



Council
17 May 2023

Fitness to Practice Publication Policy: Consultation outcome

Classification	Public
Purpose	For decision
Issue	This paper invites Council to agree the amended draft Fitness to Practise Publication Policy following a public consultation being undertaken from 31 January – 25 April 2022.
Recommendation	To agree the draft Fitness to Practise Publication Policy.
Financial and resourcing implications	Within existing budget.
Equality and diversity implications	An EDI 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.
Annexes	A - Consultation Responses B - Draft FtP Publication Policy
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Key messages from paper:

- The GOsC has a Fitness to Practise (FtP) Publication Policy which has been in place since 2013. The policy focusses on the length of time that notices of decisions should appear on the public website.
- The policy provides that Investigating Committee (IC) written decisions to impose an Interim Suspension Order (ISO) should be publicised in full and a note of the suspension should be made against the registrant's entry on the online register.
- The policy states that Professional Conduct Committee (PCC) ISO written decisions should be published in full and a note of the interim suspension should be made against the registrant's entry on the register.
- A registrant is able to request removal from the Register of osteopaths (the Register) at any time. This is a process called voluntary removal.
- The FtP publication policy is silent as to whether the written determination pertaining to individuals who request and are granted voluntary removal after their substantive hearing has concluded are also removed from the website.
- GOsC will publish a summary only of the outcome for PCC and IC ISO decisions. In short this is because:
 - 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.
 - A summary of the ISO decision provides sufficient information of the concerns without risking contamination of any external third-party investigations and protects the rights of the registrant in circumstances where no findings of fact have been made against them
- GOsC will continue to publish an FtP written decision and sanction imposed (for the length specified within the FtP publication policy) for those individuals who have been granted voluntary removal by the Registrar after the hearing has concluded. In short, this is because:
 - Members of the public can then see that the former osteopath faced a professional conduct or professional incompetence hearing as this will be put on public record.
 - It supports the wider public interest in the publishing of sanctions by maintaining public confidence in the osteopathic profession and declare and upholding proper standards of conduct and competence amongst the osteopathic profession

- Section 22(13) of the Osteopaths Act 1993 requires GOsC to publish a report setting out the individual names of the osteopaths who have been investigated where those allegations have been found to be well founded. At present, we publish the current annual Fitness to Practise Report on [our website](#) together with all the previous reports going back to 2010/2011. We have decided to publish the current Fitness to Practise annual report on our website but to archive the previous five annual reports on a separate page of the website and archive internally reports dating further back and make them available on request. In short, this is because:
 - We consider that this change in approach is justifiable and proportionate, balancing our statutory functions and the rights of the data subject (the individual);
 - It is consistent with our approach on the length of time we publish sanctions against an osteopath elsewhere on our website.
- Our FtP Publication Policy requires the PCC's determination not to be linked to a registrant's register entry or noted on the register where an osteopath has been admonished. Currently, we publish this information on our website and within the annual FtP report. Following feedback on the consultation received from the PSA, we have decided to link an admonishment imposed on an osteopath following a hearing with their entry on the online Register. In short, this is because:
 - It is the most accessible way for members of the public to find the information on our website as searching decisions may present more difficulties for those unfamiliar with our processes;
 - It will allow the public and others to make informed choices about a registrant, as they will know that a finding has been made against them following a fitness to practise hearing;
 - This will likely have a greater effect as a deterrent and in declaring and upholding standards of conduct and performance if they are published on the register entry as well as elsewhere;
 - it is consistent with our policy to link a conditions of practice order and a suspension order to a registrant's entry on the register.
- The consultation ran for a period of 3 months from 31 January – 25 April 2023. We have published a summary of the responses in Annex A.

Background

1. The GOsC publishes PCC decisions in three places:
 - In the Fitness to Practise Annual Report published in accordance with section 22(13) of the Osteopaths Act;
 - On the online register next to the registrant's name;
 - In notices of decisions available on the public website.

Current policy

2. The current GOsC fitness to practise publication policy (the policy)¹ was approved by Council in October 2013 following a period of public consultation. The policy focusses on the length of time that notices of decisions should appear on the public website. It did not propose to make any changes with regard to the Fitness to Practise Annual Report or the online Register. The former is a public record of the work of the GOsC required by Parliament. The latter is a list of osteopaths who are fit to practise and reflects a registrant's current registration status.
3. The development of the current policy was influenced by the Professional Standards Authority (PSA) project in 2010 to review the information published by healthcare regulators on their Registers. The PSA encouraged regulators to make information about a registrant's current and past fitness to practise history available to the public. It said this:

'the benefits and disadvantages of making fitness to practise sanctions that are no longer in force available to the public are finely balanced. We accept that the purpose of the fitness to practise process is not to punish a health professional, and that a professional with an expired sanction has been judged to be fit to practise. However, in line with the principle of regulators operating transparently, we have given more weight to the rights of patients than those of professionals. Information that is already available should be made as accessible as possible. We recommend that regulators who do not currently publish fitness to practise histories should begin to take a proportionate approach to making this information available against a register entry.'

