



Council
21 November 2018
Standard Case Directions – draft Practice Note

Classification Public

Purpose For decision

Issue This paper proposes the introduction of standard case management directions for the progression of cases from referral by an Investigating Committee to a final hearing before a Professional Conduct Committee.

Recommendation To agree the draft practice note on standard case directions.

Financial and resourcing implications The introduction of standard case directions has the potential to reduce hearing costs.

Equality and diversity implications None identified.

Communications implications The GOsC has undertaken a public consultation on the Draft Standard Case Directions as detailed within this paper. Additionally, if approved, the guidance will be published on the GOsC website and used in all hearings before the Professional Conduct Committee

Annexes

- A. Responses to the consultation
- B. Draft Standard Directions for the progression of cases from referral by an Investigating Committee to a final hearing before a Professional Conduct Committee

Author Sheleen McCormack

Background

1. In our Corporate Strategy 2016-19, we state that we will continue to seek to identify improvements in our fitness to practise processes. As part of our reform programme, we continue to explore options and implement reforms which we consider could improve efficiency and streamline our processes but which do not require changes to our legislation. The GOsC Business Plan for 2017-2018 stated that we will, 'develop and implement Standard Case Directions for all cases referred to PCC'.
2. As the Osteopaths Act and the associated rules date back some time, they do not accord with the current approach to case directions and management of a case that is found in more modern healthcare regulatory legislation, as there is limited provision for the advanced and timely disclosure of documents and evidence.
3. In summary, GOsC is required to serve its case 28 days before a hearing with the osteopath required to serve their bundle seven days before a hearing. This can lead to: last minute adjournments arising out of the late disclosure of evidence, extended preliminary argument at the commencement of a hearing or the defence calling last minute witnesses which can all lead to hearings going part heard. Because of the unavailability of the Professional Conduct Committee (PCC) members and defence counsel it is not uncommon for a hearing to take several months to resume. This is not in either the public interest or the osteopath's interest.
4. The aim of standard case directions, on the referral of a case from the Investigating Committee (IC) to a final hearing before the PCC, is to encourage a case to run smoothly, while promoting the timely listing of a case for a final hearing, via sensible liaison between the GOsC regulation team and the osteopath and his/her representatives.

Discussion

5. Many healthcare regulators and other court services impose standard directions on both presenters and respondents in cases. Explicit provision within the statutory scheme of each regulator usually provides for the management of cases and the issuing of directions for the future conduct of a case. Standard directions are used to ensure a case is progressed and concluded efficiently and in a timely manner.
6. Adherence to standard directions can:
 - a. Engender confidence that the regulator is acting fairly and fulfilling its disclosure obligations;
 - b. Ensure fairness by ensuring that unusual points of law or fact are identified in good time so that full and considered argument can be advanced;

- c. Assist the decision making of panels by identifying issues to reduce the considerable stress of litigation upon all the participants (respondents, witnesses, lawyers and panellists);
 - d. Avoid the calling of witnesses whose evidence is not challenged;
 - e. Reduce the risk of last minute adjournments arising out of the late disclosure of evidence;
 - f. Reduce the risk of wasting costs by listing cases for longer than is needed;
 - g. Reduce the risk of cases going part heard.
7. Although regulators work to the civil standard of proof, adoption of civil processes is not appropriate. In civil litigation disclosure obligations fall upon both parties and, typically, disclosure of evidence for the final hearing is made by exchange of witness statements. In regulatory processes there is no obligation on a registrant to disclose material in their possession that they do not intend to rely on. Also a registrant should know the case they have to meet before disclosing their response.
 8. The draft Practice Note on Standard Case Directions encourages the osteopath to engage with the regulatory process and liaise with the regulation team to identify issues and assist in the timely listing of the case. The scheme front loads the obligations on the GOsC in terms of final investigation and service of its case. It provides for the sequential exchange of documents and bundles well in advance of the hearing.
 9. While the scheme has no 'teeth', it is hoped that osteopaths and their defence representatives will appreciate the benefit offered in terms of the opportunity to engage with the process, and ensuring the timely progression and conclusion of fitness to practise cases.

Consideration by the Policy Advisory Committee

10. At its meeting on 10 October 2017, the Policy Advisory Committee considered the draft guidance. The PAC agreed that the guidance should be recommended to Council for consultation after the planned Defence Organisations meeting in November 2017.

