



"Standard" Legal Advice as to the role of the Investigating Committee in UPC Cases.

The role of the Investigating Committee ("IC") is to decide whether, in its opinion, there is a case for the osteopath to answer before the Professional Conduct Committee ("PCC").

The IC should employ the "real prospect test" when determining whether or not there is a case to answer.

The IC may refer an allegation to the PCC only if it is satisfied that there is a real prospect that the osteopath has been guilty of Unacceptable Professional Conduct.

The real prospect test applies to both the facts and to whether the facts, if established, would amount to Unacceptable Professional Conduct. Therefore, in conduct cases, the IC should ask itself:

- i. Is there a real prospect of being able to prove the facts alleged against the osteopath?
- ii. If the alleged facts were proved, is there a real prospect that such facts, viewed individually or collectively, would amount to Unacceptable Professional Conduct?

In considering whether any alleged facts are capable of amounting to UPC, the IC should have regard to the guidance of Irwin J in *Spencer v General Osteopathic Council [2012] EWHC 3147 (Admin)*, namely whether, to an ordinary intelligent citizen, such facts would convey an implication of moral blameworthiness and a degree of opprobrium.

The IC should also bear in mind that a breach of the Osteopathic Practice Standards would not, of itself, amount to Unacceptable Professional Conduct.

A real prospect means a genuine possibility, not one that is merely remote or fanciful. Where there is such a genuine possibility, the matter should be referred.

The IC must remember its duty to act in the public interest. This includes the protection of patients; the maintenance of public confidence in the profession; and the declaring and upholding of proper standard of conduct and behavior.

It is not the role of the IC to decide whether the facts are proved or whether they amount to UPC, those are decisions for the PCC. The IC is entitled to assess the weight of the evidence and should remember there is a public interest in osteopaths not being harassed by unfounded complaints. It is also in no-one's interest to refer cases that are "bound to fail."

The IC has only a limited filtering role and should bear in mind the need to reassure the public that complaints against registrants are properly investigated - albeit balancing against this - the interests of the osteopath.

Where there is a direct conflict of evidence - and on one account there would be a real prospect of that account amounting to UPC - then, ordinarily, a referral should be made.

The IC should consider all the information before it, including any representations from the osteopaths and must remember it is working from documents alone, rather than evidence on oath.

In exercising its judgment, the IC should remember that the Council bears the burden of proving any disputed facts before the PCC. The standard of proof at the PCC is the ordinary civil standard namely, the balance of probabilities.

Where there is any doubt as to whether the real prospect test is satisfied it should be ordinarily be resolved in favour of referral.