



General  
Osteopathic  
Council

## Professional Indemnity Insurance consultation

### Purpose of consultation

1. This consultation document considers possible changes to the [General Osteopathic Council \(Professional Indemnity Insurance\) Rules 1998](#) [the Rules] and the principles that should underpin new rules.
2. The General Osteopathic Council (GOsC) will be required to draft and implement new Rules following anticipated changes to the *Osteopaths Act* resulting from the introduction of EU Directive 2011/24/EU<sup>1</sup> later this year.
3. As a condition of registration, osteopaths are required to demonstrate to the GOsC that they hold insurance cover in line with the Rules. When drafting new Rules, we will seek to simplify how registrants demonstrate to us that they hold appropriate insurance cover.
4. This consultation document outlines some challenges presented by the current Rules, along with some ways in which the Rules might be simplified. This consultation has been designed to help inform our thinking around the development of new Rules on which we will consult further in 2014.
5. It is hoped that those with an interest in osteopathy will contribute to the consultation. This includes patients and the public, current registrants and their professional groups, osteopathic students and providers of insurance cover to the osteopathic profession.

### Background

6. A condition of registration with the GOsC is the holding of professional indemnity insurance cover in accordance with the Rules.
7. Within healthcare regulation, not all regulatory bodies currently have a statutory requirement for registrants to hold insurance or indemnity cover. For the protection of patients, the UK Government believes this to be unsustainable, and launched an independent review to determine whether the most cost-effective and proportionate means of resolving the issue was to make holding insurance or indemnity cover a condition of registration.

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<sup>1</sup> Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare

8. The review, led by Finlay Scott, former Chief Executive of the General Medical Council, reported its findings in June 2010 and concluded that *'making insurance or indemnity a statutory condition of registration is the most cost-effective and proportionate means of achieving the policy objective.'*
9. At the same time, EU Directive 2011/24/EU on the application of patients' rights in cross-border healthcare was under negotiation by the European Commission, Parliament and Council of Ministers. The Directive came into force on 9 March 2011 with Article 4(2)(d) placing a requirement on Member States to ensure that by 25 October 2013, this Directive should be transposed into national law :  
  
*'systems of professional liability insurance, or a guarantee or similar arrangement that is equivalent or essentially comparable as regards its purpose and which is appropriate to the nature and the extent of the risk, are in place for the treatment provided in [Member States]'*
10. The UK Government considered the findings of the independent review, and the need to implement the Directive, and concluded that it was right to introduce a requirement for all healthcare professionals to hold insurance or indemnity cover as a condition of registration.
11. When the EU Directive is implemented later this year the *Osteopaths Act* will be amended, requiring the GOsC to introduce new statutory Rules that comply with the amended Act. This consultation document will help us develop the new Rules.

## **Consultation questions**

12. There are seven parts to this consultation document with questions provided at the end of each section.

## **Section 1: Obligation to insure**

### **The current Rules<sup>2</sup> say:**

*'3.(1) Subject to Rule 3(2) any osteopath who practises as an osteopath must be insured against claims for any of the prescribed risks; and shall obtain and maintain cover for not less than the prescribed amounts.'*

*'3.(2) An osteopath who is a registered practitioner need not obtain separate insurance to cover his practice as an osteopath if he is indemnified in his capacity as a registered medical practitioner and that indemnity complies with the insurance requirements set out in the prescribed risks and is approved by the Registrar.'*

### **What is the issue?**

Should there be an obligation on all registered osteopaths to be insured?

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<sup>2</sup> General Osteopathic Council (Professional Indemnity Insurance) Rules 1998

## Discussion

Fundamental to patient safety is the right of patients to seek redress when things go wrong. On the occasions when things do go wrong and the patient seeks redress, the healthcare professional benefits from holding insurance cover.

Not all healthcare professionals are required to have insurance cover as a condition of being registered with a healthcare regulator. The UK Government does not believe this to be sustainable and has concluded that there should be an obligation on all healthcare professionals to hold insurance or indemnity cover as a condition of registration.

Osteopaths are already required, as a condition of registration, to hold insurance cover in line with GOSc registration Rules.

## Consultation question

1. Osteopaths will be required to hold insurance as a condition of registration. In order that the Rules are clear, are there any circumstances under which an osteopath registered with the GOSc should not be required to have insurance? If yes, please describe those circumstances.

