General Osteopathic Council

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Council
20 July 2021
Insights and reflections from external reports

Classification	Public
Purpose	For discussion
Issue	To provide Council with insights and reflections from the publication of externally produced reports.
Recommendation	To discuss the content of the paper.
Financial and resourcing implications	None arising from the paper.
Equality and diversity implications	These have been considered within the individual reports referred to within this paper.
Communications implications	We propose using our communication channels to signpost to the resources referenced in this paper.
Annex	None.
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Key messages from the report:

- Bringing insight into our business is a key component of the GOsC Strategic Plan 2019-24 and the Communications and Engagement Strategy 2021-24.

- We have considered a number of external reports and set out our reflections on who we might use the insights/reflections in our future work. The reports considered are:

    - Professional Standards Authority (PSA) - covid-19 review: learning from a crisis (a case study review)
    - PSA - Ethics in extraordinary times: practitioner experiences during the pandemic
    - PSA - cognitive biases in fitness to practise decision making: from understanding to mitigation
    - The Kings Fund - My role in tackling health inequalities: A framework for Allied Health Professionals
    - NICE - shared decision-making guidance

- Examples of our insight/reflections across the reports include:

    - Ensuring the patient voice remains central to our work (PSA covid-19 review)

    - Reviewing how we have implemented remote hearings and meetings so we ensure we carry forward that learning into our future work (PSA covid-19 review)

    - Reviewing ethical considerations in our context, for example around the use of judgement and how this applies to standards (PSA ethics in extraordinary times)

    - Signposting resources available to the profession and drawing the link to the Osteopathic Practice Standards (Kings Fund report and NICE guidelines).

Background

1. A key principle of the Strategic Plan 2019-24 is that as a regulator we will be anticipatory, and that we will monitor trends in health and social care, regulation, osteopathic practice and education in order to respond effectively to change and to support the osteopathic profession to respond accordingly.

2. This flows through into our new Communications and Engagement Strategy 2021-24 where we describe a key principle for our work as the need to be reflective and insight-driven.

3. This paper summarises a number of recent external reports and identifies for Council insights and reflections which may inform our future activity.

Discussion

4. The external reports considered within this paper include:

    - Professional Standards Authority (PSA) - covid-19 review: learning from a crisis (a case study review)
    - PSA - Ethics in extraordinary times: practitioner experiences during the pandemic
    - PSA - cognitive biases in fitness to practise decision making: from understanding to mitigation
    - The Kings Fund - My role in tackling health inequalities: A framework for Allied Health Professionals
    - NICE - shared decision making guidance

PSA - covid-19 review: learning from a crisis (a case study review)

5. In April 2021, the PSA published a case study review of learning from the first seven months of the pandemic - January 2020 to July 2020. The PSA sate that the report '…provides some early insights into how the regulators responded in that first emergency period, and what we can learn from the actions they took'.

6. The report identified that a number of regulatory actions were helpful and constructive during this period and included:

    a. Improvements in inter-regulatory relationships
    b. Improvements in relationships between regulators and other stakeholders
    c. Improvements in mutual understanding between regulators and their stakeholders
    d. Rapid adaptation of technology
    e. Rapid development and implementation of other innovations
    f. The importance of trust
    g. The importance of corporate strategy.

7. The report also identified a number of potential risk areas which emerged and which will need appropriate consideration. These are set out in the table below with the Executive's reflections on how the GOsC relates to those risks.

Potential risk area	**PSA narrative**	**GOsC reflections**
Diminished involvement of patients, service users and the public	In the rapid development of guidance and positions, some have reflected that the patient and public voice was not given sufficient influence.	We recognised this early in the pandemic and took active steps to involve the patient voice in the development of our guidance which was being prepared at pace. Looking ahead, our business plan 2021-22 sets out a range of activity to further enhance our relationship with patients so their voice is central to our regulatory approach.

Potential risk area	PSA narrative	GOsC reflections
As yet incomplete assessment of the impact of innovations	Necessarily, as determined by the speed of necessary changes, but with potential negative impacts such as on the trust of the public in regulation.	The pandemic can be used as a disruptor for positive change however this need not mean that change should lead to trust in regulation being eroded. We note that the PSA reflects on trust of the public, but equally there is the trust of registrants themselves. In January 2021, we published our insights of the pandemic in the Nockolds Solicitors regulatory briefing document Keeping regulation relevant We identified learning across areas including: • Patient voice • Wellbeing • Collaboration within our osteopathic sector • Collaboration across the healthcare sector • Equality, Diversity and Inclusion Looking ahead, we have committed within the business plan 2021-22 to reviewing how we have implemented remote hearings and meetings so we ensure we carry forward that learning into our future work. We note a concern of the PSA which is that in fitness to practise cases the way in which context is taken into account will require further consideration and exploration. While the pandemic situation may amplify sensitivities, our view is that this is always a factor, and that the views of all parties need to be heard to ensure fairness and confidence in the regulatory system.
Blurring of boundaries	Has seemed an ever-present risk in the examples of regulators working with other organisations, with	We saw during the pandemic, particularly the early phase, that there was confusion within the profession between the role of the regulator and that of the professional association.

