General Osteopathic Council

Screeners Guidance

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Contents

Introduction

1. This Guidance document sets out the statutory duties and regulatory function of the Screeners in accordance with the Osteopaths Act 1993 (the Act) and the GOsC (Investigation of Complaints) (Procedure) Rules 1999 (the Investigation Rules).

Equality and Diversity Statement

2. The GOsC is committed to ensuring that processes for dealing with concerns about osteopaths are just, fair and free from discrimination. All those involved in our processes are subject to the Public Sector Equality Duty (PSED) under the Equality Act 2010, which requires that we eliminate discrimination, advance equality of opportunity, and foster good relations. GOsC is listed as a public authority in the Equality Act 2010 in respect of our public function.

Conflicts of Interest

3. Screeners must ensure that their decisions are fair and free from bias (whether actual or perceived). It is the personal responsibility of the Screener to ensure there are no potential conflicts of interest. Where they have a doubt which could preclude them from considering a concern, they should raise this as soon as possible so that potential conflicts of interest can be considered by the GOsC.

Role of the Screener

4. The Screener is a member of the Investigating Committee ("IC") appointed by the General Council and must be "a fully registered osteopath". The Screener's role is to determine whether power is given under the Act for the IC to consider allegations against osteopaths. The Screener is required under the the Osteopaths Act 1993 ("the Act") to "*consider the allegation with a view to establishing whether, in his opinion, power is given by this Act to deal with it if it proves to be well founded*"[1] and "*if he considers that such a power is given, give the Investigating Committee a report of the result of his investigation*".

5. The General Osteopathic Council (Investigation of Complaints) (Procedure) Rules Order of Council 1999 ("the Rules") provides:

   "*6(1) Where the Screener decides that the Investigating Committee has no power to deal with a complaint then he shall inform the complainant of his decision in writing and give reasons.*

   (2) In such circumstances neither the complainant, nor the osteopath, shall have the right of access to any document relating to the case"

6. Therefore, the Screener has a statutory duty to:
   - consider any allegation referred to them; and
   - determine whether power is given by the Act to deal with the allegation, if it proves to be "well founded"; and
   - if they consider that such power is given in (ii) above, to provide a report to the IC (section 20)

[1] section 20(6)(a)

7. This means a Screener has to decide whether any allegation falls within the scope of section 20(1)(a) – (f) of the Act. Namely, where an allegation has been made against a registered osteopath ("the Registrant") to the effect as follows:
   - Unacceptable Professional Conduct;
   - Professional Incompetence;
   - Conviction;
   - Ability to practise is Seriously Impaired because of his /her physical or mental condition;
8. The Screener "*may seek information about or observations on the case from any person who, in the opinion of the Screener, might assist him in his consideration"*. (rule 5)
9. The role of the Screener is a narrow one. They have to be satisfied of a negative. Namely, that there is no power under the Act to deal with the matter. The Screener's role does not involve consideration of the wider question of the prospects of success of the complaint or matters that fall within the purview of the IC, applying the realistic prospect test.
10. Screeners must ensure that their decisions comply with the PSED.
11. The Screener should therefore ask the following questions:
    (a) Is the person complained against a registered osteopath? If not, there is no jurisdiction and the case will be closed.
    (b) Is there sufficient relevant, credible and detailed information to support the allegation? If the answer is no, the case will be closed under the initial closure procedure.
    (c) If the answer to (b) is yes, then for cases where unacceptable professional conduct is alleged, the Screener must consider whether the Threshold Criteria for Unacceptable Professional Conduct applies.
    (d) If the Threshold Criteria does not apply (or the allegation is not one of unacceptable professional conduct) the Screener must then consider whether the allegation could fall within section 20(1) of the Act. In other words, could the allegation, if it is proved, be
        - Conduct falling short of the standard required of a registered osteopath ("unacceptable professional conduct")? Or
        - Professional incompetence? Or
        - A conviction? Or
        - Serious impairment to the ability to practise because of a physical or mental condition etc.

A flowchart setting out the Screener's decision-making process is at Annex A.

Closing a case under the Initial Closure Procedure

12. The Initial Closure Procedure (ICP) appears at Annex B.

13. If, following reasonable and proportionate attempts to gather information, the GOsC considers that there is insufficient relevant, credible and detailed supporting material to enable the Screener to make a decision under (b) above, the GOsC will refer the case to the Screener under the ICP with a recommendation for closure. If the Screener agrees with the recommendation, the case will be closed. Cases closed under the ICP do not require review by a lay member of the IC.

