fitness to practise 2004/05

Contents

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Assistant Registrar (Regulation)	Miss Kellie Green
Professional Conduct Officer	Miss Dana Davies
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01 foreword

This report of the General Osteopathic Council's (GOsC) fitness to practise committees is produced in accordance with the Osteopaths Act 1993, section 22(13). Historically, the report has covered the period 1 January - 31 December, however, this report is provided in two sections and covers the period 1 January 2004 - 31 March 2004 and 1 April 2004 - 31 March 2005. This is to enable the GOsC to bring the report in line with all other reports and publications produced by the GOsC, which are done on a financial rather than calendar year basis.

Issues involving osteopaths' fitness to practise are an integral part of the GOsC's duty to regulate the profession and thereby protect the public and the profession's reputation. The information contained in this report provides a valuable resource to osteopaths on the high standards of conduct and proficiency required to maintain registration as an osteopath.

What are the fitness to practise committees and what do they do?

The statutory committees generically referred to as the fitness to practise committees include the Investigating Committee (IC), Professional Conduct Committee (PCC) and Health Committee (HC). All three committees are established by the Osteopaths Act 1993 with specific constitutions and terms of reference.

Who makes complaints?

Anyone who has a concern about any osteopath's fitness to practise can raise this with the GOsC. The majority of complaints come from members of the public; however, the GOsC are notified when osteopaths are convicted of a criminal offence. Also, there is an increasing obligation on health care regulators to share information about practitioners who are subject to investigations and registered with two or more regulatory bodies. Figure 2 illustrates further the different categories of complainants for the period of this report.

What happens when a complaint is made?

Figure 1 illustrates the investigation procedures followed when a complaint is made about an osteopath. These procedures are governed by the Osteopaths Act 1993, section 20, and the GOsC Investigation of Complaints (Procedure) Rules 1999. It should be noted that if the allegations made raise an immediate concern for the protection of public, the osteopath's registration may be suspended immediately while the case is investigated (Osteopaths Act 1993, section 21).

Investigation procedures

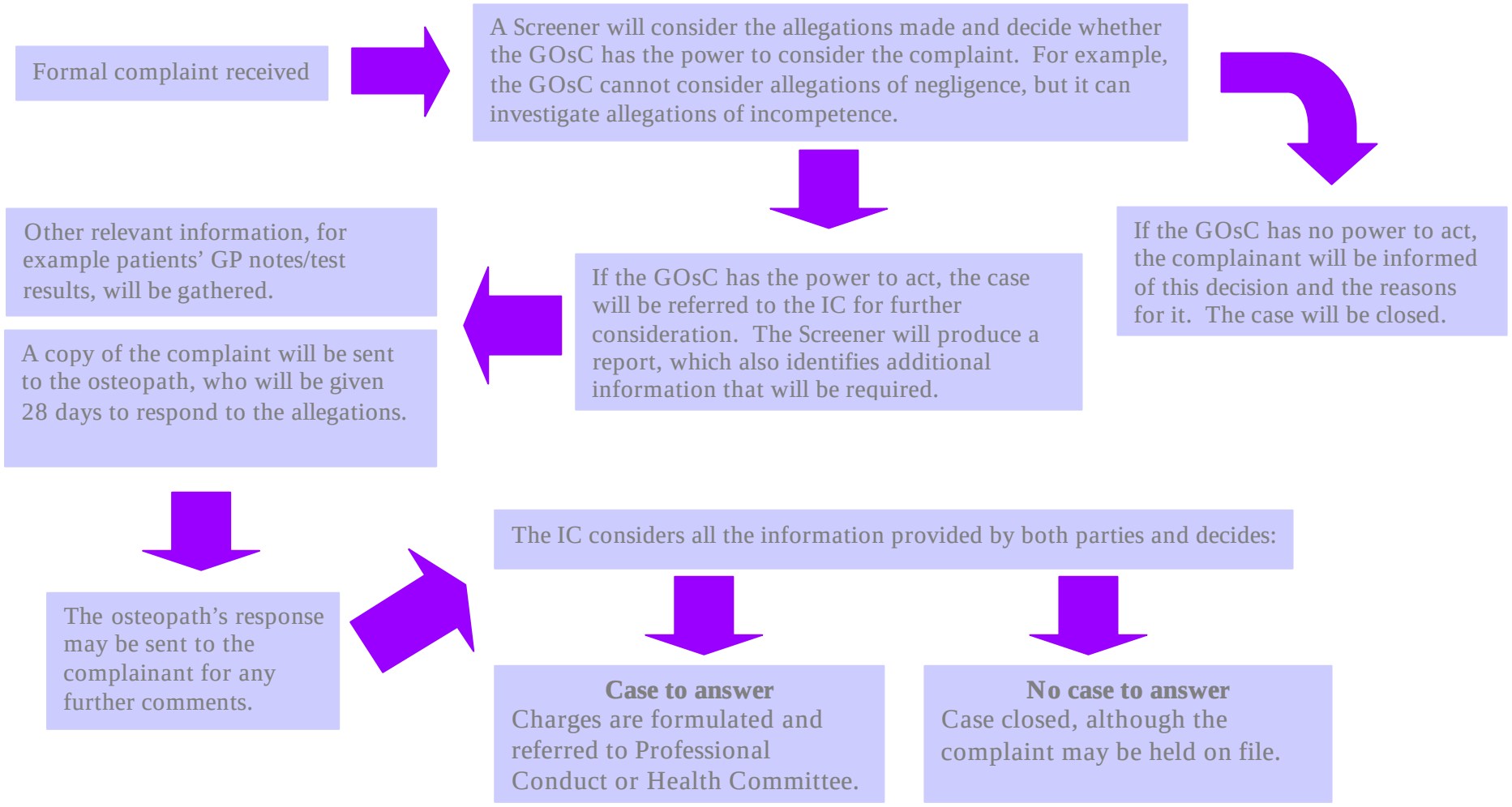

figure 1

02 investigating committee

The Investigating Committee (IC) consists of osteopathic and lay members. Its primary role is to decide whether or not there is sufficient evidence of one or more of the following for there to be a case for the osteopath to answer:

- unacceptable professional conduct
- professional incompetence
- a relevant criminal offence
- ability to practise is seriously impaired because of mental or physical health.

