



Defining characteristic

The General Osteopathic Council's new chief executive, Tim Walker, says fitness to practise measures play a vital role for a modern profession.

"What is the one distinguishing characteristic of a regulated profession, such as osteopathy? Without doubt, it is the existence of a mechanism to restrict or prevent an individual from practising.

What we call 'fitness to practise' is crucially important in maintaining confidence in osteopathy and providing reassurance to patients that poor practice will not be tolerated.

But in tandem with having such powers comes the requirement of exercising them responsibly. First, decisions must be independent and impartial. Neither the GOsC's Council members nor its staff makes decisions in fitness to practise cases. The fitness to practise committees consist of independently appointed osteopaths and lay members making their own decisions based on the evidence they hear. Second, decisions must be transparent. Where a complaint has been upheld, the panel's detailed decision can be found on the GOsC's website and each

year we publish a summary in our fitness to practise annual report. If you read the reports, there are two things you will note: the small number of osteopaths that are found to have breached the GOsC code or its standards and the seriousness of the charges made against them.

Fitness to practise is not an arbitrary process. The standards required of osteopaths are clearly stated, there is detailed guidance on how complaints are considered, as well as the sanctions that can be given in the event of a finding against an osteopath. There is also a right of appeal in all cases.

Could we do without fitness to practise? The answer is clearly no, but I would dearly like to see fewer osteopaths facing charges. We must continue to work with the whole profession to continue to maintain and raise standards, but always be prepared to step in when the necessary standards are not maintained."



Chief executive CV

Tim Walker took over the post of Chief Executive and Registrar at the GOsC in November, moving from the General Medical Council where he was responsible for external relations including management of offices in Belfast, Cardiff and Edinburgh. Before joining the GMC in 2007, Mr Walker had a senior position at public affairs consultancy Bell Pottinger. And prior to that he worked on regulatory matters at Turner Broadcasting UK, the Cabinet Office, and the Ministry of Agriculture, Fisheries and Food.

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Dealing with complaints

Dealing with complaints comprehensively and appropriately when they are first made is likely to result in practitioners avoiding having to appear before the General Osteopathic Council's Professional Conduct Committee. Three cases highlight two examples of good practice and one serious example of how not to behave.

Case 1

Comprehensive approach

Clear and concise case notes are crucial to good practice as a recent case before the Professional Conduct Committee (PCC) clearly illustrated. The case resulted in a finding of unacceptable professional conduct.

A case of local complaints handling illustrates how practitioners can potentially head off a full hearing.

A patient complained to the osteopath involved, maintaining that the treatment received did not represent value for the fee charged. The allegations were rooted in a common logistical situation in which, owing to a short leave of absence, the original practitioner referred the patient to a second osteopath.

The patient alleged that the second practitioner was forced to re-read the original notes, depriving him of actual treatment time. On complaining to the first osteopath's clinic, the patient was further angered by receiving what he interpreted as being a 'patronising and pompous' response.

Nonetheless, the original osteopath appears to have been able to avert further damage by responding comprehensively to the entire complaint, expressing regret that the patient considered that he had not received good value and welcoming the patient's decision to move to another practitioner. Importantly, the original osteopath also advised the patient on the proper procedure for taking the grievance to the GOsC.

While the first osteopath did not manage to deter the patient from bringing his concerns to the GOsC, his handling of the complaint was judged to be appropriate by the Investigating Committee, who found that there was no case to answer.



Case 2

Unanswered complaints

In another recent case, a patient alleged that the practitioner ignored his complaints, set out in two emails, following treatment for a strain in the lower left back and hip area.

Examining the case as a whole, the Investigating Committee found that the osteopath 'had taken an adequate case history, had conducted an adequate examination...and that the treatment provided seemed reasonable in the circumstances'. The Committee went on to conclude that there was no evidence to support the thrust of the patient's complaint, that the treatment had actually caused injury.

Looking specifically at the patient's allegation that his emails had been ignored, the Committee noted that the complaint to the Council might in fact have been triggered by the osteopath's failure to respond to the patient's emails.

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Case 2

Unanswered complaints

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However, the practitioner explained that the delay had been caused by a technology failure with his practice's own email system and was able to provide evidence of the disruption. This explanation and the evidence supporting it was passed on, during the Council's investigation, to both the Committee and the patient. The Committee accepted the explanation and when the patient himself realised that no disrespect had been caused to him, he indicated that he did not wish to proceed with his complaint.

The Committee found that there was no case to answer.

Case 3

Reacting professionally

In sharp contrast to the two previous cases which concluded at the Investigating Committee stage, the failure by an osteopath to deal appropriately with an elderly and vulnerable female patient was criticised by the Professional Conduct Committee at the end of a hearing.

The patient in this case, angry with the osteopath for what she perceived as poor treatment and anxious about her symptoms, complained loudly to him in the waiting area of his practice. The Professional Conduct Committee commented.

'An important and testing part of professional life is facing a complaining patient who may (from the professional's point of view) be making an unfounded attack. A registered osteopath must react professionally. [This osteopath] claims he is experienced in dealing with elderly patients. We consider his reaction here [offering an opinion that patient A had probably suffered a stroke] was inappropriate, unkind and unprofessional. He may have been put in a difficult situation but it was not a diagnosis for him to make and it was one for which he was not competent. His behaviour showed no degree of care for the patient and did not put the patient first.'