14. If the Screener disagrees with a recommendation under the ICP, the case will not be closed under (b) and the Screener should go on to consider whether the allegation falls within section 20(1) of the Act (c).

Applying the Threshold Criteria

15. The Threshold Criteria appears at Annex C.

16. If the Screener determines at (c) that the Threshold Criteria applies, the allegation will be reviewed by a lay member. If the lay member disagrees with the Screener, their reasons should be captured in the Screener's report and the case should be referred to the IC.

17. Where the lay member agrees with the osteopathic Screener that the Threshold Criteria apply then the complainant will be informed of the decision in writing and will be provided with a copy of the Screener's reasons.

Allegations that are "not well founded"

18. If the Screener determines at (d) that the allegation is not well founded (i.e. that it does not fall under any of the grounds set out in section 20(1) of the Act), the decision must be reviewed by a lay member of the IC, as above. If the lay member disagrees with the Screener, their reasons should be captured in the Screener's report and the case referred to the IC.

19. Where the lay member agrees with the Screener that the allegation is not well founded then the complainant will be informed of the decision in writing and will be provided with a copy of the Screener's reasons.

Referring a case to the Investigating Committee ("IC")

20. If the answer to (d) is "yes", the Screener shall refer the case for investigation and give a report to the IC. This should include the reasons for the decision and identify possible breaches of the Osteopathic Practice Standards applicable at the time when the events of the complaint are said to have taken place.

21. The template Screener Report appears at Annex D.

Documents Provided to Screeners

22. When a Screener is asked to consider an allegation, they are provided with the following documents by the GOsC:

- Regulatory Concerns
- Copy of complaint
- Any supporting documents obtained by the GOsC

- Registrant's response (if they have been contacted for comment at this stage
- Screener's report template
- This guidance document

Regulatory Concerns

23. The regulatory concerns are drafted by the GOsC to assist the Screener. These identify in broad terms the issues that the GOsC considers may be relevant to the osteopath's fitness to practise, i.e. the allegation. The Screener's decision-making is not fettered by the regulatory concerns. The Screener may agree or disagree with the GOsC's identification of the issues and may identify additional regulatory concerns.

24. If an allegation is referred to the IC by the Screener, the particulars of the allegation will be drafted once the investigation has been completed. The particulars of allegation will be drafted around the identified regulatory concerns and set out in detail the case against the Registrant.

Requesting further information

25. If the Screener requires further information to enable them to make their decision, they should communicate what further information is required to the GOsC. The GOsC will make reasonable attempts to obtain the further information before referring the case to the Screener again for consideration.

Screener's reports

26. Written reasons need to be provided in all cases. This includes decisions to close under the ICP. Reasons can be brief and do not need to identify each individual piece of information taken into account. However, they should be clear, intelligible and specific to the case.

27. If any categories of the Threshold Criteria apply to the case, these should be set out in the decision, with the reasons why they apply. Simply repeating which criteria apply is not sufficient.

28. If the Screener decides that part, but not all, of the allegation should be referred to the IC, reasons should be given to explain the part-referral.

