



Council

22 November 2023

Draft Interim Suspension Order Guidance and Draft Practice Note on Undertakings: Consultation outcome.

Classification	Public
Purpose	For decision
Issue	This paper invites Council to agree the draft Interim Order Guidance and Draft Practice Note on Undertakings following a public consultation being undertaken from July 2023 – October 2023.
Recommendation	To agree the draft Interim Order Guidance and Draft Practice Note on Undertakings.
Financial and resourcing implications	Within existing budget.
Equality and diversity implications	An EDI Impact Assessment was carried out prior to a public consultation being undertaken.
Communications implications	A public consultation has been undertaken. The results of the consultation are set out in Annex A. If approved, the guidance will be published on our website.
Annexes	A - Consultation Responses B – Draft Interim Order Guidance C - Draft Practice Note on Undertakings
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Key messages from paper

- Both the Investigating Committee and Professional Conduct Committee can impose an interim suspension order over a registrant's registration while a fitness to practise investigation is undertaken. Both the Investigating Committee and Professional Conduct Committee can accept undertakings from a registrant. An undertaking is a voluntary written promise.
- As background to updating our guidance, we commissioned an external audit which was undertaken in August and September 2021 of all Investigating Committee and Professional Conduct Committee applications for an interim order between January 2020 - March 2021. No concerns regarding patient safety were identified within the audit report.
- The detailed recommendations from the audit included refreshing GOsC's guidance on imposing interim orders and the practice note on undertakings in relation to risk assessment and proportionality. It also recommended making the procedure around undertakings clearer.
- We have also taken the opportunity to enhance the interim order guidance to make it clearer that the Investigating Committee and Professional Conduct Committee are under a duty to have regard to the overarching objective within the Osteopaths Act when considering interim order applications.
- The consultation ran for a period of 3 months from July – October 2023. We have published a summary of the responses in Annex A.

Background

1. Under sections 21 and 24 of the Osteopaths Act 1993, a Fitness to Practise Committee of GOsC has the power to impose an interim suspension order on a registrant, if it considers it necessary to do so in order to protect the public. An interim suspension order can be imposed by either the Investigating Committee for up to two months or by either the Professional Conduct Committee or the Health Committee up until the final hearing has concluded.
2. The Professional Conduct Committee or the Health Committee may also impose an interim suspension order to cover the 28-day appeal period after a final hearing has concluded. The Guidance for the Fitness to Practise Committees on imposing Interim Suspension Orders was last reviewed in 2015 and agreed by Council in 2016.
3. Undertakings are defined as solemn written promises which are made by the registrant to the fitness to practise committee considering allegations against them. Undertakings set out the terms on which the registrant will voluntarily restrict their practice during a fitness to practise investigation. They are either agreed by the Investigating Committee or the Professional Conduct Committee at

an interim order application hearing. The GOsC Practice Note on Undertakings was introduced in 2014.

