



Council
4 February 2015
Consultation on Threshold Criteria for Unacceptable Professional Conduct

Classification	Public
Purpose	For decision
Issue	Proposals for new guidance on threshold criteria for fitness to practise cases.
Recommendation	To approve the Threshold Criteria for Unacceptable Professional Conduct, at the Annex.
Financial and resourcing implications	Cases that fall outside the threshold criteria should not be referred by the Investigating Committee. This may impact on the number of formal cases considered by the Professional Conduct Committee.
Equality and diversity implications	None
Communications implications	Once agreed, the criteria will be placed on the GOsC website and communicated to relevant stakeholders.
Annexes	Amended Threshold Criteria for Unacceptable Professional Conduct
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Background

1. At its meeting in July 2014, Council considered proposals for the development of 'threshold criteria' and agreed to consult on draft criteria.
2. Council will recall that the development of the draft criteria has been informed by the threshold for Unacceptable Professional Conduct identified by Mr Justice Irwin in *Spencer v General Osteopathic Council*¹; the views expressed by the Joint Law Commissions in April 2014 in the report *Regulation of Health Care Professionals: Regulation of Social Care Professionals in England*² on the purpose of fitness to practise proceedings, and on 'referral criteria'; the criteria published and used by a number of other health care regulators; the concerns expressed by the Institute of Osteopathy on the types of case that members of the profession were referring to the GOsC; views obtained from the GOsC FTP User's forum in March 2014; and the workshop undertaken by members of the GOsC Investigating Committee on 21 May 2014.
3. The draft criteria and guidance were considered in detail by the Osteopathic Practice Committee at its meeting on 25 June 2014. The comments and suggestions made by the OPC were considered by Council and incorporated into the consultation draft.
4. The consultation document and draft criteria were considered by members of the Professional Conduct Committee at the training day on 20 November 2014; the PCC members were supportive of the criteria.
5. A three month public consultation was undertaken between 1 October and 31 December 2014.
6. In addition to this public consultation, the GOsC commissioned legal advice from leading Counsel; held an engagement meeting with the Professional Standards Authority; and convened a focus group on 3 December 2014 which consisted of patients and members of the public.

The legal position

7. The Osteopaths Act 1993 and the rules made under that Act which govern the proceedings of the Investigating Committee and the Professional Conduct Committee do not contain an explicit power to establish threshold criteria.
8. However, Paragraph 15(1) of the Schedule to the Act provides a general power (subject to the provisions of the Act) for the GOsC to 'do anything which is calculated to facilitate the discharge of its functions or which is incidental or conducive to the discharge of its functions.'

¹ [2012] 1WLR 1307, [2012] EWHC 3147 (Admin)

² (CM 8839, SG/2014/26, Law Com No 345/Scot Law Com No 237/ NILC 18(2014). Available at http://lawcommission.justice.gov.uk/areas/Healthcare_professions.htm

9. The view of the Law Commissions is that regulators may use their general powers to issue guidance, to produce documents of this kind.³
10. The GOsC sought advice from leading Counsel on whether the GOsC was legally able to issue threshold criteria and guidance.
11. Counsel's unequivocal opinion was that the combination of the GOsC's statutory duty to regulate the osteopathy profession set out in Section 1 of the Act, and the general power in paragraph 15(1) of the Schedule 'establishes...a firm legal basis for the publication of the proposed threshold criteria and guidance, calculated as it is to promote the consistency and good quality of an element of regulatory decision making.'
12. Leading Counsel was also asked to consider whether the draft threshold criteria were compatible with the proposed overarching public protection function set out in the Private Members Bill currently before Parliament.
13. Counsel's view was that the publication of threshold criteria and guidance in the interests of transparency and consistency of decision making, was fully compatible with the GOsC's existing de-facto public protection function (as established in the case law applicable to health care regulators generally) and with the proposed new statutory objectives.

Engagement with the Professional Standards Authority

14. On 28 November 2014, the Chief Executive and Head of Regulation met with representatives of the Professional Standards Authority (PSA).
15. The purpose of the meeting was to explain to the PSA the process by the GOsC had arrived at the draft threshold criteria, and the considerations which the GOsC had taken into account in producing the draft for consultation.
16. The PSA were also provided with a copy of the Spencer decision and the Counsel's opinion commissioned by the GOsC.
17. The PSA has responded separately to the consultation paper and consultation questions.