Engagement

11. As part of our pre-consultation engagement plan, on the 22 November 2017, a meeting took place with defence organisations and insurers. The purpose of the meeting was to identify and discuss ways where we could work together to improve the efficiency and effectiveness of the fitness to practise hearings process. The draft practice note for standard case management directions was a central item on the agenda. Feedback on the meeting included the possibility of

making provision for case conferences or directions hearings for complex cases and comments that skeleton arguments were 'onerous' and not required.

The Consultation

12. At its meeting in January 2018, Council agreed that the draft practice note should go to public consultation. The GOsC undertook a public consultation from 21 August to 15 October 2018, in accordance with our engagement strategy. In addition to being published on our website, an article relating to the consultation was featured in *the osteopath* magazine and through social media including LinkedIn and Twitter.
13. Direct correspondence in the form of an email was also sent to targeted stakeholders, including osteopathic educational institutions, other healthcare regulators and public/patient representatives shortly after the launch of the consultation and as a 'last chance' reminder email a week before the deadline. The consultation page had 213 page views and 176 visits with the practice note downloaded 43 times.
14. Four responses were received via the website on the online response form. A summary of the consultation responses are set out in Annex A.
15. All feedback received has been reviewed and considered when making revisions to the draft practice note which can be found at Annex B.

Recommendation: to agree the draft practice note on standard case directions.

Responses to the consultation

Consultation Question	Yes	No	Consultation response ¹	GOsC Response (where relevant)
Do you consider the Standard Case Directions will make an improvement in the management of a case for a hearing?	4	0	<p>It is a clear and concise document setting out the process</p> <p>They need to be framed slightly differently, see below</p>	
Do you consider that the Standard Case Directions will encourage earlier and more effective engagement by the osteopath and their representatives for a hearing?	4	0	<p>Most osteopaths will not have an appreciation of the format and procedures and this will provide them with a useful overview</p>	

¹ Some responses have been shortened

<p>Do you think the Practice Note has the potential to reduce the number of adjournments and communication difficulties?</p>	<p>4</p>	<p>0</p>		
<p>Do you think the draft Practice Note, if observed by all parties, will help to improve the GOsC's ability to deal with cases:</p> <ul style="list-style-type: none"> a. cost-efficiently? b. in a timely manner? 	<p>4</p>	<p>0</p>		

<p>Do you think the draft Standard Case Directions:</p> <p>a. provide achievable time frames?</p> <p>b. cover the appropriate case management issues in advance of the hearing?</p>	<p>3</p> <p>4</p>	<p>0</p> <p>0</p>		
<p>Please provide us with any other comments, including suggestions for improvement, you may have.</p>			<p>These proceeds [sic] are a creature of statute. Given that the proposals are contrary to the Rules, it is wrong to create a new 'overriding objective' which imposes a 'duty' on the parties. It must be made clear that the SCRs are voluntary and that the PCC has no power to draw any adverse inference if there is non compliance. In the preamble, there is reference to 'proportionate cost'. While the GOsC might like that, there is no lawful authority for this - it should just say 'proportionately'. The preamble also states that the parties MUST</p>	<p>The Practice note is aligned to the GOsC's overarching objective which is the protection of the public which involves a pursuit of the following objectives:</p> <p>a. to protect, promote and maintain the health, safety and well-being of the public</p> <p>b. to promote and maintain public confidence in the profession of osteopathy; and</p> <p>c. to promote and maintain proper professional standards and conduct for members of that profession.</p> <p>Moreover, paragraph 15 of the schedule to the Osteopaths Act enables the General Council to do</p>

		<p>assist and co-operate; there is no duty upon them to do so and accordingly this is misleading to Registrants.</p> <p>Direction 3(h) has a small typo. The time limits in directions 3 and 4 are inconsistent and in any event too short. Direction 6, first line should refer to Registrant and not respondent. Direction 7 should ask the parties' experts to agree a joint report at least one week before the first day of the hearing so as not to delay the start (this often happens).</p> <p>I wonder whether it would be helpful also to include in the questionnaire at Direction 3 the following: i) whether either party intends to seek to treat any witness as a vulnerable</p>	<p>anything 'which is calculated to facilitate the discharge of its functions or which is incidental or conducive to the discharge of its functions.' This Practice Note facilitates the efficient and timely disposal of cases.</p> <p>We have added an introduction to the directions to make it clear that the purpose of the standard case directions is to enable osteopaths and their legal representatives to engage with the fitness to practise process to ensure timely progression and conclusion of cases which benefits both the osteopath and the public interest and that the PCC cannot draw adverse inferences from either the GOsC or the osteopaths failure to comply with any of the directions.</p> <p>Amended</p> <p>Amended</p>
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