



Policy Advisory Committee

14 October 2020

Acting as an expert or professional witness on the osteopathic context

Classification	Public
Purpose	For decision
Issue	Acting as an expert or professional witness in osteopathic cases.
Recommendations	<ol style="list-style-type: none">1. To agree that the advice set out in the Academy of Royal Medical Colleges 'Acting as an Expert or Professional Witness – guidance for healthcare professionals', is consistent with our own standards and guidance.2. To agree to a review of the GOsC's existing guidance and further engagement with the expert witness working group on this.
Financial and resourcing implications	The running of Stakeholder Reference groups has some costs met from current budgets.
Equality and diversity implications	The Expert Witness working group identified that EDI training for experts is not referenced within the Academy's guidance. The working group has recommended that EDI training should be undertaken by all osteopathic expert witnesses instructed by the GOsC.
Communications implications	If the decision is taken that the GOsC should support the Academy's guidance, this will be communicated to stakeholders via the usual communication channels.
Annexes	Annex A – Discussion Document for Expert Witness working group meeting on 24 September 2020. There are two further documents annexed to this paper: <ul style="list-style-type: none">• Expert Witness Working Group terms of reference• Case scenarios
Authors	Hannah Smith and Steven Bettles

Background

1. In March 2014, the GOsC published a PCC Practice Note setting out the requirements for expert witnesses reporting to the PCC. This covers the duties of an expert witness and the requirements for the format of their written reports.
2. Our Business Plan 2019-20 stated that we would update and develop expert witness competences and eligible pool of expert witnesses (working with other relevant bodies and stakeholders). This work stream also features in our Business Plan for 2020-21.
3. In October 2019, the Policy Advisory Committee considered the background to this work stream, which arose from the recommendations of the Williams review into gross negligence manslaughter in healthcare. The Williams Review report published in 2018 responded to the issues raised through the case of Dr Bawa-Garba and 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 informed the Policy Advisory Committee of our work with the other health professional regulators to consider the wider implications for health regulators from the Williams Review. This included, for example, the joint statement about the benefits of reflective learning published by all health professional regulators in June 2019. See <https://www.osteopathy.org.uk/news-and-resources/news/regulators-unite-to-support-reflective-practitioners/> for further information.
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. In May 2019, the Academy of Medical Royal Colleges produced its 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 supported by seven of the ten health professional regulators.
 8. In March 2020, the Policy and Education Committee approved the terms of reference for an Expert Witness working group (linked to discussion paper at Annex A). The terms of reference set out that the group will advise the GOsC on the production of guidance for expert witnesses, including:
 - a. whether the GOsC should endorse or support the Academy's guidance
 - b. whether there is a requirement for additional guidance specific to the osteopathic context.

Discussion

9. The Expert Witness working group met on 24 September 2020 to consider the Academy's guidance and advise the GOsC about whether to support it. A discussion document with questions was circulated prior to the meeting (See Annex A).
10. The majority of the group received the guidance positively and did not consider that it raised insurmountable challenges for expert witnesses in an osteopathic context. They therefore recommended that the GOsC should support the guidance.
11. It was stated that the guidance is broad and flexible enough to be tailored to the nuances of the osteopathic profession.
12. Several members of the group indicated that they were in favour of

standardisation and professionalising the role of expert witnesses. They advised that if the GOsC diverged from the majority of other healthcare professional regulators by not supporting the guidance, it would be necessary to have clear and robust reasons for this and consideration should be given to how the decision would be perceived by the GOsC's stakeholders.

13. It was observed that the guidance provides for the possibility of supporting organisations developing their own profession-specific guidance. The GOsC was advised to consider developing its own guidance to address some of the areas not covered by the Academy guidance.
14. Those who did not recommend supporting the guidance raised a question about whether the scope of the guidance was too wide and whether the profession as a whole is in a place to commit to the training requirements set out in the guidance. A question was also raised about what constitutes expertise in the osteopathic context given that some areas of professional practice are less well supported by clinical evidence than others.
15. The group were agreed that the requirement for expert witnesses to undergo appropriate training, as set out in the guidance, is of fundamental importance. It was suggested that a competence based selection process for experts could be followed up by training across the board to bring every person selected up to the same level.
16. The group were also agreed that what the PCC requires of an expert witness should be carefully considered. It was observed that the PCC need experts who can write clear opinions, understand the law and are well connected with the evidence base that exists.
17. It was identified that the guidance does not make it an explicit expectation for expert witnesses to have a commitment to equality and diversity. It also makes no mention of training requirements around this. The GOsC was advised to consider this as part of our own guidance for experts.
18. It was also recommended that any guidance produced by the GOsC should make reference to the seven principles of public life.
19. It was observed that NCOR are well placed to support the GOsC with advice and guidance about evidence in osteopathy and it was recommended that the GOsC engage further with NCOR around this.
20. Taking into account the feedback on the guidance from the working group, we consider that the GOsC can join those regulators that have already confirmed their support for the guidance.
21. Of those who support the guidance, there is a distinction between healthcare professional organisations who endorse it, and professional regulatory bodies who confirm that it is consistent with their own standards and guidance. If the

decision is taken that the GOsC should support the guidance, we envisage that we would join the other regulatory bodies by confirming it is consistent with the Osteopathic Practice Standards and GOsC guidance.

