



**Osteopathic Practice Committee
27 February 2014**

**Practice note – Consideration of Undertakings at Interim Suspension
Order Hearings**

Classification	Public
Purpose	For decision
Issue	This paper proposes the introduction of a Practice Note to assist the Investigating, Professional Conduct and Health Committees at interim suspension order hearings.
Recommendation	To agree the Practice Note should be recommended to Council for approval.
Financial and resourcing implications	No material implications.
Equality and diversity implications	None identified. Equality monitoring in relation to FTP cases is part of the draft Quality Management and Assurance framework.
Communications implications	None identified at present. Views from the FTP users forum and the Chairs of the Fitness to Practise Committees have been sought on the draft Practice Note.
Annex	Draft Practice Note on Consideration of Undertakings
Author	David Gomez

Background

1. Under sections 21 and 24 of the Osteopaths Act 1993, a fitness to practise committee of the General Osteopathic Council (GOsC) has the power to impose an interim suspension order on a registrant, if it considers it necessary to do so in order to protect the public.
2. Unlike other healthcare regulatory regimes, the GOsC's fitness to practise committees do not have the power to impose a conditions of practice order on an interim basis.
3. Suspension from practice, even on an interim basis, may have severe consequences for the practitioner. However, the GOsC's primary consideration remains the protection of members of the public.
4. At a number of recent hearings to consider whether an interim suspension order should be made, registrants have offered undertakings to the Committee.
5. Legal advice received by the fitness to practise committee on these occasions has been to the effect that undertakings are a matter that the Committee may take into account in considering whether or not it is necessary to make an interim suspension order.
6. At the all members day in November 2013, members of the Professional Conduct and Health Committees suggested that they would find it helpful if the GOsC provided a Practice Note on Consideration of Undertakings.

Discussion

7. The draft Practice Note explicitly provides that a fitness to practise committee may take any undertakings offered at an Interim Suspension Order hearing into account, provided that such undertakings meet the criteria set out in paragraph 7 of the Practice Note.
8. The term 'undertakings' is defined in paragraph 6 of the Practice Note.
9. Paragraph 7 of the draft Practice Note sets out detailed criteria to ensure consistency in the material to be provided to the Committee by registrants, and to assist the Committee in assessing whether the undertakings offered would actually protect the public pending the final determination of the allegation against the registrant.
10. The criteria in paragraph 7 also re-enforces the registrant's professional responsibility when providing the undertakings and to make clear to the registrant, the consequences of non-compliance.

Feedback on the draft Practice Note

11. The draft Practice Note was shared individually with the Chair and Panel Chairs of the Professional Conduct Committee, and with the Chair and members of the Investigating Committee at a recent meeting.
12. The draft Practice Note was also shared with members of the Fitness to Practise Users Forum-which includes the legal assessors, and GOsC and defence representatives who regularly appear before the GOsC fitness to practise Committees.
13. The Chair and the Panel Chairs of the PCC were content with the circulated draft and made the following comments.

“It will be very helpful to have this practice note in place and I am happy with the provisions made in the draft” – Chair

“For my part I am content with the practice note and am reassured that there are robust guidelines in place which will ensure public protection under such circumstances.” – Panel Chair

“I had wondered whether formalising the possibility of Undertakings might result in a gradual shift away from Interim Suspension and the use of the former when the latter might be more proportionate and proper for public protection. Following our conversation I was entirely persuaded that the risk was minimal in fact - and that Undertakings could well provide robust protection for the public especially when Suspension may be argued as disproportionate.” – Panel Chair

14. The Chair and the IC members who considered the draft were in favour of the Practice Note, with the suggestion that the Note should incorporate references to a registrant’s behaviour, as well as his or her practice. These amendments have been included in the draft before the Committee at the Annex.
15. The BOA and Defence representatives who responded, were in favour of the Practice Note:

“Thank you for your draft practice note. I have no issues with what you suggest and welcome the introduction of undertakings.”

“As to your document, given the constraints of the Act, I think it is excellent and I would not change a word of it. As a medico-legal adviser it will assist me considerably in offering advice to osteopaths in difficulties with complaints to the GOsC.”