Potential risk area	PSA narrative	GOsC reflections
	a resultant potential for confusion about where responsibilities lie.	We took steps to address this through an article in the osteopath magazine[1] and looking ahead we recognise that we need to be able to help osteopaths better understand the benefits of being a regulated healthcare professional. It is interesting to note, that this issue comes through in the PSA ethics in extraordinary times report (see next section of this paper) and therefore, there is work for all regulators to explore further. We will use our new Communications and Engagement Strategy to help us better explain our regulatory role and approach to regulation.
Limitations of technology	Some regulatory processes being a poor fit for online working, particularly where the supporting information or documentation is complex, and where too comprehensive adoption risks excluding some people.	We were able to adapt pretty much all of our processes to online working relatively easily; however, we did pause our substantive fitness to practise hearings from March to July 2020. During this period we led the way in developing innovative interim guidance on holding remote hearings and questioning witnesses remotely. We ensured that this guidance had patient input. Looking ahead, we will be publishing consultations on the interim guidance we produced and, subject to consultation, we will make the guidance permanent.
Losses from not being able to meet in person	The exact nature of which is not easy to quantify, but which requires further consideration before not-in-person working becomes	We recognise that there have been some losses from not being able to meet in person; however, there have also been made benefits from the online working. As an example, our larger scale CPD webinars, and our Fitness to Practise 'myth-

[1] https://www.osteopathy.org.uk/news-and-resources/document-library/about-the-gosc/the-osteopath-july-august-2020/

Potential risk area	PSA narrative	GOsC reflections
	enshrined as the new normal.	busting' webinars have attracted large registrant audiences. Looking ahead, we are planning a return to office-based working, in accordance with the Government Guidance, from August 2021 and in due course, we will outline our plans for holding Council/Committee meetings in-person and online.
The operational impacts in some areas	Such as the build-up of fitness to practise cases which it has not been possible to progress – will need to be addressed.	We recognise this has been a challenge for many regulators, and while we did pause our substantive fitness to practise hearings, which will of course impact on our key performance indicators, we have not experienced a backlog in our case volumes.

PSA - Ethics in extraordinary times: practitioner experiences during the pandemic

8. The PSA commissioned Professor Deborah Bowman to carry out research to explore the ethical experiences of practitioners working in health and social care professions during the covid-19 pandemic. The research was conducted between January 2021 and March 2021 and comprised a scoping literature review, the iterative development of a semi-structured interview (16 were held in total), and focus groups scheduled with practitioners from a range of professions (5 were held in total).

9. The report was published in June 2021.

10. With regards to the ethical experiences of practitioners, the report reflects that the findings from the research identified areas which have been overlooked and include:

    a. what duties of care to self and others might mean in professions beyond intensive care;

    b. how underexplored ethical approaches such as the ethics of care, relational ethics, virtue ethics and narrative ethics resonate with practitioners and relate to their experiences during the pandemic;

    c. how practitioners perceive and engage with ethical guidance, including from professional regulators, and the significance of judgement;

d. the extent of moral injury and ensuing moral distress which will endure long after the pandemic.

11. The report makes seven recommendations for consideration by regulators and these are:

    a. Reflect on the contents of this research and map its finding against ethical guidance to identify where and how it might be developed;

    b. Review whether the concept of judgement is well-articulated, modelled and supported in ethical guidance and resources;

    c. Evaluate the purpose and format of ethical guidance: how effectively does it meet the practice-based, human and interactionist elements of ethical practice captured within this study?

    d. Describe what ethical preparedness might look like for the profession and its practitioners.

    e. Describe what ethical approaches are embedded in, or even assumed by, the ethical guidance that is offered to professionals and what might be missing or under-emphasised.

    f. Develop resources and guidance that recognise the prevalence and significance of moral injury and moral distress; and

    g. Develop a systems-based approach to thinking about and fostering ethical practice. Building on the flexibility and collaboration that emerged during the pandemic to identify ways in which a systems approach would engage with practitioners' ethical experiences during the pandemic.

12. We are reflecting on the report and what this might mean in our context. Providing one example, during the earlier phases of the pandemic there was a tension between osteopaths wanting GOsC to provide a definitive answer and our position that osteopaths needed to assess the published guidance, including the Osteopathic Practice Standards (OPS) and apply their clinical judgement.

13. In light of this research, we may reflect on whether we need to provide more resources around making judgements, such as what does it feel like to make a judgement and what, if any, barriers might exist that prevent judgements from being made. We may also want to think about how the patient voice plays into such a discussion.

14. We suggest that we reflect further and discuss our thinking later in the year at our Policy and Education Committee, which is chaired by the report author, Deborah Bowman.

PSA - cognitive biases in fitness to practise decision making: from understanding to mitigation

15. The PSA commissioned advice from Leslie Cuthbert, a consultant and experienced Chair and fee paid judge on biases in fitness to practise decision making in accepted outcome versus panel models (i.e. panel hearings and case examiner accepted outcomes). The advice was published on 10 June 2021.