4. In July 2021, the Audit Committee agreed to an assurance audit of fitness to practise interim order decisions made by the Investigating Committee and Professional Conduct Committee. The audit was undertaken by Rosemary Rollason, a legal consultant, in August and September 2021. The scope of the audit looked at all IC and PCC applications for an interim order between January 2020 - March 2021.
5. In that period, the IC considered eight applications for an interim order and imposed an ISO in only two cases. They accepted undertakings in a further two cases and rejected the ISO application in the remaining four cases. Over the corresponding period, the PCC imposed only one ISO up to the conclusion of the hearing. The findings / recommendations from the report were reported to and discussed with Audit Committee and Council in October and November 2021. In summary, it recommended that:
 6. Refresher training for Committees on risk assessment, proportionality undertakings, consistency of decisions and the requirement to give adequate written reasons.
 7. The Interim Orders Guidance and the Undertakings Practice Note should be amended to set out the procedure for Committees considering an offer of undertakings by the Registrant.
 8. The relevant sections of the Interim Orders Guidance, in relation to risk assessment and written reasons, could be refreshed to place enhanced focus on the issues of risk assessment and proportionality and the need to adequately explain the committees' decisions on these aspects within their written determinations.
9. In parallel with the external audit, we conducted an internal audit / review of all the current GOsC caseload to ensure that risk assessments are clearly documented both at receipt and throughout the lifecycle of an investigation, (including at the point after a case is referred by the IC). This review revealed no concerns in relation to risk assessing. All risk assessments were up to date and correctly reflected the level of risk in each case. All cases classed as high risk had interim orders, aside from one case in which we are actively chasing and await further information from a third party.
10. At the IC and PCC training day in 2021, the key findings from the audit were presented to panellists and legal assessors. At the most recent IC training day on 30 November 2022, panellists and legal assessors undertook a case-based discussion facilitated by the legal auditor who had conducted the audit. The case studies focused on assessing risk, proportionality, undertakings and providing adequate written reasons in interim order applications. Attendees were also provided with a revised draft Interim Suspension Order guidance setting out the

amendments to the guidance and were also provided with an opportunity to provide feedback on its development.

11. Unlike some other healthcare regulatory regimes, the GOsC's statutory scheme as set out in the Osteopaths Act 1993 (the Act) and the associated rules provides for one statutory ground for the imposition of an interim order. This is that it is necessary to do so in order to protect members of the public. The current¹ legislation of some other healthcare regulators provide three separate statutory grounds. For example, public protection, that it is otherwise in the public interest and also that is in the registrant's own interests.²

Discussion

12. Section 1(2) of the Act provides that it is the duty of the Council to regulate and develop the profession of osteopathy. The Health and Social Care (Safety and Quality) Act 2015 amended the Act by inserting a new over-arching objective for the Council in the exercise of its functions which is 'the protection of the public'. This involves the pursuit of the following objectives:

- to protect, promote and maintain the health, safety and well-being of the public;
- to promote and maintain public confidence in the profession of osteopathy; and
- to promote and maintain proper professional standards and conduct for members of that profession.

13. Paragraph 34B of the Schedule requires that the Professional Conduct Committee (PCC) must have regard to the over-arching objective when determining restoration hearings and substantive hearings. The Health Committee (HC) has a corresponding duty contained in Paragraph 38B. This creates a mandatory obligation on both the PCC and HC to have regard to public protection and the wider public interest during substantive final hearings.

14. However, the Schedule is silent on parallel provisions for both the Professional Conduct Committee and the Investigating Committee on the exercise of their statutory functions at interim order application hearings. Equally, there is no equivalent provision for the Investigating Committee or the Professional Conduct Committee to have regard to the overarching objective in its functions in determining whether there is a case to answer or during interim order hearings.

¹ The DHSC consultation concluded in May 2023. This consultation sought views on the anaesthesia associates and physician associates order (the draft order) which paves the way for full scale reform of the regulatory frameworks of all the healthcare professional regulator. The draft Order did not refer to any 'grounds' under which an interim order may be made. In GOsC's response to this consultation on this issue, we considered that ensuring fundamental procedural safeguards meant that the grounds for seeking an interim order needed to be explicitly referenced within the Order. We therefore suggested that specific reference or a link to public protection should be made in the order.

² For example, the legislative framework for Social Work England does not have the 'otherwise in the public interest' ground for imposing an interim order.

