

2019 Report to the Investigating Panel from the Independent Complaints Moderator for BAAC

This report is my eighth one as Independent Moderator of complaints for the British Acupuncture Council (BAAC). It covers the period 1 January – 31 December 2019 under the following headings:

- 1. Background**
- 2. Moderator role**
- 3. The BAAC complaints procedure**
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1. Background

The BAAC is a membership body and a professional regulator accredited by the Professional Standards Authority for Health and Social Care under its Accredited Register scheme.

All BAAC member practitioners are bound by a Code of Professional Conduct (updated January 2015), a Code of Disciplinary Procedures 2018 (updated October 2020) and a Code of Safe Practice (revised November 2016). It is the 2018 version of the Code of Disciplinary Procedures that was in force at the time of the complaints considered in this report. The Guide to Safe Practice was revised in 2018; unlike the Code of Safe Practice (2016), the Guide is non-mandatory and contains extensive good practice guidance.

The Codes are enforced by the BAAC's three Ethics Committees: Investigating Panel (IP), Professional Conduct and Competence Panel (PCCP) and Health Committee (HC). The panels/committees are supported and administered by the Ethics Department of the BAAC and its Professional Conduct Officer (PCO).

Complaints about a practitioner (the 'registrant') who is a member of the BAAC can be made by a member of the general public, professional regulator, patient, fellow practitioner or member of any committee or employee of the BAAC. The PCO considers if a complaint falls within the scope of the BAAC's Code of Professional Conduct and/or the Code of Safe Practice; if it does, then the PCO will notify the registrant and progress the complaint, including referring it to the IP.

The IP is made up of three members (one lay person, one acupuncturist and one person who is either lay or an acupuncturist), and is managed and supported by the BAAC's PCO. It is referred to as a filtering panel. Its powers are explained in the BAAC Code of Disciplinary Procedures (updated October 2020). The process is intended not to punish a registrant but to consider if the registrant's conduct has fallen short of the standards expected and is potentially in breach of the Codes. The IP itself has no power to sanction a member through fines or disciplinary action. Its role is to determine whether allegations should be referred to the PCCP or HC, specifically where it considers there is a realistic prospect of a finding of 'impairment' in relation to any allegation. It can recommend that the seriousness of the issues warrants temporary removal of the registrant from the register (suspension) pending consideration of the case by the IP, PCCP or HC. The IP can also decide to take no further action in relation to an allegation or make recommendations for service improvements ("Letter of Advice").

Complaints raising significant safety concerns can be considered, before investigation, by an Interim Orders Panel (IOP), which has the power to place temporary restrictions on registrants. The IOP does not investigate the complaint and cannot resolve disputes of fact; it makes a decision on whether an interim order is necessary for the public interest or the interests of the registrant. The IP, on the other hand, considers each allegation in the complaint, weighs evidence, and decides if there is a realistic prospect of a finding of impairment. The IP process therefore takes place following the IOP process, where the IOP is involved, and any interim order is only in place for as long as the full BAcC disciplinary progress takes to conclude.

2. Moderator role

My role as Moderator is set out in the BAcC Code of Disciplinary Procedures, Section 12. I have been appointed to review complaints made to the BAcC which the PCO decided not to refer to the IP and complaints that were referred to the IP but which the IP decided not to refer to the PCCP.

My role is to review those complaints, describe how they were handled, and comment on the way they were handled in terms of communication and consistency. Where appropriate, I can make recommendations for improvements in the way complaints are handled by the IP.

3. The BAcC complaints procedure

The complaints procedure sets out the steps in the complaints process, from the statement and supporting documents submitted by complainants through to the IP's decision. Practitioners complained of are required to provide a written response within 14 days of the BAcC requesting this, including copies of relevant patient notes. The IP then discusses the case at its next meeting, usually within one month.

The IP is entitled to ask for further information, including the complainant's comments on the practitioner's response, further relevant practitioner's notes and records, and a report from an independent Technical Assessor. The IP is also entitled to seek information and evidence from third parties and to seek advice from a lawyer or doctor. The IP then reviews any further information at its next scheduled meeting.

The IP must decide, following its consideration, whether there is a realistic prospect of a finding of impairment in relation to any allegation. Complainants are to be informed of the IP's decision within 14 days of the meeting at which the decision was made, although in practice this is usually done within 7 days of the decision meeting.

