



Council
14 May 2015
Updates to the Governance Handbook

Classification Public

Purpose For decision

Issue This paper sets out a number of recommended amendments to the Governance Handbook which have arisen from discussions at recent Committee meetings.

Recommendation To agree the proposed revised sections in the Governance Handbook relating to:

- a. Procurement of services
- b. Terms of Reference of the Audit Committee
- c. Conflicts of interest

Financial and resourcing implications Minor savings may arise in relation of procurement.

Equality and diversity implications None

Communications implications The Governance Handbook is published on the GOSc's website

Annexes

- A. Revised policy on procurement of services
- B. Revised Terms of Reference for the Audit Committee
- C. Revised conflicts of interest policy

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Background

1. Our Corporate Plan states that we will 'ensure that our governance is appropriate and effective'. As part of that commitment, periodically we update our Governance Handbook.
2. Recent discussions at Committees have led to recommendations that aspects of the Handbook should be reviewed, as follows:
 - a. A request from Council that the Audit Committee should advise on tendering for services.
 - b. A review by the Audit Committee of its Terms of Reference following the appointment of a new Chair.
 - c. A discussion at the Education and Registration Standards Committee about the conflicts of interest policy.
3. These three areas are discussed in more detail below.

Discussion

Procurement of services

4. At its meeting in November 2014 Council agreed a new policy on the procurement of services. At that meeting there was some discussion about the requirement for certain services to be tendered at least every five years. Council decided to refer the matter to the Audit Committee for their consideration.
5. The Committee discussed the matter at its meeting in March 2015 (see minutes at Item 20). In discussion Members were keen that the procurement section of the Governance Handbook did not attempt to constrain the Executive. Members advocated a light-touch approach where the Executive is required to ensure the best value services were procured, but this did not require a list of service and related contracts to be recorded in the Governance Handbook. Members agreed that the Executive should be allowed flexibility in their approach but that it was important that Council and committees received appropriate reports to allow for scrutiny and assurance.
6. In the light of these discussions, the policy has been amended and is presented at Annex A for agreement. The section of the policy relating to the procurement process itself has not been changed except to make it consistent with the new general principles set out in the policy.

Audit Committee Terms of Reference

7. The Audit Committee reviewed its terms of reference at its meeting in March 2015 and concluded that:

- a. The Committee should consider any corporate governance matters that arise in relation to performance management.
 - b. There should be explicit mention of whistleblowing.
 - c. There should be a role for the Committee in recommending the commissioning of any special investigations, e.g. in relation to fraud.
 - d. The Committee should periodically review its own performance
 - e. Current practice in relation to receiving the Annual report and Accounts and on giving an overall opinion should be reflected in the Terms of Reference.
8. These amendments are reflected in the amended Terms of Reference presented at Annex B for agreement.

Conflicts of interest policy

9. The current conflicts of interest policy has not been reviewed for a number of years and, in discussion at a recent meeting of the Education and Registration Standards Committee it was recognised that it was not clear and was difficult to apply.
10. The Chair and Chief Executive, reflecting on best practice and on the advice of the Head of Regulation, have amended the policy. A revised draft is presented at Annex C.
11. The key differences between the current and proposed policies are:
- a. Clarifying the legal test for bias which must underpin all such policies.
 - b. Replacing the three current categories of interest (indirect, prejudicial and irreconcilable) with the more commonly used two categories (indirect and direct).
 - c. Updating the list of interests which must be declared to reflect wider best practice.
 - d. Removing the list of practical examples which are not relevant to the proposed new policy.
 - e. Updating the declaration of interests form.
12. Council is invited to agree the new policy.

Recommendation: To agree the proposed revised sections in the Governance Handbook relating to:

- a. Procurement of services
- b. Terms of Reference of the Audit Committee
- c. Conflicts of interest.

Revised policy on the procurement of services

Principles

1. It is the duty of all those engaged in the procurement of goods and services for the GOsC to ensure that contracts are reviewed on a regular basis to ensure they represent value for money, while having due regard for quality and sustainability.
2. There are a number of principles which underpin the procurement of services:
 - a. All procured goods and services should be obtained on the most economically advantageous terms.
 - b. All procured goods and services should strive to ensure the best quality is achieved for the price being paid.
 - c. Those individuals procuring goods or services should have regard for all relevant legislative requirements under *The Public Contracts Regulations 2015* and any relevant EU Procurement Directives.
 - d. Contracts should be reviewed on a regular basis having due regard for latest best practice, e.g. external financial audit.
 - e. Contracts should be reviewed on a regular basis having due regard to the competitiveness of relevant markets, e.g. utilities and insurance.
 - f. Those individuals procuring goods or services should have regard for the procurement criteria as specified in paragraphs 5 and 6 below.
3. The Chief Executive is authorised to sign all contracts on behalf of the GOsC.
4. The procurer of the goods or services will, where the value of the contract is over £25,000, inform the Head of Registration and Resources so that the details of the contract can be added to the list of procured goods and services published on the GOsC website.