15. One view is that the absence of an express provision that the Investigating Committee and Professional Conduct Committee have regard to the overarching objective, is by design rather than oversight, i.e., that it was Parliament's explicit intention to exclude from consideration the overriding objective. The better view is that a specific provision in the Schedule is unnecessary given that both section 21(2) and section 24(2) enable both the Investigating Committee and Professional Conduct Committee to impose an interim suspension order if satisfied that it is necessary to do so in order to protect members of the public.
16. Axiomatic to this is what is referred to as the wider public interest (namely, maintaining public confidence in the profession of osteopathy and promoting and maintaining proper professional standards and conduct for members of the osteopathic profession). Therefore, by virtue of the Health and Social Care (Safety and Quality) Act 2015, protection of the public also encompasses the wider public interest.
17. We have therefore taken the opportunity to enhance the guidance to make it clearer that the Investigating Committee and Professional Conduct Committee are under a duty to have regard the overarching objective when making interim order decisions.
18. The revised interim suspension order guidance together with the revised practice note on undertakings are both aligned to the GOsC strategic objective to promote public and patient safety through proportionate, targeted and effective regulatory activity. The draft guidance on interim orders will provide greater assistance to Committees in the task of deciding whether an ISO is appropriate. The draft practice note on undertakings will enhance transparency and will enable both the IC and PCC to utilise greater flexibility when deciding whether undertakings are sufficient in any given case and will assist other users of the guidance including legal assessors and registered osteopaths and their advisers on the process involved.
19. The draft Guidance on Interim Suspension Orders and Practice Note on Undertakings was considered by the Policy and Education Committee (PEC) at its meeting in March 2023.
20. At the Council meeting on 17 May 2023, Council agreed to consult on both the draft guidance and practice note.
21. A public consultation on our draft guidance ran from 3 July – 3 October 2023. As part of our consultation engagement plan, we hosted a webinar on interim suspension orders and undertakings on 7 September 2023. The purpose of the webinar was to highlight, engage and gather views from all stakeholders on the proposed changes to our guidance and practice note. The session also covered information around the number of interim order hearings held and how many interim orders are granted. There was also an opportunity for questions to be

answered by the panel. We had also gathered feedback from the Investigating Committee and Professional Conduct Committee panellists and Legal Assessors on the consultation as part of our pre-consultation activities. In addition to oral feedback we received during the webinar, we also received 14 written responses to the consultation.

22. A summary of the responses we received is included in Annex A.

Recommendation: To agree:

1. The draft Interim Order Guidance at Annex B
2. The draft Practice Note on Undertakings at Annex C

Annex A to 9

Summary responses to the consultation on the draft Guidance on Interim Suspension Orders and Draft Practice Note on Undertakings

Consultation Question	Yes	No	Consultation response ³	GOsC Response (where relevant)
Do you agree that the Interim Suspension Orders Guidance and the Undertakings Practice Note procedure for accepting undertakings by the osteopath is clearer?	7	4	<p>Practice Note Point 12 is ambiguous. "The GOsC has no power to apply for Undertakings. However, if it considers that Undertakings may be sufficient to address the risks identified, the GOsC may facilitate undertakings with the osteopath. . ." This appears to be contractor [sic] as well as unclear. What is meant by "facilitate undertakings with the osteopath"?</p> <p>The guidance is written in a format that is easy to read and understand.</p> <p>No definition of facts, alleged fact is not a fact. No clarity of skills and knowledge what the benchmark is, "compared to what" no clarity of measurable scale</p>	<p>We have amended the guidance to make the procedure clearer on this point.</p> <p>The meaning of 'fact' bears its everyday meaning. There are no 'alleged facts' but allegations against the Registrant which specify or particularise the regulatory concerns. The guidance and practice note are not meant to be read in isolation but form part a suite of guidance and materials available on our website.</p>

³ Some responses may have been shortened.

