



**General
Osteopathic
Council**

Response from the General Osteopathic Council to a joint consultation on the Report for Ministers from the DH Steering Group on the Statutory Regulation of Practitioners of Acupuncture, Herbal Medicine, Traditional Chinese Medicine & other Traditional Medicine Systems Practised in the UK

About us

The General Osteopathic Council (GOsC) has a statutory duty to regulate the practice of osteopathy in the UK. Osteopaths must be registered with the GOsC in order to practise.

We work with the public and the profession to protect and promote patient safety through effective regulation of osteopaths by:

- Registering osteopaths
- Setting standards of conduct and osteopathic practice for osteopaths
- Assuring the quality of osteopathic education
- Requiring continuing professional development by osteopaths
- Dealing with patients' concerns or complaints about osteopaths

The 2009 Statutory Register of Osteopaths provides a geographical index of all practising osteopaths, and is available to the general public and to healthcare providers online at: www.osteopathy.org.uk

Introduction

We welcome the opportunity to respond to this Government consultation on the future regulation of acupuncture, herbal medicine and traditional Chinese medicine. We have responded to all questions. These views are based on our knowledge and experience of the statutory regulation of osteopaths.

Our response to the Consultation questions:

1. What evidence is there of harm to the public currently as a result of the activities of acupuncturists, herbalists and traditional Chinese medical practitioners? What is its likelihood and severity?

The nature of the treatment involved in acupuncture and the potential risks associated with some herbal medicines, justifies in our view a system of regulation that establishes the standards required for practitioners and provides a means of redress for patients who believe they have suffered harm as a result of the treatment. In the absence of such a system, patients have no effective means of voicing their concerns or raising a formal complaint.

2. Would this harm be lessened by statutory regulation? If so, how?

Statutory regulation would impose a legal requirement on acupuncturists, herbalists and traditional Chinese medical practitioners formally to register, and thereby prove their safety and competency to provide care for patients.

Such a system would provide clarity and reassurance to patients, and other healthcare professionals, that there existed a benchmark standard and a means of redress. The education standards provided by statutory regulation would also provide a greater certainty that the practitioner is trained to identify when a patient needs to be referred to a GP.

Statutory regulation would not stop individuals offering these treatment methods using another (unprotected) professional title, for example 'acutherapist'. However, it is hoped that effective public awareness campaigns would go some way to educate potential users to be aware of the dangers of seeking care from non-registered practitioners.

3. What do you envisage would be the benefits to the public, to practitioners, and to businesses, associated with introducing statutory regulation?

Statutory regulation would provide:

- Patients with clarity and confidence about the safety and competency of practitioners and a formal means of redress.
- Better quality education and training which designed, delivered and assessed to prescribed standards and is externally scrutinised.
- An ability to stop unsafe practitioners from practising with subsequent removal of serious (albeit less likely) risks to potential patients.
- An ability to share relevant fitness to practise information between the different professional regulators.

- Individual practitioners of acupuncture, herbal medicine and traditional Chinese medicine with an officially recognised and protected professional status. This might help to facilitate patient referrals, as well as freedom of movement of practitioners within the European Union and internationally.
- Other healthcare professionals, such as GPs and NHS commissioners, with reassurance about referring patients for treatment. For example, since the establishment of the Statutory Register of Osteopaths in 2000, NHS commissioners, and industry have greater confidence in commissioning osteopathic services to tackle the problem of musculoskeletal disorders.
- Private health insurers with the confidence to offer customers a greater choice of care to treat their ailments safely.

4. What do you envisage would be the regulatory burden and financial costs, to the public, to practitioners and to businesses, associated with introducing statutory regulation? Are these costs justified by the benefits and are they proportionate to the risks? If so, in what way?

All regulation involves additional costs. However, the costs must be viewed in the context of the public protection afforded.

As with all healthcare professionals, the burden of statutory regulation for acupuncturists, herbalist and traditional Chinese medicine practitioners should be no greater than it needs to be to ensure public protection. The main regulatory burden would fall onto the individual practitioners who would need to meet new legislative requirements, for example the possible introduction of mandatory continuing professional development and revalidation.

The financial burden of statutory regulation would fall on the practitioner through payment of registration fees. Government and parliamentary resources would also be required in the drafting and tabling of primary legislation and supporting regulations.

5. If herbal and TCM practitioners are subject to statutory regulation, should the right to prepare and commission unlicensed herbal medicines be restricted to statutorily regulated practitioners?

The preparation and commissioning of herbal medicines should be restricted to individuals deemed fit to have the necessary skills and qualifications to treat patients safely and competently. If the medicines are unlicensed, then this service should only be delivered by statutorily regulated practitioners.

6. If herbal and TCM practitioners are not statutorily regulated, how (if at all) should unlicensed herbal medicines prepared or commissioned by these practitioners be regulated?

The alternative of regulating the product, rather than the practitioner could carry significant risks without offering much benefit. The costs involved in licensing herbal medicines could make products prohibitively expensive.

