



Council
29 January 2014
Quarterly 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	None
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
Annexes	A. Dashboard Report B. Internal Peer Review Checklist C. GOsC/GOC Peer Review Pilot checklist
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Fitness to practise case trends

1. In this reporting period, the Regulation department received 19 informal complaints and 10 formal complaints. During the same period last year, the figures were 18 informal and four formal.
2. In this reporting period, four applications for an Interim Suspension Order were made in respect of formal complaints.
3. The complaints concerned the use of inappropriate language, transgressing sexual boundaries, practicing whilst suspended, use of threatening behavior, failures to obtain valid consent and the appropriateness of treatment provided.
4. The Regulation Department is currently handling a caseload of 80 fitness to practice cases (32 formal and 48 informal).

Section 32 cases

5. 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.
6. In the current reporting period, no criminal prosecutions have been initiated in the Magistrates Court. However, the Regulation department has continued to act on reports of possible breaches of section 32.
7. The Regulation department is currently handling 18 active section 32 cases. Cease and desist letters have been sent in eight and investigations are ongoing in the remaining cases.
8. The Regulation department is currently formulating a draft enforcement policy, which will be brought to Council for consideration in due course.

Dashboard reporting

9. Following discussion at Council in October, it was agreed that a dashboard format would be introduced using the indicators of efficiency, effectiveness and economy, and including comparative trends over time.
10. The dashboard report is at Annex A.
11. This quarter has seen some increase in the median time taken for cases to be considered at IC and PCC. In part, this reflects an increased number of interim order hearings during the earlier part of the year, work on fitness to practice policy issues and case complexity.

12. In December last year, we recruited an additional legally qualified caseworker on a six month basis to assist with the caseload, and to ensure cases continue to be progressed in accordance with our performance indicators.
13. Four interim suspension orders were applied for during the quarter. Three of these related to allegations that the registrant had transgressed professional and sexual boundaries. One related to concerns about the treatment provided by a registrant, and the application was made on the recommendation of the screener.
14. The dashboard contains an indicator for the number of cases in which the Professional Conduct Committee did not find the allegation 'well founded'. The case law establishes that this is not a question of proof. Rather, it is a matter of judgment for the committee.
15. The role of the GOsC is to ensure that complaints are properly investigated, that the best available evidence is obtained, and that where a matter has been referred to the Professional Conduct Committee, the case is properly presented.
16. On its own, an indicator which merely recorded whether or not the Committee considered an allegation to be 'well founded' would be of limited use in providing assurances to the Council about the quality or effectiveness of its case investigation and presentation functions.
17. We have considered a number of additional indicators that might assist the Council in forming a view on effectiveness in this regard. We considered the number of facts found proved at each hearing as a potential indicator. However, there are considerable difficulties in obtaining a consistent measure for comparative purposes, not least because of drafting differences.
18. We considered that the most useful measure would be one employed by the Crown Prosecution Service, the 'half time submission'. If a hearing proceeds to the defence case (i.e. past half time), it is considered that the case is properly brought.
19. Under the GOsC (Professional Conduct Committee) (Procedure) Rules 2000, there are two opportunities for a registrant to make such submissions.
20. Firstly, under rule 27(2), a registrant may submit that any facts admitted by him do not amount to the allegation (rule 27(2)).
21. Secondly, under rule 27(6), after the close of the Council's case, a registrant may submit that in relation to any facts alleged but not admitted, insufficient evidence has been adduced upon which the Committee could find the facts proved.

22. If no such submissions are made, or if submissions are made but not successful, it is considered that this would be a useful indicator that the allegation was properly investigated and presented.

Quality assurance of fitness to practise

23. In July 2013, the Regulation department introduced new template case history, case management and risk assessment forms; chronologies and evidence grids as part of effective case management. Each case must have these documents on file and they are regularly reviewed as part of case management meetings.
24. In September 2013, the OPC considered draft proposals for a quality assurance framework. Work on the framework is on-going and an update will be provided at the next OPC meeting. The Regulation department is currently compiling a quality assurance manual and template library, which are key elements of the quality framework. The intention is to map each part of the FTP process against the PSA performance and audit standards, and to identify areas where processes could be made more effective.

