



**Council**  
**6 May 2014**  
**GOsC Whistle Blowing Policy**

<b>Classification</b>	Public
<b>Purpose</b>	For discussion
<b>Issue</b>	The General Osteopathic Council is now a prescribed body to which protected disclosures under 'whistle blowing' legislation can be made. This paper proposes the introduction of a whistle blowing policy setting out how the General Osteopathic Council will deal with any disclosures which are made to it.
<b>Recommendation</b>	To agree the draft whistle blowing policy.
<b>Financial and resourcing implications</b>	None
<b>Equality and diversity implications</b>	None identified. Equality monitoring in relation to fitness to practise cases is part of the draft Quality Management and Assurance framework.
<b>Communications implications</b>	The GOsC has undertaken a three month consultation on the draft policy. If approved, the policy will be published on the GOsC website.
<b>Annex</b>	Draft Whistleblowing Policy amended to take account of consultation comments
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## Background

1. The Public Interest Disclosure Act 1998 (PIDA) was introduced to provide protection to employees raising concerns, where they do so in accordance with the provisions set out in that legislation.
2. The protections of the PIDA were extended to all healthcare professionals by the Enterprise and Regulatory Reform Act, which received Royal Assent in April 2013.
3. Under PIDA, disclosure of information by a worker will be protected if the worker makes a qualifying disclosure to a 'prescribed person', reasonably believing that the information and any allegation contained within it are substantially true.
4. The list of prescribed persons can be amended by the Secretary of State through statutory instrument.
5. On 1 October 2013, the Public Interest Disclosure (Prescribed Persons) (Amendment) Order 2013 came into force.
6. The effect of the amendment is that the GOsC is now a 'prescribed person' to which qualifying disclosures may be made in respect of the following:
 

'Matters relating to-

  - (a) the registration and fitness to practise of a member of a profession regulated by the Council; and
  - (b) any activities not covered by (a) in relation to which the Council has functions.'
7. In February 2013, the whistle blowing charity – Public Concern at Work (PCAW) – established a Commission to examine the effectiveness of existing arrangements for workplace whistle blowing in the UK and to make recommendations for change. The remit of the Commission was to review all aspects of whistle blowing, including the current legal and governance arrangements, best practice and societal attitudes.
8. In November 2013, this Commission published its report: *Report on the effectiveness of existing arrangements for workplace whistle blowing in the UK* (available at <http://www.pcaw.org.uk/whistleblowing-commission>).
9. The report made a number of recommendations, including:
  - a. that regulators have a clear procedure for dealing with whistle blowers who come to them, including the provision of feedback and explaining when it is not possible or reasonable to do so.

- b. that regulators include whistleblowing in their annual reporting mechanisms, including in accountability hearings before parliament.
10. In September 2014, the Chief Executive and Head of Regulation met with PCAW to discuss potential areas for co-operation and closer working.

### **The GOsC's policy**

11. The GOsC is now a prescribed body to which certain 'qualifying disclosures' may be made under PIDA. In accordance with best practice, the GOsC is required to set out its policy on how it will handle such disclosures and, in doing so, it should take account of the draft Code published by the Whistleblowing Commission.
12. The draft policy annexed to this paper sets out how disclosures will be handled upon receipt by the GOsC.
13. There is an overlap between qualifying disclosures that may be made to the GOsC under the whistle blowing legislation, and the routine handling of fitness to practise concerns brought to the GOsC's attention. However, the GOsC may in future receive disclosures relating to osteopathic educational institutions and other organisations which do not fall within the GOsC's fitness to practise remit.
14. The draft policy is not an attempt to expand the GOsC's jurisdiction into these areas; rather, it is a response to a new statutory requirement which establishes the GOsC as a body to which disclosures may be made, and which requires the GOsC to act upon such disclosures.
15. The Department has indicated that it would expect individual regulators to publish the number of protected disclosures received by them, on a regular basis. The GOsC has reminded the Department that in view of the very small numbers of cases that it receives overall, it would be important to ensure that any blanket publication policy does not have the adverse effect of identifying individuals where they might otherwise want their identity protected.
16. A draft policy was considered by the Osteopathic Practice Committee (OPC) at its meeting on its meeting on 27 February 2014.
17. The OPC was concerned to ensure that stakeholders fully understood the reason for the GOsC establishing this policy – as a response to the coming into force, on 1 October 2013, of the Public Interest Disclosure (Prescribed Persons) (Amendment) Order 2013, and that this should be made clear when the final guidance is published on the Website.
18. The OPC considered the difficulties associated with raising concerns anonymously. The OPC noted the recent case of *White v NMC* (decided in February this year), in which the High Court held that the fact that anonymous evidence could not be properly tested impinged on the fairness of proceedings,

and that therefore such evidence should not be admitted. The OPC recommended that this be highlighted in the draft policy.