The Professional Conduct Committee found unacceptable professional conduct in relation to this and a number of other matters, and imposed a suspension order of four months. During that period, said the Committee, the practitioner must provide evidence of retraining 'in the areas of patient relationships, particularly the management of challenging behaviour, gathering and recording of clinical data, clinical reasoning and the formulation of differential diagnoses and the development of an informed treatment plan'.

Additional information

The *Code of Practice* says the following about complaints:

"COMPLAINTS

- 94. If you meet the requirements of the Osteopaths Act 1993 and the required Standard of Proficiency, and follow the guidance in the Code, you should be able to practise osteopathy safely, competently and ethically. From time to time, however, patients may be dissatisfied with the care they have received.
- 95. You should operate a procedure for considering and responding to any complaints against your practice. All staff should be familiar with the procedures adopted and know to whom to direct any complaint.
- 96. Dealing with such matters quickly and effectively will minimise the stress and anxiety for all concerned.
- 97. You should ensure that anyone making a complaint knows that they can refer it to the GOsC and you should co-operate fully with any external investigation. By acting constructively, by allowing the patients opportunity to express their dissatisfaction and by providing sensitive explanations of what has happened and why, you may prevent the complaint from escalating.
- 98. You should inform your professional association and professional indemnity insurers immediately if you receive a complaint.
- 99. A complaint is an opportunity to reflect on the standard of care that was given and it may highlight areas of your practice that could be improved."

Feeling fit

Fitness to Practise Policy Committee brings expert eye to bear on fitness to practise issues.

The Fitness to Practise Policy Committee opened for business last April as a specialised forum for discussion of the policies and procedures which apply to the Council's fitness to practise processes, and to act as a bridge between the existing investigating, conduct and health committees, and the Council itself.

A gap had emerged because of the move last year to a completely independent membership of the fitness to practise committees, meaning that there is no longer Council member representation on those committees. Although the Council is not obliged by law to create the policy committee, its creation is in line with practice at other healthcare regulators.

The Fitness to Practise Policy Committee aims to consider a number of issues over the coming year, including: the development of guidance on interim suspensions; a review of fitness to practise data retention policy; and an examination of research carried out by NCOR into adverse events particularly in relation to suggestions for incorporating mediation into the fitness to practise process.

The committee is made up of five Council members, including the lay Chair, Julie Stone. The other committee members are osteopaths Jonathan Hearsey and Fiona Walsh and lay members Ian Hughes, who also chairs the Education Committee, and Jenny White, a barrister and disability discrimination expert.



Chair's profile

Professor Julie Stone is an independent consultant in healthcare ethics and law. She is a visiting professor in ethics at the Plymouth-based Peninsula Medical School. She is also non-executive director of NHS Cornwall and Isles of Scilly, a member of the Advisory Board on the Registration of Homeopathic Products and senior consultant to public affairs consultancy Political Intelligence.

Ms Stone is also a member of the ethics committees of the British Psychological Society, the medico-legal charity, the Clinical Disputes Forum, and of the governing body of the Institute of Medical Ethics.

Her former appointments include deputy director of the Council for Healthcare Regulatory Excellence; adviser to the Department of Health Steering Group on the Statutory Regulation of Practitioners of Acupuncture, Herbal Medicine and Traditional Chinese Medicine; and adviser to the Kerr/Haslam Inquiry into NHS services in Yorkshire.



No sex, please – it's the law

The harsh employment market has triggered recent claims that some osteopaths are breaching legislation by recruiting women only.

Osteopaths are reminded to make sure they comply with equality law when advertising for staff or contract cover. Failing to do so could give rise to a discrimination claim in the Employment Tribunal.

The Council has noted several recent advertisements aimed at recruiting female-only practitioners. We have been contacted directly by male osteopaths enquiring about the legal position, and maintaining that the job market is already hard enough in the current economic climate without being unlawfully excluded from certain vacancies.

While there are rare exceptions in which gender-specific recruitment might be allowed, in most situations this will breach the Equality Act 2010.

What the law says

Under the Equality Act 2010 'an employer must not discriminate against a person in the arrangements A makes for deciding to whom to offer employment; as to the terms on which A offers B employment; [and] by not offering B employment.'

(This applies not just to sex discrimination, but to a number of other 'protected characteristics': age, race and disability for example).

The Equality and Human Rights Commission (EHRC) advises on its website that employers may sometimes believe that discrimination can be justified. But it warns that an employer's belief that discrimination is justified is no guarantee that it actually is lawful. While there are certain circumstances where some types of discrimination can be justified, the exceptions are very narrow and they will be strictly interpreted by any court or tribunal. The EHRC gives as an example of the case of a women's

refuge which wishes only to employ women as counsellors because its client base is women who are experiencing domestic violence committed by men. This would probably be a genuine occupational requirement, and the discrimination would not be unlawful.



Further advice

- > Business Link, the small business advisory web site:
www.businesslink.gov.uk
- > Equality and Human Rights Commission:
www.equalityhumanrights.com



**General
Osteopathic
Council**

The GOsC Fitness to Practise e-bulletin is produced by the Regulation Department. For further information contact regulation@osteopathy.org.uk.