



Council
12 November 2015
Fitness to practice committee Annual Reports 2014-15

Classification	Public
Purpose	For noting
Issue	Each committee is required to report annually on its work to Council. These reports cover the period 1 October 2014 to 30 September 2015.
Recommendation	To note the Annual Reports of: a. Investigating Committee b. Professional Conduct Committee c. Health Committee
Financial and resourcing implications	None
Equality and diversity implications	Ongoing monitoring of equality and diversity trends in the decisions made by the fitness to practise committees form part of the Regulation Department's quality assurance framework.
Communications implications	None
Annexes	A. Investigating Committee Annual Report B. Professional Conduct Committee Annual Report C. Health Committee Annual Report
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Investigating Committee Annual Report

Introduction

1. This is my fourth report to the Council. The period covered by this report is from 1 October 2014 to 30 September 2015.
2. I have included, in bold and in brackets, figures from the 2013-14 and 2012-13 years for comparison. However, it should be noted that the period covered by the report provided to Council in 2012-13 was 1 December 2012 to 30 September 2013 (a period of ten months, as against the 12 month period covered in this report and the 2013-14 report).
3. In making this report I am conscious that the Council is provided with a quarterly report on the work of the IC and the Osteopathic Practice Committee also considers papers on fitness to practise matters. To some extent this report will repeat information previously provided to the Council.

Meetings of the Investigating Committee

4. During the twelve months covered by this report there have been eight meetings of the IC to consider complaints (2013-14 comparison: nine 12-13 comparison: seven in ten months). One meeting was an 'all members' meeting primarily for training, where all members are invited, and the remaining seven have each been attended by five or seven members of the Committee.
5. In addition, panels of Committee members have sat on 12 occasions to consider applications by the Council for the imposition of Interim Suspension Orders on registrants **(2013-14 comparison: eight 12-13 comparison: five)**.

Casework

Numbers of complaints and the Committee's decisions

6. During the period accounted for in this report, the IC has made decisions on 43 complaints against registrants (2013-14 comparison: 41, 12-13 comparison: 30). In 22 of these, the complaint was referred to the PCC, and one case was referred to the Health Committee (54% complaints referred). In 20 cases, the Committee decided that there was no case for the registrant to answer (2013-14 comparison: 22 'case to answer' 16 'no case to answer' [56% referred] 12-13 comparison, 20 'case to answer' eight 'no case to answer' [71% referred]).
7. In comparison to the last reporting period, the number of cases considered by the IC increased by two cases and the Committee held one fewer meeting. There was a decrease in the number of health matters being referred to the Health Committee.
8. In all but 10 cases, the IC was able to make a decision when the complaint was first considered by the Committee. In these 10 cases, the Committee adjourned

the case to allow for further investigations to be carried out or to afford the registrant further time to respond to the complaint **(2013-14 comparison: five adjournments, 12-13 comparison, two adjournments)**.

9. The IC was asked to provide its view on whether a hearing should be held in relation to two complaints that it had previously referred to the Professional Conduct Committee. This procedure is followed where a complaint has been referred by the IC to the PCC but subsequently further information comes to light which calls into question whether a hearing should go ahead (whether the hearing goes ahead is a decision for the PCC not the IC) **(2013-14 comparison two cases, 12-13 comparison three cases)**.

Issues raised by complainants

10. The complaints considered by the Committee covered a wide variety of areas including:
 - Providing inappropriate treatment
 - Advertising on osteopaths' websites
 - Failure to respond to complaints appropriately
 - Providing treatment without appropriate qualification
 - Breaching patient confidentiality and data security
 - Failure to explain the risks of treatment
 - Failure to obtain valid patient consent for examination and/or treatment
 - Failure to communicate effectively with patients
 - Failure to have in place professional indemnity insurance
 - Disputes between osteopaths, including use of website or domain names and disputes arising from the breakup of business arrangements
 - Failure to respect patient dignity and modesty
 - Dishonesty
 - Concerns about the health of registrants
11. Other areas of concern include the crossing of appropriate professional boundaries, both friendship and the exploitation of patients, and sexually motivated conduct. These have featured in 11 cases this year **(2013-14 comparison eight cases 2012-13 comparison, six cases)**.

