



Council
1 November 2017
Fitness to practise committee Annual Reports 2016-17

Classification	Public
Purpose	For discussion
Issue	Each committee is required to report annually on its work to Council. These reports cover the period 1 October 2016 to 30 September 2017.
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 2016-17

Introduction

1. This is my sixth report to the Council. The period covered by this report is from 1 October 2016 to 30 September 2017.
2. I have included, in bold and in brackets, figures from the 2015-16 and 2014-15 years for comparison.
3. In making this report I am conscious that the Council may be provided with a quarterly report on fitness to practise and the work of the IC. To some extent this report will repeat information previously provided to the Council.

Meetings and Hearings of the Investigating Committee

4. During the twelve months covered by this report there have been seven meetings of the IC to consider complaints **(2015-16 seven, 2014-15 eight)**. In addition an 'all members' meeting primarily for training, where all members are invited was held; the remaining seven meetings have each been attended by five or seven members (out of 13/4) of the Committee.
5. In addition, panels of Committee members (five each time) have sat on six occasions to consider applications by the Council for the imposition of Interim Suspension Orders on registrants **(2015-16 seven, 2014-15 twelve)**.

Casework

Numbers of complaints and the Committee's decisions

6. During the period covered by this report, the Committee has made decisions on 59 complaints against registrants **(2015-16 44, 2014-15 43)**. In 36 of these, the complaint was referred to the Professional Conduct Committee, no cases were referred to the Health Committee (61% complaints referred). In 23 cases, the Committee decided that there was no case for the registrant to answer **(2015-16 34¹ 'case to answer' 12 'no case to answer' [73% referred], 2014-15 23 'case to answer' 20 'no case to answer' [54% referred])**.
7. In comparison to the last two reporting periods, the number of cases decided by the Committee has increased substantially whilst the number of meetings has remained the same.
8. In 16 cases, the Committee was not able to make a decision when the complaint was first considered by the Committee. In these 16 cases, the Committee adjourned the case for further investigations to be carried out, for further allegations to be put to the registrant or to afford the registrant further time to

¹ 33 referred to the PCC and 1 to the HC

respond to the complaint **(2015-16 21 adjournments, 2014-15 10 adjournments)**. The high number of cases that had to be adjourned is noteworthy.

9. In this year the Committee was asked to provide its view on whether a hearing should be held in relation to 3 cases that it had previously referred to the PCC. This procedure is followed where a complaint has been referred by the Committee 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) **(2015-16 0 cases, 2014-15 2 cases)**.

Issues raised by complainants

10. The complaints considered by the Committee covered a wide variety of areas, as in previous years, including:

- Providing inappropriate treatment
- Advertising on osteopaths' websites
- Failure to respond to complaints appropriately
- 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
- Failure to respect patient dignity and modesty
- Dishonesty

11. Other areas of concern include the inappropriate crossing of professional boundaries and sexually motivated conduct. These have featured in 6 cases this year **(2015-16 7 cases, 2014-15 11 cases)** similar to last year.

Targets

12. Once a complaint is received by the GOsC, it must be screened by a registrant member of the Committee in order for it to be considered by the Committee. The GOsC target is for screening to be completed within three weeks of receipt of the complaint by the GOsC. The median time for screening this year was 2.29 weeks.
13. The GOsC also has a target for cases to be considered and determined by the Committee within four months of receipt of a formal complaint. 41 cases **[66%]** were decided within the target period and 21² were decided in a longer period **(2015-16 no information available, 2014-15 36 were determined within target [84%] and 7 were outside)**.

² The numbers do not equate to the earlier figures as a number of cases were considered more than once.

Interim suspension orders

14. There have been a similar 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 6 cases. It imposed 2 Orders, accepted undertakings in 2 cases and made no order in the other 2 cases **(2015-16 7 applications [5 orders made, no cases where undertakings were accepted], 2014-15 12 applications [5 orders made and undertakings accepted once])**. The proportion of applications resulting in an order has dropped, although the numbers are very low.

All members meeting

16. An all members meeting and training day was held on 3 July 2017. Given the changes to the committee both this year (see 19 below) and in 2015-16 members appreciated the opportunity to enhance their knowledge, particularly if at an early stage of their term, and in some cases to meet the other members of the committee for the first time.
17. The all members meeting included training on the Initial Closure Procedure and the Threshold Criteria. Members were consulted on the review of the IC decision making guidance and the review of the Osteopathic Practice Standards. Over lunch members were able to meet privately to discuss topics of common interest which was much appreciated, since each meeting and hearing of the Committee is attended by only a selection of members of the Committee.
18. In the afternoon session the Committee received training from an external barrister on what is a 'case to answer' as well as receiving a case law update.