³ At paragraph 8.24, page 126 of the April 2014 report.

The focus group

18. The Regulation and Communications teams held a focus group on 3 December 2014.
19. The purpose of the focus group was to obtain good qualitative feedback from patients and members on the public on the draft threshold criteria, and the approach that the GOsC should adopt in relation to the proposed professional duty of candour.
20. The focus group consisted of 11 members within the age range of 30 to 74 years old. Six of the group were female, five were male. Two members identified as having an ethnic minority background and two members considered themselves to have a disability. Nine members were osteopathic patients; two were members of the public. The members were recruited from the GOsC public and patient group, osteopath and local Healthwatch networks across London and East Anglia.
21. The focus group was facilitated by an external facilitator, Mary Timms.
22. Members of the focus group were provided with the consultation document and draft criteria in advance of the meeting, together with information about the GOsC.
23. At the meeting on 3 December 2014, the focus group was asked to consider three key questions:
 - a. should the GOsC produce threshold criteria
 - b. if so, were the draft criteria appropriate, and
 - c. if so, at what stage in the GOsC's FTP proceedings should the criteria be used?
24. In relation to the first question, the focus group members considered the development of threshold criteria to be a positive development, which would promote consistency in decision making:

"...I would have confidence that if one person has looked at [the complaint] and they have got the threshold criteria, somebody else looks at it and they should come to more or less the same decision should they not?"

"Also, if you get new people becoming involved in the process sitting on the Committee and so on, it is a lot easier...rather than trying to pick up as they go along, the general sense of how people treat these things."

25. Members of the focus group also appreciated that not all complaints made to the GOsC should be referred:

"...the idea of a threshold would be quite good really because as awareness [of the complaints procedure] increases the complaints will increase as well..."

"You have to have some sort of filtering process...a wide variety of complaints from absolutely ridiculous to very important, so you might as well call that filtering process the threshold criteria..."

26. In relation to the individual criteria, some members of the focus group expressed a concern about whether the criteria could be (mis)interpreted as being exhaustive; and about whether the criteria should be expressed positively or negatively (i.e. things that would **not** normally be referred, or things that **should** normally be referred):

"You have a list here of the things that are not relevant...what about a list [of things] that are relevant instead?"

"How can you differentiate between someone's professional conduct and forgetting to pay, say, a parking penalty fine which ends up in the Magistrate's Court because you are on holiday? You cannot penalize somebody for that can you? When it comes to actually naming the offences, they need to be more precise and saying this will not affect their professional conduct. It needs to be more defined."

27. On the one hand, some focus group members wondered whether – if the criteria specified minor matters which would not normally be referred – the decision maker using the guidance might interpret that to mean that other minor matters not specifically mentioned, should be referred:

"there could be something that is lower than a criminal conviction but potentially higher than [parking offences] ... which might then imply that that needs to go through when you would not expect it to go through ... by putting it in I thought it made it more messy than it perhaps needs to be."

"They are so petty that I think you can just add an almost simple way of saying 'and anything that is not regarded as an offence that would affect their duties or their ability to practise.' I do not want him banned for not having paid his TV licence or [not returning] the library books..."

28. On the other hand, some members queried whether-if the criteria specified certain offences that would be referred-this would imply that nothing else should be:

"I felt that by saying 'the following motoring offences would be taken into account' you might have another motoring offence that was perhaps more serious around, I do not know, dangerous driving or undue care and attention that did not necessarily lead to a conviction but a greater penalty or something. I just thought there could be a gap between a legal conviction and a parking penalty, which might then imply that it could go to the Committee which I sort of thought I would probably expect to be taken forward."

29. Some individuals expressed concern about the note taking criteria which had been derived from the Spencer Judgment:

"With A, I am not quite sure I fully understand it because it seems to be saying complaints about note taking and record keeping alone. Does that mean that if nothing ensues from that, an osteopath might rarely make notes or keep his records up-to-date but so long as nothing happens to the patients...then that is just fine...?"

30. One member considered that the criteria might be interpreted as excluding concerns about data protection issues:

"When I read this I was quite alarmed ... the bit I was thinking it was saying you do not deal with, but this might not be the case, was about privacy of data. I had read the record-keeping as, for instance, if the osteopath had not kept the records secure and personal information about me has got out then that was something that this would not deal with. For me, that is quite a severe thing. I would have thought that would go though..."

