



General  
Osteopathic  
Council

# Discussion Paper on the Fitness to Practise Publication Policy

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## Discussion

All osteopaths registered with us must be fit to practise. This means that they must have the skills, knowledge, good health and good character to do their job safely and effectively. Fitness to practise hearings are held to decide whether an osteopath's fitness to practise is impaired. Notices of these hearings and the decisions reached at them may be published.

The GOsC is expected to be open and transparent in its regulatory proceedings and to comply with its own legislation and other relevant legislation such as the *Human Rights Act 1998*. The General Data Protection Regulation 2018 and the Freedom of Information Act 2000 also impose specific duties on the GOsC in respect of the disclosure of information.

The purpose of the Fitness to Practise Publication Policy (the policy) is to ensure that the GOsC meets its obligations to publicise fitness to practise information, while protecting the rights of parties to its proceedings.

Publicising this information provides valuable information about the standards expected of registrants, assists patients to make informed choices and helps to maintain public confidence in the profession. It is consistent with the GOsC's statutory function of setting and maintaining standards for the profession, with the over-arching objective of protecting the public and ensures transparency.

The information may influence a patient's choice when deciding which osteopath to attend. Osteopaths are usually self-employed practitioners in private practice. Patients, therefore, have a choice, which may be influenced by the information published. Potential employers, such as

the NHS or an osteopathic educational institution may also be influenced by knowing about an applicant's fitness to practise history. The information that we publish and the length of publication must be proportionate and balance the need for the public and patients to be informed about an osteopath's fitness to practise, with the osteopath's right to privacy and ability to rehabilitate.

The current Policy is attached as Appendix B to this paper.

We have three Statutory Committees:

- The Investigating Committee carries out the initial scrutiny of concerns about osteopaths, and decides whether the osteopath has a case to answer.
- The Professional Conduct Committee hears cases involving criminal convictions or allegations against an osteopath's conduct or competence. If the Committee finds the allegation is well-founded, it imposes an appropriate and proportionate sanction on the osteopath.
- The Health Committee considers cases where an osteopath is alleged to be in poor physical or mental health. Appropriate action is taken in the interests of the public and the osteopath.

Each committee meeting or hearing is attended by a legal assessor – a legally qualified person who provides the committee with advice on matters of law and procedure.

Any of our fitness to practise committees can impose an interim suspension order on an osteopath, if they feel it necessary to protect the public in a case involving serious allegations.

An interim suspension order means the osteopath's registration is suspended pending the investigation and outcome of the hearing.

We are in the process of conducting a review of the Policy as it relates to:

- the publication of interim order determinations made by the Investigating Committee (IC) and the Professional Conduct Committee (PCC). We want to use the discussion to inform our views on updating the Policy, and to reflect upon whether there are any additional areas we need to consider.
- the publication of written determinations where voluntary removal has been granted after FtP hearing has concluded with a sanction.

This discussion paper does not commit the GOsC's Council to any future changes to the Policy, which would be subject to formal public consultation before they are implemented.

### **Publishing IC and PCC interim order determinations**

Currently, where the IC and PCC determine to impose an interim suspension order (ISO), we publish the full determination of the Committee. However, we routinely make redactions from ISO published decisions where there is sensitive information relating to the Registrant's health for example. We do not publish the outcome of the Health Committee.

The approach taken by a selection of other regulators is set out in the table at Appendix A. However, it should be noted when drawing comparisons, that Regulators have widely differing statutory

schemes to the GOsC and in some cases separate interim order tribunals.

The publication of FtP decisions will generally be in the public interest. Publishing decisions enables members of the public, including current and future patients, employers and colleagues, to know when there has been concern about an osteopath's fitness to practise. If there are current restrictions on an osteopath's practice, e.g. conditions, then it enables those same members of the public to know of the restrictions and to know whether the osteopath is complying with them.

However, different considerations apply where an ISO is imposed by the IC and the PCC. Where an ISO is imposed by an IC, concern is at the early stages of an investigation where the IC has not yet determined whether there is a 'case to answer' against the registrant. The application for an ISO is also heard in private.