Composition of the Investigating Committee

19. During the year five new members joined the Committee following interviews in January 2017. All have now attended at least one IC meeting or hearing. Over the last 18 months nine (out of 14) members have begun their first term as members of the Committee. The Council will be aware that while good candidates were appointed there were a very disappointing number of applications from Registrants.

Other changes in the year

20. During the year the GOsC introduced a new Initial Closure Procedure. It is too early to say what impact this will have on the Committee's workload but at present it seems likely to apply to only a very few cases, the majority continuing to be referred to a screener (a registrant member of the committee) to decide whether the IC should make a decision whether there is a case to answer.

21. This year also saw changes to the process to reach a decision whether a hearing should be held to consider the imposition of an Interim Suspension Order. This, together with a different approach by the GOsC as to whether it is necessary to have meetings and hearings chaired by a panel Chair, has led to the GOsC seeking to appoint more panel chairs.
22. Finally this year has also seen some changes to the remuneration of Committee members. Subsequent to the very large number of advertising complaints being received a fee of £12.50 for screening cases has been introduced (previously this work was done gratis). At the same time there has been a change to reading fees for Committee meetings; the standard fee of £75 has been replaced by a fee of £12.50 per case on the agenda. The Committee welcomed these changes but noted, with disappointment, that the GOsC decided not to raise the fee for attending meetings and hearings, which has remained unchanged now for six years.

Support to the Committee

23. Last year I commented that the Committee had been less well supported by the GOsC's staff in that period. This year the Committee has noticed some improvement and hopes this will continue.

General reflections

24. 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 higher number of complaints, compared to four or five years ago and three times as many as ten years ago (the proportion of cases where the Committee finds there is a case to answer is not dissimilar to that ten years ago).
25. In this year there has again been a much larger number of complaints considered by screeners³ than in earlier years. This continued the pattern in 2015-16 when many complaints were received, from a single complainant, alleging that osteopaths were dishonestly advertising that they can treat certain conditions for which, it was said, there is no evidence to support such claims. This again imposed an increased burden on screeners and also on the IC when cases were screened in. A number of these cases had to be adjourned and considered more than once due to a lack of clarity over how the original complaint had been handled by the GOsC.
26. In most other respects the overall workload and performance of the committee seem to reflect 2015-16. This is against a background of substantial change in the membership of the committee as noted above.

³ the screener, an individual member of the IC, gives an opinion whether the Osteopaths Act 1983 gives 'power to deal with [the allegation] if it proves to be well founded'

27. Finally I would like to record my thanks to the departing members of the Committee, Miles Crook, Gillian Hawken, James Olorenshaw and Sarah Payne, for their very substantial contributions to the work of the Committee.

James Kellock
Chair, Investigating Committee

Professional Conduct Committee Annual Report 2016-17

Introduction

1. Judith Worthington concluded her appointment as Chair of the Professional Conduct Committee (PCC) in March 2017, and I succeeded her. Accordingly, this is my first report to Council on the work of the PCC. It covers the period October 2016 to September 2017. The primary objective of the PCC is to apply the overarching objective of Council – that is, to protect patients; to sustain professional standards, including those of conduct and behaviour; to uphold the reputation of the profession; and to maintain that of the Council as regulator.
2. All members of the PCC are keenly conscious of the importance of reaching decisions that are proportionate, fair, accessible, transparent and well-reasoned. It is very much in the public interest, as well as that of the Council and Registrants facing allegations, that the PCC commands confidence as to its procedures and determinations. It follows that the pressures on the PCC to make the best use of very limited hearing time are inevitably considerable.