4. The policy also provides that Investigating Committee (IC) written decisions to impose an Interim Suspension Order (ISO) should be publicised and a note of the suspension should be made against the registrant's entry on the online register. If the IC decided not to impose the Interim Order, then that decision should not be publicised.

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

5. The policy states that Health Committee (HC) written decisions to suspend or impose conditions should be published but not the reasons for that decision. If the HC decides that the registrant's ability to practise is not impaired, the decision should not be publicised at all.
6. The policy distinguishes between the two different types of ISOs that can be imposed by the Professional Conduct Committee (PCC) under section 24(1)(a) and (b) of the Osteopaths Act 1993 (the Act). Namely, the former covers the period before the final hearing, the latter, the 28-day appeal period after the hearing concludes.
7. For ISO's imposed before the final hearing, the PCC's full decision is published. The policy also provides for redactions of information that was heard in private to be made to the PCC's publicised written decision.

Discussion

8. At the meeting in March 2022, the Policy and Education Committee (PEC) considered a discussion on the Fitness to Practise Publication Policy. The PEC noted the finely balanced reasons for and against publishing the written determinations of both the IC and PCC ISO decisions, noting the advantages to each.
9. After the PEC meeting, as part of our pre consultation engagement, we invited feedback from all panellists and legal assessors. All the feedback we received supported publishing a summary of the IC ISO decision only. Opinion varied as to whether the PCC ISO written determination should be published in full given the hearing itself takes place in public. On balance we have decided that publishing a summary of the outcome for both the IC and PCC would ensure the right balance of information is in the public domain to protect the public.
10. Following the meeting of the PEC, a further, important issue with the practical application of the FtP publication policy came to light. This related to the publication of the written determination where a registrant is granted voluntary removal by the Registrar.
11. 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.

12. The Guidance on Voluntary Removal Applications², 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.
13. 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 written decision 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.
14. Section 22(13) of the Osteopaths Act 1993 requires GOsC to publish a report setting out the individual names of the osteopaths for whom allegations under this section have been investigated, if those allegations have been found to be well founded. Section 22(13) also requires that a summary of the nature of those allegations and the sanction imposed be included in the report.
15. Currently, we publish the current annual Fitness to Practise Report on our website together with all the previous reports going back to 2010/2011. However, we considered that this may undermine the FtP publication policy which requires us to publish sanctions against an osteopath only for a specific length of time. For example, currently a decision to admonish an osteopath can be published only for a period of six months on the Decisions page on our website but on a separate web page this information can be found permanently within the annual FtP report.
16. At the Council meeting on 16 November 2022, Council agreed to consult on the Policy to make it clear that GOsC will continue to publish a FtP written decision on the website, for the length specified within the Policy, in circumstances where an individual has been granted voluntary removal by the Registrar following a final hearing. Council also agreed to consult on amending the Policy so that GOsC will publish a summary only of the written decision for IC and PCC ISO hearings where an order is imposed.
17. Additionally, Council agreed that amended draft consultation documents would be circulated with the addition of a question around the length of time we propose the annual FtP report will be published on our website.
18. A public consultation on our draft guidance ran from 31 January – 25 April 2023. As part of our consultation engagement the Director of FtP and Senior Engagement and Insight Officer in the Comms team were invited to attend an online meeting of the Cheshire Osteopathic Group on Saturday 22 April 2023, to answer questions around the draft FtP publication policy and wider questions around our fitness to practise processes. We had also gathered feedback from the IC, PCC and Legal Assessors on the consultation as part of our pre-

² <https://www.osteopathy.org.uk/news-and-resources/document-library/fitness-to-practise/voluntary-removal-policy/>

consultation activities. In addition to oral feedback we received, we also received 6 written responses to the consultation. Responses were received from the PSA, GMC, Institute of Osteopathy and the Office of the Chief Allied Health Professions (AHP) Officer.

