



## Policy Advisory Committee

Minutes of the 14<sup>th</sup> Policy Advisory Committee – Public (and also the 94<sup>th</sup> statutory Education Committee) held on Wednesday 4 March 2020 at Osteopathy House, 176 Tower Bridge Road, London SE1 3LU

*Unconfirmed*

Chair Dr Bill Gunnyeon

Present: Dr Marvelle Brown  
John Chaffey  
Bob Davies  
Elizabeth Elander  
Professor Raymond Playford  
Alison White (from Item 4)  
Nick Woodhead

Observers with speaking rights: Professor Dawn Carnes, Director, National Council for Osteopathic Research  
Dr Kerstin Rolfe, Council for Osteopathic Education Institutions (COEI)  
Michael Mehta, the Osteopathic Alliance

In attendance: Steven Bettles, Policy Manager, Professional Standards,  
Fiona Browne, Director of Education, Standards and Development  
Kabir Kareem, Quality Assurance Liaison Officer (QALO)  
Sheleen McCormack, Director, Fitness to Practise  
Liz Niman, Head of Communications and Engagement  
Matthew Redford, Acting Chief Executive and Registrar  
Marcia Scott, Council and Executive Support Officer  
Hannah Smith, Regulation Manager

### Item 1: Welcome and apologies

1. The Chair welcomed all to the meeting. A special welcome was extended to Sarah Botterill who takes the place of Dr Joan Martin. Joan will now sit on the Remuneration and Appointments Committee. The Chair on behalf of the Committee thanked Joan for the contributions she has made to the PAC.
2. A special welcome was also extended to Michael Mehta, an observer with speaking rights attending the meeting on behalf of the Osteopathic Alliance (OA).
3. Apologies were received from Maurice Cheng, Chief Executive of the Institute of Osteopathy (iO), Dr Stacey Clift and Rachel Heatley, Senior Research and Policy Officers.

## **Item 2: Minutes and matters arising**

4. The minutes of the meeting, 9 October were agreed as a correct record. It was confirmed that Nick Woodhead had not attended the meeting and the attendance list had been corrected to reflect this.

## **Matters arising**

5. There were no matters arising.

## **Item 3: Acting as an Expert Witness or Professional Witness in the osteopathic context**

6. The Director of Education, Standards and Development introduced the item which concerned the terms of reference for those acting as an expert witness in osteopathic cases.
7. The following points were highlighted:
  - a. The paper follows from the William's Review, the wider implications as a result of the recommendations from the review proposed for Health Regulators, and the challenges for osteopathy.
  - b. Expert witness guidance has been produced by the Academy of Medical Royal Colleges, but only endorsed by six of the nine health professions regulators. Advice is required from the sector as to how the guidance fits with the osteopathic profession and whether additional guidance and support is required for the OEIs.
  - c. Terms of Reference have been developed and the Expert Witnesses in Osteopathy Reference Group (Group) will help to establish a consensus on the role of expert and professional witnesses.
  - d. The paper had been shared with the osteopathic educational institutions (OEIs) some of which do have their own specific guidance and training in place for expert witnesses in relation to their own student fitness to practise or disciplinary cases.
  - e. The Chair commented that the issues concerning to expert and professional witnesses were especially important for the credibility of the osteopathic profession. It was also important for those who were subject to fitness to practise proceedings, complainants and registrants, that the fitness to practise process remains credible.
8. In discussion the following points were made and responded to:
  - a. The guidance was welcomed as it would give clarity to those who act as expert or professional witnesses and encouraged development in this area. In considering the development of expert and professional witnesses there

would be a need for a high level of support and training to ensure there could be confidence in those who performed in these roles.