## Section 2: Prescribed risks

### The current Rules say:

*'4. The insurance to be obtained by an osteopath shall cover the following risks:*

*a) Any legal liability for any negligent act, error or omission in professional services rendered or which should have been rendered by an osteopath whilst practising as an osteopath;*

*b) Any liability for claims for public liability or product liability arising from death or injury to third parties or damage to third party property caused by the osteopath in the course of providing his professional services or in the course of supplying products in connection with those professional services;*

*c) Any legal liability of an osteopath in respect of the risks set out in (a) or (b) above which are attributable to his employees, partners, associates, co-directors or agents and which are connected with the provision of osteopathic services on his behalf or under his supervision;*

*d) Any liability to pay all legal costs, of and incidental to all proceedings which may be recovered by a claimant against an osteopath arising out of any claim in respect of the prescribed risks, and all or any costs, fees and expenses which may be incurred by an osteopath in defending any claim in respect of the risks set out in (a) to (c) above.*

*5. Any insurance which is obtained by an osteopath in respect of the prescribed risks need only cover his liability as a practising osteopath providing professional services in the United Kingdom.'*

### **What are the issues?**

Are the current Rules too prescriptive?

Can the current Rules be simplified?

### **Discussion**

The insurance Rules for osteopaths are quite prescriptive compared to those for other health professionals.

The issue for consideration is whether it is better for the Rules to remain prescriptive or be simplified, with a greater discretion for interpretation given to osteopaths and their insurers.

More prescriptive rules would provide greater clarity to osteopaths and insurers about what is required to be covered, while rules which have less prescription might allow policies to be adapted to the wide variety of osteopathic practice. However, it is important that considerations of cost do not override the protection of patients.

In choosing to simplify the Rules, it may be possible to provide additional guidance to osteopaths about matters to be considered when deciding what risks their insurance policy should cover.

There are advantages to each approach, which include:

<b>Advantages of prescriptive rules</b>	<b>Advantages of non-prescriptive rules</b>
Clarity for osteopaths and insurance providers.	Greater flexibility for osteopaths and insurers.
Coverage of risks guaranteed.	Can be more responsive to changing regulatory environment.
	Guidance is simpler to change than legislation, so less likely to become out of date.

### **Consultation questions**

2. Are the prescribed risks (set out above in italics above) appropriate for osteopathic practice or could they be simplified? If so, how?

3. Are there any risks that have not been included and, if so, what are these?
4. Would it be helpful for the GOsC to provide guidance for osteopaths about what risks should be included in the cover?
5. If so, what areas of risk do you think this guidance should cover?

### **Section 3: Prescribed amounts**

#### **The current Rules say:**

*'6. The minimum amount of insurance cover to be obtained by an osteopath in respect of the prescribed risks is £2,500,000 in the aggregate in the cases of rules 4(a), 4(b) and 4(c).'*

#### **What are the issues?**

Should the GOsC prescribe a minimum amount of cover in legislation?

Should the current minimum level of cover increase?

#### **Discussion**

It is important for the protection of patients that osteopaths have sufficient insurance to cover any potential claim against them.

The onus is on the osteopath to ensure that the level of their cover reflects the needs of their professional activities, but arguably the regulator should specify the minimum level of cover required.

The current minimum of £2.5m was set in 1998; if it had been increased annually by the rate of inflation, the amount would now be just under £4m. We also know that a number of insurance providers offer as part of their standard package a minimum level of cover far in excess of £2.5m.

<b>Advantages of setting a minimum level of cover in legislation</b>	<b>Disadvantages of setting a minimum level of cover in legislation</b>
Ensures protection for the registrant by requiring insurance policies to provide an adequate minimum level of cover.	The Rules are unlikely to be changed again for a number of years leading to the erosion of the minimum level of cover.
Sets in legislation a permanent benchmark.	Less flexibility/responsiveness to changes in regulatory environment.

Ensures cost considerations do not override protection of patients.	
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### Consultation questions

6. Do you agree that it is appropriate for the GOsC to prescribe in legislation a minimum level of cover? If no, please provide your reasons.
7. Do you agree that the minimum level of cover should be increased from £2.5m? If no, please provide your reasons.
8. If you believe the minimum level of cover should increase, please state to what level you think it should be increased?

### Section 4: Run-off cover

#### The current Rules say:

*'7. Every practising osteopath shall maintain insurance cover for the prescribed risks and in the prescribed amounts to cover any claims in respect of his practice as an osteopath which may arise after the date on which he ceases to practise as an osteopath for whatever reason.'*

#### What are the issues?

Should run-off cover feature in the Rules?

If yes, for how long should run-off cover last?

#### Discussion

Run-off cover ensures that should a claim be made retrospectively against an osteopath after they have ceased to practise **or** have changed insurance provider, their past practice is still covered by insurance. This ensures ongoing patient protection once an osteopath leaves the Register.

The length of time run-off cover should last is equally important. It may be argued that run-off cover should last for as long as claims may be received (i.e. within statutory time limits), or it may be argued that the length of run-off cover should be aligned with Section D6 of the *Osteopathic Practice Standards*, which specifies that patient records should be retained:

- For a minimum of eight years after their last consultation, or
- If the patient is a child, until their 25<sup>th</sup> birthday.

