



**Policy Advisory Committee**

**9 October 2019**

**Approach to adjunctive therapies and expert evidence**

<b>Classification</b>	Public
<b>Purpose</b>	For discussion
<b>Issue</b>	Protecting patients and supporting other stakeholders in understanding the application of the Osteopathic Practice Standards to the breadth of practice undertaken by osteopaths through the development of resources for osteopaths engaged in adjunctive or complementary therapies and other related matters.
<b>Recommendations</b>	<ol style="list-style-type: none"><li>1. To consider the issues arising about the application of the Osteopathic Practice Standards to adjunctive therapies.</li><li>2. To consider the approach to expert evidence in fitness to practise proceedings.</li></ol>
<b>Financial and resourcing implications</b>	Consultation costs will be undertaken as part of our communications strategy at the appropriate point of development.
<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>	<p>Annex A: Illustrative case examples exploring the nature and scope of the application of the Osteopathic Practice Standards to people on the General Osteopathic Council register</p> <p>Annex B: Possible expert evidence scenarios: examples</p>
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## Background

1. Our Business Plan 2018/19 states that we will:
  - Update and develop expert witness competences and eligible pool of expert witnesses (working with other relevant bodies and stakeholders).
  - Explore the need for guidance or resources to support osteopaths engaged in adjunctive and / or complementary treatments and other stakeholders to understand the application of the Osteopathic Practice Standards.
2. In addition to this, as a result of ethical queries, feedback from stakeholders, and recommendations from our Determinations Review Group<sup>1</sup>, we are also exploring the application of the Osteopathic Practice Standards to care or treatment by a person who is registered with the General Osteopathic Council.
3. The purpose of this paper is to highlight the work that we have done to explore and scope the issues at hand, to enable the Committee to begin to consider these issues. We are proposing an approach for further development.

## Discussion

*The application of the Osteopathic Practice Standards to care and treatment by a person who is registered by the General Osteopathic Council*

4. The Osteopathic Practice Standards (2019) provide:

'The Osteopathic Practice Standards **set out the standards of conduct, ethics and competence required of osteopaths to promote patients' health and wellbeing, protect them from harm and maintain public confidence in the profession.** It brings together the Standard of Proficiency and Code of Practice required by the Osteopaths Act 1993.'

'The standards set out the expectations of osteopaths as regulated healthcare professionals. **Patients must be able to trust osteopaths with their health. To justify that trust osteopaths must meet the standards expected in the Osteopathic Practice Standards. Osteopaths are personally accountable for their professional practice and must always be prepared to justify their decisions and actions, explaining how they have exercised their professional judgement.**'

5. Standard D1 provides '*You must act with honesty and integrity in your professional practice*', and D7, that '*You must uphold the reputation of the profession at all times through your conduct, in and out of the workplace*'. These

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<sup>1</sup> The Determinations Review Group comprises senior members of staff at GOsC and from the General Optical Council and the General Chiropractic Council. It reviews determinations of the Fitness to Practise Committees and makes recommendations and identifies learning opportunities as appropriate. The full terms of reference are available at: <https://www.osteopathy.org.uk/news-and-resources/document-library/about-the-gosc/council-june-2017-item-6b-annex-b-decision-review-group-terms/?preview=true>

standards do not limit the application of the Osteopathic Practice Standards (OPS) to when practising as an osteopath.

