



Council
20 May 2021
Draft Screeners Guidance

Classification	Public
Purpose	For decision
Issue	<p>This paper invites Council to agree the draft Screeners Guidance.</p> <p>An external audit in 2019 recommended that the Screeners guidance is consolidated. The guidance has also been substantially updated and modified to enable Screeners to make consistent, fair and proportionate decisions.</p>
Recommendation	To agree the draft Screeners Guidance.
Financial and resourcing implications	Within existing budget.
Equality and diversity implications	An Equality Impact Assessment was carried out prior to a public consultation being undertaken.
Communications implications	A public consultation has been undertaken. The results of the consultation are set out in Annex A. If approved, the guidance will be published on our website and made available to Screeners.
Annexes	Annex A Consultation Responses Annex B Draft Screeners Guidance
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Key messages from this paper:

- An independent audit of the initial stages of our investigations took place over July/August 2019. The auditor also recommended that comprehensive, consolidated Guidance for Screeners be produced.
- A first draft of consolidated Guidance for Screeners was prepared for consideration by the Investigating Committee at a training day which took place on 21 February 2020.
- At the start of lockdown, on 26 March 2020, we temporarily paused the progress of the Screeners Guidance as public protection took precedence.
- We restarted this activity later in the year and sought views from the Policy and Education Committee (PEC) in October 2020. Council agreed to publish a consultation in November 2020 and this paper sets out the results of that consultation.
- The consultation analysis is at Annex A and there are no substantive comments which would affect the approval of the Screeners Guidance. The Professional Standards Authority (PSA) confirmed they did not have any substantive comments to make on the Screeners Guidance, which is at Annex B.

Background

1. The Regulation department reviews all concerns received and conduct an initial risk assessment to ensure there is no immediate risk to public protection. We gather as much information as possible at this initial stage before referring the concern to a 'Screener' (an osteopath member of the GOsC Investigating Committee).
2. As part of our information gathering, we usually seek additional information or clarification from the person raising the concern. If the person raising the concern 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 under the Initial Closure Procedure on the basis that there is insufficient relevant and credible supporting material.
3. If we do receive the information, the case is passed to the Screener who reviews the concern to determine whether it is capable of amounting to an allegation under the Osteopaths Act 1993.
4. In reaching a decision, the Screener can refer to 'Threshold Criteria' to help decide whether an activity complained about constitutes unacceptable professional conduct, which is 'conduct which falls short of the standard required of a registered osteopath'.

5. If the Screener decides that the GOsC has no power to investigate the concern against the osteopath, the matter is referred to a Lay Screener to review the documentation and the Screener's decision. If they both agree, the matter can be closed. If they disagree, then the matter is referred to the Investigating Committee.
6. An independent audit of the initial stages of our investigations took place over July/August 2019. In summary, the audit reviewed 20% of all concerns/cases closed at the different decision points during the initial stages of the GOsC fitness to practise processes, up to and including, Investigating Committee decisions.
7. The audit focused on the decisions of Screeners and the Investigating Committee in relation to concerns/cases that were closed under the initial closure procedure/threshold criteria with no case to answer. The key finding that emerged from the review related to the adequacy of reasons given in screening decisions where concerns were closed under the Initial Closure Procedure. However, the auditor also recommended that comprehensive, consolidated Guidance for Screeners be produced.
8. Because of the auditor's recommendation we incorporated this activity within the Business Plan for 2020-21, which stated that we will, 'Update and consolidate the guidance to Screeners'.