Targets

12. Once a complaint is received by the GOsC, it must be screened by a registrant member of the IC in order for it to be considered by the Committee. The GOsC target is for screening to be completed within three weeks of receipt by the GOsC. That target was met in all cases and screening was usually much quicker (sometimes as little as one or two days).
13. The GOsC also has a target for cases to be considered and determined by the IC within four months of receipt of a formal complaint. Of the 43 considered and determined in this reporting period, 36 were determined within target and 7

cases were outside (84% within target)¹ **(2013-14 comparison 23 were determined within target and 18 cases were outside [56% within target]², 2012-13 comparison 18 cases within target [60%] and 12 outside target).**

Interim suspension orders

14. There has been an increase in the number of Interim Suspension Order hearings compared to last year.
15. During the period of this report, the Committee considered whether to impose an Interim Suspension Order in 12 cases. It imposed five Orders and accepted an undertaking in one other case. It made no order in the other six cases **(2013-14 comparison 8 applications [four orders made], 2012-13 5 applications [3 orders made]).**

All members meeting

16. An all members meeting and training day was held on 18 May 2015 which included a workshop on the Duty of Candour, training on the new Threshold Criteria and a case law update. The Committee took the opportunity to consider as a whole, the report of the review of Committee decisions undertaken by Bevan Brittan LLP.
17. During the afternoon session, members took part in a workshop on the Duty of Candour. They were also given an update from the PSA on its activities and its criterion for reviewing decisions under Section 29. Members also took part in an interactive discussion on data protection presented by Antonis Patrikiou of Field Fisher.
18. Members very much appreciated the opportunity to meet with all colleagues to discuss topics of common interest and to receive news and training.
19. Most of the Committee also attended a supplementary training event on 29 September on the threshold criteria. This was organised in response to the discussion in May and helped to develop members' understanding of this development and increase confidence in the increased roles that both lay and professional members have in applying the criteria.

Composition of the Investigating Committee

20. There were no changes to membership of the committee during the period. However, the Council has started the process of recruiting two new lay and two

¹ This figure does not include cases in which the IC is asked to express its view on whether a hearing should be cancelled. The IC considered two such cases within this reporting period.

² This figure does not include cases in which the IC is asked to express its view on whether a hearing should be cancelled. The IC considered two such cases within this reporting period.

osteopath members by 1 April 2016 to take the place of those members whose terms of membership end then.

21. I would like to place on record my appreciation for the considerable contributions made by those members who will be leaving in 2016 – Charles Dunning, Anne Johnstone, Abigail Miller and Michael Yates.

Procedural Changes

22. There have been a number of changes this year including:

- Introduction of the Threshold Criteria for Unacceptable Professional Conduct (May 2015)
- Updates to the IC Guidance and Screener's Guidance and decision template

Of these the most significant are the Threshold Criteria which are designed to assist the Committee to ensure that resources are used effectively to protect the public and are not diverted towards investigating matters that do not raise cause for concern.

Support to the Committee

23. New Legal Assessors were appointed by the Council with effect from 1 April 2015. The pool of legal assessors now numbers 14.
24. The IC has continued to be well supported by Legal Assessors in the reporting period.
25. The Committee has also been well supported by the GOsC's staff in this period, for which we are especially grateful given the changes that have taken place in the regulation team. Sheleen McCormack, who was appointed this year, becomes the third Head of Regulation in the last four years. The committee was pleased to see Vanessa Tailor return as the Regulation Assistant.

General reflections

26. It is very difficult to establish any trends when the number of complaints is very low but that said there has continued to be a small rise in the number of complaints as well as a significant increase in the number of cases where an application for an ISO is made. As with last year Committee members have noticed an increase in cases where it is alleged the registrant has crossed professional or sexual boundaries, which has fed the increase in the number of ISO hearings. I cannot say why there has been this increase.
27. The other area of note is a number of complaints alleging misleading advertising.