19. Council considered the draft policy at its meeting in May 2014 and made some further amendments to the draft. Council members approved a further draft of the policy for consultation in May.

### The consultation

20. The GOsC undertook a three month consultation from 1 June to 31 August 2014 in accordance with our engagement strategy. The consultation was published on our website and published to the profession by direct email to all osteopaths, a double-page spread in the *June/July the osteopath*, as well as features in the June, July and August news e-bulletins.
21. Direct correspondence was sent to osteopathic organisations, including the Institute of Osteopathy, osteopathic educational institutions, Osteopathic Alliance and National Council for Osteopathic Research.
22. We also communicated with the professional indemnity insurers, legal teams, other regulators and public/patient representatives, including the GOsC's Patient Participation Group.
23. The GOsC received four responses to the consultation questionnaire. The consultation responses are analysed below.

<b>Consultation Question</b>	<b>Yes</b>	<b>No</b>	<b>If no, reasons and any suggestions for improving the policy.</b>	<b>Other comments</b>
After reading the draft whistle blowing policy, did you understand clearly how to raise a concern with the GOsC?	4	0		
After reading the draft whistle blowing policy, did you understand clearly what sorts of concerns the GOsC is able to consider?	4	0		

After reading the draft whistle blowing policy, did you understand clearly what action the GOsC is able to take in response to a concern that has been raised?	4	0		
Does the whistle blowing policy provide sufficient information about other regulators to whom concerns can be raised?	4	0	<i>"Further links or references would be helpful. There could perhaps be examples of whistle blowing to illustrate its usefulness in the medical profession."</i>	
Does the whistle blowing policy provide sufficient information about further sources of advice on whistle blowing issues?	3	1		
Did the whistle blowing policy provide the right level of detail?	2	2	Too detailed  Not enough detail	<i>"Cannot agree with the regulator accepting a case without the complainant providing full disclosure of their personal details. Examples of anonymous complaints could be provided to illustrate how they will be dealt with compared with those where the complainant disclosed their identity."</i>

25. In addition, the GOsC received a detailed response from Public Concern at Work (PCAW).

26. PCAW made the following helpful suggestions on the draft policy:

- a. references to PIDA might be removed or placed in annex to prevent the policy coming across as too legalistic
  - b. the introduction could be amended to make it clearer who the policy is intended for
  - c. the policy could usefully include examples of the types of wrongdoing that would fall under the GOsC's remit
  - d. in the section on confidentiality, the option of raising the concern openly should be added and emphasised as the preferred option.
27. The draft policy has been amended to take account of the PCAW comments as set out at sub-paragraphs a, b and d above.
28. However, in line with the discussion at the OPC, the executive considers that examples of wrong doing and scenarios would be better placed in the specific guidance for registrants on raising concerns which will form part of the Francis work stream.
29. The amended draft policy is set out at the Annex.

**Recommendation:** to agree the draft whistle blowing policy.

## General Osteopathic Council

### Policy on handling whistle blowing concerns

#### 1. The purpose of this policy

- 1.1 Whistle blowing is the raising of a concern, either within the workplace or externally, about a danger, risk, malpractice or wrongdoing which affects others.<sup>1</sup>
- 1.2 In the UK, 'whistle blowers' are protected by legislation<sup>2</sup> and the General Osteopathic Council (GOsC) is one of the bodies to which whistle blowing concerns can be reported.
- 1.3 We recognise that raising concerns can be difficult. If you are an employee, and are thinking about raising concerns with the GOsC, this policy will explain:
  - a. the type of concerns that we can consider under the whistle blowing legislation;
  - b. how we will deal with concerns which have been reported to us; and
  - c. the action that we will take and the timescales for doing so.