Admonishment Linked to Entry on the Register

19. The PSA, in their response to the consultation, raised the current practise by GOsC not to link an admonishment sanction to an osteopath's register entry. PSA said they were unclear what the rationale for GOsC implementing this where a conditions of practice and suspension are imposed but not where an admonishment is issued. They drew attention to the practice of other health regulators to generally note in the register entry when they impose broadly similar sanctions that do not restrict a registrant's practice. They suggested that this enabled the public and others to make informed choices about a practitioner, as they will know that a registrant's fitness to practice has been found to be impaired.
20. Whilst information about admonishments is published elsewhere on the GOsC's website, both in the Fitness to Practise annual reports and the hearings decisions page, this is not the most accessible way for members of the public to find the information. We agree that admonishments are likely to have a greater effect as a deterrent and in declaring and upholding standards of conduct and performance if they are published on the register entry as well as elsewhere.
21. We are therefore of the view that including admonishments in the list of sanctions published on the register would enhance its usefulness to the public and promote the GOsC's overarching objective of public protection. We also consider it is consistent with our policy to link a conditions of practice order and a suspension order to a registrant's entry on the register. We have therefore made this clear within the draft policy at paragraph 3(b).
22. Following the Council meeting the Communications, Fitness to Practise and Registration teams, and the IT Manager, will liaise to work through the practicalities required to link admonishments to the Register entry in the same way we do for suspensions and conditions of practice.
23. A summary of the responses we received is included in Annex A.

Recommendation: To agree the Draft FtP Publication Policy at Annex B

Annex A to 9

Responses to the consultation on the draft Fitness to Practise Publication Policy

Consultation Question	Yes	No	Consultation response ³	GOsC Response (where relevant)
Do you agree with our proposal to publish only a summary of the Investigating Committee and Professional Conduct Committee decisions before the final hearing where an interim suspension order has been imposed?	6	0	<p>The proposed change is in line with the Osteopaths Act 1993. It also mirrors the process and procedures set out by the Health & Care Professions Council (HCPC) and the HCPC Tribunal Services.</p> <p>Additionally, it is also in the interests of the registrant as the proposed change is for before the final hearing.</p> <p>To avoid prejudicial influence over decision. Necessary for patients to be aware but is for a non-proven allegation or unnecessary damage to reputation.</p> <p>A summary seems to be sufficient to provide information to the public without prejudicing any other ongoing process. It also seems to be proportionate in respect of protecting the osteopath's reputation when the hearing ends up not finding any basis of fact in the allegations.</p>	

³ Some responses may have been shortened

Annex A to 9

Consultation Question	Yes	No	Consultation response ³	GOsC Response (where relevant)
			<p>We agree that publishing a summary rather than full details is appropriate for the reasons outlined in the consultation document. A summary of decisions would continue to inform the public, employers and colleagues that concerns have been raised about an osteopath's fitness to 2 practise.</p> <p>We support the GOsC's proposed move from publishing full decisions to a summary. However, as indicated above, we do not publish any details about interim orders imposed prior to a hearing other than the fact of the order itself. The interim order is removed from publication when it is no longer active, and if the case has resulted in no finding of impairment or warning against the registrant, any reference to the interim order, for example in the published tribunal decision on the MPTS website, is removed.</p>	
Do you consider publishing a summary of the decision would be sufficient to	6	0	Knowing that there is an ISO in place until the full hearing sufficiently fulfils the overarching objective of public protection (alongside the fact the osteopath is suspended from working pending the	

Annex A to 9

Consultation Question	Yes	No	Consultation response ³	GOsC Response (where relevant)
address our overarching objective of public protection?			substantive hearing). The sanction of the ISO in itself (and publication in summary thereof) is a strong means of promoting and maintaining standards within the profession (of osteopaths) and confidence in the fact the osteopath is suspended from working pending the substantive hearing).	
Do you agree with our proposal that GOsC will continue to publish a Fitness to Practise decision and sanction for the length of time specified within the publication policy, for those individuals who have been granted voluntary removal by the Registrar?	6	0	<p>Overall I agree with this. It is important to provide clarity on publishing the decisions and sanctions of fitness to practice in the case of osteopaths being granted voluntary removal from the Register of Osteopaths.</p> <p>Publishing the fitness to practise decision and sanction for those individuals who have been granted voluntary removal by the Registrar for the relevant time, as detailed in the policy provides transparency to the general public, future employers and colleagues, regarding the fitness to practise record of the former osteopath. We agree that it will promote and maintain professional standards and public confidence in the profession. It is important to ensure that taking voluntary removal is not perceived as a way to circumvent the fitness</p>	

Annex A to 9

Consultation Question	Yes	No	Consultation response ³	GOsC Response (where relevant)
			<p>to practise process or sanctions. Therefore, it is appropriate for the former registrant's register entry to remain as it would have been had they had remained on the register.</p> <p>The Health Professions Order 2001 gives the HCPC discretion to disclose any information about a person's fitness to practise where it considers that disclosure is in the public interest. The Osteopaths Act 1993 appears to give the GOsC similar discretion.</p> <p>We support the GOsC's proposal to provide clarity in the publication policy about the length of time decisions will be published where a registrant who has had a sanction imposed is granted voluntary removal from the register. We also agree that it is in the interests of public protection to continue to publish this information for a period after the registrant leaves the register.</p>	
Do you agree with our proposal that we publish	6	0	It makes sense to have parity on the website between the annual reports and the register.	

