



**Council**  
**4 February 2015**  
**Fitness to Practise Report**

<b>Classification</b>	Public
<b>Purpose</b>	For noting
<b>Issue</b>	Quarterly update to Council on the work of the Regulation department and the GOC's fitness to practise committees.
<b>Recommendation</b>	To note the report.
<b>Financial and resourcing implications</b>	Financial aspects of fitness to practise activity are considered in Annex B to Item 5 (Chief Executive's Report).
<b>Equality and diversity implications</b>	Ongoing monitoring of equality and diversity trends will form part of the Regulation department's future quality assurance framework.
<b>Communications implications</b>	None
<b>Annex</b>	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. As set out in paragraph 18 of the Chief Executive's Report, changes to the dashboard have been made since the last reporting period.
4. In this reporting period, the Regulation Department received 17 informal complaints and 11 formal complaints. During the same period last year, the figures were 19 informal complaints and 10 formal complaints.
5. Of the 17 informal complaints, 9 related to concerns about treatment/adverse effects, three to charges being laid by police but yet to be determined at Court (dishonesty); two to sexual boundaries; and the remaining three relating to communication failures, patient modesty, and a business dispute.
6. Of the 11 formal complaints, three related to concerns about treatment/adverse effects; two to sexual boundaries; and the other six complaints related to charges being laid by police but yet to be determined at Court(dishonesty), failure to notify of a conviction, failure to insure, failure to obtain consent, and communication failures.
7. In this reporting period, four applications were made to the Investigating Committee for the imposition of an Interim Suspension Order, and two applications were made to the PCC. During the same period last year, the number of applications made was four and nil respectively.
8. Of the six Interim Suspension Order (ISO) applications made during this reporting period, three related to breaches of sexual boundaries, two related to breaches of professional boundaries, and one related to a conviction for assault and failure to be insured.
9. Two ISO applications were granted, and the Committee accepted an undertaking from the registrant in a third case. In the other three cases, the Committee considered, on the evidence before it, that the risk of repetition of the alleged behaviour was low, and that the statutory test for the imposition of an ISO was not made out.

### **Fitness to Practise case load**

10. As at 8 January 2015, the Regulation Department is currently handling a caseload of 77 fitness to practice cases (35 formal and 42 informal).

### **Case Progression**

11. In this reporting period (and the first three quarters of 2014/15 financial year), 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 within KPI.
12. The median figures for this reporting period are as follows:

<b>Case stage</b>	<b>Key Performance Indicator</b>	<b>Median figures achieved this quarter</b>
Screening	3 Weeks	1 Week
Investigating Committee	17 Weeks	15 Weeks
Professional Conduct Committee	52 Weeks	37 Weeks

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

### **Indicators of whether cases are being properly brought**

14. 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 Rules<sup>1</sup>.
15. During this reporting period, UPC was found in all cases considered by the Professional Conduct Committee.

### **Section 32 cases**

16. 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.
17. At its meeting in November 2014, the Council approved a new Section 32 Enforcement Policy.
18. The Regulation department continues to act on reports of possible breaches of section 32, and as at 8 January 2015, is currently handling 54 active section 32 cases.

<sup>1</sup> 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 FTP Committees**

19. At its meeting in July 2014, Council was informed that two applications had been lodged, seeking permission from the Court to judicially review decisions made by the GOsC FTP Committees.
20. One application related to the decision to impose an interim suspension order in a health case. Permission for judicial review was refused at first instance. The litigant made a renewed application for permission at an oral hearing in the High Court, and permission was again refused. An appeal to the Court of Appeal was also dismissed on the papers.
21. The remaining application relates to an interlocutory decision made by the PCC in a case that is currently on-going. Permission for judicial review was refused at first instance, but the litigant applied to the Court of Appeal.
22. The Court of Appeal has now granted permission for judicial review proceedings to go ahead.
23. In a separate development, an appeal has been lodged at the High Court against a decision of the Professional Conduct Committee to impose an Interim Suspension Order. No date has yet been fixed for the appeal hearing.

## **Costs considerations**

24. The Regulation Department is having to accommodate an increasing number of hearing days. During this reporting period, we have serviced 14 Committee and hearing events, including substantive, review and ISO hearings before the PCC and HC; IC meetings and IC ISO hearings; directions hearings before the HC and one registration appeal before an Appeal Panel of the Council.
25. As previously indicated to Council, an increasing number of interim order applications, health cases, and increased use of conditions by the Professional Conduct Committee (which require a review hearing) all contribute to the increase in fitness to practise costs.
26. In addition to the costs of hearings, the Regulation Department has incurred costs relating to training of new members of the Investigating Committee and Council members sitting as a Registration Appeal Committee. Additional training costs will be incurred following the exercise to recruit new Legal Assessors, and induction of new PCC/HC Chairs.
27. As noted above, the GOsC has also had to incur external legal costs in relation to the two applications for judicial review, and the appeal against the Interim Suspension Order.