31. Some members of the focus group wanted greater clarity about the link between the threshold criteria and the professional duty of candour:

"...there are certain issues around candour that actually needs to be part of this as well."

"What if someone says he did not say sorry, which is one of the several parts of candour and that is the entire complaint, which is part of candour. Is that enough to meet the criteria? That is my question."

32. In relation to Question 3 – whether the threshold criteria and guidance should be used by the Screener or by the Investigating Committee – members of the focus group considered unanimously that they should be used by both sets of decision makers:

"I really cannot see how they do not both use it to some extent."

33. However, there was an acknowledgement that use of the criteria at the different stages might yield different results:

"Given that it is not a 'set in stone set of criteria', it is 'generally and usually', that might be where you might get a slightly different result."

"I go back to my point about candour and not saying sorry. That will probably pass the screener because it is not on the list I guess, and it will have to be for the Investigating Committee to throw it out."

34. A general point raised by the focus group was that, in their experience, there seemed to be a low level of awareness of how to make a complaint about an osteopath

"I have been to a number of different osteopaths and I have never once seen a notice up to say how you can complain if you have a complaint ... I would think that should be a requirement actually ... I think you do actually need to have that notice up in a very visible place..."

Analysis of consultation responses

35. The GOsC received 76 responses to the consultation. The majority of responses were from individuals. However, the respondents included: the Institute of Osteopathy; the Osteopathic Alliance; two osteopathic educational institutions; a provider of professional indemnity insurance for osteopaths; and the Nightingale Collaboration.
36. The breakdown of responses to the individual consultation questions is set out below:

Question	Yes	No	Other comments made
Do you agree that the GOsC should produce guidance on the threshold criteria for establishing UPC?	62	2	<p>"This would certainly appear to be a timely draft guidance" to lessen the burden of high numbers of complaints."</p> <p>"...Threshold criteria really help clarify the complaints process."</p> <p>"...timely and appropriate"</p> <p>"The lighter, proportionate and appropriate touch to regulation is appreciated. It shows a mutual respect and acknowledgements the integrity of the professionals you're regulating. "</p> <p>"I think this is an excellent move ...allowing you to concentrate time and resource on important matters. Some important cases you have take more than a year to be instructed and settled. Too long."</p>
Do you agree that the use of guidance by Screeners or the Investigating Committee will make decision-making more open and transparent?	56	6	<p>"Using guidance does not <i>in and of itself</i> make a decision more open and transparent. What does is recording and publishing a record of the decision and the process through which it was arrived at including he justification for that decision. We recommend that all such decisions are recorded and published."</p> <p>"I don't believe it will make it more open and transparent, what it will do is change the decisions made."</p> <p>"It may make reasons for decisions quicker, simpler and clearer, rather than making decision-making more open and transparent"</p>
Do you think that the draft guidance is clear?	53	10	<p>"Not in its current form. It is still extremely vague and open to interpretation"</p> <p>"Excellent draft guidelines – congratulations"</p>

Question	Yes	No	Other comments made
Do you agree that all decisions taken by a screener to close a case on the grounds that it did not meet the threshold for UPC should be subject to a process of external audit?	52	8	<p>"Audit information should be available to the profession on request."</p> <p>"Analysis of audit should be available on demand."</p> <p>"The PSA might choose to review all of them but from the GOsC's point of view I would have thought a selection only might be reviewed."</p>
Do you agree with the criteria set out in the draft guidance?	52	12	<p>"not practical too slow too legal"</p> <p>"...looks good to me"</p>

Question	Screener	IC	Both	Other comments made
At which point in the decision-making process do you think the guidance should be used?	54	5	2	<p>"We strongly suggest, in order to maintain public confidence in the GOsC as a statutory regulator, that whatever guidance is put in place, it is the job of the Investigating Committee to consider it. We cannot see that a Screener-being ... a registrant can have the necessary independence and attachment..."</p> <p>"I think the guidance should be used by the Screener initially. However, the IC should also refer to the guidance when deciding if there is a case to answer."</p> <p>"if you do this the screener's decision is questioned therefore a panel should be used throughout and thus a waste of screener time and expense"</p>

Question	Too detailed	Just about right level of detail	Not enough detail	Other comments made
What did you think of the level of detail in the draft guidance?	2	49	11	"Adequate for the most part" "I don't think the draft is far reaching enough in its present form."

