



## GENERAL OSTEOPATHIC COUNCIL

### Guidance on Interim Suspension Orders

#### INTRODUCTION

- 1 The General Osteopathic Council (GOsC) was established by the *Osteopaths Act 1993* (the Act) to regulate and develop the profession of osteopathy. This document relates to the GOsC's regulatory function and in particular the work of its three fitness to practise committees:
  - Investigating Committee (IC)
  - Professional Conduct Committee (PCC)
  - Health Committee (HC)
- 2 This document has been produced primarily to assist the fitness to practise committees in achieving a consistent and proportionate approach when determining whether to impose an Interim Suspension Order (ISO). However, osteopaths, their legal representatives, professional bodies and members of the public may also find the information contained in this document useful.
- 3 This document is designed to guide the fitness to practise committees. It is not exhaustive, nor is it intended to restrict the committees from exercising their own judgement. Every case, even if it contains similarities to other cases, is unique, whether in severity or surrounding circumstances. The committees will judge each case on its particular merits and make decisions accordingly.
- 4 The guidance given in this document will be reviewed and updated when necessary. The most up-to-date version will be available on the GOsC website [www.osteopathy.org.uk](http://www.osteopathy.org.uk).

#### THE LEGISLATION

Please note: the relevant sections of the legislation are provided in full at Annex A.

##### **Investigating Committee**

- 5 The Act (as amended), section 21, and the GOsC (Investigation of Complaints) (Procedure) Rules 1999 (the IC Rules), rule 22, set out the powers and procedures that are to be followed by the IC when considering whether to impose an ISO.

6 Section 21 of the Act provides that:

- Where the IC is investigating an allegation against a registered osteopath, it may order the Registrar to suspend the osteopath's registration.
- The IC must be satisfied that it is necessary to do so in order to protect members of the public.
- Any such ISO must specify the period of suspension, which must not exceed two months.
- Only one ISO may be made by the IC in respect of any allegation.
- The osteopath concerned shall be given an opportunity to appear before it to argue their case against the making of the proposed ISO.
- The osteopath may be legally represented at any hearing.

### **Professional Conduct Committee**

7 Section 24 of the Act and rule 40 of the GOsC (Professional Conduct Committee) (Procedure) Rules 2000 (the PCC Rules) set out the powers and procedures that are to be followed by the PCC when considering whether to impose an ISO.

8 Section 24 of the Act provides for the PCC to impose an ISO if it is satisfied that it is necessary to do so in order to protect members of the public. The PCC may impose an ISO at two different stages of its procedures:

- i) Where an allegation against a registered osteopath has been referred to the PCC and the PCC has not reached a decision on the matter; and/or
- ii) Where the PCC has reached a relevant decision<sup>1</sup> on any such allegation.

9 An ISO made in a case falling within point i) will cease to have effect when the PCC reaches a decision in respect of the allegation in question.

10 An ISO made in a case falling within point ii) will cease to have effect:

- If there is no appeal against the decision, when the period for appealing (28 days) expires; or
- If there is an appeal against the decision, when the appeal is withdrawn or otherwise disposed of.

11 Before making an ISO, the PCC shall give the osteopath an opportunity to appear before it and to argue their case against the making of the proposed order. At any such hearing the osteopath shall be entitled to be legally represented.

### **Health Committee**

12 Section 24 of the Act and rule 26 of the GOsC (Health Committee) (Procedure) Rules 2000 (the HC Rules) set out the powers and procedures that are to be followed by the HC when considering whether to impose an ISO.