28. The Regulation and Registration and Resources Departments are continuing to monitor the effect of these increases in hearing costs and related matters.

### **Quality assurance of fitness to practise**

#### *Peer review processes*

29. As part of on-going quality work, the Regulation Department has established a peer review mechanism to assess compliance with case management and customer service standards. Council received reports on the results of the first four reviews at its meetings in January, May, July and November 2014.
30. A further peer review was scheduled to take place on 8 and 9 January 2014, to be undertaken by staff from the General Pharmaceutical Council. Unfortunately, the member of staff was ill and this review will now be rescheduled for later on this year.

#### *Peer Review undertaken by General Optical Council*

31. On 22 and 23 December 2014, the Head of Legal Compliance at the General Optical Council undertook a peer review of 'Rule 19' cases (cases in which a referral had been made by the Investigating Committee but where the hearing before the Professional Conduct Committee was cancelled); and cases in which UPC had not been found by the Professional Conduct Committee, or in which a successful 'half time' submission had been made by the registrant.
32. This was the second such peer review exercise undertaken with the General Optical Council; the first peer review took place in December 2013, and the results of that exercise were reported to Council in January 2014.
33. In 2014, the GOsC had two 'Rule 19' cases; 5 cases in which UPC had not been found; and two cases in which a successful 'half-time' submission had been made.
34. All nine cases were included in the peer review sample. The reviewer was provided with copies of the Allegation, the PCC determination; Committee Hearing Bundles; GOsC case file; and a transcript of the PCC Hearing (if available). The reviewer was also provided with a copy of the Osteopathic Practice Standards.
35. In all cases, the reviewer was asked to consider the material provided and to provide views on the quality of the GOsC Investigation; the evidence obtained by the GOsC; and the GOsC's presentation of the case.

36. In coming to a view, the reviewer was asked to have particular regard to the relevant Quality Objective from the GOsC Quality Assurance Framework:

*'In all investigations undertaken by the Regulation Department we will:*

- *"Ensure that all allegations are investigated"*
- *"Be Proportionate"*
- *"Present the case to the best of our ability, and provide all available and relevant evidence, which is sufficient for the relevant Committee to make its decision."*
- *"Have properly formulated Particulars of Concern (IC) or charges for the relevant Committee to consider.'*

37. In addition, for the 'Rule 19' cases, the reviewer was asked to provide a view on whether the decision to apply to cancel the hearing was justified; and whether more could have been done by the GOsC to make the case effective.

38. In relation to the cases in which UPC was not found, the reviewer was also asked to provide a view on whether the case was properly brought by the GOsC; whether an application should have been made by the GOsC to cancel the hearing; and whether more could have been done by the GOsC to ensure that a finding of UPC was made by the Committee.

39. In all cases, the reviewer concluded that the GOsC investigation; the evidence obtained by the GOsC; and the GOsC presentation of the case were generally sound.

40. However in one case, the reviewer was suggested that further evidence might have usefully been obtained from an additional witness; and that an additional allegation could have been introduced. In another case, the reviewer suggested that the GOsC might usefully have offered the witness an opportunity to give video recorded evidence.

41. In one case, the reviewer considered that the decision of the PCC was "harsh in its findings regarding the complainant, especially compared with its attitude to the registrant" and considered that a different Committee might have found UPC.

42. In both Rule 19 cases, the reviewer concluded that the GOsC's decision to apply to cancel the hearing was justified and that nothing more could have been done to make the case effective. Both cases related to the reluctance or inability of the complainant to give evidence at a hearing.

43. In the UPC/Half time submission cases, the reviewer concluded that the cases were properly brought by the GOsC, and there was nothing more that the GOsC could have done to obtain a finding of UPC.
44. The GOsC considers that this peer review exercise adds real value to our quality assurance process.

*External review of all decisions made by the Investigating Committee during 2014*

45. In the week commencing 15 December 2014, Bevan Brittan LLP conducted a legal audit of all decisions made by the Chair and members of the Investigating Committee during 2014.
46. This review was a follow up to the base-line quality review conducted in December 2013.
47. The purpose of the review was to provide objective external assurance about the quality of the decisions being made at the Investigating Committee stage, and to assess how the GOsC had implemented the recommendations made by Bevan Brittan LLP in the 2013 report, and the effect of that implementation.
48. During 2014, the following decisions were made at the Investigating Committee stage:
  - 13 Decisions by the IC Chair as to whether or not to hold an ISO Hearing
  - 13 ISO Hearings
  - 43 Decisions made by the Investigating Committee
49. The external lawyers were provided with:
  - a. the bundle of documents considered by the Investigating Committee in each case
  - b. the Investigating Committee decision in each case
  - c. the advice provided to the Investigating Committee by the legal assessor in each case
  - d. the decision and reasons of the Investigating Committee Chair on each application to hold an ISO hearing
  - e. the bundle of documents considered at the ISO hearing
  - f. the transcript of the ISO hearing
  - g. the determination of the Investigating Committee.
50. The external lawyers were also provided with copies of the standard IC documentation including the IC Decision-Making Guidance and Flow Chart approved by the Council in October 2013; and the Standard Legal Advice on Unacceptable Professional Conduct provided to the Investigating Committee at each meeting.

