

GENERAL OSTEOPATHIC COUNCIL

Minutes of the public session of 73rd meeting of the General Osteopathic Council
Tuesday 11 October 2011

Unconfirmed

Chair: John Chuter

Present:

Geraldine Campbell

Jonathan Hearsey

Nick Hounsfield

Professor Ian Hughes

Kim Lavelly

Brian McKenna

Kenneth McLean

Robin Shepherd

Fiona Walsh

Jenny White

In attendance:

Tim Walker, Chief Executive and Registrar

Fiona Browne, Head of Professional Standards

Matthew Redford, Head of Finance and Administration

Velia Soames, Head of Regulation

Brigid Tucker, Head of Policy and Communications

Kellie Green, Regulation Manager

Jane Quinnell, Governance Manager

1. Observers, as follows, were welcomed to the meeting:

Sally Irvine, Council member, CHRE

Catherine Goodyear, Chief Operating Officer, BOA

Alison White, member of the public

David Plank, Chair of the PCC

James Kellock, Chair of the IC

Apologies

2. Apologies were received from Professor Adrian Eddleston, Julie Stone and Alan Currie. Geraldine Campbell arrived at 11.15. It was confirmed that the meeting was quorate.

Questions from observers

3. Catherine Goodyear referred to the consultation to gather feedback on a proposed change to the way witnesses present their evidence in hearings held by the GOsC's Professional Conduct Committee (PCC). She wished to know how the consultation was communicated to osteopaths other than on the website and how the GOsC intended communicating the result of the consultation. It was confirmed that the PCC was able to consult separately on its own procedures and that notification of the consultation had been included in the August and September GOsC e-bulletins. The PCC was meeting on 17 October 2011 to consider the next steps and these would be communicated to the

profession in due course. Where it was possible to identify a registrant who had responded to the consultation, a response would be sent directly.

Minutes and matters arising

4. Minutes Several previously notified typographical errors had been corrected. Miss White had a point of accuracy over the complicated issues around Equality and Diversity which required slight re-wording of paragraph 34 as follows:

The Chief Executive presented the paper which set out the work being carried out in this area following the passing of the Equality Act 2010. The GOsC's current Equality Scheme Action Plan had now expired, the Equality Act 2010 set out a new equality duty for public sector bodies and it extended the list of 'protected characteristics'. As the Government had not yet finalised the guidance on the duty of public sector bodies, it was not appropriate to finalise a new GOsC Equality and Diversity Policy.

5. The minutes of the public session of the Council meeting held on 14 July 2011 were **agreed** subject to the above.

Chair's Report

6. The Chair presented Professor Eddleston's report and, in addition, confirmed that the recruitment campaign for the new Chair was well underway with the 28 applicants being shortlisted down to nine candidates who had been pre-interviewed by the Appointments Commission. A further shortlisting exercise would be carried out for the final interviews on 31 October 2011.
7. The report was **noted**.

Chief Executive's report

8. The Chief Executive presented his report and highlighted several items:
- a. Revalidation workshops The work involved in connection with the 15 revalidation pilot workshops was considerable and staff were thanked for all their hard work, much at weekends.
 - b. Customer service quality The Heads of Communications and Registration were leading the project to look at a clear and consistent approach to customer service to maintain the highest standards of customer care and the Council would be kept up-to-date on this important work.
 - c. Osteopathic International Alliance (OIA) and the Forum for Osteopathic Regulation in Europe (FORE), Potsdam, Germany Attendance at the OIA forum had been very successful with 36 people from 16 countries who were particularly interested in the GOsC's revalidation work. At the FORE meeting, the issues of a merger between the European Federation of Osteopaths (EFO) and FORE were explored and the FORE funding arrangements for next year were confirmed.
 - d. Business plan monitoring (annex A) and financial reports (annex B) The Business Plan remained on course for the second quarter.
 - e. Non-practising osteopaths (annex D) This information was produced at Council's request. Most non-practising osteopaths were either on maternity or paternity leave

and the longer term non-practising osteopaths were either in teaching posts or had long-term illness.