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<sup>1</sup> 'relevant decision' means an order under section 22(4)(c) or (d) or an order under section 23(2)(b) of the Osteopaths Act 1993 (as amended)

- 13 Section 24 of the Act provides for the HC to impose an ISO if it is satisfied that it is necessary to do so in order to protect members of the public. The HC may impose an ISO at two different stages of its procedures:
- i) Where an allegation against a registered osteopath has been referred to the HC and the HC has not reached a decision on the matter; and/or
  - ii) Where the HC has reached a relevant decision<sup>2</sup> on any such allegation.
- 14 An ISO made in a case falling within point i) will cease to have effect when the HC reaches a decision in respect of the allegation in question.
- 15 An ISO made in a case falling within point ii) will cease to have effect:
- If there is no appeal against the decision, when the period for appealing (28 days) expires; or
  - If there is an appeal against the decision, when the appeal is withdrawn or otherwise disposed of.
- 16 Before making an ISO, the HC shall give the osteopath an opportunity to appear before it and to argue their case against the making of the proposed order. At any such hearing the osteopath shall be entitled to be legally represented.

## REASONS FOR CONSIDERING AN ISO

- 17 The fitness to practise committees will be asked to consider an ISO when an allegation has been made about the osteopath, which raises immediate concerns about the protection of the public. Such allegations may include:
- A criminal investigation, charge or conviction for serious offences.
  - Sexual or violent misconduct or indecency.
  - Abuse of the privileged position enjoyed by a registered professional.
  - A number of, or serious, departures from the standards of practice laid down in the *Code of Practice* and *Standard of Proficiency*.
  - Dishonesty or fraudulent behaviour.
  - Lack of evidence of adequate professional indemnity insurance.
  - Risk of patient harm due to the osteopath's health, including alcohol or drug abuse.
- 18 When deciding whether a hearing is necessary, the Chair or committee will take into account:
- The test to be applied (see paragraph 20);
  - The degree of risk to the public if the osteopath were allowed to continue practising without restriction, including the seriousness of the allegation and the risk of repetition if an ISO were not imposed; and
  - How much time has passed since the alleged events and what has happened during that time.

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<sup>2</sup> See note 1.

- 19 The fitness to practise committees have formally delegated the function of deciding whether an ISO should be considered to the relevant Chair. Clear and adequate reasons should be given for the decision to convene an ISO hearing.

## HEARINGS

### The test to be applied

- 20 An ISO may be imposed when the fitness to practise committee is satisfied that it is necessary to do so in order to protect members of the public<sup>3</sup>.
- 21 The following factors should be considered when determining whether an order is necessary:
- Whether there is a real risk of significant harm to the health, safety or wellbeing of a patient, visitor, colleague or other member of the public.
  - The seriousness of the allegations made about the osteopath.
  - The likelihood of the alleged conduct being repeated.
  - The severity of harm likely to result should the alleged conduct be repeated.
  - The osteopath's previous employment history and character.
- 22 The panel should also consider whether the imposition of an order is proportionate to the risk and take into account the impact which an order may have on the osteopath. An order will impact upon the osteopath's right to practise his/her profession and may also impact financially and on the osteopath's reputation. The panel must balance the need for an ISO against the consequences for the osteopath and satisfy itself that the consequences of the ISO are not disproportionate to the risk from which it is seeking to protect the public.
- 23 The panel making an ISO does not make a finding of fact or determine the allegations against the osteopath.

### Applications for postponement or adjournment

- 24 The IC Rules are silent about the powers or procedures for postponing or adjourning ISO hearings. The IC should, however, allow all reasonable applications for a postponement of a hearing or adjournment of proceedings to be made, even if not subsequently granted.
- 25 The PCC (rule 40(3)) and HC (rule 26(4)) Rules provide for the committees to postpone a hearing or adjourn proceedings as they think fit. This may be on the committees' own motion or on the request of the osteopath.
- 26 As interim orders are designed to provide immediate public protection, hearings can be arranged at short notice. This immediacy is provided for in the legislation. It is not uncommon for an application for postponement to be made on the basis that a longer notice period should be provided. When considering applications made on this basis, the

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<sup>3</sup> Note that this is a narrower test than that which may apply for other healthcare regulators, who may impose an order if it is also in the public interest, or the interests of the registrant, to do so.

committees should be mindful of the statutory notice period<sup>4</sup> and consider whether this has been met.