*Key findings from the review:*

51. The findings of the review were generally positive.
52. The review concluded that there was a strong consistency in the format and content of the written decisions, and an overall improvement in the quality and transparency of decisions made by the Investigating Committee.
53. The review identified no decisions which raised concerns that the substantive decision was unsafe or which did not adequately protect the public.
54. However, the review did identify nine 'Case to Answer' decisions in which the content of the written decision could potentially have been improved. Five of these were linked cases, so that the issue in relation to the reasoning was common to all cases. One issue arose in two decisions on the same case.
55. In relation to the recommendations made from the review of 2013 decisions, Bevan Brittan LLP concluded:

*"Based upon the findings of our review of 2013 cases, we note that most of the areas of concern in relation to the written decision where we suggested improvements have been adopted, resulting in the quality of written decisions having improved overall."*

56. In relation to the introduction of Particulars of Concern, and Executive Recommendations, Bevan Brittan LLP concluded:

*"We consider the Particulars of Concern document now prepared as standard by the GOsC Regulation Department, and provided to the Investigating Committee with each case, has been beneficial to the IC decision-making process. It identifies the potential issues arising in the case, helping to ensure it is ultimately clear in the decision which issues have been referred or not referred on."*

*The Particulars of Concern also set out an 'Executive Recommendation' as to the appropriate decision in the case. We are satisfied that it is clear to the IC that this is only a suggested outcome and that the IC is not bound by it and must exercise its own judgment. This is a necessary safeguard. We are also satisfied on reading the decisions that this Committee is exercising its own independent judgment on the path cases should take."*

*We noted that the Committee in several cases removed or added allegations to those proposed in the Particulars of Concern and did not follow the Executive Recommendation in every case, providing reassurance that it is exercising its independent judgment on the cases and properly exercising its statutory function."*



57. The Review also concluded that *"decisions of the IC Chair as to whether to refer a matter to an Interim Suspension Hearing were generally clear, well-explained and referred to the relevant guidance and legal test; and that the greater detail in this year's decisions enhanced the quality of the decisions overall."*
58. The review concluded that the style and content of Interim Order Hearing decisions was broadly consistent with the decisions considered in last year's review; they generally included reasoning, reference to the Interim Order Committee Guidance and indicated it was being applied, reference to legal advice having been given and accepted, an explanation of the legal test in Section 21 of the Act and of the scope of the Committee's powers.
59. However, the review noted that the legal advice given to the Committee was not usually detailed in the decision, although the decision referred to it having been given and accepted, and the advice itself is available in the transcript.
60. In relation to Interim Order decisions which involved allegations of a transgression of sexual boundaries, the review stated:

*"In relation to the substantive decisions taken at ISO hearings, we consider it is appropriate to add this note. We did look carefully at some of the decisions not to impose an interim suspension order, the transcripts of which were provided for the review. These were particularly cases involving allegations of a sexual nature. These cases were, rightly in our view, referred for consideration of an interim order by the Chair and hence the decision not to impose an order has been taken by a full panel of the IC, consisting of five members with a lay majority.*

*Such decisions are matters of fine judgment, based on the all the issues the Committee considers at the hearing. The decision to impose, or not impose, an interim order involves an exercise in balancing the competing interests and factors in the case. It is well understood that the imposition of an interim order is a serious step for the registrant concerned and the threshold to be applied is 'necessity', rather than 'desirability'.*

*We have not categorised any decision as "red" under our assessment system, as we could not say any decision is clearly unsafe, recognising the balancing exercise the Committee has to undertake and the subjective (on the part of the panel which hears the case) nature of the judgment in such decisions. Nevertheless, we do feel that certain cases fell close to the fine line. It may be that the GOsC may wish to consider whether the issue warrants further discussion and review in training for the IC of learning points arising from the decisions."*

61. Bevan Brittan conclusions are set out below:

*"In summary, we have concluded that this year there has been a marked improvement in the quality of the written decisions of the Investigating Committee on the substantive "case to answer" consideration, and also in relation to the decisions of the IC Chair in relation to the decision on referral for an interim order hearing. Both are more detailed, refer appropriately to guidance, standards and relevant legal tests and demonstrate improved explanation of reasoning.*

*In relation to decisions at interim order hearings, we conclude the standard has not altered significantly (although it should be recognised we were less critical of these decisions than the case to answer decisions last year). We refer back to our recommendations from last year's review...as there is still room in our view to achieve a further improved quality of decision at interim order hearings."*

62. In relation to Interim Order hearings, Bevan Brittan recommended that the following areas be considered as areas for improvement:

- a. legal advice given was not usually recorded and in the main, case law referred to in the transcript not addressed;
- b. summaries of the parties' respective submissions and their position in respect of whether an interim order should be made;
- c. more detailed explanation of the committee's reasoning, in terms of why it decided an interim suspension order should or should not be imposed and how it has conducted the necessary balancing exercise of the respective interests; and
- d. clearer explanation of what real and substantial risk the Committee has identified to public protection.