- f. Transfer of £80,000 to reserves £80,000 was earmarked in the 2011-12 budget for research into patterns of osteopathic practice which was intended to inform future work on the scope of practice. This work had been delayed until after the conclusion of the CROaM project which is also collecting information about patterns of practice. As it was unclear whether it would be possible to commission the work within the financial year or, indeed, whether the work was still required, it was recommended that the money be transferred to reserves for future research.
9. Members then raised questions or made observations.
- a. Annex D One of the Council members, who was a return to practise interviewer, commented that some graduates were returning to their original jobs to help pay off the debts they had accrued during osteopathic training and were then returning to practise.
 - b. Annex B: The higher interest rate referred to in paragraph 13 was 3.01% gross, which is significantly higher than holding the funds in the bank. The cash position, which could be found under current assets on the Balance Sheet, was higher than at the start of the financial year because the majority of the profession renewed their registration in May. Council was reminded that under the investment policy it agreed in April 2011, the investment portfolio (which currently stands at £500,000) could be liquidated in a week, should it be needed.
 - c. Annex C It was confirmed that one member of staff being on sick leave for two weeks would cause the spike in the graph but that overall, the average sick leave per full time equivalent was below the public sector average.
10. **Agreed** the transfer of £80,000 from the Professional Standards Department budget to research earmarked for future research projects and the rest of the report was **noted**.

Fitness to practise report

11. The Head of Regulation presented the report and confirmed that it covered 18 months from April 2010 to September 2011. James Kellock had been appointed Chair of the Investigating Committee; he was welcomed by the Council. Initial training for Mr Kellock had been scheduled for 1 November 2011. Complaints for the year to March 2010 were 35 and to March 2011, 21. There were only eight complaints so far this year so it appeared that there was a downward trend in complaints. The regulation team were using the slightly quieter time to go back over all concerns raised to check whether complainants were happy to leave them or wished to take them forward. The Regulation Department would not be complacent as complaints in other healthcare regulators were on the increase. It was not clear why complaints were reducing; was the GOsC less well known or was osteopathy becoming a safe practice? The Chief Executive confirmed that new patient leaflets were being prepared and that all osteopaths should make it known to their patients how they could complain. He also confirmed that the BOA has helped mediate some complaints which meant they had not come to GOsC.

12. Members then raised questions or made observations:
- a. It was reported that there was still confusion within the profession about the Independent Safeguarding Authority and the Scottish Vetting and Barring Scheme, particularly with Scottish osteopaths, although things were more uncertain within England. The Executive would consider further features in the magazine and the e-bulletin.
13. Annual Report by David Plank, Chair of the Professional Conduct Committee The report covered 15 months from April 2010 to June 2011. Mr Plank highlighted the following from the report:
- a. His general observations that some osteopaths were becoming 'routinised' in their practice and were falling short of the standard expected and, while some were very enthusiastic about 'specialist' areas of practice e.g. cranial osteopathy or applied kinesiology, they were not always delivering the basics.
 - b. The consultation that was taking place about a number of changes on the PCC's notice.
 - c. The improvement in pre-hearing arrangements including better quality skeleton arguments.
 - d. His personal impression about the parts and particulars of allegations and the quality of investigation and testing of evidence require some scrutiny. Also, in a recent case, very detailed allegations with numerous particulars and sub-particulars might have complicated the proceedings.
 - e. Improved strategies by panel chairs were now assisting in more timely conclusions to cases, whilst not impairing fairness.
 - f. Appraisals had been completed for the year.
14. Members then raised questions or made observations:
- a. Possible Act and Rule changes referred to in the report were currently uncertain as the Department of Health had confirmed it was unlikely that there would be any legislative change until the Law Commission has finished its review work. The department would only consider changes that were necessary to protect the public immediately.
 - b. Members considered it important that the profession was notified of the PCC Chair's observations about 'routinised' practice and enthusiasm for certain areas of practice where the basics of practice may not be adhered to, perhaps by a magazine article or the Fitness to Practise e-bulletin. It was confirmed that a recent FtP e-bulletin interview with the PCC Chair had referred to 'routinised' practice.
 - c. A variety of reasons, such as the registrant's availability and issues that arose during the course of proceedings, have caused an increase in the time to hear cases. No pattern was emerging and the panel chairs were aware of costs involved in scheduling cases and then having to adjourn, so they considered adjournment requests very thoroughly.
 - d. The Fitness to Practise Report was put before the Education Committee every year for thorough consideration.
 - e. The revalidation pilot and the continuing professional development discussion paper were testing out a range of subjective and objective ideas to challenge the notion of

routinised practise.