Additional comments on particular draft criteria

Criterion A – Complaints about note-keeping and record keeping in the absence of incompetence or negligence of a high degree

37. One member of the PCC made the following comment:

"The GOsC may be fettering itself unnecessarily. I can foresee a possibility of cases where poor note-taking is at the root of a serious problem which is not immediately evident, and which might therefore slip through the net before it has been investigated properly."

38. The PSA made the following comment:

"We do not consider this a sufficiently accurate or clear reflection of the Spencer judgment, particularly as that decision related to only two instances of inadequate note taking. Repeated (possibly deliberate) minor misconduct might amount to unacceptable professional conduct even if it did not amount to the separate concept of incompetence."

Criterion B – complaints which do not fall within the statutory grounds of section 20

39. Leading Counsel made the following comment:

"In my view, this should be deleted; the purpose of the table is to inform the user what does not fall within the statutory grounds of S.20."

Criterion C – Vexatious complaints

40. The PSA made the following comment:

"We do not agree a complaint is necessarily vexatious if the complainant repeatedly fails to identify the precise issues that he or she wishes to complain about, or repeatedly changes the substance of the complaint or continually seeks to raise new issues. Some complainants find it hard to articulate their concerns clearly but that does not mean they are vexatious. In addition, a vexatious complaint could still include valid concerns about an osteopath's fitness to practise. Whilst we recognize the intention to help distinguish those cases that are truly vexatious, it is important to remain vigilant to real concerns, even when they are not well expressed."

41. A respondent made the following comment:

"Vexatious Complaints" could make reference to complaints by a "stalker". A stalker may make a complaint against an Osteopath for the sole reason of maintaining contact with the Osteopath. A complaint motivated in this way should be closely scrutinised before it is referred to the PCC."

Criterion E – Unwilling complainants

42. The PSA made the following comment:

"We consider proposed threshold criterion (e) is unclear and suggest this could be resolved by referring to the failure of a complainant to participate and provide evidence where the allegation(s) cannot otherwise be proven."

Criterion G – Advertising complaints

43. The Nightingale Collaboration made the following comment:

"We believe the ASA are best placed to investigate and rule on such complaints ... However, we do not believe the matter can end there. Breaches of the CAP Code and other ASA guidance could well be minor, but they can also be of a very serious nature, including claims to treat serious medical conditions. To abrogate responsibility entirely to the ASA, we believe, is inadequate for a statutory regulator..."

"A ruling against a registrant is therefore of significant public concern and the publishing of the details by the ASA is a public record of that concern. As such, it is fully deserving of "moral opprobrium". But it is also a matter of professional and regulatory concern, particularly since advertising is specifically covered in the Osteopathic Practice Standards."

We believe a ruling represents a serious breach of the trust the public places in statutorily regulated osteopaths. We therefore believe that it is entirely appropriate for the GOsC to fully investigate a registrant after the ASA has published the outcome. We would go further and say that we believe it is essential that the registrant should be investigated to ascertain if he or she has fallen short of the standards required of a registrant."

"We therefore believe that it cannot be in the public interest to state that complaints about advertising are not usually capable of amounting to Unacceptable Professional Conduct. Each case should be judged on its merits. We believe there is a danger that it would become normal practice to simply reject all complaints about advertising, regardless of the seriousness of the case. This cannot be in the interests of the public and can only result in a loss of confidence in the regulator."

Criterion H – Differences of professional opinion

44. Bankside law made the following comments:

"The draft guidance misses an opportunity, in our view, to address a significant area of complaints many of which may not involve issues of public protection but do involve significant resources and often dashed expectations on the part of patients. This is where treatment has not met the expectations of the patient. Paragraph h touches on this but approaches it from the stage of there being a "difference of professional opinion".

"We would prefer to see the wording of paragraph h replaced with wording along the following lines:

Complaints from patients about the treatment given by an osteopath which are not supported by an opinion from an expert which sets out that the treatment fell seriously below the standard expected of a reasonable osteopath by a responsible body of osteopaths..."

