

**Osteopathic Practice Standards Committee
14 May 2013
Fitness to Practise Publication Policy**

<u>Classification</u>	Public
<u>Purpose</u>	For decision
<u>Issue</u>	This paper invites the Committee to agree the length of time that Professional Conduct Committee (PCC) decisions should be actively published for. It also asks the Committee to agree that Council is asked to approve the draft policy document for consultation.
<u>Recommendations</u>	<ol style="list-style-type: none"> 1. To agree that PCC decisions that an allegation is well founded and any subsequent Review hearing decisions are actively published on the GOsC's public website for six years from the date of the last PCC decision. 2. To agree that Council is asked to approve the draft revised policy for consultation.
<u>Financial and resourcing implications</u>	None at this stage.
<u>Equality and diversity implications</u>	None
<u>Communications implications</u>	None at this stage, though a consultation on the proposed policy is recommended and this will need to be communicated to all stakeholders.
<u>Annex</u>	Draft revised Publications Policy
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Background

1. The Osteopathic Practice Committee's role includes contributing to the development of policies relating to fitness to practise procedures. Its terms of reference require it to advise Council on any questions of policy relating to the management, investigation and adjudication of concerns about the fitness to practise of registrants.
2. The former Fitness to Practise Policy Committee, at its meeting in September 2012, agreed to update the GOsC's current Professional Conduct Committee (PCC) Publications Policy. This policy outlines the method and timescale of the publication of PCC decisions to ensure that the GOsC meets its obligations to publish fitness to practise decisions and to be open and transparent whilst protecting the rights of the parties to its proceedings.
3. The current policy was published some years ago. It only covers the publication of notices and findings made by the PCC. It is lengthy and has a complicated structure of publication depending on the findings made and sanctions imposed. The review highlighted that, to bring the policy up-to-date and in line with other healthcare regulators and to make it more user friendly, it required a fairly radical re-draft.
4. At its meeting on 16 January 2013, the former Policy Committee was asked to consider a first draft of a revised policy. It was able to agree the following:
 - a) The policy should be extended to include the work of the Investigating Committee (IC) and Health Committee (HC).
 - b) IC decisions to impose an Interim Suspension Orders (ISO) should be publicised and a note of the suspension should be made against the registrant's entry on the online register. If the IC decided not to impose the Interim Order, then that decision should not be publicised.
 - c) To publicise HC decisions to suspend or impose conditions but not to publicise the reasons for that decision. If the HC decides that the registrant's ability to practise is not impaired, the decision should not be publicised at all.
 - d) The policy should distinguish between the two different types of ISOs that can be imposed by the PCC under section 24(1)(a) and (b) of the Osteopaths Act 1993 (the Act).
 - e) When the PCC decide not to impose an ISO, the registrant should be able to choose whether that decision is published or not. If publicised it will appear on the GOsC's website for a period of 28 days.
 - f) The PCC's full decision should be published (redacted as appropriate).
 - g) The policy should allow for redactions of information that was heard in private to be made to the PCC's publicised written decision.
5. The draft policy at annexed reflects incorporates these decisions.

6. The Policy Committee, at its meeting in January 2013, was not able to reach a decision about the length of time that PCC decisions should be published. This Committee is, therefore, asked to consider this today and to make a recommendation to Council on the length of time that the PCC's written decision resulting in a finding (i.e. that the allegation against the registrant was well founded and a sanction imposed) should be actively published for. By actively published, we mean posted on the GOsC's public website.

Length of publication

7. The Policy Committee did discuss the length of time that these decisions should be actively published. It was keen to balance the needs of patients, who may want such information to be available to them when making a choice as to who they see for osteopathic treatment, against the needs of a registrant who is likely to have taken rehabilitative steps prior to or since the decision and would not want the information to be available indefinitely. It also acknowledged the purpose of the Register, which is a register of osteopaths who are fit to practise.
8. The Policy Committee agreed that it would be assisted by a further paper focussing on the length of publication before reaching an agreement on this point. This paper, therefore, focuses on the length of publication of the PCC's decision that an allegation is well founded.