- f. The regulation team was collecting data around the issues raised in paragraphs 23 and 24 (parts and particulars of allegations and the quality of investigation and testing of evidence) and was sharing this with its solicitors. Further training had been given to junior regulation staff on the issues around investigation and testing of evidence. It was confirmed that all PCC decisions were reviewed by the Council for Healthcare Regulatory Excellence.
- g. Members asked that 'specialist practice' in paragraph 7 be referred to as 'special interest' or 'particular interest' as there are no clear definitions of specialisms and specialist practice within osteopathy.

15. Mr Plank thanked the Head of Regulation and her team for their support to the PCC and his report and the fitness to practise report were **noted**.

Stakeholder engagement report

16. The Head of Policy and Communications presented the stakeholder engagement report which summarised GOsC stakeholder engagement activity in the period July to September 2011.
17. Members then raised questions or made observations.
 - a. A note of the meeting of the Health Professional Regulators' Learning Circle on Patient and Public Engagement would be circulated to Council members.
 - b. Each new piece of work undertaken by the Council was fully considered to see where patient and public involvement was integrated. It was not easy to measure how successfully the GOsC was engaging with patients and the public and it often depended upon the type of project being undertaken.
 - c. The Communications Department was looking to set up a virtual patient and public forum/reference group.
18. The report was **noted**.

Interim Suspension Order (ISO) Guidance

19. The Regulation Manager presented the paper which asked the Council to approve the publication of Interim Suspension Order Guidance. The Fitness to Practise Policy Committee (FtPPC) had developed guidance on ISOs which protected the public while a case was considered. There was one amendment to the draft Guidance and this was at paragraph 22 where the FtPPC and the regulation team considered that enhanced wording was required, based on that suggested in the *Madan v GMC [2001] EWJC 577* case, to bring proportionality to imposing an ISO.
20. Members then raised questions or made observations.
 - a. Members asked that the regulation team translated the wording suggested in the *Madan* case to fit with that of the ISO Guidance.
 - b. It was suggested that presentation of the document could be improved, perhaps with more sub-sections and headings, to make it clearer to the external audience who might be reading it.

- c. There was some concern over whether an ISO could be in place long enough for the police or CPS to investigate and take a difficult case to Court. It was confirmed that the Investigating Committee could only make a ISO for two months and that if it had found a case to answer, it would have been passed on to the Health or Professional Conduct Committees who had no time limits on ISO and there were strict time limits on reviewing ISOs.
 - d. The principles of ISOs in the draft Guidance were consistent with other healthcare regulators.
21. **Agreed** the Interim Suspension Order Guidance as currently drafted subject to the revised wording for paragraph 22 being sent to Julie Stone, the Chair of the FtPPC, for comment. **Further Agreed** that John Chuter, as Chair for the meeting, would approve the final wording on behalf of the Council.

Regulatory Reform (this item was taken after the Law Commission’s presentation to add to the context of the paper)

22. The Chief Executive presented the paper which gave an update on the work undertaking in response to *Enabling Excellence*. It included an outline of work to date on costs savings, the CHRE work programme and the Law Commission’s legislative review. It was confirmed that there had been limited discussions with other regulators when looking for potential cost savings. The CHRE’s costs review resulting from *Enabling Excellence* had been delayed, with its first briefing meeting on the scope of the review now scheduled for 24 October. The CHRE had written to the Department of Health with advice on Board size; 8-12 members were recommended. Alongside the Law Commission’s review, the Executive had sought to identify the powers and duties that might be considered essential to the GOsC; this list was not definitive nor should it be seen to pre-empt future discussion in Council.
23. Members then raised questions or made observations.
- a. If *Enabling Excellence* proposed changes incurring additional costs for registrants, these would have to be communicated very carefully. The profession needed to be kept up-to-date with what was happening and any potential consequences. Communication would be complex but the Council needed to be absolutely clear on exactly what was happening before it could give out clear communication.
 - b. There was no clear consensus within the regulators following the consultation about the CHRE levy to fund the new body and nothing further had been heard from the CHRE about which option for the levy would be adopted.
 - c. The Cost Savings Working Group would need to come back to the Council with further details on the promising areas identified for further exploration.
24. The report was **noted**.