Discussion

9. At the start of lockdown, on 26 March 2020, we decided to temporarily pause the progress of the Screeners Guidance as originally planned. Public protection took precedence as we concentrated on triage of concerns and risk management activity, prioritising high-risk investigations and interim order and review cases. Over a short period of time, we adapted to the many challenges thrown up by the pandemic and in the process have transformed many of our FtP core activities at an unprecedented pace. Most notably through our activity around holding hearings remotely.
10. Part of our reform programme over the past five years has included the introduction of the Threshold Criteria and Initial Closure Procedure. The introduction of these initiatives brought step changes in the initial stages of our investigations enabling both improved efficiencies and effectiveness in our processes. Whilst all members of the Investigating Committee have received training on these processes, it is essential that the training is augmented by up-to-date, accessible guidance which continues to support Screeners in their decision-making role.
11. The key changes in the draft Screener guidance include:
 - A separate section on the application of the initial closure procedure

- Generally refreshing the guidance on applying and incorporating the threshold criteria
- A section on 'regulatory concerns' and the documents that will be considered by the Screener
- A separate section on interim orders
- A Screener decision making flowchart
- Added appendices on the Initial Closure Procedure, the Threshold Criteria and an amended template Screener's Report

12. We did not consult on either the Initial Closure Procedure or the Threshold Criteria, as both documents have been approved by Council in 2015 and 2016 and are both publicly available¹. These guidance documents were nevertheless included in the consultation for reference and completeness.

13. As part of our pre-consultation engagement plan, a first draft of consolidated Guidance for Screeners was prepared for consideration by the Investigating Committee at a training day which took place on 21 February 2020 and feedback we received has been incorporated in the current draft.

14. At the meeting in October 2020, the Policy and Education Committee (PEC) considered the draft Screeners Guidance. Amongst other comments and questions regarding the work of Screeners, the use of the male gender within the guidance was queried. It was explained that both the Osteopaths Act and the Investigating Committee Rules employ gender specific language, and this cannot be changed. However, we have ensured that a gender neutral terminology was used in the guidance itself as this is in line with current parliamentary counsel drafting guidance.²

15. The PEC agreed that the guidance should be recommended to Council for consultation. At its meeting in November 2020, Council agreed that the draft guidance should be consulted on.

16. A public consultation on our draft guidance ran from 2 December 2020 until 2 March 2021. Given the amount of pre-consultation engagement we had undertaken with internal and external stakeholders at the time, and the nature and content of the changes made, we did not anticipate a large response to the consultation.

¹ <https://www.osteopathy.org.uk/news-and-resources/document-library/fitness-to-practise/threshold-criteria-for-upc/> ; <https://www.osteopathy.org.uk/news-and-resources/document-library/fitness-to-practise/initial-closure-procedure/>

²

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/892409/OPC_drafting_guidance_June_2020-1.pdf

17. In total, we received 7 responses to the consultation. The Professional Standards Authority (PSA) confirmed they did not have any substantive comments to make on the revised draft guidance.

18. A summary of the responses we received is included in Annex A.

Recommendation: To agree the draft Screeners Guidance at Annex

Annex A to 11

Responses to the consultation on Screeners Guidance

Consultation Question	Yes	No	Consultation response ³	GOsC Response (where relevant)
<p>Did you find the guidance clear and accessible?</p> <p>Please provide any suggestions about how the draft Guidance might be made clearer</p>	6	1	<p>Thank-you for the inclusion of the flowchart, it was useful</p> <p>The screener should be required to declare conflicts of interest and recuse themselves in the event that they have close contact with either the complainant or the registrant. This would include social contact or professional contact (through clinic or college). It should not include simply having met either party on infrequent occasions.</p>	<p>Screeners are required to declare all conflicts of interest, or where they have any doubt as to whether there is a possible conflict, to proactively raise this with GOsC. We have therefore added a separate section on conflicts to the draft guidance to make this clearer.</p>
The draft Screeners template report	7	0		

