

**Policy Advisory Committee**

**4 March 2020**

**Acting as an expert or professional witness on the osteopathic context**

<b>Classification</b>	Public
<b>Purpose</b>	For decision
<b>Issue</b>	Acting as an expert or professional witness in osteopathic cases.
<b>Recommendation</b>	To agree the terms of reference for the Expert Witnesses in Osteopathy Reference Group.
<b>Financial and resourcing implications</b>	Any consultation costs will be undertaken as part of our communications strategy at the appropriate point of development and are incorporated in our 2020/21 budget planning.
<b>Equality and diversity implications</b>	Equality and diversity issues are a key component of this work and will form part of an equality impact assessment.
<b>Communications implications</b>	This work is in early development with stakeholders. It will be communicated further when it is further developed.
<b>Annexes</b>	Annex A: Possible expert evidence scenarios: examples  Annex B: Draft Terms of Reference for Expert Witnesses in Osteopathy Reference Group
<b>Authors</b>	Fiona Browne, Steven Bettles, Sheleen McCormack and Hannah Smith

## Background

1. Our Business Plan 2019-20 states that we will:
  - Update and develop expert witness competences and eligible pool of expert witnesses (working with other relevant bodies and stakeholders).
2. The work stream also features in our forward-looking Business Plan for 2020-21.
3. In October 2019, the Policy Advisory Committee considered the background and guidance to working following on from the Williams review. We explained that the Williams review into Gross negligence manslaughter in healthcare: the report of a rapid policy review (2018) responded to the issues raised through the case of Dr Bawa Garba. The review focussed on three key areas:
  - information on and understanding of gross negligence manslaughter and the processes which apply to possible cases of gross negligence manslaughter involving healthcare professionals;
  - reflective learning; and
  - lessons for healthcare professional regulators.
4. We have been working closely with the other health professional regulators to consider the wider implications for health regulators from this review. For example, all the healthcare professional regulators published a joint statement about the benefits of reflective learning in June 2019. See <https://www.osteopathy.org.uk/news-and-resources/news/regulators-unite-to-support-reflective-practitioners/> for further information. We have taken steps to promote this statement in our communications with osteopaths.
5. A particular theme in the Williams review related to the quality of expert evidence. The following recommendations were made in relation to the role of expert witnesses:
  - 'The Academy of Royal Medical Colleges, working with professional regulators, healthcare professional bodies and other relevant parties, should lead work to promote and deliver high standards and training for healthcare professionals providing an expert opinion or appearing as expert witnesses. These standards should set out what, in the Academy's opinion, constitutes appropriate clinical experience expected of healthcare professionals operating in such roles.
  - Healthcare professionals providing an expert opinion or appearing as an expert witness should have relevant clinical experience and, ideally, be in current clinical practice in the area under consideration.
  - Additionally, they should understand the legal requirements associated with being an expert witness (including the requirement to provide an objective and unbiased opinion).

<https://www.gov.uk/government/publications/pathology-delivery-board-criteria-registration>

- Healthcare professionals should be supported and encouraged to provide an expert opinion where it is appropriate for them to do so.
  - Healthcare professional bodies, including Royal Colleges and professional regulators, should encourage professionals to undertake training to become expert witnesses, and employing organisations should be prepared to release staff when they are acting as expert witnesses.
  - Professional representative bodies and regulators should recognise acting as an expert witness as part of a healthcare professional's revalidation or continuous professional development (CPD) process.'
6. In spring 2019, at a workshop with osteopaths, lay people and patients, we also discussed the scope and nature of expert evidence in the context of osteopathic fitness to practise cases and explored some of the challenges that can arise. Case scenarios at Annex A outline some of the specific challenges.
7. Issues arose in that discussion included the following:
- Expert in what? In 'osteopathy', the application of the 'Osteopathic Practice Standards' or expert in an adjunctive therapy?
  - The limited evidence base in osteopathy and the limited number of treatments or conditions recognised by the Advertising Standards Authority. (See <https://www.asa.org.uk/advice-online/health-osteopathy.html>)
  - Does it make a difference if the particular treatment requiring expert evidence is regulated or voluntarily regulated by another regulator or professional body? Or if it is a novel or unusual technique practised only by one practitioner?
  - What is the patient's understanding? What dialogue took place about benefits and risks, can the patient consent?
  - The nature of the expertise and the case should be clear. In other professions, the nature of the expertise was clearer and could be dealt with in terms of submissions and facts. However, the limited evidence base in osteopathy can make the nature of the expert evidence more difficult. Is an expert on the OPS always necessary? Perhaps sometimes it is not necessary. The issue is what are the facts?
  - Would the response be the same if the person responding was the osteopath, the particular patient, a member of the profession, another health professional, or the insurer?
8. In May 2019, the Academy of Medical Royal Colleges produced expert witness guidance. This is available at: <https://www.aomrc.org.uk/reports-guidance/acting-as-an-expert-or-professional-witness-guidance-for-healthcare-professionals/>. The guidance has at present been endorsed by six of the nine health professional regulators.

