



Policy Advisory Committee
13 October 2016
Indicative Sanctions Guidance

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| Classification | Public |
| Purpose | For noting |
| Issue | This paper sets out the GOSc's approach and rationale for updating and modifying the Indicative Sanctions Guidance. |
| Recommendation | To note the approach outlined in this paper and the proposed timetable for the production of a draft Indicative Sanctions Guidance for Professional Conduct and Health Committees. |
| Financial and resourcing implications | Within existing budget. |
| Equality and diversity implications | Monitoring of diversity data will form part of the Regulation Department Quality Assurance Framework. Equality considerations will also be reflected in the review of the draft guidance pre -consultation. |
| Communications implications | Identified within this paper |
| Annexes | None |
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Background

1. The third edition of the Indicative Sanctions Guidance (ISG) was approved by Council in October 2013. The current document is used by the Professional Conduct Committee (and the Health Committee) at the sanction stage of a fitness to practise hearing. The main aim of the ISG is to assist Committees in adopting a consistent, appropriate and proportionate approach when determining what sanction to impose against a registrant. As a publicly available document the ISG enhances the accountability and transparency of the Committees decision making and is utilised by all the parties to a hearing including registrants and their representatives.
2. As part of our reform programme for 2016-17, we are continuing to explore options and implement reforms which we consider could improve and modernise our fitness to practise processes and improve patient protection. Additionally, the GOsC Business Plan for 2016-17 states that we will review the Indicative Sanctions Guidance.
3. In January 2014, Council considered a paper which set out a range of actions that the GOsC was taking in response to the recommendations of the Francis Inquiry and the Government's response to that report published in November 2013, which included a commitment from regulators to agree consistent approaches to candour and a review of standards and guidance to panels taking decisions on professional misconduct. The GOsC Action Plan sets out a number of actions across broad themes. The first theme, pertaining to openness and candour, stipulated that a review of the indicative sanctions guidance would be undertaken to take account of duties relating to candour.

Discussion

4. Building on other work undertaken by the GOsC in relation to the duty of candour, including the review of the *Osteopathic Practice Standards*, it is anticipated that the revised sanctions guidance will include detailed expectations of registrants on the seriousness of failures in the professional duty of candour. This will encompass failures by osteopaths to raise concerns about both themselves and others.
5. Since the publication of the ISG in 2013, there have been numerous developments in healthcare regulation and the regulatory landscape generally. A literature review of recent developments in equivalent guidance produced by other healthcare regulators has also been undertaken.
6. We are therefore taking the opportunity to include several changes to the current guidance as outlined below. The purpose of these changes is to further enhance transparency and consistency in decision making whilst ensuring any sanction imposed by a Committee is both targeted and proportionate. Importantly, the revised guidance will also help ensure that in the most serious cases, appropriate sanctions are imposed that takes account of the confidence of the public.

7. While Committee members should take all evidence and their findings into account as part of their decision making and in the exercise of their judgement, it is important that the approach they take is consistent and adequately addresses any risk to patient and public safety and the wider public interest.
8. Unlike other healthcare regulatory regimes, the GOsC's statutory scheme, as set out in the Osteopaths Act 1993 and the associated rules, does not require Committees to decide whether the osteopath's fitness to practise is impaired. Rather, the Act provides that a Committee must determine whether the osteopath is guilty of unacceptable professional conduct.¹ Unlike current impairment, unacceptable professional conduct is a backward looking concept which Committees frequently grapple with at the sanctions stage in circumstances where the osteopath adduces evidence of insight and remorse into their misconduct. This is particularly so where the Committee's earlier finding of unacceptable professional conduct is based upon the wider public interest and does not include patient safety issues. Consequently, further guidance would benefit Committees in assessing insight, remediation and mitigation.
9. We are therefore proposing to strengthen the ISG by providing further guidance in four key areas:
 - Dishonesty
 - Sexual misconduct
 - Duty of candour
 - The impact of a registrant's conduct (e.g. insight and remediation) on sanction
10. As part of our pre-consultation engagement plan we will be working closely with key internal and external stakeholders, including defence organisations and patient groups, on the usability and accessibility of the draft guidance. We are in the process of arranging a joint meeting with defence organisations and insurers in November 2016.
11. We will also be seeking input from the GOsC FtP forum (which includes the views of experienced lawyers) and the PCC/HC members at their annual training day in November 2016.
12. We intend to amend and update the sanctions guidance in light of feedback we receive and the updated guidance changes will put to Council for approval in February 2017, prior to a three month public consultation being undertaken. A further version of the Sanctions Guidance, taking account of the feedback and

¹ An allegation must fall within the scope of the categories as defined within section 20(1)(a) – (f) of the Osteopaths Act 1993.

outcomes of the consultation, will then be brought to Council for approval in 2017.

Recommendation: to note the approach outlined in this paper and the proposed timetable for the production of a draft Indicative Sanctions Guidance for Professional Conduct and Health Committees.