



General
Osteopathic
Council

Council
13 November 2015
Fitness to practise report

Classification	Public
Purpose	For noting
Issue	Quarterly update to Council on the work of the Regulation department and the GOsC's fitness to practise committees.
Recommendation	To note the report.
Financial and resourcing implications	Financial aspects of fitness to practise activity are considered in (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 61 informal complaints and 36 formal complaints. During the same period last year, the figures were 22 informal complaints and 9 formal complaints.
 - a. Of the 61 informal complaints, 50 related to advertising, 4 related to concerns about treatment; 3 concerning patient modesty and dignity and/or transgressing sexual boundaries; 2 with practising without insurance and 1 for receiving a conviction.
 - b. Of the 36 formal complaints, 25 related to advertising, 4 to treatment, 3 to dishonesty 3 concerning patient modesty and dignity and/or transgressing sexual boundaries and 1 with failure to have in place professional indemnity insurance.
 - c. On 8 October 2015, a further 25 advertising complaints were received. This brings the total to 100 complaints received so far regarding advertising on osteopaths' websites. Broken down, this translates to 25 complaints being received each month since July 2015. Adding this to the 4 complaints received in April 2015, the Regulation Department, at present, is managing 104 complaints relating to advertising. The current prediction is that this figure is likely to rise in the coming months.
4. Broadly, the 100 complaints allege that claims on osteopaths' websites might be misleading and cannot be substantiated, and therefore do not meet the requirements of the UK Code of Non-Broadcast Advertising, Sales Promotion and Direct Marketing (CAP code). The complaint alleges that a failure to meet the CAP Code is therefore a breach of the Osteopathic Practice Standard D14 (2).
 - a. These complaints are being managed within existing financial and people resources and currently there are no immediate financial or resourcing implications. As detailed elsewhere in this report, a Regulation Officer has been appointed on a temporary basis enhancing the capacity of the team generally. This has assisted in enabling the increase in complaint numbers to be absorbed within the existing fitness to practise caseload. Additionally, the GOsC has been working closely with both the ASA and CAP team in effectively managing these complaints.

- b. All 100 complaints received have been risk assessed, with a referral to another external body for investigation being made in one case. After further investigation, 25 cases have been opened as formal cases and screened, in accordance with our procedure for handling cases where the Threshold Criteria may apply. As at 24 October 2015, 10 cases have now been closed by Screeners as not meeting the threshold for referral.
- 5. One application was made to the Investigating Committee for the imposition of an Interim Suspension Order, and four applications were made to the PCC/HC. During the same period last year, the number of applications made was three and zero respectively.
- 6. Of the five Interim Suspension Order (ISO) applications made during this reporting period, three related to alleged transgression of sexual boundaries/ failing to uphold patient dignity and modesty with the remaining two relating to dishonesty by not working within one's approved training and competency and a registrant's health.
- 7. Of the five ISO applications three were granted.

Costs considerations

- 8. During this reporting period, the Regulation Department serviced 16 Committee and hearing events, including substantive, review and ISO hearings before the PCC and IC as well as IC meetings.
- 9. As previously indicated to Council, the trend regarding an increase in the number of interim order applications continues and this is a significant contribution to the increase in fitness to practise costs.
- 10. 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. moving towards 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

- 11. As at 24 October 2015, the Regulation Department's fitness to practise case load was 175 fitness to practice cases (75 formal and 100 informal).

Case Progression

- 12. 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.

13. The median figures for this reporting period are as follows:

Case stage	Key Performance Indicator	Median figures achieved this quarter
Screening	3 Weeks	2
Investigating Committee	17 Weeks	9
Professional Conduct Committee	52 Weeks	40
Health Committee	52 Weeks	0

14. During the reporting period, the Investigating Committee adjourned five cases in order to obtain further information.
15. 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. As the first step in the process the Regulation team, at an away day on 3 September 2015, mapped out in detail the existing fitness to practise procedure from end to end.
16. The Head of Registration and Resources and the Regulation Manager are in the process of arranging a meeting to take place in November 2015 with our external providers to discuss how the Integra system can be developed and tailored to increase its functionality to suit requirements. 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.
17. We will be conducting a review of the existing suite of case management documents currently utilised by the regulation team with a view to streamlining and collating what are currently several separate documents into one overarching investigation case plan document which captures key information (such as internal and external KPI's and active case progression) but also incorporates the draft particulars of concern set against the evidential strengths and weaknesses of the case.
18. During the reporting period the Regulation Team undertook an audit of all open informal complaints. All of the 62 informal complaints that were open as at the commencement of the audit (23 July 2015) were reviewed. The review found no 'red flag' cases had been missed. Following the review 31 complaints were able to be closed. Of these cases the majority had been dealt with within the time frames set out in the Regulation Manual, but had not been closed

administratively after the complainant had failed to respond or pursue their complaint. Case handlers have been reminded of the need to follow the informal case handling procedures to ensure that informal cases are closed in a timely manner.

Indicators of whether cases are being properly brought

19. 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.
20. During this reporting period, UPC was found in two out of the five cases considered by the Professional Conduct Committee.

