



**General Osteopathic Council
Osteopathic Practice Committee**

Minutes of the Osteopathic Practice Committee held on 27 February 2014

Confirmed

Chair: Julie Stone

Present: Jane Fox
Alison White
Jonathan Hearsey
Jenny White
Manoj Mehta

In attendance: Gina Baidoo (Senior Professional Standards Officer), Item 9 only
Fiona Browne (Head of Professional Standards)
David Gomez (Head of Regulation)
Kellie Green (Regulation Manager)
Matthew Redford (Head of Registration and Resources)
Tim Walker (Chief Executive and Registrar)
Vanissa Tailor (Regulation Assistant)

Item 1: Welcome to new member

1. The Chair formally welcomed Manoj Mehta to the Committee. The Chair noted that Manoj's experience in osteopathic practice and education, and as a former Council Member, would be a valuable addition to the Committee.

Item 2: Apologies

2. Apologies were received from Haidar Ramadan. Haidar had provided the Chair with comments on the items that were to be considered, which she would feed into the meeting at the relevant point.

Item 3: Minutes and matters arising

Approved:

3. The Committee approved the Minutes of the meeting held on 19 September 2014 with the following amendments: on page 1, Haidar Ramadan's name and "cross boarder" was misspelled.
4. It was confirmed that, in the Rule 8 documentation considered at the previous meeting of the OPC, the decision as to whether a matter should be treated as a single incident should remain a matter for the Professional Conduct Committee's discretion.

Item 4: Whistleblowing policy

5. The Head of Regulation introduced the paper and explained the reason why the GOsC was required to establish a whistleblowing policy. This was because recent legislation had established the GOsC as a prescribed body to which whistleblowing disclosures could be made.
6. The purpose of the policy was to set out how the GOsC would respond to any disclosures that it received. Head of Regulation asked the Committee to note the definition of whistleblowing adopted by the Whistleblowing Commission: 'the raising of a concern, either within the workplace or externally about a danger, risk, malpractice or wrongdoing which affects others.'
7. The attention of the Committee was drawn to the relevant requirements of the Osteopathic Practice Standards which state that all registered osteopaths have a duty to raise concerns which may impact on the safety of patients.
8. The inter-relationships between the role of the GOsC as a prescribed body, the duty on registrants to raise concerns, and the recommendations for a duty of candour arising out of the Francis Report were noted by the Committee.
9. The Chair thanked Head of Regulation for a helpful introduction. The Committee discussed the whistleblowing policy and asked how this would affect retention of data. The Head of Regulation confirmed that the GOsC would follow its published data retention policy in relation to any disclosures made to it, and that the draft policy required the GOsC to report on the number of whistleblowing disclosures received.
10. The Committee sought clarification on the intended audience for the policy, i.e. the Council or people raising concerns. It was explained that the document had two purposes: to set out the Council's approach to dealing with protected disclosures made to it, and in doing so, to provide relevant background information to persons who might be considering making a disclosure to the Council. It was noted that the policy sought to follow the requirements of the draft Code issued by the Whistleblowing Commission. The OPC agreed that, in addition to the formal policy, the executive should consider the need for 'softer' guidance on raising concerns, as part of the work associated with the duty of candour. The use of scenarios as explanatory tools was also discussed.
11. The Committee considered how the policy would be monitored. It was agreed that the most appropriate mechanism would be for the Audit Committee to monitor the operation of the policy, and to make recommendations to Council as required.
12. The Committee also discussed the issue of anonymous concerns. The Head of Regulation informed the Committee of the recent decision of the High Court in *White v NMC* (decision 11/2/14) in which the Court held anonymous data to be

inadmissible in fitness to practise proceedings, because it could not be properly tested. The Committee suggested that the use of anonymous data be clarified in the draft policy.

Agreed: the Committee agreed to recommend that the draft policy be considered for consultation by Council.