The membership of the IC for the periods covered by this report are reflected in the table below.

Osteopathic Members	Lay Members
Mr Martin Booth* *(from May 2005)*	Mr Barry Baines* *(to July 2004)*
Mr Robert Burge	Mr John Chuter
Mr Paul Cairns* *(from May 2005)*	Mrs Fionnuala Cook (Acting Chairman)
Mrs Catherine Hamilton-Plant	Mr David Hamilton-Rump* *(from March 2005)*
Mrs Rachel Pointon *(from September 2004)*	Mrs Nicola Renken* *(from March 2005)*
Mr Robin Shepherd	Mr Paul Sommerfeld (Chairman)
Mr Ian Swash	Miss Linda Wallace* *(from March 2005)*
Miss Fiona Walsh *(to March 2005)*	Mr David Wilson* *(from March 2005)*
	Mrs Judith Worthington*

* indicates co-opted member

What have the IC considered?

Between the period 1 January 2004 - 31 March 2004, the IC sat on three occasions and considered a total of five cases. The IC sat on seven occasions between 1 April 2004 and 31 March 2005 and considered a total of 27 cases.

As explained previously, a complaint can be made by anyone and figures 2 and 3 provide a breakdown of complainants for the five and 27 cases mentioned above.

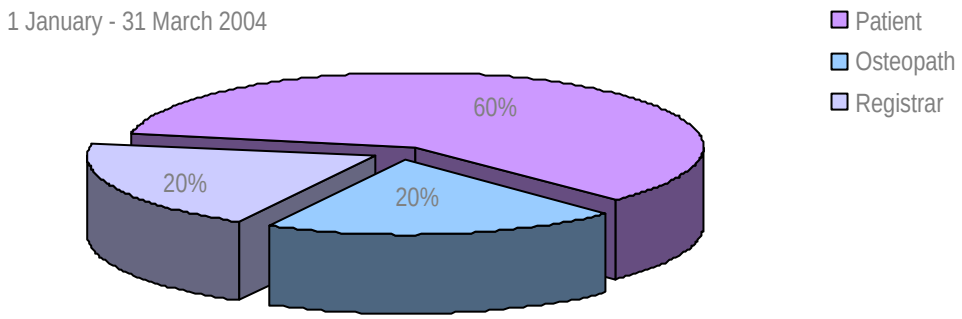

figure 2

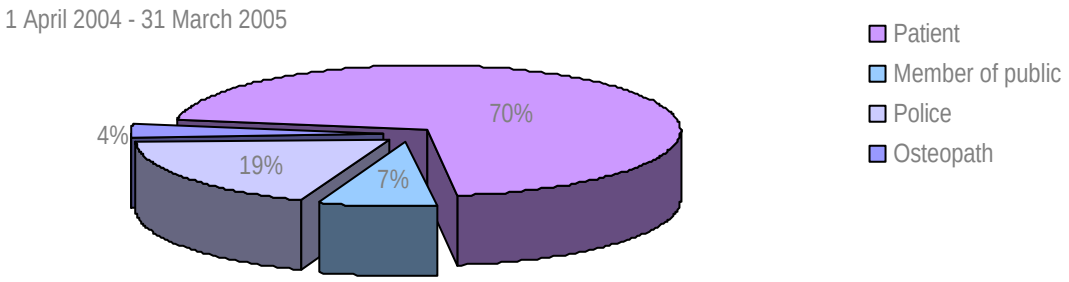

figure 3

Figures 4 and 5 provide a breakdown of the nature of the allegations made and the decisions that were reached in each case.

1 January - 31 March 2004

Allegation	Case to answer	No case to answer
Unacceptable professional conduct	0	1
Professional incompetence	0	1
Unacceptable professional conduct and professional incompetence	1	1
UK convictions	0	0
Health	1	0
Total cases considered	**2**	**3**

figure 4

1 April 2004 - 31 March 2005

Allegation	Case to answer	No case to answer
Unacceptable professional conduct	7	5
Professional incompetence	0	1
Unacceptable professional conduct and professional incompetence	4	8
UK convictions	1	1
Health	0	0
Total cases considered	**12**	**15**

figure 5

Monitoring complaints

The GOsC continually monitors the number and nature of the complaints it receives. The information gathered is fed back into the developmental work of the GOsC and can have an impact on how the GOsC directs it resources – for example, the production of a new Code of Practice, guidance leaflets and CPD Provision.

A good example of this was the inclusion of Record Keeping, Consent and Confidentiality' on the programme for the Regional Conferences held during 2004. The impact of this may have led to the drop in complaints that involved issues of consent from eight in 2002, six in 2003 to four in 2004/05. Complaints involving issues of Confidentiality have also decreased from six in 2003 to none in 2004.

Figure 6 illustrates the different allegations that were considered and the conclusions reached for each year since 2001.