- b. It was not clear as to the reasons why three of the nine health profession regulators had not endorsed the Expert Witness Guidance produced by the Academy of Medical Royal Colleges. This would be explored as part of the work to be conducted by the Group.
- c. It was noted that the pool of expert witnesses within the osteopathic profession is very small. A challenge would be how a generation of new expert witnesses could be developed for the future, and how the work of the Group might address this. It was suggested that a shadowing scheme to run along the existing pool of expert witnesses might be considered as one solution. It was agreed that the points raised were pertinent and highlighted some of the challenges to be explored such as when there is only one expert in a specific area, and how expertise might be established and verified.
- d. There were challenges in relation to novel therapies and expert witnesses. These included establishing the relevant expertise and the potential impact on credibility if the validity of the therapy could not be established or was called into question. It was suggested that the issue would often be not that an osteopath practised a particular therapy (not regarded as osteopathic) but how this was set against the Osteopathic Practice Standards and communicated to the patient in a way that supported the patient to consent. In rare circumstances, it might be the case that the issue would relate to maintaining confidence in the osteopathic profession, in such circumstances, there would be an issue regardless of patient consent.
- e. Due to the nature of the current caseload there had been no issues in appointing osteopathic expert witnesses over the past twelve months. The work to be undertaken, which will include training of expert witnesses, would go some way to addressing a number of issues that have been identified. The work of the Group would also consider some of the issues relating to the adversarial approach taken by Defence Counsel during a number of fitness to practise proceedings.
- f. It was suggested that the Insurers, who instruct experts, should also be included as part of the Group. It was also suggested that producing guidance on the selecting of expert and professional witnesses should be considered once the work of the Group was completed.
- g. It was confirmed that expert and professional witnesses were independent as defined by the Academy of Medical Royal Colleges and were not acting 'for' either parties.
- h. It was suggested that the following should be introduced to the terms of reference:

- i. The approach for creating new expert witnesses for the future;
- ii. Clarification on the scope of expert and professional witnesses and adjunctive and novel therapies;
- iii. The criteria that should be considered when appointing expert and professional witnesses.

**Agreed: The Committee agreed the terms of reference for the Expert Witnesses in Osteopathy Reference Group.**

**Item 4: Fitness to Practise: Adjunctive Therapies**

9. The Regulation Manager introduced the item which concerned the protection of patients and supporting other stakeholders in understanding the application of the Osteopathic Practise Standards (OPS) to the breadth of practice undertaken by osteopaths.
10. The following points were highlighted:
  - a. At the last meeting of the PAC, October 2019, the Committee considered the work undertaken to scope and explore the application of the OPS in the context of adjunctive therapies. Feedback from the Committee in relation to the issues have been incorporated into the draft guidance.
  - b. The focus on the patient perspective has been the thread throughout the guidance note focusing on the patients understanding and expectations from the services offered and whether this is being effectively communicated by the osteopath. The importance of a clear narrative to explain and justify the benefits of treatments being offered was also an issue made clear from the case studies.
  - c. The next steps would be a roundtable event to engage with a number of stakeholders to further consider the guidance and the issues illustrated in the fictional case examples.
11. In discussion the following points were made and responded to:
  - a. Members welcomed the draft guidance note as it would clarify the position on adjunctive therapies to the profession.
  - b. It was confirmed that osteopaths and others who practise adjunctive therapies would be invited to participate at the roundtable event to ensure their views along with those of other stakeholders are considered.
  - c. There was a concern that the guidance and some of the scenarios given might imply the GOsC was moving beyond its statutory remit as the competent authority for osteopaths. Care should be taken in setting the criteria and admitting complaints that should be dealt with by another authority.

- d. It should be clear in applying the Osteopathic Practice Standards, whether the criteria in question was generic or specific to the practise of osteopathy. It was agreed this was a difficult issue in defining what would be relevant to each health professional/practitioner and it may vary depending on the context of the particular circumstances. It was pointed out that criteria would become clearer with the experience of case law.
- e. The issue of individuals working in a multidisciplinary capacity whether adjunctive or not was also raised and the regulatory approach. It was agreed that multidisciplinary practise was becoming more common amongst health and care practitioners and would require further consideration.
- f. It was agreed that the comments put forward by the Committee would inform the discussions at the roundtable event.

**Noted:** The Committee considered the draft guidance note for osteopaths on issues arising about the application of the Osteopathic Practice Standards to adjunctive therapies.

**Noted:** The Committee noted the plans for a roundtable event incorporating input from patients, other regulators, Professional Conduct Committee panel members and the Institute of Osteopathy, osteopaths and those practising adjunctive therapies or professions.

