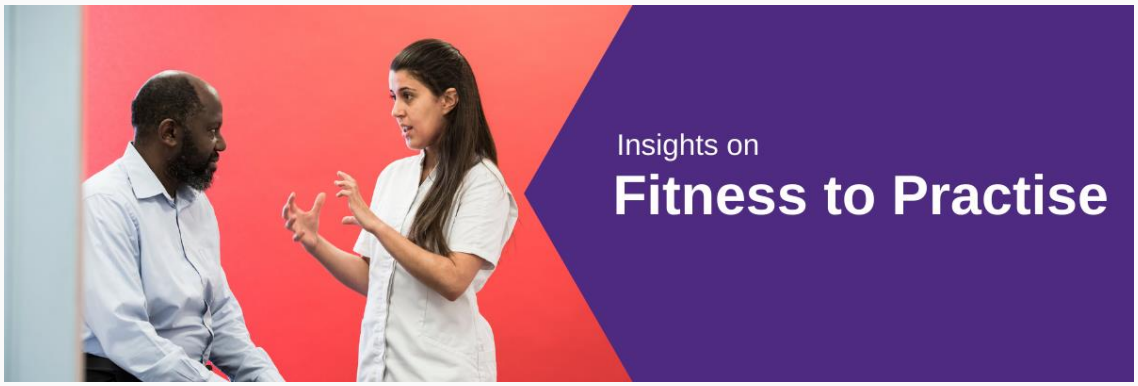
General Osteopathic Council



Issue one: 2 September 2021

Welcome to the first in a new series of 'Insights on Fitness to Practise' bulletins designed to help demystify our fitness to practise processes, and respond to feedback we have received.

In this first issue, we focus on how a fitness to practise case is handled from receipt of a concern from a complainant up to the conclusion of a case at a hearing.

We also look at a recent case considered by the Professional Conduct Committee relating to an allegation of breaching professional boundaries.

– Sheleen McCormack, Director of Fitness to Practise (pictured)

At the end of March 2021, we hosted the second in a series of webinars where we shared insights on fitness to practise around the investigation of concerns we receive and the Investigating Committee.

This webinar was well attended with over 130 attendees and presented an opportunity for attendees to ask questions of our panel (see the end of this bulletin for details of our next webinar).

The overall feedback from the webinar was positive, and included further questions about topics that we weren't able to cover on the night. We have now carefully reviewed all the comments and feedback we received. In particular, we received a number of requests for specific examples and case-based discussions such as this one:

‘Could you go through an actual case with us, what the process was and the outcome, just to make it all the more insightful?’

Maintaining patient safety and public confidence in the osteopathic profession sits at the heart of fitness to practise and, by law, we must investigate and consider concerns about osteopaths’ conduct, competence or health.

We carry out an initial assessment, called a triage, of every concern we receive. We assign a caseworker from our Regulation team to the concern, they are called Regulation Officers.

We aim to conclude cases that proceed to a hearing within a year of receiving the concern. The case study below illustrates the different stages that a case progresses through, which can be quite lengthy depending on the complexity of the case. We try to progress cases as swiftly as possible without impacting quality or the high service of care we provide to all the parties involved.

In the fictional case detailed below, we set out the main stages in the progress of a straightforward clinical case to a final hearing before a Professional Conduct Committee (PCC).

Case Study

Patient A emails a concern to the General Osteopathic Council. Patient A explains within their email that they went to see an osteopath, Mr B, because of ongoing back pain.

They state that at their previous appointment with Mr B, he asked them to remove their top and lie face down on the treatment table. Mr B then proceeded to put a lot of pressure on Patient A's back using his elbow. Patient A asked him to stop and said they were in pain but he refused, saying "don't worry, I know what I'm doing".

When they complained again, he said "don't be such a baby. No pain, no gain" and he continued to press down with considerable force. Since that appointment, a few weeks ago, Patient A has been in a lot of pain and unable to walk properly.

The Regulation Officer calls Patient A to explain the investigation process. She explains that we may need to take a witness statement from Patient A and that details of their concern will need to be disclosed to Mr B. She asks Patient A to complete our complaint and consent forms. Patient A agrees.

The Regulation Officer completes our internal case management and risk assessment forms. She notes that Patient A says they wrote directly to the practice to complain but were not satisfied with the response received.

The Regulation Officer then calls to ask Patient A for a copy of that correspondence. The concern is prepared and the papers are sent to a Screener (an osteopathic member of the Investigating Committee) to review the concern and consider whether the General Osteopathic Council can investigate.

The Screener's decision is to refer the case to the Investigating Committee (IC) to decide whether there is a case to answer (link to video).

The Regulation Officer informs Mr B that a concern has been raised about him. She also updates Patient A.

The Regulation officer investigates and obtains all the necessary information. This includes obtaining Patient A's osteopathic notes from Mr B. She sends these notes to a clinical advisor.