The GOsC must take account of the rights of registrants and others involved in proceedings and assess the risk of harm that may arise from the disclosure or non-disclosure of information disclosed in the published determination where an ISO is imposed. For example, any potential prejudice or contamination of witness evidence which could jeopardise an ongoing police investigation or trial. Equally, we are aware, in a number of cases, of further victims of alleged sexual abuse coming forward to the GOsC and/or the police after reading the ISO determination.

Similar considerations prevail in the publication of PCC determinations where an ISO is imposed with key differences: the PCC ISO hearing takes place in public and the case has been referred by the IC for a substantive hearing.

Three options have been identified for discussion:

- Continue with the current approach to publishing ISO determinations.
- Only publish the fact of the ISO (or undertakings) together with the update to the register entry for the duration of the order.
- Publish a summary of the ISO (containing a broad outline of the nature of the concerns by the IC or PCC).

**Recommendation:** To publish a summary only of the outcome for and PCC and IC ISO decisions. This is because a summary of the ISO decision will provide sufficient information of the concerns without risking contamination of any external third party investigations whilst also protecting the rights of the registrant in circumstances where no findings of fact have been made against them.

### **Publishing PCC final determinations after a registrant has been voluntarily removed from the Register**

A registrant is able to request removal from the Register of osteopaths (the Register) at any time. This process is referred to as voluntary removal or resignation. Where voluntary removal is for administrative reasons, for example, retirement, the process is generally straightforward, and can be effected quickly. A different procedure is followed where the registrant is subject to an ongoing fitness to practise investigation or proceedings. The Guidance on

Voluntary Removal Applications, approved by Council in May 2017, details the relevant factors that the Registrar will take into consideration when making a decision on requests for voluntary removal where the registrant is the subject of an ongoing fitness to practise investigation.<sup>1</sup>

However, the Policy is silent as to whether the written determination pertaining to individuals who request and are granted voluntary removal are also removed from the website.

As these individuals are no longer registrants, it could be said that the record of the hearing should also be removed from our website. However, publishing the determination for the relevant time in accordance with the policy aligns with the purpose underpinning the publication policy which is public protection and the public interest.

For example: at the conclusion of a PCC hearing against Mr A, the PCC impose a conditions of practice order for 2 years over his registration. The FtP Publication Policy provides that the conditions will be published for the duration of the Order plus one year, i.e. 3 years. Mr A then applies for voluntary removal from the register and the Registrar accedes to this request. As Mr A is longer a registrant, the issue that falls to be considered is, should the determination relating to Mr A be removed from the GOsC website?

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<sup>1</sup> <https://www.osteopathy.org.uk/news-and-resources/document-library/fitness-to-practise/voluntary-removal-policy/>

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**Recommendation:** Our preliminary view is to publish the FtP determination, in accordance with the FtP publication policy, for those individuals who have subsequently been granted voluntary removal by the Registrar. We consider this is consistent with the GOSC's statutory function of setting and maintaining standards for the profession and protecting the public.

<b>Regulator</b>	<b>Publication on interim order decisions</b>
Medical Practitioners Tribunal Service	<p>The detailed decisions of interim orders tribunal hearings and of interim orders reviews on the papers are not published.</p> <p>Where the tribunal makes an interim order to suspend a doctor or impose conditions on their registration pending the outcome of an investigation:</p> <ul style="list-style-type: none"> <li>-these are published in a website notice on the recent decisions page of our website and are removed after six weeks</li> <li>-they are also published on the medical register while they are active.</li> </ul>
Health and Care Professions Council	<p>Interim orders can be imposed by either the Investigating Committee Panel or Professional Conduct Committee Panel. Hearings are usually held in public.</p> <p>If an interim order is imposed, the terms of the Panel's order will be published on the Tribunal website for so long as the order has effect and will be removed once the case in respect of the allegation to which it relates has been concluded</p>
General Pharmaceutical Council	<p>Interim measures (suspension or conditions) only imposed by Fitness to Practise Committees.</p> <p>Where an order is imposed, a summary of the decision is published for the duration of the order.</p>
General Dental Council	<p>The GDC began publishing Interim Order Committee determinations from February 2016 where an interim conditions or interim suspension is imposed.</p> <p>Where an interim order is imposed the GDC publish it for the period of the imposition of the order and for one further month after the order has ceased.</p>