



**Council**  
**31 January 2018**  
**Hearings and Sanctions Guidance**

<b>Classification</b>	Public
<b>Purpose</b>	For decision
<b>Issue</b>	This paper invites Council to consider the draft Hearings and Sanctions Guidance. The changes proposed will further enhance transparency and consistency in decision making of the Professional Conduct Committee whilst ensuring any sanction imposed by a Committee is both targeted and proportionate.
<b>Recommendation</b>	To agree the draft Hearings and Sanctions Guidance at Annex B.
<b>Financial and resourcing implications</b>	None
<b>Equality and diversity implications</b>	Equality considerations have been reflected in the review of the draft Hearings and Sanctions guidance.
<b>Communications implications</b>	As part of our pre-consultation engagement plan, we undertook a short six week period of consultation from 21 March – 1 May 2017 with interested parties. The GOsC has undertaken a three month consultation on the draft guidance from 22 September 2017 – 15 December 2017. If approved, the guidance will be published on the GOsC website
<b>Annexes</b>	A. Responses to the Consultation B. Draft Hearings and Sanctions Guidance
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## Background

1. In our Corporate Strategy 2016-19 we state that we would continue to seek to identify improvements in our fitness to practise processes.
2. As part of our reform programme for 2016-17, we have continued to explore options and implement reforms which we consider could improve and modernise our fitness to practise processes and improve patient protection but which do not require a change to our primary legislation, the Osteopaths Act. The purpose of these changes is to further enhance transparency and consistency in decision making whilst ensuring any sanction imposed by a Committee is both targeted and proportionate. Additionally, the GOsC Business Plan for 2016-17 states that we will review the Indicative Sanctions Guidance.
3. The third edition of the Indicative Sanctions Guidance (ISG) was approved by Council in October 2013 and, for reference, can be found at: <http://www.osteopathy.org.uk/news-and-resources/document-library/fitness-to-practise/indicative-sanctions-guidance/>. The ISG is used by Professional Conduct Committees (and Health Committees) at the sanction stage of a fitness to practise hearing. As a publicly available document the ISG enhances the accountability and transparency of the Committees decision making and is used by all the parties to a hearing including registrants and their representatives.
4. Since the publication of the current ISG there have been numerous developments in healthcare regulation and the regulatory landscape generally, which required a review of the ISG.
5. In January 2014, Council considered a paper which set out a range of actions that the GOsC was taking in response to the recommendations of the Francis Inquiry and the Government's response to that report published in November 2013, which included a commitment from regulators to agree consistent approaches to candour and a review of standards and guidance to panels taking decisions on professional misconduct. The GOsC Action Plan set out a number of actions across broad themes. The first theme, pertaining to openness and candour, stipulated that a review of the indicative sanctions guidance would be undertaken to take account of duties relating to candour.

## Discussion

6. As part of the review the ISG we wanted to explore in advance a range of topics relevant to Unacceptable Professional Conduct (UPC) and sanction. We wanted to use the discussions arising from this public discussion to inform our views on updating the ISG, and to reflect upon whether there are any additional areas we need to consider.
7. A comprehensive literature review of recent developments in equivalent guidance produced by other healthcare regulators was also undertaken. We wanted the draft hearings and sanctions guidance designed in a way that parties to a hearing would be clear on the procedure and approach that will be

taken by the PCC during the hearing and when imposing a sanction. The guidance is therefore separated into two distinct sections: the procedure that is followed at a hearing and the framework within which the PCC will make decisions about sanctions.