28. In most other respects the overall workload and performance of the committee seems to reflect that in 2013-14; more cases were adjourned on first coming before the committee but more cases were resolved within the target times.
29. As in previous years I have been struck by the very wide variety of allegations made against osteopaths and by the differences in allegations when compared to other healthcare professions of which I have experience. Three differences stand out. First there are very few allegations that an osteopath has been convicted of or cautioned for a criminal offence. Second a noticeable proportion of allegations concern commercial arguments between rival osteopaths in the same geographical area. These often involve allegations that an osteopath has 'stolen' data (which then enables him to approach prospective patients) or has advertised his services in such a way as to increase unfairly his caseload to the detriment of rival osteopaths. The threshold criteria may have some impact on this area. Finally the number of complaints of crossing of professional and/or sexual boundaries is not something I have encountered elsewhere.

James Kellock
Chair, Investigating Committee
25 October 2015

Professional Conduct Committee Annual Report

Overview

1. This year has been a period of change for the PCC during which the Council confirmed the substantive appointment of the chair of the Committee in November 2104, the appointment of two new panel chairs who began sitting in March 2015 and the recruitment of a pool of new legal assessors, effective from 1 April 2015.
2. There has been considerable focus on enhancing the efficiency and effectiveness of the Committee, achieved through the leadership of the chairs in changing ways of working for panels to make sure time is properly used. This has included strategies to avoid adjournment and delay, agreeing timetables with parties at the outset and ensuring these are adhered to as the hearing progresses, managing the performance of the legal assessor in drafting, requiring joint expert reports where appropriate and managing the time spent in camera. Previous initiatives such as ceasing the practise of requiring witnesses to read out their statements and moving to the handing down of the panel’s decisions (except where members of the public are present) are also now well embedded.

Matters considered by the PCC

3. This 2014/15 annual report covers the period 1 October 2014 to 30 September 2015. The number of matters considered by the PCC during this reporting period is set out below. For comparison, the figures in the last reporting period are also given (*please note that the previous period was 14 months long as a result of an adjustment made in 2014 to enable Council to have the most recent information available*).

1/10/14 to 30/9/15	[1/8/13 to 31/9/14]	
Full hearings	12	[17]
Rule 8 decisions ³	2	[1]
Reviews of Suspension Orders and Conditions of Practice Orders	5	[3]
Interim Suspension Order applications	7	[3]
Rule 19 applications to cancel a hearing	2	[4]

³ Under Rule 8 of the General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules 2000, the PCC may issue an admonishment without a hearing in circumstances where the Registrant admits the facts and the allegation; and waives his right to a public hearing.

Outcomes

4. The 12 full hearings resulted in:

1/10/14 to 30/9/15 [1/8/13 to 31/9/14]

Admonishment	4	[1]
Conditions of Practice Order	1	[3]
Suspension Order	2	[2]
Removal from the Register	2	[3]
Unacceptable Professional Conduct found not proved:	3	[8]
Of which -		
Some of the facts alleged found proved	3	[5]
None of the facts alleged found proved	0	[3]
Successful half-time submissions under rule 27(2) ⁴	0	[0]
Successful Half-time submissions under rule 27(6)	0	[2]

5. In relation to the Committee’s judgment on the issue of Unacceptable Professional Conduct (UPC), in this reporting period 3 out of 12 hearings resulted in the Committee determining that the registrant had not committed UPC (25% of the cases heard. i.e. UPC was found in 75% of cases heard). In comparison, in the previous reporting period, 8 out of 17 hearings resulted in the Committee determining that the registrant had not committed UPC (47% of cases heard. i.e. UPC was found in 53% of the cases heard).
6. Council will no doubt be interested in the reasons for the increase in findings of UPC. To fully understand only an in depth audit of the cases could assist in this. Contributing factors have been the move towards more rigorous drafting of allegations in the past year and an improvement in the GOsC’s case presentation and the performance of its advocates. However, without an understanding of the nature of the cases considered it is difficult to draw definite conclusions.

