

Osteopathic Practice Committee
14 May 2013
Obtaining Consent Guidance

Classification	Public
Purpose	For noting
Issue	We ask the Committee to note the next steps in the development of additional guidance for registrants that supports Standard A4 of the <i>Osteopathic Practice Standards</i> .
Recommendation	To note the consultation report at Annex C and the proposed next steps that will be taken by the Executive, set out in paragraphs 11 and 12.
Financial and resourcing implications	None at this stage.
Equality and diversity implications	None.
Communications implications	It will be necessary to engage with some registrants who can provide comments and feedback on a further draft of the <i>Obtaining Consent</i> guidance. It will also be essential to ensure that, once published, all registrants are aware of the guidance existence and status.
Annexes	Annex A – Osteopathic Practice Standard A4 Annex B – Draft <i>Obtaining Consent</i> guidance Annex C – Consultation Report
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Background

1. The Osteopathic Practice Committee's role includes contributing to the development of standards of osteopathic practice. The *Osteopathic Practice Standards* (OPS) took effect on 1 September 2012 and clearly identify the standards of practice and conduct expected of osteopaths. Each Standard is supported by specific guidance, which is designed to help osteopaths understand and achieve the relevant Standard.
2. This paper relates specifically to Standard A4 and its supporting guidance. This section of the OPS is presented at Annex A for member's ease of reference. Members will see reference in the guidance to a further document *Obtaining Consent*. A draft of this document was approved for consultation by Council in October 2013. This draft is attached at Annex B. The consultation was open for 11 weeks, closing on 16 January 2013.
3. A report of the consultation findings is provided at Annex C. As a result of the responses and on further reflection by the Executive, it is now proposed that we (the Executive) look at the guidance afresh. This paper, therefore, asks the Committee to note the consultation report and the proposed next steps that will be taken by the Executive.

Discussion

The guidance

4. When drafting the OPS, the aim was to provide clear and concise guidance to support each of the Standards. The subject of consent is, however, large and complex. The law on consent also varies across the UK and it proved very difficult to produce guidance in the OPS that remained clear and concise and yet also accurately conveyed all of the relevant law on consent as it applies throughout the UK. The law may also develop and change and if the guidance in the OPS were too specific and detailed it could easily become out of date. For these reasons, it was agreed that this section of the OPS should be supported by additional guidance produced in a separate document.
5. The area of the law covered by the additional guidance relates specifically to the question of capacity. Members will know that for consent to be valid, it must be given by a person with the capacity to consent to the intervention in question. Often patients will have the required capacity but this may not always be the case and in these instances an osteopath needs to know how they should proceed.

6. The guidance in the OPS supporting Standard A4 importantly makes reference to the *Obtaining Consent* document as a source for guidance on:
 - a) the law on treating adults who lack mental capacity (paragraph 11)
 - b) receiving valid consent for the examination or treatment of children or young people (paragraphs 13 and 20)
 - c) the law on treating a young person who lacks capacity (paragraphs 18 and 20).
7. This guidance should be an extension of and be similar in language to the guidance given in the OPS. It should also be limited to the three areas identified in 6 a) to c) above and clearly reflect the law in this area. It will have the same status as the guidance contained in the OPS.
8. The draft an Annex B focuses on the law and we have attempted to clearly outline the law for each of the UK countries.

The consultation

9. We consulted on the draft guidance at Annex B and the results are presented in the report prepared by Hewell Taylor Freed at Annex C. The Committee will see that the responses were not great in number. However, they have provided some valuable feedback on the content, language and format of the draft guidance.
10. The Executive, in addition to the consultation report, has had the opportunity to consider all of the responses made and reflect on the draft guidance. While the responses were varied, one theme does appear and it is perhaps captured most clearly in a response from the General Medical Council, which reads:

'Many of the principles underpinning the law are the same across the UK, even where the terminology used is different, particularly in relation to adults who lack capacity. It may be helpful to first explain the common principles relating to capacity and consent and then to flag up the particular differences or additional requirements in different countries...'

Next Steps

11. The Executive, having reflected on the consultation responses and the draft guidance, believe a more succinct narrative that is more rooted in the language used in the guidance in the OPS is required. This narrative can be supported by the tables that appear in the current guidance, which some respondents to the consultation found helpful.

12. The Executive propose to produce this narrative over the summer. It will seek views on it from registrants, who it is aimed at assisting. A final version will be brought to the Committee at its meeting in September 2013 for consideration. It hoped that this Committee will be able, at that stage, to recommend that Council approve the final version of the guidance.

Recommendation: to note the consultation report at Annex C and the proposed next steps that will be taken by the Executive, set out in paragraphs 11 and 12.