Annex A to 9

Consultation Question	Yes	No	Consultation response ³	GOsC Response (where relevant)
<p>Do you agree with our proposed approach within the Guidance on Imposing Interim Suspension Orders that the Investigating, Professional Conduct and Health Committees should have specific regard to our overarching objective of public protection when making a decision on whether an interim</p>	7	2	<p>Your proposed approach is completely relevant to the registrant who believes that the process will exonerate them.</p> <p>Striking a balance between protecting the public and ensuring fairness for osteopaths facing such orders is a complex challenge that requires careful consideration.</p> <p>The GOsC's commitment to reviewing and improving its guidance demonstrates a dedication to enhancing the regulatory process.</p> <p>There is no mention of the wellbeing of the suspended osteopath.</p>	<p>GOsC works in partnership with the independent charity Victim Support, to provide a confidential support service to anyone, including Registrants, involved in fitness to practise cases. We have added information on this to the guidance.</p>

Annex A to 9

Consultation Question	Yes	No	Consultation response ³	GOsC Response (where relevant)
<p>suspension order should be imposed? The overarching objective includes:</p> <p>a) protecting, promoting and maintaining the health, safety and well-being of the public</p> <p>b) promoting and maintaining public confidence in the profession</p>			<p>I thought we lived in a democracy, where an individual is innocent until proved guilty.</p> <p>There are no timescales of when a hearing should be heard.</p> <p>If the GOsC considered that it had sufficient information to make a temporary suspension order that should be followed swiftly with a full hearing.</p>	<p>The decision to impose an interim order does not involve making findings against the Registrant but focusses on risk to the public and patients.</p> <p>The guidance focusses on interim order hearings and not final hearings. Information and guidance on final hearings is available on our website and can be viewed here: https://www.osteopathy.org.uk/standards/complaints/guidance-practice-notes-and-policies/</p> <p>Interim orders are only sought where the concerns relating to the registrant are so serious that it is necessary for public protection that interim measures are sought during the fitness to practise investigation. We have key targets for progressing all cases with an end-to-end target (i.e. from receiving the concern to its conclusion at hearing) of 52 weeks. A substantial proportion of our cases however, involve investigation and prosecution by the police. This means that we must pause progression of the case until any criminal investigation has concluded. This may cause significant delay in the timely progress and conclusion of a case.</p>

Annex A to 9

Consultation Question	Yes	No	Consultation response ³	GOsC Response (where relevant)
<p>of osteopathy</p> <p>c) promoting and maintaining proper professional standards and conduct for osteopaths</p>				
Do you agree that the sections on risk	10	1	The new provisions appear to be fair and clear, especially in allowing for practise under specific conditions/restrictions [to	

Annex A to 9

Consultation Question	Yes	No	Consultation response ³	GOsC Response (where relevant)
assessment and proportionality are clear and accessible?			<p>minimise risk] to be allowed to continue pending the hearing and outcome.</p> <p>It is not clear what support may be given to the complainant to ensure that they are not disadvantaged by the “intimidatory” nature of the complaint process and are challenging the professional.</p> <p>A risk assessment should provide clearer metrics for a committee to follow. There is no weighting provided on how each bullet point.</p> <p>Whilst the committee should have regard to the impact on the registrant, there does not appear to be the same for the complainant and may be construed as being inherently biased. This may be further exacerbated by the absence of a lay member during the hearing stage.</p>	<p>GOsC works in partnership with the independent charity Victim Support, which runs the Independent Support Service which provides a confidential support service to anyone, including complainants, involved in fitness to practise cases. Complainants are able to access the service at every stage, including where they are considering raising a concern against an osteopath.</p> <p>Every case is considered on the individual features of the particular case. It would not be appropriate for guidance to attempt to curtail this independent assessment conducted by Committees.</p> <p>Interim order hearings do not the Committee reaching a decision on the allegation relating to a registrant. This takes place at a final hearing where evidence is presented and the Committee makes findings. Please see our Hearings and Sanctions guidance for further information: https://www.osteopathy.org.uk/news-and-</p>