⁴ Under rule 27(2) of the GOsC (Professional Conduct Committee) (Procedure) Rules 2000, the Registrant may submit that the facts admitted are insufficient to support a finding of Unacceptable Professional Conduct or Professional Incompetence.

7. Although there were fewer full hearings (pro rata) than last year, some of those hearings have been particularly complex, with five out of the twelve lasting 5 days or more and the Committee has experienced an increase in workload across all its activities.
8. Matters which led to a finding of Unacceptable Professional Conduct included sexual misconduct involving a patient (1 case), dishonesty (1 case), conviction for an offence of violence (1 case), failure to observe patients' dignity and modesty together with failings in consent and communication with patients (4 cases), failings in clinical care (3 cases), failure to have professional indemnity insurance (2 cases). (Some cases may include more than one of these elements). In 2 cases, sexual misconduct was alleged (along with other matters) and was not found proved. Of the two Rule 8 matters, both arose from convictions, one for possession of Class A drugs and the other for an excess alcohol offence.
9. The number of cases where allegations involve failings in the approach to patients' dignity and modesty, consent and communication with patients, remains a concern. Typically, the patient complains, variously, that the registrant remained in the room and watched them while they undressed, that no gowns were provided or towels to cover them, that they were unaware of what was going to happen next in terms of examination or treatment and were taken by surprise. These were also features in two of the cases where the patient complained that the registrant's actions were sexually motivated. Whilst this was not found proved at the hearing, it is understandable that in such circumstances, there was room for misinterpretation. A further matter of note is the reluctance of patients to take up their concerns in relation to these issues (or indeed any issues) with the practice either at the time or soon afterwards.
10. It is the view of the PCC that practitioners should be reminded of the importance of having in place and using practice complaints procedures, policies on consent and the use of chaperones and the provision of towels and gowns. Raising awareness with the profession through initiatives such as the recent coverage of these issues in The Osteopath (October/November 2105) are welcome and timely.

Other matters

11. During the year the GOsC has produced Practice Notes based on issues which have arisen in the hearings process to increase the effectiveness of the Committee and to assist all those involved. This has included 'Acting in the Public interest' and 'Admissibility of good character evidence'. Guidance on Drafting Determinations and on the Imposition of Interim Suspension Orders are currently out to consultation.
12. Plans to provide electronic evidence bundles in advance of hearings have been welcomed by PCC members. Currently bundles are provided on the first morning of the hearing and practice has been for the panel to have dedicated reading

time on that day. The new approach will bring benefits in terms of time saved at the hearing but will also bring challenges for the parties in getting their bundles ready within prescribed timescales and avoiding the submission of late evidence. It also means that panellists will need to set aside time for reading in advance.

13. Council will no doubt recall that the panel's decision in a case heard in September 2014 was the subject of criticism by the PSA in the early part of the year currently under review. Close attention to and discussion of the issues raised informed the GOsC's response to the PSA and gave rise to much reflection by those PCC members directly involved and the Committee as a whole. The emerging lessons to be learned continued to be a theme for this year's appraisal round and will be returned to at the PCC training day in November 2015 (see paragraph 6.2 below). The Council will be reassured to know that during the current year no further learning points or criticism have been received from PSA of the outcomes of any subsequent cases.
14. During the year, an appeal was heard in the Administrative Court from a registrant against a finding of unacceptable professional conduct and the resulting admonishment by the PCC. Mr Justice Kerr found that the Committee's decision was 'well- reasoned' and supported its findings and the appeal was dismissed. This case was significant in that in his written Judgement, Kerr J provided welcome clarification and counterbalance to an earlier case as to the meaning of "moral opprobrium" and the threshold to be reached for conduct to be "serious".

