



Council
4 February 2016
Charitable status

Classification Public

Purpose For decision

Issue Consideration of whether to seek registration as a charity.

Recommendation To agree to make an application to the Charity Commission for charitable status.

Financial and resourcing implications Contained within the body of the report.

Equality and diversity implications None

Communications implications None at this time

Annexes None

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Background

1. Council has held a number of informal discussions about the merits of applying for registration as a charity. Current discussions commenced in June 2013 when it was decided to explore a number of technical and legal aspects of an application and the implications for ownership of the GOsC's assets.
2. The results of this exploration were discussed in a Council seminar on 16 July 2015 and in a private session of Council on 12 November 2015. At both of these meetings Council had the benefit of extensive legal advice provided by Field Fisher Waterhouse LLP.
3. This paper seeks agreement to making an application to the Charity Commission for charitable status.
4. At the suggestion of the Chair, Samantha Peters, Chief Executive of the General Optical Council, has agreed to attend this part of the meeting. The GOC made a successful application for charitable status in 2012.

Discussion

Advantages of charitable status

5. Council has considered a number of potential benefits from registration as a charity. Broadly these fall into three areas:
 - a. Clarity of purpose and governance
 - b. Financial
 - c. Succession arrangements.

Each of these is considered in more detail below.

6. The requirement for GOsC to serve the public interest (rather than that of osteopaths) is not widely understood or appreciated by osteopaths. This is probably largely due to the historic evolution of the GOsC which came into being following a campaign by osteopaths to have their own regulator, combined with changes in the wider public policy environment between the Act being passed and the register opening.
7. At present, there is no explicit duty in the Osteopaths Act 1993 for the GOsC to protect the public. However, the Act was amended in 2008 to remove the duty to promote the profession, and there is both case law and a tacit understanding that the primary focus of the GOsC should now be on patients rather than on osteopaths.
8. The Health and Social Care (Safety and Quality) Act 2015 will, when it is enacted through regulations, will extend the duty at paragraph 6 above with the following objectives:

'The over-arching objective of the General Council in exercising its functions is the protection of the public.

The pursuit by the General Council of its over-arching objective involves the pursuit of the following objectives:

- a. to protect, promote and maintain the health, safety and well-being of the public;
 - b. to promote and maintain public confidence in the profession of osteopathy; and
 - c. to promote and maintain proper professional standards and conduct for members of that profession.'
9. This amendment will provide helpful 'internal' clarification but would not necessarily provide the 'external' clarification that is still required for the osteopathic profession that we are not here to serve its ends or needs.
 10. If the GOsC were to become a registered charity and hence required to demonstrate that it met the public benefit requirements of being a charity, i.e. it was required to benefit a wider public and not just a small group or category of people, this would provide further clarification of our purpose to all our stakeholders.
 11. The public benefit requirements would also allow us to apply a clearer test of whether any discretionary activity we undertake has sufficient public benefit to be justified. For example, in relation to the funding of development initiatives and research projects we have constructed our own internal public benefit test. The guidance of the Charity Commission would provide a more robust framework for making such decisions.
 12. There are also further governance advantages that arise from charitable status, for example, because of the clear requirements that individual charity trustees must operate in the interests of the charity and its purpose, and that the role of Council members is not to represent any position or viewpoint that derives from their outside professional or personal interests. The transition to a new Council seems an ideal opportunity to further embed these public interest values in our governance.
 13. We have identified that there are financial advantages accruing from charitable status, these are:
 - a. Reduction in business rates
 - b. No Corporation Tax on investment interest
 - c. VAT relief.

14. The most important of these would be the reduction in business rates. At present we pay approximately £42,000 per annum in rates. This would be reduced by 80% if we were to register as a charity.
15. A further financial advantage that was not identified in the legal advice but that has been identified by the Executive relates to investments. Council has expressed considerable interest in the past in pursuing an ethically-based investment policy. However, our ability to do so has been constrained by the limited number of suitable investment funds available. The range of investments of this nature available to charities is wider and would provide Council with a greater range of options to consider.
16. A final potential benefit was that discussed in some detail at the last meeting in relation to the concept of cy-près and whether this would have an impact on the residual assets of the GOsC should at any time some or all of its statutory functions be transferred to another body. The legal advice in this regard was considered helpful if not definitive.

Disadvantages of charitable status

17. The principal disadvantage identified relates to the regulatory burden of complying with the requirements of the Charity Commission. The areas identified and how these concerns might be dealt with are set out in the table below.

Issue	Response
Operation of committees	The issue of delegation to committees appears to have been dealt with satisfactorily in other regulators. However, it would be necessary to review the standing orders and scheme of delegation to ensure compliance.
Fees and expenses of Council members	Again this appears not to be a problem in other regulators, some of whom pay substantially more to their Council members as trustees.
Complaints by the public	This would require a minor adjustment to our own internal procedure on complaints about members of the governance structure.
Accounting standards	Although the accounting requirements are slightly different to those applied at present there would be no material additional requirements.
Access to information	This would require some amendment to our information governance framework.

Managing conflicts of interest	No additional requirement anticipated.
Annual reporting obligations	Some minor changes plus potential cost of adding registered charity numbers to documents.
Compliance with public benefit requirements	This would probably require additional training for Council members and senior staff.
Impact of charitable status on decision making	<p>There are a number of areas here about which Council and the Executive would need to be mindful, however none of these appear to be of such significance as to prevent the normal business of the GOsC as it is undertaken at present.</p> <p>The only minor issue, which we know was encountered by the GOC related to whether any activities were intended to benefit osteopaths personally. The argument here is about whether such things as material provided on the o zone benefits osteopaths as individuals or whether by its use it benefits members of the public. Again this is likely to be fairly straightforward to resolve and, as with the GMC, these would be deemed to be ancillary to the main charitable purpose of protecting the public.</p>

Conclusion

18. Taking into account the advantage and disadvantages, and having discussed this matter with colleagues in other regulators, the Executive take the view that the GOsC should pursue charitable status.

Recommendation: to agree to make an application to the Charity Commission for charitable status.