8. We identified a number of issues about which we thought it would be helpful to obtain preliminary feedback prior to further work taking place on the revised ISG. These encompassed:
  - a. the degree to which a practitioner's insight and remediation can be taken into consideration at the unacceptable professional conduct stage of a hearing
  - b. how any period of suspension served prior to sanction should be taken into account
  - c. whether specific guidance is needed in cases of sexual misconduct.
  - d. whether the Committee should offer advice where no finding of unacceptable professional conduct has been made.
9. Building on other work undertaken by the GOsC in relation to the duty of candour, including the review of the *Osteopathic Practice Standards*, the revised hearings and sanctions guidance includes detailed expectations of registrants on the seriousness of failures in the professional duty of candour. There is also separate guidance on failures by osteopaths to raise concerns about both themselves and others. The language used in the draft hearings and sanctions guidance is consistent with both the existing OPS.
10. The collective purpose of these changes is to further enhance transparency and consistency in both our hearings and the decision making of the Committee whilst ensuring any sanction imposed by a Committee is both targeted and proportionate. Importantly, the revised guidance will also help ensure that in the most serious cases, appropriate sanctions are imposed that take account of the confidence of the public including upholding the standards of the osteopathic profession.
11. While Committee members should take all evidence and their findings into account as part of their decision making and in the exercise of their judgement, it is important that the approach they take is consistent and adequately addresses any risk to patient and public safety and the wider public interest.
12. The Hearings and Sanctions guidance is key to maintaining a link between the GOsC's OPS<sup>1</sup> and its fitness to practise functions. We have therefore sought to more closely align the draft guidance with the Standards.

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<sup>1</sup> <http://www.osteopathy.org.uk/standards/>

*Engagement*

13. As part of our pre-consultation engagement plan, we sought input from the GOsC FtP forum (which includes the views of experienced regulatory lawyers) including the Professional Conduct Committee Chairs and members and GOsC legal assessors.
14. We then undertook a short six week public engagement activity from 21 March – 1 May 2017 with interested parties. During the consultation period the consultation page had 203 views and the paper was downloaded 55 times. In total, we received over 20 separate written responses to this discussion paper.
15. In light of the responses we received and comments from the review of PCC determinations by the Determinations Review Group, we made further revisions to the draft guidance. We decided to take the matters identified at paragraph 9 (b) – (d) above forward, in addition to also including guidance on dishonesty. We decided not to take the proposal at paragraph 9(a) forward. This was in light of the majority of responses we received to the effect that the concept of unacceptable professional conduct, unlike current impairment, is a backward looking concept which does not enable a panel, as part of its decision making process, to undertake a distinct consideration of two issues (or steps), namely, 'misconduct' and 'impairment'. The fundamental distinction between the two is most simply expressed as follows: misconduct is about what happened in the past whereas impairment is an assessment addressed to the future, albeit it is made in the context of the past misconduct. Consequently, despite the obvious shortcomings of this approach in practice, unacceptable professional conduct most closely equates with serious misconduct used by other healthcare regulators. We intend to keep this matter under review.
16. In addition, we took the opportunity to include further sections which we consider strengthens and enhances the guidance including:
  - a. detailed guidance on the meaning of unacceptable professional conduct and professional incompetence
  - b. inclusion of additional considerations on both mitigating and aggravating factors, insight and remediation and factors the PCC should take into consideration when determining the length of a suspension.
17. A further meeting with defence organisations and their insurers took place on 22 November 2017. The purpose of this meeting was to identify and discuss ways where we can work together to improve the efficiency and effectiveness of the fitness to practise hearings process. One of the agenda items was the draft Hearings and Sanctions Guidance. Feedback from the group included: how the issuing of advice to registrants would be perceived; whether the examples regarding dishonesty were too prescriptive and the need to reflect that there is a 'spectrum of dishonesty'.

## The consultation

19. The GOsC undertook a three month public consultation from 22 September 2017 to 15 December 2017, in accordance with our engagement strategy. In addition to being published on our website, an article relating to the consultation was featured in the Oct/Nov 2017 issue of *the osteopath* and in news e-bulletins sent to osteopaths in Sept, Oct and Nov 2017.
20. The GOsC received nine responses, including a detailed response from the PSA. The full response from the PSA can be found at:  
<https://www.professionalstandards.org.uk/publications/detail/professional-standards-authority-response-to-gosc-consultation-on-hearings-and-sanctions-guidance>
21. As a general indicator as to the relative success of the engagement strategy, it is relevant to note that over the consultation period there were 301 views of the hearings and sanctions consultation page on our website, with the consultation document being downloaded 113 times. In addition, there were 2,156 views of the October 2017 ebulletin sent to all registrants with 17 'clicks' through to the draft Hearings and Sanction Guidance.
22. A summary of the formal consultation responses we received are set out in Annex A.