National Council for Osteopathic Research (NCOR) future governance and funding

25. The Chief Executive presented the paper which confirmed that discussions among NCOR stakeholders organisations had led to new funding arrangements for the next three years and changes to the way in which NCOR was governed. The Osteopathic Educational Foundation (OEF) had committed £25,000 per year for the next three years and the BOA

had committed £20,000 a year for the next three years. It was proposed that other funding would come from the GOsC at £25,000 per annum for the next three years. Set against the funding for this year of £62,800 this would save the GOsC some £38,000. The nine Osteopathic Educational Institutions would also be asked to make a contribution for the next three years. New governance arrangements included the recruitment of a Director of NCOR rather than a Chair and a new Management Board reporting to the Council of NCOR. The new governance arrangements would mean clearer lines of accountability. The Council was asked to approve the funding before seeing the detailed work plans because unless funding was secured, the more detailed planning and the recruitment of the Director from April 2012 could not go ahead.

26. Members then raised questions or made observations.
- a. It was confirmed that this was low risk to approve the funding before the business plan and the Director were in place. Additionally, there was enough 'good faith' to get the funding and new governance structure working. The Chief Executive confirmed that he would be the GOsC representative on the Management Board and that he would attend all meetings and look after the stewardship of the GOsC funds.
 - b. Some members were concerned that NCOR had required a lot of support in the past and whether some external research expertise was required on the Management Board. This suggestion would be taken back to the next NCOR meeting.
 - c. Some concern was raised about the Management Board composition as sometimes representatives of organisations do not feel empowered enough to make some decisions on behalf of their organisations without reverting back to the organisation and this could stilt day to day decisions. It was confirmed that there would have to be some sort of reporting back on the more serious decisions and this would have to be managed.
 - d. Members wanted to see some process/policy for managing conflicts of interest between board members and the research work. This request would be taken back to the NCOR Management Board for a policy to be put in place.
 - e. The NCOR work plan, as it evolved, would be shared with the Council for information.
 - f. Advertisements for the NCOR Director would be placed over the next few weeks.
 - g. It was planned that by the time the Council was approving the budget for the next financial year, a detailed work plan and a Director would be in place at NCOR.
27. **Agreed** that £25,000 would be allocated to NCOR from the 2012-13 revenue budget and in principle, for a similar commitment in the following two years. **Noted** the new governance arrangements for NCOR.

Measuring the GOsC's performance

28. The Chief Executive presented a paper which considered ways in which the overall performance of the GOsC could be measured and reported on to the Council. The Audit Committee had looked at the subject earlier in the year and had advised that a balanced scorecard approach was appropriate but that it should, in the first instance, not be over complicated and that the Council should not worry if it required change over time.

29. Members then raised questions or made observations.
- a. The scorecard would vary from the Key Performance Information (KPI) used in the Chief Executive's report in that some information would be similar but it would now measure aspects of performance which the KPIs currently did not.
 - b. It was thought it might be helpful to undertake a short survey of the profession, say at re-registration time but this should not be introduced until a pilot survey had been carried out.
 - c. Some outcomes, such as support for patients, were not entirely within GOsC control and this might require further work as the outcome was too broad.
 - d. Should areas such as the ability of GOsC to be forward looking, innovative and enabling be covered by the scorecard?
30. **Agreed** to pilot a balanced scorecard as set out in the Annex with a view to developing a more detailed approach in conjunction with the Corporate Plan 2013-16.

