

# **Osteopaths under Investigation**

## **Draft Hearings Guidance for Osteopaths**

### **Introduction**

Maintaining patient safety and public confidence in the osteopathic profession means that we must investigate and consider complaints about osteopaths' conduct, competence or health.

The aim of this booklet is to provide guidance to osteopaths about preparing for and attending a hearing before the GOSc's Professional Conduct Committee or Health Committee.

This booklet provides general guidance only and should not be used as a substitute for any legal advice or advice from your professional indemnity insurers.

### **Before the hearing**

You will have received a letter from the GOSc caseworker informing you that a decision has been made to hold a hearing in your case before the GOSc's Professional Conduct Committee or Health Committee.

The GOSc caseworker will have also asked you to complete a listings questionnaire to confirm your availability to attend a hearing.

It is also important that you let us know, before the hearing, about any accessibility needs or other needs that you have (for example, wheelchair access, a hearing-loop system, or a sign or language interpreter), so that we can make the necessary arrangements.

### **Legal representation**

We advise you to inform your legal representative of the decision to hold a hearing in your case. Your legal representative will be able to give you advice and information about the hearing and the steps required to prepare for it.

If you are unrepresented, you should seek independent legal advice or contact your professional indemnity insurers for assistance and advice in relation to the hearing and the steps we are taking.

If you are a member of the Institute of Osteopathy (iO), you can contact them for assistance and advice.

If you have no legal representation through your professional indemnity insurers and you are not a member of the iO, you may also be able to get free legal assistance from the Bar Pro Bono Unit ([www.barprobono.org.uk](http://www.barprobono.org.uk)), a charity that helps source free legal assistance from volunteer barristers.

### **Practice Notes for hearings**

The GOsC has produced a number of Practice Notes to help osteopaths and their legal representatives prepare for the hearing. These are available on our website at: [www.osteopathy.org.uk/standards/complaints/guidance-practice-notes-and-policies/](http://www.osteopathy.org.uk/standards/complaints/guidance-practice-notes-and-policies/)

Paper copies are also available on request.

### **Preparing to attend the hearing**

We have developed a protocol to enable the timely and advanced listing of cases for hearing directly following referral from the Investigating Committee. How this works in practice is that, upon referral of the case by the Investigating Committee of a case, the GOsC caseworker will send you and/or your legal representative a listing questionnaire requesting information that is relevant to the length and timing of the final hearing. This information is provided which will then be used to more accurately assess the length the case will require to be completed and when it can be listed for hearing. Where practical, we will try to take into account your availability and those of witnesses when listing your case for hearing and give you as much notice as possible. We aim to list hearings within six months of referral of the case by the Investigating Committee.

You and/or your legal representative will then be sent a Notice of Hearing, and a hearing schedule, at least 28 days before the hearing. The Notice of Hearing confirms the following information:

- The date, time and place of the hearing
- The names of the witnesses that the GOsC intends to call at the hearing
- The names of the Committee members that will hear your case
- Confirmation that you have a right to attend the hearing and/or be legally represented.

A copy of the GOsC's bundle of documents will also be provided to you at least 28 days before the hearing. This will contain the formal allegation and factual particulars, and all of the evidence that the GOsC intends to rely on at the hearing.

### **Submitting documents**

You and/or your legal representative will also receive an email from the GOsC Hearings Officer/Clerk informing you of the date by which you need to (if you have not done so already):

- confirm the names of the witnesses that you intend to call at the hearing

- submit your skeleton argument ( a written document provided to the Professional Conduct Committee in advance of the hearing which summarises the issues in your case)
- submit all of the evidence that you intend to rely upon.

### **Deciding not to attend the hearing**

You and/or your legal representative should confirm to the GOsC caseworker whether you plan to attend the hearing.

If you decide not to attend the hearing, you can still be legally represented at it. The GOsC caseworker will inform you of the outcome.