PCC members

15. At the end of last year, an open recruitment process resulted in the appointment of two additional panel chairs both with considerable experience of chairing panels in other healthcare regulatory contexts. Following completion of a comprehensive 3 day induction programme in February 2015, they began sitting in March. With four chairs now involved, it is important that attention is paid to ensuring consistency of approach in managing hearings and to this end all chairs' feedback forms are shared after each hearing and plans have been discussed with the Head of Regulation to jointly develop guidance for chairs in managing hearings.
16. As Council members will already be aware, to assist with succession planning, a process is currently in train for the recruitment of four new members of the PCC who are expected to join the Committee in April 2016.
17. Comprehensive appraisal of individual performance was carried out over July and August 2015, in line with the GOsC's performance review process. An opportunity was also taken to reinforce the practice of exchanging open feedback on performance at an individual and team level at the end of each hearing. In addition, appraisal discussions proved useful in identifying topics for the planned PCC training day later this year and the views of the osteopathic members on the induction training needs of new registrant committee members.

18. In the course of the year, a further recruitment campaign resulted in the appointment of 12 new members to the pool of legal assessors as well as two of the existing legal assessors. This has resulted in a 'refresh' of the pool and consequent benefits to the efficiency and effectiveness of the process as a result of their wider experience and focussed drafting skills.
19. It remains the case that PCC members are fully committed and supportive of initiatives to achieve an outcome that is fair to all and seen to be so in the most effective and efficient way possible and in particular to avoid adjournment. Predicting the length of time a case will take is not an exact science. However, feedback from chairs' reports following each hearing reveals that there have been occasions when a reduction in the number of planned days has placed a significant burden on members and legal assessors (in drafting) in completing a hearing in the revised time allotted.

Training and development

20. A training day for members of the Professional Conduct and Health Committees was held on 20 November 2014. The agenda included:
 - Raising members' awareness of the new statutory duties of the Council as set out in the Health and Social Care (Safety and Quality) Act 2015 and requiring fitness to practise panels (in this case the PCC and HC) to have regard to the overarching objective of Council in protecting the public and duty to act in the public interest
 - A review of recent relevant case law from the wider healthcare context
 - Admissibility of character evidence and testimonials
 - Reflection on PSA learning points from 3 cases in the year under review (all relating to the imposition of conditions: the issue of insight, the evidence to be presented at the review hearing and ensuring the determination sets out how the conditions protect the public).
 - The role of the registrant panellist
 - Revisiting questioning skills
21. This year, the PCC and HC training day will take place on 27 November, with a new approach to the agenda. Issues to be covered include dealing with unconscious bias and raising awareness of the challenges faced by complainants in giving evidence especially for vulnerable witnesses and where there are allegations of sexual misconduct. This session will be interactive and facilitated by a team of actors with particular expertise in this area.

Judith Worthington
Chair, Professional Conduct Committee
26 October 2015

Health Committee Annual Report

Introduction

1. The pressures on the HC have been fewer than in 2013-14. The Committee did not encounter any fundamental operational problem. Such procedural issues as have arisen, or are otherwise noteworthy, originate in the existing statutory framework. Most will be familiar to the Council following last year's report. All are worth bearing in mind and are rehearsed at paragraphs 8-12 below.

Matters considered by the Health Committee

2. The number of matters considered by the HC in this reporting period is set out below. Comparisons for the previous reporting period are set out in brackets.

	1/10/14 to 30/9/15	1/7/13 to 30/9/14
Rule 6 Directions hearings ⁵	0	[4]
Rule 8 meetings ⁶	0	[2]
Applications to cancel a hearing under rule 36 ⁷	0	[0]
Full hearings	1	[2]
Reviews of Suspension Orders	2	[0]
Interim Suspension Order applications	1	[4]

Outcomes

3. The one full hearing resulted in:

Findings of impairment of fitness to practise	1	[2]
Conditions of Practice Orders	1	[1]
Suspension	0	[1]

Themes

4. There has been no material change in the kinds of medical condition which have featured in the cases considered by the Committee during the period. The case load was too small to enable the HC to identify themes or trends. The effective

⁵ Under Rule 6 of the GOsC (Health Committee) (Procedure) Rules 2000, upon referral of a case from the Investigating Committee, the Chair of the Health Committee is required to review the information and reports available and to determine what further information is required.

