General Osteopathic Council

Osteopathic Practice Committee
17 September 2013
PSA – Encouraging registrant candour

Classification	Public
Purpose	For noting
Issue	A short summary of the purpose of the paper, i.e. what needs to be considered, why it needs to be considered and by when.
Recommendation	To note the response to the PSA.
Financial and resourcing implications	None.
Equality and diversity implications	None.
Communications implications	None.
Annex	Response to the PSA on encouraging candour
Author	Tim Walker

Background

1. The Francis Report recommended that the Government legislate to introduce a statutory duty of candour on all healthcare professionals.

Discussion

2. As part of its consideration of the recommendation the Department of Health has commissioned advice from the Professional Standards Authority (PSA) on how professional regulation can encourage UK healthcare practitioners to be more candid when care goes wrong.

3. The PSA requested our views at short notice and these were submitted to them in early August. Our response can be found at the annex to this paper.

4. We also encouraged the British Osteopathic Association, the Council of Osteopathic Educational Institutions and Osteopathic Alliance to respond to the PSA's call for information. We are pleased that the three organisations worked together on a joint response.

5. It is interesting to note that the recent Berwick review of patient safety – *A promise to learn – a commitment to act: improving the safety of patients in England* (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/226703/Berwick_Report.pdf) – was explicit in its rejection of a statutory duty of candour.

Recommendation: to note the response to the PSA.

Encouraging candour – response to the PSA from the General Osteopathic Council

Questions	GOsC response
1. We enclose a table of the candour and honesty related standards we have identified in yours and the other regulatory bodies' current codes of practice/ standards/guidance. Please can you confirm that we have identified the correct standards for you? Please tell us if you consider any of your other standards implicitly require registrants to be candid, open, transparent and/or honest about treatment or care that has gone wrong or incidents that caused harm or nearly caused harm.	We believe that candour is of fundamental importance to a wide range of our standards and consider the following parts of the Osteopathic Practice Standards are relevant: **A3 – Give patients the information they need in a way they can understand.** The guidance to this standard states: '2. You should inform your patient of any material or significant risks associated with the treatment you are proposing. If you are proposing no treatment, you should explain any risks associated with doing nothing. You should explain any alternatives to the treatment. The information you provide should focus on the patient's individual situation and risk to them. You should check that your patient has understood the information you have given.' **B3 – Recognise and work within the limits of your training and competence.** The guidance for this standard states: '1. You should use your professional judgement to assess whether you have the training, skills and competence to treat a patient. 2. If not, you should consider: 2.1 Seeking advice or assistance from an appropriate source to support your care for the patient. 2.2 Working with other osteopaths and healthcare professionals to secure the most appropriate care for your patient. 2.3 Referring the patient to another osteopath or appropriate healthcare professional, if you reasonably believe that professional to be competent.'

	C2 – You must be able to formulate and deliver a justifiable osteopathic treatment plan or an alternative course of action. The guidance to this standard states: '1.8 Recognise adverse reactions to osteopathic treatment and take appropriate action, including referral to another osteopath or other healthcare professional when appropriate. 1.9 Recognise when errors have been made and take appropriate action to remedy these, taking account of what is in the best interests of the patient.' **C3 – Care for your patients and do your best to understand their condition and improve their health.** The guidance to this standard states: 'Trust is an essential part of the osteopath-patient relationship. Your professionalism and observance of the ethical standards laid down in this document will reinforce this trust.' **C8 – Ensure that your patient records are full, accurate and completed promptly.** The guidance to this standards states: 'The information you provide in reports and forms or for any other purpose associated with your practice should be honest, accurate and complete.' **C9 – Act quickly to help patients and keep them from harm.** The guidance to this standard states: 'If you are the principal of a practice, you should ensure that systems are in place for staff to raise concerns about risks to patients.'

	D7 – Be open and honest when dealing with patients and colleagues and respond quickly to complaints. The guidance to this standard states: '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.' **D9 – Keep comments about colleagues or other professionals honest, accurate and valid.** The guidance to this standard states: '1. All comments about colleagues or other healthcare professionals should be appropriate and justified. This will help to ensure that patients retain confidence in their healthcare team.' **D10 – Ensure that any problems with your own health do not affect your patients.** The guidance to this standard states: '1. If you know or suspect your physical or mental health to be impaired in such a way that it affects the care you give your patients, consider whether you should: 1.1 Seek and follow appropriate medical advice on whether, and if so how, you should modify your practice. 1.2 Inform the GOsC so that your registration details can be amended.' **D14 – Act with integrity in your professional practice.** The guidance to this standard states: 'Acting with integrity means acting with honesty and sincerity. A lack of integrity in your practice can adversely affect patient care. Some examples are:

	1.1 Putting your own interest above your duty to your patient.' **D17 – Uphold the reputation of the profession through your conduct.** The guidance to this standard states: '2. Upholding the reputation of the profession may include: 2.7 Not falsifying records or other documents 2.8 Behaving honestly in your personal and professional dealings.' **D18 – You must provide to the GOsC and important information about your conduct and competence** The guidance to this standard states: '1. You should tell the GOsC, straight away, if you: 1.1 Are charged, anywhere in the world, with an offence relating to: 1.1.1 Violence 1.1.2 Sexual offences or indecency 1.1.3 Dishonesty 1.1.4 Alcohol or drug abuse 1.2 Are convicted of a criminal offence, anywhere in the world. 1.3 Receive a conditional discharge for an offence. 1.4 Accept a police caution. 1.5 Are disciplined by an organisation responsible for regulating or licensing a healthcare profession.
2. Do you require registrants to declare they will follow your code of practice/standards/guidanc	The GOsC does not currently require registrants at initial registration or at each renewal thereafter, to positively declare they will follow the Osteopathic Practice Standards (OPS). While we recognise the attraction of seeking such a declaration, our focus has been on a more active

e: a) when they register initially and b) each renewal/retention thereafter?	dissemination and discussion of the OPS. We have set out below the different ways that we ensure osteopaths are aware of and practise in accordance with the OPS both at the point of entry to the register and on an ongoing basis. **Pre-registration** In order to enter the register, UK graduates must have completed a GOsC quality assured curriculum which is mapped and delivered against the OPS. GOsC staff meet with undergraduates twice in the course of their studies. In initial visits to the OEIs we talk specifically about the OPS; what it means while in clinical training and what it means once registered. This is timed to take place shortly before the students enter the clinic for the first time treating patients under supervision. The OPS also features prominently in a further presentation given to final year students around the process for registration. This is in addition to the regular focus provided by the institutions themselves. Students are also made aware of the GOsC Student Fitness to Practise Guidance which again emphasises the importance of being taught and learning the OPS. International and most EU-qualified osteopaths have completed a written assessment and an Assessment of Clinical Performance which is mapped against the OPS which requires the review of the standards to complete the assessments successfully. **Post-registration** All newly registered osteopaths are sent a copy of the OPS and leaflets for patients and other health professionals which explain that osteopaths practice in accordance with the OPS. The OPS contain a statement explaining that 'osteopaths are expected to comply. Failure to do so may put the osteopath at risk of fitness to practise proceedings.' Post-registration, the GOsC believes it is important to continue to engage with our registrant population about the OPS and to raise awareness of the standards and associated guidance. Our extensive work in relation to promoting the new OPS was reflected in our 2012/13 Performance

	Review submission and the PSA's subsequent report. This work continues with the development of supplementary guidance that will reinforce our core standards. We have also developed some e-learning scenarios in conjunction with medical educationalist, Sue Roff, which are designed to enable osteopaths to work through the OPS identifying the relevant standards for each question thus increasing awareness of the OPS and how they apply in clinical scenarios. Further scenarios have been piloted and will be launched shortly. These scenarios will also enable us to collect data identifying which of the standards are less understood, providing an emerging evidence base upon which to target further implementation work. Moving forward, we hope to build a more explicit link to the OPS as part of our continuing fitness to practise scheme. One of the findings of our recent revalidation pilot was that it led to 80% of participants undertaking a purposeful review of the OPS, something that is not required as part of a self-declaration process.
3. How do your education standards and processes encourage education providers to satisfactorily prepare new registrants to be candid?	As indicated above, all students must meet the Osteopathic Practice Standards (OPS) before being awarded a qualification entitling them to apply for registration. The current undergraduate guidance is outlined in the QAA Benchmark Statement which requires 'the appropriate professional attitudes and behaviours consistent with being a healthcare practitioner' and cross-references the current Standard of Proficiency which is the OPS. Students are also provided with the GOsC Student Fitness to Practise Guidance – see above which states that students should Justify public trust and confidence by being honest and trustworthy. The guidance also states: '18. The public, including relatives, friends, colleagues and staff, have certain expectations of healthcare professionals. This is because, as a patient, most people will be vulnerable. Patients expect that healthcare professionals will treat them properly and will behave ethically. Trust is critically important to this therapeutic relationship.