## Discussion

9. The Academy of Medical Royal Colleges guidance includes the following key points:
  - Healthcare professionals giving expert evidence must hold the appropriate licence to practise or registration and be in, or sufficiently recently be in, practice
  - Healthcare professionals who act as expert witnesses should undertake specific training and continuing professional development (CPD) for being an expert witness
  - The healthcare professional must have a full understanding of the wider context of the care delivery and how it impacts on the case, including the care delivery setting (rural, tertiary care, district general hospital, independent sector, primary care etc) and the historical context and circumstances if relevant
  - Healthcare professionals should be able to describe and explain the range or spectrum of clinical and/or professional opinion on the issue in question and indicate, with sufficient reasoning, where their own opinion fits into that spectrum
  - Healthcare professionals acting as expert witnesses should make a self-declaration as to their scope of practice, professional development, training, special interests, areas of expertise both in general and in relation to the specific case and any conflicts of interest that could impact on their evidence
  - If they are found to have provided misleading information after such a declaration, they could be liable to professional misconduct proceedings in addition to the possibility of any criminal sanction.
10. Some of these points transfer easily to the osteopathic context. For example, the importance of training and development in the knowledge and skills required to be an expert, the duty to the tribunal etc. Other areas may on the face of it, be more challenging in the osteopathic context, when considered against the scenarios in Annex A. For example, if a particularly novel technique is proposed, how is it possible to establish oneself as an expert? Also, a limited evidence base and sometimes limited publications may challenge the ability of an osteopath to establish expertise in the traditional way.
11. It is clear that this is not simply a 'GOsC' issue and it will be important for the key parties in the sector to work together to establish consensus and identify key issues and to be transparent about expectations for all involved. Such an approach will also enable us to identify the support and guidance needed by osteopaths, patients and others to ensure that they are able to understand and work towards clear expectations should they be approached to be expert witnesses.

**Next steps**

12. It is our intention to convene a working group of stakeholders in order to flesh out these issues. The draft terms of reference are attached at Annex B for consideration.

**Recommendation:** To agree the terms of reference for the Expert Witnesses in Osteopathy Reference Group.

## Possible expert evidence scenarios: examples

Scenario	How might be handled	Comments
1. Osteopath acting within an area that another non-osteopathic professional may be able to provide evidence (e.g. colonic hydrotherapy)	1. Expert osteopath witness, with no detailed knowledge of colonic hydrotherapy, but able to research this appropriately and offer an opinion based on the application of the OPS	If the expert is an expert in osteopathic practice and implementation of the OPS, but not familiar with the approach in question, their views as a witness may be challenged, even if the issue does not rest upon the particular approach per se, but on the implementation of OPS.
	2. Expert evidence sought from colonic hydrotherapist (see <a href="http://www.colonic-association.org/">http://www.colonic-association.org/</a> )	Depends on the credibility of the profession as well as the individual witness. Someone may have expertise in an approach for which there is no scientific basis or evidence whatsoever, for example.
	3. Expert medical evidence – for example, that a particular approach was unsafe, inappropriate or was subject to undisclosed risks	May be scientifically robust and reflect medical opinion, but opinions may vary on some approaches for which the evidence base is less developed, for example, cranial osteopathy.
2. Case relates to the use of acupuncture/dry needling by an osteopath	1. If relates to acupuncture/needling, then an expert in that modality – if an osteopath, one who is able to demonstrate their expertise through training, practice, CPD, maybe registration with another professional body	Depending on the modality in question, this may be challenging – acupuncture/needling is common for osteopaths, but other modalities are less so.
3. Osteopath providing treatment in a novel or new area where there are no experts, either because it is new (though safe) or controversial	1. Expert medical evidence may be able to comment on the scientific basis for and safety of a particular technique. 2. Or is it damaging to the reputation of the profession?	For some highly novel approaches, it may be difficult to find an appropriate expert. Depends on the nature of the complaint – is it that the approach was novel or not based in any evidence, or

## Annex A to 3

		that the patient was unaware of this, and of any potential benefits and risks?
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### **Expert Witnesses in Osteopathy Reference Group**

#### **Draft Terms of reference**

#### **Purpose and role**

1. To establish consensus about the role of expert witnesses in the osteopathic sector and context and to make recommendations about effective implementation.