6. The OPS also require osteopaths to have the knowledge and skills necessary to support their work as an osteopath (standard B1), to recognise and work within the limits of their training and competence (standard B2), and to keep their knowledge and skills up to date (standard B3).
7. It seems uncontentious that the OPS apply to any osteopath at any time. At this point, we may argue the OPS apply to any osteopath at any time and we may argue that this is the intention of those opening paragraphs of the Osteopathic Practice Standards at paragraph 4 above. The standards are there to protect patients.
8. However, to illustrate the issues arising in practice we have developed fictional case examples at Annex A which demonstrate of the breadth of the challenges experienced by patients and osteopaths. An analysis of these case examples raises the following questions:
  - Should the Osteopathic Practice Standards apply or not<sup>2</sup>, and why?
  - Or might it depend, for example,
    - on the particular care or treatments offered and the associated dialogue with the patient?
    - or whether the patient is protected because that professional is regulated by another regulator for the adjunctive therapy?
    - Or whether the treatment or act is such that no osteopath or other health professional would undertake it?
  - Does it matter if the adjunctive therapy is typically practised by an osteopath or not?
  - Might the response be the same if the person responding is the osteopath, another osteopath, another health professional or the patient or a member of the public?
9. In relation to the point about whether the osteopath is doing an osteopathic technique; no definition of the scope of osteopathy exists, and there is no (and could be no) set list of 'osteopathic' techniques, as opposed, for example, to 'chiropractic' or 'physiotherapy' techniques because approaches and treatments or techniques may be performed by other health professionals as well as osteopaths. It may also be argued that any attempt to restrict the treatments that osteopaths may perform may restrict the benefits of treatment for patients.
10. Within the profession, there may be a fairly common understanding, however, of what comprises an 'osteopathic' technique (or a technique commonly used by osteopaths), and therefore of what is likely also to be a technique *not* so commonly used by osteopaths, but there is no precise definition of this. Further, there is some evidence that, for example, acupuncture, is used by up to 42% of

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<sup>2</sup> If not 'practising as an osteopath' are there any circumstances when the OPS will not apply?

osteopaths responding to the Institute of Osteopathy survey of 2018 and massage by 37% of osteopaths which raises the question, what do we mean by adjunct and we should not that it is not necessarily the same as 'not common'? Some 'adjunctive' techniques may be argued to be a routine and accepted part of many osteopaths' typical practice.

11. How osteopaths perceive what they do may vary. For example, someone who is registered as an osteopath, and who is also qualified as an acupuncturist may see themselves very much in a dual capacity. They could even provide different services in different locations – working as an acupuncturist on a Monday afternoon, for example, and as an osteopath on a Tuesday. Others will see their use of needling as an inclusive aspect of their osteopathic approach and may draw no distinction between their professional identities in this respect. From the regulatory perspective, though, however the osteopath sees themselves, or works, they are an osteopath, and must work in accordance with the OPS in order to protect patients.
12. In spring 2019, the professional standards and regulation teams designed, developed and delivered a seminar with osteopaths, lay people with experience of fitness to practise processes and patients to explore some of the issues and to understand how best to address them so that there is clarity for osteopaths, for patients and for other stakeholders. A note of this session and the associated discussion paper is available on request from Steven Bettles ([sbettles@osteopathy.org.uk](mailto:sbettles@osteopathy.org.uk)).
13. Key issues that arose were about being clear that the standards are there to protect patients and that this should be a key consideration for care and treatment provided by an osteopath.
14. An early draft statement is being developed for further discussion with our stakeholder group.

#### *Expert witnesses*

15. The Williams review into Gross negligence manslaughter in healthcare: the report of a rapid policy review (2018) responded to the issues raised through 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.
16. 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. See

<https://www.osteopathy.org.uk/news-and-resources/news/regulators-unite-to-support-reflective-practitioners/> for further information.

17. A particular theme in the 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.'
18. In spring 2019, at our 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. Again, the case scenarios at annex B outline some of the challenges.
19. The note of this discussion is available on request from Steven Bettles ([sbettles@osteopathy.org.uk](mailto:sbettles@osteopathy.org.uk)). 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 of 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 makes the nature of the expert evidence more difficult. 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, the insurer?

20. 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.

21. The 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.

22. 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 B. 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.

**Next steps**

23. These issues have been presented to the Committee at this stage to outline some complex policy areas that we are working through with our stakeholders. We welcome any initial response and feedback from the Committee.
24. We will continue to work with our stakeholders to explore these issues and will bring further progress back to the Committee in due course.

**Recommendations:**

1. To consider the issues arising about the application of the Osteopathic Practice Standards to adjunctive therapies.
2. To consider the approach to expert evidence in fitness to practise proceedings.