



Council
2 November 2016
Complaints and Hearings Guidance for Registrants

Classification	Public
Purpose	For decision
Issue	This paper proposes two guidance booklets developed as part of a range of support and information the GOsC is planning to put in place to assist osteopaths under investigation in our fitness to practise procedures.
Recommendation	To agree to consult on the draft complaints and guidance documents at Annex A and B
Financial and resourcing implications	Contained within existing communication and regulation budgets.
Equality and diversity implications	None identified.
Communications implications	Feedback from selected stakeholders has been incorporated within both draft guidance documents. Wider involvement of individual registrants who have been investigated as part of our fitness to practise processes will be sought prior to a three month public consultation being undertaken.
Annexes	A. Draft Complaints Procedure: Guidance for Registrants on Fitness to Practise Complaints Procedure B. Draft Hearings Guidance for Registrants
Authors	Sheleen McCormack and Priya Lakhani

Background

1. The GOsC Business Plan for 2016-2017 states that we will, 'review best practice across regulators for the support and information provided to registrants and identify proposals for consideration by the Osteopathic Practice Committee' and that we will review the hearings guidance. Our core objective is to protect patients but an important part of that role is providing appropriate support to osteopaths under investigation in our fitness to practise procedures.
2. In 2015 we undertook a range of steps to provide greater support to witnesses involved in our fitness to practise proceedings. Individualised customer service and support is an area where we continue to perform well and where we strive to act proactively in identifying and embedding best practice in our processes. We are currently conducting a review of fitness to practise process to enhance registrant's understanding of our complaints process so that it is clear to all osteopaths. In undertaking this review we have looked at information and resources provided to registrants by other professional regulators.
3. There are currently no guidance documents about our fitness to practise procedures specifically designed for osteopaths. Although there is some information available on the **o** zone, this is very limited. At present the regulation department provide osteopaths, who are subject to an investigation, with a copy of the GOsC's *Making a Complaint* leaflet to provide some general guidance on our complaints procedures. However, this leaflet has been produced for complainants and members of the public. Caseworkers also explain the procedures to osteopaths once they have been notified of a complaint about them to ensure they understand the fitness to practise process.

Discussion

4. Appropriate outward facing guidance made available to osteopaths facing a fitness to practise investigation would impact positively in demystifying what can seem to be quite a daunting process and should assist in instilling greater trust and confidence that the GOsC will manage and consider concerns about an osteopath fairly.
5. We have drafted two separate booklets which we plan to provide to Registrants at the appropriate stage of a fitness to practise investigation. The first booklet explains the GOsC's fitness to practise procedures generally and sets out what an osteopath needs to do if a complaint is made about them. This booklet will be provided to Registrants at the point they are notified of a complaint. The second booklet contains detailed guidance about preparing for and attending a hearing. This guidance document will be provided to Registrants if their case is referred for a hearing.
6. Feedback from the Institute of Osteopathy and Jonathan Hearsey, Clinical Project and Improvement Lead at Sussex MSK Partnership, has been incorporated in the composition of the current draft documents. Suggestions

have included the inclusion of process diagrams and a separate 'useful information' section including contact details of professional organisations and insurers.

Consideration by the Policy Advisory Committee

7. At its meeting on 13 October 2016, the Policy Advisory Committee (PAC) considered both draft guidance documents. A number of helpful observations were made with members recommending, amongst other things, that both documents needed to be "user friendly" and accessible with explanations given to words such as "skeleton argument" and "conflicts of interest". The PAC agreed that both guidance documents should be recommended to Council for consultation subject to corrections and amendments.
8. Wider involvement of individual osteopaths who have been involved in the fitness to practise process at GOsC fitness to practise hearings will also be sought before a public consultation is undertaken on both draft guidance documents.
9. The draft guidance documents have not yet been formatted and it is intended that both will include photographs and diagrams of the hearing process and the hearing room post consultation. In addition, it is also intended that a crystal mark for plain English will be sought for both documents post consultation.

Recommendation: to agree to consult on the draft complaints and guidance documents at Annex A and B

Osteopaths under Investigation

Guidance for Registrants on the General Osteopathic Council's Fitness to Practise Complaints Procedure

About this booklet

This guidance is designed to inform Registrants about the GOSc's fitness to practise procedures.

