



**Osteopathic Practice Committee
03 Month 2016
Case Examiners**

Classification Public

Purpose For discussion

Issue This paper invites members of the OPC to consider the attached options paper which explores enhancing the role of Screeners at the investigation stage of a fitness to practice case.

Recommendation To consider the approach outlined in this paper and to make recommendations to Council.

Financial and resourcing implications Costs implications are identified within the paper.

Equality and diversity implications None identified

Communications implications None identified at present

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Background

1. The GOsC investigates complaints or concerns about the fitness to practise of osteopaths, and the way in which we do this is set out in law. The Osteopath's Act 1993, our primary legislation, provides the GOsC with powers in relation to the investigation and adjudication of fitness to practise matters, and also enables Rules (secondary legislation) to set out the process by which we deal with such cases.
2. As part of our reform programme for 2016-17, we are continuing to explore options which we consider could improve and modernise our processes without requiring changes to the Act.
3. This paper sets out proposals for screeners to take on an enhanced role which would be similar to Case Examiners (CE) at the investigation stage of a complaint within other healthcare regulators such as the General Medical Council and the General Optical Council (GOC). More recently, the General Dental Council (GDC) has been consulting on in the process of introducing CEs which will be effected through changes to their rules. The collective impetus for these changes stemmed from the expectation that cases could be referred more quickly by a CE than referring cases to the IC. This would then reduce the time taken to carry out any action needed to protect patients whilst reducing the overall amount of time to investigate and resolve cases.
4. The CE process at these healthcare regulators is broadly similar. CEs are individuals (whether employees or otherwise) who, in effect, carry out the functions of the current Investigating Committee. Decisions made by the CEs are at the end of the investigation stage. There is usually one registrant case examiner and one lay case examiner. The decision of the case examiners must be unanimous. Where the case examiners do not agree, the matter will be decided by the IC.
5. At present, express provision for the decision making powers of the IC can be found within section 20(3) of the Osteopath's Act 1993 (the Act) which provides as follows:

"Where an allegation is made to the General Council, or to any of its committees (other than the Investigating Committee), it shall be the duty of the Council or committee to refer the allegation to the Investigating Committee".

6. However, section 20(4) and (5) of the Act effectively delegates to rules the process for enabling "*preliminary consideration*" of an investigation undertaken by "*a person appointed by the Council*". Pursuant to section 20(1)(a) – (f) of the Act, where an allegation has been made against a registrant to the GOsC, the allegation must be referred to the Screener.

By virtue of section 20(6)(a) and (b) this person shall:

"(a) consider the allegation with a view to establishing whether, in his opinion, power is given by this Act to deal with it if it proves to be well founded; and

(b) if he considers that such power is given, give the Investigating Committee a report of the result of his consideration".

7. In the event that the Screener considers that there is power to deal with the allegation, the matter must be referred to the Investigating Committee (IC).
8. The IC is a panel of at least five people who meet in private and consider a set of cases, prepared and referred to them by the GOsC regulation team. The IC decides whether a matter ought to be referred to a public hearing before the Professional Conduct or Health Committee (the PCC and HC). It is the role of the PCC and HC to determine whether the allegation is well founded.
9. The introduction of the threshold criteria in May 2015 represented a shift in the way Screeners are engaged as part of the decision making process at the investigation stage, effectively increasing the role that the Screener traditionally was required to undertake. Although the threshold criteria are still in the process of bedding in, this new process it has had many practical advantages. In particular, improvements have been made in streamlining our investigations process which has enabled us to act more proportionately to complaints whilst maintaining our ability to protect patients. Conversely, because of built in quality assurance mechanisms which require the osteopathic screener's recommendation to be reviewed by a lay screener, there have been no perceived disadvantages or risks identified so far where cases have been closed inappropriately.
10. The role of the Investigating Committee is to 'consider, in the light of the information which it has been able to obtain and any observations duly made to it by the registered osteopath concerned, whether in its opinion there is a case to answer.'
11. In deciding whether or not there is a case to answer, the IC uses the real prospect test. In essence, the IC is required to ask itself two questions. Firstly, whether there is a real prospect that the allegation would be found proved before a Professional Conduct Committee and secondly, whether there is a real prospect that those facts found proved would amount to unacceptable professional conduct.
12. In contrast, the Screener's role has been a fairly narrow one in that s/he has to be satisfied of a negative. Namely, that there is no power under the Act to deal with the matter. Therefore the Screener's role does not currently involve consideration of the wider question of the prospects of success of the complaint or matters that fall within the scope of the Investigating Committee, applying the real prospect test. Where the Screener determines, applying the threshold

criteria, that there is no power under the Act then they can recommend that the case is closed without the need to refer the matter to the IC.

Discussion

13. Where the Screener determines that the matter is capable of amounting to an allegation within the meaning of the Act, the case must be considered by the IC. Under the current statutory framework there is no mechanism which would enable the IC to be effectively 'by-passed'. This would require a change to primary legislation. However, this would not prevent the Screener from drafting a full report to the IC (making fuller use of the 'any observations' provision), within which the evidential strengths and weaknesses are detailed with a recommendation as to the appropriate disposal of a case. In theory this could enable the IC to throughput cases more speedily. There may also be potential cost savings as the IC, (which is required to meet not less than three times a year),¹ would need to convene less.² However, there would be a requirement to pay Screeners in certain cases. In tandem with this we are exploring the IC meeting by alternative mechanisms such as teleconferences which would increase flexibility and reduce associated travel and attendance expenses of IC members.
14. Our current published key performance indicators require that a decision of the screener is required within three weeks of receipt of a complaint. The IC decision must be within four months of receipt of a formal complaint. A review of the formal complaints received by the GOsC over the period January 2015 – December 2015, discloses that 73% of those cases were screened within three weeks, with 84%³ of cases receiving an IC decision within four months receipt of the formal complaint.
15. Two options have been identified and may be summarised below.
16. Option 1 envisages expanding the role of the Screener without replacing the statutory decision-making functions conferred on the IC. This could improve efficiencies both in terms of speed and the quality of the investigation and could be achieved by a change in internal procedures and KPI's without the necessity of a change to the existing Act or rules.
17. When making their decision about a particular allegation, the screener would consider not only the investigation report, and any evidence gathered by the regulation team, but also any written representations that have been received from the registrant concerned. The Act states that a registrant must be notified of allegation and supporting documents and witness statements and given 28 days to give his observations and to make any written representations to the

¹ Rule 8 The General Osteopathic Council (Investigation of Complaints) (Procedure) Rules Order of Council 1999.

² During January – December 2015 the IC met on seven occasions for a full day at an average cost of £3000 per day.

³ These figures do not include data on the 205 advertising complaints we have received.

IC.⁴ The Screener would also consider any comments received from the complainant, made once the complainant has seen any written representations made by the registrant. Any comments from the complainant would also be copied to the registrant. The Screener would then be required to prepare a detailed report with recommendations to the IC.

18. This would enable a much more streamlined consideration of cases by the IC. As part of the change, screeners would be required to undertake a robust training programme supported by published guidance when carrying out their role. This option could be commenced on a trial basis using the existing IC pool of Committee members for a specified period with some cases.
19. Option 2 would be to introduce Case Examiners who would effectively replace the IC as the decision makers. However, as described earlier in this paper, this would require changes to the Act and the rules. Any changes would require a section 60 Order consultation by the Department of Health which would seem to be unlikely at this time.

Recommendation: the Committee is invited to consider the approach outlined in this paper.

⁴ Section 20(9)(a) of the Act.