A guide to its complaints procedure (Information for Complainants), which clearly explains the role of the IP, the procedure, and what is required to submit a complaint, is sent to complainants and is also available on the BAcC website.

Under the 2019 Code of Disciplinary Procedures, both the complainant and the practitioner can appeal against a decision (including a decision not to refer a complaint to the PCCP or HC) made by the IP within 28 days of that decision (section 10).

4. Complaints this year: case study and observations

In 2019, the PCO received three complaints about practitioners. Two were referred to the IP, and one was not because on counsel's advice the BAAC decided not to pursue the complaint. In one of the two cases that went to the IP, the complainant appealed, and following the appeal process the decision was taken that no further action was necessary by the BAAC. I therefore did not review the handling of this complaint, because in effect the appeal had been the review.

I did review the other two complaints. In the case that went to the IP, the IP referred three of the seven allegations to the PCCP. I therefore reviewed the handling of the complaint in relation to the other four allegations that did not go further. In the case that did not go to the IP, I reviewed the handling of the complaint by the PCO.

I refer to the cases by the numbering system used by the IC. I provide a brief description of the issues only, and do not include any names of the complainant (referred to as 'C') or the registrant ('R'), in order to protect the anonymity of individuals involved.

Case study 1/2019

Issues: unsuitable premises used for treatment; use of 'practice' treatments; treatment without consent; inappropriate treatment; adverse effects of treatment; harassment; failure to maintain high standards of care, competence and conduct

C complained to the BAAC of adverse effects resulting from treatment received from R. C believed that he had suffered nerve damage as a result of moxabustin treatment by R, treatment he said lasted two hours and which C says he asked to be stopped. He also complained that R had treated him in inappropriate domestic settings. R agreed that she had provided treatments in a domestic setting. She disputed, however, that C had not consented and that the treatments were inappropriate. R believed that the complaint was made maliciously. The background, not disputed by either party, was that C and R had a relationship as friends that was sometimes intimate but that also involved arguments and resulting injunction orders against both.

Because of the seriousness of the allegations, the complaint was considered by an Interim Order Panel (IOP). R attended that meeting. The IOP issued an order, to be in place for 12 months or until the BAAC process had concluded, with several restrictions on R's practice. These included not treating C; only treating patients at one of three identified clinics; notifying the BAAC of any request for treatment elsewhere, and only providing that treatment with BAAC approval. The order also required R to obtain consent from patients for each treatment, to keep a record of that consent and a log of all patients, and to meet with a supervisor twice to discuss the issue of patient consent, with a report to be supplied by the supervisor to the BAAC.

The BAAC was clear that the decision of the IOP was not a decision on the merits of the allegations. The case was then considered by the IP, which reviewed the seven allegations.

The IP's consideration and decision

The IP found that sections of the Code of Safe Practice and Code of Professional conduct may have been breached, and it identified that three of the allegations should be referred to the PCCP. These related to use of inadequate premises for treatment; excessive moxa treatment in light of minimal case history and diagnosis; and failure to uphold high standards of care,

competence and conduct in relation to inadequate diagnosis, lack of recorded consent, inadequate case notes, and not keeping clear boundaries between personal and professional relationships.

The IP decided that no further action was required in relation to four of the allegations. These related to the allegations that treatments were 'practice' ones; that consent was not given for the moxa treatment; that nerve damage resulted from the treatment; and that R had harassed C.

Observations:

This was a difficult case in that it contained sensitive personal information about the parties and their relationship and it involved allegations of adverse effects of treatment. It was appropriate for the allegations to be considered by the IOP, given the seriousness of those relating to adverse effects of treatment. It is clear that the IP subsequently carefully considered all seven allegations and the responses to those. The notes of both the IOP and the IP meetings are clear and comprehensive. Communication with both C and R was timely and sensitive.

My only question about this case refers to a question raised about the submission of further evidence before an IP meeting. As I understand it, C submitted further medical evidence and gave permission for this to be shared with R, which would have been required if any allegations were subsequently referred to the PCCP because all information would be shared then with both R and C. The question in the notes of the IP meeting is whether a deadline should be set, beyond which further evidence would not be accepted for consideration by the IP. Has this been actioned?

Case study 3/2019

Issues: Behaviour and treatment by R in a personal capacity

This was an unusual complaint in that a large number of questions and allegations were put to the BAcC but none related specifically to acupuncture practice or to alleged breaches of the BAcC Codes.