63. These issues will be addressed at the next IC training day.

#### *Equality monitoring*

64. Since the beginning of April 2014, the GOsC has begun sending Fitness to Practise Equality Monitoring Questionnaires to registrants when they are first notified that an allegation has been made against them.

65. Such monitoring is in line with the GOsC's duties under the Equality Act 2010 and will assist the GOsC to obtain more real time information, and to monitor the whole of the fitness to practise process to the sanctions stage.

#### **Feedback loops**

66. The Regulation and Communications teams produced the FTP e-newsletter which was sent out to all registrants in December 2014. Key topics included in this edition of the newsletter included: practising in a non-clinical environment;

protecting patient information; and maintaining professional and sexual boundaries.

67. Learning from recent cases considered by the PCC was highlighted to the profession. Feedback on the newsletter has been extremely positive.
68. On 7 January 2014, the Head of Regulation and Regulation Manager met with the Chief Executive and Key staff of the Institute of Osteopathy to discuss fitness to practise issues.
69. It was a very productive meeting. The GOsC and the IO have agreed to work together to produce a protocol on dealing with vulnerable registrants who are subject to fitness to practise proceedings; and to identify conditions appropriate to the osteopathy context, which might form the basis of a standard bank of conditions in fitness to practise cases. The issue of maintaining appropriate professional and sexual boundaries was highlighted during the meeting and the IO will look at ways in which the importance of maintaining such boundaries can be re-enforced amongst the profession generally.
70. The issue of maintaining professional and sexual boundaries was also considered by the Investigating Committee at its meeting on 17 October 2014. The Chair of the Investigating Committee has written to the Chair of the Council's Education and Standards Committee to highlight the Investigating Committee's concern at the perceived increase in the number of cases of this nature which are coming before the Investigating Committee.

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

71. On 8 October 2014, the Head of Regulation met with representatives from the General Dental Council to discuss best practice in relation to interim orders and fitness to practise generally.
72. On 17 November 2014, the Regulation Department held a training session on the drafting of allegations. Training was provided by a set of barristers' chambers. In accordance with our commitment to cross-regulatory learning, we invited fitness to practise staff from the General Pharmaceutical Council and the General Optical Council to attend the session.
73. The feedback from staff at other regulators who attended the training was very positive.
74. In January/February 2015, the Head of Regulation will be attending the NDPB Lawyers Group Conference and the Annual Disciplinary Conference.

### **Recruitment of legal assessors**

75. The exercise to recruit a new pool of legal assessors has now been completed, and is the subject of a separate paper to Council.
76. We intend to hold an induction and training day for the new legal assessors, once appointed by Council. The induction will be completed before the new legal assessors take office on 1 April 2015.

### **PCC**

77. On 20 November 2014, members of the Professional Conduct and Health Committees attended an all day training event.
78. The Agenda included sessions on the admissibility of character evidence and testimonials; acting in the public interest; committee behaviours and the test for bias; and a detailed case law updated provided by an external trainer – Mary Timms.
79. In the afternoon, members attended a refresher session on the rules of evidence and questioning techniques, followed by a practical workshop provided by Legal Experience Training in which these techniques were put into practice as part of a prepared case study, and in which feedback to individuals was provided by the trainer and by other members of the Committee.
80. The PCC/HC members also considered the learning points received by the PSA during 2014.

### **Induction training for new panel chairs of the Professional Conduct and Health Committees**

81. The new panel chairs of the Professional Conduct and Health Committees attended the training day on 20 November 2014.
82. A formal induction and training session has been arranged for the new Chairs and will take place on 25 and 26 February 2015.
83. The existing panel chairs will join the session on 25 February and will attend a workshop on producing and critiquing determinations, to be provided by Legal Experience Training. Learning points from the PSA will also be reviewed as part of the workshop session.

### **Staff Changes**

84. Vanessa Tailor left the GOsC on 24 December 2014, and Priya Lakhani commences maternity leave on 14 January 2015.

85. Vanessa's role has been filled by Lesley Rudd and Priya's maternity cover is Mr. Oke Adizie. Both have experience of working at other regulators.

**Recommendation:** to note the report.