Section 32 cases

21. 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.
22. At its meeting in November 2014, the Council approved a new Section 32 Enforcement Policy.
23. The capacity of the Regulation team was recently boosted with the appointment of a temporary Regulation Officer on 1 September 2015 for an initial period of six months. The main purpose of the Regulation Officer's role is to implement the Council's fitness to practise and protection of title policies and procedures under the supervision of the Regulation Manager. However, the Regulation Officer has also been assisting in the processing of the advertising complaints the Regulation Department has received in this period.
24. As at 1 September 2015 there were 58 active section 32 cases. A review of these cases by the Regulation Manager and the new Regulation Officer resulted in 34 cases being finalised. This was due to either a satisfactory response having been received or insufficient evidence being available to proceed with enforcement action in accordance with the Council's enforcement policy. All remaining active S32 cases have been actioned in accordance with the policy.
25. The Regulation department continues to act on reports of possible breaches of section 32, and as at 24 October 2015, was currently handling 34 active section 32 cases.

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").

Judicial Reviews and Appeals of decisions made by committees

26. The statutory appeal, *Shaw v General Osteopathic Council*, took place on 28 July 2015, before Mr Justice Kerr at the Royal Courts of Justice (RCJ), London. The appeal against a decision of a Professional Conduct Committee was dismissed with costs being awarded to the GOsC. This is an important decision where the concept of unacceptable professional conduct has been explored further by the courts. It will require, in certain cases, a more nuanced approach from Legal Assessors in the advice they provide to the PCC both in terms of the meaning of 'moral opprobrium' and the threshold to be reached for conduct to be 'serious'.
27. On 10 September 2015, the GOsC received a notice of appeal against a decision of the Health Committee to impose an interim suspension order against the Registrant in August 2015. This appeal has been listed for a two hour hearing on 26 November 2015 at the RCJ.

Feedback loops

28. An initial meeting with the charity, Witness Support, took place on 2 July 2015. At this meeting the GOsC discussed developing a service where complainants and witnesses giving evidence on behalf of either party involved in a hearing are able to access support from the Witness Service. The current position is that Victim Support is in the process of modelling and costing an offer to the GOsC.
29. Following a joint letter to osteopaths being issued by GOsC, CAP and the ASA in September 2015 to the osteopathic profession regarding compliance with the CAP Code and Guidance, a meeting took place between the GOsC, CAP, ASA and the Institute of Osteopathy at the ASA offices on 21 September 2015. The agenda covered the management of advertising complaints and clarifying existing CAP advice to osteopaths to improve compliance.
30. The second Committee circular, designed specifically for GOsC fitness to practise committees, was distributed to all Committee members and Legal Assessors in October 2015. Within this edition, the Regulation team provided a regulatory case law update and commentary on the reported case of *Shaw v General Osteopathic Council* [2015] together with an update on developments on the electronic case papers pilot. It is intended that this circular will be issued at least quarterly or more frequently if required.

Training and development/working with other regulators/keeping abreast of good practice

31. On 14 September 2015, the Head of Regulation attended the Fitness to Practise Directors meeting hosted by the General Chiropractic Council. At this meeting the group discussed, amongst other matters, the future prospects for the Regulation of Health and Social Care Professions Bill and the current section 60 orders for the Nursing and Midwifery Council, the General Dental Council and the

General Pharmaceutical Council. There was also an interesting discussion on the significant increase in complaints some healthcare regulators are experiencing with the attendees identifying the reasons and any research undertaken in this area that may assist in understanding the general upward trend in complaints received from the public.

32. All Regulation Team Members attended a training session on how to assess and prepare section 32 cases for prosecution on 11 August 2015. They also attended Cross Regulatory Equality and Diversity forums, a Victim Support Briefing, computer training in Excel and Word, Indemnity Insurance Provider meeting and a variety of regulatory law seminars.

Pilot scheme on implementing electronic case papers

33. 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, DocMonster. As no IC meeting was arranged for October 2015, it has been decided to extend the pilot until the end of December 2015.
34. During this period it has also determined to extend the pilot to all Legal Assessors sitting on interim suspension order hearings and final fitness to practise hearings from November 2015.
35. Feedback so far has been very positive and it is anticipated that the provision of electronic case papers and bundles to the PCC/HC in all hearings will commence from January 2016.

Implementation of the guidance on Threshold Criteria for Unacceptable Professional Conduct

36. The guidance on the Threshold Criteria for Unacceptable Professional Conduct came in effect on 18 May 2015. However, following feedback from Committee members a further dedicated training event took place externally on 29 September 2015. This training session, facilitated by Bevan Brittan Solicitors, covered how in practice Investigating Committee members should apply the Threshold Criteria to typical GOsC cases utilising three anonymised case studies.
37. This necessitated further amendments having to be made to the guidance to screeners and screener's reports and the Regulation Manual has also been updated with a new section inserted which covers arranging for cases to be screened where the threshold criteria may apply.

Annual training for the Investigating Committee and Professional Conduct Committee

38. The agenda for the annual training day for the Professional Conduct Committee/Health Committee on 27 November 2015 has been confirmed. The agenda includes an interactive session, involving role play using trained actor-facilitators. The training objectives for the day will focus on appropriate questioning of vulnerable witnesses. It is hoped this will assist Committee members in developing a greater critical analysis of evidence by focusing on the clarity and consistency of a witness's evidence whilst drawing less assumptions. This training session will be augmented by a separate session provided by Victim Support in the afternoon.

Witness Guidance Leaflet

39. At its meeting on 13 October 2015, the OPC considered the draft guidance for witnesses. This guidance has been developed as part of a range of support tools the GOsC is planning to put in place to ensure witnesses are properly assisted and are enabled to give best evidence. Feedback from Victim Support has been incorporated within the guidance and wider involvement of the Patient Partnership Group and witnesses who have attended GOsC fitness to practise hearings will also be sought before the guidance is finalised.

Recommendation: to note the report.