This could also drive the manufacture and supply of certain medicines 'underground', posing a possibly even greater threat to patients exposed to unsafe products, not subject to formal manufacturing and storage requirements.

We would favour the statutory regulation of herbal medicine practitioners, with targeted investment to carry out relevant research into the effectiveness of herbal medicines. Within the osteopathic profession, the National Council for Osteopathic Research was established in 2003 to foster research and gradually to increase the evidence base for osteopathic treatment. NCOR is collectively funded by the General Osteopathic Council, the British Osteopathic Association and osteopathic educational institutions.

7. What would be the effect on the public, practitioners and businesses if, in order to comply with the requirements of European medicines legislation, practitioners were unable to supply manufactured unlicensed herbal medicine commissioned from a third party?

Patients would no longer have access to treatment from which they currently experience some benefit. Practitioners and companies currently supplying and processing herbal medicine could go out of business. In order to meet a likely determined demand from consumers, this might drive the manufacture and supply of medicines 'underground', as argued above. Online purchasing from overseas could also flourish, with little or no check on the quality of sourcing resulting in the unintended consequence of potential risk to patients rather than the reduction of risk.

8. How might the risk of harm to the public be reduced other than by statutory professional self-regulation? For example, by voluntary self-regulation underpinned by consumer protection legislation and by greater public awareness, by accreditation of voluntary registration bodies, or by a statutory or voluntary licensing regime?

It could be argued that any system of regulation, however light in touch, would provide a greater level of protection over that available currently. However, as stated above, we feel that, given the nature of the treatment concerned and the potential risks, the public would be best protected where acupuncturists, herbalists and traditional Chinese medicine practitioners were statutorily regulated.

- 9. What would you estimate would be the regulatory burden and financial costs, to the public, to practitioners, and to businesses, for the alternatives to statutory regulation suggested at Question 8?**

Some alternatives to statutory regulation may be less costly but the question must be asked: at what cost to public protection? A system which imposes no obligation of membership and which may not offer redress in cases of harm, may ultimately prove worthless however cheap to run.

- 10. What would you envisage would be the benefits to the public, to practitioners, and to businesses, for the alternatives to statutory regulation outlined at Question 8?**

We do not believe the benefits of non-statutorily regulation outweigh those provided by statutory regulation.

- 11. If you feel that not all three practitioner groups justify statutory regulation, which group(s) does/do not and please give your reasons why/why not?**

We feel that all 3 groups should be subject to statutory regulation.

- 12. Would it be helpful to the public for these practitioners to be regulated in a way which differentiates them from the regulatory regime for mainstream professions publicly perceived as having an evidence base of clinical effectiveness? If so, why? If not, why not?**

We do not support this proposal. The evidence base for acupuncture for treatment of low back pain is set out in the recently published NICE guidelines on low back pain¹, and could be said to be greater than for some professions already subject to statutory regulation and which are well established within the NHS.

- 13. Given the Government's commitment to reducing the overall burden of unnecessary statutory regulation, can you suggest which areas of healthcare practice present sufficiently low risk so that they could be regulated in a different, less burdensome way or de-regulated, if a decision is made to statutorily regulate acupuncturists, herbalists and traditional Chinese medicine practitioners ?**

The GOsC does not have sufficient information on the risk profile of professions currently the subject of statutory regulation to identify any candidates for deregulation. Similarly it does not have sufficient information on the risk profile of unregulated disciplines to offer a view on whether some might be suited to non-statutory regulation.

¹ *Low back pain: early management of persistent non-specific low back pain.* National Collaborating Centre for Primary Care, May 2009.

The Government is rightly concerned to avoid statutory regulation where it is unnecessary, but healthcare should never be the first port of call for a government in 'de-regulatory mode'.

14. If there were to be statutory regulation, should the Health Professions Council (HPC) regulate all three professions? If not, which one(s) should the HPC not regulate?

The HPC may be an appropriate regulator based on its record of efficient operation. However its already very considerable size raises questions about the desirability of bringing further disciplines under its remit.

15. If there were to be statutory regulation, should the Health Professions Council or the General Pharmaceutical Council/ Pharmaceutical Society of Northern Ireland regulate herbal medicine and traditional Chinese medicine practitioners?

Please see response to Q14. A realistic alternative to the HPC for herbal medicine could be the General Pharmaceutical Council / Pharmaceutical Society of Northern Ireland.

16. If neither, who should and why?

If the Government chooses to go down the non-statutory regulation route at this stage, the recently established Complementary & Natural Healthcare Council (CNHC) could be an initial first step, before moving to statutory regulation in the future. The CNHC would seek to provide a single register, but would not provide patients with the safeguards provided by statutory regulation. This deficiency would mean that there could be a long term delay in moving to statutory regulation.

17. a) Should acupuncture be subject to a different form of regulation from that for herbalism and traditional Chinese medicine? If so, what?

Regulation in terms of risk to the patient must be proportionate and relevant to the practice of the profession being regulated. If it is the practitioner being regulated, acupuncturists should not be subject to a different form of regulation which sets a lower or higher standard than that required for herbalists and traditional Chinese medicine practitioners.

b) Can acupuncture be adequately regulated through local means, for example through Health and Safety legislation, Trading Standards legislation and Local Authority licensing?