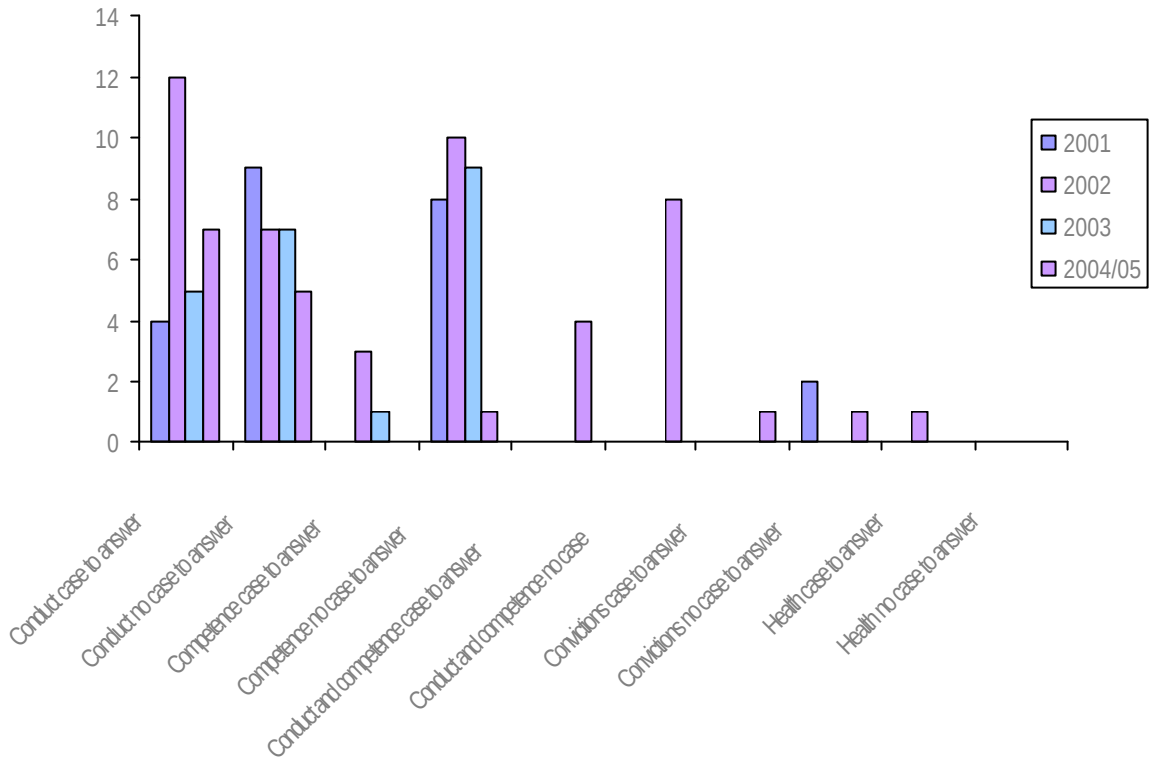

figure 6

Interim Suspension

The IC will, if it is necessary to protect members of the public, order the Registrar to immediately suspend an osteopath's registration. This will be done if serious allegations are made and the suspension is likely to remain in place while the IC investigates those allegations. The Osteopaths Act 1993, section 21, governs the process that will be followed when imposing such an order.

The IC exercised this power on three occasions during the full period covered by this report.

Code of Practice – *Pursuing Excellence*

When a complaint is received, the Screener will identify which areas of the Code of Practice (the Code) relate to the allegations that are being made about the osteopath. The table in figure 7 shows how the clauses of the Code relate to the allegations considered by the IC during 1 April 2004 - 31 March 2005 and reflect the fact that complaints often allege breaches in more than one area of the Code.

The figures are quite similar to those of last year with the main areas of concern relating to *What Patients Can Expect*, *The Duty of Care* and *Communication*. There was a marked increase in the number of complaints that involved *Fees* and *Practice Information* and also an increase in cases that involved *Undue Influence on Patients*. Of particular interest is the drop in cases that involve *Consent*, *The principles of Confidentiality* and *Examining and Treating Intimate Areas*. These are the areas that the Council has drawn the profession's attention to by providing guidance through the Regional Conferences and producing further written guidance in the Code and The Osteopath magazine.

While the Code attempts to reflect all situations, there may be instances when particular behaviour cannot be related to a specific clause. Such a case can still be considered as it is the primary legislation (Osteopaths Act 1993, section 20) that governs allegations of poor professional conduct and fitness to practise. The Code is kept under constant review to take account of newly presenting situations and best practice and a new edition will come into effect in May 2005.

The figures in the column headed 2003 refer to the 22 cases considered by the IC during the period 1 January - 31 December 2003. The figures in the column headed 2004/05 refer to the 27 cases considered by the IC during the period 1 April 2004 - 31 March 2005.

Clause from Pursuing Excellence	2003	2004/05
What patients can expect (clauses 4-6, page 7)	13	15
The duty of care (clauses 27-29, page 12)	13	15
Communicating with patients (clauses 31-34, pages 12-13)	13	12
If things go wrong (clauses 62-64, page 19)	12	9
Relationships with patients (clause 9, page 8)	4	7
Maintaining your standards (clauses 7-8, page 8)	3	7
Fees (clause 59, page 18)	0	6
Undue influence on patients (clause 50, page 16)	1	6
Practice information (clauses 54-58, pages 17-18)	2	5
Consent (clauses 14-16, June 2002 erratum page)	6	4
As an osteopath you must (page 5)	1	3
Financial and commercial activity (clauses 60-61, page 18)	2	3
If trust breaks down (clause 66, page 19)	0	3
Personal relationships with patients (clauses 51-53, page 17)	1	2

Clause from Pursuing Excellence	2003	2004/05
Examining and treating intimate areas (clauses 35-36a, June 2002 erratum page)	4	2
Your contract with the patient (clause 17, page 10)	5	2
Trust above all (clauses 75-76, page 22)	1	2
Relationships with colleagues (clauses 67-68, page 20)	0	1
The right to practise (clause 12, page 9)	0	1
Legal limitations on what an osteopath can do (clauses 25-26, page 11)	1	1
What registration with the GOsC means (clauses 1-3, page 6)	5	0
Problems with your health (clause 65, page 19)	0	0
Comments about colleagues (clauses 70-71, page 21)	3	0
The principles of confidentiality (clauses 37-43, page 14)	6	0

figure 7

How long does it take the IC to consider a case?