Discussion

The Sanctions

9. The length of publication has, so far, been determined by the type of sanction that has been imposed by the PCC. It may help, therefore, to first consider in what circumstances the different sanctions are used:
10. Admonishment – this is essentially a warning. It is the lowest sanction that can be applied and is appropriate where the conduct is at the lower end of the spectrum. An admonishment has no direct effect on a registrant's practise and will only be used if the registrant is fit to continue practising without any restrictions.
11. Conditions of Practice Order – if the PCC consider that, in order to protect patients, it is necessary for the registrant to have some restrictions on their practice, it will formulate conditions that the registrant must comply with for a specific period of time. The conditions may be restrictive in nature (i.e. they may prohibit the registrant from practicing on a certain type of patient) or the may educational (i.e. they may require the registrant to successfully complete training in a specific area of practice). A Conditions of Practice Order will be imposed on the registrant for a specific period of time (i.e. six months).

12. Suspension – in more serious cases the PCC may suspend the registrant’s registration for a period of time. This will be done where the degree to which the registrant has fallen short of standards is such that it would not be safe to allow the registrant to have patient contact or as means of maintaining confidence in the osteopathic profession. Often, the PCC will provide direction to the registrant that identifies steps they can take in order return to safe and competence practice, which may include the need for the registrant to pass a test of competence or take steps to gain insight into the conduct that led to the suspension.
13. Removal – this is the highest sanction that can be applied and is used where there is no other means of protecting the public and/or maintaining confidence in the osteopathic profession. This sanction will be used when the behaviour is fundamentally incompatible with being an osteopath.

Methods of publication

14. It may also help to confirm the methods by which these PCC decisions will be published:
 - a) The full written PCC decision and reasons will be published on the GOsC’s public website on the fitness to practise findings page.
 - b) If a Conditions of Practice Order or a Suspension Order is imposed, a note will appear next to the registrant’s name on the online Register for the duration of the Order. The note is in the form of a link that will take the reader to the full written PCC decision.
 - c) The PCC’s annual Fitness to Practise Report, published in accordance with section 22(13) of the Act, will contain a summary of the PCC’s decision and is published on the GOsC’s website indefinitely.

Length of publication

15. The publication policy is concerned with the mode and length of time that the GOsC actively publishes its fitness to practise decisions. It is not concerned with how long this information should be available to the public, if enquiries are made, or to be taken account of should any future case be made about the same registrant.
16. Currently, PCC findings against a registrant are published on the website for:
 - 28 days where the Sanction imposed is an Admonishment;
 - the duration of the Order, where the Sanction imposed is a Conditions of Practice Order or a Suspension Order;
 - 10 months where the Sanction is a Removal.
17. The Executive, in the draft revised policy that was presented to the Policy Committee in January 2013, recommended an extension of these times to:
 - 6 months where the Sanction imposed is an Admonishment;
 - 6 months or the duration of the Order (whichever is longer) where the Sanction imposed is a Conditions of Practice Order or a Suspension Order;

- no limit where the Sanction is a Removal.
18. The length of publication of similar decisions on the websites of other healthcare regulators varies substantially. For example the Nursing and Midwifery Council publishes decisions for 4 months; the General Optical Council publishes decisions for 12 months; and the Health and Care Professions Council publishes decisions indefinitely. The HCPC's decisions are first published on a 'current' list for 10 days and then on an 'historical' list indefinitely.
 19. The Professional Standards Authority (formerly CHRE) has in the past encouraged regulators to publish all such decisions for a registrant's entire career.

Purpose of publication

20. The purpose of publicising the PCC's findings is to protect the public and ensure transparency. It allows members of the public, which includes the relevant registrant's current and future patients, employers and colleagues, to know when there has been concern about their fitness to practise. If there are current restrictions on a registrant's practice (e.g. conditions) then it allows those same members of the public to know of the restrictions and to know whether the registrant is complying with them.

Effects of publication

21. The information is likely to influence a patient's choice when deciding which practitioner to attend. Osteopaths are, generally, self-employed practitioners in private practice. Patients, therefore, have a choice, which is likely to be influenced by the information published. Potential employers, such as the NHS or an osteopathic educational institution are also likely to be influenced by knowing about an applicant's fitness to practise history.

