



General
Osteopathic
Council

Council
4 February 2016
Fitness to practise report

Classification	Public
Purpose	For noting
Issue	Quarterly update to Council on the work of the Regulation Department and the GOC's fitness to practise committees.
Recommendation	To note the report.
Financial and resourcing implications	Financial aspects of fitness to practise activity are considered in the Chief Executive's Report.
Equality and diversity implications	Ongoing monitoring of equality and diversity trends will form part of the Regulation department's future quality assurance framework.
Communications implications	None
Annex	Dashboard Report
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Fitness to practise case trends and dashboard reporting

1. Following discussion at Council in October 2013, it was agreed that a dashboard format would be introduced using the indicators of efficiency, effectiveness and economy, and including comparative trends over time.
2. The dashboard report is attached at the Annex. Comparative data from the same quarter last year has been included (the figures are bracketed and highlighted in red).
3. In this reporting period, the Regulation Department received 94 informal complaints and 16 formal complaints. During the same period last year, the figures were 11 informal complaints and 17 formal complaints.
 - a. Of the 94 informal complaints: 76 related to advertising; eight related to concerns about treatment; three concerned patient modesty and dignity and/or transgressing sexual boundaries; three related to issues of general conduct; two with practising without insurance; and the remaining being for advertising, confidentiality of patient notes and for receiving a conviction.
 - b. Of the 16 formal complaints: five related to treatment, five to general conduct, which included patient modesty and dignity and/or transgressing sexual boundaries; three with failure to have in place professional indemnity insurance; with the remaining three concerning advertising, conviction and dishonesty.
4. Two applications were made to the Investigating Committee for the imposition of an Interim Suspension Order, and one application was made to the PCC/HC. During the same period last year, the number of applications made was four and two respectively.
5. Of the three Interim Suspension Order (ISO) applications made during this reporting period, two related to alleged transgression of sexual boundaries/failing to uphold patient dignity and modesty with the remaining application relating to dishonesty by not working within one's approved training and competency. Of the three ISO applications, one was granted.

Advertising complaints

6. As reported in detail within the last quarterly report to Council in November 2015, since July 2015, we have been receiving approximately 25 complaints per month relating to osteopaths advertising on their websites. As at 8 January 2016, the total number of complaints relating to advertising the Regulation Department has received is 180.
7. The current position and progression of the advertising complaints is set out in the table below:

Number of Advertising Complaints received	Advertising complaints closed under the threshold criteria	Advertising complaints closed other than under the threshold criteria	Total number of Advertising complaints closed	Total number of Advertising complaints referred by IC to a hearing
180	62	2	64	0

Costs considerations

8. During this reporting period, the Regulation Department serviced 14 Committee and hearing events, including substantive, review and ISO hearings before the PCC and IC as well as IC meetings and a PCC Training Day.
9. The Regulation and Registration and Resources Departments are continuing to monitor the effect of these increases in hearing costs and related matters and are in the process of actively developing effective cost saving strategies (e.g. negotiating fixed fees with external legal providers) which will not compromise the quality or effectiveness of the fitness to practise function.

Fitness to practise case load

10. As at 31 December 2015, the Regulation Department's fitness to practise case load was 183 fitness to practice cases (46 formal and 137 informal).

Case Progression

11. In this reporting period, the median figures for the length of time taken for cases to be screened and to be considered by the Investigating Committee and Professional and Conduct Committees are all within KPI.
12. The median figures for this reporting period are as follows:

Case stage	Key Performance Indicator	Median figures achieved this quarter
Screening	3 Weeks	1
Investigating Committee	17 Weeks	15
Professional Conduct Committee	52 Weeks	46
Health Committee	52 Weeks	N/A (no HC cases heard)

13. During the reporting period, the Investigating Committee adjourned three cases in order to obtain further information.

14. As reported in in the last quarterly report to Council in July 2015, one of the initiatives currently being implemented within the Regulation team is the development of an electronic case management system (CMS) utilising and building on the existing Integra system. Moving to a fully integrated CMS would enable more extensive and precise reporting to be effected while enabling enhanced monitoring of legal costs.
15. On 15 November 2015 the Regulation Manager and the Head of Registration and Resources met with our external providers and discussed how the Integra system can be developed and tailored to increase its functionality to suit requirements. Our external provider was able to demonstrate how Integra had significant capacity to be used as a fitness to practise case management system (CMS) and could facilitate many of the enhancements to work practices drawn up by both Regulation and Registration. On 14 January 2016 they were given a 'tour' by the Bar Standards Board of its CMS and discussed some of the issues that arise when implementing a new CMS. Pending the outcome of this meeting, it is anticipated that the CMS will be rolled out in stages commencing in the first quarter of 2016. This will help facilitate embedding of the new changes while providing the opportunity for close monitoring of its operational effectiveness to be undertaken.
16. During the second half of January 2016, the Head of Regulation will be undertaking an internal audit of formal cases. The audit will sample a cross section of cases spanning the period 1 May 2015 up to and including December 2015, to assess our adherence against our published key performance indicators and internal timescales. Broadly, the remit of the audit has a similar focus to the peer review audit conducted in February 2015 and will encompass whether there is evidence that the Regulation team are continuously monitoring and assessing risk. However, the audit will also assess our performance in relation to case progression and periodic case reviews together with keeping all parties in a fitness to practise case updated on the progress of their case so that they feel supported to participate effectively in the process. Council will be updated on the outcomes of this audit in the next fitness to practise quarterly report.
17. In relation to whether cases before the PCC have been properly brought, in this reporting period, there were no successful 'half time submissions' under rule 27(2) or 27(6) of the PCC Rules¹.
18. During this reporting period, UPC was found in five out of the seven cases considered by the Professional Conduct Committee. One case was adjourned part heard and no UPC was found in the other case.