This depends on the nature of the allegations and the complexity of the complaint. For example, if the complaint is investigated by the Police and pursued through the criminal courts, the GOsC's consideration of the matter cannot normally proceed until there is an outcome from the criminal process.

The statutory rules that govern the process (GOsC Investigation of Complaints (Procedure) Rules 1999) require that every complaint is first considered by a Screener. Screening is usually completed within a week or two of receipt of the complaint. If the Screener recommends that the case is investigated, a copy of the complaint is sent to the osteopath concerned, who is allowed 28 days to prepare a response. It is unlikely, therefore, that the IC will reach a decision on a case in less than two months from receipt of the complaint.

The fitness to practise committees aim to ensure that delays do not occur unnecessarily and progress on outstanding cases is reviewed at every meeting. Figure 8 shows the time taken for the IC to reach its decision in the 27 cases considered in 2004/05.

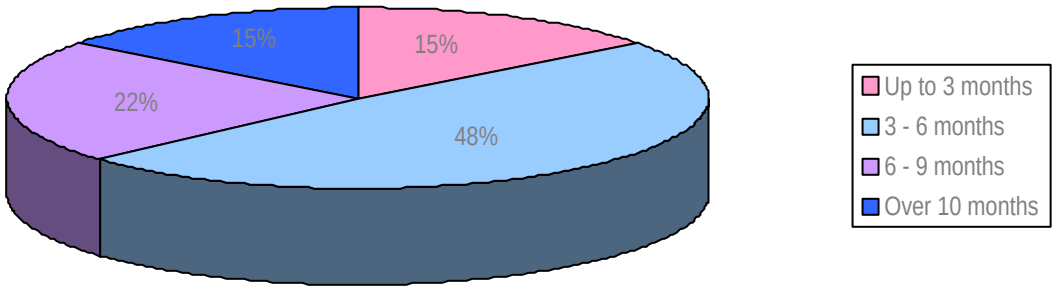

figure 8

Case 1

Allegation: Unacceptable Professional Conduct and/or Professional Incompetence

Background: The patient attended the osteopath for the first time and presented with mild low back pain. During the case history, the patient explained to the osteopath that she had fractured her sternum as a child, which had healed normally but had left her with a pain free 'click' at the sternum that happened several times a day.

Having taken the medical history and performed a full osteopathic examination, the osteopath diagnosed hypertonicity of the right iliopsoas which was causing a leg length discrepancy. This in turn was causing osteopathic lesions at L5/S1 with compensations higher up the spine in the thoracic area. Taking into account the old fracture of the sternum, it was the osteopath's opinion that the lesions at T4-6 were contributing to a degree of restriction of movement in the thorax that was a contributing factor to the clicking sensation in the sternum.

During the first treatment session, the osteopath released the right iliopsoas using inhibitory techniques. The osteopath then used neuromuscular techniques to release the erector spinae muscles between lumbar and cervical spines. The osteopath attempted a high velocity thrust to L5/S1, which did not release, and a low velocity thrust in the prone position at T7/8, which was successful. The osteopath then wished to release T4/5 and T5/6 and decided that, given the patient had no other medical conditions of concern, a low velocity thrust in the supine position with this healthy 25 year old patient was indicated. The osteopath was aware that the patient had an old healed fracture of the sternum, however, on palpation it had felt stable. The osteopath had already received verbal consent for the previous manipulations but the osteopath explained again that she 'would be exerting a small amount of pressure onto the patient's folded arms to release the area between her shoulder blades and that there may be a small click or crack'. The osteopath received the patient's verbal consent and performed the manipulation. Afterwards the patient told the osteopath that it hurt slightly but the pain passed within a minute. In the osteopath's experience this was a normal reaction particularly in someone who has never received osteopathic manipulation. The osteopath then released C3/4, again having received verbal consent. The osteopath finished the treatment and gave the patient advice on stretching properly. The patient seemed happy and was not complaining of any pain. A second appointment was booked.

The patient did not attend the second appointment, so the osteopath telephoned to enquire why. The patient explained she had been in pain, which she believed was caused by the 'invasive treatment' she had received from the osteopath.

The osteopath made an appointment for the patient to see another osteopath, which was not attended. The patient felt that she could no longer trust the osteopath and did not, therefore, want to attend the practice again.

The patient made her complaint to the Council six months after the initial treatment as she was still in considerable pain. She was attending another osteopath who was 'trying to correct [the preceding osteopath]'s procedures'. The patient felt that the osteopath complained about had failed to take account of the injury to her sternum and had administered inappropriate treatment.

Possible breaches of the Code of Practice**:** Clause 6 on 'In providing care you must'.

Decision: After receipt of advice from the independent Legal Assessor on the legal definition of incompetence and considering this case on its own merits, the Investigating Committee concluded that there was no case of unacceptable professional conduct or professional incompetence for the osteopath to answer. The Committee did, however, provide the osteopath with the following advice:

"In view of the history of a fractured sternum and the current symptoms of 'clicking' of the sternum, it may have been more appropriate to consider the use of articulatory techniques rather than using two direct HVT techniques especially with the patient in the prone and supine positions.

The patient presented with symptoms described as 'mild low back pain' and the Committee thought that the differential diagnostic possibilities and contra-indications to HVT could have been more fully explored, with regard to treating the non-symptomatic thoracic area."

The osteopath was advised that this complaint would be taken into account again, if any subsequent complaint is received about the osteopath concerned.