22. In addition to supporting the guidance, we consider that an appropriate next step would be to review our existing guidance in light of the working group's feedback and to engage with the group further on this. This may lead to developing our existing guidance, including the PCC Practice note on the role of the expert in light of the working group's feedback, and to engage with the group further on this. Alternatively, it may lead to the development of a new guidance document addressing the matters raised by the working group.

Recommendations:

1. To agree that the advice set out in the Academy of Royal Medical Colleges 'Acting as an Expert or Professional Witness - guidance for healthcare professionals', is consistent with our own standards and guidance.
2. To agree to a review of the GOsC's existing guidance and further engagement with the expert witness working group on this.



Discussion paper for working group - Acting as an expert or professional witness in the osteopathic context

1. This paper sets out the key issues for consideration and discussion at the first meeting of the Expert Witness Working Group on 24 September 2020.

Background

2. The GOSc's Business Plan for 2020-2021 states that we will:

"Develop expert witness competences working with other relevant bodies and stakeholders."

3. In March 2020, the GOSc's Policy and Education Committee agreed the Terms of Reference for a new Expert Witness working group. The purpose of this group is to establish consensus about the role of expert witnesses in the osteopathic sector and context and to make recommendations about effective implementation. The Terms of Reference are at **Annex A**.
4. In 2018, in response to the case of Dr Bawa-Garba, the Secretary of State for Health announced a rapid policy review into gross negligence manslaughter in healthcare, chaired by Professor Sir Norman Williams. 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.
5. A particular theme in the review related to the quality of expert evidence. The report of the review made the following recommendations 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 May 2019, the Academy of Medical Royal Colleges produced its 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.
7. A task of the Expert Witness working group, as set out in its terms of reference, is to consider the guidance produced by the Academy of Medical Royal Colleges and make a recommendation to the GOsC about whether to endorse it. This task is the focus of this first meeting of the group.

Discussion

8. 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.
9. 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. 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.
10. Examples of some of the more complex osteopathic scenarios in which the guidance - if adopted - would be applied are set out at **Annex B**.
11. It is clear that this is not simply a 'GOsC' issue and we are therefore keen to learn from members of the working group to establish consensus and identify key issues and to be transparent about expectations for all involved. This will 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.

Questions

- 1. Are there likely to be any challenges in adopting the Academy of Medical Royal Colleges' Guidance in an osteopathic context? If so, what are these?**
- 2. Are there any aspects of the guidance that you disagree with?**
- 3. Is there anything missing from the guidance that you feel should be included?**
- 4. Overall, do you recommend that the Academy of Medical Royal Colleges' Guidance should be adopted by the GOsC?**
- 5. If you feel that you cannot recommend adoption of the guidance by GOsC, should GOsC create its own specific guidance?**

Expert Witnesses in Osteopathy Reference Group

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.

Annex A to Discussion Paper

- 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:

Month	Activity
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.

Possible expert evidence scenarios: examples

Scenario	How might be handled	Comments
<p>1. Osteopath acting within an area that another non-osteopathic professional may be able to provide evidence (e.g. colonic hydrotherapy)</p>	<p>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</p>	<p>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.</p>
	<p>2. Expert evidence sought from colonic hydrotherapist (see http://www.colonic-association.org/)</p>	<p>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.</p>
	<p>3. Expert medical evidence – for example, that a particular approach was unsafe, inappropriate or was subject to undisclosed risks</p>	<p>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.</p>
<p>2. Case relates to the use of acupuncture/dry needling by an osteopath</p>	<p>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</p>	<p>Depending on the modality in question, this may be challenging – acupuncture/needling is common for osteopaths, but other modalities are less so.</p>
<p>3. Osteopath providing treatment in a novel or new area where there are no experts, either because it is new (though safe) or controversial</p>	<p>1. Expert medical evidence may be able to comment on the scientific basis for and safety of a particular technique.</p>	<p>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</p>

Annex A to 7

Annex B to Discussion Paper

	2. Or is it damaging to the reputation of the profession?	based in any evidence, or that the patient was unaware of this, and of any potential benefits and risks?
--	---	--