Internal peer review

25. As part of this on-going quality work, the Regulation and Professional Standards teams have established a peer review mechanism to assess compliance with case management and customer service standards.
26. An audit checklist has been prepared (Annex B). The intention is that the Professional standards Team will review all cases received this quarter on a rolling basis for the lifetime of the case against the criteria set out in the checklist. Depending on case numbers, a sample of new informal and formal cases will also be reviewed in future quarters, in addition to the rolling review of cases already now in the review sample.
27. On 20 December 2013, the Head of Professional Standards and the Professional Standards Manager, reviewed the seven formal and 18 informal complaints that had been received between 1 October to 16 December 2013.
28. The reviewers looked for evidence that:
- a. sufficient information about the fitness to practise process had been provided to potential complainants and that regular and active efforts were being made to progress an informal complaint
 - b. receipt of formal complaints was acknowledged and that a Screener's decision was obtained within our internal and published key performance indicators
 - c. risk was assessed on receipt of the formal complaint and continually assessed throughout the life of the case

- d. relevant policies, such as the Notification of Fitness to Practise Investigations and Outcomes were being complied with
 - e. case management documents, including Particulars of Concern, Investigation plans, evidence grids and case management forms were present in each case and up-to-date
 - f. there was continuous activity in each case and internal and published key performance indicators were being complied with
 - g. the parties in each case were kept up-dated on the progress of the case and contacted at least once in every month of the life of the case.
29. Feedback from the review team and regulation caseworkers is that they have found this to be a very constructive exercise.

External Peer review

30. The Regulation team and the General Optical Council are now piloting a mechanism for peer reviewing GOsC cases in which the Professional Conduct Committee has concluded that the allegation was not 'well founded' or in which a hearing has to be cancelled under rule 19 of the GOsC (Professional Conduct Committee) (Procedure) Rules. Rule 19 provides for the cancellation of a hearing where, due to exceptional circumstances, the hearing of the case cannot properly take place.
31. On 23 December 2013, the Head of Legal Compliance at the General Optical Council attended the GOsC offices to review a sample of cases as part of the pilot. In order to avoid costs, cases were included in the review sample on the basis of whether a transcript of the proceedings had already been commissioned.
32. During 2013, there were nine cases in which the PCC concluded the allegation was not well founded and four of these were included in the review sample. During 2013, three cases were cancelled under rule 19, and one of these was included in the review sample.
33. The reviewer was provided with copies of the PCC determination, the transcript of the hearing, the hearing bundle and documents before the Committee, and with the investigation file containing original correspondence and documents.
34. A copy of the review checklist is at Annex C. The reviewer was asked to consider all the material provided and to provide her opinion on the following in each case:
- a. the quality of the investigation
 - b. the evidence obtained (including the quality of any expert evidence and the relevance and sufficiency of witness statements obtained)

- c. the presentation of the case before the PCC
 - d. whether or not the case was properly brought.
35. The reviewer was also asked to provide her views on the drafting of the factual particulars (charges) in each case and whether or not an Interim Order should have been applied for.
36. The findings from the pilot have been positive. The reviewer considered that the four cases heard by the PCC were properly brought and investigated, and that the outcome turned on factual disputes which could only be resolved by the PCC. In relation to the case that had been cancelled, the reviewer confirmed that rule 19 was appropriate in circumstances where the complainant had refused to co-operate with the investigation. In addition, the reviewer made helpful suggestions about the wording of template letters, documentation to be provided to experts and best practice in relation to obtaining evidence useful to the registrant.

Baseline review of Investigating Committee decisions

37. In addition to the quarterly fitness to practice report, Council receives an annual report from the Chair of the Investigating Committee. However, both these reports deal primarily with statistical information: the volume and type of cases considered; the number of cases referred; and compliance with timescales and key performance indicators.
38. The intention of the draft quality assurance framework is to provide further objective and qualitative assurance to the GOsC Council about the decisions being made by its fitness to practise committees. Following discussion with the Chair of the Investigating Committee, it was agreed that undertaking a baseline audit of investigating decisions would be appropriate.
39. The draft Quality Assurance Framework includes a number of quality objectives in relation to the length of time for completion of an investigation and the final disposal of a case, which are already subject to monitoring and reporting mechanisms. However, in relation to decisions taken by the GOsC fitness to practise committees, the quality objectives include that such decisions should:
- a. address all allegations made
 - b. give sufficient reason for preferring the evidence of one party over another (where appropriate in the context of the Committee's role)
 - c. give sufficient reasons
 - d. refer to any relevant standards and guidance
 - e. refer to any legal advice received by the Committee
 - f. be delivered promptly.