45. The Institute of Osteopaths made the following comments:

"The area where perhaps we have the greatest concerns in respect of actual hearings which do currently fall within the threshold criteria are those where the complaint made by the patient and the response made by the osteopath are poles apart, especially in circumstances where the osteopath's decision would be in keeping with the substantial body of opinion and where there was no reason to suppose that the actions taken were not those normally taken by the osteopath. In circumstances where there is a dispute of that sort, a ground-breaking approach would be an initial meeting between patient, osteopath and an independent GOsC arbitrator to try to resolve the problem."

46. A respondent made the following comments:

"complaints which merely amount to a difference of professional opinion" cannot be screened out fairly at Screener stage. This guidance however would be material to the IC".

Criteria J and K – Contractual and business disputes

47. The Institute of Osteopaths made the following comments:

"Disputes between osteopaths should be excluded where one alleges contractual issues e.g. non payment of fees for work done as this is in the domain of a civil court."

48. An individual made the following comment:

"most upc is financial and patient stealing. it is a grey area and legal contracts are rubbish and or expensive so non viable. Strict contract done through the GOsC is the only way forward."

Criterion M – Complaints which have no public protection implications

49. The PSA made the following comments:

"...criterion (m) is narrowly drawn as it does not explain that public protection also involves maintaining confidence in the profession and upholding proper standards."

Criteria N and O – Motoring and 'minor' criminal offences

50. Bankside law made the following comments:

"The guidance under n – motoring offences could be clearer e.g. if drugs or alcohol were involved one would expect a drink or drug driving offence to be present. Also no mention is made of crimes of strict liability e.g. no television licence. As it stands screeners or IC members may take the guidance to read that any offence not within n or o should be referred whereas this would be contrary to Spencer as few members of the public would consider a conviction for no tv licence to be deserving of the moral opprobrium to merit a disciplinary hearing and a threat to an osteopaths career."

"We feel that there is a risk that by referring specifically to minor motoring offences and fare evasion offences there is a risk that screeners or Investigating Committee may refer any other offences when this is contrary to the legislation, Spencer, the Law Commission's views and the intention of these threshold criteria."

General comments on the guidance

51. The PSA made the following comment:

"It would be helpful if the guidance clearly explained at what stage of the fitness to practise process it is to be applied; set out what steps can be taken to re-visit such a decision or what other information could be provided, and that it is guidance only and not rules. If the threshold criteria remain presented in a table format we suggest more detailed information might be provided in the right hand column to list the sorts of factors that will be taken into account when applying individual criteria."

"...we suggest that the GOsC considers incorporating relevant aspects of the proposed guidance into its existing complaints guidance ... [and] existing guidance for screeners and standard legal advice for investigation committee..."

52. Leading Counsel considered that the rationale for publishing the threshold criteria and the related guidance is to improve the consistency and quality of decision making and that it was in the interests of transparency for the GOsC to publish such guidance. Leading Counsel considered that these considerations applied equally at the screening and at the Investigating Committee stages and that, therefore, the criteria and guidance "can and should" be used at both stages.

53. Leading Counsel made some suggested amendments to the draft guidance; these have been incorporated into the Annex.

54. Dr Leach made the following comments:

"It is essential to provide examples of allegations which are worthy of moral opprobrium, in terms of severity and nature. Without such examples, the Screener is placed in the position of having to make a moral judgment about the nature and seriousness of the case."

In addition to such examples, it would be very helpful for openness and transparency for the Screener and Investigating Committee to have a number of tests to apply to an allegation rather than having to make a moral judgment:

1. Does the allegation claim that harm has been done? Have the alleged actions (or failure to act) of the osteopath caused the patients to suffer significant material harm or exploitation?

2. Can the nature of the harm be defined?

3. Is there any independent and material evidence that harm has been caused which will enable the case to be provable?

4. *Is there a plausible causal link between the osteopath's actions and the alleged harm?*

5. *Does the patient consider removal from the register is a just outcome in the light of their own experience?"*

55. A screener commented:

"I have added there may not be enough detail. As a Screener and Investigating Committee member the responsibility of making the decisions relies on clear guidance in the many situations we have to deal with. This Draft is good but a few more examples would have been more helpful for our work."

56. One respondent stated:

"We applaud the conclusion that for a professional conduct complaint to go forward it must reflect very strong public disapproval. However, lists of this kind can never cover every case and, notwithstanding the fact that the list is not intended to be exhaustive, there is a risk that screeners will interpret this list as the only grounds for dismissal rather than intelligently applying the principle to each case. It is important that the guidance explicitly empowers screeners to assess each case on its merit and to dismiss any that do not reach the threshold for unprofessional conduct, whether the matter concerned is included on the list or not. To ensure this is the case, the list should include a final item along the lines of 'Any other matters which a reasonable person would judge not to be worthy of the moral opprobrium and the publicity which flow from a finding of unacceptable professional conduct.'"