Overview

3. With those pressures in mind, and with the support and guidance of the Chair and Council, a number of steps have been taken over the last two to three years to provide assurance as to the sustained robustness and reliability of the PCC process. These have included:
 - The recruitment of new **legal assessors** to clear specifications. Amongst other things these make it clear that assessors are responsible for preparing the first drafts of all determinations for Committee consideration.
 - The recruitment of new **medical assessors**, also to clear specifications.
 - The introduction of **focused annual training** for PCC members. Since 2015 these have covered developments in case law, diversity and unconscious bias, inquiry skills, and handling vulnerable witnesses. Sessions have included role play and reflection on specific determinations. The next training day will be held in November 2017.
 - Consultations on a new **Practice Note for Consensual Disposal under Section 8**, and on revised **Indicative Sanctions Guidance**. The latter has featured fresh consideration about the treatment of cases of dishonesty, and sexual motivation together with guidance on how far the Committee may reasonably take account of considerations such as insight and remediation in reaching decisions on Unacceptable Professional Conduct (UPC). The results of both consultations are under review.
 - The electronic circulation of case bundles to Committee Members so that they can be read in advance of each hearing. This is done through an online

platform and has a significant impact on the PCC's ability to make good use of hearing time.

- The Legal Assessors and the PCC have received helpful **guidance on drafting determinations**. This takes account of approaches adopted in other regulators, and the interest of the public and the PSA in being able to identify clear reasons for decisions.
- **Communication** for the profession on the importance recurrent issues such as holding Professional Indemnity Insurance; protecting patient modesty and dignity; and obtaining valid consent.

Further Initiatives

4. The following additional developmental action featured in 2016-17.

- **Quality of decision making.** As a result of the work undertaken before my appointment, the Professional Standards Authority (PSA) report on cases handled by the PCC (and the overall GOsC process) was again notably favourable for 2016-17. No case has been appealed to the High Court. There was only one notable 'learning points' letter from the PSA – dealt with under the existing performance management and listing process. The Regulatory Team also commissioned an independent report on every case where the PCC did not find UPC. This did not identify fundamental weaknesses in decision making. In addition, the Team has commenced a Determination Review Process involving independent, inter-regulatory input to assist PCC Chairs to sustain the quality of written determinations.
- **PCC Members.** During the course of the last year almost all the Osteopath and Lay Members of the PCC reached their appointment terms. Their positions have been successfully filled, and further recruitment rounds are planned for early 2018. There are currently five Osteopath Members, five Lay Members, and four Chairs for the PCC (who are also available for the Health Committee).

Newly appointed members have been encouraged to become familiar with Osteopathic Practice Standards (OPS) as part of the annual process of objective setting and performance assessment. Council decision following recent consultation on the OPS will be taken into account for the future. The training day in November will be facilitated by an external consultant, Abigail Masterson, and is likely to concentrate on inquiry skills, situational awareness, and collaborative decision making.

- **Chairs' Training.** For the first time, the Regulatory Team scheduled a training day specifically for Chairs held on 29 September 2017. This was led by Toni Smerdon who has had long experience of handling the legal and practical pressures associated with regulatory cases. The programme was

designed to help develop Chairs' hearing management skills, and to share best practice on the good use of time.

The session was joined by Chairs from the General Chiropractic Council (GCC). Like the GOsC, the GCC's statutory rules feature consideration of Unacceptable Professional Conduct as opposed to the assessment of current fitness to practise more common in other health-care regulatory jurisdictions. The feedback from was notably positive: **I shall report on the practical impact and benefits** in due course.

- **Expert evidence and Counsel submissions.** Chairs are pressing to take every opportunity to encourage expert witnesses to prepare statements of common ground wherever possible so as to focus the hearing on matters in dispute. Expert evidence can often be prolix, opaque and unhelpful, so such statements are of real assistance to Committees in disposing of the irrelevant. At the same time, Counsel for the parties are being urged to prepare skeleton arguments not only on opening but on closing their cases too. Such crisp presentations invariably assist Committees to test and clarify their own reasoning.

Caseload

5. The figures for cases considered in 2016-17 are set out at **Appendix**. The increase in activity over the last three years is noteworthy. For example, there were 23 full hearings in 2015-16, and 46 in 2016-17. This is largely due to a significant number of cases involving practitioner failure to hold or maintain professional indemnity insurance (PII) cover. That is reflected in the figures for Admonishment too. There is an absolute obligation on practitioners to have proper PII. It is to be hoped that opportunities will be taken by the Council to reinforce practitioners' understanding of that obligation, especially given the serious risks to which patients are exposed if PII is not in place.
6. The implications of a larger caseload are important – especially in relation to bringing cases to a conclusion. The Regulation team monitors performance as regards the time taken from the receipt of a complaint through to consideration by the Investigating Committee and then to a PCC hearing. However, from the narrow PCC perspective, the critical issue concerns the time from Notice of Hearing to final determination. There are two issues to note here.
 - i. The PCC is increasingly conscious that the **pressures of pre-hearing case preparation and management on the Regulation team** are extremely heavy. The sizeable volumes of caseload in other regulators make it relatively easy to estimate how long it will take a panel to dispose of given types of case. Elsewhere investigation, prosecution and tribunal functions are also generally handled by different teams. However, at the GOsC the same small Team deals with all these functions.