¹ Under rule 27(2), a registrant may submit that any facts admitted are insufficient to support a finding of UPC or Professional Incompetence. Under rule 27(6), after the close of the Council's case, a registrant may submit that any facts adduced or admitted are insufficient to support a finding of unacceptable professional conduct (UPC).

Section 32 cases

19. Under section 32 of the Osteopaths Act 1993, it is a criminal offence for anyone who is not on the GOsC's register to describe themselves (either expressly or by implication) as an osteopath.
20. At its meeting in November 2014, the Council approved a new Section 32 Enforcement Policy.
21. The Regulation department continues to act on reports of possible breaches of section 32, and as at 31 December 2015, was currently handling 14 active section 32 cases.
22. The Regulation Department has sought legal advice and is in the process of commencing a prosecution under section 32 against a former registrant.

Judicial Reviews and appeals

23. On 26 November 2015, an appeal against a decision of the Health Committee to impose an interim suspension order against a Registrant in August 2015 took place before Mr Justice Foskett at the Royal Courts of Justice (RCJ), London. The appeal was dismissed. Foskett J approached the appeal as a statutory appeal and not by way of a judicial review. He delivered an oral judgment within which he concluded that the Health Committee was justified in making an interim suspension order pending the conclusion of the Registrant's final hearing and he could detect no basis to interfere with the Committee's decision. However, we are still awaiting the final written judgment to be published which will then be circulated to all Committee members in the next edition of the fitness to practise committee bulletin.
24. On 4 January 2016, the GOsC was served with a number of claim forms stamped by the Queens Bench Division at the RCJ, pertaining to what would appear to be a claim for damages by a Registrant who is currently the subject of fitness to practise proceedings. This is still in the very early stages and we are liaising closely with the court to resolve matters expeditiously. The outcome of this will be reported in the next report to Council.

Future fitness to practise reporting

25. In November 2015, the Professional Standards Authority (PSA) introduced a new fitness to practise dataset which it has requested each healthcare regulator to provide quarterly. We are in the process of developing an amended format for presenting fitness to practise data which will be reflective of the PSA proposed key comparators. It is anticipated that a draft will be provided at the meeting of Council in May 2016 for discussion before any changes in fitness to practise data are implemented.

Training and development/working with other regulators/good practice

26. On 16 December 2015, the Head of Regulation met with the Head of the Fitness to Practise at the General Chiropractic Council's offices. This was an interesting and useful introductory meeting. Topics covered included joint working and perceived advantages of working together to effect rule changes, the use of in house advocacy and the introduction of case management directions to prepare cases for a hearing following referral from the Investigating Committee.
27. As part of our key initiatives within the Regulation team, we are conducting a review of GOsC guidance documents. Part of this review includes producing new guidance on drafting allegations or particulars of charge for fitness to practise cases before the Investigating Committee and Professional Conduct and Health Committees. On 10 November 2015, all Regulation Team Members attended a half day training event on charge drafting hosted by Blake Morgan at their London Offices in Smithfield.
28. On 8 January 2016, the Regulation Manager attended a meeting of the Nursing and Midwifery Council's Decision Review Group (DRG). The DRG examines and reviews final FtP decisions of the NMC's FtP Panels. This is to quality assure the decisions and recommend changes to practice and procedure that arise from them.

Electronic case papers project

29. As reported in the previous fitness to practise report to Council, the GOsC commenced a three month pilot in July 2015, whereby members of the Investigating Committee and the Legal Assessors were provided with access rights to case papers and other documents on the GOsC online document library. The pilot was extended until the end of December 2015. Following a review of the feedback, which was very positive, it has been decided to provide electronic case papers to Professional Conduct Committees and Health Committees in advance of the hearing in all cases from 4 January 2016 onwards. It is anticipated that this will reduce costs as hearings will require less time to complete while improving hearing efficiency and data security.

Other issues

30. The PSA's appeal threshold for appeals has changed for all regulators as of 31 December 2015. Rather than unduly lenient decisions, the Authority may now refer decisions to the courts which are not sufficient (whether as to a finding or a penalty or both) for the protection of the public. Consideration of whether a decision is sufficient for the protection of the public involves consideration of whether it is sufficient:
 - a. to protect the health, safety and well-being of the public

- b. to maintain public confidence in the profession concerned, and
 - c. to maintain proper professional standards and conduct for members of that profession.
31. On 21st December 2015, Sarah Plaschkes, one of the Legal Assessor's appointed last year, was sworn in as a Circuit Judge and has been deployed to Kingston Crown Court. Unfortunately, this means she will no longer act as a Legal Assessor to the GOsC Statutory Committees.

Recommendation: to note the report.