29. The Screener's reasons for referring a case to the IC will be provided to the Registrant and the IC.

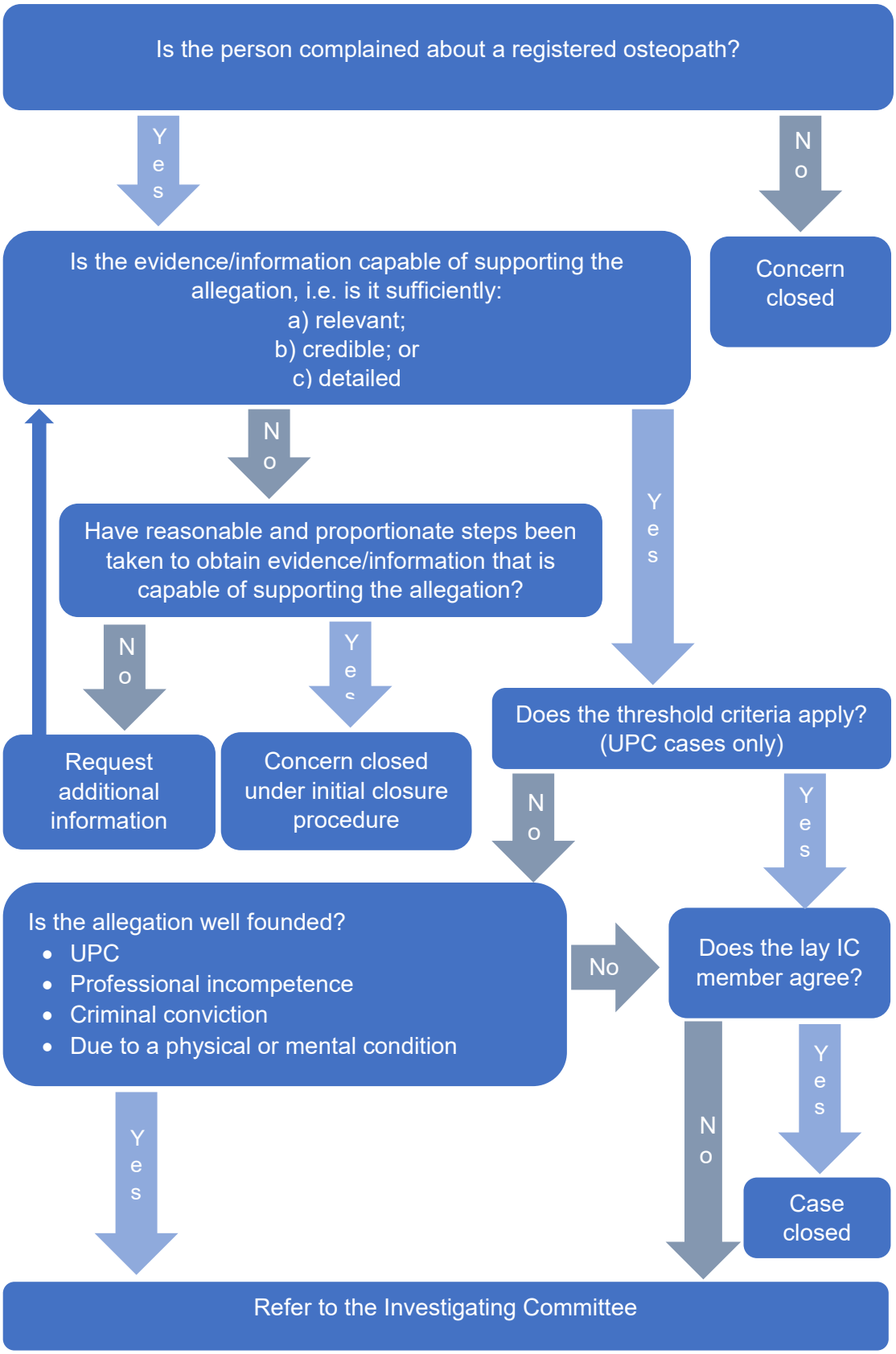
30. The Screener's reasons for deciding not to refer a case will be provided to the Complainant and to the Registrant (if they have been informed of the complaint against them at that stage).

Interim Order recommendations

31. As part of our internal processes and our wider quality assurance framework we constantly risk assess cases. As an added assurance a Screener may also recommend that consideration be given to an application for an interim order.

32. If the Screener recommends this as a course of action, they should indicate within their report where they consider the information discloses serious concerns and that urgent interim measures should be considered.

Annex A: Screener Decision-Making Flowchart



Annex B: Initial Closure Procedure

Approved by Council on 12 July 2016

1. The purpose of this procedure note is to enhance the transparency of the initial stages of the GOsC's disciplinary process, by explaining the way in which we deal with professional conduct and fitness to practise concerns where they are not (yet) accompanied by sufficient relevant information to permit a decision on closure or referral under the statutory process.

2. The GOsC investigates and determines complaints (also known as allegations) about the professional conduct and fitness to practise of registered osteopaths (registrants), following a process set out in law. The Osteopaths Act 1993 (the Act), the primary legislation, puts a broad framework in place, especially in sections 19-28. More detailed adjudicatory steps and functions are described in secondary legislation: especially the General Osteopathic Council (Investigation of Complaints) (Procedure) Rules 1999 (Rules). Additionally, paragraph 15 of schedule 1 to the Act gives the GOsC a broad power to do anything which is calculated to facilitate, or which is incidental or conducive to, the discharge of any of its functions: paragraph 15(1). It also confers a discretion for the GOsC to regulate its own procedure: paragraph 15(5).