Student Fitness to Practise and the management of disability or health impairment in osteopathic education, training and practice

31. The Head of Professional Standards presented the paper which considered the publication of the following guidance on the management of health impairments and disability, the latter two documents having been developed by consultants:
- a. Guidance about Professional Behaviours and Fitness to Practise for Osteopathic Students
 - b. Student Fitness to Practise: Guidance for Osteopathic Educational Institutions
 - c. Osteopathic Education and Training: Guidance for Applicants and Students with a Disability or Health Impairment
 - d. Students with a disability or health impairment: Guidance for Osteopathic Education Institutions
32. Members made a number of observations on the documents that needed to be taken into account before publication. Concern was also raised about potential errors, ambiguity and inconsistencies in the latter two documents that required addressing prior to publication.
33. **Agreed** that a further review of all four of the documents be carried out taking into consideration all the points raised by members of Council. This would include an independent legal review, before the Education Committee, under Council's delegated authority, approved the documentation for publication.

Law Commission presentation on the review of the regulation of healthcare professions

34. Frances Patterson QC and Tim Spencer-Lane gave a presentation on the Law Commission's review of the regulation of healthcare professionals.
35. Members then raised questions or made observations.

- a. Members pointed out that although the healthcare regulators had common principles of regulation, all the professions were different and in particular, osteopaths generally practised single handed and not within the NHS or through other employers. The Law Commission approach should take account of these differences.
- b. The Law Commission was confident that it would arrive at a better, all encompassing solution that worked for all nine regulators and that would replace the current nine Acts of Parliament. The aim was to have an enabling act that simplified and modernised regulation whilst being useful and workable. Getting the balance right was crucial to the final recommendation.
- c. A transitional period would be required to make arrangements for new Rules and the consultation required for new Rules. This was not within the Law Commission's remit but transitional periods would usually be down to the Government to institute.
- d. The relative maturity of each regulator was something that the Law Commission should also take into account.
- e. Were some of the regulators going to have more influence within the review because they were large e.g. using the GMC's adjudication processes? The Law Commission was confident that it would allow all regulators, whatever their size, to have their say and for the Law Commission to take on board all reasonable suggestions.
- f. The Law Commission's remit was:
 - simplification
 - modernisation
 - clarification.
- g. The Department of Health had asked the Law Commission to look at complexities of each regulator's legislation and there was no overall cost cutting driver; patient and public safety was the overriding principle.
- h. It was envisaged that a regulator's Rules would have the same status as now, regardless if they were made by the relevant regulator's Council rather than the Privy Council.

36. The Chair thanked the Law Commission for their useful presentation and Q&A session.

Revalidation Assessors

37. Professor Hughes and Mr McLean had a conflict of interest for this item and left the Council Chamber.
38. The Head of Professional Standards presented the item which sought to clarify two aspects of the arrangements for the recruitment and payments of the Revalidation Pilot Assessors previously agreed at the April Council meeting. It was confirmed that there were no affordability issues with the proposed amendments.
39. **Agreed** that all members of the recruitment panel for revalidation assessors should be paid the normal daily rate of £306. **Further agreed** that payment to the assessors should be fixed at £50 per portfolio.
40. Professor Hughes and Mr McLean returned to the meeting.

Revalidation update

41. It was noted that the General Chiropractic Council had taken an earlier decision not to proceed with revalidation but an item in the August GCC newsletter confirmed that the GCC would be looking again at how to introduce a revalidation scheme.

Minutes of the Education Committee meeting of 22 September 2011

58. The minutes were **noted**.

Minutes of the Fitness to Practise Policy Committee meeting of 21 June 2011

56. The minutes were **noted**.

Fitness to Practise Policy Committee Annual Report 2010-11

59. **Noted** the annual report for 2010-11 of the Fitness to Practise Policy Committee, covering the period September 2010 to September 2011.

Any other business

60. Patient and Public involvement A member was concerned that there did not appear to be much patient and public involvement in the student fitness to practise consultation and that publishing the names and responses of respondents could fetter consultations. It was confirmed that patients from the OEIs' clinics were asked to take part in the consultation but only one person expressed an interest and then did not supply a response. Eight or nine patient organisations were targeted on the consultation. There was one non-osteopath response and the NMC and CHRE had responded. Names of respondents would be published unless they indicated they did not want to be identified.

Date of next meeting

61. To be confirmed as the January and April 2012 dates were to be re-scheduled.