C complained to the BAcC that her sister, R, had given inappropriate and dangerous massage treatments to her father while he was ill. She raised a number of questions about the behaviour of her sister, R, and other family members and explained that she had raised safeguarding complaints with other agencies. She believed the BAcC should investigate because the behaviour of R raised issues of the duty of care as a member of the BAcC.

R refuted the allegations and explained that there were complicated family dynamics behind the complaint.

After receiving correspondence from C and R, including the complaint and the response and associated evidence, the PCO decided to seek counsel's advice. Counsel reviewed the complaint and identified 70-80 separate complaints, mostly relating to allegations of abuse or failure of duty. In his view the complaint was possibly vexatious. He identified nine allegations and considered each carefully, concluding that that they did not relate to complaints about acupuncture practice and/or there was insufficient evidence to proceed.

The PCO then wrote to both R and C explaining that the BAcC would not take the complaint further.

Observations:

This was an unusual case involving difficult and sensitive family dynamics but without a clear link to alleged breaches of the BAcC codes. Therefore it was correct, in my view, for the BAcC to act on the advice of counsel and decide not to take the complaint further. The letters to both C and R were written with care and sensitivity, and careful notes were taken of phone calls, of which there appear to have been several with C.

One question is whether it would have been better to seek counsel advice before initiating the complaints process and requesting a response from R. Clearly both R and C went to some trouble to provide information on the complaint, and it could be argued that they would have been spared the time and expense of doing so had the BAcC made its decision earlier not to pursue the complaint. However, in my view it was right for the BAcC to inform R of the complaint and give her the opportunity to reply.

5. Conclusions and recommendations

I have no concerns about the BAcC's handling of either of the two complaints I reviewed.

In case 1, my only question is a procedural one: what consideration has been given, and action taken, to the suggestion of a deadline beyond which further evidence would not be accepted for consideration by the IP? I do not have a view on this but want to flag it as a suggestion made.

In case 3, my question is again a procedural one: whether it was correct to seek further information from C and R before a decision was made to progress the complaint? I think that this was correct, if only to allow for full transparency and enable R to respond to what clearly were concerning complaints.

Previous recommendations:

Last year I had a few comments to raise about the IP's consideration of specific allegations.

One involved the issue of when, following a complaint alleging adverse effects of treatment, registrants are expected to complete an adverse incident report form. I suggested that it may be helpful for the BAcC to clarify in what circumstances it is appropriate for the IP to expect a registrant to complete an adverse incident report form.

The other involved the issue of when the BAcC expects a complainant to raise a complaint first with the registrant, before taking it to the BAcC. The BAcC's procedure for making a complaint about a registrant is explained on the BAcC website and clearly expects a complainant to raise a complaint directly with a registrant as a first step. Complainants can, however, approach the BAcC without doing so, if for some reason they are uncomfortable raising a complaint with the registrant. Generally, I would expect to see that the complaint had first been considered by the registrant. In the two cases I reviewed from 2019, however, given the personal relationships and, in one case, history of injunction orders, I believe it was appropriate for the BAcC to accept the complaints without that first consideration by the registrant.

My final observation from last year's report was a general point about the wording now used in IP's decisions ('not a realistic prospect of a finding of impairment' in relation to allegations made), which was new to the 2018 Code of Disciplinary Procedures (section 7.1). I find the language potentially confusing. It would be helpful to have a clear and accessible explanation of this for both complainants and registrants.

As with last year, I would like to note the excellent record-keeping by the PCO and her team. In addition, correspondence – some of which conveys difficult decisions to complainants and registrants – is clear and sensitively worded. All procedural timescales were met in the handling of these complaints.

I have no new recommendations to make.

I would appreciate an update on my recommendations from last year:

- Consider giving complainants and registrants a clear explanation of the language used in relation to IP findings ('not a realistic prospect of a finding of impairment' in relation to allegations made).
- Consider whether the IP should have gone back to R in this case to ask if she had advised C on side effects.
- Consider clarifying in what circumstances it is appropriate for the IP to expect a registrant to complete an adverse incident report form.

Thank you for the opportunity to consider the work of the IP in 2019. I would like to acknowledge the continued support and cooperation of Caroline Jones, the BAcC Professional Conduct Officer, and of the IP members.

Margaret Doyle
Moderator, BAcC
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