### **Proceeding in the absence of the osteopath**

- 27 The fitness to practise committees may proceed with a hearing and decide whether to impose an ISO in the absence of the osteopath.
- 28 As a general principle, the osteopath has the right to be present and represented at a hearing. However, the following Rules do provide for the hearing to proceed in the absence of the osteopath:
- Rule 22(4) of the IC Rules provides that the IC may proceed in the absence of the osteopath if it is satisfied that all reasonable efforts have been made to notify the osteopath of the hearing.
  - Rules 20 and 40(5) of the PCC Rules provide for the PCC to proceed in the absence of the osteopath if it is satisfied that all reasonable steps have been taken to serve notice of the hearing on the osteopath.
  - Rules 16(4) and (5) and 26(6) of the HC Rules provide for the HC to proceed in the absence of the osteopath if:
    - It is satisfied that the notice of hearing has been served in accordance with the rules; or
    - In its opinion all practicable steps have been taken to serve the notice.
- 29 The decision to proceed with a hearing in the absence of the registrant is a matter within the discretion of the Committee. The Committee should exercise that discretion with the utmost care and caution. In reaching a decision, the Committee should take account of the following factors:
- The nature and circumstances of the osteopath's absence.
  - Whether the absence is deliberate or voluntary.
  - Whether an adjournment might result in the osteopath attending the proceedings at a later date.
  - The likely length of any such adjournment and the immediacy of ISO decisions.
  - Whether the registrant wished to be represented at the hearing or has waived that right.
  - The extent to which any representative would be able to receive instructions from, and present the case on behalf of, the absent osteopath.
  - The extent of the disadvantage to the registrant in not being able to give evidence having regard to the nature of the case.
  - The seriousness of the allegation.

### **Reasons for decision**

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<sup>4</sup> The IC's statutory notice period is 5 days (rule 22(2), IC Rules). There is no specified notice period for the PCC or HC who are required to have 'regard to the urgency and all the circumstances of the case' (rule 40(2) of the PCC Rules and rule 26(2) of the HCR).

- 30 All of the fitness to practise committees must give full reasons for their decisions. The reasons should include:
- Why it is or is not necessary to impose an ISO to protect the public.
  - Why an ISO is or is not proportionate to any identified risks.
  - Why an ISO is or is not proportionate to the consequences for the osteopath.
  - What impact an ISO might have on the osteopath and why the particular period of suspension was chosen.

### **Publication of decision**

- 31 The IC ISO hearings are held in private. If the decision is to impose an ISO, the full written decision is published on the GOsC website.
- 32 The PCC ISO hearings are held in public. If the decision is to impose an ISO, the full written decision is published on the GOsC website.
- 33 The HC ISO hearings are held in private. If the decision is to impose an ISO, the decision is published on the GOsC website. The full written reasons may also be published.

## **LENGTH AND REVIEW OF ISO**

- 34 When imposing an ISO, the IC must specify the period of the suspension, which must not exceed two months beginning with the date on which the ISO is made. In deciding the period of suspension, the IC must take into account the amount of time which is likely to be needed to complete any investigation.
- 35 The PCC and HC are not required by legislation to specify the period of interim suspension. However, other healthcare regulators are required to specify a period, which is usually less than 18 months. When imposing any ISO, both the PCC and HC should, therefore, specify a period of suspension, which should normally be less than 18 months. The PCC and HC may also direct that the ISO will be reviewed before the specified period of suspension ends.

## **REVOCATION OF ISO**

- 36 An osteopath may apply to the PCC or HC, as appropriate, to have the ISO revoked. The PCC or HC may revoke the ISO if there is a change in circumstances of the case which has made the ISO unnecessary<sup>5</sup>. No such application can be entertained by the PCC or HC unless six months have passed since the imposition of the ISO.

## **APPEALS**

- 37 There is no statutory right of appeal against an IC decision to impose an ISO. However, there may be an entitlement to Judicial Review.

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<sup>5</sup> Section 25(1) of the Osteopaths Act 1993 (as amended)

- 38 Section 24 of the Act provides for an osteopath to appeal a decision of the PCC or HC to impose an ISO. Any such appeal must be made within 28 days of the date on which the ISO was made and to the appropriate court, which is:
- In the case of an osteopath whose registered address is in Scotland, the Court of Session.
  - In the case of an osteopath whose registered address is in Northern Ireland, the High Court of Justice in Northern Ireland.
  - In any other case, the High Court of Justice in England and Wales.
- 39 The appropriate court may terminate the Interim Suspension Order. The court's decision is final.