	19 The patient will often have the same expectations of, and will put the same level of trust in, a student as they would a fully-qualified health professional. This means that healthcare students are different to students of other disciplines. Professional behaviour in all aspects of life is important. 20 Regulation takes place at a number of different levels. The first level of regulation is the individual. It is crucial that individuals are aware of and abide by principles of regulation themselves. Healthcare professionals are in day-to-day contact with patients and this requires students to take responsibility to behave in a way that is in accordance with professional obligations and the expectations that the public have of healthcare professionals. 21 As you progress through your RQ course, you will learn the knowledge, skills and attitudes to support your practice alongside appropriate values, behaviours and relationships.' Students are asked 'When considering your own behaviour and that of others, ask yourself will it: • Impact on the perception of patient safety (including that of fellow students and staff)? • Impact on the trust that the public places in the osteopathic profession that you wish to be a part of?' This is in conjunction with the OPS which include the statement: '23. The standards expected of osteopathic students are set out in the OPS, published on the GOsC website: www.osteopathy.org.uk/practice/standards-ofpractice/. The RQ course will help you to gradually achieve the knowledge, skills, attitudes and behaviours to demonstrate these standards to the appropriate level.' These standards include 'Be open and honest when dealing with patients and colleagues and respond quickly to complaints.' The student fitness to practise guidance is explored as part of the course aims and outcomes aspect of our GOsC Quality Assurance Review and is required to be reported on as part of the osteopathic educational institution's 'self-evaluation document'. Visitors are expected to explore evidence to take a view as 'to what extent to what extent procedures exist for establishing student fitness to practise.'

	As part of our quality assurance process, we have introduced an 'unsolicited information procedure' which specifically provides a pathway for clinical staff and students to report anonymously or not to the GOsC and inform the review of the institution. This can include concerns about patient safety and patient care. While we accept feedback all year round, this process is specifically advertised prior to a review on our website and via posters in the institution's patient clinic, staff and student areas and online staff and student support networks. Finally, through our Quality Assurance Annual Review process, we monitor complaints and student fitness to practise data from educational institutions as part of the Annual Report they are required to submit which helps us to understand if candour issues are coming through. Although we see issues of dishonesty relating to other areas, we have not yet had any cases reported in relation to the duty of candour related to patients. But we plan to provide more guidance about the details we require to enable us to explore the student fitness to practise information more thoroughly. It is expected that as we develop our Guidance for Osteopathic Pre-registration Education (due for publication for consultation in late 2013/early 2014) we will be strengthening this whole framework. Alongside the standards and quality assurance framework, we have also developed and piloted undergraduate professionalism programmes for students in academic training and for those undertaking clinical training under supervision. These questionnaires help us to explore an understanding about the implementation of values - enabling both e-learning but crucially enabling us to target gaps. For example, one of the questions asked is: "A fellow student asks you to help cover up a mistake in patient record keeping/care" which goes directly to the heart of the duty of candour when something goes wrong. We have collected some emerging evidence that falsification of records not regarded as sufficiently serious (i.e. less serious that falsification of curriculum vitae, for example) by students in the early years of training so if this data continues to be borne out we will work with OEIs to further explore best practice ways to target this. It is of note that this data appears consistent with that of

	other professions (currently the osteopathic data is unpublished, but data from other professions has been published[1]). We hold regular meetings with the osteopathic educational institutions to discuss key issues affecting the profession and to discuss good practice. This has recently included discussion of the Francis Report, the patient voice and student fitness to practice guidance supporting seminar discussions about ways in which osteopathic education could respond to these challenges.
4. The Department of Health would like to understand the outcomes and frequency of fitness to practise hearings involving an allegation that a registrant has failed to be candid/open/honest about treatment or care that has gone wrong or incidents that caused harm or nearly caused harm. To assist with this please can you name any such cases decided at a final hearing since 1 January 2009? (This is the timeframe the Department of Health has requested information for.)	The GOsC does not receive many allegations that a registrant has failed to be candid about treatments which have gone wrong or incidents which have caused (or nearly caused) harm. Since January 2009, the GOsC has only had one hearing (GOsC v Huxtable, March 2011) that involved specific allegations that the registrant had failed to be candid about treatment which had gone wrong. A further case has been identified dating back to 2005, (GOsC v Wood) which involved allegations that the registrant had failed to be candid about treatment which had gone wrong. In October 2010, the GOsC had one hearing (GOsC v Wilkinson) which involved allegations that the registrant had failed to maintain adequate professional indemnity insurance. Although not specifically charged an allegation, the Committee found that the Registrant had been dishonest in her responses to the regulatory investigation. Copies of the allegation and the decision in these three cases can be supplied if required.

[1] Roff S, Chandratilake M, McAleer S, Gibson J. Medical student rankings of proposed sanction for unprofessional behaviours relating to academic integrity: results from a Scottish medical school. Scott Med J. 2012 May;57(2):76-9).

