



General  
Osteopathic  
Council

**Council**  
**6 November 2014**  
**Professional Conduct Committee Annual Report**

<b>Classification</b>	Public
<b>Purpose</b>	For noting
<b>Issue</b>	This paper presents the annual report for 2013-14 of the Professional Conduct Committee covering the period 1 August 2013 to 30 September 2014.
<b>Recommendation</b>	To note the content of the report.
<b>Financial and resourcing implications</b>	None.
<b>Equality and diversity implications</b>	On-going monitoring of equality and diversity trends in the decisions made by the Professional Conduct Committee will form part of the Regulation Department's future quality assurance framework.
<b>Communications implications</b>	None.
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## Introduction

1. This 2013/14 annual report covers the period 1 August 2013 to 30 September 2014. The usual April to March period has been adjusted over the few last years to take account of the Council receiving the report in the Autumn.

## Matters considered

2. The number of matters considered by the PCC during this reporting period is set out below. For comparison, the figures in the last reporting period are given in bold brackets.

	1/8/13 to 30/9/14	[1/9/12 to 31/7/13]
Full hearings	17	[10]
Rule 8 decisions <sup>1</sup>	1	[0]
Reviews of Suspension Orders and Conditions of Practise Orders	3	[2]
Interim Suspension Order applications	3	[1]
Rule 19 applications to cancel a hearing	4	[1]

## Comment

### *Activity*

3. As the numbers demonstrate, there has been an increase in activity; last year there were 14 hearings in a 10 month period; this year 27 in a 14 month period and one Rule 8 meeting (before the introduction of the Rule 8 procedure in October 2013, this would have been dealt with as a full hearing). This increase is in line with the experience across the regulators.
4. In respect of the Rule 8 procedures, since these are only relevant where the osteopath admits the facts and accepts that a sanction if imposed will be admonishment only, the table at paragraph 6 below demonstrates that the circumstances in which they could have been invoked have been limited.
5. In three of the four applications made by GOsC to cancel a hearing under Rule 19, the application was made on the basis that the complainant withdrew consent for their statement provided to the Council in support of their case to be used and also refused to provide live evidence at the hearing or to give permission for their evidence to be provided to the registrant. In circumstances

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<sup>1</sup> Under Rule 8 of the General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules 2000, the PCC may issue an admonishment without a hearing in circumstances where the Registrant admits the facts and the allegation; and waives his right to a public hearing.

where the primary allegations rest solely on the evidence of the complainant, without their co-operation, the Council has no positive case to advance. The PCC has the power to issue a witness summons under Rule 57 (2) which it exercised in one case during this year.

6. The 17 full hearings resulted in:

	1/8/13 to 30/9/14	[1/9/12 to 31/7/13]
Removal from the Register	3	[1]
Admonishment	1	[3]
Conditions of Practice Order	3	[0]
Suspension Order	2	
Unacceptable Professional Conduct found not proved:	8	[6]
Of which -		
Some of the facts alleged found proved	5	[3]
None of the facts alleged found proved	3	[3]
Successful half-time submissions under rule 27(2) <sup>2</sup>	0	[0]
Successful Half-time submissions under rule 27(6) <sup>3</sup>	2	[0]

7. In relation to the Committee's judgment on the issue of Unacceptable Professional Conduct (UPC), in this reporting period eight out of 17 hearings resulted in the Committee determining that the registrant had not committed UPC (47% of the cases heard. i.e. UPC was found in 53% of cases heard).

8. In comparison with the previous reporting period, six out of 10 hearings resulted in the Committee determining that the registrant had not committed UPC (60% of cases heard. i.e. UPC was found in 40% of the cases heard).

<sup>2</sup> Under rule 27(2) of the GOsC (Professional Conduct Committee) (Procedure) Rules 2000, the Registrant may submit that the facts admitted are insufficient to support a finding of Unacceptable Professional Conduct or Professional Incompetence.

<sup>3</sup> Under rule 27(6) of the GOsC (Professional Conduct Committee) (Procedure) Rules 2000, the Registrant may submit that insufficient evidence has been adduced on which the Committee could find the facts proved.

## Comment

### *Facts found proved/not proved:*

9. The relatively high rate of acquittal reported in previous years continues and the possible reasons have been explored in detail in those annual reports: the relatively low threshold for referral to the PCC from the IC, based on the 'case to answer' test; and a significant number of cases which depend for their proof on the relative credibility of the complainant witness and the registrant, with the burden of proof on the GOsC. This is particularly relevant in cases involving sexual misconduct.

### *Finding on UPC*

10. Undoubtedly the judgement of Irwin J in the Spencer case has had an impact. Legal assessors (as they must) routinely make reference to this judgement in their advice before the Committee considers UPC, using the language of 'moral opprobrium' and the analogy of impairment. It is open to case presenters to make reference to a wider body of case law in their closing submissions.

### *Advice*

11. In all three of the hearings resulting in removal of the registrant's name from the register, the basis was a finding of sexual misconduct. In four other cases involving complaints of sexual misconduct by patients, the facts were not proved. In three of the cases where some of the facts were proved but unacceptable professional conduct was not found, the Committee gave advice to the registrant (about record keeping on two occasions and about communication with patients on another).