“I think that it is right for you to bring GOsC into line with most other professional bodies and courts by introducing the option for a registrant to give undertakings provide always that they meet the criteria set out.”

I think that this ought to be considered for all matters of disposal, not just at ISO hearings (as mentioned in your draft note 2014/1) – defence representative.

16. Views on the draft Practice Note were also provided by a legal assessor:

“(a) I think that ultimately it must be a matter for a Committee as to whether or not it is satisfied that the undertakings offered are sufficient to protect the public. It seemed to me that the current draft might be amended by reframing the prohibition upon the Committee considering an Undertaking which did not meet the stringent criteria. I wonder whether it would be better expressed as the Committee having reference to the criteria before determining whether any undertaking would offer adequate protection to the public or whatever is the appropriate standard;

(b) I think that the monitoring/objective mechanism for checking compliance is potentially problematic. Whilst I understand the sentiment, I can imagine plenty of circumstances where it will simply not be possible for an osteopath to satisfy this requirement. If such a requirement would fetter the ability of a Committee to accept an undertaking in an otherwise appropriate case, that might be subject to challenge.”

17. GOsC Prosecutors who responded were generally in favour of the Practice Note:

“I am very much in favour of the Practice Note, and have nothing to add to the draft. My experience of cases in which undertakings have been put forward and agreed is that they assist in the pragmatic disposal of cases pending final determination.”

18. One prosecution firm made the following comments:

- a. “The GOsC may consider that an undertaking not to practise would not be acceptable and that this would bring the proposed process potentially into conflict with (or at least provide an alternative to) the provision within Sections 21 and 24 of the Osteopaths Act 1993. If it is intended that an undertaking not to practise would not be accepted, the GOsC may consider that this ought to be made clear and the reason for this explained.”
- b. “In relation to 7(e), the GOsC may consider it appropriate to replace the term 'would amount to Unacceptable Professional Conduct' with 'may amount to Unacceptable Professional Conduct' due to the question of UPC being a matter for the professional judgement of the Committee.”
- c. “The GOsC may wish to give consideration to the need for some evidence that the employer is content with any proposed arrangements suggested within the undertaking when it is made.”

- d. "The GOsC may consider that it would assist if any undertaking given would be subject to a review after a specified period providing the opportunity for the registrant to continue to provide evidence of continued compliance with the undertaking given and to its appropriateness to continue. This would necessitate some amendment to 7(l). It would be beneficial for any process of review to be made clear within the document as in the absence of any statutory framework to support this, any such review may need to be carried out administratively."
- e. "It is logical that the onus in terms of providing evidence of compliance is placed on the registrant due to the undertaking being a voluntary action that has been proposed by the registrant. In relation to the requirement to 'notify the GOsC immediately' (see 6(m)) where there is an actual breach or the potential for non-compliance, the GOsC may wish to consider a clear, plain language definition to the use of the term 'immediately' to avoid legal arguments over the extent of compliance with this."
- f. "Where there is a suggestion that there has been non compliance with an undertaking or where it could be considered that the continuation of the undertaking is no longer appropriate, the GOsC may consider it appropriate to clarify the potential impact of this on the registrant. For example, such a change in circumstances may necessitate further consideration by a Committee of the need for an interim order. Additionally any breach of an undertaking could potentially lead to further proceedings being initiated and an additional allegation being raised against the registrant. The GOsC may consider that reference to such potential consequences within the Practice Note would be of assistance to all parties."

Conclusion

- 19. The draft before the OPC has been amended to avoid the potential for fettering the discretion of the PCC, identified in paragraph 16 above.
- 20. In relation to the comments at paragraph 18:
 - a. We consider that the Fitness to Practise Committee should not fetter its discretion on the types of undertaking that it can consider. Before coming to its decision, it will take into account the advice of the legal assessor.
 - b. The draft before the OPC has been amended to replace 'would amount to Unacceptable Professional Misconduct' to 'may amount...'
 - c. The draft before the OPC has been amended to refer to the expectation that the registrant proposing undertakings will provide evidence that any relevant third parties are aware of the allegations made against the registrant; and are content with the undertakings being proposed.