Procurement criteria

Contract value £5,000 to £50,000

5. All contracts with an anticipated value between £5,000 and £50,000 will be subject to the process for procurement of services as set out below, unless otherwise varied by Council.
 - a. The relevant head of department will prepare an invitation to tender document setting out the specification for goods or services.
 - b. The relevant head of department will consult with the Head of Regulation on the legal implications of any tender process (including any requirement

arising from EU Procurement Directives), and shall comply with the requirements.

- c. Where no legal requirement exists, or the number of suppliers is not specified, the relevant head of department will arrange for at least three suppliers to tender.
- d. At least one of the Chief Executive, Head of Registration and Resources or Head of Regulation, will sit on the selection panel considering the tender.
- e. The selection panel shall assess the tenders and make a recommendation on which of the potential suppliers best meets the requirements set out in the invitation to tender.
- f. The final award of contract will be subject to a legal review by the Head of Regulation seeking specialist advice where required.

Contract value greater than £50,000

6. For tenders where the anticipated value is greater than £50,000, a number of additional steps to those set out in paragraph 3 will apply. These are:
 - a. A business case, procurement strategy and project initiation document will be submitted in advance of the procurement for approval by the relevant committee or by Council.
 - b. The procurement panel will include the Chair of Council or another Council member.
 - c. The final award of contract will be subject to agreement of the procurement panel.
 - d. A contract award notice will be published on the GOsC website.
 - e. The outcome of the procurement will be reported to the relevant Committee and/or to Council.
 - f. Where, for any reason, the cost of the procured goods or services increases by 10% or more, or where a significant delay is anticipated, the circumstances will be reviewed by the original tender panel.
 - g. The outcome of the review at f. will be reported to the relevant Committee and/or Council, and be open to review by the Audit Committee.

Revised Terms of Reference of the Audit Committee

The role of the Audit Committee is to provide assurance that the necessary internal and external systems and processes are in place for identifying, managing and mitigating the risks relating to the discharge of the GOsC's statutory duties, and make recommendations for any actions to Council and the Executive as appropriate. To do this it will:

- a. Agree the content of the risk register at the start of each business planning cycle and keep it under review.
- b. Request and receive reports on the management of risk areas identified in the register and make any recommendations.
- c. Review the internal financial controls and advise on these controls.
- d. Make a recommendation to Council on the appointment of financial auditors to conduct the annual financial audit.
- e. Receive a report on preparations for the annual financial audit.
- f. Receive the audit report, Audits Findings Report (AFR), draft Annual Report and Accounts, and Governance Statement; make recommendations to Council on the approval of these, and monitor the implementation of agreed recommendations in the AFR.
- g. Approve proposals for the commissioning of audits of key functions within the organisation and to recommend any areas where special investigation might be necessary.
- h. Receive audit reports and the Executive's response, and make recommendations to Council on the implementation of recommendations arising from such audits and investigations.
- i. Receive reports on any critical incidents, data breaches, corporate complaints or whistleblowing, and the Executive's response to them, and make any recommendations to the Executive and Council.
- j. Receive reports on the Executive's approach to organisational performance management and corporate governance, and make any recommendations.
- k. Make an annual report to Council on the work of the Committee and an overall opinion on the management of risk within the GOsC.
- l. To review periodically its own effectiveness as a Committee.

Revised Register of Interests and Conflicts of Interest Policy

Introduction

1. The Osteopaths Act 1993 requires the GOsC to establish and maintain a system for the declaration and registration of the private interests of its members, as well as to publish these interests.
2. Failure to manage conflict of interests effectively runs the serious risk that the GOsC could be perceived to be acting improperly, rendering its actions and decisions vulnerable to legal challenge.
3. The GOsC strives to ensure transparency and probity in the fulfilment of its statutory functions. In so doing, it aims to avoid any appearance of impropriety or conflict of interest that would undermine confidence in the regulatory process.
4. Best practice in corporate governance requires that this policy applies not only to Council members but all those acting on behalf of the GOsC including members of committees who are not members of Council, co-opted members of committees and working groups, Legal and Medical Assessors, Visitors and any other office holders.
5. Members of the Executive are also required to follow the principles set out in this policy and notify the Council and Executive Support Officer of any potential or actual conflicts of interest between their work and any non-work activity.

