



### **Osteopathic Practice Committee**

**12 March 2015**

### **Draft Guidance for the Professional Conduct Committee on Drafting Determinations**

1. The Professional Conduct Committee panel chairs were asked to provide a collective view on the draft guidance and template for drafting determinations.
2. The chairs' view was that the draft documents were to be "welcomed by all for its comprehensive approach, whilst agreeing that it should be considered a 'live' document to be monitored and reviewed as appropriate".
3. The key comments of the chairs on particular aspects of the draft documents are set out below.

#### *Comments on the draft guidance*

4. In relation to paragraph 4, the chairs recommended replacing the sentence

*"It should then consider the legal issues that arise and, after again using a process of reasoning to relate the facts to the law, come to a conclusion."*

With

*"In cases where there has been dispute between the parties on legal issues, the determination should set out the Committee's reasons for the conclusions it has reached."*

5. In relation to paragraph 6, and the need to refer to legal advice, the chairs' view is that "unless the issues have been particularly complex or unusual, it has normally been sufficient to state that the Committee accepted the advice of the legal assessor".
6. In relation to paragraph 7, the chairs' view is that "singling out Spencer is unhelpful and encourages a narrow preoccupation with what is after all only one case among many. Reference to 'the relevant case law' is sufficient."

7. In relation to paragraph 8, the chairs recommended that the guidance should state in terms that the purpose of sanctions is not intended to be punitive although it may have that effect.
8. In relation to paragraph 10 and the issue of lack of insight, the chairs noted that "conditions are rarely appropriate where insight is in question" and suggested that since insight is such a key issue for the decision on sanction, the issue of whether or not the registrant has insight or to what degree is should be rehearsed in the determination in the preamble to the section on sanction.
9. In relation to paragraph 11, the Chairs recommended that the guidance should state that a review hearing will be held before the end of the period of suspension (and if no review is ordered, then give the reasons for this) and include actions and evidence that the registrant might provide to that hearing to assist the committee (whilst avoiding 'conditions by the back door')
10. In relation to paragraph 12, the Chairs noted that the reference to "conditions" should be replaced by "suspension" in the first line.
11. The Chairs also considered that the guidance should have specific sections on admonishment and removal.

*Comments on the draft template*

12. The Chairs considered that to make best use of the template, as much preparatory work should be undertaken prior to hearing. So that for example, section 3 of the template should be pre-populated with the Allegation by the Committee clerk.
13. In relation to paragraphs 6, 7 and 10, the Chairs view "is against setting out the parties' cases and submissions any further than identifying their key differences".
14. In relation to paragraph 8 of the template, the Chairs considered that:
  - a) "lengthy rehearsal of legal advice should be discouraged unless substantial legal issues have arisen";
  - b) note should be also be made of any Practice Notes referred to during the hearing.
15. The chairs considered that it would be helpful if paragraph 11 of the template included examples such as "facts in dispute, facts not in dispute; conflicting evidence; the Committee's views on the credibility of witnesses; why one account was preferred over another, assessment of the expert evidence".

- 16 At paragraph 14 of the template, the chairs suggested that the following useful prompts be added "summarise the findings and the Committee's views on their seriousness and the impact on patients, including references to the relevant parts of the Osteopathic Practice Standards."
17. At paragraph 15 of the template, the chairs suggested that the following useful prompts be added: "include references to:
- the Committee's obligation to uphold the public interest;
  - a description of the public interest in terms;
  - the requirement to consider sanction by beginning with the least severe and working upwards in so far as that may be appropriate;
  - the principle of proportionality;
  - the fact that sanction is not intended to be punitive, though it may have that effect;
  - sanction is for the Committee's independent judgment;
  - key points arising from the submissions of the parties where necessary;
  - a brief overview of aggravating and mitigating features;
  - the Committee's assessment of the Registrant's insight; and the risk of repetition;
  - any testimonials and the weight given to such material;
  - the GOsC's Indicative Sanctions Guidance;
  - how the sanction will uphold the public interest;
  - publication of the determination;
  - requirement for Review. "

**Recommendation:** to note the comments of the Professional Conduct Committee panel chairs on the draft guidance and template for writing determinations.