3. Section 20 of the Act sets out the categories of allegation that must be investigated by the GOsC. It does not apply to every general communication, assertion or concern, but only to: (i) an allegation, (ii) against a registrant, which (iii) falls within one of six defined categories. Most notably, these include:

   - the registrant has been guilty of conduct which falls short of the required standard (known as 'unacceptable professional conduct');
   - the registrant has been guilty of 'professional incompetence';
   - the registrant has been convicted at any time in the UK of a criminal offence which has 'material relevance to the fitness of the osteopath concerned to practise osteopathy'; and
   - the registrant's ability to practise as an osteopath is 'seriously impaired because of his physical or mental condition'.

4. The GOsC uses the term fitness to practise 'concern' to describe any professional conduct communication containing information which may amount to an 'allegation' or 'complaint' under the Act. This procedure note outlines the process undertaken upon receipt of a concern.

5. An initial assessment is carried out of every concern received, to enable a determination on whether it is an allegation or complaint capable of falling into one or more of the categories of section 20 of the Act. An allegation or complaint needs no particular formality. Although a completed form or a signed witness statement will often make things easier and quicker, any form of communication may be sufficient as content and substance is more important than the presentational form.

6. Concerns reach the GOsC from many different sources: patients, relatives, other members of the public, employers, colleagues and public officials (such as the police). The GOsC may also become aware of fitness to practise concerns about a particular registrant or group of registrants through other channels (such as the media or the publication of a report). In this situation, the GOsC can raise the enquiry on its own initiative. Regardless of the means by which a concern arises, the GOSC has a duty to identify whether there is a legitimate concern that needs to be investigated.

7. The GOsC's overriding objective is to protect public and patient safety. It takes seriously any professional conduct and fitness to practise communications. However, not all such communications raise safety issues. Accordingly, the extent and immediacy of any risk posed by the registrant is always assessed on receipt of every concern. The risk level of the concern will be reassessed throughout its lifecycle, as there can be a significant difference in risk level to patient and public safety as the case progresses after the concern is first received.

8. Sections 20(4) and (5) authorises the GOsC to make Rules requiring 'preliminary consideration' to be carried out by 'a person appointed by the [GOsC's] Council'. Those persons are appointed, and their role detailed, by rules 3-6. They are known as 'Screeners', and all are members of the IC. Section 20(6)(a)-(b) require a Screener to:

   (a) consider the allegation with a view to establishing whether, in his opinion, power is given by this Act to deal with it if it proves to be well founded; and

   (b) if he considers that such power is given, give the [IC] a report of the result of his consideration.'

9. Thus, if the Screener considers that there is power to deal with the allegation, it must be referred to the IC along with the Screener's report (which may contain a recommendation). Otherwise, the Screener should dismiss (close) the case and inform the complainant through a written and reasoned decision: rule 6(1). The GOsC has developed an established practice to furnish the Screener with adequate material to permit a properly informed choice between those two options: either referral to the IC or closure.

10. Concerns often need clarification. They can be very brief, vague and/or incoherent. For each new concern the GOsC tries to gather information (if it has not already been provided) which is sufficiently relevant, credible and detailed to enable the Screener to reach a reasonable opinion on whether or not 'power is given by [the] Act to deal with it if it proves to be well founded'. Essentially, this involves the Screener forming a view (and perhaps making a recommendation) on whether the concern meets the statutory definition of an 'allegation' or 'complaint' (as set out in paragraph 3 above) and is capable (assuming the factual assertions are made out) of affecting the registrant's registration status. This typically means inviting the enquirer or third parties to provide further information. Such requests are issued under rule 5, which permits Screeners to 'seek information about or observations on the case from any person who, in the opinion of the Screener, might assist him in his consideration'. In practice, it is the regulation team that sends out the requests, in order to streamline the process.