Rehabilitation

22. It has to be accepted that a registrant at some point in their career may fall short of the standards required and, therefore, be subject to a fitness to practise finding and sanction. The sanction applied will reflect the seriousness of the falling short and whether it is necessary and possibly for the registrant to take rehabilitative steps. Those who are not fit to practise will be prevented from practising or only be allowed to practise with restrictions. Those who have taken rehabilitative steps and again become fit to practise will be allowed to return to the Register without restriction.

The Register

23. Ensuring the integrity of the Register is important. It is a list of osteopaths who are fit to practise and the publication of registrant's fitness to practise decisions and history should not undermine the integrity of the Register. Whilst

publication of fitness to practise findings support the integrity of the Register, notes on the Register itself should reflect registrant's current registration status.

What is the most appropriate length of publication?

24. It is suggested that the most appropriate length of publication is one that balances the rights of patients to know about a registrant's fitness to practise history against the rights of a registrant to be able to rehabilitate themselves and return to unrestricted practice.
25. For the purpose of this discussion we are considering the period of time that the decision appears on the website rather than appears against the registrant's name on the online register.
26. Indefinite period – actively publicising a registrant's fitness to practise history for an indefinite period or for their entire career does not balance these needs and appears disproportionate. It will have an impact on the registrant's ability to grow their practice and obtain employment. You may, for example, have a registrant who in 2002 had conditions imposed on their practice that required them to be mentored and to improve their case history taking and examination skills. The registrant embraced the learning experience, complied fully and excelled in meeting the conditions and was allowed, following a PCC review hearing, to return to unrestricted practice in 2003. Since this time, there has been no evidence that the registrant is not fit to practise. Should the 2002 finding and 2003 review decision be actively published on the GOsC's website indefinitely or for the registrant's entire career?
27. If so, consideration would need to be given to whether this change in policy should apply retrospectively and to decisions made under the current policy. If not, this would create an inconsistency with the information published about registrant's fitness to practise history, with only those who have had findings made after the revised policy is approved being actively published. This would mislead members of the public, causing them to believe that there was no relevant history where a decision was not publicised.
28. One specified period – a decision could be made that ensures that fitness to practise decisions are actively publicised for a specified period. Suspension and Conditions of Practice Orders should not be imposed for more than three years. While at the current time, a registrant can apply for restoration to the register after a period of 10 months, the Law Commission are recommending that this period should be five years. If a decision were taken that the all relevant decisions were actively published for, say, 6 years from the date of the last PCC decision (this would include decisions that are made on review or any subsequent findings against the registrant), this would ensure that decisions will cover the period of restriction on a registrant's registration but accommodate their return to unrestricted practice, if this occurs.

29. This approach seems more proportionate. It will allow members of the public to know of a registrant's history for up to six years after the last decision. If no other findings have been made within this period, it should be accepted that the registrant is fit to practise. This would accommodate a situation where the registrant had been removed from the registration following a finding that he had been professionally incompetent. Following the removal the registrant enrolled on a recognised osteopathic course and completed his degree. He then wished to return to the register and, given that he is no longer incompetent, he is allowed to do so.
30. Another option might be a specified period for those who return to unrestricted practice but an indefinite period for those who have been removed from the Register.

Consultation

31. Given that the policy has been changed to include the decisions that are made by the Investigating and Health Committees, and given the discussions that have been had about the length of publication of PCC decisions, it is recommended that we consult on the draft revised policy annexed before it is finalised.
32. We would require Council's approval to consult, which can be sought at its meeting on 20 June 2013. It is proposed that the consultation begin on 1 July 2013 and end on 30 September 2013. A 3 month consultation period would allow for an analysis of the responses and a review of the policy to be completed in time for the Committee to consider it at its meeting in February 2014.
33. It is proposed that the consultation will be conducted on-line, with participants completing the response electronically. Printed copies will be made available on request. Key stakeholders, such as patients, osteopaths, the BOA and the PSA will be communicated with directly and encouraged to respond to the consultation and, in particular, give their views about the length of time that PCC decisions should be publicised for. This will help to inform the final policy and ensure that it does balance the interests of the public and patients and registrants.

Recommendations:

- 1 To agree that PCC decisions that an allegation is well founded and any subsequent Review hearing decisions are actively published on the GOsC's public website for six years from the date of the last PCC decision.
- 2 To agree that Council is asked to approve the draft revised policy for consultation.