16. The advice identifies common cognitive biases likely to affect group decision makers and common cognitive biases likely to affect decisions made in private. The advice finds important differences in the biases that affect each method of decision-making, highlighting strategies for managing those biases. It acknowledges that bias and the impact of biases cannot be solved at a personal psychological level and concludes that part of the 'solution' is to use groups and procedures which help to counter-act biases, and offers as an example, the adversarial approach at hearings and the fact that decision makers hear submissions from opposing sides which in turn helps to reduce the impact of confirmation bias.

17. The advice stresses the importance of an organisational culture which fosters and encourages rethinking i.e. case examiners and panellists should not be punished or criticised for sometimes 'being wrong', rather, the focus should be seen as an opportunity to learn and improve rather than be perceived as an attack on the decision maker's abilities or judgment. Organisations should also be careful to describe approaches as 'best practice' as this could hinder development and discourage a proactive approach to continually strive for better practice within fitness to practise.

18. In summary the advice provides broad criteria for cases that are potentially more appropriate for the Case Examiner consideration and those more appropriate for a Panel route.

19. Cases more appropriate for Case Examiner are those where:

    - Cases where a decision needs to be made urgently.
    - Cases where there is very little missing information and very little ambiguity.
    - Cases which are likely to require limited amounts of engagement with the registrant.

20. Cases potentially more appropriate for the Panel route are:

    - Paper heavy cases as there would be less likelihood of a number of the biases which would impact on an individual decision maker considering matters on the papers having a significant effect e.g. the absentmindedness bias.

    - Cases which may involve different cultural considerations (providing the panel itself is diverse) as individual decision makers may be more prone to blind spot bias and to stereotyping, whether intentionally or not.

- Cases with significant 'gaps' in the information and/or with substantial ambiguity as to what occurred.

21. The above conclusions accord with our final response to the Department of Health and Social Care (DHSC) consultation on regulating health professionals where we expressed reservations on case examiner 'accepted outcomes' for all cases when determining 'impairment' and 'sanction', questions around insight, reflection and the proper evaluation of aggravating and mitigating features are not conducive to what would be in effect a paper-based activity.

22. We suggested that some cases will not be suitable for the accepted outcome route, even where the registrant may agree to the proposed measure and that careful consideration would need to be given to situations where the registrant is self-represented and the real prospect of being disadvantaged in providing detailed submissions on an increasingly complex, specialised area of law.

23. We are currently considering how we can employ some of the measures set out in the advice at individual, interpersonal, and at organisational level, to raise awareness, mitigate, and potentially remove these biases and improve fairness and the quality of decisions taken in a fitness to practise context. This may include a bespoke training programme for the PCC.

The Kings Fund - My role in tackling health inequalities: A framework for Allied Health Professionals

24. In May 2021 the Kings Fund published a report which provides a framework for Allied Health Professionals to consider 'my role in tackling health inequalities'. The report was developed with an Advisory Group which included representation for osteopaths from the Institute of Osteopathy.

25. The report sets out that Health inequalities are 'unfair and avoidable differences in health across populations and between different groups within society' which arise because of different conditions such as where we are born, where we live and where we work. The report also references that some of the people most at risk of experiencing health inequalities are also often those who find it the hardest to access high-quality support (Hart 1971).

26. The report provides a framework with six aspects of practice and three different ways to think about each aspect. There are also practical examples provided alongside each aspect of practice. These are

Aspect of practice	
Myself as an individual	Awareness ↓ Action ↓ Advocacy
Care of patients	
Clinical teams, pathways and service groups	
Communities and networks	
Systems of care	
Nurturing the future	

27. The document represents a helpful resource for osteopaths who may see patients within their practice/community who suffer from health inequalities.

28. With osteopaths being Allied Health Professionals in England it would be appropriate for GOsC to signpost this through our social media, recognising that for those osteopaths in Scotland, Northern Ireland and Wales who do not have Allied Health Professions status, the document still represents a useful learning resource. In signposting this resource we can draw a link to the OPS and where we anticipate that the framework provides a support, such as:

    - Standard A2: You must work in partnership with patients, adapting your communication approach to take into account their particular needs and supporting patients in expressing what is important to them.

    - Standard A5: You must support patients in caring for themselves to improve and maintain their own health and wellbeing.

    - Standard C6: You must be aware of your wider role as a healthcare professional to contribute to enhancing the health and wellbeing of your patients.

NICE - shared decision making guidance

29. In June 2021, the National Institute for Health and Care Excellence (NICE) published guidance on how to make shared decision making part of everyday care in all healthcare settings. On their website, NICE state the purpose of the document is to: '…promote ways for healthcare professionals and people using services to work together to make decisions about treatment and care. It includes recommendations on training, communicating risks, benefits and consequences, using decision aids, and how to embed shared decision making in organisational culture and practices.'

30. The NICE guidelines, with their focus on communicating risks, benefits and consequences has a direct link to our OPS and we again can signpost to this document to bring it to the attention of the profession. We can demonstrate how familiarity with the guidelines will enhance the patient experience and qualify as an excellent source of CPD.

Recommendation: To discuss the content of the paper.