- d. We do not consider that there is any power under the legislation to introduce a system of reviews for undertakings. Where the GOsC becomes aware that a registrant was not complying with undertakings provided to the PCC, it would be open to the GOsC to make a new application for an Interim Suspension Order.
- e. We do not consider that a definition of 'immediately' is necessary.
- f. The draft before the OPC has been amended to include a reference to the action that the GOsC may take in the event that it becomes aware that a registrant is not complying with undertakings provided by him or her.

Recommendation: to agree that the Practice Note should be recommended to Council for approval.

General Osteopathic Council

Investigating Committee, Professional Conduct Committee and Health Committee

Practice Note 2014/01

Consideration of Undertakings at Interim Suspension Order Hearings

Effective from: [date]

1. This Practice Note applies to the following statutory committees of the General Osteopathic Council—the Investigating Committee, the Professional Conduct Committee and the Health Committee (‘the fitness to practise committees’).
2. Sections 21 and 24 of the Osteopaths Act 1993 provide a power for the fitness to practise committees to impose an interim suspension order on a registrant.
3. The statutory test for the making of an interim suspension order is whether the relevant fitness to practise committee “...is satisfied that it is necessary to do so in order to protect members of the public...”
4. The Osteopaths Act 1993 and the rules of procedure which govern proceedings before the fitness to practise committees do not provide any power for a committee to impose conditions on a registrant’s practice on an interim basis.
5. However, in deciding whether or not it is necessary to make an interim suspension order, a fitness to practise committee may take into account undertakings which are offered by the registrant as to the conduct of his or her practice and future behaviour, pending the further investigation and final determination of the allegations made against him or her.
6. For the purpose of this Practice Note, undertakings are defined as solemn written promises which:
 - a. are made by the registrant to the fitness to practice committee considering allegations against him or her; and
 - b. set out the terms on which the registrant will voluntarily restrict his or her practice until the final determination of the allegations made against him or her.
7. A fitness to practise committee may take into account Undertakings which:
 - a. are in writing;
 - b. are addressed to the fitness to practice committee considering the allegation;

- c. are signed by the Registrant;
 - d. contain an express acknowledgement that the Registrant accepts that the undertakings constitute a solemn promise to the fitness to practise committee as to the conduct of his or her practice, or behaviour;
 - e. contain an express acknowledgement by the Registrant that a failure to comply with the undertakings made by him or her may amount to Unacceptable Professional Conduct;
 - f. contain express consent by the Registrant to publication of the undertakings on the GOsC website;
 - g. contain express consent by the Registrant to provision of the undertakings to any person that the GOsC considers appropriate in the public interest;
 - h. address the nature of the allegations made against him or her and clarify how the proposed restrictions would protect the public;
 - i. set out restrictions on the Registrant's practice in numbered paragraphs and without ambiguity;
 - j. set out restrictions which are measurable, and capable of being monitored;
 - k. provide a mechanism for providing objective evidence of compliance with the restrictions stated to the GOsC on a regular basis;
 - l. confirm that the restrictions will remain in place until the final determination of the allegations against him or her by the fitness to practice committee, or until such other date as may be stipulated by the fitness to practice committee;
 - m. include a requirement to notify the GOsC immediately if the Registrant becomes aware that he or she may not be able to comply with the restrictions.
8. When proposing Undertakings to a Fitness to Practise Committee that require monitoring or the involvement of third parties such as employers; a registrant will be expected to provide evidence to the Committee that any third parties are aware of the allegations that have been made against the registrant, and are content with the undertakings being proposed.

9. Where a Fitness to Practise Committee considers that any Undertakings provided by the registrant :
 - a) do not comply with paragraph 7; or
 - b) are insufficient to protect the public,it should consider making an interim suspension order.

10. Where the GOsC becomes aware that undertakings provided by a registrant are not or have not been complied with, it may apply for an Interim Suspension Order to be imposed on the registrant.