We hope you find this information helpful, but this is only a guide and should not be used as a substitute for any legal advice or advice from your professional indemnity insurers.

When do we investigate?

Maintaining patient safety and public confidence in the osteopathic profession means that we must investigate and consider complaints about osteopaths' conduct, competence or health.

Concerns are referred to us 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. We have a duty to identify whether the concern referred to us is a legitimate matter that needs to be investigated. We have a duty under the Osteopaths Act to investigate concerns about osteopaths. Concerns may fall within one of a number of categories (called allegations) as defined by law including:

- conduct has fallen short of the standard required
- professional incompetence
- conviction of a criminal offence
- serious impairment because of physical or mental health

Concerns we can't deal with

As part of their decision making, the Screener will be guided by threshold criteria when deciding whether the concern is one we can deal with. Concerns that would not generally amount to an allegation include:

- Complaints about note-taking and recordkeeping alone
- Vexatious complaints
- Complaints that relate to employment disputes
- Complaints that relate to contractual disputes
- Complaints that relate to disputes between registrants and patients about fees or the costs of treatment

What happens when we receive an enquiry or concern about an osteopath?

We conduct an initial assessment, called a triage, of every concern we receive to enable us to decide whether it is capable of falling into one or more of the categories set out above. A caseworker is then assigned to your case.

For each new concern the GOsC tries to gather information (if it has not already been provided) which is detailed enough to enable a Screener (an osteopath member of the Investigating Committee) to reach a reasonable opinion on whether or not the concern is capable of amounting to an allegation. This typically means inviting the complainant or third parties to provide further information. However, how we conduct our investigation will depend on the nature of the concerns. For example, we may need to get an expert report if the concern relates to your clinical practice or an assessment for one of our medical assessors about your health. We will show you the evidence and information we receive.

Sometimes, you will also be asked for some input before the papers are placed before a Screener.

If the Screener decides that the GOsC has no power to investigate the concern against you, the complainant will be informed of this decision and the case will be closed. The Screener is provided with a guidance document to assist them in making a decision. The Guidance for Screeners is available on the GOsC website at:

<http://www.osteopathy.org.uk/news-and-resources/document-library/policies-and-procedures/guidance-for-screeners-and-report-template/>

How long will the investigation take?

This will depend upon the seriousness of the concerns and how quickly we can acquire the information. We set initial targets or performance indicators which gives up to forty two days to get adequate information or evidence which is then given to the Screener to decide whether the concern is an allegation that we can deal with.

What happens if the complaint is screened in?

If the Screener decides that the GOsC has the power to deal with the complaint, the case will be referred to the Investigating Committee for investigation.

The Screener will produce a report, which identifies:

- The allegation
- The relevant standards of the *Osteopathic Practice Standards*
- Any additional information that may be required.

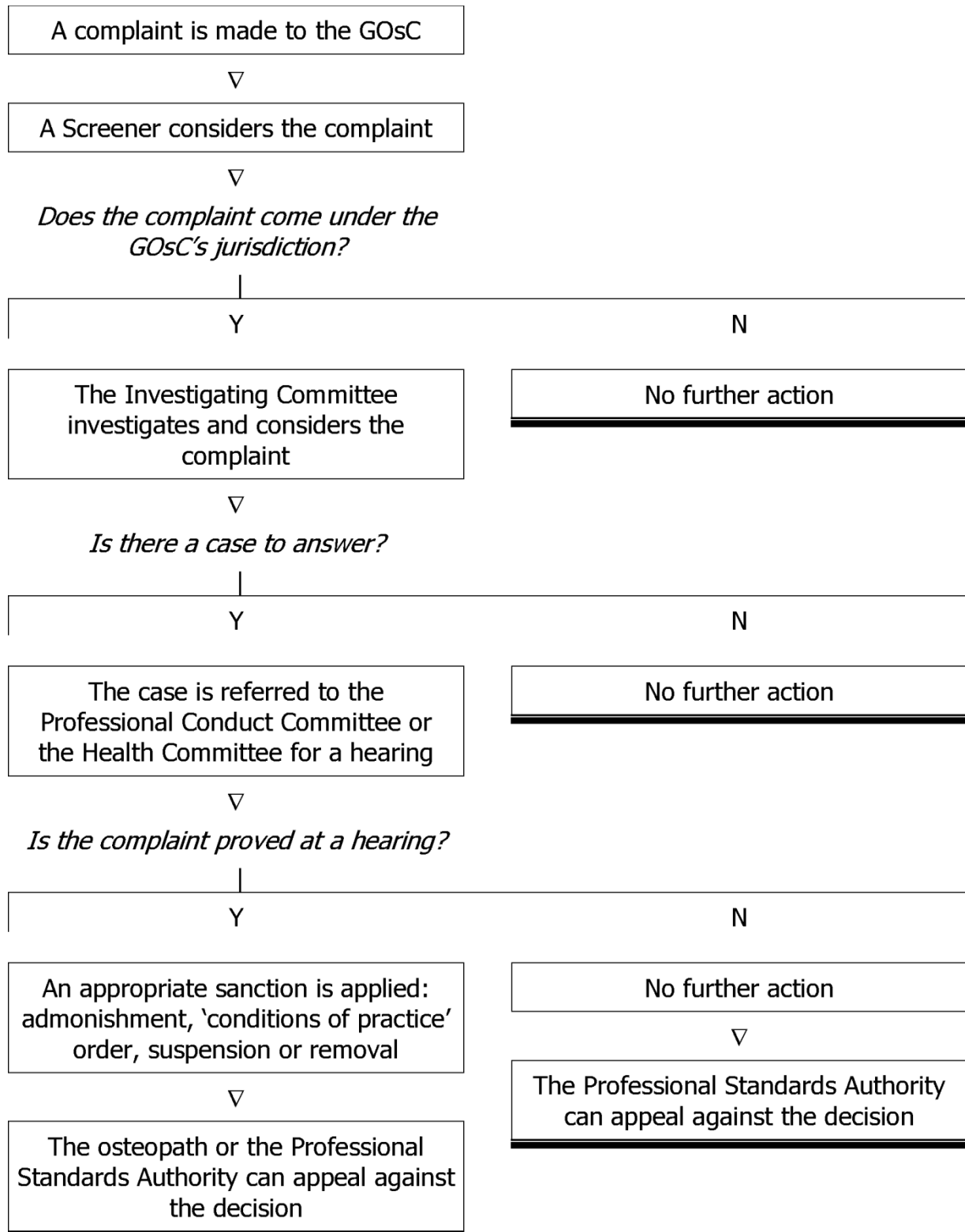
At this point, the caseworker will notify you of the complaint. You will be provided with a copy of the Screener's Report and a copy of the complaint papers and you will have **28 days** to respond to the allegations.

Once we have received a response from you, we may send a copy to the complainant for their further comments.

If any new information or allegation is raised by the complainant, you will be given the opportunity to respond to that before any decision is reached.

The caseworker will also gather any other relevant information and evidence at this stage. For example: any statements from third parties, relevant medical records or an assessment of your health.

The flowchart below sets out the procedure that the GOsC follows when a concern is made about you:



Legal Advice

We advise you to contact your professional indemnity insurer or seek your own independent legal advice about the complaint and our request for your response as soon as possible.

Consideration by the Investigating Committee

Once all evidence has been obtained, including your written response the case will be considered by the Investigating Committee. The Investigating Committee meets in private with the assistance of a legal assessor, a legally qualified person who provides the Investigating Committee with advice on the law, to consider cases on the papers. Neither the GOsC nor you and/or your representative will be present at this meeting as the Investigating Committee will make a decision on the papers.

The Investigating Committee will carefully consider the case to decide whether there is a case for you to answer, and if so, what that case is. The Investigating Committee is assisted in determining whether there is a case for the osteopath to answer by the Investigating Committee Decision-making Guidance and the guidance on Threshold Criteria for Unacceptable Professional Conduct, which is available on the GOsC website¹

If the Investigating Committee decides that there is a case to answer, a public hearing will be arranged before the GOsC's Professional Conduct Committee.

If the matter relates to your health, the Investigating Committee will refer the case to the Health Committee.

If the Investigating Committee decides that there is no case for you to answer, the case will be closed and the caseworker will provide you with a copy of the Investigating Committee's written decision and reasons.

Interim Suspension Order Hearings before the Investigating Committee

Sometimes in serious cases where the concerns we receive present a risk to patient or public safety, the Investigating Committee can impose an interim suspension order on you. What this means is that you will not be able to practise as an osteopath as long as the interim suspension order lasts. The Investigating Committee can impose an interim suspension order for up to two months.

The Investigating Committee may also agree undertakings with you. These undertakings are binding written promises which you agree to which will voluntarily

¹ <http://www.osteopathy.org.uk/news-and-resources/document-library/fitness-to-practise/ic-decision-making-guidance/> and <http://www.osteopathy.org.uk/news-and-resources/document-library/fitness-to-practise/threshold-criteria-for-upc/>

restrict your practice until the final determination of the allegations made against you.

If a hearing to consider an interim suspension order is being held in your case, the caseworker will notify you of the date, time and place of the hearing. A copy of all relevant documents will also be provided to you in advance of this hearing.

You are able to attend the hearing and/or be legally represented at it.

The interim suspension order hearing is held in private. However, where a decision to impose an interim suspension order is made, a copy of that decision will be published on the GOsC website in accordance with our Fitness to Practise Publication Policy.

Consideration by the Professional Conduct Committee or Health Committee

The GOsC has produced separate guidance on hearings for Registrants and you will be provided with a copy if your case is referred for a hearing by the Investigating Committee.

The hearings guidance is also available on the GOsC website [insert link].

In summary, the Professional Conduct Committee hears all the evidence in a case in order to decide whether you have been:

- Guilty of Unacceptable Professional Conduct.
- Professionally Incompetent.
- Convicted of a criminal offence which has material relevant to your fitness to practise as an osteopath.

Where a finding of Unacceptable Professional Conduct or Professional Incompetence, or a finding relating to a conviction is made, the Professional Conduct Committee may:

- Admonish you.
- Impose a Conditions of Practice Order, which will allow you to continue to work in a limited way.
- Impose a Suspension Order for a period of time.
- Remove your name from the Register.

Complaints related to health

If the complaint relates to your health, the Investigating Committee will refer the case to the Health Committee.

Further guidance about hearings will be provided to you if your case is referred for a hearing before the Health Committee.

We hope you find this guidance helpful. If you have any questions, please

contact the Regulation Team.
regulation@osteopathy.org.uk
020 7357 6655 x224

Osteopaths under Investigation

Hearings Guidance

Maintaining patient safety and public confidence in the osteopathic profession means that we must investigate and consider complaints about osteopaths' conduct, competence or health.

The aim of this booklet is to provide guidance to Osteopaths about preparing for and attending a hearing before the GOsC's Professional Conduct Committee or Health Committee.

This booklet provides general guidance only and should not be used as a substitute for any legal advice or advice from your professional indemnity insurers.

Before the hearing

You will have received a letter from the GOsC caseworker informing you that a decision has been made to hold a hearing in your case before the GOsC's Professional Conduct Committee or Health Committee.

The GOsC caseworker will have also asked you to complete a listings questionnaire to confirm your availability for the hearing. We will try to list hearings on dates convenient to you. However, this might not always be possible for a variety of reasons including, for example, other witnesses' availability.

It is also important that you let us know, before the hearing, about any accessibility needs or other needs that you have (for example, wheelchair access, a hearing-loop system, or a sign or language interpreter), so that we can make the necessary arrangements.

Legal representation

We advise you to inform your legal representative of the decision to hold a hearing in your case. Your legal representative will be able to give you advice and information about the hearing and the steps required to prepare for it.

If you are unrepresented, you should seek independent legal advice or contact your professional indemnity insurers for assistance and advice in relation to the hearing and the steps we are taking.

If you are a member of the Institute of Osteopathy (iO), you can contact them for assistance and advice. The website for the iO is: <http://www.osteopathy.org/>

If you have no legal representation through your professional indemnity insurers and you are not a member of the iO, you may also be able to get free legal assistance from the Bar Pro Bono Unit, which is a charity that helps find free legal assistance

from volunteer barristers. The website for the Bar Pro Bono Unit is:
www.barprobono.org.uk

Practice Notes for hearings

The GOsC has produced a number of Practice Notes to help Registrants and their legal representatives prepare for the hearing. These are available on our website at:

<http://www.osteopathy.org.uk/standards/complaints/guidance-practice-notes-and-policies/>

Paper copies are available on request.

Preparing to attend the hearing

You and/or your legal representative will be sent a Notice of Hearing, and a hearing schedule, at least 28 days before the hearing. The Notice of hearing confirms the following information:

- The date, time and place of the hearing.
- The names of the witnesses that the GOsC intends to call at the hearing.
- The names of the Committee members that will hear your case.
- Confirm that you have a right to attend the hearing and/or be legally represented at it.

A copy of the GOsC's bundle of documents will also be provided to you at least 28 days before the hearing. This will contain the formal allegation and factual particulars, and all of the evidence that the GOsC intends to rely on at the hearing.

Submitting documents

You and/or your legal representative will also receive an email from the GOsC hearings officer informing you of the date by which you need to (if you have not done so already):

- confirm the names of the witnesses that you intend to call at the hearing.
- submit your skeleton argument (this is a written document provided to the Professional Conduct Committee in advance of the hearing which summarises the issues in your case).
- submit all of the evidence that you intend to rely upon.

Generally, osteopaths are required to confirm the names of their witnesses and submit all documents at least seven days before the hearing.

Deciding not to attend the hearing

You and/or your legal representative should confirm to the caseworker whether you plan to attend the hearing.

If you decide not to attend the hearing, you can still be legally represented at it. The GOsC caseworker will inform you of the outcome.

If you decide not to attend the hearing or be legally represented at it, the Professional Conduct Committee or Health Committee may proceed in your absence. There is a Practice Note on our website on Proceeding in the absence of the Registrant, which you may find useful to read.

Attending the hearing

On the first day of the hearing, you should aim to arrive at least 20 minutes before the hearing is due to start. On your arrival, a GOsC staff member will take you to your private waiting room. If you are legally represented, your representative will also be asked to wait in the same room as you.

Refreshments such as coffee, tea and water will be available while you wait.

The diagram below will give you an idea of how the hearing room will be set up on the day:

[insert diagram(s)]

The Professional Conduct Committee and Legal Assessor

The Professional Conduct Committee is made up of three panel members. There will be one osteopath member and two lay members, one of which will act as Chair.

A legal assessor will also be present to provide the Professional Conduct Committee with advice on matters of law and procedure. The Legal Assessor will play no part in the decision making process.

The Professional Conduct Committee will be provided with a copy of the GOsC's bundle of evidence and any documents received from you in advance of the hearing.

The GOsC's witnesses and Representative

The GOsC's representative and witnesses (i.e. the person who complained about, and any other person who has given a statement in the case) will also be present at the hearing. They will be asked to wait in another private waiting room.

Hearings Officer/Clerk to the Professional Conduct Committee

A GOsC staff member (clerk) will also be present to assist with the smooth running of the hearing.

Public, Press and Supporters

Hearings are usually held in public, unless there is a reason why some or all of the hearing has to be held in private. This means that members of the public (including the press) are also able to attend.

There are seats available at the back of the hearing room where members of the public can sit.

You are able to bring someone with you for support – perhaps a friend or relative. If you do bring someone with you for support, they will be asked to sit in the public seating area inside the hearing room.

Recording

An audio recording of the proceedings will be made by the clerk.

During the hearing

At the start of the hearing, the clerk will take you and your legal representative into the hearing room and show you where to sit.

Please make sure your mobile phone is switched off before you enter the hearing room. Cameras, tape-recording equipment and any other device capable of making a permanent record are not allowed in the hearing room.

The hearing will begin with the Chair of the Professional Conduct Committee introducing themselves and everyone else who is present in the room.

You or your legal representative will be asked to confirm your name.

The GOsC's representative will be asked to read out the allegation about you.

The Professional Conduct Committee Chair will then ask you to confirm whether you admit to any of the facts alleged. If you do admit to any of the facts alleged, those facts will be found proved.

If you admit to all of the facts alleged, the Chair will formally announce that all the facts have been admitted and are proved. In these circumstances, the Committee will then move on to the next stage of deciding whether the facts proved amount the Unacceptable Professional Conduct – see below.

If you dispute some or all of the facts alleged, the GOsC's legal representative will formally open the GOsC's case and the procedure below will be followed.

The GOsC will present the evidence to support its case first. The GOsC's representative may call any witnesses in the case and ask them questions once they have taken an oath or an affirmation. This is called examination- in -chief.

You or your legal representative will then have an opportunity to ask the GOsC's witness any questions. This is called cross-examination.

Once you and your legal representative have asked all your questions, the GOsC's representative may ask the GOsC's witness further questions.

The Professional Conduct Committee may then ask the GOsC's witness some questions.

Once the GOsC's witness have given evidence, the Chair will be formally release them as witnesses. Some witnesses may stay to observe the remainder of the hearing. If they do, they will be asked to sit in the public seating area.

After all of the GOsC's witnesses have given their evidence, the Chair of the Professional Conduct Committee will ask you or your legal representative to open your case.

At this this stage you or your legal representative may call your witnesses to give evidence under oath according to your religious belief, or an affirmation which is a solemn declaration if the witness does not want to take an oath. You or your legal representative will need to ask your witnesses questions first. The GOsC's legal representative will then be given the opportunity to ask questions of your witnesses. The Professional Conduct Committee may also have questions for your witnesses.

You may also give evidence under oath (or affirmation). If you give evidence, the GOsC's legal representative and the Professional Conduct Committee can ask you questions.

Closing statements

Once you and/or all your witnesses have concluded your evidence and are released as witnesses, both parties will be invited to make closing statements about the case. The GOsC's legal representative will make their closing statement first, followed by you or your legal representative.

The Professional Conduct Committee will receive legal advice from the legal assessor before it retired to make a decision on the facts of the case.

Findings of the Professional Conduct Committee

The Professional Conduct Committee goes into private session to make their decision, which will be in three stages.

The legal assessor is present in the room and may assist the Committee in drafting their decision, however the legal assessor plays no role in the decision making process.

Stage 1

Where some or all of the facts alleged are in dispute, the Professional Conduct Committee will need to first consider whether they find those facts proved. The GOsC has to prove the case against you. The standard of proof which applies is called the 'balance of probabilities'. This means that the Professional Conduct Committee will only find the alleged fact 'proved' if it considers that it is more likely than not that it happened.

If the Professional Conduct Committee do not find any of the facts proved, it will ask parties to return to the hearing room and formally announce the decision and the case will be concluded.

Where the Professional Conduct Committee find some or all of the facts proved, they will ask parties to return to the hearing room so that the Chair can formally announce the decision and reasons and the hearing will progress to Stage 2 below.

Stage 2

Once the Professional Conduct Committee's findings of fact have been announced, the GOsC's representative and you or your legal representative will be invited to make submissions on Unacceptable Professional Conduct.

The legal assessor may provide the Professional Conduct Committee with legal advice and the Committee will then retire in private to consider whether the facts found proved amount to Unacceptable Professional Conduct.

After the Committee has reached a decision, parties will be invited into the hearing room and the Chair of the Professional Conduct Committee will announce their decision on Unacceptable Professional Conduct.

Stage 3

Where a finding of Unacceptable Professional Conduct is made, the Professional Conduct Committee will proceed to impose a sanction, which will be one of the following:

- An admonishment.

- A Conditions of Practice Order, which will allow you to continue to work in a limited way.
- A Suspension Order for a period of time.
- Remove your name from the Register.

In deciding what sanction to impose, the Professional Conduct Committee will take account of guidance documents.²

Publication of findings – website and Annual Fitness to Practise Reports

Our Fitness to Practise Publication Policy sets out how, and for how long, we publish information relating to the decisions of our fitness to practise committees.

A finding of unacceptable professional conduct made by the PCC (at a hearing or under the Rules 8 Procedure) will be published on the GOsC website and within the Annual Fitness to Practise Report.

Findings made by the HC will be published, but information relating to your health or condition will not be published.

Notification of fitness to practise outcomes

The GOsC has a Policy on Notification of Fitness to Practise Investigations and Outcomes. This is available on our website and explains the information we will provide to third parties about the investigation and outcome of such complaints.

Examples of third parties includes your employer, and any persons with whom you may have a contractual or other arrangement to provide services, and any other health care regulator that you may be registered with.

Appeals

You have a right to appeal against a decision made by the Professional Conduct Committee. If you wish to appeal a decision, you should seek your own independent legal advice.

Decisions made by the Professional Conduct Committee can also be appealed against by the Professional Standards Authority. Please see the PSA's website for further information <http://www.professionalstandards.org.uk>.

² Including the Sanctions Guidance. The latest version of this guidance document can be accessed on the GOsC website at <http://www.osteopathy.org.uk/news-and-resources/document-library/fitness-to-practise/indicative-sanctions-guidance/>