Other comments

57. Some respondents to the consultation commented on the desirability of introducing some form of local resolution route or mediation process into the GOsC's fitness to practise procedures.

58. However, the potential for the introduction of these sorts of mechanism is constrained by the current legislative scheme within which the GOsC is required to operate.

Conclusions

59. The threshold criteria have been the subject of detailed consideration by the Osteopathic Practice Committee, and by Council.

60. The development of the criteria has been informed by the relevant case law, the views of the Law Commissions, the practice of other regulators, and by advice from leading Counsel. It has also been informed by the practical experience of screeners and members of the Investigating Committee.

61. In developing the criteria, the GOsC has engaged with key stakeholders, including the Professional Standards Authority and the Institute of Osteopathy. In addition to a three month public consultation, the GOsC convened a focus group specifically intended to capture the views of patients and members of the public about the criteria.
62. The response to the consultation on the draft threshold criteria was the largest response to a GOsC fitness to practise consultation in recent times.
63. 82% of the respondents agreed that the GOsC should produce threshold criteria; 74% of the respondents considered that use of the criteria would make the GOsC's decision making more open and transparent; 70% of the respondents considered that the guidance document was clear and 64% considered that the document contained the right level of detail; 68% of the respondents agreed with the criteria proposed by the GOsC.
64. The focus group was also in favour of the GOsC producing threshold criteria. The comments made by the focus group have been carefully analysed. The document at the Annex has been amended to make clearer that the criteria are not exhaustive. The Executive will give future consideration to producing additional material, such as case studies to illustrate the sorts of cases that have been referred to the Professional Conduct Committee, in a future business plan work stream.
65. In addition, helpful comments made by leading Counsel and the PSA on the draft document have been incorporated into the amended document at the Annex. In addition we will ensure that the guidance to complainants that can be found on our website is amended to reflect the new criteria, in particular, to ensure that it does not discourage complainants from reporting their concerns to us.
66. Advice from leading Counsel, and the unanimous view of the focus group, was that the threshold criteria should be used by both the Screener and the Investigating Committee. The document at the Annex incorporates this approach.
67. Detailed suggestions from individual respondents on particular criteria have been considered by the Executive, and highlighted in this paper.
68. This is the first time that the GOsC has introduced threshold criteria, and the Executive recommends that the first iteration of the document should be kept as simple as possible.

69. Given the high levels of agreement amongst consultees about the proposed criteria, the clarity of the document and the level of detail, the Executive recommends that these suggestions should not be incorporated in the document at the present time, but that the document should be reviewed after its first year of use by the Screeners and Decision Makers, at which time these suggestions can be revisited.
70. Queries raised by the focus group about the role of candour in the document should also be revisited at this stage, by which time there should be greater clarity amongst the health care regulators about the content and context of the professional duty of candour.
71. With regard to the views of the Nightingale Collaboration we agree that complaints about advertising should rightly be investigated and adjudicated by the Advertising Standards Authority. However, we do not agree with their recommendation that after a complaint has been resolved by the ASA it should subsequently and automatically in all circumstances be investigated by the Investigating Committee.
72. Monitoring of the use of the criteria will also be incorporated into the next audit of the Investigating Committee's decisions to be conducted by external solicitors.

Recommendation: to approve the Threshold Criteria for Unacceptable Professional Conduct, at the Annex.

General Osteopathic Council

Threshold Criteria for Unacceptable Professional Conduct

Purpose of this document

1. The purpose of this document is to provide guidance to complainants and registrants, and to the Screeners and Investigating Committee of the General Osteopathic Council (GOsC), about the sorts of matters that will be considered under the GOsC's fitness to practise procedures.
2. The fitness to practise procedures of the General Osteopathic Council are designed to protect the public. They are not intended to serve as a general complaints resolution process, nor are they designed to resolve disputes between registrants and patients.
3. Investigating allegations properly is a resource-intensive process and the public interest requires that such resources should be used effectively to protect the public and should not be diverted towards investigating matters which do not raise cause for concern.
4. The GOsC considers that this approach is both a proportionate response to the volume of complaints it receives, and is consistent with the principle of 'right touch regulation' promoted by the Professional Standards Authority.
5. The GOsC has, in consultation with its stakeholders including public and patient representatives, produced these 'threshold criteria'.
6. These criteria will guide the screeners when determining whether power is given by the 1993 Act to deal with the complaint if it proves to be well founded⁴, and will guide the Investigating Committee when determining whether or not there is a 'case to answer'⁵.