## **Issues identified in Chairs' feedback reports**

12. Each PCC panel agrees a report after the hearing which is prepared and fed back to the GOsC by the relevant Chair. The following are in my view the most significant issues listed in this year's reports:

### *The wording of the allegations*

13. This was the subject of comment in last year's report. The drafting of allegations has improved this year although in seven of the feedback reports, there were suggestions for improvement. The practice of using 'wrap up' allegations which summarise the 'wrong doing' is helpful in particular when it comes to the decision on UPC and clarifies the basis on which the Council puts its case. The use of dependent clauses and over complication of the factual allegations is particularly unhelpful as it requires all aspects to be found in order to prove the whole.

### *Witness evidence*

14. The guidance from Council as set out in the recent practice note on witness evidence is welcome. Witnesses no longer read out their statements which are

taken as read by the Committee. Initially, it was necessary for the Committee to encourage the GOsC case presenter to take the witness to the parts of the statement relevant to the matters before the Committee to elicit evidence-in-chief. At a recent hearing the Committee experienced this carried out in an exemplary manner which should serve as a model for the future. It clearly saves time and on the whole is less onerous for the witness.

#### *Case presentation*

15. Whilst acknowledging the contribution of a small number of the regular GOsC case presenters, as the year has progressed, there has been a significant improvement in the overall standard from a wider range of case presenters. The work done to bring in 'new blood' has been fruitful and the Committee has observed some good advocacy skills.

#### *Equipment*

16. Microphones: the amplification system introduced during the year is working well, is reliable and now fit for purpose. The Committee is very grateful for this. On the other hand, the Committee continues to struggle with the laptop and printer when drafting determinations and this features in almost every feedback report. Their continued tendency to malfunction is a source of frustration and a loss of valuable time during hearings.

#### *Support to the Committee*

17. The Committee continues to receive good support from GOsC staff in all areas of its activities. This year, unusually, there were hearings which took place outside the normal venues of Osteopathy House and the occasional use of the Society of Podiatrists.
18. In London two hearings were held off site in the hearing rooms of other disciplinary bodies. Two hearings were held in Newcastle, one because of the vulnerable witnesses and one because the registrant had family responsibilities which prevented her attending a hearing in London; a further hearing was held in the MPTS hearing rooms in Manchester. This placed unusual demands on staff who undoubtedly rose to the occasion.

#### *Other issues*

19. The background to two of the cases heard revealed issues about the context in which osteopaths work which the Committee on each occasion decided should be shared with the Council after the hearing.
20. One of these was in relation to standards of behaviour, relationships and boundaries between students and teachers at one of the osteopathic educational institutions; the other concerned osteopathic practice in the context of a music festival. It was encouraging to find that the first matter was already in train through work between the GOsC and the OEIs and that the Committee's comments triggered a return visit to the College in question.

21. In the second case it is understood that the Committee's comments in the determination about the challenges of delivering safe osteopathic care in such environments will be highlighted to the profession in the next FtP e-newsletter. It is also understood that information on Data Protection as identified as a shortcoming in last year's report, has been addressed by an article in Osteopath Magazine.

### **Other matters**

22. During the year the GOsC has produced Practice Notes based on issues which have arisen in the hearings process to increase the effectiveness of the Committee and to assist those involved. These included the presentation of evidence at hearings (see paragraph 8 above), Undertakings at Interim Suspension Hearings, and Expert Evidence. These have been welcomed by the Committee, are clearly drafted and contribute to consistency and save time (see above). An identified need for an enhanced bank of conditions will be addressed in the near future for discussion at the PCC meeting on 20 November 2014.

### **PCC members**

23. This year's appraisals followed a different format from previous years with the departure of the Chair of the PCC in late May. Members submitted a self-evaluation (including feedback from colleagues) to the Chair of Council together with the offer of a conversation by telephone.
24. An all members meeting and training day for members of the Professional Conduct and Health Committees was held on 15 November 2013.
25. The day was facilitated by an external facilitator, Mary Timms. The Agenda included:
- presentation from the Professional Standards Authority
  - training on Spencer v GOsC
  - new indicative sanctions guidance
  - new conditions of practice guidance
  - case study
  - update on GOsC new quality assurance framework and risk assessment process for ISOs
  - consideration of new Practice Notes issued by Council
  - Rule 8 procedure and guidance
  - new Consent guidance
  - Information Governance issues
  - Consideration of PSA learning points
26. As the agenda demonstrates, this session covered a wide range of significant topics and was hugely valuable to members in maintaining their knowledge and effectiveness.

27. This year, the all members meeting and training day will take place on 20 November. The Agenda will include discussions on proposals for an enhanced bank of conditions for use by the Committee; the appropriate time for consideration of character evidence; and consideration of draft threshold criteria produced by the GOSC. It will also be an opportunity to reflect back on how the new initiatives introduced during the past year are working in practice and for a briefing from the Regulation department on developments in the pipeline.

**Judith Worthington**  
**Acting Chair, Professional Conduct Committee**  
**30 September 2014**