## ANNEX A

### Legislation

#### **Osteopaths Act 1993, section 21**

- 21 Interim suspension powers of the Investigating Committee.
- (1) This section applies where, under section 20, the Investigating Committee is investigating an allegation against a registered osteopath.
  - (2) If the Committee is satisfied that it is necessary to do so in order to protect members of the public, it may order the Registrar to suspend the osteopath's registration.
  - (3) The order shall specify the period of the suspension, which shall not exceed two months beginning with the date on which the order is made.
  - (4) The Committee shall not -
    - (a) make an order in any case after it has referred the allegation in question to the Professional Conduct Committee or the Health Committee; or
    - (b) make more than one order in respect of the same allegation.
  - (5) Before making an order, the Investigating Committee shall give the osteopath concerned an opportunity to appear before it and to argue his case against the making of the proposed order.
  - (6) At any such hearing the osteopath shall be entitled to be legally represented.

#### **GOsC (Investigation of Complaints) (Procedure) Rules 1999, r22**

- 22 Interim suspension.
- (1) If the Committee considers that the nature of the complaint received is such that in order to protect members of the public it may be necessary to order the Registrar to suspend the osteopath's registration (an "Interim Suspension Order"), it shall -
    - (a) notify the osteopath of his opportunity to appear before it at a hearing to argue why an Interim Suspension Order should not be made and of his right to be legally represented at any hearing;
    - (b) proceed as provided in the following paragraphs of this rule.
  - (2) Any hearing under this Rule shall not be fixed within a period of five days beginning with the day on which the notice under paragraph (1)(a) hereof is sent to the osteopath.
  - (3) A legal assessor appointed by the Council shall be present at any such hearing.
  - (4) Where the osteopath is neither present nor represented at the hearing, the Committee may, nevertheless, proceed with the hearing if it is satisfied that all reasonable efforts have been made in accordance with rule 22(1)(a) to serve notification of the hearing on the osteopath.
  - (5) When considering whether to make an Order under this rule the Committee may invite the Solicitor to address it as to the circumstances of the case.
  - (6) The Committee shall -
    - (a) ensure that its decision is recorded in writing; and
    - (b) direct the Registrar as soon as practicable, after the hearing to send a copy of the Order to the osteopath.
  - (7) Subject to the above, the Committee's procedure in dealing with Interim Suspension Orders shall be as it shall determine.

#### **Osteopaths Act 1993, section 24**

- 24 Interim suspension powers of the Professional Conduct Committee and the Health Committee.
- (1) This section applies where -

- (a) an allegation against a registered osteopath has been referred under section 20, or by virtue of any rule made under section 26(2)(a), to the Professional Conduct Committee or the Health Committee and the Committee has not reached a decision on the matter; or
  - (b) the Professional Conduct Committee or the Health Committee reaches a relevant decision on any such allegation.
- (2) The Committee concerned may, if it is satisfied that it is necessary to do so in order to protect members of the public, order the Registrar to suspend the registration of the osteopath concerned.
- (3) An order under subsection (2) (an “Interim Suspension Order”) shall cease to have effect -
- (a) in a case falling within subsection (1)(a), when the Committee reaches a decision in respect of the allegation in question; and
  - (b) in a case falling within subsection (1)(b) -
    - (i) if there is no appeal against the decision, when the period for appealing expires; or
    - (ii) if there is an appeal against the decision, when the appeal is withdrawn or otherwise disposed of.
- (4) Before making an interim suspension order, the Committee shall give the osteopath in question an opportunity to appear before it and to argue his case against the making of the proposed order.
- (5) At any such hearing the osteopath shall be entitled to be legally represented.
- (6) Where an Interim Suspension Order has been made, the osteopath concerned may appeal against it to the appropriate court.
- (7) Any such appeal must be brought before the end of the period of 28 days beginning with the date on which the order appealed against is made.
- (8) On an appeal under subsection (6) the court may terminate the suspension.
- (9) On such an appeal the decision of the court shall be final.
- (10) In this section “the appropriate court” means -
- (a) in the case of an osteopath whose registered address is in Scotland, the Court of Session;
  - (b) in the case of an osteopath whose registered address is in Northern Ireland, the High Court of Justice in Northern Ireland; and
  - (c) in any other case, the High Court of Justice in England and Wales;
- “relevant decision” means an order under section 22(4)(c) or (d), or an order under section 23(2)(b).