The Clinical Advisor responds to say that it is not clear from the notes whether Mr B explained what he was going to do to Patient A before treatment. He suggests that Patient A should be asked what explanation they were given.

The Regulation Officer then takes a witness statement from Patient A and liaises with them to amend the statement until Patient A is happy with it and ready to sign it.

She then instructs an expert witness to provide a report about whether Mr B met the standard expected of a reasonably competent osteopath in his treatment of Patient A.

The Regulation Officer reviews the file, prepares a ‘bundle’ of the evidence which comprises the osteopathic notes, Patient A’s witness statement and the expert report.

She redacts the bundle, which means she removes personal information and finalises the particulars of the allegation.

The allegation and bundle are sent to Mr B, and he is given 28 days to provide a response.

Mr B’s response is received. In short, he denies the allegation.

Mr B’s response is sent to Patient A for comment and they are invited to respond within 14 days.

The case is then considered by the IC at its next meeting. The IC decides that there is a case to answer and refers it to a hearing of the PCC.

Under our standard case directions, the case is served on Mr B and he is asked to complete a listing questionnaire providing his dates of availability for a hearing, details of any witnesses he intends to call, and any preliminary arguments he intends to make.

Patient A and the expert witness are asked for their availability to attend to give evidence at the hearing if required.

Mr B provides his availability and confirms he does not intend to call any witnesses.

The hearing is listed for four days and notice is served on the parties that the hearing will take place remotely in accordance with our Interim Remote Hearings Protocol.

Mr B’s response is received from his legal representative. He disputes that he carried on with treatment against Patient A’s wishes and denies that he said “don’t be such a baby, no pain, no gain”.

The Regulation Officer contacts Patient A to explain that, as their evidence is disputed, they will need to attend the hearing as a witness.

The hearing bundle is agreed between Mr B’s representative and the GOsC after some correspondence between them.

The ‘skeleton arguments’, which are the written documents that are provided in advance of a hearing, summarise the issues to be addressed in the case of both the GOsC and Mr B.

These are exchanged and the papers are provided to the PCC panel members and their legal assessor in advance of the hearing. This is done via Caselines, the online document and electronic evidence preparation and presentation system.

The hearing takes place and the PCC decide to issue Mr B with a conditions of practice order for two years after finding the allegation is well founded. The PCC provide Mr B and the GOsC presenter with the written reasons for the decision reached.

In reaching a decision the PCC take account of the Osteopathic Practice Standards and the Hearings and Sanctions Guidance.

Mr B and his representatives have 28 days to appeal the decision to the High Court. The PCC decision is also provided to the Professional Standards Authority for Health and Social Care, which reviews every final decision made by the PCC and can appeal the decision if it decides that the sanction is not sufficient for public protection.

A panel hearing taking place

Maintaining clear professional boundaries

Over the past three years, the GOsC has dealt with 58 concerns relating to osteopaths involving a breach of professional or sexual boundaries with patients.

We set out below a recent case where the PCC decided to suspend an osteopath from the Register and the osteopath made an appeal to the High Court. We also draw some learning and insights from the judgment.

On 12 November 2018, Patient C became a patient of Mr D, an osteopath. Mr D soon developed an overly informal and flirtatious relationship with Patient C. The last time Mr D saw Patient C to provide osteopathic care was on 29 January 2019.

At the end of February 2019, Mr D entered into a personal relationship with Patient C. This later developed into a sexual relationship.

After Mr D had started seeing Patient C, she had told him she still needed osteopathic treatment. He said he had made it clear to her that he could no longer treat her.

On 14 March 2019, Mr D sent a message to Ms E, another osteopath at the practice where he worked, asking her to take over the care of Patient C. As a result, on 15 March 2019, Patient C had osteopathic treatment with Ms E.

The PCC found that Mr D had been pursuing a relationship with Patient C from a phone call he had made to her on 24 November 2018 onwards.

The PCC concluded that the patient/practitioner relationship was persisting at the point where Mr D had entered into a non-professional personal relationship with Patient C.

The PCC determined that the patient/practitioner relationship continued until 14 March 2019, which was the date of the hand over to the other osteopath, Ms E. However, the PCC was not satisfied that the relationship with Patient C had become sexual prior to that handover with the other osteopath in March.

When deciding whether Mr D’s conduct amounted to Unacceptable Professional Conduct, the PCC had regard to the 2012 edition of the Osteopathic Practice Standards, (which was in force at the time).

The PCC considered that the facts proved collectively demonstrated a serious departure from the standards required of an osteopath as Mr D had acted in a sexually motivated way towards Patient C whilst he was still in a practitioner/patient relationship with her.

The PCC considered that this was a serious breach of appropriate professional and sexual boundaries. The PCC determined to suspend Mr D for a period of six months with a review before the end of that period.

Mr D appealed the PCC decision to suspend him to the High Court. The High Court dismissed the appeal, concluding that the principal purpose of the imposition of the sanction in cases involving sexual misconduct is 'the maintenance of public confidence in the profession'.

The Judge stated that the public interest 'ultimately takes precedence over the consequences for the individual which may be unfortunate and somewhat punitive'.

The Judge determined that the PCC, rightly in his view, recognised that Mr D's sexual misconduct fell at the lower end of the scale and for that reason concluded that removal from the Register of osteopaths would not be proportionate.

This was also reflected in the fact that the PCC chose to impose a period of suspension at the lower end of the range of possible periods of suspension (six months).

Reflections and learning points

- This case illustrates the distinction between treatment and the professional relationship.
- The end of a treatment or a course of treatment with a patient is not necessarily the end of the professional relationship between you and the patient.
- At the heart of the patient/osteopath relationship (as distinct from a personal or other non-professional relationship) is a need for absolute trust and confidence. Boundaries are required to maintain that trust and prevent abuse of power.

What does the OPS say?

Standard D2 of the Osteopathic Practice Standards requires that all osteopaths must establish and maintain clear professional boundaries with patients, and must not abuse their professional standing and the position of trust they have as an osteopath:

Here is an extract from the additional guidance under D2:

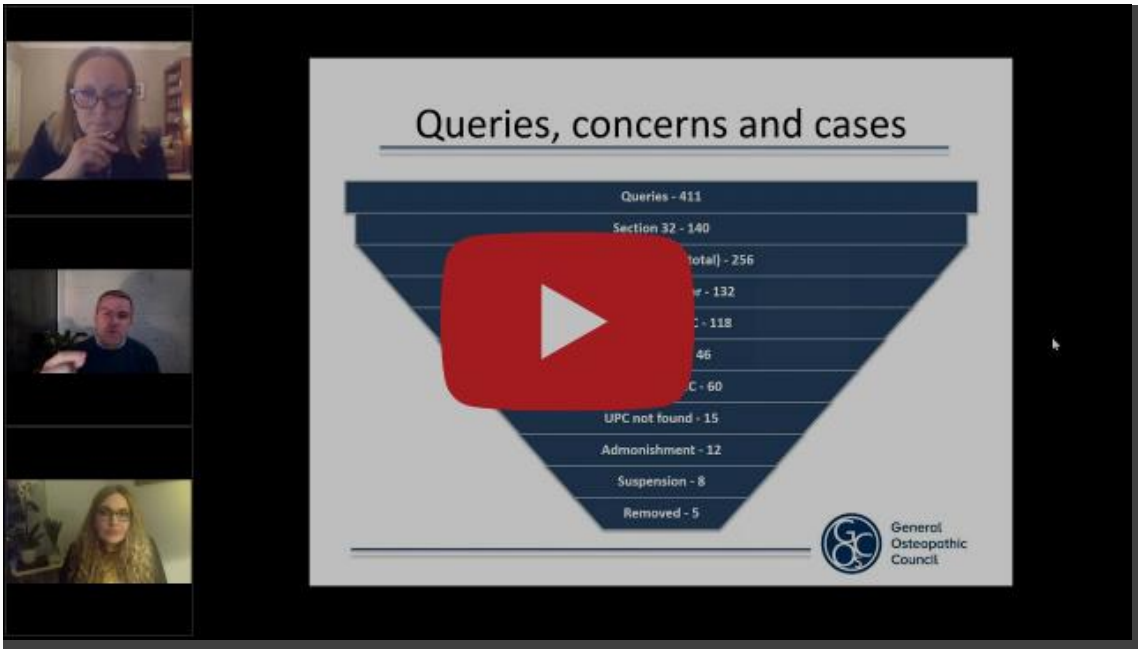
- It is your responsibility not to act on feelings of sexual attraction to or from patients.
- If you are sexually attracted to a patient or if a patient displays sexualised behaviour towards you, you should seek advice from, for example, a colleague or professional body on the most appropriate course of action. If you believe that you cannot remain objective and professional or that it is not possible to re-establish a professional relationship, you should refer your patient to another healthcare practitioner. If referring a patient because of your own sexual feelings towards them, you should endeavour to do so in a way that does not make the patient feel that they have done anything wrong.

- You must not take advantage of your professional standing to initiate a personal relationship with a patient. This applies even when the patient is no longer in your care, as any personal relationship may be influenced by the previous professional relationship and an imbalance of power between the parties.
- You must not end a professional relationship with a patient solely to pursue a personal relationship with them.

Sign up for our Fitness to Practise webinar to find out more

We were delighted to welcome over 130 attendees to our last Fitness to Practise webinar. Following positive feedback from the event, we're running another session on Thursday 23 September, which this time will have a focus on hearings before the Professional Conduct Committee.

Sign up to attend



GOsC's Regulation Manager, David Bryan, gave an overview of the queries, concerns and cases that get put forward at our last Fitness to Practise webinar.

Any suggestions?

If you have feedback on this series or any suggestions for future topics for us to focus on, please contact us at: regulation@osteopathy.org.uk