#### **Terms of Reference**

2. The multi stakeholder group will act in an advisory capacity and will provide advice to GOsC about:
  - a. Guidance including:
    - The endorsement of the Academy of Medical Royal Colleges Guidance, Acting as an expert or professional witness: Guidance for healthcare professionals.
    - Specific issues that may arise in the osteopathic context which may require further guidance or clarification from GOsC or other bodies in the sector.
    - Advice about consultation and engagement
  - b. Implementation: The requirements of osteopaths and others in the sector in order to implement the recommendations effectively in the osteopathic context
  - c. A programme of evaluation
3. During this work, the group will consider a range of relevant topics including:
  - a. The duty to the tribunal –
    - Understanding Professional Conduct Committee procedures and rules, (including the standard of proof and the rules of evidence)
    - Understanding the duty to inform the Professional Conduct Committee and be independent, honest, trustworthy, objective and impartial (not being 'for' the patient or the practitioner)
    - Understanding the duty to produce a reasoned opinion derived from information provided, and other sources of evidence including research and standards. Being able to articulate the range of opinions and being able to articulate where the witness cannot provide an opinion and explaining reasoning
    - Only providing expert testimony and opinions about issues that are within the witness's professional competence.

- Duty to provide a comprehensive and accurate expert report
  - Duty to give oral evidence where required
- b. Demonstrating legitimacy – establishing expertise by articulating expectations about education, qualifications and practise necessary to inform establishment of expertise
  - c. Training and experience – making recommendations about role, qualifications and experience, expected training and ongoing CPD expected of an expert
  - d. Scope – articulating clearly the nature of the individual’s expertise and competence in relation to the facts at hand and a full understanding of the wider context of the care delivery. This will include familiarity with accepted normal and good practice in the specific area, the care setting and the historical context and circumstances if relevant.
  - e. Professional responsibilities including the need for probity, impartiality, honesty, integrity and the need for appropriate professional indemnity insurance
4. The group will ensure that:
- equality and diversity matters are considered and integrated in the course of the work undertaken

### Membership

5. The group will be chaired by the Chair of the PAC

Members will include:

- The Council of Osteopathic Educational Institutions
  - The Institute of Osteopathy
  - The Osteopathic Alliance
  - The National Council for Osteopathic Research
  - Patients
  - Fitness to practise panellists
  - Other health professions
6. Administrative aspects will be undertaken by members of the GOsC’s Professional Standards team.

### Quorum

7. The quorum will be three members and must include the Chair of the Group or their nominated deputy.

**Method of delivery**

8. Face to face and through virtual meetings. Much of the work of the group may be undertaken 'virtually', with online contributions and webinar meetings. Three face to face meetings are planned, though remote attendance at these may be possible for those unable to attend in person.

**Timetable**

9. The current indicative timetable for the project is set out in the timetable below. This may be subject to review as the project progresses:

<b>Month</b>	<b>Activity</b>
March 2020	Terms of reference agreed
May 2020	First meeting of group – workshop to explore the topics, where we are now and where we want to be. Feedback on the Academy of Medical Royal Colleges guidance.
June 2020	First report back from group and agreement to next steps:  E.g. Endorse AOMRC guidance, develop further osteopathic specific guidance, consultation plan
July to December 2020	Development of further guidance and consultation / exploring matters of implementation
March 2021	Agreement to additional guidance and implementation plan and plan for evaluation

**Observers**

10. The group may invite people with particular expertise to attend group meetings to inform the discussion of the Reference Group members.
11. Meetings will be convened by the General Osteopathic Council.

**Reporting and Accountability**

12. The group is advising the General Osteopathic Council's Policy Advisory Committee and will also provide advice to other organisations in the sector.
13. Regular reports of the group's activities will be reported to the Committee.