#### 2. Matters that the GOsC can not consider under this policy

- 2.1 Under this policy, the GOsC is not able to consider:
  - a. complaints relating to employment;
  - b. contractual disputes about arrangements to provide osteopathic services, room hire or partnership agreements;
  - c. contractual disputes about providing osteopathic services within a particular area, or in close proximity to an existing osteopathic practice;
  - d. ownership of websites and domain names; or

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<sup>1</sup> Report on the effectiveness of existing arrangements for workplace whistleblowing in the UK, Public Concern at Work, November 2013 (at page 4) , available at <http://www.pcaw.org.uk/whistleblowing-commission>

<sup>2</sup> The Public interest Disclosure Act 1998 (as amended by the Enterprise and Regulatory Reform Act 2013) (PIDA). More information is set out in the Annex to this policy.

- e. complaints about soliciting patients from another osteopath or osteopathic practice.

### **3. Matters that the GOsC will consider under this policy**

- 3.1 The main duty of the GOsC as set out in the Osteopaths Act 1993 is 'to develop and regulate the osteopathy profession'.
- 3.2 Under this policy, the GOsC can only consider matters relating to:
  - a. the registration and fitness to practise of an osteopath registered with the GOsC; and
  - b. any activities not covered by (a) in relation to which the GOsC has functions. This would include functions in relation to the approval of courses at osteopathic educational institutions.

### **4. How to report whistle blowing concerns to the GOsC.**

- 4.1 We encourage individuals to consider raising concerns internally within their own organisations before approaching the GOsC. However, if you have raised your concerns within your organisation and are not satisfied with the response, or if you feel unable to raise your concerns within your organisation, you are able to contact us under this policy.
- 4.2 Before you raise a concern with the GOsC, you must have a reasonable belief that the disclosure of information to us will be in the public interest.
- 4.3 In addition, you must reasonably believe that your disclosure, and the information that you provide to us, are substantially true.
- 4.4 You can raise a concern with the GOsC in the following ways:

By telephone: 0207 357 6655 x248

In writing to: The Whistle Blowing Officer  
General Osteopathic Council  
Osteopathy House  
176 Tower Bridge Road  
London SE1 3LU

By email: [whistleblowing@osteopathy.org.uk](mailto:whistleblowing@osteopathy.org.uk)

- 4.5 If you contact us by telephone, we will talk you through our process and record information about your concerns that you are willing to provide. However, we will usually ask you to confirm your concerns in writing (by post or email).



- 4.6 Please note that any concerns that you wish to report must relate to the GOsC's functions referred to in paragraph 3 above. The GOsC will not be able to consider matters which do not relate to those functions, under this policy.
- 4.7 The GOsC regulates individual osteopaths. Wider concerns about the standards of quality and safety of healthcare offered by another healthcare provider may be more appropriately covered by another healthcare regulator.
- 4.8 Such regulators include: the Care Quality Commission in England; the Regulation and Quality Improvement Authority in Northern Ireland; Healthcare Improvement Scotland; and Healthcare Inspectorate Wales.
- 4.9 In England, you may also wish to contact the sector regulator for health services: Monitor.
- 4.10 Details of these organisations are set out below.

Care Quality Commission (England)	National Correspondence Citygate Gallowgate Newcastle upon Tyne NE1 4PA	Email: <a href="mailto:enquiries@cgq.org.uk">enquiries@cgq.org.uk</a> Telephone: 0300 061 61 61 Website: <a href="http://www.cgq.org.uk">www.cgq.org.uk</a>
Regulation and Quality Improvement Authority (Northern Ireland)	9th Floor Riverside Tower 5 Lanyon Place Belfast BT1 3BT	Email: <a href="mailto:info@rqia.org.uk">info@rqia.org.uk</a> Telephone: 028 9051 7500 Website: <a href="http://www.rqia.org.uk">www.rqia.org.uk</a>
Healthcare Improvement Scotland	Gyle Square 1 South Gyle Crescent Edinburgh EH12 9EB	<b>Email:</b> <a href="mailto:comments.his@nhs.net">comments.his@nhs.net</a> <b>Telephone: 0131 623 4300</b> Website: <a href="http://www.healthcareimprovement.scotland.org">www.healthcareimprovement.scotland.org</a>
Healthcare Inspectorate Wales	Government Buildings Rhydycar Business Park Merthyr Tydfil CF48 1UZ	<b>Email:</b> <a href="mailto:hiw@wales.gsi.gov.uk">hiw@wales.gsi.gov.uk</a> <b>Telephone:</b> 0300 062 8163 Website: <a href="http://www.hiw.org.uk">www.hiw.org.uk</a>
Monitor (England)	Wellington House 133-155 Waterloo Road London SE1 8UG	<b>Email:</b> <a href="mailto:enquiries@monitor.gov.uk">enquiries@monitor.gov.uk</a> Telephone: 020 3747 0000 Website: <a href="http://www.monitor-nhsft.gov.uk">www.monitor-nhsft.gov.uk</a>