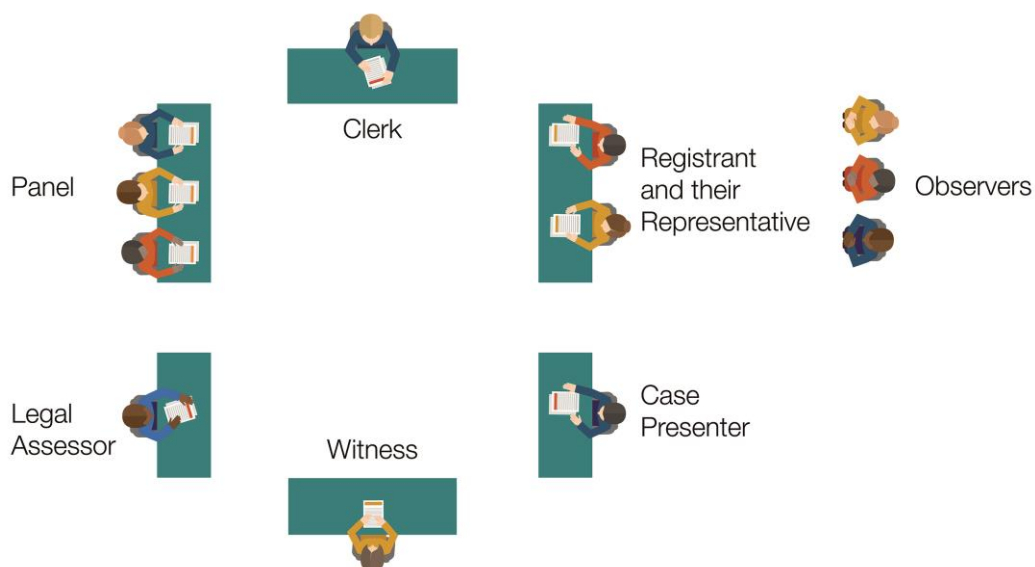
If you decide not to attend the hearing or be legally represented at it, the Professional Conduct Committee or Health Committee may proceed in your absence. There is a Practice Note on our website on *Proceeding in the Absence of the Registrant*, which you may find useful to read.

### **Attending the hearing**

On the first day of the hearing, you should aim to arrive at least 20 minutes before the hearing is due to start. On arrival, a GOsC staff member will take you to your private waiting room. If you are legally represented, your representative will also be asked to wait in the same room as you.

Refreshments such as coffee, tea and water will be available while you wait.

The diagram below gives you an idea of how the hearing room will be set up on the day.



## **The Professional Conduct Committee and Legal Assessor**

The Professional Conduct Committee is made up of three committee members. There will be at least one osteopath member and one lay member. The Chair will be a lay member.

A legal assessor will also be present to provide the Professional Conduct Committee with advice on matters of law and procedure. The Legal Assessor will play no part in the decision making process.

The Professional Conduct Committee will be provided with a copy of the GOsC's bundle of evidence and any documents received from you in advance of the hearing.

## **The GOsC's Case Presenter and witnesses**

The GOsC's Case Presenter and witnesses (i.e. the complainant and any other people who have given a statement in the case) will also be present at the hearing. They will be asked to wait in another private waiting room.

## **Hearings Officer/Clerk to the Professional Conduct Committee**

A GOsC staff member (Clerk) will also be present to assist with the smooth running of the hearing.

## **Public, Press and Observers**

Hearings are usually held in public, unless there is a reason why some or all of the hearing has to be held in private. This means that members of the public (including the press) are also able to attend.

There are seats available at the back of the hearing room where members of the public can sit.

You are able to bring someone with you for support – perhaps a friend or relative. If you do bring someone with you for support, they will be asked to sit in the public seating area inside the hearing room.

## **Recording**

An audio recording of the proceedings will be made by the Clerk.

## **During the hearing**

At the start of the hearing, the Clerk will take you and your legal representative into the hearing room and show you where to sit.

Please make sure your mobile phone is switched off before you enter the hearing room. Cameras, tape-recording equipment and any other device capable of making a permanent record are not allowed in the hearing room.

The hearing will begin with the Chair of the Professional Conduct Committee introducing themselves and everyone else who is present in the room.

You or your legal representative will be asked to confirm your name.

The GOsC's Case Presenter will be asked to read out the allegation about you.

The Professional Conduct Committee Chair will then ask you to confirm whether you admit to any of the facts alleged. If you do admit to any of the facts alleged, those facts will be found proved.

If you admit to all of the facts alleged, the Chair will formally announce that all the facts have been admitted and are proved. In these circumstances, the Committee will then move on to the next stage of deciding whether the facts proved amount to Unacceptable Professional Conduct – see below.

If you dispute some or all of the facts alleged, the GOsC's Case Presenter will formally open the GOsC's case and the procedure below will be followed.

The GOsC Case Presenter will present the evidence to support our case first. The GOsC's Case Presenter may call any witnesses in the case and ask them questions once they have taken an oath or an affirmation. This is called examination-in-chief.

You or your legal representative will then have an opportunity to ask the GOsC's witnesses any questions. This is called cross-examination.

