



Council
20 July 2023
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 Annex B of the Chief Executive and Registrar Report.
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
Annex	A - Fitness to Practise Data Set
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Key messages from the paper:

- In this quarter we received a 75% increase in the number of new concerns (21), having seen a 31% decrease in the total of the number of concerns received in the previous quarter (12).
- We exceeded our screener KPI however the IC and PCC (end-to-end) KPI's were not met during the reporting period.
- In this reporting period, we listed 2 of the 12 cases referred by the Investigating Committee (IC) to the Professional Conduct Committee (PCC).
- Following feedback from Council at the last meeting in May 2023, we have provided, within this report, separate analysis of the caseload where 'third party' investigations have been excluded from the median figures provided. This analysis demonstrates the impact third party investigations are having on the timely progression of our overall caseload.
- The GOsC has commenced proceedings to prosecute an individual, with the initial hearing having taken place on 7 June 2023 at Highbury Magistrates Court.

Fitness to practise case trends

1. In this reporting period, the Regulation Department received 21 concerns and 9 formal complaints were opened. During the same period last year, the Regulation Department received 10 concerns and 9 formal complaints were opened.
2. Of the 21 concerns, six related to a transgression of boundaries, six related to the conduct of the registrant, one related to a conviction, one related to a lack of insurance and seven related to poor clinical treatment.
3. The nine formal complaints related to: a transgression of sexual boundaries (3), poor conduct (2), poor clinical treatment (3) and lack of insurance (1).
4. As reported to Council at its last meeting, we continue to encounter delays in the progress of some cases because of on-going challenges engaging with complainants especially in serious and complex cases, but mainly third-party investigations (i.e., police investigations). Last quarter we reported that 31% of our caseload was under police investigation or with the criminal courts. This figure has since increased slightly to 33%. The delay in these cases, as well as difficulties with engaging complainants in serious matters including transgression of sexual boundaries cases, that has impacted on our ability to meet certain timescales. Further analysis of this is provided at paragraph 14 below.
5. During this reporting period, there has been three Interim Suspension Order applications, one to the Investigating Committee (IC) where undertakings were accepted by the Committee, one to the Health Committee (HC) where undertakings

were accepted by the Committee and another to the Professional Conduct Committee (PCC) in which the Committee determined that an ISO was not necessary.

6. The IC met remotely on three occasions and considered seven cases. The IC closed four cases, and in two cases the IC considered GOsC's application under Rule 19 to conclude two cases without the requirement for a PCC hearing. In a further case the IC adjourned the matter. The reasons for this adjournment were that the IC had concerns with the opinion of the expert on certain aspects of his report.
7. In the reporting period the PCC sat for two substantive hearings, one rule 8 meeting and one rule 19 hearing, that involved two registrants.

Fitness to practise case load and case progression

8. As at 30 June 2023, the Regulation Departments fitness to practise caseload was 57 cases (42 formal complaints and 15 concerns). In comparison, the Regulation Department's fitness to practise case load as of 30 June 2022, was 55 (47 formal complaints and 8 concerns).
9. Performance against our targets for this reporting period, is set out in the table below. At its meeting in May 2023, Council requested that we provide separate information on KPI's where third party cases / investigations are excluded from the performance targets.
10. Principally, we define third party cases/investigations as those cases that are being investigated by the police or that are being progressed within the criminal courts. However, we also rely on information from other healthcare providers, e.g. medical practitioners who operate within the NHS, where, as a result of pressures and backlogs exacerbated by the pandemic, we have encountered significant delays in obtaining information, documentation and medical reports. We have included these types of cases within the meaning of 'third party cases / investigations', as delays in the progression of these cases have been outside of our control.
11. We have set out the impact of third-party investigations on our current caseload in the table at paragraph 17 within this report. However, we have also added an additional column below demonstrating the impact on KPIs where 3rd party cases closed within this reporting period are excluded from the performance targets:

Case stage	Key Performance Indicator	Performance Target	Median figures achieved this quarter	Median figure achieved excluding 3rd party cases
Screening	Median time from receipt of concern to the screener's decision	9 weeks	6 weeks	6 weeks
Investigating Committee	Median time from receipt of concern to final IC decision	26 weeks	55 weeks	32 weeks
Professional Conduct Committee	Median time from receipt of concern to final PCC decision	52 weeks	63 weeks	63 weeks

12. In this reporting period the Screener KPI was exceeded by three weeks. Screeners considered 18 cases in this quarter.
13. The IC KPI was not met in this quarter. One case was impacted by delays in obtaining information from the police and the courts. In a further three cases, and despite numerous attempts from GOsC staff, there were continued delays in obtaining information from complainants. However, when third-party cases and investigations are excluded from the cases closed over this quarter we can see the KPI is significantly reduced.
14. The end-to-end KPI was not met during this reporting period. Two of the cases, concluded by way of a Rule 19 hearing, related to a complex, long running case involving a joint hearing with two registrants which negatively impacted on the overall KPI for this quarter.
15. Two cases at the PCC stage have been scheduled for a hearing. The remaining cases awaiting progression are as follows; in three cases we are in the process of actively listing for hearing; a further two require further investigation before we can actively list them for a hearing; a further five cases await the outcome of a police investigation and/or trial before we can progress further.