What is a conflict of interest?

6. A conflict of interest is any situation in which the personal interests of an individual (or the responsibilities or allegiances owed by them to another body), may or may appear to influence their personal judgment, actions or decision-making.

7. In UK law the legal test for bias, derived from case law is:

'whether the fair-minded observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased' (Porter v Magill [2002] 2 AC 357).

Therefore it follows that a perception of wrongdoing, impaired judgement or undue influence can be equally as detrimental as any of them actually occurring.

8. Conflicts may be financial as well as non-financial, and may be direct or indirect. So for example, conflicts can arise from an indirect financial interest (e.g. payment to a spouse) or a non-financial interest (e.g. preserving the individual's reputation).

9. Conflicts of loyalty may arise in respect of an organisation of which the individual is a member or with which they have an affiliation, or from personal or professional relationships with others, e.g. where the role or interest of a family member, friend or acquaintance may influence an individual's judgement or actions, or could be perceived to do so. Depending upon the individual circumstances, these factors can all give rise to potential or actual conflicts of interest.
10. A conflict of interest may also be anticipatory, where the actions of an individual may be perceived to put them in a more favourable future position in relation to another party.

Guidance

11. Members and all those who act on behalf of the GOsC are expected **to act impartially and objectively in carrying out the GOsC's business.**
12. In considering what might constitute a potential conflict, those covered by this policy should bear in mind the seven principles of public office: selflessness; integrity; objectivity; accountability; openness; honesty; and leadership.¹
13. There is a duty on those covered by this policy to avoid situations of conflict of interest between the individual's personal interests and his/her GOsC duties.
14. All those covered by this policy must declare in writing to the Chief Executive any professional, personal or business interests which they consider may pose, or might be seen to pose, a conflict with their GOsC responsibilities. The interests will then be transferred to a Register of Interests which will be made available on the public website. Annex A provides a list of examples of interests that must be declared although it cannot represent the totality of what should be declared.
15. Where a potential or actual conflict arises in the course of GOsC business (for example, in the course of a meeting or when invited to take part in another GOsC activity), the individual should declare at that time that they have a potential or actual conflict of interest.
16. Where a potential conflict has been declared, the Chair of Council (or Chair of a Committee) will decide whether it is appropriate for that Member of Council or office holder to participate in a relevant discussion or decision.

¹ The Seven Principles see: [Committee on Standards in Public Life](#)

17. The categories of interest, together with their effect on participation in the issue for discussion/decision are:

- **Indirect interests**

Interests that do not directly relate to specific issues for discussion. In such circumstances, while the interest must be declared, there is no reason not to participate in the discussion or decision.

- **Direct interests**

Interests with direct relevance to specific items of business such that a fair-minded observer, having considered the facts, would conclude that there was a real possibility that the individual was biased in any discussion or decision.

In such circumstances it will not normally be permissible to participate in any relevant discussion or decision and the individual should withdraw from the meeting.

Should the Chair of Council or relevant committee decide, following a consideration of the likely impact of the interest, that it is appropriate for the individual to participate in the discussion or decision this must be recorded, with reasons, in the minutes of the meeting.

Procedure

18. The Chief Executive will be responsible for keeping the Register of Interests which will be published on the GOsC website.

19. If any member is unsure as to whether they need to declare a particular interest, they should discuss it with the Chair of Council, the relevant committee chair or the Chief Executive. The final decision on whether a matter is a conflict of interest is taken by the Chair of Council.

20. On appointment, all members are asked to complete the attached form (Annex B) giving details of their interests. All individuals concerned will be invited to review and update their declared interests on an annual basis and aside from this, are required to amend their entries to reflect any changes as soon as possible.

21. If there are any queries over proposed entries on the Register of Interests, please contact the Chief Executive, in the first instance, or the Council and Executive Support Officer:

Chief Executive
+44 (0) 20 7357 6655 x244
ce@osteopathy.org.uk

Council and Executive Support Officer
+44 (0) 20 357 6655 x246
council@osteopathy.org.uk

22. Please return the completed declaration form to the Council and Executive Support Officer:

Council and Executive Support Officer
General Osteopathic Council
Osteopathy House
176 Tower Bridge Road
London SE1 3LU

Annex A

Interests which must be declared

The following interests must be declared:

- a. posts held in the ordinary course of employment or professional practice, including unpaid
- b. membership of professional bodies or specialist societies
- c. any office (e.g. President, Chairman, Chief Executive, Treasurer or Secretary) of any professional body, specialist society or similar body, whether in the public, private or voluntary sector
- d. consultancies, directorships or advisory positions
- e. membership of a political party or pressure group
- f. a current, anticipatory or recent association with any osteopathic educational institution (OEI):