The threshold criteria

7. The Osteopaths Act 1993 provides that 'Unacceptable Professional Conduct' is 'conduct which falls short of the standard required of a registered osteopath.'⁶ It also provides that a failure to comply with any provision of the Code of Practice should be taken into account, but shall not of itself, constitute Unacceptable Professional Conduct.⁷

⁴ Section 20(6)(a) of the Osteopaths Act 1993

⁵ Section 20(9)(c). See also the GOsC's Investigating Committee Decision-Making Guidance, October 2013.

⁶ Section 20(1)(a) and (2).

⁷ Section 19(4).

8. The threshold for whether or not a complaint or allegation is capable of amounting to Unacceptable Professional Conduct was set out by the High Court in the case of *Spencer v the General Osteopathic Council*⁸

“Is the allegation worthy of the moral opprobrium and the publicity which flow from a finding of unacceptable professional conduct?”

9. Applying this threshold, matters which are not usually capable of amounting to Unacceptable Professional Conduct and which should therefore not generally be referred to the Professional Conduct Committee include:

a. Complaints about note taking and record keeping alone	In the absence of ‘incompetence or negligence of a high degree’ In the absence of evidence of a failure to comply with relevant Information Governance legislation.
b. Complaints which do not fall within the statutory grounds of section 20	
c. Vexatious complaints Including where the complainant: i. repeatedly fails to identify the precise issues that he or she wishes to complain about; ii. frequently changes the substance of the complaint or continually seeks to raise new issues; iii. appears to have brought the complaint solely for the purpose of causing annoyance or disruption to the registrant	
d. Complaints which have been made anonymously and which cannot be otherwise verified	
e. Complaints in which the complainant refuses to participate and provide evidence and in which the allegation cannot otherwise be verified or proved	
f. Complaints which relate to disputes between registrants and patients about fees or the costs of treatment	Provided that there is no allegation of dishonesty or intent to deceive

⁸ [2012] 1WLR 1307, [2012] EWHC 3147 (Admin), at paragraphs 25 and 28 of the judgment

<p>g. Complaints which:</p> <ul style="list-style-type: none"> i. seek to reopen matters which have already been the subject of an employment tribunal process or Civil proceedings; ii. seek to pre-empt or influence the outcome of other regulatory or civil proceedings; iii. which lie more properly within the jurisdiction of another regulator (e.g. the Advertising Standards Authority) and which should have been made to that regulator 	
<p>h. Complaints which merely amount to a difference of professional opinion</p>	<p>Provided that :</p> <ul style="list-style-type: none"> i. the opinion is accepted as proper and responsible by a responsible body of osteopaths skilled in that particular area of practice and who are acting responsibly; and ii. the opinion is reasonably held and is capable of withstanding logical analysis
<p>i. Complaints which relate to employment disputes</p>	
<p>j. Complaints which relate to contractual disputes, including arrangements for lease of premises and facilities</p>	
<p>k. Complaints relating to business disputes including:</p> <ul style="list-style-type: none"> i. passing off/similar sounding web domain names or trading names ii. 'patient poaching' iii. matters arising from the break up of a principal/associate relationship 	<p>Provided that there is no allegation of a breach of patient confidentiality or Data Protection issues.</p>

Annex to 11

l. Complaints about a registrant's personal life (including matters arising out of divorce proceedings)	Unless the complaint relates to abusive behavior or violence, or brings the profession into disrepute
m. Complaints which have no public protection implications but which are made simply on the basis that the complainant is aware that the other party to a dispute is a registrant (e.g. boundary disputes between neighbours)	
n. The following motoring offences: i. Parking and penalty charge notice contraventions; ii. Fixed penalty (and conditional offer fixed penalty) motoring offences	Provided that drugs or alcohol are not involved and there are no potential health issues in relation to the registrant
o. Penalty fares imposed under a public transport penalty fare scheme.	