11. Sometimes, the registrant is also asked for some input before the papers are placed before a Screener.

12. The GOsC imposes a deadline to this initial stage of its disciplinary function to enable concerns to be managed in a timely manner. If the enquirer or other third parties do not provide the further information within 42 days of the request, the concern will then be referred to a Screener with a recommendation for closure on the basis that there is insufficient relevant and credible supporting material. If the enquirer cooperates sooner, an earlier referral is made. The Screener will then form a view in accordance with the Guidance for Screener.

13. Before the case is referred to a Screener, the initial risk assessment will be reviewed. As described above at paragraph 7, patient and public safety is an ongoing assessment and will be assessed before any case is considered by a Screener. The initial closure procedure applies to only those concerns that are assessed not to raise an issue of public and patient safety.2

14. This procedure note should be read in conjunction with the GOsC's guidance on *Threshold Criteria for Unacceptable Professional Conduct.*

Document Title	Document author	Version	Date	Nature of amendments
Initial Closure Procedure	Regulation Department	1	July 2016	
Initial Closure Procedure	Regulation Department	1.2	January 2020	• Changed 'enquiry' to 'concern' • Clarification that risk assessment of a concern is ongoing • Added footnote clarifying when a concern raises an issue of public and patient safety

[2] Whether a concern raises an issue of public and patient safety is made at the point it is considered by the Screener

Annex C: Threshold Criteria for Unacceptable Professional Conduct

Approved by Council on 4 February 2015

Purpose of this document

a. The purpose of this document is to provide guidance to complainants and registrants, and to the Screeners and Investigating Committee of the General Osteopathic Council (GOsC), about the sorts of matters that will be considered under the GOsC's fitness to practise procedures.

b. In line with its overarching objective,[3] the fitness to practise procedures of the GOsC are designed to protect the public. They are not intended to serve as a general complaints resolution process, nor are they designed to resolve civil disputes between registrants and patients.

c. Investigating allegations properly is a resource-intensive process. The public interest requires that such resources should be used effectively to protect the public and should not be diverted towards investigating matters that do not raise cause for concern.

d. The GOsC considers that this approach is a proportionate response to the volume of complaints it receives, and is consistent with the principle of 'right touch regulation' promoted by the Professional Standards Authority.

e. The GOsC has, in consultation with its stakeholders including public and patient representatives, produced these 'threshold criteria'.

f. These criteria will guide the Screeners when determining whether power is given by the 1993 Act to deal with a complaint if it proves to be well founded,[4] and will guide the Investigating Committee when determining whether or not there is a 'case to answer'.[5]

The threshold criteria

g. The *Osteopaths Act 1993* provides that 'Unacceptable Professional Conduct' is 'conduct which falls short of the standard required of a registered osteopath'.[6]

h. It also provides that a failure to comply with any provision of the Code of Practice should be taken into account but shall not, of itself, constitute Unacceptable Professional Conduct.[7]

i. The threshold for whether or not a complaint or allegation is capable of amounting to Unacceptable Professional Conduct was set out by the High Court in the case of *Spencer v the General Osteopathic Council*:[8]

> Is the allegation worthy of the moral opprobrium and the publicity which flow from a finding of unacceptable professional conduct?

[3] The overarching objective of the General Osteopathic Council in exercising its functions is the protection of the public (Section 1(3A) of the *Osteopaths Act 1993*, inserted by section 5(2) of, and paragraph 3 of the Schedule to, the *Health and Social Care (Safety and Quality) Act 2015*).
[4] Section 20(6)(a) of the *Osteopaths Act 1993*.
[5] Section 20(9)(c) of the *Osteopaths Act 1993*. See also the GOsC's *Investigating Committee Decision-making Guidance*, October 2013.
[6] Section 20(1)(a) and (2).
[7] Section 19(4).
[8] [2013] 1 WLR 1307, [2012] EWHC 3147 (Admin), at paragraphs 25 and 28 of the judgment

j. Applying this threshold, matters that are not usually capable of amounting to Unacceptable Professional Conduct, and that should therefore not generally be referred to the Professional Conduct Committee, include:

a. Complaints about note-taking and record-keeping alone	In the absence of: i. 'incompetence or negligence of a high degree'; or ii. evidence of a failure to comply with relevant information governance legislation such as the *Data Protection Act 1998* (and any subsequent or amending legislation)
b. Complaints that do not fall within the statutory grounds of section 20 of the *Osteopaths Act 1993*	
c. Vexatious complaints, including where the complainant: 1. repeatedly fails to identify the precise issues that he or she wishes to complain about; 2. frequently changes the substance of the complaint or continually seeks to raise new issues; or 3. appears to have brought the complaint solely for the purpose of causing annoyance or disruption to the registrant	
d. Complaints that have been made anonymously and cannot be otherwise verified	
e. Complaints in which the complainant refuses to participate and provide evidence and in which the allegation cannot otherwise be verified or proved	
f. Complaints that relate to disputes between registrants and patients about fees or the costs of treatment	Provided that there is no allegation of dishonesty or intent to deceive

g. Complaints that: i. seek to reopen matters which have already been the subject of an employment tribunal process or civil proceedings; ii. seek to pre-empt or influence the outcome of other regulatory or civil proceedings; or iii. lie more properly within the jurisdiction of another regulator (e.g. the Advertising Standards Authority) and should have been made to that regulator	
h. Complaints that amount to a difference of professional opinion	Provided that the opinion is: i. accepted as proper and responsible by a responsible body of osteopaths who are skilled in that particular area of practice and acting responsibly; and ii. reasonably held and capable of withstanding logical analysis
i. Complaints that relate to employment disputes	
j. Complaints that relate to contractual disputes, including arrangements for lease of premises and facilities	
k. Complaints that relate to business disputes, including: i. passing off/similar sounding web domain names or trading names; ii. 'patient poaching'; and iii. matters arising from the break-up of a principal/associate relationship	Provided that there is no allegation of a breach of patient confidentiality or data protection issues

l. Complaints about a registrant's personal life (including matters arising out of divorce proceedings)	Unless the complaint relates to abusive behaviour or violence, or behaviour that brings the profession into disrepute
m. Complaints that have no public protection implications but are made simply on the basis that the complainant is aware that the other party to a dispute is a registrant (eg boundary disputes between neighbours)	
n. The following motoring offences: i. parking and penalty charge notice contraventions; and ii. fixed penalty (and conditional offer fixed penalty) motoring offences	Provided that drugs or alcohol are not involved and there are no potential health issues in relation to the registrant
o. Penalty fares imposed under a public transport penalty fare scheme	

Annex D: Screener's Report

Screener's Report

Case Number:	
Registrant	
Date Registered:	
Complainant:	
Date Complaint Made:	

ALLEGATION:

The Regulatory Concerns are…

This section will be completed by the GOsC caseworker in advance.

Relevant parts of the Osteopathic Practice Standards:

Please list relevant section(s):

Relevant parts of the Threshold Criteria for Unacceptable Professional Conduct:

Please list the relevant category or categories:

Possible Statutory Basis:

Please select all that apply /delete any that do not apply
Section 20(1)(a) – "he has been guilty of conduct which falls short of the standard required of a registered osteopath." or
Section 20(1)(b) – "he has been guilty of professional incompetence".
Section 20(1)(c) – "he had been convicted (at any time) in the United Kingdom of a criminal offence."
Section 20(1)(d) – "his ability to practise as an osteopath is seriously impaired because of his physical or mental condition".
Section 20(1)(e) – "the registered osteopath has been included by the [Independent Safeguarding Authority] in a barred list...".
Section 20(1)(f) – the registered osteopath has been included by the Scottish Ministers in the children's list or adults' list..."

Screener's Decision:

Please delete all that do not apply
Power to investigate – refer to Investigating Committee (IC)
Power to investigate – refer to IC and recommend Interim Suspension Order (ISO)
No Power to investigate – refer to lay member
Insufficient relevant or credible supporting material – Close under Initial Closure Procedure (ICP).

Screener's Reasons:

Please provide reasons for your decision including reasons for: *Any part of the allegation found to fall under Section 20(1)* *Any part of allegation found not to fall under Section 20(1)* *ISO recommendation, if applicable* *Any references to the Threshold Criteria, if applicable* *Closure under ICP, if applicable* *Any additional regulatory concerns identified*

Screener:

Date:

Lay Member's Review

To be completed by a lay member of the IC for all cases in which the Screener decides there is no power to investigate. Please delete the one that do not apply. I agree with the screener's decision I disagree with the screener's decision

Lay Member's Reasons:

Please set out the reasons below why you agree / disagree with the Screener's decision.

Lay Member:

Date: