



General
Osteopathic
Council

May 2022

Insights

ON FITNESS TO PRACTISE

This is the second in our series of 'Insights on Fitness to Practise' bulletins designed to help demystify our processes and respond to feedback we have received.

In this issue we highlight the Independent Support Service available to all osteopaths going through a fitness to practise investigation. We also continue to reply to the questions you sent us during our most recent Fitness to Practise webinar.

Sheleen McCormack
Director of Fitness to Practise



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Independent Support Service

Luke Seidel-Haas

Senior Team Leader for the Independent Support Service (Delivered by Victim Support)



Going through the fitness to practise process can be a daunting and uncertain time. You may wonder what is expected of you, what the potential outcome might be, and how you will cope with that outcome. At the Independent Support Service we have been working with healthcare regulators including the GOsC since 2019 to help support patients, witnesses and osteopaths going through the fitness to practise process. As a national charity we have a lot of experience supporting those who are going through traumatic events, which gives us the knowledge and expertise to support clients in an understanding and empathetic way. We provide a confidential safe space for people to discuss their feelings about the fitness to practise process and talk through what might be expected of them at each stage.

My colleague Georgia, a team leader for the Independent Support Service said "I've heard first-hand the struggles that people face when involved in the process with the GOsC. It can be a very isolating experience, particularly when you're not sure who you can talk to about what you're going through.

Having that support throughout the process with someone to speak to on a confidential and independent basis can be a real benefit, and can help give you the confidence to carry on with the process. Some people find it helpful to have a regular check-in call with someone from our service as the case progresses, while others find that in the lead up to a tribunal having someone to give them reassurance can be really valuable to them".

The support that our Independent Support Service can provide is available throughout the process and for three months afterwards. If you are involved in a fitness to practise case and feel you would benefit from the service you can speak to your contact at the GOsC and ask them to refer you into the service, or alternatively you can self-refer into the service by calling 0300 303 1964. The helpline is open 24/7, 365 days a year, with caseworkers available to provide ongoing support Monday-Friday 8am-6pm (excluding bank holidays).



VS VICTIM SUPPORT

 **General Osteopathic Council**

Independent Support Service

0300 303 1964

For those affected by a fitness to practise case. Would you like to discuss how the case has affected you?

Call our **24/7, free, confidential and independent** service. Our trained and experienced staff are available 24/7 to speak with you and arrange ongoing support as required.

  

Registered charity number 296238. Registered address: Victim Support, 1 Bridge Street, Derby DE1 342. January 2022. P2006 © Victim Support

Your questions answered

At the end of March 2021, the GOsC continued its series of webinars focused on insights on fitness to practise, and discussed the hearings that take place before the Professional Conduct Committee. The webinar was well attended with over 130 attendees. We weren't able to answer all the questions on the evening, but we agreed to follow these up.

We have carefully reviewed all the comments and feedback we received and provide a response to some of the queries we most often hear around the fitness to practise process below.

‘Is the osteopath still allowed to practise until a final decision is achieved?’

The General Osteopathic Council's overarching objective is the protection of the public.

If a suspension order is granted, then an osteopath would not be able to practise as an osteopath for the duration of the order. The length of the interim suspension order differs depending upon whether it is imposed by the Investigating Committee or the Professional Conduct Committee. The Investigating Committee can impose an interim suspension order for up to two months. The Professional Conduct Committee can impose an interim suspension order until the hearing is concluded against the osteopath.

In very serious cases, where the concern against an osteopath presents an ongoing and real risk to patient or public safety, we can make an application to either the Investigating Committee or the Professional Conduct Committee to impose an interim suspension order against an osteopath during our investigation of the allegation.

The Investigating Committee may also agree 'undertakings' with an osteopath. Undertakings are binding written promises that an osteopath agrees to which will voluntarily restrict practice until the final decision about the allegations against them is made.

To illustrate the approach taken in interim suspension order cases, a fictitious case study is provided below:

CASE STUDY

The concerns are that Mr B, the osteopath, retrospectively created patient records and/or made entries in the patient records in relation to several patients he performed acupuncture on. It is also alleged he did this dishonestly to cover up the fact he had not sought valid consent from each of the patients before performing the technique. One patient, Patient A, has written to the practice where Mr B worked as an osteopath at the time, stating that they came to see an osteopath for back pain. They state that Mr B did not inform them he was planning to insert an acupuncture needle into Patient A's upper back area without notice. When Patient A screamed in shock and pain, Mr B is alleged to have become angry and dismissive. Patient A said there was blood on their clothing when they returned home that night. They took a photograph of this. Patient A then complained to the practice.

GOsC is made aware of these concerns by the practice manager. The practice manager provides a report of an audit he had conducted showing that several electronic patient records of patients had all been amended, apparently by Mr B, in the same afternoon. He also provides the concerns of Patient A (who has provided their consent for this disclosure). After risk assessing the concerns, it is decided that the threshold for an application for an interim suspension order is met. A Chair of the Investigating Committee decides whether an application for an interim order should be considered at a hearing. The Chair in this case decides that the concern should be referred for a hearing because the allegation is very serious and that it may be necessary for Mr B's registration to be suspended while those allegations are fully investigated in order to protect the public.

The GOsC arranges a hearing to take place remotely in accordance with our [interim remote hearings protocol](#). The Investigating Committee rules require that Mr B is entitled to at least five days' notice of the hearing. He is given seven days' notice. He is able to arrange legal representation for the hearing.

At the hearing (which takes place in private) the Committee hears submissions (oral representations) from the Presenting Officer on behalf of the GOsC and submissions from Mr B's representative who states that the allegations are entirely made up by the practice manager because they have fallen out and he has since left the practice and is working successfully without incident elsewhere.

The Committee hears legal advice from the independent legal assessor who refers them to the GOsC's [Guidance for the Fitness to Practise Committees on Imposing Interim Suspension Orders](#).

The Committee goes 'in camera' (which means they go into a private part of the proceedings) to reach its decision. It also prepares written reasons for its decision which is called a 'determination'.

The Committee reminded itself that it did not have a fact-finding role, but was undertaking a risk assessment of the concerns and exercising its judgment as to whether it was necessary on the sole statutory ground of public protection to impose an interim suspension order on Mr B. The Committee had serious concerns that the allegations suggested serious departures from the standards of practice laid down by the Osteopathic Practice Standards. The Committee noted that Mr B appeared to alter patient records after he had been told about Patient A's complaint to the practice. The Committee was also concerned that this arose from an injury that Mr B was alleged to have caused to Patient A during an osteopathic appointment where he did not appear to acknowledge the distress caused to the patient. The Committee considered in all the circumstances that there was a real and continuing risk to patients if an interim suspension order was not granted while further investigations were undertaken.

‘Do osteopaths need to let patients know if there are any undergoing investigations held against them to comply with the OPS in regard to honesty?’

The answer is, this depends.

Where an osteopath is notified about a fitness to practise investigation, they should contact their professional indemnity insurer or get their own independent legal advice about the concern and our request for their response as soon as possible. We have produced guidance, designed to inform osteopaths about our fitness to practise processes:

[Read our complaints procedure.](#)

[Read our guidance for osteopaths](#) who need to attend a hearing.

Where an osteopath has offered undertakings to either the Investigating Committee or Professional Conduct Committee, these undertakings will be published on the GOsC website for the duration of the undertakings (usually until the case has concluded). In these circumstances the osteopath would need to make a patient aware of the undertaking if it impacted upon patient care. For example, if they have agreed to have a chaperone present during a clinical examination. In all circumstances, the osteopath should use their professional judgement.

A3.1 of the Osteopathic Practice Standards (OPS) references ensuring patients understand their right to have a chaperone. A6.5 states that patients must always be asked if they want a chaperone where the examination or treatment is of an intimate area, the patient is under 16, an adult who lacks capacity, or if a patient is treated at their home. This would be different to the osteopath undertaking to have a chaperone present in every case, as the patient's choice would be to accept a chaperone or go elsewhere which impacts on their options.

Professional Indemnity Insurance: Revisited

In the past 12 months we have seen an increase in concerns relating to osteopaths who have not renewed their Professional Indemnity Insurance.

Not only are osteopaths legally required to have Professional Indemnity Insurance but this also underpins public confidence in the profession and, if an osteopath were to practise without it, they could be risking their patient's safety.

Within our Strategic Plan 2019-2024 we explain how we plan to foster and promote high standards of practice and conduct while trying to prevent poor practice and harm to patients.

Our guidance on insurance requirements for osteopaths supports this approach by providing clear information for osteopaths, and those wishing to register with the GOsC, about the important requirement to have adequate Professional Indemnity Insurance and public liability insurance in place. [Read the guidance.](#)



Guidance on Insurance Requirements for Osteopaths

Introduction

This guidance provides information about the statutory requirements that all osteopaths and those intending to register as osteopaths with the General Osteopathic Council must have in place.

The legal requirement for osteopaths to have an appropriate level of indemnity cover is set out in section 37 of the Osteopaths Act 1993 (the Act). This requirement is linked to an osteopath's registration and is therefore required even where an osteopath does not intend to see patients or for periods where they are on holiday or have been unwell.

The fundamental purpose of insurance is to protect and assure patients and the public in the event of a claim. It ensures that an osteopath is indemnified against liabilities incurred while registered.

Osteopaths are personally accountable for their practice and it is their responsibility to ensure that their insurance provider is aware of and understands the requirements of the GOsC professional indemnity insurance rules to ensure the insurance cover they have taken out is valid.

A failure to make appropriate arrangements may result in refusal of entry onto the Register and refusal of entry for those applying for restoration, as set out in section 37(9) of the Act.

Key points

- Practising without indemnity insurance calls into question an osteopath's commitment to patient safety.
- It is important that patients can recover any compensation they might be entitled to in the event of a successful claim.
- An osteopath's failure to have insurance is not an 'administrative' failure, it is serious and can potentially have wider consequences for the wider public interest including maintaining proper professional standards of conduct and maintaining public confidence in the profession.
- A failure to have appropriate indemnity insurance should not be regarded as less serious by a Professional Conduct Committee solely because an osteopath has not seen patients.

Join our Fitness to Practise webinar

We'll be hosting our next Fitness to Practise webinar on Tuesday 17 May at 6:30pm. This time we will be joined by the Independent Support Service to provide osteopaths with the opportunity to hear directly about this service.

There will also be an opportunity to ask GOsC or the Independent Support Service relevant questions about the fitness to practise process.

[SIGN UP TO ATTEND](#)



Video: [In this clip from our Fitness to Practise webinar at the end of September 2021, Sheleen McCormack responds to a question from an attendee about the number of cases that result in sanctions.](#)

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



Visit the GOsC website at osteopathy.org.uk

The GOsC is a charity registered in England and Wales (1172749).

GOsC's ebulletins contain important information for registrants on maintaining high standards of practice. Make sure you don't miss out - let us know if you are changing your contact or practice details by emailing: registration@osteopathy.org.uk

The below is a standard feature, but as a registrant of the GOsC, we have a duty to supply you with the information you need, therefore we would ask that you don't unsubscribe unless, for example, you have left the Register.

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