



**Osteopathic Practice Committee**  
**3 March 2016**  
**Legally qualified chairs**

<b>Classification</b>	Public
<b>Purpose</b>	For discussion
<b>Issue</b>	Consideration of options for the current use of legal assessors and the introduction of legally qualified chairs at hearings and meetings of the fitness to practise committees.
<b>Recommendation</b>	To consider the options outlined in this paper.
<b>Financial and resourcing implications</b>	Costs implications are identified within the paper.
<b>Equality and diversity implications</b>	None identified.
<b>Communications implications</b>	Feedback from experienced members of the FtP Users Forum have been sought and incorporated within this options paper. An external consultation may also be required to be undertaken.
<b>Annexes</b>	None
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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, as detailed within the Business Plan for 2016-17, we are continuing to explore options which we consider could improve and modernise our processes without requiring changes to the Act. This paper sets out options for the following:
  - a. Using legally qualified chairs at the Investigating Committee (IC), Professional Conduct (PCC) and Health Committee (HC) meetings and hearings.
  - b. Removing the requirement for Legal Assessors to attend every meeting and hearing of the IC, PCC and HC.
3. In developing this paper we have drawn on best practice from other jurisdictions, such as the Medical Practitioners Tribunal Service (MPTS), the General Pharmaceutical Council (GPhC) and the Health and Care Professions Council (HCPC).
4. Through changes implemented to the Medical Act, the MPTS has introduced the use of legally qualified chairs in certain categories of hearings. In these situations where a legally qualified chair is appointed no legal assessor is present. The GPhC has specific provision within its current rules where the use of a legally qualified chair is permissive; where the chair is legally qualified no legal assessor is present. Presently, the Investigating Committee Panels at the HCPC do not sit with a legal assessor at normal meetings but they do when hearing an interim order application.
5. The views of experienced members of the FtP Users Forum have been sought and taken into account on the feasibility and legality of the approach taken within this paper.
6. Introducing the use of legally qualified chairs could further assist with planned improvements we are seeking to develop in our case management arrangements to further improve efficiency and streamline our processes.
7. A review of the statutory framework suggests that the attendance of legal assessors at all hearings and meetings of the Committees is not a mandatory requirement. However, if this was implemented in certain cases without the introduction of a legally qualified chair, the GOsC would need to ensure the

quality and outcomes at these proceedings were fair and justifiable, and that outcomes were sufficient to protect the public and the wider public interest.

8. It is important that any introduction of new initiatives that alter existing procedures and processes should be consistent with the powers set out within the existing legislative framework that currently governs the GOsC's fitness to practise proceedings. Undertaking the effectiveness of any proposals requires consideration to be given to the possible benefits, costs and risks of each option and is set out elsewhere within this paper.

## Discussion

9. At present, we do not require chairs of Committees to be legally qualified as currently all Committees sit with legal assessors at every meeting and hearing.
10. The first key question that needs to be addressed is whether the chair of the Committee can be legally qualified.
11. The Act does not contain an explicit power to appoint legally qualified chairs (other than a specific provision for the appointment of a chair of an appeals tribunal in health cases Section 30 of the Act expressly provides for the chairman of an appeal tribunal against decisions of the Health Committee to be legally qualified in accordance with section 27(4) of the Act).<sup>1</sup>
12. However, Paragraph 15(1) of the Schedule to the Act provides a general power (subject to the provisions of the Act) for the GOsC to 'do anything which is calculated to facilitate the discharge of its functions or which is incidental or conducive to the discharge of its functions'.
13. The (Constitution of the Statutory Committees) Rules 2009 specify that the chairs of the IC, PCC and HC shall be appointed by the General Council from amongst the lay members of those committees. 'Lay' is defined in those Rules as a person who is not and never has been a registered osteopath and who does not hold a qualification which would entitle them to apply for registration under the Act. Therefore a legal qualification is not a bar to being appointed to a committee as a lay person and thereafter being appointed from the lay members to be a chair.
14. The second key question is whether there is a requirement for a legal assessor to be present at all meetings and hearings of the IC, PCC and HC.
15. Section 27 of the Act makes provision for the appointment of persons to be legal assessors with the general function to give advice to the Committees on questions of law or 'such other functions as may be conferred on them by rules made by the General Council'. The Act is otherwise silent on the requirement for

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<sup>1</sup> A person must have a 10 year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990 etc.

a legal assessor to be present at hearings. Rather, the Act specifically delegates this to provisions made in accordance with rules.