⁶ Under Rule 8 of the Health Committee Rules, where the medical opinion of the GOsC Medical Assessors and the registrant's medical expert is unanimous to the effect that the registrant is not fit to practise, the Committee is required to determine whether it is sufficient to direct that a registrant should be subject to a Conditions of Practice Order.

⁷ Under Rule 36 of the Health Committee Rules, the Committee has the power to cancel a hearing in exceptional circumstances, provided that the registrant consents to the cancellation, and the views of the complainant and the Investigating Committee have been obtained.

and sensitive handling of impairment associated with practitioner ill health has obvious implications for the public reputation of the profession, and for practitioner's views about their regulator. If possible lessons to learn emerge in future they will be reported, for the Council's consideration.

Issues including those identified in the Chair's feedback reports

5. Each HC agrees a report after substantive hearings, including those under Rule 8. Each report is then sent to GOsC staff by the Chair. The following are the most significant issues taking account of feedback and this year's reports.
6. *Conditions of Practice.* The absence of Guidance on the imposition of Conditions of Practice for health cases has presented difficulties in previous years. Devising conditions is not straightforward. Shaping them in consultation with the parties and with due attention to what is necessary, sufficient, and workable can take significant hearing time. The fractured nature of some mental health services, and the fact that osteopaths rarely work under supervision, generates particular problems over tailoring arrangements to sustain oversight and compliance.
7. It has been recognised that a comprehensive 'conditions bank' for health matters would help to dispose of cases expeditiously. The Committee was grateful to GOsC staff for inviting comment on draft Guidance early in 2015, prior to its formal issue for consultation in July. Consultation ended in October, and the new Guidance will be welcome. Subject to its approval by Council, the Committee will encourage the parties to produce 'common ground' and preferably written submissions based upon the Guidance where Conditions are in prospect.
8. *Statutory Framework.* The Committee readily appreciates that issues associated with the statutory framework imposed on the Council are not amenable to easy resolution. In the Health Committee context three procedural matters are worth bearing in mind in case an opportunity arises to make legislative change.
9. First, it is noteworthy that where a Conditions of Practice Order has been imposed, the HC Rules do not permit the imposition of an Interim Order for Conditions to cover the 28 day appeal period. This is plainly unsatisfactory, not least as regards patient protection.
10. Second, it is not immediately obvious why the Chair is required to determine whether a case should go to the Health Committee even after it has been referred by the Investigating Committee. This appears to be an over engineered requirement – although, more generally, the involvement of the Chair in making other case management directions is helpful in bringing cases before the HC timeously and in good order.
11. Third, the Committee encountered a defective Notice of Hearing under Rule 12 in one case. It may be worth considering whether there is scope to standardise and simplify the procedural requirements here.

12. Should an opportunity arise to consider these issues in future I would recommend that it be taken.

Support to the Committee

13. *Legal Assessors.* The Committee has been very well supported by each of its Legal Assessors. It was in no doubt that the Council's attention to the quality of these assessors is paying dividends for the robustness of procedural integrity in the HC.
14. *Medical Assessors.* The new pool of Medical Assessors was appointed by the Council with effect from 1 April 2014. The positive feedback about these new Assessors has been sustained. The care taken over recruitment, training, and guidance has proved worthwhile. The impact on quality, consistency and standards has been marked.
15. *Administrative Support.* The Committee wishes to emphasise that the support it has received from the Council's executive and administrative staff has invariably been attentive and agile.

Health Committee members

16. Members of the Health Committee consider performance after each hearing. An 'all members' meeting and training day for members of the Professional Conduct and Health Committees will be held on 27 November 2015. The opportunity will be taken to review the performance of the Committee collectively at that time.

Richard Davies
Chair, Health Committee
23 October 2015