- 4.11. If your concern is about a healthcare professional who is not an osteopath, you should raise it with the regulator for that profession.

- 4.12. You can find out more about who regulates healthcare professionals and their contact details from the leaflet *Who regulates health and social care professionals?* which is available at: [www.osteopathy.org.uk/uploads/who\\_regulates\\_health\\_and\\_social\\_care\\_professionals.pdf](http://www.osteopathy.org.uk/uploads/who_regulates_health_and_social_care_professionals.pdf)

**5. Responsibilities under this policy**

<b>Person/Body</b>	<b>Responsibility</b>
The Whistle blowing Officer	The Head of Regulation will act as the GOsC's Whistle blowing Officer.  The Whistle blowing Officer will acknowledge concerns raised with the GOsC, assess the concerns and decide on appropriate action, referring the matter to other departments or bodies where necessary.
The Chief Executive	The Chief Executive will provide a yearly report to the Audit Committee about: a. the number and type of concerns received by the GOsC from whistle blowers  b. the number of enforcement actions that have been triggered or contributed to by whistle blowers.
The Audit Committee	The Audit Committee will monitor the operation of this policy; consider a yearly report on any whistle blowing activity; and make recommendations as required to the GOsC Council.
The GOsC Council	Council will consider recommendations from the Audit Committee and keep this policy under review.

**6. Confidentiality and concerns raised anonymously**

- 6.1 Wherever possible, we would prefer you to raise any concerns with us openly. This would assist us in investigating the matter in the most effective way.
- 6.2 The GOsC will not disclose your identity without your consent unless there are legal reasons that require us to do so. This might be, for example, where your information is about a child or vulnerable adult who is at risk, or where a possible criminal offence may have been committed. We may also have to disclose your identity if ordered to so by a Court.
- 6.3 However, in order for us to be able to act upon your concerns, we may need your consent to disclose information to any osteopath or institution that we are investigating. If you do not provide this consent, we may not be able to investigate your concerns properly, or at all.

- 6.4 If you wish, you may give us information anonymously. However, in such circumstances, we would not be able to contact you to discuss your concern or ask you for further information, and we would not be able to give you any feedback about any action that we might be able to take.
- 6.5 Unless we consider that evidence or information might be available from other sources, we may decide not to act upon concerns that have been raised anonymously.

**7. Action upon receipt of a concern**

- 7.1 Where you have provided us with your contact details, we will acknowledge receipt of your concern in writing, within five days. We may also seek further information from you at this stage.
- 7.2 When we have sufficient information, we will make a preliminary assessment of your concern.
- 7.3 If we consider that the matter should be dealt with under our fitness to practise procedures, we will inform you of this, and will send you further information about how those procedures work. Please note that under our fitness to practise arrangements, we are not able to deal with concerns anonymously.
- 7.4 If we decide that your concerns raise issues that the GOsC is not able to deal with, we may refer the matter to another body, and will inform you of this. Alternatively, we may provide you with details of the appropriate body to contact.
- 7.5 If we consider that your concerns should be investigated under our whistle blowing policy, we will confirm this and provide you with an estimate of how long we think any investigation might take.
- 7.6 Wherever possible, we will seek to inform you of the outcome of our investigation and any action we have taken or recommendations that we have made to third parties.
- 7.7 The sorts of action that we can take in relation to your concern include:
- a. adding your concerns to the information that we hold about institutions that the law requires us to approve, and using your information in deciding whether or not to renew our approval of them
  - b. raising your concerns directly with the institution or person if we consider this appropriate

- c. undertaking visits to institutions that we approve under our legislation, and seeking information and documents from them
- d. identifying learning points from your concerns and feeding these back to the organisations and individuals that we regulate, or amending our own policies and procedures
- e. seeking further information about your concerns from other sources
- f. if your concerns relate to an individual osteopath, dealing with the matter in accordance with our fitness to practise procedures
- g. referring the matter to another regulator, official body or the police.