### **GOsC (Professional Conduct Committee) (Procedure) Rules 2000, r20 and r40**

#### **20 Proceedings in the absence of the osteopath**

Where the osteopath does not appear and is not represented, the Committee may nevertheless proceed with the hearing, make a finding and if appropriate apply sanctions provided the Solicitor satisfies the Committee that all reasonable steps have been taken to serve the notice of the hearing on the osteopath concerned.

#### **40 Interim Suspension Orders**

##### **(1) Where a case has been referred to the Committee and -**

- (a) the Committee has not reached a final decision on the matter; or
- (b) the Committee has reached a decision to impose a suspension order or to remove an osteopath’s name from the Register then the Committee may, if it is satisfied that it is necessary to do so in order to protect members of the public, order the Registrar to suspend the registration of

the osteopath concerned (an Interim Suspension Order) in accordance with section 24 of the Act.

- (2) Where the Committee considers that an Interim Suspension Order may be appropriate, it shall fix a date, time and place for deciding that question, having regard to the urgency and all the circumstances of the case and shall notify the osteopath of his right to appear before the Committee and to argue his case and to be legally represented.
- (3) The Committee may postpone a hearing or adjourn proceedings as it thinks fit, either on its own motion, or on the request of the osteopath.
- (4) A medical assessor may be appointed by the Chairman to be present at any hearing under this rule.
- (5) Where the osteopath does not appear and is not represented, the provisions of rule 20 shall apply.
- (6) The Solicitor shall be requested to present the case to the Committee and call such evidence as he wishes to justify an Interim Suspension Order.
- (7) The osteopath or his representative shall have the right to cross-examine any witness called by the Solicitor who may in turn re-examine such witness.
- (8) The osteopath or his representative may then present the case against the making of such an Order by calling such evidence as he wishes and the Solicitor shall have the right to cross-examine such witness on behalf of the Council and the osteopath or his representative may in turn re-examine such witness.
- (9) The Solicitor and the osteopath or his representative may address the Committee.
- (10) Members of the Committee, the legal assessor, and the medical assessor may, with the consent of the Chairman, question a person giving evidence at the hearing.
- (11) Save as set out herein, the procedure of the Committee shall be as it may determine.
- (12) The Committee shall in private decide whether to impose an Interim Suspension Order and the decision of the Committee shall be given at the conclusion of the hearing.
- (13) The Committee shall direct the Registrar to confirm its decision in writing to the osteopath, informing him also of his right to appeal against the decision in accordance with section 24 of the Act.

#### **GOsC (Health Committee) (Procedure) Rules 2000, r16(4) and (5), 26 and 42**

- 16 Opening of hearing.
- (4) When the osteopath is neither present nor represented, the Committee shall determine whether or not the notice of hearing has been served on the osteopath in accordance with rule 42.
  - (5) If the Committee is satisfied that the notice has been so served the hearing may proceed if the Committee thinks fit, but if the Committee is not satisfied that the notice has been so served it may -
    - (a) if in its opinion all reasonable steps have been taken to serve the notice, proceed with the hearing; or
    - (b) if it is of the opinion that further steps should be taken to serve the notice, adjourn the hearing to a later date to allow this to happen.
- 26 Interim Suspension Orders
- (1) Where a case has been referred to the Committee and
    - (a) the Committee has not reached a decision on the matter; or
    - (b) the Committee has decided to impose a suspension order under rule 22 then the Committee may, if it is satisfied that it is necessary to do so in order to protect members of the public, order the Registrar to suspend the registration of the osteopath concerned (an interim suspension order) in accordance with section 24 of the Act.