40. The Professional Standards Authority places great importance on the reasons given for decisions made by fitness to practise committees. The 2013 initial stages audit of the Health and Care Professions Council stated (at page 9):

'A regulator's decisions must be able to stand up to scrutiny. Ensuring that detailed reasons are given for decisions, which clearly demonstrate that all relevant allegations/issues have been addressed and that decisions are communicated to the parties effectively is essential to maintaining public confidence in the regulatory process. The provision of well-reasoned decisions also acts as a check to ensure that the decisions themselves are robust.'

41. In September 2013, the Investigation Committee agreed that 'Particulars of Concern' should be drafted and sent to the complainant when he or she is asked to comment on the complaint. The intention was to aid the identification of the key issues in any case, and any subsequent referral by the IC. In turn, this measure will focus the investigation and assist in obtaining the best evidence from witnesses.
42. In January 2014, a legal consultant from Bevan Brittan LLP reviewed all decisions made by the Investigating Committee during the period 1 October 2012 to 30 September 2013. The purpose of this exercise was to establish a qualitative baseline in terms of a minimum level of quality for decisions made by the Investigating Committee and IC Chair, which it would be desirable to maintain (or exceed) each year.
43. Setting a baseline in this way will also assist any future evaluation of the effectiveness of the introduction of the Particulars of Concern, and the Quality Assurance Framework.
44. During the period of the review sample, the Investigating Committee met on eight occasions and made the following decisions:
- a. 21 case to answer
 - b. 11 no case to answer
 - c. two adjournments
 - d. three views provided on the proposals to cancel a hearing of the case that had previously been referred to Professional Conduct Committee.
 - e. The Chair of the Investigating Committee made eight decisions in relation to whether the Committee should consider whether to impose an Interim Suspension Order.
 - f. Six hearings were held at which the Investigating Committee considered whether to impose an Interim Suspension Order. Three orders were made, and the Committee accepted an undertaking in one case.

45. The reviewer was asked to consider whether:
- a. the relevant committee or decision maker had sufficient information available to it to make the decision concerned
 - b. the relevant committee or decision maker should have adjourned for any necessary further investigation
 - c. relevant procedural requirements were complied with, including providing the registrant with a suitable opportunity to make representations and the complainant with an opportunity to comment on the registrant's representations
 - d. the decision accorded with the GOsC's published guidance
 - e. the decision made adequately protected the public
 - f. the decision addressed all the allegations/aspects of the complaint
 - g. adequate reasons had been provided for the decisions made.
46. The findings from the review were generally positive. In particular, the review did not identify any cases which raised concerns that the substantive decision was unsafe, or which did not adequately protect the public.
47. The review also concluded that there were no concerns in relation to whether or not the committee had adequate and appropriate information to make its decisions, and noted that adjournments had been required only in very few cases. The review also noted that decisions of the Committee were expressed in plain English and that technical language was used appropriately.
48. The review did make some helpful suggestions in relation to how the presentation of the committee's reasons might be improved. These included matters such as including more detail on the legal advice received by the committee, and including references to the GOsC's Guidance and to the Osteopathic Practice Standards in the Committee's reasons.
49. The review also recommended that the Committee should include more detail in the reasons generally, in order to enable the reasons to be viewed as a stand alone document, and to assist the complainant in understanding why the Committee had reached the decision it did. It was, however, noted that over the course of 2013, the degree of detail in the written reasons had improved as had the specificity of the issues identified when referring allegations to the Professional Conduct Committee.

Feedback loops

50. On 20 October 2013, the Regulation Manager and Professional Standards Manager made a presentation to first year students at one Osteopathic Education Institution. The presentation focused on the Osteopathic Practice Standards and the challenges faced by osteopaths in practice.
51. At the PCC training day held on 15 November 2013, registrant members of the PCC highlighted concerns about registrants' awareness of the requirement to register with the Information Commissioner. In response, the Regulation and Communication teams have prepared some FAQs which will appear in the next edition of the Osteopath.

