme of each regulator usually provides for the management of cases and the issuing of directions for the future conduct of a case. Standard directions are used to ensure a case is progressed and concluded efficiently and in a timely manner.
6. Adherence to standard directions can:
 - a. Engender confidence that the regulator is acting fairly and fulfilling its disclosure obligations;
 - b. Ensure fairness by ensuring that unusual points of law or fact are identified in good time so that full and considered argument can be advanced;

- c. Assist the decision making of panels by identifying issues to reduce the considerable stress of litigation upon all the participants (respondents, witnesses, lawyers and panellists);
 - d. Avoid the calling of witnesses whose evidence is not challenged;
 - e. Reduce the risk of last minute adjournments arising out of the late disclosure of evidence;
 - f. Reduce the risk of wasting costs by listing cases for longer than is needed;
 - g. Reduce the risk of cases going part heard.
7. Although regulators work to the civil standard of proof, adoption of civil processes is not appropriate. In civil litigation disclosure obligations fall upon both parties and, typically, disclosure of evidence for the final hearing is made by exchange of witness statements. In regulatory processes there is no obligation on a registrant to disclose material in their possession that they do not intend to rely on. Also a registrant should know the case they have to meet before disclosing their response.
8. The draft Practice Note on Standard Case Directions encourages the osteopath to engage with the regulatory process and liaise with the regulation team to identify issues and assist in the timely listing of the case. The scheme front loads the obligations on the GOsC in terms of final investigation and service of its case. It provides for the sequential exchange of documents and bundles well in advance of the hearing.
9. While the scheme has no 'teeth', it is hoped that osteopaths and their defence representatives will appreciate the benefit offered in terms of the opportunity to engage with the process, and ensuring the timely progression and conclusion of fitness to practise cases.

Consideration by the Policy Advisory Committee

10. At its meeting on 10 October 2017, the Policy Advisory Committee considered the draft guidance. The PAC agreed that the guidance should be recommended to Council for consultation after the planned Defence Organisations meeting in November 2017.

Engagement

11. As part of our pre-consultation engagement plan, on the 22 November 2017, a meeting took place with defence organisations and insurers. The purpose of the meeting was to identify and discuss ways where we could work together to improve the efficiency and effectiveness of the fitness to practise hearings process. The draft practice note for standard case management directions was a central item on the agenda. Feedback on the meeting included the possibility of

making provision for case conferences or directions hearings for complex cases and comments that skeleton arguments were 'onerous' and not required.

Recommendation: to agree to consult on the draft practice note on standard case directions.



Professional Conduct Committee

Practice Note: 2018/1

Standard Directions for the progression of cases from referral by an Investigating Committee to a final hearing before a Professional Conduct Committee.

Effective: [date]

Preamble – overriding objective

These Directions have the overriding objective of enabling the GOsC to deal with cases fairly justly and expeditiously.

Dealing with a case justly and at proportionate cost includes:

- a. dealing with the case in ways which are proportionate:
 - i. to the importance of the case*
 - ii. to the complexity of the issues**
- b. All parties must assist in furthering the overriding objective and co-operate in the implementation of the standard case management directions.*
- c. This Practice Note applies to all allegations referred to the Professional Conduct Committee from the Investigating Committee. The Practice Note does not apply to cases referred by the Investigating Committee to the Health Committee.*

Directions (PCC cases)

1. Upon referral from an IC the GOsC will serve upon the Registrant the finalised allegation and all material relied upon (including any expert evidence) together with a list of unused material in their possession within 12 weeks. In the alternative, it will serve upon the Registrant an explanation as to why this direction cannot be complied with together with an estimated date for service. The GOsC will also send to the Registrant a questionnaire asking for the information set out at direction 2 below.
2. Upon service of the allegation in its final form the Registrant will within six weeks respond to the accompanying listing questionnaire setting out:
 - a. Which factual allegations are admitted and which are denied.

- b. Whether unacceptable professional conduct and/or professional incompetence is admitted.
 - c. In the event of a disputed case, which witnesses are challenged (i.e. required to attend the final hearing).
 - d. Whether there are legal arguments in the case (e.g. abuse of process, admissibility of material, application for a private hearing).
 - e. Any request for material on the list of unused material.
 - f. Whether there is an intention to instruct an expert witness.
 - g. The Registrant's time estimate for their own questioning of the GOsC's witnesses.
 - h. The Registrant's time estimate for presentation of their own evidence including the number and identify of witnesses.
 - i. Their dates to avoid for final hearing.
3. Either upon receipt of the listing questionnaire or three weeks after its service in accordance with direction 1 whichever comes first, the GOsC case manager shall provide the hearings officer with a time estimate for the hearing of the case.
 4. The hearings officer shall thereafter liaise with the GOsC case manager and the registrant to identify a hearing date and give notice of the same to the parties.
 5. **Expert Evidence.** Not less than six weeks prior to the hearing date the respondent shall serve any expert report relied upon. Within one week of receipt of the same the case manager shall indicate whether they will seek to rely upon any expert evidence not already served in rebuttal together with an intended date for service of the same (in any event not later than two weeks prior to the hearing). Where both GOsC and Registrant instruct experts the parties are encouraged to facilitate a meeting of experts prior to the final hearing in good time for the preparation of a joint document to assist the panel hearing the case setting out areas of agreement and dispute between the experts.
 6. **Other Registrant evidence** shall be served upon the GOsC not less than four weeks prior to the start of the hearing.
 7. **Rebuttal.** Any rebuttal material relied on by the GOsC will be served three weeks prior to the hearing.
 8. **Bundle for hearing.** The parties shall liaise and seek to agree the contents of their bundles for use at the final hearing not less than two weeks prior to the

final hearing. Where the admissibility of material is disputed it shall not be included in the agreed bundles but paginated separately.

9. **Skeleton Arguments.** The parties shall serve skeleton arguments on each other not less than seven days prior to the hearing and, where possible, all references will be as per the bundles agreed in accordance with direction 7 above.
10. All material to be relied on at the final hearing will be served on the GOsC for distribution to the PCC seven days prior to the commencement of the hearing.