



**Council**  
**12 July 2016**  
**Initial Closure Procedure**

<b>Classification</b>	Public
<b>Purpose</b>	For discussion
<b>Issue</b>	The purpose of this initial closure procedure is to enhance transparency in our fitness to practise processes by outlining the method and timeframe for how the GOC manages concerns raised where there is insufficient information to identify whether there are concerns regarding a registrant's fitness to practise.
<b>Recommendation</b>	To consider the Initial Closure Procedure contained in the Annex.
<b>Financial and resourcing implications</b>	None
<b>Equality and diversity implications</b>	None identified
<b>Communications implications</b>	None
<b>Annex</b>	Initial Closure Procedure
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## Background

1. The GOsC investigates and determines complaints (also known as allegations) about the professional conduct and fitness to practise of osteopaths, following a process set out in law. The Osteopaths Act 1993 (the Act), the primary legislation, puts a broad framework in place, especially in sections 19-28 with more detailed functions described in secondary legislation: the General Osteopathic Council (Investigation of Complaints) (Procedure) Rules 1999 (Rules).
2. As part of our reform programme for 2016-17, we are seeking to improve and modernise our processes without requiring changes to the Act or Rules.
3. The PSA within its 2014/15 annual Performance Review noted that the GOsC continues to categorise complaints as 'formal' only once a signed complaint form or witness statement is received. The PSA was of the view that the GOsC's current approach makes it more difficult to draw meaningful comparisons between the performance of the GOsC and that of other regulators by looking at median time frames for the conclusion of fitness to practise cases. Following the PSA's audit of the initial stages of the GOsC's fitness to practise process in 2014 the PSA asked the GOsC to reconsider its approach.
4. In addition, as reported to Council in May 2016, following an internal review of formal cases conducted by the Head of Regulation in April 2016, one of the key recommendations was a re-evaluation of our current approach to informal and formal cases (which would also require an appraisal of our existing KPI's and internal time scales and how we measure them).
5. This paper sets out for Council's information how we intend to improve our procedures in this area.

## Discussion

6. Concerns are referred to the GOsC from many different sources, including members of the public, employers, registrants and the police. We may also become aware of a concern through other means, such as the media or the publication of a report. Regardless of how we hear about a concern, we have a duty to identify whether it is a legitimate matter that needs to be investigated.
7. Traditionally we have used the term 'informal complaint' to describe enquiries or concerns we receive which contain information which may amount to an 'allegation' or 'complaint' but where we have insufficient information to make progress. This is because after initial assessment, a significant proportion of these concerns may require further clarification and/or information to be obtained to enable us determine whether the nature of the concern is capable of amounting to a fitness to practise allegation against the registrant. In some cases this information may never be forthcoming, for example where a patient

initially enquired about making a complaint but eventually decided against doing so.

8. Although we follow an internal procedure for managing and progressing these informal complaints there may be external perception that these initial enquiries could remain open for long periods of time before being progressed or closed.
9. We consider that the continuing use of the term 'informal complaint' might mislead, by giving the impression that we do not treat all enquiries seriously. There is also the associated risk that if in order to progress a concern we require a signed witness statement and/or complaint form, this could amount to an unnecessary hurdle for complainants which would be contrary to the Professional Standards Authority (PSA) fitness to practise casework framework.
10. The Initial Closure Procedure set out at the Annex will improve transparency in our investigative process. It will also clarify the timeframe over which we will undertake our initial information gathering to determine whether there is sufficient information to assess whether a fitness to practise enquiry may amount to a 'complaint' or 'allegation'.
11. Additionally, the Procedure will further streamline our investigations and enable us to act more proportionately and quickly on serious complaints, by identifying them at an early stage, thereby promoting our capacity to protect patients. It is also anticipated that by providing Screeners with more information and/or the submissions of a registrant in appropriate cases this will enhance a Screener's ability to make high quality decisions.
12. The revised procedure is aligned to the GOsC strategic objective to promote public and patient safety through proportionate, targeted and effective regulatory activity.

**Recommendation:** to consider the Initial Closure Procedure contained in the Annex.

### Initial Closure Procedure

1. The purpose of this procedure note is to enhance the transparency of the initial stages of the GOsC's disciplinary process, by explaining the way in which we deal with professional conduct and fitness to practise concerns where they may not (yet) be accompanied by sufficient relevant information to permit a decision on closure or referral under the statutory process.
2. The GOsC investigates and determines complaints (also known as allegations) about the professional conduct and fitness to practise of registered osteopaths (registrants), following a process set out in law. The Osteopaths Act 1993 (the Act), the primary legislation, puts a broad framework in place, especially in sections 19-28. More detailed adjudicatory steps and functions are described in secondary legislation: especially the General Osteopathic Council (Investigation of Complaints) (Procedure) Rules 1999 (Rules). Additionally, paragraph 15 of schedule 1 to the Act gives the GOsC a broad power to do anything which is calculated to facilitate, or which is incidental or conducive to, the discharge of any of its functions: paragraph 15(1). It also confers a discretion for the GOsC to regulate its own procedure: paragraph 15(5).
3. Section 20 of the Act does not apply to *every* general communication, assertion or concern, but only to: (i) an allegation, (ii) against a registrant, which (iii) falls within one of six defined categories. Most notably, these include:
  - the registrant has been guilty of conduct which falls short of the required standard (known as 'unacceptable professional conduct');
  - the registrant has been guilty of 'professional incompetence';
  - the registrant has been convicted at any time in the UK of a criminal offence which has 'material relevance to the fitness of the osteopath concerned to practise osteopathy'; and
  - the registrant's ability to practise as an osteopath is 'seriously impaired because of his physical or mental condition'.