³ Some responses may have been shortened

Annex A to 11

Consultation Question	Yes	No	Consultation response ³	GOsC Response (where relevant)
<p>has been designed to support screeners in providing adequate reasons for their decisions.</p> <p>Do you think the draft template report has the potential to improve the adequacy of screeners written reasons?</p>				
<p>Please provide suggestions for what you consider could be added/amended to the draft Screeners template report</p>			<p>Sack the screener who pass on cases that are later dismissed</p> <p>Whilst it might make the template considerably longer, for consistency, you might want to outline the Code and Threshold Criteria for UPC in the template itself on a 'delete any that do not apply basis'. Might make it quicker for the screener to populate. It's a balance I suppose</p>	<p>We plan to undertake an internal review later this year of the template report and invite comments from Screeners to assist us in making potential improvements</p>

Annex A to 11

Consultation Question	Yes	No	Consultation response ³	GOsC Response (where relevant)
			between length of the form and ease/speed of population.	
<p>Do you think the draft Screeners Guidance would be helpful to screeners on the application of:</p> <ul style="list-style-type: none"> •The Initial Closure Policy: •The Threshold Criteria: 	<p>6</p> <p>6</p>	<p>1</p> <p>1</p>	<p>I would like for further clarification on one particular point regarding the ICP: Annex B, point 12 states" The initial closure procedure applies to only those concerns that are assessed not to raise an issue of public and patient safety" and the relevant footnote to this paragraph is "Whether a concern raises an issue of public and patient safety is made at the point it is considered by the screener"</p>	<p>The initial closure procedure (ICP) and threshold criteria (TC) are not part of the consultation and are included for reference only (both having been approved by Council). However, for aid clarity and understanding the process is set out below: A separate section on risk assessment is included within the guidance. Assessment of risk is an ongoing process which may alter and change as a case progresses. As the regulation department manage investigations we conduct a reassessment of the risk upon the receipt of new information and evidence.</p> <p>All concerns undergo an initial assessment. This is not meant to be a detailed risk assessment given it is not unusual at the earliest stages for there to be a paucity of evidence at the initial stage. Rather, the triage determines whether there are serious issues that require immediate action, in particular an interim order or particular vulnerabilities for the complainant or other individuals.</p>

Annex A to 11

Consultation Question	Yes	No	Consultation response ³	GOsC Response (where relevant)
				<p>However, if there is a lack of information or the enquirer disengages then we seek to engage with them (i.e. communication at 14 days and 30 days). We use additional methods to attempt to engage with the enquirer, such as letters and phone calls. These strategies have proved successful in practice and therefore it is only in a small minority of cases where, what might first appear to have the potential to amount to a serious concern, is unable to be progressed because of lack of engagement and/or evidence from the enquirer.</p> <p>It is at that juncture that we recommend closure with the Screener. The decision to close the case is for the Screener. Where we have been able to acquire information or evidence that suggests there are patient safety issues the case is not suitable for closure under the ICP and rather we would assess the risk and apply for an interim order following the procedure set out in our interim order guidance.</p>
Do you consider that the approach proposed in this	7	0		

Annex A to 11

Consultation Question	Yes	No	Consultation response³	GOsC Response (where relevant)
<p>consultation supports our overarching objective of public protection? This includes:</p> <ul style="list-style-type: none"> a. protecting, promoting and maintaining the health, safety and well-being of the public b. promoting and maintaining public confidence in the profession of osteopathy c. promoting and maintaining proper professional standards and conduct for osteopaths 				

Annex A to 11

Consultation Question	Yes	No	Consultation response ³	GOsC Response (where relevant)
Do you have any other comments on the draft guidance?			<p>It is clear, structured and focuses on right-touch regulation and proper assessment of risk, rather than being a mechanism to get rid of cases without appropriate scrutiny. I think it is also clear enough for unrepresented registrants to be able to follow and understand the decision making process.</p> <p>Make your screener actually check the facts, in one case a psychiatrist told the osteopath that he was mentally ill for thinking that osteopathy was health care, your screener agreed with this.</p> <p>No particular suggestions. I found the Annexes, specifically Annex A, to be very helpful in following the process.</p>	<p>We are unable to comment on individual concerns considered by Screeners. However, we intend to revisit the Screeners Guidance and its application at the Investigating Committee all day training event in 2021.</p>