16. The General Osteopathic Council (Investigation of Complaints) (Procedure) Rules Order of Council 1999 (the IC Rules), the General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000 (the PCC Rules) and the General Osteopathic Council (Health Committee) (Procedure) Rules Order of Council 2000 (the HC Rules) are drafted in terms that envisage the legal assessor, the chair and the remaining members of the Committee as separate functions performed by different individuals.
17. However, rule 3(b) of the GOsC (Legal Assessor) Rules 1999 refers to the Legal Assessor having the additional function of being 'present at such meetings as the Committee (defined within those rules as the IC, PCC or HC may request'. This therefore suggests that the presence of a legal assessor is not a mandatory requirement at all meetings of the IC, PCC and HC.
18. Upon a review of the statutory framework our preliminary view is that a legal assessor is not required in certain hearings and meetings.
19. For example: rule 20 of IC rules states that the IC 'may' in any case seek legal advice from a legal assessor. However, rule 22 of the IC rules which relate to interim suspension order (ISO) hearings, expressly require that a legal assessor 'shall' be present at the interim suspension order hearing. Conversely, there is no corresponding explicit requirement for the attendance of a legal assessor at any other meeting of the IC.
20. A further example may be provided by rule 26(5)(f) of the HC Rules which states that the legal adviser 'may' question a person at an ISO hearing. This would support a proposition that there is an expectation that a legal adviser/assessor will be present at the hearing. However, it can be put no higher than that. Furthermore, and unlike Rule 15(1) which states that the Chairman 'shall' arrange for one or more medical assessors to attend the hearing, the HC rules do not contain a corresponding express provision for the attendance of a legal adviser/assessor at an ISO hearing.
21. The current requirement for a legal assessor differs between the IC and PCC/HC stages in the process and the type of meeting or hearing. An analysis of the various rules, when read disjunctively, which expressly state that the attendance of a legal assessor is mandatory is set out in the table below.

<b>Activity</b>	<b>Is a Legal Assessor a mandatory requirement?</b>	<b>Relevant provision(s) in the Act and Rules</b>
IC Meeting	No	IC Rule 20 <sup>2</sup>
IC ISO Hearing	Yes	IC Rule 22(1)(3) <sup>3</sup>
PCC ISO Hearing	No	But see PCC Rule 16, 40(10) <sup>4</sup>
PCC Final Hearing	Yes	PCC Rule 16, 23(2); 24;
PCC Rule 8 Procedure	No	PCC Rule 8 <sup>5</sup>
PCC Rule 19 Application	Yes	PCC Rule 19 <sup>6</sup>
PCC Review Hearing	No	But see PCC Rule 16 and 46
HC Final Hearing	Yes	HC Rules 12(5); 14; 19(1) <sup>7</sup>
HC ISO Hearing	No	HC Rule 26 <sup>8</sup>
HC Rule 8 Procedure	No	HC Rule 8 <sup>9</sup>
HC Review Hearing	No	HC Rules 21 – 25; 33 <sup>10</sup>
HC Rule 36 Hearing	Yes	HC Rule 36 <sup>11</sup>

22. Four options have been identified and may be summarised as follows:

- a. Current model, chair and a legal assessor in all cases
- b. No legal assessor present with Committee only in some cases (no rule change)
- c. Legally qualified chair only in some cases (no rule change)

<sup>2</sup> The General Osteopathic Council (Investigation of Complaints) (Procedure) Rules Order of Council 1999.

<sup>3</sup> As above.

<sup>4</sup> General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000

<sup>5</sup> As above.

<sup>6</sup> As above

<sup>7</sup> The General Osteopathic Council (Health Committee) (Procedure) Rules Order of Council 2000

<sup>8</sup> As above

<sup>9</sup> As above.

<sup>10</sup> As above

<sup>11</sup> As above

- d. Legally qualified chair only in all cases (would require a rule change).
23. Option 1 reflects the current procedure and is included for completeness. As such there is no further discussion on this for the purposes of this paper.
24. Option 2 covers situations where the current rules do not require the attendance of the legal assessor and the Committee would therefore sit without a legal assessor present. This option could be introduced without the need to appoint additional Committee members who are legally qualified. It is therefore proposed that this could be introduced in a staged manner and only in defined proceedings and meetings, namely the ordinary meetings of the IC (excluding ISO hearings) and Rule 8 PCC hearings (and the corresponding provision in the HC Rules for disposing of cases without a hearing).
25. While the scope of convening hearings without a legal assessor, on a literal reading of the provisions, is potentially wider than that recommended above, this would produce inconsistencies in its application which arguably would not have been the intention of the parliamentary draftsman and may be perceived to be contrary to the principles of a fair hearing. Moreover, there is a perceptible difference in the nature and extent of the legal advice that might be required at an ordinary IC meeting and Rule 8 proceedings on the one hand and the potentially wide ranging, frequently complex, legal issues that may arise before the IC, PCC and HC in ISO and substantive hearings.
26. This proposition would have a clear cost benefit and could be effected by a change in internal policy without associated rule changes being required. Any risk that the decision making of the Committee would in some way be adversely impacted, could be mitigated by Committee members undertaking 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 without the introduction of legally qualified chairs.
27. If a trial is undertaken, a comprehensive system of review and appraisal would be in place throughout this period to monitor and support performance to ensure the consistency and appropriateness of decisions. It is relevant to note that at least two of the existing lay panellists on the IC have legal qualifications. Additionally, a decision making template document for use by the IC has already been drafted and is due to be circulated to all IC members. The provisional agenda for the IC Committee training scheduled for 17 June 2016 incorporates a half day session on reaching and drafting decisions. In exceptional cases, the Committee could adjourn the hearing to seek legal advice which is expressly provided for in the rules.
28. Option 3 and 4 may be taken together and propose going further than option 1 and 2 by introducing the concept of legally qualified chairs under the provisions of the Constitution of Statutory Committee Rules Order of Council 2009, where Rule 7 specifically provides for a panel of chairs. While the appointment of

legally qualified chairs would not require any changes to the existing Act or the associated rules, it would require a consultation process followed by an external recruitment exercise which would have cost implications. Moreover, to have legally qualified chairs at every hearing without a legal assessor being present would necessitate a change to the rules. Any changes to the rules require significant input from the Department of Health (England) legal team which may not be available at the present time.

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