- ii. All Chairs have noticed that while the time estimated for complex and contested hearings has been under strain, the **incidence of cancellation or postponement** for planned hearings appears to have modestly increased. More cases than we would wish have gone part heard, and it is not unusual for such cases to resume after many months as opposed to a few days or weeks. The strains on Registrants are then multiplied as a consequence of delay.
7. It is too soon to say that a pattern of adjournments and cancellations is emerging or that it is associated with particular problems of resource or practice. It is always difficult to estimate whether a case will need to be heard over three, five, seven or more days. Nonetheless, the Regulation team is reviewing the listing and scheduling processes – and this is most welcome. Its action follows on from the Council business objective for 2017-18 to secure improved and streamlined processes that do not require legislative change.
8. Accordingly, the Regulation team has submitted proposals to the Policy Advisory Committee for the development and implementation of **Standard Case Directions** for all cases referred from the Investigating Committee to the PCC. Even though case directions cannot be made mandatory, they can condition the behaviour of defence Counsel and others.
9. **I strongly support** the advice that Standard Directions will help to:
 - Engender confidence that the regulator is acting fairly and fulfilling its disclosure obligations;
 - Ensure fairness by ensuring that unusual points of law or fact are identified in good time so that full and considered argument can be advanced;
 - Assist the decision making of panels by identifying issues to reduce the considerable stress of litigation upon all the participants (respondents, witnesses, lawyers and panellists);
 - Avoid the calling of witnesses whose evidence is not challenged;
 - Reduce the risk of last minute adjournments arising out of the late disclosure of evidence;
 - Reduce the risk of wasting costs by listing cases for longer than is needed;
 - Reduce the risk of cases going part heard.
10. Chairs remain committed to doing everything possible to assist in disposing of cases with prudent despatch. Over the 2017-18 period it will be necessary to make sure that the process of pre-hearing case management, scheduling and listing is carried forward on a realistic footing both as regards staff complement and time allocation. **I shall report further** as necessary, fully in the

understanding that it remains for the Chief Executive to advise the Chair and Council as to decisions affecting the disposition of resources.

Conclusion

11. Council is invited **to note**:

- a. the contents of this paper – and particularly paragraphs 4 and 6; and,
- b. the commitment to provide further report given at paragraphs 4 and 10.

**Richard Davies: Chair, PCC
October 2017**

Appendix

Professional Conduct Committee	Q3 1/10/16- 31/12/16	Q4 1/1/17- 31/3/17	Q1 1/4/17- 30/6/17	Q2 1/7/17- 30/9/17	TOTAL
Total cases considered	6	17	16	7	46
Allegation not 'well founded'	1	7	4	2	14
Admonished	1	6	3	4	14
Conditions of Practice	0	0	2	0	2
Suspension	2*	1*	1	0	4
Removal	2	2	0	0	4
Adjourned/Part heard	1	0	6	1	8
Rule 19	1	2	0	0	3

*The suspension also resulted in removal

Professional Conduct Committee	Q3 1/10/16 - 31/12/16	Q4 1/1/17- 31/3/17	Q1 1/4/17- 30/6/17	Q2 1/7/17 - 30/9/17	Total
ISO Hearings	2	1	1	0	4
ISO Imposed	1	1	0	0	2
Not Imposed	0	0	1	0	1
Undertaking	1	0	0	0	1
Professional Conduct Committee Reviews					
Reviews	2	1	2	0	5

PCC Activity Last 3 years	1/10/14 - 30/9/15	1/10/15 - 30/9/16	1/10/16 - 30/09/17
Full hearings	12	23	46
Rule 8 decisions	2	0	2
Reviews of Suspension Orders and Conditions of Practice Orders	5	3	5
Interim Suspension Order applications	7	4	4
Rule 19 applications to cancel a hearing	2	0	3