Case 2

Allegation: Unacceptable Professional Conduct

Background: An osteopath (A) complained that another osteopath (B) had written a letter that was sent to the practice managers of their local GP surgeries. The letter informed the practice managers that osteopath B had ceased working with osteopath A and implied that osteopath A's practice was not a safe environment for patients. Osteopath A said that the letter referred to her practice in an unprofessional and derogatory manner, which may have damaged the reputation of both her clinic and the therapists who worked there. There was no evidence to support the suggestions that osteopath A's practice was unsafe.

In response, osteopath B said that she had not intended to cause distress or to infer that osteopath A's practice, and those who worked there, were in any way unsafe or below standard. Osteopath B had since written to the recipients of the letter clarifying the reason for her move from osteopath A's clinic, which was 'simply because the former premises did not allow [osteopath B] to manage some specific patients in a particular way'. Osteopath B also apologised to both osteopath A and the other practitioners concerned.

Possible breaches of the Code of Practice:

page 5 on 'As an osteopath you must';

clause 3 on 'What registration with the GOsC means';

clauses 54-55 and 58 on 'Practice information'

clause 70 on 'Comments about colleagues'.

Decision: The Investigating Committee found that there was no case of unacceptable professional conduct to answer. Osteopath B, was however, advised that this complaint will be taken into account again, if any subsequent complaint is received about osteopath B.

Case 3 (this case relates to Case 4)

Allegation: Professional Incompetence and/or Unacceptable Professional Conduct

Background: The osteopath explained that the patient complaining had originally attended with pain in the left supra-lateral gluteal region radiating to her posterior-lateral thigh and lateral calf. It was thought that the problem stemmed from an incident two years earlier when the patient, who practised and taught yoga, had been pushed into a back and then forward bend.

On examination all active movements were full. There was restriction in movement between L1-3 and facilitation around the left L5/S1 joint on passive examination. The neurological examination elicited normal reflexes, power in upper and lower extremities, and SLRT was also normal. The osteopath told the patient his diagnosis was of a facilitated left lumbar-sacral joint.

The osteopath described the treatment given as 'minimal and conservative'. The osteopath applied a minimal lever HVT to the patient's upper lumber spine (L1-3) on the left – into rotation as the primary lever.

The patient described the treatment as 'very strong' and said that it was the first time an osteopath had manipulated her by 'cracking the lower spine'. By the next morning the patient was experiencing pain, which she described as 'terrifying, in her left hip, knee and especially the calf'. She had difficulty laying down in the bathtub without causing pain to her sacrum. The patient thought that the osteopath had changed the position of her sacrum.

The pain worsened and two days after the initial treatment the patient tried to contact the osteopath who did not return her calls. The patient contacted the GOsC and at that time was advised to contact the osteopath again. The patient then had two conversations with the osteopath and explains that the osteopath 'did not have time to talk and did not return the calls as promised. He seemed to have absolutely no interest in the distress I was suffering'.

The osteopath explained that he could 'not remember this patient or the reported telephone calls'. There was a note in the osteopath's diary of a call received by [patient] the day after her initial treatment and one recorded five days later, which included a reference to first-aid advice that was given.

Possible breaches of the Code of Practice:

clauses 5 and 6 on 'What patients can expect';

clause 28 on 'The duty of care';

clauses 31-32 on 'Communicating with patients'

clauses 62-66 'If things go wrong'

Decision: The Investigating Committee concluded that there was sufficient evidence to support a case of unacceptable profession conduct for the osteopath to answer. The Committee was concerned that the patient had not been able to speak to the osteopath about the pain and distress she was experiencing - the osteopath had not returned her calls or been available to speak with her.

The patient subsequently sought care from another osteopath, who was recommended by an acquaintance. The complaint that the patient made was about both osteopaths and Case 4 provides further details.

Case 4 (this case relates to case 3)

Allegation: Professional Incompetence

Background: background to this case can be found at Case 3 above.

The patient says that the osteopath was ‘confident he could stop the pain’ she was experiencing and so she decided to trust him. She attend for a total of 10 treatments and says that the pain worsened and became more severe.

The osteopath explained that the patient was advised that ‘most cases of sciatica will resolve with osteopathic manipulative treatment… if that doesn’t work, there are alternatives that are more invasive’. The osteopath took ‘particular care to explain everything to [the patient], as she was in great distress and was wary of manual therapy’.

The patient’s notes record reported improvement on each occasion, except the last appointment.

The patient sought care from a third osteopath and reported, after three months of treatment, that the pain had eased and was ‘under control’.

Possible breaches of the Code of Practice:

clauses 5 and 6 on ‘What patients can expect’;

clause 28 on ‘The duty of care’;

clauses 31-32 on ‘Communicating with patients’.

Decision: The Investigating Committee found that there was no case to answer. The osteopath’s attention was, however, drawn in particular to sections J on ‘Identification and evaluation of the needs of the patient’, L on ‘Planning, justifying and monitoring osteopathic treatment interventions’, M on ‘Conducting osteopathic treatment and patient management’ and N on ‘Evaluation of post treatment progress and change’ of the Standard of Proficiency 2000 (S2K).

Case 5

Interim Suspension Order

Allegation: The osteopath's ability to practise was seriously impaired because of a medical condition.

Background: It was brought to the Investigating Committee's attention that the osteopath was suffering from alcohol dependency. The osteopath admitted that he had an issue with alcohol and was attempting to seek help for this.

Possible breaches of the Code of Practice:

clause 8 on 'Maintaining your standards';

clause 65 on 'Problems with your health'.

Decision: The Investigating Committee considered the allegation and related information and concluded that it was necessary to impose an interim suspension order in this case. The osteopath's registration was suspended for the maximum period of two months to allow the Committee to conclude its investigations. Subsequently it was found that there was a case to answer, the osteopath's ability to practise was seriously impaired due to his alcohol dependency. This case was referred to the Health Committee.