### **Item 5: Draft Practice Note: questioning witnesses**

- 12. The Director of Fitness to Practise introduced the item which proposed the introduction of a Practice Note on questioning witnesses.
- 13. The following points were highlighted:
  - a. The development of this practice note stems from the Beard judgement where in an appeal against a PCC decision it the judgement found that there had been bias.
  - b. The appeal was discussed by Council at its meeting in July 2019. At the meeting Council concluded and agreed that as part of the set of actions required, which would include training, a practice noted be developed on questioning witnesses.
  - c. A training day for the PCC was held in November 2019, focusing on questioning and managing witnesses. The draft Practice Note was considered by the members at the training day and their comments/feedback reviewed and incorporated into the Practice Note.
  - d. The Practice Note would form part of a suite of Practice Notes prepared for use by the fitness to practise committees. It has been designed to be read in conjunction with other practice notes published by the GOsC.

- e. Subject to the approval of Council there would be a consultation to allow stakeholders to comment and feedback on the Practice Note.

14. The following points were made and responded to:

- a. It was agreed that the Practice Note was in line with what had been requested by Council.
- b. It was suggested that the following might be included as part of the Practice Note:
  - examples based on different cultural backgrounds
  - explanation of key words should be included
  - the subject of tone of voice and tonal interpretation
- c. It was explained that there are separate rules for disclosure pertaining to the Professional Conduct Committee rules and all evidence needs to be disclosed 28 days in advance of a hearing. As part of the guidance the Standard Case Directions which is to be implemented would provide for appropriate planning in advance of a hearing to avoid unplanned disclosures by parties which can lead to undue delay.
- d. It was confirmed that training days for all fitness to practise committee members are arranged to take place on an annual basis. The outcomes of hearings form the basis of topics and the areas for development at the training days. If it is considered necessary then additional training days can be organised. The outcomes from the meetings of the Determinations Review Group which sits bi-annually also informs areas for discussion at ftp committee training days.
- e. It was explained that there are a number of mechanisms to highlight issues/concerns. The relevant FtP Chair provides detailed feedback to the Regulation team at the conclusion of a case which is then reviewed. Where there are issues the case is identified and the determination reviewed more closely. The PSA can also request documents to review decisions and the Determinations Review Group also can review cases and make recommendations.
- f. Concerns relating to the performance of a Fitness to Practice (FtP) Committee member are managed independently by the relevant Committee Chair and by using the appraisal process. Where a Committee member has a concern relating to the governance of the Committee the performance appraisal process/whistleblowing process would be the appropriate approach.
- g. It was explained that it would be highly unusual and unlikely for an individual to take civil action against a member of a FtP Committee. If this were to happen it would be the GOsC which would be the potential

defendant in any action. The usual mechanism where there are concerns or disagreement on the outcome of a hearing is to appeal the decision of the Committee.

- h. It was explained that the purpose and focus of the Practice Note is the managing and questioning of witnesses appropriately. Consideration had been given to including elements of the ftp feedback processes, but it was believed this would conflate issues in terms of the independence of the FtP Committees and the role of Council. There was also the possibility this could lead to Defence Counsel using the set guidance against the GOsC. It was stressed that there was a need to avoid conflation within ftp guidance and practice notes and that in due course Council might give consideration to different aspects of the traction it has with the professional conduct process and gaps that might exist in current processes.
- i. It was also highlighted that in a wider review of the GOsC governance arrangements to be considered by the Audit Committee in due course, there may be a number of ftp processes that can be considered in conjunction with the Governance Handbook.

**Noted:** The Committee considered and noted the draft Practice Note on questioning witnesses.

#### **Item 6: Quality Assurance programme from 2020 to 2025 – Mechanism for developing risk profiles**

15. It was noted that Annex A: Summary of individual risk profiles, would be considered in the private session of the Committee's meeting.
16. The Quality Assurance Liaison Officer introduced the paper which set out the proposal for the approach to developing the Quality Assurance Risk Profile of the nine Osteopathic Education Institutions (OEIs). The Risk Profile will contribute to the overarching Quality Assurance programme from 2020-2025.
17. The following points were highlighted:
  - a. The key areas which have contributed to the risk profiles include:
    - reporting of any major changes;
    - external examiner reports;
    - stakeholder feedback (students, patient and staff);
    - annual monitoring plans;
    - Maybe add in here a list of things such as stakeholder feedback;
    - annual monitoring plans, external examiner reports, reporting of major changes etc;
    - Validation reports.
  - b. The approach has been discussed with the OEIs and the feedback has been positive and receptive to the direction of travel.