Legal services tender

52. In November 2012, the Finance and General Purposes Committee agreed that the Executive should undertake a twelve month market testing exercise with a number of legal service providers before determining whether or not to commit to a long term relationship with any of the providers.
53. The market test exercise commenced in January 2013, and the Regulation department has been working with two firms of solicitors, a solicitor advocate and two barristers as part of the exercise.
54. Each of the legal service providers has been assessed against a number of evaluation criteria including:
 - a. cost
 - b. responsiveness
 - c. judgment
 - d. quality of work
 - e. drafting
 - f. advocacy
 - g. added value (e.g. training/case updates).
55. In addition, feedback on individual case presenters was obtained from all PCC members at the PCC members day on 15 November 2013.
56. A meeting was held with all service providers on 12 September 2013. One of the main purposes of the day was to ensure that new providers of legal services had an understanding of the osteopathy profession and the GOsC. The tenderers were therefore given a presentation from an osteopath who acts as an expert for the GOsC and were able to ask technical questions to assist their case preparation. In addition, the opportunity was taken to share knowledge and best practice and to clarify the GOsC's expectations of its legal providers.
57. Given the relatively small number of cases which are heard by the PCC each year, the executive intends to continue the market testing exercise for a further

six months in order to allow a fair opportunity for each of the legal service providers to be evaluated. In line with the objective of maximising quality, however, the executive may choose to engage additional legal service providers if it considers that a particular case warrants particular expertise, or if any of the current providers are not available to undertake the work.

Training and development

58. On 3 December 2013, the General Osteopathic Council held a joint training event with the General Optical Council: 'Handling Challenging Contacts with Suicide Awareness', with training delivered by the Samaritans. In addition to learning various techniques, attendees were able to work through a number of case studies and to share best practice and to learn from the way in which employees at other regulators might handle the same issues.
59. On 14 November 2013, members of the Regulation department attended a seminar on drafting charges hosted by external solicitors. This year, we intend to arrange further training with other regulators on this topic.

Working with other regulators and keeping abreast of good practice

60. Representatives from the Regulation department attended the regulators' fitness to practice forum on 24 October 2013. The GOsC will host the forum on 29 April this year.
61. The GOsC and General Optical Council have co-operated on joint training of staff and established a pilot peer review process for reviewing cases in which the Professional Conduct Committee did not make a finding of Unacceptable Professional Conduct.

PCC training day

62. On 15 November 2013, members of the Professional Conduct Committee attended an all members day. The event was facilitated by an external facilitator, Mary Timms. Feedback from the Chair and members on the day was extremely positive.
63. PCC members received a detailed presentation from Ms Keisha Punchihewa, the senior lawyer at the Professional Standards Authority (PSA) with responsibility for operational management of the Section 29 Review process and scrutiny of the decisions made by fitness to practise panels and committees of each health care regulator.
64. The presentation set out the PSA's views on the matters, reasoning, and amount of detail that it would expect to see in determinations of fitness to practise committees. The opportunity was also taken to share learning points from the Section 29 scrutiny process which the PSA considered to be of general application to all fitness to practise committees.

65. PCC members also received detailed training on the new Indicative Sanctions Guidance, Conditions of Practice Guidance and the Practice Note on use of the 'Rule 8 Procedure' which Council had approved on 17 October 2013. Members had the opportunity to apply the new Conditions of Practice Guidance to a case study.
66. In addition to a refresher on the importance of data security and Information Governance, PCC members received an in-depth analysis of the judgment of the High Court in *Spencer v the General Osteopathic Council* and had the opportunity to discuss the implications of the judgment.
67. As part of on-going quality assurance, PCC members were asked to complete an anonymous questionnaire providing individual feedback on legal representatives and experts appearing before the committee, and on the legal and medical assessors advising the committee.
68. In response to the question 'what does the GOsC do well?', PCC members all highlighted the administrative arrangements for hearings; the quality of hearings bundles; and customer care of panelists and witnesses.
69. 68. In response to the question 'where do you think the GOsC could improve?', helpful suggestions were received about our procedures for scheduling cases and estimating the time required for a hearing, and on the drafting of charges. Over the next few months, we intend to meet with the other regulators to identify best practice that might be incorporated into our own procedures.
70. PCC members also made very helpful suggestions on the draft Quality Assurance Framework.

Recommendation: to note the report.