03 professional conduct committee

The Professional Conduct Committee (PCC) consists of both osteopathic and lay members with no member of the Investigating Committee (IC) or Health Committee (HC) able to sit on the PCC. The membership of the PCC for the periods covered by this report are reflected in the table below.

Osteopathic Members	Lay Members
Ms Kathryn de Fleury *(from May 2005)*	Ms Victoria Baron*
Mrs Jane Langer *(to May 2005)*	Mr Michael Boyall* *(from March 2005)*
Mr Manoj Mehta	Miss Tracey Huckfield* *(from March 2005)*
Mr Graham Sharman* *(from May 2005)*	Miss Anne Jones (Joint Chairman)
Mrs Rosalind Stuart-Menteth	Mr Andrew Popat (Joint Chairman)
Mr Nicholas Woodhead *(to May 2005)*	Miss Linda Wallace* (*to 20 June 2004*)
Dr Leslie Wootton	Mrs Margaret Wolff

* indicates co-opted member

What happens if a case is referred to the PCC?

The PCC considers cases that are referred from the IC and relate to osteopaths' conduct, competence or conviction for a criminal offence. The PCC's role is to decide whether the allegations made are well founded and this takes place at a public hearing. Both parties (the osteopath and the GOsC) are permitted to attend the hearing and submit their case.

The GOsC prosecutes the case against the osteopath and the complainant may attend the hearing as the GOsC's witness and give evidence under oath. After both parties and all the evidence has been heard, the committee retires to decide whether the allegations are proven. This decision is announced in public.

If the allegations are proven, the osteopath or his representative may inform the committee of any circumstances that mitigate the severity of the osteopath's actions. The committee will also be notified at this stage of any previous cases proven against the osteopath. The committee will again retire to consider what sanctions if any to impose against the osteopath. The committee has the following options:

- to remove the osteopath's name from the Register
- to suspend the osteopath's registration for a set period
- to impose conditions on the osteopath's practise
- formal admonishment

The committee will announce any chosen sanctions in public. The committee will also announce the reasons for its decisions in public, either at the time or at a later date.

What has the PCC considered?

The PCC sat four times during the period 1 January - 31 March 2004 and considered three new cases and reviewed one case where previously the PCC had imposed conditions on the osteopath's practise.

During the period 1 April 2004 - 31 March 2005, the PCC sat six times and considered three new cases and reviewed one case where previously the PCC had imposed conditions on the osteopath's practise. The PCC also imposed an interim suspension order in two cases.

Figures 9 and 10 show the outcomes of the cases mentioned above.

1 January - 31 March 2004

Sanction	Unacceptable Professional Conduct	Professional Incompetence
Removed	0	0
Suspended	1	0
Conditions of practice	0	0
Admonished	1	0
Not well founded	1	0
Imposed Interim Suspension	0	0
Total	**3**	**0**

figure 9

1 April 2004 - 31 March 2005

Sanction	Unacceptable Professional Conduct	Professional Incompetence
Removed	0	0
Suspended	0	0
Conditions of practice	0	0
Admonished	2	0
Not well founded	1	0
Imposed Interim Suspension	2	0
Total	**5**	**0**

figure 10

How long does it take to prepare a case and for the PCC to consider it?

This depends on the nature of the allegations and the complexity of the complaint. It is usual for both parties to instruct legal representatives who will need time to review the case and prepare for the hearing. The chart at figure 11 shows the time taken to prepare the six new cases heard by the PCC during the period of this report.

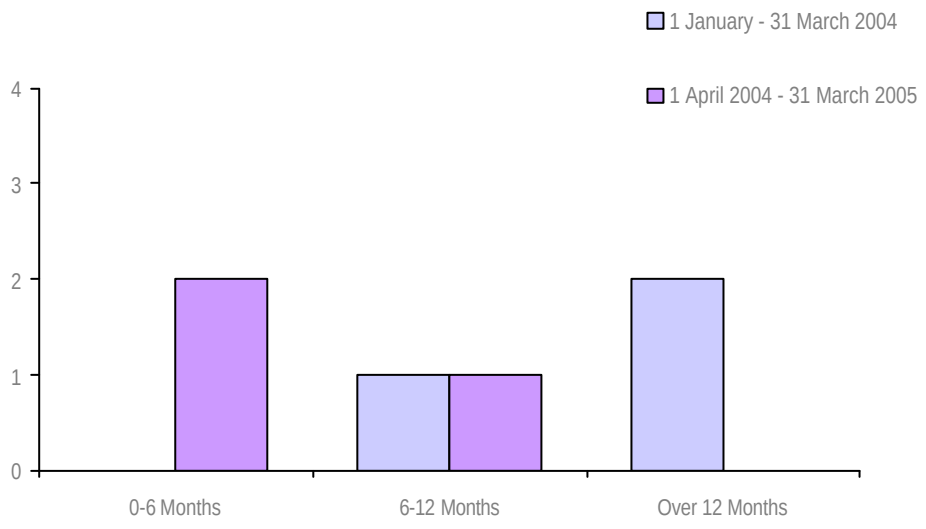

figure 11

Every effort will be made to improve these times, if possible, year on year. But there will always be cases where delays are beyond the GOsC's control and/or information gathering takes longer than expected.

An estimation of how many days it will take for the PCC to hear the case is taken prior to setting the hearing date. An average of two days was taken to hear each of the six cases mentioned above.

Interim suspension

Like the IC, the PCC will, if it is necessary to protect members of the public, order the Registrar to immediately suspend an osteopath's registration. This will be done on referral of a case that raises serious allegations against an osteopath. The suspension is likely to remain in place while the preparations are made for the committee to hear the case. The Osteopaths Act 1993, section 24, governs the process that will be followed when imposing such an order.

The Committee exercised this power in two cases during 1 April 2004 - 31 March 2005.