Third party cases /investigations - data comparison

16. As outlined earlier in the report, we have prepared a table below where third party investigations have been excluded from the median figures of current open cases.

17. The figures below relate to all open cases as at 30 June 2023.

	Median age of open cases which include third party investigations	Median age of open cases which exclude third party investigations	Total number of third party cases at each stage
Screeener stage	5 weeks	4 weeks	6 (40%)
IC stage	32 weeks	15 weeks	7 (58%)
PCC stage	144 weeks	67 weeks	8 (67%)
Total (taken from entire caseload)	36 weeks	15 weeks	21 (37%)

Explanatory note of the table above

18. The KPIs presented in the table above represent a snapshot of the current, median age of open cases. The median KPI for open cases at the PCC stage is 67 weeks. These cases have been complex in nature consisting of numerous patients and/or registrants. For example, in one case we received concerns from a further complainant against a registrant where the case had been referred by the IC for a final hearing. This required that we pause the progress of this case so that the further concern can be considered by the IC and joined with the case at the PCC stage.

19. Excluding third party cases and investigations from the cases currently at the Screener and IC stages clearly shows a highly significant decrease in the median KPIs. We expect that these cases will in due course positively impact on the end-to-end KPI figure. However, this prediction needs to be viewed within the following context that, should the upward trend of third-party cases we have received recently continue, this will render forecasting difficult. Nevertheless, we will continue to actively manage all cases as expeditiously as possible given their size and complexity.

Working with other regulators/stakeholders

20. The Head of Fitness to Practise continues to attend quarterly inter-regulatory meetings with other healthcare regulators. The last meeting took place on 28 June 2023. At this meeting there was discussion around witnesses giving evidence remotely from abroad where there is no permission from the state to do so. Social

Work England are awaiting a response from the Foreign, Commonwealth and Development Office on their position before this issue is considered further.

21. The Director of Fitness to Practise attended the Health and Social Care Directors of Fitness to Practise meeting on 24 May 2023. At this meeting, PSA attended to discuss boundaries and explore next steps as to how the PSA can best support prevention, learning and the development of guidance and resources in this area. GOsC will be hosting the next Directors of FtP meeting in September 2023.
22. Further feedback from this meeting was that quite a few Regulators are undertaking, or have undertaken, panel recruitment. Further feedback was that regulators have started to make some impact in regard to the 'backlog' of cases following the pandemic, but also they are experiencing a heightened level of part heard hearings which seems to be contributed to remote hearings taking longer than in-person hearings as well as the effectiveness of panellists and/or panel chairs to ensure the hearing finishes in time.

FTP Publication policy

23. In February 2023, GOsC launched the FtP Publication policy consultation. Following this consultation, which closed on 25 April 2023, the GOsC have since published the revised policy. The main changes to this policy includes clarity on admonishments with regard to how they are published, as well as clarifying that we will publish Interim Suspension Order decisions as a summary, whereas we previously we published the full reasons

Section 32 Investigations

24. 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. There were 12 active Section 32 investigations as at 30 June 2023.
25. The GOsC has commenced a second prosecution against Mr Nigel Graham. By way of background, Mr Graham, a former registrant, was removed from the Register of Osteopaths in 2016 following a hearing before the Professional Conduct Committee. GOsC successfully prosecuted Mr Graham for breach of title at Willesden Magistrates Court in 2017.
26. An initial hearing took place on 7 June 2023 at Highbury Magistrates Court. Mr Graham failed to attend, and the trial was adjourned to 11 August 2023. Council will be provided with a further update once this case has concluded.

Consultation on the Guidance on Imposing Interim Suspension Orders and Practice Note on Undertakings

27. Following Council's approval in May 2023, we are undertaking a public consultation for three months commencing on 3 July until 3 October 2023, on our current guidance on Imposing Interim Suspension Orders together with the Practice Note on Undertakings.
28. Following an external audit of all our interim order applications over a 15-month period in 2020/21, we are proposing revisions in relation to risk assessment, proportionality, written reasons and undertakings within our interim suspensions orders guidance and practice note on undertakings. By making the process around undertakings clearer we consider this will enhance transparency and will enable both the IC and PCC to utilise greater flexibility when deciding whether undertakings are sufficient in any given case.
29. We are also consulting on changes within the Guidance on Imposing Interim Suspension Orders that the Investigating Committee, Professional Conduct Committee and Health Committee are under a duty to have regard to the overarching objective within the Osteopaths Act when considering interim order applications.
30. We will report the outcomes of this consultation to Council in November 2023.

Training for the Investigating Committee and Professional Conduct Committee

31. The IC all members training day has been scheduled for 4 December 2023. Currently, the agenda includes training on interim orders and undertakings.
32. The Professional Conduct Committee all members training day has been scheduled for 11 January 2024. The training has been scheduled later than in previous years to try and accommodate panellists availability. Currently, the agenda encompasses the amended guidance on interim orders and undertakings and case law updates.

Regulation Team training

33. During this reporting period the Regulation team received training in the form of expert instructions and assessing expert reports from one of our instructed panel firms, Capsticks. Further training was also provided by another instructed panel firm, Ward Hadaway, in the form of allegation drafting.

Recommendation:

To note the report.