

Response to the General Osteopathic Council consultation – changes to Rule 8 Practice Note

September 2017

1. Introduction

- 1.1 The Professional Standards Authority for Health and Social Care promotes the health, safety and wellbeing of patients, service users and the public by raising standards of regulation and voluntary registration of people working in health and care. We are an independent body, accountable to the UK Parliament. More information about our work and the approach we take is available at www.professionalstandards.org.uk
- 1.2 As part of our work we:
- Oversee the nine health and care professional regulators and report annually to Parliament on their performance
 - Conduct research and advise the four UK governments on improvements in regulation
 - Promote right-touch regulation and publish papers on regulatory policy and practice.

2. General comments

- 2.1 We welcome the opportunity to respond to this consultation by the General Osteopathic Council (GOsC) on its draft Practice Note on consensual disposal Rule 8.
- 2.2 We were disappointed by the quality of the consultation materials, which do not explain what changes are being proposed or why. We sought – and received – answers from the GOsC on both these points – and found that this information was essential to understanding the changes. We consider that this basic information should have been published alongside the draft Practice Note, along with some assessment of the likely impact, and an evidence-base or arguments for the proposed policy changes.
- 2.3 We understand from the answers we received from the GOsC that the changes are largely being made to:
- streamline the process by allowing the decision as to whether the case can be disposed of under Rule 8 to be made by the Chair of the Professional Conduct Committee (PCC), rather than a PCC Panel
 - provide greater discretion to GOsC staff, PCC Chairs and Panels about what sorts of cases might be suitable for disposal under Rule 8, and

- reflect the updated guidance on what constitutes ‘unacceptable professional conduct’.
- 2.4 In addition, the Council paper relating to these changes was helpful in clarifying that the main purpose of the changes was to encourage greater use of the Rule 8 procedure.¹
- 2.5 While we understand the GOsC’s desire to streamline this process and encourage greater use of it, we find the revised Practice Note to be confusing and lacking in detail and clarity. We are concerned that the broad framework it sets out is too permissive, possibly to the detriment of public protection and the public interest. The replacement of the exclusion criteria in the current draft with discretionary guidelines seems to give decision-makers almost complete freedom over which cases can be disposed of under Rule 8.
- 2.6 Below we set out in more detail our concerns. We have not responded to the consultation questions, which we found to be focused on the way the information was presented in the guidance, rather than on its content or the policy changes.

3. Specific issues

Delegation of decisions to the PCC Chair about whether a case is suitable for consideration under Rule 8

- 3.1 We support the proposal to allow initial Rule 8 decisions to be made by the Chair of the PCC rather than a full panel. Cases would already have been considered by the Investigating Committee, and would then be referred for consideration by a full PCC whether under Rule 8 or not. We agree that such a measure could streamline the process without posing any risks to public protection or the wider public interest. We would expect the quality and consistency of these decisions to be monitored to ensure that the new process is fair and protecting the public.

Criteria for disposal of cases

- 3.2 We understand the GOsC’s intention to make better use of its Rule 8 procedure, particularly given that major legislative change for professional regulation will not happen in the short-term. We also support the use of consensual mechanisms where appropriate. However, it is important to bear in mind that the only available sanction under the GOsC’s consensual disposal route is admonishment, which is the least severe sanction under GOsC legislation, and places no restrictions on a registrant’s practice.
- 3.3 Broadly speaking, the amendments to the decision-making framework constitute a move from specific categories of case that are excluded from consideration under Rule 8, to an entirely discretionary framework with neither exclusion nor inclusion criteria. This change results in both a significant loss of

¹ GOsC Council Paper, May 2017. Item 8 – Rule 8 Practice Note. Available at: <http://www.osteopathy.org.uk/news-and-resources/document-library/about-the-gosc/council-may-2017-item-8-rule-8-practice-note/>

clarity and far greater discretionary powers for decision-makers. It could lead to decisions that fail to protect the public, maintain public confidence in the profession, and declare and uphold professional standards.

