

Investigating Committee Decision-making Guidance

draft

Overriding objective

The Investigating Committee (IC) will be mindful that the overriding objective of health regulation is to protect the health safety and wellbeing of members of the public.

Function of the IC

The function of the IC is to consider whether, in its opinion, there is a case to answer¹ when an allegation is made against a registered osteopath, to the effect that²:

- a) he has been guilty of conduct which falls short of the standard required of a registered osteopath (Unacceptable Professional Conduct);
- b) he has been guilty of professional incompetence;
- c) he has been convicted in the UK of a criminal offence; or
- d) his ability to practise as an osteopath is seriously impaired because of his physical or mental condition

Is there a case to answer?

The legal test that the IC must apply is:

“in the light of the information which it has been able to obtain and any observations made to it by the registered osteopath concerned, whether in its opinion, there is a case to answer”³

In deciding whether there is a case to answer, the test to be applied by the IC is whether there is a realistic prospect that the GOsC will be able to prove the allegation at a hearing.

The Central Questions

When considering whether the IC should refer an allegation to the PCC, it should ask itself:

1. Is there a real prospect of the alleged facts being proved before the PCC/HC?

¹ Osteopaths Act 1993, section 20(9)(c)

² Osteopaths Act 1993, section 20(1)

³ Osteopaths Act 1993, section 29(9)(c)

2. If so, is there a real prospect that those facts would amount to:
 - a) Unacceptable Professional Conduct; or
 - b) Professional Incompetence; or
 - c) That the ability to practise as an osteopath is seriously impaired because of a physical or mental condition?

In respect of a conviction for a criminal offence, the IC may conclude that there is no case to answer if it considers that the offence has no material relevance to the fitness of the osteopath concerned to practise osteopathy.

It may be that more than one allegation is featured in any one case. For example, it may be that it has been alleged that the registrant has been guilty of Unacceptable Professional Conduct because of some facts and that he is also Professionally Incompetent because of other facts that feature in the same complaint.

There must be a genuine, not remote or fanciful, possibility that both the alleged facts could be found proved and that, if they are, they could amount to the allegation.

Matters to consider

When considering whether there is a case to answer, the IC should have regard to the following:

Whether there is a case to answer is a matter for the IC's judgment.

Each case will turn on its own facts – even if it bears similarities to other cases. The IC must exercise its judgement in each individual case.

It is not the IC's role to determine whether those facts are proved or to determine that they amount to the relevant allegation - that is the job of the Professional Conduct (PCC) or Health Committee (HC).

The IC should not seek to resolve substantial conflicts of evidence. Where there is a plain conflict between the two accounts, either one of which may realistically be correct, and on one account the matter would call into question the registrant's fitness to practise, the conflict should be resolved by the PCC/HC.

The IC is entitled to assess the weight of evidence and to evaluate the available material in order to determine whether, in its opinion, that material raises a case to answer.

The IC's role is to filter out complaints which raise no question capable of resulting in the allegation and which need not or ought not to proceed further.

Standard and burden of proof

The IC should bear in mind that the standard of proof applicable before the PCC and HC is the ordinary civil standard, namely the balance of probabilities.

The Council has the burden of establishing a case for the osteopath to answer and of proving the facts and allegation before the PCC and HC.

Public Interest

The IC should take account of the public interest, which includes the protection of the public, upholding and declaring proper standards of conduct and behaviour and the maintenance of public confidence in the profession.

The public interest and the interests of the complainant and registrant may demand that matters are fully and properly investigated and resolved at the PCC or HC.

Complainants have a legitimate expectation that complaints – in the absence of some special and sufficient reason – will be publically investigated by the PCC.

There is also a public interest in registrants not being harassed by unfounded complaints.

Further Investigations

The IC should ensure that all reasonably practicable steps are taken to obtain as much information as possible about the case⁴.

It may, in any case, require further investigations to be carried out when it has insufficient evidence on which to reach a decision⁵.

If further investigations are necessary, the IC should adjourn the case to allow those investigations to be carried out⁶.

Unacceptable Professional Conduct

Case law has established the following principles regarding the concepts of Unacceptable Professional Conduct.

⁴ Osteopaths Act 1993, s20(9)(b)

⁵ GOsC (Investigation of Complaints) (Procedure) Rules 1999, rule 19

⁶ GOsC (Investigation of Complaints) (Procedure) Rules 1999, rule 21

A breach of the Osteopathic Practice Standards shall not be taken of itself to constitute UPC. A breach of the OPS is a starting point and is relevant; but it is not determinative of UPC and does not create a presumption of UPC. A breach of the OPS may be established and may be significant without making it UPC.

Not every minor error or isolated lapse will result in a case to answer.

In determining UPC – the critical term is ‘conduct’. ‘Conduct’ is behaviour – or the manner of conducting oneself.

UPC is not a lower threshold than ‘misconduct’ in other health professions. To reach the threshold of UPC, the unacceptable conduct must be serious.

A single negligent act or omission is less likely to cross the threshold of UPC than multiple acts or omissions. Nevertheless, and depending on the circumstances, a single negligent act or omission, if particularly grave could be characterised as UPC.

A finding of UPC would mean that a ‘degree of opprobrium’ would be likely to be conveyed to the ordinary intelligent citizen. UPC carries an ‘implication of moral blameworthiness’.

Professional Incompetence

Case law has established the following principles regarding the concepts of Professional Incompetence.

This is separate from negligence and UPC, it connotes a standard of professional performance which is unacceptably low. A single incidence of negligent treatment would be unlikely to constitute professional incompetence, unless it was very serious. Except in exceptional circumstances, professional incompetence should be based on consideration of a fair sample of the registrant’s work.

Standard of conduct and practice

When deciding whether an alleged fact will amount to the allegation, it will wish to have regard to the standards set out in the *Osteopathic Practice Standards*. These standards will apply to events that took place on or after 1 September 2012. For events that occurred before this day, the IC will wish to have regard to the Code of Practice (May 2005) and the Standard of Proficiency (2000).

No case to answer

Where the IC has found no case to answer, it may, if it considers that it would be helpful to the registrant, write a letter of advice. This may include guidance about the standards of conduct and practice expected of an osteopath and advice as to the registrant's future conduct.

Reasons for decision

The IC must give reasons for the decisions that it reaches. These should address each of the alleged facts and explain why the IC has found a case to answer or not in relation to them. It should also explain why it has concluded that those facts would or would not amount to the relevant allegation.

The IC's reasons will be provided to both the registrant and complainant in each case.