**Recommendation:** to agree the draft Hearings and Sanctions Guidance at Annex B.

<b>Consultation Question</b>	<b>Yes/ Helpful</b>	<b>No/ Unhelpful</b>	<b>Consultation response<sup>2</sup></b>	<b>GOsC Response (where relevant)</b>
<p>Do think the draft guidance is structured clearly?</p> <p>If no, please set out your reasons and any suggestions for improvement.</p>	7	2	<p>On the whole it is clear, but has a heavy legal jargon, if this is a "public" document it could be explained in simpler language e.g "opprobrium". A visual time line or flow diagram could help reduce text when describing the scale of outcomes from the hearings of PCC processes, from admonishment to de-registration.</p> <p>Add a contents page with sections and sub-section headings . No italics in the sub-headings as this is difficult for dyslexics to read . Add numbering of headings and sub-headings (e.g. p.5 – (1) unacceptable Professional Conduct, (2) Professional Incompetence, etc.)</p>	<p>The guidance is a public document which enhances the transparency of our procedures and can be accessed by all those involved in, or with an interest in, the GOsC fitness to practise hearings. However, the primary purpose of the guidance is for use by the Professional Conduct Committees in hearings to ensure consistent and proportionate decisions are reached. The use of language such as 'opprobrium' mirrors the language used in case law. The GOsC has produced separate guidance booklet on the hearings procedure specifically designed for registrants. This guidance for osteopaths has been approved by the Plain English Campaign and has received a crystal mark for clarity. It can be found on <a href="http://www.osteopathy.org.uk/news-and-resources/document-library/fitness-to-practise/hearings-guidance-for-osteopaths/">http://www.osteopathy.org.uk/news-and-resources/document-library/fitness-to-practise/hearings-guidance-for-osteopaths/</a></p> <p>The guidance has been amended to include both a contents page and numbered paragraphs.</p>

<sup>2</sup> Some responses have been shortened

<p>Do you think the draft Hearings and Sanctions Guidance will help Committees to make transparent fair and consistent decisions on sanctions?</p> <p>If no, please set out your reasons and any suggestions for improvement.</p>	<p>8</p>	<p>1</p>	<p>When the Osteopathic Practice Standards ('OPS') are referred to, it would be useful to have the related standard number, e.g. for Duty of Candour on p.9, 'standard D.3' could be added.</p> <p>Where OPS numbers are given, the old ones are sometimes used, e.g. para 5, p.11 Sexual Misconduct, standard 'D16' but the revised OPS gives 'D.2' on 'clear and professional boundaries'; and in para 5, p.10, Dishonesty is 'D15' but it is 'D.1' in the revised OPS.</p>	<p>While the revised Osteopathic Practice Standards are due to be published in the summer of 2018, the planned implementation date is not until September 2019. It would not be appropriate to refer to draft standards not in force in current guidance. It is anticipated that the Hearings and Sanctions will be revised to reflect changes in the Standards and developments in the regulatory landscape generally.</p>

<p>The draft Hearings and Sanctions guidance is divided into two parts: an overview of hearings and specific guidance on sanctions, do you find this separation helpful or would you prefer two separate guidance documents</p>	<p>9</p>	<p>0</p>		
<p>Do you think the draft Hearings and Sanctions Guidance gives clear and helpful guidance to the PCC in relation to:</p> <ul style="list-style-type: none"> <li>- Dishonesty</li> <li>- Sexual Misconduct</li> </ul>	<p>7</p>	<p>2</p>	<p>Could have had a little bit more reference to examples</p> <p>It may be helpful for the Hearings and Sanctions Guidance to have a separate section focusing on indemnity insurance (alongside other sections on dishonesty, sexual misconduct, raising concerns and duty of candour). We note that practising without indemnity insurance is listed as an example of dishonesty in the draft guidance. However, we suggest practising without indemnity insurance is a serious FtP issue in its own right. We have previously suggested</p>	<p>Separate guidance to Fitness to Practise Committees on professional indemnity insurance will be issued in due course.</p>
	<p>8</p>	<p>1</p>		