- 3.4 We see a conflation in the draft criteria between what makes a case suitable for consensual disposal, and what makes it suitable for admonishment. Either all cases that are suitable for admonishment at the hearing could have been disposed of through Rule 8 if the registrant had been willing, or there is an extra dimension to a Rule 8 decision that is not clearly set out in the Practice Note. Assuming that it is the latter, and because the existing Indicative Sanctions Guidance (ISG)² contains guidance on whether a case is suitable for admonishment, logically the criteria in the Practice Note should reflect what is in the ISG, with the addition of any considerations needed to determine whether the case would be suitable for consensual disposal. This does not seem to be the case.
- 3.5 As written, the draft Practice Note sets out a series of discretionary disqualification criteria (cases that are *unlikely* to be suitable, cases that *may not* be suitable), but does not explain how they are to be applied, namely when or why it might be appropriate for such cases to be disposed of a) consensually, and b) by means of an admonishment. There are also no specific inclusion criteria. Paragraph 34 lists a number of factors that *may* be taking into account, but it is unclear how much weight each should be given, or how and when they might be considered relevant or adequate mitigation for the serious allegations listed in paragraph 32, or for cases that meet the further criteria in paragraph 33. We would have expected to see *insight* and *risk of repetition* as factors that must be taken into account when determining whether a case might be suitable for consensual disposal under Rule 8.
- 3.6 The list in paragraph 32, which contains some very serious types of allegation, is of concern to us – to move from excluding these cases from Rule 8 consideration to including them is a significant change in policy. We would like to see the evidence supporting the decision that these types of allegation could be suitable for consensual disposal by admonishment, and under what circumstances. We are also concerned about the potential loss of public confidence in the regulatory process resulting from the use of the list in paragraph 32. Some indication of the circumstances in which such serious cases might be considered appropriate for consensual disposal could help to mitigate any loss of confidence.
- 3.7 We note that the draft guidance for registrants in Appendix A refers to cases that do not ‘fall within the criteria listed in the Practice Note’. Given that there are no exclusion criteria in the draft Practice Note, this would need to be amended. The broadening of the decision-making framework also raises the question of how a registrant would themselves be in a position to assess whether a case might be suitable for an application under Rule 8.
- 3.8 We are concerned that failure to have appropriate indemnity cover does not appear in the list of allegations that are unlikely to be appropriate for Rule 8

² Available at: <http://www.osteopathy.org.uk/news-and-resources/document-library/fitness-to-practise/indicative-sanctions-guidance/>

disposal – particularly as it features in the list of firm exclusion criteria in the current version of the Practice Note. We are aware that some cases involving indemnity cover are not serious, however some are, particularly if the failure is deliberate and therefore involves an element of dishonesty, or if it covers a long period of time.³ We would be concerned both about the impact on decisions on individual cases, and about the message being sent to registrants and patients, if the guidance downplayed the importance of being appropriately insured.

- 3.9 Overall, with this redrafted Practice Note, the GOsC would be moving from a clear set of criteria, to an entirely discretionary decision-making framework that would be too broad to operate safely, consistently, and in the wider public interest.

Statement setting out why a case is suitable

- 3.10 It is not clear to us why the draft Practice Note makes no mention of the statement of reasons for recommending a case for Rule 8, which in the current version forms part of the bundle for the first PCC consideration of a case. Given that greater discretion would be afforded to the PCC Chair and Panel, the reasons for the initial recommendation might be helpful to decision-makers later in the process.

4. Further information

- 4.1 Please get in touch if you would like to discuss any aspect of this response in further detail. You can contact us at:

Professional Standards Authority for Health and Social Care
157-197 Buckingham Palace Road
London SW1W 9SP

Email: dinah.godfree@professionalstandards.org.uk

Website: www.professionalstandards.org.uk

Telephone: 020 7389 8013

³ The GCC case we appealed concerning failure to have indemnity insurance resulted in the registrant being struck off. See *The Professional Standards Authority v. The General Chiropractic Council and Cameron Briggs*, [2014] EWHC 2190 (Admin). Available at: <http://www.bailii.org/ew/cases/EWHC/Admin/2014/2190.html>