Local licensing schemes for practitioners of acupuncture already exist, but it is not clear to what extent this procedure protects patients.

Whilst regulation through local means might appear a practical way forward, this could lead to inconsistency in application within and across the four UK countries. For the GOsC, there has been an inconsistent approach by trading standards within England and across Wales, Scotland and Northern Ireland to taking action (under Section 32 of the *Osteopaths Act 1993*) against unregistered practitioners falsely claiming to be osteopaths.

18. a) Should the titles "acupuncturist", "herbalist" and "[traditional] Chinese medicine practitioner" be protected?

If the Government is to move forward with statutory regulation, the titles of acupuncturist, herbalist and traditional Chinese medicine practitioner should be protected.

b) If your answer is "No", which ones do you consider should not be legally protected?

19. Should a new model of regulation be tested where it is the functions of acupuncture, herbal medicine and TCM that are protected, rather than the titles of acupuncturist, herbalist or Chinese medicine practitioner?

Protection of functions might assist those practitioners who are regulated by other health professions regulatory bodies, e.g. osteopaths who also practice herbalism, acupuncture and / or Traditional Chinese Medicine. The disadvantage of protecting function only would be that a whole raft of professional features is missing, including the need to ensure that someone is up to date and fit to practise and practising in accordance with an ethical code.

We see greater advantages to protecting the titles in each case.

20. If statutory professional self-regulation is progressed, with a model of protection of title, do you agree with the proposals for "grandparenting" set out in the Pittilo report?

The problem with grandparenting is that individuals join a single register from voluntary registers with differing training backgrounds / standards. With the introduction of statutory regulation of osteopaths, the GOsC chose to revalidate the profession to ensure that all practitioners on the register were of a certain standard. This did have cost implications for both regulator and applicant.

21. In the event of a decision that statutory or voluntary regulation is needed, do you agree that all practitioners should be able to achieve an English language IELTS score of 6.5 or above in order to register in the UK?

We strongly agree that an appropriate level for English Language should be set.

We would suggest that the level used is the same as that used by existing health professions. Effective communication skills are vital to delivering safe and competent patient care.

Recent media coverage has highlighted the dangers of healthcare professionals working in the UK with insufficient English skills. Practitioners do not work in isolation but increasingly within multidisciplinary clinics. An ability to communicate effectively with other healthcare professionals and the emergency services is crucial.

22. Could practitioners demonstrate compliance with regulatory requirements and communicate effectively with regulators, the public and other healthcare professionals if they do not achieve the standard of English language competence normally required for UK registration? What additional costs would occur for both practitioners and regulatory authorities in this case?

We do not believe that practitioners can demonstrate compliance with regulatory requirements and communicate effectively without sufficient English language competence, even if they are practising on patients who do not speak English. This is because in any healthcare situation, it is vital that the practitioner is able to communicate with others effectively in the event of an emergency. If the practitioner wishes to fulfil UK registration requirements, it is up to those individuals to have the relevant skills and qualifications.

Government is already aware of concerns by regulators of the inability to test the language skills of EU nationals at the point of registration. Whilst the testing of language skills can be carried out by employers, this does not provide adequate protection for patients of self-employed practitioners.

The idea of a translator is not appropriate because of the:

- potential extra costs on the practitioner, employer or patient in term of higher fees,
- need to rely on the availability of such individuals who would require a very specialised knowledge / understanding of terminology,
- difficulty in dealing with modesty / confidentiality matters, with three individuals present during the treatment session.

23. What would the impact be on the public, practitioners and businesses (financial and regulatory burden) if practitioners unable to achieve an English language IELTS score of 6.5 or above are unable to register in the UK?

These individuals would not be granted registration and, therefore, would be unable to practise that particular profession in the UK.

24. Are there any other matters you wish to draw to our attention?

The GOsC has started work to explore the development of a scope of osteopathic practice (we are contributing to a similar project at a European level) as some osteopaths also practise acupuncture, dry needling, herbalism and traditional Chinese medicine.

As the Government does not favour dual registration for practitioners of more than one discipline, the individual may have the opportunity to decide which body to be his/her principal regulator, following what has been referred to as a 'distributed model' of regulation. This has implications for regulators in terms of potential resignations, and possible confusion with fitness to practise proceedings as it is our understanding that the principal regulator would be responsible for dealing with complaints involving a registrants 'secondary profession'. This would require the development of memoranda of understanding between the respective principal and secondary regulators on disclosure of information, and on the handling of fitness to practise cases, with resource implications.

Careful consideration would need to be given to how regulators could implement Continuing Professional Development and revalidation requirements on practitioners who have chosen another body as their principle regulator. To protect patients, Government should avoid the scenario where practitioners choose an alternative regulator as their primary regulator, because it is perceived as 'light touch' and where they would not be subject to the same robust, but appropriate, regulatory requirements.

Consideration would also need to be given to the quality assurance of the information provided on the statutory registers about practitioners practising more than one profession.