## **8. Sources of further advice**

- 8.1 Before you decide whether or not to raise a concern with the GOsC, you may want to get independent advice first, or contact your trade union or professional body.
- 8.2 If you work in the NHS, you can get free, independent and confidential advice from the Whistleblowing Helpline for NHS and Social Care on 0800 0724 725.
- 8.3 You can also call the independent whistle blowing charity Public Concern at Work for free and confidential advice on 020 7404 6609.

## **9. Review**

- 9.1 The GOsC will review this policy annually and also updated in the light of any changes in the law or revisions to relevant codes of practice

## **Annex to GOsC Whistle Blowing Policy**

### **Whistle blowing legislation – key points**

1. Under the Public interest Disclosure Act 1998 (PIDA), it is unlawful for an employer to dismiss or victimise a worker for having made a 'qualifying disclosure' of information. The protections afforded by the Act apply to a worker from their first day of employment, and there is no minimum qualifying period of employment. The protections also apply to agency workers and people who are training with an employer. However, PIDA does not cover the self-employed or volunteers.
2. The Act also provides protection in the event that individuals have difficulty gaining a reference from an employer because they have raised a concern. It makes it clear that any clause in a contract that seeks to prevent an individual from raising a concern that would be protected under the Act, is void. For more information on the law visit: [www.pcaw.co.uk/law/uklegislation.htm](http://www.pcaw.co.uk/law/uklegislation.htm).
3. In order for a disclosure to be protected, the worker who made it must have a reasonable belief that:
  - a. disclosure was made in the public interest, and
  - b. the disclosure tends to show one or more specified categories of wrongdoing.
4. These categories are set out in Section 43B of the Employment Rights Act 1996 (as amended by PIDA) that:
  - a. a criminal offence has been committed, is being committed or is likely to be committed
  - b. a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject
  - c. a miscarriage of justice has occurred, is occurring or is likely to occur
  - d. the health or safety of any individual has been, is being or is likely to be endangered
  - e. the environment has been, is being or is likely to be damaged, or
  - f. information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.
5. However, the disclosure will not be protected if, by making the disclosure, the worker commits an offence such as misconduct in public office.

6. Under PIDA, disclosure of information by a worker will be protected if the worker makes a qualifying disclosure to a 'prescribed person', reasonably believing that the information and any allegation contained within it are substantially true.
7. Under the Public Interest Disclosure (Prescribed Persons) (Amendment) Order 2013, the General Osteopathic Council (GOsC) is now a 'prescribed person' to which qualifying disclosures may be made.
9. However, the disclosures that can be considered by the GOsC are limited to:  
  
'Matters relating to
  - (a) the registration and fitness to practise of a member of a profession regulated by the Council; and
  - (b) any activities not covered by (a) in relation to which the Council has functions.'
10. Where an individual is subjected to a detriment by their employer for raising a concern, or is dismissed in breach of PIDA, they can bring a claim for compensation in the Employment Tribunal (or the Industrial Tribunal in Northern Ireland).
11. In Northern Ireland, Part 5A of the Employment Rights (Northern Ireland) Order 1996 (the '1996 Order') gives protection to 'whistle blowers', who raise concerns by making a protected disclosure about dangerous or illegal activity that they are aware of in the workplace. The disclosures qualifying for protection are listed at Article 67B of the 1996 Order, which can be viewed via the attached link - <http://www.legislation.gov.uk/nisi/1996/1919/article/67B>.
12. The 1996 Order ensures that protection is provided against any consequent victimisation or dismissal, and is contingent on the whistle blower having acted in a responsible way in dealing with his/her concerns. Disclosures can be made to a person or body which has been prescribed by the Public Interest Disclosure (Prescribed Persons) Order (Northern Ireland) 1999 (the '1999 Order'), for which the Department for Employment and Learning has responsibility.
13. Further information about whistleblowing in general, can be found at [www.gov.uk/whistleblowing](http://www.gov.uk/whistleblowing).