Once you and your legal representative have asked all your questions, the GOsC's Case Presenter may ask the GOsC's witnesses further questions.

The Professional Conduct Committee may then ask the GOsC's witnesses some questions.

Once the GOsC's witnesses have given evidence, the Chair will formally release them as witnesses. Some witnesses may choose to stay to observe the remainder of the hearing. If they do, they will be asked to sit in the seating area for observers.

After all of the GOsC's witnesses have given their evidence, the Chair will ask you or your legal representative to open your case.

At this stage you or your legal representative may call your witnesses to give evidence under oath according to your religious belief, or an affirmation which is a solemn declaration if the witness does not want to take an oath. You or your legal representative will need to ask your witnesses questions first. The GOsC's Case Presenter will then be given the opportunity to ask questions of your witnesses. The Professional Conduct Committee may also have questions for your witnesses.

You may also give evidence under oath (or affirmation). If you give evidence, the GOsC's Case Presenter and the Professional Conduct Committee can ask you questions.

### *Closing statements*

Once you and/or all your witnesses have concluded your evidence and are released as witnesses, both parties will be invited to make closing statements about the case. The GOsC's Case Presenter will make their closing statement first, followed by you or your legal representative.

The Professional Conduct Committee will receive legal advice from the Legal Assessor before it retires to make a decision on the facts of the case.

## **Findings of the Professional Conduct Committee**

The Professional Conduct Committee goes into private session to make their decision, which will be in three stages.

The Legal Assessor is present in the room and may assist the Committee in drafting their decision. However the Legal Assessor plays no role in the decision-making process.

### **Stage 1**

Where some or all of the facts alleged are in dispute, the Professional Conduct Committee will need to first consider whether they find those facts proved. The GOsC has to prove the case against you. The standard of proof which applies is called the 'balance of probabilities'. This means that the Professional Conduct Committee will only find the alleged fact 'proved' if it considers that it is more likely than not that it happened.

If the Professional Conduct Committee do not find any of the facts proved, it will ask parties to return to the hearing room and formally announce the decision and the case will be concluded.

Where the Professional Conduct Committee finds some or all of the facts proved, they will ask parties to return to the hearing room so that the Chair can formally announce the decision and reasons and the hearing will then progress to Stage 2.

### **Stage 2**

Once the Professional Conduct Committee's findings of fact have been announced, the GOsC's Case Presenter and you or your legal representative will be invited to make submissions on Unacceptable Professional Conduct.

The Legal Assessor may provide the Professional Conduct Committee with legal advice and the Committee will then retire in private to consider whether the facts found proved amount to Unacceptable Professional Conduct.

After the Committee has reached a decision, parties will be invited into the hearing room and the Chair of the Professional Conduct Committee will announce their decision on Unacceptable Professional Conduct.

### **Stage 3**

Where a finding of Unacceptable Professional Conduct is made, the Professional Conduct Committee will proceed to impose a sanction, which will be one of the following:

- An admonishment
- A Conditions of Practice Order, which will allow you to continue to work in a limited way
- A Suspension Order for a period of time
- Remove your name from the Register.

In deciding what sanction to impose, the Professional Conduct Committee will take account of guidance documents<sup>1</sup>.

### **Publication of findings**

Our *Fitness to Practise Publication Policy* sets out how, and for how long, we publish information relating to the decisions of our fitness to practise committees.

A finding of unacceptable professional conduct made by the Professional Conduct Committee (at a hearing or under the Rules 8 Procedure) will be published on the GOsC website and within the *Annual Fitness to Practise Report*.

Findings made by the Health Committee will be published, but information relating to your health or condition will not be published.

### **Notification of fitness to practise outcomes**

The GOsC has a Policy on *Notification of Fitness to Practise Investigations and Outcomes*. This is available on our website and explains the information we will provide to third parties about the investigation and outcome of such complaints.

Examples of third parties includes your employer, and any persons with whom you may have a contractual or other arrangement to provide services, and any other healthcare regulator that you may be registered with.

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<sup>1</sup> Including the Sanctions Guidance. The latest version of this guidance document can be accessed on the GOsC website at <http://www.osteopathy.org.uk/news-and-resources/document-library/fitness-to-practise/indicative-sanctions-guidance>

## **Appeals**

You have a right to appeal against a decision made by the Professional Conduct Committee and the Health Committee. If you wish to appeal a decision, you should seek your own independent legal advice.

Decisions made by the Professional Conduct Committee can also be appealed against by the Professional Standards Authority.

We hope you find this guidance helpful.

If you have any questions, please contact the GOsC Regulation Team

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