



Council
16 November 2022
Discussion Paper: Fitness to Practise Publication Policy

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| Classification | Public |
| Purpose | For discussion |
| Issue | <p>This paper invites Council to consider the draft Fitness to Practise (FtP) Publication policy in relation to:</p> <ul style="list-style-type: none">• publishing interim order determinations and• final determinations where a registrant is voluntarily removed from the Register |
| Recommendation | To approve the draft Fitness to Practise Publication policy for consultation. |
| Financial and resourcing implications | Within existing budget. |
| Equality and diversity implications | An Equality Impact Assessment has been carried out. |
| Communications implications | A public consultation will be undertaken. |
| Annexes | <p>A. Draft Fitness to Practise Publication Policy</p> <p>B. Equality Impact Assessment</p> <p>C. Draft Consultation document</p> |
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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
- The consultation, which aligns with the GOsC consultation principles, will run for a period of 3 months and we plan to report back to Council with the outcome at its meeting in May 2023.

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

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

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. At the Council meeting in May 2022, Council 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. Council also agreed to amend 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.
15. Aligned with GOsC consultation principles, we plan to run a three month consultation and will report back to Council with the outcomes in May 2023.
16. We set out at Annex A the draft FtP Publication Policy, at Annex B the EDI Assessment and at Annex C, the draft consultation document.

Recommendation: To approve the draft Fitness to Practise Publication policy for consultation.