- c. The explanation of the risks and levels are still in draft form and further work will be undertaken to incorporate the Committee's comments and feedback. The examples about how these might be applied were illustrative only.

18. In discussion the following points were made and responded to:

- a. The paper was considered to be very thorough.
- b. It was suggested that there could be more granularity on the quality of the educators as students were educated in small groups; how many are osteopaths; do they have a postgraduate qualification?
- c. It was asked if there would be difficulty in differentiating between the six levels from very high to very low. Might it be easier to have three levels, high – medium – low?
- d. It was suggested care was needed in considering the approach for the OEIs. The issue was the extent to which Council could take assurance from the OEI own quality control processes (rather than GOsC doing quality control activities, such as visits). It was not thought that the explanations for the risk levels arrived at a sufficiently objectively quantified position. Was it possible to make the assessment more objective rather than subjective? The method as set out at paragraph 15 of the paper, are the areas which could be looked at to arrive at a conclusion against more quantified areas such as:
  - Effectiveness of the OEI quality control processes
  - Rapid change in any area especially financial
  - Adverse stakeholder feedback
  - Quality of student tuition and patient experience
  - Strength of governance over academic arrangements
  - Lack of frankness/transparency about issues identified
  - Change to validating partners

These potential risk factors could be scored with the evidence coming from areas shown in the method section. Such an approach could be helpful in making the risk scoring more explicit and demonstrating consistency.

- e. It was asked how much individual OEIs would know about the categorisation being set and would this information be in the public domain? It was explained that at this point in development of the model the availability of the information beyond the OEI had not yet been fully considered. The model would make the Committee decision process more explicit and this has been described to the OEIs. Currently much of the information is in the private domain due to commercial sensitivities and it is recognised that there needs to be balance in the level of information that can be made available

about an institution but over time this was expected to change as more information becomes available in the public domain.

- f. The development of the risk profile would seek to determine the approach to be taken pertaining to each OEI, the associated risk, the resources required, and the ascribed action and timing of the actions required. There would be a plan in place to be implemented at an earlier stage for a high-risk institution over that of a lower risk institution; where an issue was identified the appropriate approach would be taken based on the risk profile. It was recognised that the issues about publication of information was complex but would be considered as the model continued to be developed.
- g. It was asked what might happen if a number of OEIs reached level five or six, how this would impact on the GOsC's ability to respond, and what the resource implications would be? Should this be reflected in the Risk Register. In addition, it was asked to what extent, as the regulator for osteopathic education, does the GOsC continue providing support for organisations ensuring compliance with regulatory requirements? It was agreed that the points raised were valid and would be considered but the conclusions were governed by the GOsC's statutory objectives and goals and not resources.
- h. It was suggested that the risk modelling could be more nuanced and could be built in a similar way to the PSA performance review model
- i. It was noted that the OEIs were supportive of the mechanism but wanted further clarity about how institutions moved through the risk levels. It was also highlighted that the OEIs were working well together in support of each other in a number of areas.
- j. It was explained that the External Examiner Reports and the Annual Monitoring Reports submissions on quality assurance for the OEIs are taken into account and would feed into the risk profile. The reports received include the responses from the OEIs and the focus is that the identification, management monitoring issues are identified by the institutions and that there is a consistent response to the issues.
- k. The acting Chief Executive noted that the paper had identified progress and gave credit to the Quality Assurance Liaison Officer and the Professional Standards team for their work to date and in moving forward.

**Noted:** The Committee considered and provided feedback on the draft risk profile.

### **Item 7: Any other business**

- 19. Members end of Tenure: It was noted this would be the final meeting attended by John Chaffey and Alison White with their tenures as members of Council ending on 31 March. The Chair thanked them both for their support and contributions to the Committee and wished them well for the future.

20. Future Chairing of the PAC: The Chair announced that from 1 April in his new role as the Chair of Council he would no longer participate as a member of the PAC but would observe proceedings. There would be further information on the governance structure of the PAC in due course. The Chair acknowledged the Committee had developed and become more robust in its role and thanked all the members and stakeholders for their support and contributions during his Chairmanship.

**Date of the next meeting:** 10 June 2020 at 10.00