Annex A to 9

Consultation Question	Yes	No	Consultation response ³	GOsC Response (where relevant)
			<p>If there is evidence that the allegation is unfounded the Committee must take that evidence into account.</p>	<p>resources/document-library/fitness-to-practise/hearings-and-sanctions-guidance/ Every Committee is required to have at least one lay member as a panellist. The Chair of the Committee must be a chair.</p> <p>Whilst the Committee will need to consider the source of the complaint, if there is evidence that the allegation is unfounded then the Committee will take that evidence into account.</p>
<p>Do you think the proposed Interim Suspension Orders Guidance and Practice Note on Undertakings are likely to have any positive or negative effects on a person's opportunities to use the Welsh Language?</p>	2		<p>Don't know.</p> <p>I have no way of knowing this.</p> <p>Nowhere did I see mention of the Welsh language. If the accessibility of documents in Welsh is a concern, the documents should be translated to Welsh, in addition to providing support resources in Welsh.</p>	<p>We have adopted the principle that in the conduct of our business in Wales we will treat the Welsh and English languages on an equal basis. Our Welsh Language Scheme explains how we provide services to patients and members of the public who are Welsh speakers. More information on this can be found on our website or by contacting our Communications and Engagement team.</p>

Annex A to 9

Consultation Question	Yes	No	Consultation response ³	GOsC Response (where relevant)
<p>a. Do you think the proposed Interim Suspension Orders Guidance and Practice Note on Undertakings can be revised in any way in order to increase a person's opportunities to use the Welsh Language?</p> <p>If yes, please explain how the policy could be revised:</p>		2	<p>There may be differences in translating the complaint, production of either parties statements/evidence and concerns about only one party producing/stating evidence in Welsh (what about other foreign languages?).</p> <p>Not sure how, but there is always room for improvement.</p>	Please see our response above.
<p>Except for issues relating to the Welsh language, do you consider there are any</p>	4	7	<p>The document is long, and full of text, which is not accessible for everyone. Things to consider:</p> <ul style="list-style-type: none"> • Make available in audio format by scanning a QR code 	<p>We are actively considering how we can make this key policy more accessible to all, including audio format and braille.</p> <p>All parties to a hearing are provided with individual assistance and reasonable adjustments</p>

Annex A to 9

Consultation Question	Yes	No	Consultation response ³	GOsC Response (where relevant)
equality and diversity implications for groups or individuals related to the proposed Interim Suspension Orders Guidance and Practice Note on Undertakings?			<ul style="list-style-type: none"> • Make available in braille • Use graphics to show how a committee should follow steps in determining an outcome. With so much text, it is difficult for them to follow. <p>There should be a plain English version.</p>	made to ensure they are able to fully participate in the event.
Please provide additional comments below. Are there any other areas that the policy should address? If so, please set out what these areas are.			<p>These revisions appear to deliver greater clarity and recognition of the potential complexity of individual circumstances while minimising risk and attempting to achieve fairness.</p> <p>While it's commendable that the General Osteopathic Council is taking steps to review and improve these sections, the ultimate test lies in their practical application. Committee members, legal assessors, and osteopaths are the ones who will be directly engaging with these sections. Their feedback and experiences will be essential in determining</p>	We agree. We have taken into account all feedback we received, including Committee members, legal assessors, osteopaths and patients.

Annex A to 9

Consultation Question	Yes	No	Consultation response ³	GOsC Response (where relevant)
			<p>whether the revisions indeed enhance clarity and accessibility</p> <p>Practice note: there is no paragraph 11. The term “solemn written promises” is open to interpretation (solemn?), comprehension and could be replaced by “written undertaking, written commitment or written assurance).</p> <p>It is not clear why the Rules of Procedure do not contain the ability to provide an express power to impose conditions on a registrant’s practice on an interim basis. This absence may well lead to a lack of confidence in the Society’s appearance of being in control of the issue and additionally currently requires further determining judgement that may (and could) result in a further appeal and delay the issue resolution. The clarity of the process will also help the registrant in knowing the direction of travel and be able to provide a defence, should they so wish, and preserve the equality of justice principle at the earliest opportunity.</p>	<p>We consider that use of the word solemn signifies the important consequences and binding nature of entering into written undertakings with the Committee.</p>