



Council
17 July 2018
Fitness to practise report

Classification Public

Purpose For noting

Issue Quarterly update to Council on the work of the Regulation department and the GOSC's fitness to practise committees.

Recommendation To note the report.

Financial and resourcing implications Financial aspects of fitness to practise activity are considered in the Chief Executive's Report.

Equality and diversity implications Ongoing monitoring of equality and diversity trends forms part of the Regulation department's future quality assurance framework.

Communications implications None

Annex Fitness to practise data set Q1 2018-19

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Fitness to practise case trends

1. The quarterly fitness to practise dataset for the relevant reporting period is attached at the Annex to this paper.
2. In this reporting period, the Regulation Department received 25 concerns and 14 formal complaints. During the same period last year, the figures were concerns and formal complaints.
 - a. Of the 25 concerns: seven related to communication issues; five concerned professional indemnity insurance; two involved sexual impropriety; six involved consent; two involved convictions/police investigations; one involved dishonesty; one related to advertising and one related to the osteopath acting beyond their training and/or competence.
 - b. Of the 14 formal complaints: four related to communication issues; three concerned professional indemnity insurance; four involved consent; one concerned sexual impropriety; one involved dishonesty and one concerned the health of a registrant.
3. One application was made to the Investigating Committee for the imposition of an Interim Suspension Order and two applications were made to the Professional Conduct Committee. During the same period last year, the number of applications made were one and one respectively.
4. The Interim Suspension Order (ISO) applications made during this reporting period concerned allegations of transgressing sexual and professional boundaries and substance misuse.
5. The IC considered that an interim suspension order was necessary for public protection and granted the application. The PCC considered that interim suspension orders were necessary for public protection in both cases and granted the applications.
6. During this reporting period, the Regulation Department serviced 18 Committee hearing and training events, substantive, review, IC meetings and ISO hearings.

Fitness to practise case load and case progression

7. As at 30 June 2018, the Regulation Department's fitness to practise case load was 67 cases (44 formal complaints and 23 concerns). At the 30 June 2017, the fitness to practise case load was 131 cases (57 formal and 74 concerns).
8. The performance against KPIs for this reporting period is as follows:

Case stage	Key Performance Indicator	Median figures achieved this quarter
Screening	3 weeks	3 weeks
Investigating Committee	17 weeks	11 weeks
Professional Conduct Committee	52 weeks	53 weeks
Health Committee	52 weeks	n/a (no cases heard)

9. In this reporting period, the median figures for the length of time taken for cases to be screened and considered by the IC are within KPI with the PCC median just exceeding the KPI.
10. The Professional Conduct Committee heard eight cases over thirty four days during the relevant period. Two cases went part heard with one being re-listed and concluded within the same reporting period. In three cases no UPC was found, two cases concluded with admonishment and one case resulted in a suspension.
11. During the reporting period, the Investigating Committee considered eleven cases and referred six cases for a final hearing and closed four cases. The IC adjourned one case to request additional information.

Section 32 cases

12. 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.
13. The Regulation department continues to act on reports of possible breaches of section 32 and as at 30 June 2018, is currently handling 30 active section 32 cases.

Judicial Reviews and appeals of decisions made by FTP Committees

14. The statutory appeal case of *Teasdale v General Osteopathic Council* [2018] EWHC 1679 (Admin), took place before Mr Justice Spencer at the Royal Courts of Justice on 9 May 2018. Judgment was handed down on 4 July 2018.
15. Whilst the appeal was allowed in part (with a sanction of admonishment substituted for that of conditions of practice), the GOsC was ordered to pay only 50% of the Appellant's costs, assessed as £12,000. Therefore the GOsC is required to pay £6,000 in total.
16. The background to the Appeal can be stated shortly. Patients treated by the Registrant were referred to as patients A, B, C, and E. The hearing before the

PCC took place between 16 October 2017 and 24 October 2017. The PCC heard oral evidence from Patient E, the mother of Patient A, Patient B and two expert witnesses. The PCC also heard oral evidence from the Registrant herself. The PCC found the majority of the allegations proved in relation to three broad areas: record keeping; communication and consent; and assessment, management and aftercare. The PCC did not find any UPC or lack of professional competence in relation to record keeping. However, in relation to communication and consent, the PCC observed that, on their findings, the Registrant's appointments with Patients A, B and E demonstrated that on four separate occasions she did not adequately explain the treatment she intended to provide and as a consequence did not obtain valid consent which, the PCC concluded, represented a departure from the Osteopathic Practice Standards.