## Consultation questions

9. Do you agree that a requirement for run-off cover should be maintained as an important element of the Rules? If no, please provide your reasons.
10. For how long should the run-off cover continue? Please provide your reasons.

## Section 5: Evidence of compliance

### What the current Rules say:

*'8.(1) Following registration, subsequent renewal or at any other time that the Registrar may stipulate, an osteopath must provide the General Council with evidence acceptable to it that he has a current insurance policy which complies with the requirements of these Rules.'*

*'8.(2) Any osteopath whose insurance ceases to comply with the requirements of these Rules or ceases altogether (for whatever reason) shall notify the General Council forthwith.'*

### What are the issues?

Is the current mechanism for a registrant to demonstrate to the GOsC they hold insurance too burdensome?

Are there alternative mechanisms?

### Discussion

The current registration and re-registration processes require all osteopaths to demonstrate that they hold professional indemnity insurance. Osteopaths provide proof of professional indemnity insurance either by submitting to the GOsC a copy of their schedule of cover, or by their insurance provider confirming this directly to the GOsC.

It is recognised that this mechanism can be administratively burdensome for the osteopath as well as the insurance provider. It also differs from other aspects of the renewal of registration process where self-declaration is considered acceptable.

An alternative mechanism for osteopaths to demonstrate they hold insurance in line with the Rules would be through a self-declaration as part of the renewal process.

The advantage of a self-declaration approach is that it would immediately reduce the administrative burden on osteopaths and the GOsC. As a safeguard, the Registrar would be able to request evidence of insurance at any time from an osteopath.

In addition, there should be an onus on an osteopath to advise the GOsC immediately if their insurance cover for any reason ceases to comply with the requirements of the Rules.

## Consultation questions

11. Do you agree with the principle that osteopaths should be required to demonstrate they hold insurance cover in line with the Rules? If not, please provide your reasons.
12. Which mechanism for an osteopath to demonstrate they hold insurance cover in line with the Rules do you support:
  - a. Hard copy evidence submitted to GOsC?
  - b. Self declaration during renewal of registration cycle?
  - c. Other, please describe.Please provide your reasons.
13. Do you agree that the Registrar should be able to request evidence of insurance from an osteopath at any time? If no, please provide your reasons.
14. Do you agree that if insurance cover ceases, for whatever reason, the osteopath in question should immediately advise the GOsC? If no, please provide your reasons.

## Section 6: Non-compliance

### The current Rules say:

*'9. Any failure by an osteopath to maintain insurance in accordance with these Rules may be treated as constituting unacceptable professional conduct and dealt with accordingly.'*

### What is the issue?

How should the GOsC deal with an osteopath who fails to maintain insurance in accordance with the Rules?

### Discussion

Patients are entitled to be treated by a healthcare provider who holds professional indemnity insurance for the rare occasions when things do go wrong. In these circumstances there is clear benefit also for the registrant in having insurance cover.

Within the GOsC's Rules there are two main ways to deal with a registrant who fails to maintain insurance:

- a. The registrant is subject to investigation for unacceptable professional conduct
- b. The registrant is administratively removed from the Register for failing to comply with the requirements of GOsC registration.

The advantage of referring for investigation is that the registrant remains on the Register and can be held to account. However, this route is costly and time-consuming. The alternative approach of administratively removing the registrant from the Register represents a more speedy and cost-effective resolution.

### **Consultation questions**

15. Do you agree with the principle that a registrant who fails to maintain insurance cover in line with the Rules should be held to account? If not, please explain your reasons.

16. How do you believe a registrant should be held to account:

- a. Referred to the Professional Conduct Committee<sup>3</sup> for unacceptable professional conduct?
- b. Administratively removed from the Register?

Please provide your reasons.

## **Section 7: Registrants who work overseas**

### **What the current Rules say:**

The current Rules only require a registrant to be insured for their practice in the UK.

### **What are the issues?**

Should the rules be extended to include work by registrants overseas?

### **Discussion**

UK-based registrants who undertake work overseas are not currently required to include this work within their insurance cover. In the context of temporary and occasional work within the EU this may not meet European Directive requirements. Arguably, wherever they are practising as GOsC registrants they should continue to comply with GOsC rules and standards.

For GOsC registrants who choose to work permanently outside the UK, the situation is more complex as insurance is not always available or public 'no fault' compensation arrangements may be in place. However, where such cover is available, our expectation is that registrants' patients are protected and that they should be able to demonstrate this to the GOsC.

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<sup>3</sup> The Professional Conduct Committee hears cases concerning serious unacceptable conduct, incompetence or criminal convictions. If the Committee finds any such case proved, it imposes an appropriate sanction on the osteopath

### **Consultation question**

17. Do you agree with the principle that registrants who practise overseas should hold insurance, where such cover is available, and if required be able to demonstrate this to the GOsC? If no, please provide your reasons.