'Association 'includes:'

- a trustee, governor, director or other office holder
- an employee
- any other paid or unpaid association, e.g. as a consultant, adviser or external examiner

'Current, anticipatory or recent':

- the individual's association with the OEI is active at the time
- the individual expects to have a future association with an OEI
- the individual's association lapsed less than four years ago

'Osteopathic Educational Institution (OEI)':

- an undergraduate osteopathic provider that already has Recognised Qualification (RQ) status
 - an undergraduate osteopathic provider that is known to be seeking (or it is anticipated will seek) RQ status
 - a provider of post-graduate or continuing professional development courses in osteopathy.
- g. any close personal ties with the GOsC's advisers, executive or prospective advisers.
 - h. any other interest which may be relevant and not covered by the above e.g. association through family such as might lead a fair-minded observer, having considered the facts, to conclude that there was a real possibility that such an interest might influence an individual's judgment.

Annex B

Declaration of interests form

I, _____, understand that I must act in accordance with the Nolan principles. The principles of selflessness, integrity and honesty relate directly to the management of interests. I must not receive any financial or non-financial benefit from my association with the GOsC that is not explicitly authorised in my appointment letter (i.e. annual remuneration and travel and subsistence expenses) and I should not exert any influence to acquire any preferential treatment for myself or other connected persons.

Areas of interest	Details relating to you (Also include any relevant details relating to a connected person i.e. a person with whom you have a personal or business relationship which could be perceived as influencing your decision)
<p>Posts held in the ordinary course of employment or professional practice, including unpaid</p> <p>Why? Decisions need to be taken in an open and transparent fashion. Therefore Members are required to declare positions so that any perceived interest can be easily managed</p>	
<p>Membership of professional bodies or specialist societies</p> <p>Why? Decisions need to be taken in an open and transparent fashion. Therefore, Members are required to declare positions so that any perceived interest can be easily managed</p>	

<p>Areas of interest</p>	<p>Details relating to you</p> <p>(Also include any relevant details relating to a connected person i.e. a person with whom you have a personal or business relationship which could be perceived as influencing your decision)</p>
<p>Any office (e.g. President, Chairman, Chief Executive, Treasurer or Secretary) of any professional body, specialist society or similar body, whether in the public, private or voluntary sector</p> <p>Why? Decisions need to be taken in an open and transparent fashion. Therefore, Members are required to declare positions so that any perceived interest can be easily managed</p>	
<p>Consultancies, directorships or advisory positions</p> <p>Why? Decisions need to be taken in an open and transparent fashion. Therefore, Members are required to declare positions or holdings so that any perceived interest can be easily managed</p>	
<p>Membership of a political party or pressure group</p> <p>Why? Members are free to engage in political activities or to maintain associations with professional organisations. Members are required to declare such positions to give assurance that they do not conflict with the essential purpose of the GOsC which is to protect the public.</p>	

<p>Areas of interest</p>	<p>Details relating to you (Also include any relevant details relating to a connected person i.e. a person with whom you have a personal or business relationship which could be perceived as influencing your decision)</p>
<p>A, current, anticipatory or recent association with any osteopathic educational institution (OEI) as per Annex A</p> <p>Why? Decisions need to be taken in an open and transparent fashion. Therefore, Members are required to declare positions so that any perceived interest can be easily managed</p>	
<p>Any close personal ties with the GOsC’s advisers, executive or prospective advisers</p> <p>Why? Members who have close ties with advisors or employees may be perceived as having an undue influence on decisions. These must be declared so that they can be managed in an open and transparent manner.</p>	
<p>Any other interest which may be relevant and not covered by the above e.g. association through family such as might lead a fair-minded observer, having considered the facts, to conclude that there was a real possibility that such an interest might influence an individual’s judgment.</p>	

I will update my register regularly, particularly if any significant changes occur. I will alert the Council and Executive Support Officer as soon as possible if I am subject to disqualification under the General Osteopathic Council (Constitution) Order 2009 (SI2009/263). All actual, perceived, apparent and potential conflicts are disclosed above.

Signed..... Date.....

A scanned electronic signature or typed name will suffice so that the return can be made electronically.

Data Protection

The information provided will be processed in accordance with the data protection principles set out in the Data Protection Act 1998. The information provided will be available publically; the register will be available on the GOsC website.

If you are not sure what to declare or whether or when your declaration needs to be updated, please err on the side of caution. If you would like to discuss this issue please contact the Chief Executive (+44 (0) 20 7357 6655 x244, ce@osteopathy.org.uk) or the Chair of Council (chair@osteopathy.org.uk) for confidential guidance.