Case studies

This report is published in accordance with the Osteopaths Act 1993, section 22(13) and (14). The Act requires the report to include the names of those osteopaths who have had allegations found against them; details of the allegations and the steps taken by the PCC in respect of those osteopaths.

Where the PCC has considered allegations against an osteopath and has not been satisfied that the allegations were well founded, the report will include a statement to this effect if the osteopath requests it. The two cases heard, during the period of this report, where the PCC were not satisfied that any of the allegations were well founded are not included in this report.

Case 1: Miss Gayle Palmer

Allegation: Unacceptable Professional Conduct

Charges:

That being registered under the Osteopaths Act 1993:

1. At all material times Miss Gayle Palmer practised as an osteopath at [practice address].

2. That between March 2002 and April 2002 she examined and / or treated a child, A, without the consent and / or knowledge of his father, Mr B.

3. That Miss Palmer failed to inform Mr B that she was carrying out the said examination(s) and / or treatment(s) to his son.

4. That Miss Palmer failed to inform Mr B that there would be a charge for the said examination(s) and or treatments.

5. That Miss Palmer failed to inform Mr B as to the nature of any examinations(s) and / or treatments carried out or at all.

6. *Not proved.*

7. That Miss Palmer breached patient confidentiality by disclosing copies of Mrs D's [child A's mother] notes to Mr C [Mr B's father] by letter dated 25 April 2002 without consent.

8. *Not proved.*

9. In relation to the facts alleged, Miss Gayle Palmer behaved in an unprofessional manner, and is guilty of unacceptable professional conduct, falling short of the standard required of a registered Osteopath, contrary to Section 20 of the Osteopaths Act 1993.

Decision announced by the Chairman:

Having carefully considered all the evidence in this case, we are satisfied so that we are sure that the facts alleged in Charge 2, 3, 4, 5 and 7 are PROVED.

In respect of Charges 6 and 8, we are not satisfied that these facts have been proved. Therefore charge 6 and charge 8 are DISMISSED.

We would add that what has been listed as Charge 1 is not in fact a charge at all, but merely an agreed preamble.

In respect of Charges 2, 3, 4, 5 and 7, the reasons why we found the facts proved are as follows:

We found Mr B to be a credible and impressive witness. We accept his evidence and find as a fact that he did not give any consent to Miss Palmer treating his son and that he was not aware that Miss Palmer was treating him. The practitioner accepts that she did not speak directly to him to get his consent, and says she made the assumption that she had Mr B's consent. This assumption we find to have been a false one.

We are satisfied that the practitioner did not inform Mr B as alleged in Charges 3, 4 and 5. Her actions in leaving a note and completing the hospital record were not sufficient to inform Mr B.

In respect of Charge 7, we are satisfied that the disclosure of Miss D's notes to Mr C was a breach of confidence. In our view the role Mr C had adopted and the practitioner's assertion that she sought advice, does not mean that there was not a breach of patient confidentiality.

Further, in respect of Charges 2, 3, 4, 5 and 7, we have considered whether or not the facts that we have found proved, in each charge, amount to unacceptable professional conduct. This is defined in Section 20(2) of the Osteopaths Act 1993 as conduct that falls short of the standard required of a registered osteopath.

We are satisfied that the facts proved in each of these charges amount to conduct falling short of the required standard. Our reasons are as follows:

It is clear from the good practice guidance for osteopaths entitled *Pursuing Excellence*, which was then in force, and in particular at page 9, paragraphs 14-16, that consent in such circumstances that existed here, should be clear and unequivocal. In the tragic circumstances of Miss D's death, we are certain that the practitioner ought to have obtained such clear and unequivocal consent from Mr B before treating Baby A. *Pursuing Excellence* also emphasises the importance of giving patients the information they need – here that must be the patient's father as the patient was a minor. The importance of the confidentiality of patients is well set out at paragraphs 37 and 38.

Sanction:

The Committee has carefully considered all the mitigation that has been put forward both by [osteopath's legal representative] on Miss Palmer's behalf and by Miss Palmer herself when we gave her the opportunity, that she had requested, of further addressing the Committee.

We have taken particular account of the fact that the practitioner has had no previous complaints found against her and that there has been no criticism of her work as an osteopath from the complainant.

Further we note that no harm was occasioned to Baby A as a result of these matters and we are aware that these proceedings have been hanging over Miss Palmer's head for some considerable time.

This Committee views the allegations proved against the practitioner to be serious, particularly those relating to the fundamental principles of consent and confidentiality. The decision of this Committee is that Miss Palmer be suspended from practice for a period of three months. We do not think that Miss Palmer had the issue of consent in her mind when treating Baby A after his mother's death.

The Committee would advise Miss Palmer that it would be in her best interests when she resumes her practice that she addresses the shortfalls in her knowledge and that she follows *Pursuing Excellence* meticulously.

Case 2: Ms Jane Morris

Allegation: Unacceptable Professional Conduct

Charges:

That being registered under the Osteopaths Act 1993;

1. At all material times, Ms Jane Morris practised as an osteopath at [practice address].

2. By letter dated 17 January 2002 Ms Morris made representations of an inappropriate nature concerning Mr S, contrary to principle 70 of *Pursuing Excellence – Good Practice for Osteopaths*.

3. In relation to the facts alleged, Ms Morris is guilty of unacceptable professional conduct, falling short of the standard required of a Registered Osteopath contrary to Section 20 of the Osteopaths Act 1993.

Decision announced by the Chairman:

The Committee has carefully considered all the evidence we have seen and heard in this case.

We are satisfied on the balance of probabilities that Ms Morris made representations in her letter of 17 January 2002 about a fellow osteopath (Mr S.) that were of an inappropriate nature. We think the tone and content of the letter speak for themselves.