Annex B to 7

PCC Outcomes Last Three Years	1/10/14 - 30/9/15	1/10/15 - 30/9/16	1/10/16 - 30/09/17
Admonishment	4	2	14
Conditions of Practice Order	1	2	2
Suspension Order	2	2	4
Removal from the Register	2	4	4
Unacceptable Professional Conduct found not proved	3	3	14
Of which:			
Some of the facts alleged found proved	3	2	11
None of the facts alleged found proved	0	1	0
Successful half-time submissions under rule 27(2)	0	0	0
Successful Half-time submissions under Rule 27(6)	0	0	3
Adjournments		10	8

Health Committee Annual Report 2016-17

Introduction

1. This is my first report as Chair of the statutory Health Committee, my appointment taking effect from 1 April 2017. I express my sincere respect to my predecessor, Richard Davies, who has been appointed Chair of the PCC.
2. My aim will be to play my part in promoting the smooth running of Health Committee hearings that produce fair, evidenced-based, independent decisions that can with-stand scrutiny.
3. Having had sight of previous Health Committee reports to Council and updated casework data, it is clear there is little new to report this year regarding Health Committee casework. There have been changes to the personnel on the Committee.
4. I regret a prior commitment prevents me from attending Council to present this report. I have diarised next year’s Council meeting (21 Nov 2018) and have every intention of being available to attend.

Matters considered by the Health Committee.

5. The number of matters considered by the Health Committee in the reporting period is set out below with comparative data for the two previous periods

Health Committee	2016 - 2017 1/10/16 to 30/09/17	2015 - 2016 1/10/15 to 30/9 16	2014 - 2015 1/10/14 to 30/9/15
Event Type			
Rule 6 Directions hearings ⁴	0	0	0
Rule 8 meetings ⁵	0	0	0
Applications to cancel a hearing under rule 36 ⁶	0	0	0
Full hearings	1	1	1
Reviews of Suspension Orders	1	1	2
Interim Suspension Order applications	0	1 (suspension imposed)	1

⁴ 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.

⁵ 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.

⁶ 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.

Hearing outcomes			
Findings of impairment of fitness to practise	1	1	1
Conditions of Practice Orders	1	0	1
Suspension	0	1	0

Themes

6. Given that the case load is very small it is not realistic to draw out any particular themes. Health will inevitably subsist as a category of case work: amongst the population of registered Osteopaths, individuals will suffer with physical and/or mental ill-health that may impact on their ability to practise, and that will, from time to time, require regulatory intervention. The nature of the ill-health and the degree of regulatory intervention can vary enormously but will often give rise to matters of sensitivity affecting the Registrant requiring careful handling.

Chair’s feedback reports

7. Feedback reports on the management of hearings are standard practice following each hearing. Aside from the practical issues that do arise at hearings, no issues arose specific to the Health Committee.
8. As to feedback more generally, specific shortcomings regarding the legal framework have previously been set out in reports, alongside the acknowledgement of the difficulty Council faces to gain legislative changes through Parliament. The short-comings identified, as set out more fully in last year’s report, include:
 - a. The inability to impose an Interim Order for Conditions to cover the appeal period following the imposition of a Conditions of Practise Order – an issue that arose during the year;
 - b. The over-engineered role of the Health Committee Chair; and
 - c. The disparity in statutory Rules regarding the giving of a Notice of Hearing as between the PCC and Health Committee.
9. The Committee will continue to reflect on the functioning of its statutory framework.
10. In the meantime, I recommend that should an opportunity arise to address the short-comings, it is taken. In addition, I recommend that the Council and Executive Team continue to draw on the learning from other comparable regulators, and from the Professional Standards Authority to ensure that best practice is adopted in the handling of health cases.

Support to the Committee

11. There are no note-worthy reports regarding Legal and Medical Assessor support to the Health Committee. The administrative support provided at hearings and at other times continues to be most helpful.

Health Committee Members.

12. The Statutory framework, as set out in the Governance Handbook, provides for there to be 18 members of the Health Committee, made up of osteopaths and lay members.
13. Earlier this year the appointments of some individuals came to their natural end and new individuals have been appointed. In total there are currently 14 members of the Health Committee, 9 lay and 5 Osteopath members, of whom 5 were appointed earlier this year (3 lay and 2 Registrant members) giving a good mix of new and experienced members.
14. This concludes the Health Committee report for 2016-2017.

Philip Geering
Chair, Health Committee