<p>Raising Concerns</p> <p>- Duty of Candour</p> <p>If you have answered no to any of the above then please set out your reasons and any suggestions for improvement.</p>	<p>8</p> <p>7</p>	<p>1</p> <p>2</p>	<p>that a professional practising without indemnity insurance 'calls into question a healthcare professional's commitment to patient safety'.</p> <p>Fraud/financial misconduct could include prolonging treatment unnecessarily and/or encouraging financial dependency.</p> <p>Some of the examples of dishonesty are stretching the point too far. Borrowing money from patients is not good, but it's not dishonest per se. Neither, in themselves, are accepting referral fees or putting pressure on a patient to buy a product (it may be a very good product that the patient can benefit from).</p> <p>Sexual misconduct, while very serious and likely to result in removal from the register, may not always so result in every circumstance.</p> <p>Offences of psychological violence should be added, e.g. harassment, stalking, threats (on social media)</p> <p>It should be explicit that using patients and patient data for research needs informed voluntary consent</p>	<p>The examples given are those within the Osteopathic Practice Standards and are not intended to be an exhaustive list.</p>
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<p>Do you have any further suggestions on how we can improve the guidance?</p>		<p>Will there be an easy-read version for members of the public who might struggle to understand this guidance, such as those with learning disabilities?</p> <p>We suggest the GOsC may wish to consider referring to health in the Conditions of Practice Order (COPO) section on page 13 of the draft guidance. For example, conditions of practice can be a useful regulatory tool to ensure public protection whilst remediating a professional with alcohol abuse problems. We also note that the guidance states that a Professional Conduct Committee ‘must specify the period’ of time for which a COPO is to have effect. We suggest that the Professional Conduct Committee (PCC) may wish to set a length of time during which a registrant is required to complete a test of competence in order to return to practise.</p> <p>Regarding suspension of an osteopath’s registration, the GOsC may wish to refer to the Fleishman principle.</p>	<p>Currently there are no plans to do so. However, there is separate guidance to registrants on the hearings process available (referred to above) which has been approved by the Plain English Campaign.</p> <p>Guidance on drafting conditions, including their purpose is available to the Professional Conduct Committee and Health Committee and can be found on: <a href="http://www.osteopathy.org.uk/news-and-resources/document-library/publications/conditions-of-practice-order-guidance/">http://www.osteopathy.org.uk/news-and-resources/document-library/publications/conditions-of-practice-order-guidance/</a></p> <p>Reference to this has now been included in the Hearings and Sanctions Guidance. The PCC is also provided with hearing folders which contain a complete set of all GOsC guidance and practice notes.</p> <p>Amendments have been within the Guidance.</p>

			<p>The GOsC may wish to consider adding a paragraph to the guidance, clearly setting out the purpose of review hearings and the rationale for imposing sanctions at a review.</p> <p>Guidance on review of COPOs or suspension would be helpful.</p> <p>No, it seems very clear and comprehensive</p> <p>As a practitioner I found the use of reference to the OPS themes helpful. More of that would be beneficial to aid appropriate interpretation and reference to the new standards.</p> <p>The section on issuing advice is confusing. Risk of appeals and JRs.</p>	<p>Separate guidance (which is referred to within the Hearings and Sanctions Guidance) on drafting determinations provides guidance to the PCC on review hearings including reviews of conditions and suspension orders. The PCC is also provided with hearing folders which contain a complete set of all GOsC guidance and practice notes.</p>
<p>Please provide us with any other comments you may have</p>			<p>I thought the guidance was easy to read, clear and found it generally helpful as an update/refresh bringing all the elements together.</p> <p>Thanks for the opportunity to be consulted. I learned a lot about osteopathic standards and practice that no osteopath had ever told me before.</p>	