Item 5: Protection of Title enforcement policy

13. The Regulation Manager introduced this policy and reminded the Committee of the requirements of s32(1) of the Osteopathic Act 1993. She also reminded the Committee of the circumstances in which the GOsC had begun to initiate criminal proceedings against persons breaching the requirements of S.32.
14. In line with best practice, the Regulation Manager explained that the GOsC considered it necessary to set out how decisions on whether or not to prosecute were made, and the matters that the GOsC took into account before making its decision. It was important that any draft policy on this issue be consulted on and the views of stakeholders sought, before the policy was finally approved.
15. While the draft policy reflected a codification of existing practice in large part, KG highlighted the key areas of change, including the requirement for decisions to be taken by the Registrar.

Agreed: the Committee recommended that Council should be asked to approve the draft policy for consultation.

Item 6: Practice Note – Expert witnesses

16. The Regulation Manager introduced the draft Practice Note. It was noted that the Practice Note had been produced in response to concerns raised by members of the Professional Conduct Committee, and that the note sought to reflect the current legal position of experts giving evidence in civil proceedings, as reflected in the case law and the High Court Civil Procedural Rules.
17. The Committee considered comments on the draft Practice Note made by the PCC Chair and the PCC Panel Chairs, and by members of the Fitness to Practise Forum which were tabled.
18. The Committee welcomed the introduction of the Practice Note, and the emphasis on joint expert reports.
19. The Committee sought assurance that the legal assessors would remind the Committees that the primary role of experts was to assist the Professional Conduct Committee, and not the parties. The executive confirmed that the Practice Note would be provided to the legal assessors and this requirement would be factored into their training.

Agreed: the Committee agreed that Council should be asked to approve the revised policy on Expert Witnesses.

Item 7: Professional Conduct Committee (PCC) practice note – evidence

20. The Regulation Manager introduced this practice note on how it will assist the PCC. This practice note was needed as the information on evidence is not covered in the practice note for preparing for hearings.
21. The Chair and the Panel Chairs of the Professional Conduct Committee and the Chair of the Investigating Committee had provided their comments and this was tabled at the meeting. The comments were discussed and the Committee asked that consideration be given to the following in advance of the next Council meeting:
 - Point 4, Paragraph 9 should be split into two separate paragraphs dealing with the issue of facts, judgment, sanction and interim orders.
 - Point 5 on the standard of proof
 - Point 7 and the means by which witnesses give their evidence-in-chief and the preference was that this should be at the discretion of the person presenting the case, with an emphasis against the reading in of witness statements
 - Point 8 the Committee encourage the use of remote evidence where appropriate
 - Point 10 and whether anything further should be added to the Practice Note to the issue of cross examination and weight of evidence when it had been provided via a video recorded interview
22. It was confirmed that the Council fund the costs of a legal representative required to cross examine a witness on their behalf of an un-represented Registrant.

Agreed: that Council should be asked to approve the Professional Conduct Committee (PCC) practice note – evidence, subject to the above comments.

Item 8: Practice Note – Consideration of Undertakings at Interim Suspension Order Hearings

23. The Regulation Manager introduced the draft Practice Note and explained that it had been produced in response to legal advice that had been received by fitness to practise committees about the status of Undertakings at Interim Suspension Order hearings.
24. The GOsC's legislative scheme did not provide any power to impose conditions of practice on an interim basis and did not specifically provide for the use of Undertakings. However, legal advice had been to the effect that where Undertakings had been offered, they were a relevant consideration for the fitness to practise committee in determining whether or not it was necessary to make an Interim Suspension Order.

25. The draft Practice Note sought to provide guidance to the fitness to practise committees and to Registrants about the matters to be taken into account where Undertakings were offered; and to encourage consistency in the material presented to fitness to practise committees.
26. The Committee was asked to note the definition of Undertakings set out in the draft Practice Note; and the requirements in the Practice Note relating to the format and content of any Undertakings offered to a fitness to practise committee.
27. The Committee noted that the comments on the draft Practice Note received by from the Chairs of fitness to practise committees and the FTP Users Forum.
28. The Committee further noted that Undertakings could provide some protection to members of the public. However, the Committee considered it important to set out in the Practice Note fully, the consequences of non-compliance with any Undertakings offered to a fitness to practise committee.
29. The Committee asked how people are made aware of the fact that an Undertaking has been provided to a fitness to practise committee. KG confirmed that all Undertakings are published on the GOsC website.