An initial assessment is carried out of every concern received, to enable a determination on whether it is capable of falling into one or more of the above categories. This procedure note outlines the process undertaken upon receipt of an enquiry.

4. The GOsC now uses the term fitness to practise 'concern' to describe any professional conduct communication containing information which may amount to an 'allegation' or 'complaint' under the Act. Previously, the GOsC used the phrase 'informal complaint' for this purpose, as distinct from a 'formal complaint' (i.e. any allegation or complaint which had been found to satisfy the threshold statutory requirements for recognition as such). An allegation or complaint needs no particular formality. Although a completed form or a signed witness

statement will often make things easier and quicker, any form of communication may be sufficient as content and substance is more important than the presentational form.

5. Concerns reach the GOsC from many different sources: patients, relatives, other members of the public, employers, colleagues and public officials (such as the police). The GOsC may also become aware of fitness to practise concerns about a particular registrant or group of registrants through other channels (such as the media or the publication of a report). In this situation, the GOsC can raise the enquiry on its own initiative. Regardless of the means by which a concern arises, the GOsC has a duty to identify whether there is a legitimate concern that needs to be investigated.
6. The GOsC's overriding objective is to protect public and patient safety. It takes seriously any professional conduct and fitness to practise enquiry. However, not all such communications raise safety issues. Accordingly, the extent and immediacy of any risk posed by the registrant is always assessed on receipt of every enquiry, and throughout the life of any subsequent case. This procedure note applies to only those enquiries that are assessed *not* to raise an issue of public and patient safety.
7. Sections 20(4) and (5) authorises the GOsC to make Rules requiring 'preliminary consideration' to be carried out by 'a person appointed by the [GOsC's] Council'. Those persons are appointed, and their role detailed, by rules 3-6. They are known as 'Screeners', and all are members of the Investigating Committee (IC). Section 20(6)(a)-(b) require a Screener to:
  - (a) *consider the allegation with a view to establishing whether, in his opinion, power is given by this Act to deal with it if it proves to be well founded; and*
  - (b) *if he considers that such power is given, give the [IC] a report of the result of his consideration.'*
8. Thus, if the Screener considers that there is power to deal with the allegation, it must be referred to the IC along with the Screener's report (which may contain a recommendation). Otherwise, the Screener should dismiss (close) the case and inform the complainant through a written and reasoned decision: rule 6(1). The GOsC has developed an established practice to furnish the Screener with adequate material to permit a properly informed choice between those two options: either referral to the IC or closure.
9. Concerns often need clarification. They can be very brief, vague and/or incoherent. For each new concern the GOsC tries to gather information (if it has not already been provided) which is sufficiently relevant, credible and detailed to enable the Screener to reach a reasonable opinion on whether or not 'power is given by [the] Act to deal with it if it proves to be well founded'. Essentially, this involves the Screener forming a view (and perhaps making a recommendation)

on whether the enquiry meets the statutory definition of an 'allegation' or 'complaint' (as set out in paragraph 3 above) and is *capable* (assuming the factual assertions are made out) of affecting the registrant's registration status. This typically means inviting the enquirer or third parties to provide further information. Such requests are issued under rule 5, which permits Screeners to, 'seek information about or observations on the case from any person who, in the opinion of the Screener, might assist him in his consideration'. In practice, it is the regulation team that sends out the requests, in order to streamline the process.

10. Sometimes, the registrant is also asked for some input before the papers are placed before a Screener.
11. The GOsC imposes a deadline, so that this initial stage of its disciplinary function to enable concerns to be managed in a timely manner. If the enquirer does not provide the further information within 42 days of the request, the papers will then be referred to a Screener with a recommendation for closure on the basis that there is insufficient relevant and credible supporting material. If the enquirer cooperates sooner, an earlier referral is made. The Screener will then form a view in accordance with the *Guidance for Screener*<sup>1</sup>.
12. This procedure note should be read in conjunction with the GOsC's guidance on *Threshold Criteria for Unacceptable Professional Conduct*.<sup>2</sup>

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<sup>1</sup> <http://www.osteopathy.org.uk/news-and-resources/document-library/policies-and-procedures/guidance-for-screeners-and-report-template/> (October 2015)

<sup>2</sup> <http://www.osteopathy.org.uk/news-and-resources/document-library/fitness-to-practise/threshold-criteria-for-upc/> (February 2015)