- (2) Where the Committee considers that an Interim Suspension Order may be appropriate, it shall fix a date, time and place for deciding that question, having regard to the urgency and all the circumstances of the case and shall notify the osteopath of the date, time and place so fixed.
- (3) The Committee shall further notify the osteopath of his right to appear before the Committee and to be legally represented.
- (4) The Committee may postpone a hearing under this rule or adjourn proceedings as it thinks fit, either on its own motion, or on the request of the osteopath.
- (5) A medical assessor may be appointed by the Chairman to be present at any hearing under this rule.
- (6) Where the osteopath does not appear and is not represented, the provisions of rule 16(4) and (5) shall apply, and, if the Committee decides to proceed with the hearing -
  - (a) the Solicitor shall be invited to present the case to the Committee and call such evidence as he wishes to justify an interim suspension order;
  - (b) the osteopath shall have the right to cross-examine any witness called by the Solicitor who may in turn re-examine such witness;
  - (c) the osteopath may then present his own case against the making of such an order by calling such evidence as he wishes;
  - (d) the Solicitor shall have the right to cross-examine such witness on behalf of the Council and the osteopath may in turn re-examine such witness;
  - (e) the Solicitor and the osteopath may address the Committee; and
  - (f) members of the Committee, the legal adviser, and the medical assessor may, with the consent of the Chairman, question a person giving evidence at the hearing.
- (7) Save as set out in this rule, the procedure of the Committee in deciding whether to impose an Interim Suspension Order shall be as it may determine.
- (8) The Committee shall in private decide whether to impose an interim suspension order and the decision of the Committee shall be given at the conclusion of the hearing and confirmed in writing to the osteopath informing him also of his right to appeal against the decision in accordance with section 24 of the Act.

#### 42 Service of documents

- (1) In these Rules a reference to the sending of a notice or other communication required by these Rules to be served on an osteopath is a reference to delivering it to him or sending it to him by Registered Post or by the Recorded Delivery system to his address in the Register or if his last known address differs from the address in the Register then to his last known address.
- (2) Where such notice is sent by Registered Post or Recorded Delivery service it shall be treated as having been sent on the day it was posted.
- (3) Where personally delivered then it shall be treated as having been delivered when it is handed to the osteopath.

### **Osteopaths Act 1993, section 25**

#### 25 Revocation of Interim Suspension Orders.

- (1) On an application made by the osteopath concerned, in a case falling within section 24(1)(a), an Interim Suspension Order may be revoked by the Committee which made it on the ground that a change in the circumstances of the case has made the order unnecessary.
- (2) Where an osteopath has made an application under subsection (1) which has been refused, he may appeal to the appropriate court against the refusal.
- (3) Where, in relation to an Interim Suspension Order

- (a) an appeal has been made under section 24(6) against the making of the order; or
  - (b) a further application for the order to be revoked has been made after an unsuccessful appeal under this section against the refusal of an earlier application, leave of the appropriate court shall be required for any appeal under subsection (2) in relation to that Order.
- (4) Except in a case falling within subsection (5), no application under subsection (1) shall be entertained by the Committee concerned if it is made before the end of the period of six months beginning
  - (a) with the date on which the order was imposed; or
  - (b) where an unsuccessful appeal against the order has been made under section 24(6), the date on which the appeal was dismissed.
- (5) Where a previous application has been made under subsection (1) in relation to an Interim Suspension Order, no further such application shall be entertained by the Committee concerned if it is made before the end of the period of six months beginning with the date on which the previous application was finally disposed of.
- (6) Any appeal under subsection (2) must be brought before the end of the period of 28 days beginning with the date on which notice of the refusal is sent to the osteopath.
- (7) On an appeal under subsection (2) the court may terminate the suspension.
- (8) On such an appeal the decision of the court shall be final.
- (9) In this section “the appropriate court” has the same meaning as in section 24.