Agreed: the Committee agreed that Council should be asked to approve the Practice Note on Undertakings.

Item 9: Continuing Professional Development audits

30. The Senior Professional Standards Officer introduced the paper, highlighting the main change to the Continuing Professional Development (CPD) audit process in relation to sampling and feedback. She confirmed that prior to August 2013, Registrants who had been selected as part of the CPD audit only received feedback on their submission if the activities declared did not comply with the CPD guidelines, or if they had complied but also declared a large number of unacceptable activities. The GOsC was now routinely providing feedback to all Registrants.
31. The Committee considered this a helpful development and thanked Ms Baidoo for presenting this paper.

Noted: the Continuing Professional Development audits

Item 10: Osteopathic Practice Standard Evaluation

32. The Head of Professional Standards introduced this paper and reminded the Committee that the GOsC had undertaken a programme of work to implement the Osteopathic Practice Standard (OPS) which were first published on 1 September 2011 and came into effect on 1 September 2012. An evaluation of how effective the implementation strategy of these new Standards had been was being undertaken.

- 33. The Committee recognised that this was an extremely detailed piece of work requiring extensive analysis of data. It was pleased with the direction of travel. The Committee asked Head of Professional Standards to pass their appreciation to the Professional Standards Manager for his detailed work.
- 34. The Committee suggested that the key messages from this paper be brought to the attention of Council members who had not seen it at this Committee or the Education and Registration Standards Committee, perhaps by doing a short paper to Council, which should include the purpose of the project and the relevant points.

Noted: the evaluation of the Osteopathic Practice Standard Implementation Strategy.

Item 11: Update on the Fitness to Practise Quality Assurance Framework

- 35. The Head of Regulation updated the Committee on the implementation of the Regulation Department's *Quality Management and Assurance Framework* as a mechanism for providing greater assurance to Council about the fitness to practise and protection of tile processes. He reminded members that the first draft had been produced in December 2013 and it will be finalised in April 2014.
- 36. From September 2013, the Regulation and Finance departments had agreed a new method of recording all costs associated with a particular case. The intention was to be able to identify more accurately costs per case and in doing so, to identify potential efficiencies and savings.
- 37. From January 2014, staff in the Regulation department had undertaken a programme of visits to other health regulators, in order to identify best practice in listing, scheduling and clerking fitness to practise hearings.
- 38. The Regulation team would also shortly begin obtaining equality data from registrants who were subject to a fitness to practise investigation.
- 39. The Committee considered the latest version of the draft framework and thought that, at page 12, the references to "no negative feedback", should be replaced with references to "constructive feedback".

Noted: the update on the *Quality Management and Assurance Framework*.

Item 12: Professional Indemnity insurance consultation update

- 40. The Head of Registration and Resources introduced this paper and confirmed that the consultation had ended and 47 responses had been received. These included responses from Registrants, the British Osteopathic Association, the Professional Standards Authority, a patient and two professional indemnity insurance brokers. Council would be asked to consider the consultation results and proposal in due course.

Noted: the professional indemnity insurance consultation update.

Item 13: Common Classification system update

41. The Regulation Manager introduced this paper and updated the Committee on the Common Classification System, which aims to collect and link data relating to claims and complaints about registrants. This will help to identify and monitor trends on annual basis.
42. The project had been piloted this year and it would, therefore, be reviewed by the participating organisations. The data collected will be analysed by NCOR and funded by the GOsC. It is hoped that future cost will be shared by the participating organisations.

Noted: the update on the Common Classification system.

Item 14: Effectiveness of Regulation research

Noted: the scoping report and progress on 'Exploring and explaining the dynamic of osteopathic regulation, professionalism and compliance with standards in practice.'

Item 15: Any other business

43. No other business was raised.

Date of the next meeting: 25 June 2014 at 9.30am.