5. How frequently do you receive fitness to practise complaints/referrals about candour failures? What proportion of these is closed in the earlier stages of your FtP process (i.e. any stage before the final hearing stage)? It would be helpful if any data you can provide is organised by calendar year, from 2009 onwards. We appreciate that a full analysis of this nature may be difficult to deliver in the time available, so please state any the caveats relating to the data you can provide.	The GOsC does not receive many cases in which a lack of candour is an issue. The two cases referred to above, are the only cases of this kind that have been identified. The GOsC does not currently record 'lack of candour' allegations as a specific category. However, going forward, the GOsC will amend its common classification system to enable data on this type of case to be captured.
6. In your experience, what proportion of candour failure concerns/ allegations is about a registrant's failure to be open with an employer or regulator? And what proportion is about a failure to be open with a patient, service user or	Of the three cases identified, two (Huxtable and Woods) involved allegations of failure to be open with a patient. In the third case (Wilkinson), the Committee found that the registrant had been dishonest in dealing with the regulator, but this was not charged as a specific allegation.

carer?	
7. In your experience how frequently are candour failure allegations/complaints accompanied by an allegation/complaint of professional incompetence and/or deficient performance?	Of the three cases identified, one (Huxtable) revealed failings in relation to the conduct of patient examinations; clinical investigation; and formulation of an appropriate and justified treatment plan.
8. Are there any general comments, feedback, observations you wish to make? In answering this question you may want to address the questions in the attached Call for Information which will be published on our website and circulated to other stakeholders in the next few days.	**Adverse events** One of the issues that may be significant in respect of the proposed duty of candour is the threshold at which the duty applies. The Francis report referred specifically to incidents that may have caused death or serious harm. Such incidents are, fortunately, extremely rare in osteopathy but that does not mean that the practice is not without treatment risks. We think it is important to try to develop clarity around the definition of serious harm and where the statutory duty may bite and the wider duties of candour on healthcare professionals. The GOsC has invested significant resources in research relating to adverse events in osteopathic practice. We have reported this in our submissions to the Performance Review over a number of years. As well as gaining a clearer understanding of the types and frequency of adverse events, we are working to provide registrants and patients with better information about adverse events and the communications requirements of informed consent. We are also undertaking other work, including: • the collection of data about incidents that cause patients to raise concerns about osteopaths, using

	a common classification system adopted by the organisations dealing with complaints, the GOsC, professional indemnity insurers and the professional association; • the development (by the National Council for Osteopathic Research) of online learning platforms for sharing information from both patients and osteopaths about adverse events; • continuing to encourage reflection among osteopaths around significant events as part of their CPD/continuing fitness to practice. We hope that such activities – which are designed to be supportive of good practice – will encourage osteopaths to be more candid where problems arise. **Unintended consequences** It is because we are taking a more educational approach to the issue of candour that we are concerned about the potential for unintended consequences. We think it is important that, in presenting advice to Ministers, the PSA reflects on whether a statutory duty might have the opposite effect to that intended on the willingness of individuals to be candid. One of the areas of interest to the GOsC in considering effective regulation is the notion of 'formative spaces' which allow registrants honest reflection and action to be taken to support areas of development, without 'fear' of regulatory action. This issue has been explored in research for the GMC by McGivern et al.[2] The research suggests 'a culture of legalisation and blame in healthcare is undermining such spaces and doctors' willingness to disclose problems, which may drive malpractice underground with consequences for professional development and patient safety.' This appears to echo the view expressed in the recent Berwick report which expressed concerns about

[2] McGivern G, et al The Visible and Invisible Performance Effects of Transparency in Medical Professional Regulation: Implications for the GMC, available at http://www.gmc-uk.org/McGivern___The_Visible_and_Invisible.pdf_30868616.pdf

	the possible unintended consequences of a statutory duty of candour in that 'We do not subscribe to an automatic 'duty of candour' where patients are told about every error or near miss, as this will lead to defensive documentation and large bureaucratic overhead that distracts from patient care.'[3] **The role of insurers** It has taken a considerable period of time for it to become accepted by practitioners that providing an apology to a patient when something goes wrong does not of itself mean an acceptance of liability. However, our understanding is that the advice of insurers and professional associations may not always accord with this principle. Taking this matter one stage further, we believe that healthcare professionals may find themselves in conflict between a duty of candour and the conditions of their professional indemnity insurance policies. While we have not explored this matter in any depth, it might be helpful in the context of the introduction of compulsory insurance for all healthcare professionals (something which is already a requirement for osteopaths) for the PSA to consider this issue further. Consideration of a duty of candour must be considered also alongside the adequacy of current whistle blowing legislation and incentives. Consideration should be given to incorporating some of the thinking behind the 'leniency and safe harbour' regimes in other jurisdictions such as competition law. The indicative sanctions guidance for the healthcare professional regulators could, for example, specifically make reference to sanction discounts for: co-operating with a regulatory investigation; early notification of errors to the patient; or reporting poor practice among other healthcare professionals.

[3] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/226703/Berwick_Report.pdf