The Committee were particularly concerned with her assertions about Mr S's lack of probity, that he could not be trusted in planning matters, that he was leading the Planning Authority astray and that his clinic was illegal.

We find that Ms Morris used intemperate and pejorative language which we feel was not justified.

While Ms Morris may have held these beliefs honestly the Committee was satisfied that the language she chose to adopt was inappropriate. We do not think her observations were sustainable. A reader of this letter could infer far more serious circumstances from the language used than that planning permission should be denied.

Having determined the facts proved we next considered whether they amount to unacceptable professional conduct which is defined in the Osteopaths Act 1993 as conduct falling short of the standard required of a registered osteopath.

We are satisfied that the facts proved here do so amount to unacceptable professional conduct. Our reasons are as follows:

These representations about the character of a fellow osteopath were not sustainable and breached paragraph 70 of the Code. They also reveal a lack of appreciation of the wider context of the Code which requires osteopaths to ensure amongst other things, good relationships with colleagues founded on mutual trust and respect. We find it telling that in hindsight Ms Morris accepts, she would not have used such language. We agree with her.

Sanction as announced by Chairman:

We have taken account of the representations made on Ms Morris' behalf, and that coming before this Committee in itself will cause considerable distress.

We note that Ms Morris is held in high esteem by her colleagues and that this action appears to be out of character.

We therefore consider the appropriate sanction in these circumstances to be an admonishment.

Case 3: Mr David Cooper

Allegation: Unacceptable Professional Conduct

Background: Mr Cooper was charged with sexual assault following allegations that were made by a patient. The Investigating Committee had previously ordered the Registrar to suspend Mr Cooper's registration for the maximum period of two months. The Investigating Committee, having investigated the case further, found that there was a case of unacceptable professional conduct for Mr Cooper to answer and referred the case to the PCC.

The PCC on receipt of the case concluded that it was necessary to consider imposing an interim suspension order. A hearing was, therefore, held.

Decision announced by the Chairman:

We are satisfied that Mr Cooper had proper notice of this hearing and has chosen not to attend or be represented or make any written representations. In the circumstance we have decided to proceed in his absence.

Having heard the circumstances of the case as explained by [Council's solicitor] and having listened to his submissions and having taken legal advice from the independent legal assessor, our decision is to order the Registrar to suspend Mr Cooper's registration with effect from 14 September 2004 in accordance with section 24(2) of the Osteopaths Act 1993.

Conclusion:

Mr Cooper was, by his own admission, convicted of sexual assault on 25 October 2005. He subsequently resigned from the Register held by the Council.

Health Committee

The Health Committee (HC) considers cases where it is alleged that an osteopath's ability to practise is seriously impaired because of his physical or mental health. The HC consists of osteopaths and lay members.

Osteopathic Members	Lay Members
Ms Kathryn de Fleury *(from November 2004)*	Ms Jillian Alderwick*
Mr Brian McKenna	Mr Nigel Clarke (Chairman)
Miss Sarah Wallace *(to September 2004)*	Professor Adrian Eddleston
Mr Jonathan Poston (from March 2005)	Professor Ian Hughes
	Mr John Cadywould (from March 2005)
	Mr Christopher Liffen (from March 2005)

** indicates co-opted members*

What happens if a case is referred to the HC?

It is possible for the HC to consider cases on paper alone and without the need for a formal hearing. The first step, therefore, is for the Committee and osteopath to decide whether they feel it necessary or appropriate to consider the case at a hearing or whether both parties are content that it be considered on paper. If a hearing is necessary, this will be held in private because of the nature of medical evidence that will be involved.

If the HC concludes that the osteopath's ability to practise is seriously impaired because of his physical or mental health, it will take one of the following steps:

- suspend the osteopath's registration for a set period
- impose conditions on the osteopath's practise.

What has the HC considered?

The HC sat on two occasions during the period of this report to consider one new case and to review one case where it had previously imposed conditions on an osteopath's practise.

In the new case the Committee found that the osteopath's ability to practise was seriously impaired by reason of his medical condition, as defined under Rule 21 of the General Osteopathic Council Health Committee (Procedure) Rules 2000 (Rules). The

Committee had received information which suggested that the osteopath was suffering from alcohol dependency.

Having considered the evidence the HC was satisfied that it was sufficient for the protection of the public to suspend the osteopath's registration for a period of 12 months. Sadly, the osteopath passed away shortly thereafter.

In the second case the Committee reviewed a Conditions of Practice Order that had been imposed for a period of three years in December 2003. The osteopath has been diagnosed with Bi-Polar Affective Disorder which was currently in remission.

The Committee felt it was necessary to continue with the Conditions of Practice Order based on the evidence that without the appropriate treatment, there existed a risk of a recurrence of serious impairment. The Order will be reviewed again by the Committee in 2006.

Appeals

The Osteopaths Act 1993, section 31, as amended by the National Health Service Reform and Health Care Professions Act 2002 (section 33), provides for osteopaths to appeal against decisions reached by the PCC and HC. One such appeal was made during the period under Report. This appeal, which was upheld, was referred to in the 2003 Fitness to Practice Report and concerned the case of Mr Donald Moody.

The National Health Service Reform and Health Care Professions Act 2002 (section 29) provides for the Council for Healthcare Regulatory Excellence (CHRE) to pursue an appeal against any decision reached by the PCC, if it considers that a decision should not have been made or that it was unduly lenient.

Judicial Reviews

No Judicial Reviews were pursued during the period covered by this report.

Further Information

Further details of the General Osteopathic Council's procedures for investigating and prosecuting complaints are currently provided in the leaflet 'Making a Complaint' which you can access on the GOsC website at www.osteopathy.org.uk You can also write with any queries to:

General Osteopathic Council
Osteopathy House
176 Tower Bridge Road
London SE1 3LU