Annex A to 9

Consultation Question	Yes	No	Consultation response ³	GOsC Response (where relevant)
<p>the current Fitness to Practise annual report on our website with reports from the previous five years archived on the GOsC website and those dating further back to be internally archived and available on request only?</p>			<p>Although I wasn't clear whether the list of osteopaths with FtP reports older than 5 years old was available online so that members of the public would be aware that there was a case existing for this person.</p> <p>We agree that this appears to be a proportionate approach that aligns the annual reporting of Fitness to Practise more closely with the Publication Policy's sanctions publishing timeframes. We note that the Consultation document makes reference to the Osteopaths Act 1993, and we would expect the GOsC to satisfy itself that any changes it makes are consistent with its statutory duties.</p> <p>We recognise the GOsC's concern that indefinite publication of reports which include fitness to practise decisions has the potential to undermine the approach taken to publication time limits elsewhere and support the proposal to limit that publication.</p>	
<p>Do you think the proposed fitness</p>	0	6	<p>The proposed changes for the policy is going to affect individuals concerned, regardless of</p>	

Annex A to 9

Consultation Question	Yes	No	Consultation response ³	GOsC Response (where relevant)
to practise publication policy is likely to have any positive or negative effects on a person's opportunities to use the Welsh Language?			<p>their background and what language they speak.</p> <p>It is a requirement in Wales (under the Welsh Language Act) that the Welsh language is used in this space alongside English. It has been noticed by the Office of the CAHPO that the GOsC has got a tab on their webpage with documents and policies, which supports Welsh registrants and/or individuals who use the Welsh language.</p>	
Do you think the proposed fitness to practise publication can be revised in any way in order to increase a person's opportunities to use the Welsh Language?	0	6		

Annex A to 9

Consultation Question	Yes	No	Consultation response ³	GOsC Response (where relevant)
Except for issues relating to the Welsh language, do you consider there are any equality and diversity implications for groups or individuals related to this publication policy?	0	6	Is this available in translations in other languages? or as an audio or braille version?	Not currently, but we are actively considering how we can make this key policy more accessible to all.
Please provide additional comments below. Are there any other areas that the policy should address? If so, please set out what these areas are.			Although we recognise that this consultation isn't about the GOsC's Fitness to Practise Publication Policy more generally, we are unclear as to the rationale for the level of transparency provided when a registrant has been issued with an admonishment. The current Fitness to Practise Publication Policy requires the Professional Conduct Committee's determination not to be linked to a registrant's register entry or noted on the register where a registrant has been admonished. Other health regulators generally note in the register entry when	We agree. We consider that it will improve accessibility for members of the public to find the information on our website as searching decisions may present more difficulties for those unfamiliar with our processes. It will also enable the public and others to make informed choices about a registrant, as they will know that a finding has been made against them following a fitness to practise hearing. We also consider that it is likely to have a greater effect as a deterrent and in declaring and upholding standards of conduct and

Annex A to 9

Consultation Question	Yes	No	Consultation response ³	GOsC Response (where relevant)
			<p>they impose broadly similar sanctions that do not restrict a registrant’s practice. This allows the public and others to make informed choices about a practitioner, as they will know that a registrant’s fitness to practice has been found to be impaired.</p> <p>We recognise that information about admonishments is published elsewhere on the GOsC’s website, both in its Fitness to Practise annual reports and on its hearings decisions page. However, this is not the most accessible way for members of the public to find the information, especially since they may not necessarily be aware of the need to look for it. Our policy position, as detailed in Maximising Registers’ Contribution to Public Protection, is that regulators should provide information about all current fitness to practise sanctions on the online register. Additionally, admonishments are likely to have a greater effect as a deterrent and in declaring and upholding standards of conduct and performance if they are published on the register entry as well as elsewhere. We are therefore of the view that including</p>	<p>performance if they are published on the register entry as well as elsewhere.</p> <p>We have therefore amended the draft policy to this effect.</p>

Annex A to 9

Consultation Question	Yes	No	Consultation response ³	GOsC Response (where relevant)
			admonishments in the list of sanctions published on the register would enhance its usefulness to the public and promote the GOsC's overarching objective of public protection.	