17. The Registrant appealed against the PCC's findings generally on the grounds that it had failed to give appropriate weight to the evidence of the Registrant and her expert witness, and more specifically, the factual findings relating to each of the Patients A, B, C and E were challenged as were the PCC findings that the conduct amounted to UPC. The Registrant also asserted that the sanction imposed by the PCC was wrong in that it was excessive.
18. The successful argument that found favour before the court was that the PCC had failed to make primary findings of fact in relation to the explanation given by the registrant to Patients A, B, and E. It was only then, having determined what that explanation actually was, should the PCC have given consideration as to whether that explanation was adequate or not.
19. Baby C was an 18-month-old toddler whose mother was a receptionist at the Practice where the Registrant worked. On the evening of 22 February 2016, Baby C had fallen and sustained some injury to his head. As a result of a conversation between Baby C's mother and the Registrant on the morning of 23 February 2016, the baby was brought into the Practice by his grandfather to be seen by the Registrant. The Committee found that, when seen by the Registrant, Baby C presented with swelling and bruising to his forehead. The Registrant had accepted in cross examination during the hearing before the PCC that aftercare advice in relation to Baby C should have been provided by her but that she failed to do so. Thus, the tiredness and irritability which were identified by the Registrant as potential side-effects of the treatment provided were also potential signs of cerebral irritability and therefore indicative of a serious head injury. By telling the baby's mother and grandfather that these were potential side-effects of the treatment, the Registrant was giving them false reassurance when, had those symptoms occurred, they should have led to the mother and/or grandfather seeking urgent medical attention.
20. Mr Justice Spencer concluded that the PCC was justified in making the findings that it did in relation to Baby C and, further, in also finding that the Registrant's failings amounted to unacceptable professional conduct. Accordingly, as the findings in relation to Patients A, B and E had fallen away, an admonishment

was substituted, replacing the conditions of practice order imposed against the Registrant by the PCC.

Lessons Learned Review – Morecambe Bay NHS Foundation trust: NMC handling of concerns about midwives' fitness to practise

21. In February 2017, the Secretary of State for Health asked the Professional Standards Authority (PSA) to undertake a 'lessons learned' review of the Nursing and Midwifery Council's (NMC) handling of concerns about midwives at the University Hospitals of Morecambe Bay NHS Foundation Trust. The concerns arose between 2004 and 2014 and were the subject of an independent Investigation conducted by Dr Bill Kirkup which found serious concerns about the clinical competence and integrity of the midwifery unit at Furness General Hospital (FGH). During that period there were several avoidable deaths of mothers and babies. The terms of the review encompassed identifying lessons not just for the NMC but also for other regulators about its approach with witnesses and other stakeholders. This extended to commentary on the current fitness to practise process, with its emphasis on adversarial hearings rooted in the criminal justice system, albeit the standard of proof in tribunal hearings is the civil standard of proof (the 'balance of probabilities').
22. We welcome the PSA's call for an open culture where concerns are able to be addressed locally and resolved quickly in a constructive manner (this chimes with our approach to resolving the large number of advertising concerns raised with us). The PSA has called for greater engagement with witnesses (and their families) providing appropriate information about the processes and generally being open with them. In this regard Council will note the substantial amount of work the GOsC has undertaken in the past few years in introducing a range of support tools to ensure witnesses are enabled to engage with our fitness to practise processes as well as giving their best evidence before Committees at a hearing. These tools include the witness guidance (both the leaflets and on line resources) and the assistance of Victim Support at every step of the process.
23. It is not the purpose here to examine the detailed conclusions the PSA reached in its report and how far learning can be drawn from this that is relevant to the GOsC. However, careful account has been taken to the findings reached and these will form part of all new initiatives within the regulation department.

Training for the Investigating Committee and Professional Conduct Committee

24. The Investigating Committee all members training day took place 28 June 2018. The agenda included: a case law update on recent developments in professional regulatory law including dishonesty and lack of integrity; a session on the revised osteopathic practice standards and a series of interactive sessions focusing on aspects of the amended draft Investigating Committee Decision Making guidance.

25. The Professional Conduct Committee all members training day has been scheduled for 27 November 2018. On 28 June 2018, the Director of Fitness to Practise met with the Chair of the Professional Conduct Committee to discuss, amongst other matters, the draft agenda for the training day which currently will include: an update on the new Osteopathic Practice Standards and drafting determinations.

Rule 19 Practice Note

26. We presented a paper to the Policy Advisory Committee in June 2018 proposing the introduction of a practice note on Rule 19 GOsC (Professional Conduct Committee) (Procedure) Rules Order of Council 2000 to assist the Professional Conduct Committee (PCC) and the parties to a hearing. The draft Practice Note is designed to guide the PCC through the appropriate procedure for the cancellation of a case following referral from the Investigating Committee for a substantive hearing. We have decided to undertake further pre-consultation activity with key external stakeholders in the forthcoming months before presenting the paper to Council later this year.

Recommendations: to note the report.