



Council
18 July 2024
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 reporting period, we received an increased number of concerns (23) in comparison to the last quarter (15).
- As of 30 June 2024, we have listed 4 of the 18 cases referred by the Investigating Committee (IC) to the Professional Conduct Committee (PCC). A breakdown of the cases awaiting hearing can be found in the quarterly dataset at Annex A.
- The PCC considered a restoration application, in which they restored the applicant to the Register of Osteopaths subject to Conditions of practice.
- We held an induction training day for the new IC panellists at Osteopathy House on 21 May 2024.
- We have arranged bespoke remote training for all IC, PCC and legal assessors on the European Convention on Human Rights (ECHR) and the Equality Act (including the public sector equality duty) in decision making for 10 and 25 July 2024.

Fitness to practise case trends

1. In this reporting period, the Regulation Department received 23 concerns, with four formal complaints being opened. The majority of the concerns were received towards the latter stages of the reporting period. By way of comparison, during the same period last year, the Regulation Department received 21 concerns and 9 formal complaints were opened.
2. Of the 23 concerns; five related to a transgression of boundaries, two related to conduct not linked to treatment, three related to conduct during treatment provided, one related to a lack of consent, one related to a data breach, two related to a criminal conviction, five related to inadequate treatment, two related to a lack of insurance, one relates to the misuse of social media and another relating to poor complaints management.
3. The four formal complaints related to; a transgression of boundaries (1), a breach of data (1), conduct during treatment (1) and poor complaints management (1).
4. As previously reported to Council, we have continued to encounter delays in the progress of some cases because of on-going challenges predominantly related to third-party investigations. During the reporting period 33% of our total caseload is currently with third parties, which is the same percentage as last quarter.
5. However, we have made active progress, closing eight 'third party' cases during this quarter. Unfortunately, we continue to also experience ongoing difficulties with engaging with complainants in serious matters in transgression of sexual boundaries cases, which has impacted on our ability to progress these cases expeditiously.

6. Over the relevant reporting period, there was one application to the Investigating Committee (IC) for the imposition of an Interim Suspension Order (ISO). The IC accepted the Undertakings provided by the Registrant at the hearing.
7. We are mindful of the increasing number of cases at the IC stage. This has been mainly due to third party cases at that stage. However, we continue to actively progress cases where possible, through scheduling additional IC meetings. The IC met remotely on four occasions, considering a total 13 cases over the reporting period, which has been the highest total of considerations since Q1 2020/21.
8. In the reporting period the PCC did not consider any Interim Order applications. There were three cases held in this reporting period. The PCC also met to consider two rule 8 applications, issuing an admonishment in one case and referring another case to a substantive hearing.

Fitness to practise case load and case progression

9. As at 30 June 2024, the Regulation Departments fitness to practise caseload was 72 cases (51 formal complaints and 21 concerns). In comparison, the Regulation Department's fitness to practise case load as of 30 June 2023, was 57 fitness to practise cases (42 formal complaints and 15 concerns).
10. Within each quarterly report we set out our median performance against our targets and provide Council with an explanation against those. We do this against the backdrop of continuing to meet the PSA Standards of Good Regulation which recognises that the GOsC is at the faster end of case progression within the sector, and which also recognises that because of the size of our caseload it may only take one or two cases for our performance to appear to be off-track.
11. We have advised Council of the substantial proportion of our cases being impacted by third-party investigations - 33% in this current reporting period - and the effect this has on cases which subsequent age in length. While we recognise the impact of potential delay on all parties to a hearing, what is important is that the quality of investigations remain at a high standard and there is active and timely case progression where possible.
12. With this context, the narrative for our performance is set out below.
13. In this reporting period the Screener KPI was exceeded by one week.
14. The IC KPI was not met in this quarter. Three cases considered by the IC were third party cases, and this impacted negatively on the median output. Without these cases the KPI output would have been 30 weeks. Although slightly above the KPI, in these the cases we experienced difficulty with obtaining information from complainants. Four cases considered by the IC in this quarter exceeded the KPI.

15. The median output of the PCC cases was 145 weeks. This is because two of the four substantive hearings concluded in this quarter related to lengthy third-party cases. One of these cases could only be progressed after the criminal trial and subsequent sentencing hearing. Whilst this was one hearing, this represented 5 cases (with five different complainants). It will be noted that in the FtP dataset the age of our oldest cases (156 weeks and above) has correspondingly reduced from six to one over this reporting period. Another case involved both UPC and conviction (which was appealed) and could not be progressed until the criminal proceedings had concluded.
16. Four out of 18 cases at the PCC stage have been listed for a substantive hearing. The breakdown of these cases can be found in the dataset in the annex to this paper.
17. Performance against the performance targets for this reporting period, is as follows:

Case stage	Key Performance Indicator	Performance Target	Median figures achieved this quarter
Screening	Median time from receipt of concern to the screener's decision	9 weeks	8 weeks
Investigating Committee	Median time from receipt of concern to final IC decision	26 weeks	40 weeks
Professional Conduct Committee	Median time from receipt of concern to final PCC decision	52 weeks	145 weeks
Health Committee	Median time from receipt of concern to final HC decision	52 weeks	N/A

Restoration application

18. The Regulation Team progressed a restoration application for consideration by the PCC. A restoration hearing takes place when a registrant, who has been removed from the register following a fitness to practice hearing makes an application to be restored to the register in accordance with section 8 of the Osteopaths Act 1993. In this case the PCC decided to allow the applicant to be admitted to the register with conditions of practice. This case therefore requires monitoring by the Regulation Team until the conditions have been considered the PCC in due course.

IC Induction training

19. On 21 May 2024, the regulation team arranged a training day for the new IC Committee members. The agenda covered Equality and Diversity training, a presentation on the Investigating Committee Role and Function including Case to Answer and Unacceptable Professional Conduct, a session on Interim Orders as well as a general induction to the IC, presented by the chair of the IC. The session was well received by all attendees.

Equality Training for all committee members and legal assessors

20. Recent decisions in the employment tribunal have highlighted the importance of the Equality Act and the rights afforded under the European Convention on Human Rights. We have decided to arrange training on the ECHR and the Equality Act (and the public sector equality duty) in decision making for all panellists and legal assessors. Training will be taking place on 10 and 25 July 2024, and will be held remotely. The training will be delivered by Tom Cross from 11 KBW chambers. Tom specialises in civil liberties and human rights and has been involved in several high-profile cases including defending Katharine Birbalsingh's ban on prayer rituals at Michaela School, the "Hogwarts Express" judicial review (West Coast Railway Company) and the Supreme Court claim by Deliveroo Riders for worker rights.
21. A significant recent judgment involving a health and care regulator is Court of Appeal case of *Meade v Westminster City Council and Social Work England (2023)*, In summary, Ms Meade, a social worker, was suspended for over a year for misconduct over her gender critical views by her employers Westminster Council following Social Work England's (SWE) case examiners imposing a warning against her. SWE received a complaint from a member of the public in 2020 about posts that she had shared or liked on Facebook. The Employment Tribunal judge ruled in January this year that the regulator and Westminster City Council had subjected Ms Meade to harassment and discrimination over her gender-critical beliefs by threatening her with fitness-to-practise proceedings and sanctioning her for misconduct. She was awarded almost £58,000 in damages from Westminster City Council and SWE. This included an award for exemplary damages. As context, awards for exemplary damages are reserved for the most serious abuses of governmental power.
22. This was a thorough and comprehensive judgment and the summary set out below is meant as a precis of key matters relating to the fitness to practise investigation conducted by SWE. The facts are that that Mrs Meade's (referred to as the claimant by the tribunal) Facebook was set to private and she posted messages to approximately 40 friends, which included 6 or 7 colleagues employed by her employer, Westminster City Council. There was no evidence that the Claimant identified herself as a social worker on Facebook. Her posts included those where she expressed her gender critical beliefs. Mr W, another social worker was a Facebook friend of the Claimant. He made a complaint to Social Work England

(SWE) concerning what he alleged to be the Claimant's transphobic comments on her Facebook account.

23. The Claimant received a letter from SWE informing her that the preliminary Case Examiners' decision was they had decided that an appropriate sanction would be a one year warning. The Claimant was given an opportunity to decide whether to accept this proposal, propose amendments to it or reject it. She was advised that if she rejected the proposal her case would be referred to a hearing.
24. Under S 10 (2) of the Equality Act 2010, belief means any religious or philosophical belief and a reference to belief includes a reference to a lack of belief. Section 3(1) of the Human Rights Act 1998 provides that, so far as it is possible to do so, primary and subordinate legislation must be read in a way which is compatible with the rights arising under the ECHR. The relevant provisions were Article 9 and 10. Article 9 of the ECHR provides that: Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
25. Article 10 provides that everyone has the right to freedom of expression. This right includes freedom to hold opinion and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
26. Whilst the freedom to manifest belief, (religious or otherwise) and to express views relating to that belief are described as essential rights in a democracy those rights are qualified. The manifestation of belief, and free expression, will only be protected where the law permits the limitation or restriction of such manifestation or expression to the extent necessary for the protection of the rights and freedoms of others.
27. The tribunal found that SWE's failure to check if Mr W's complaint could be malicious, and not checking his previous social media history, was indicative of a lack of rigour in the fitness to practise investigation, and an apparent willingness to accept a complaint from one side of the gender self-identification/gender critical debate without appropriate objective balance of the potential validity of different views in what the tribunal referred to as a highly polarised debate. Context is important and merely accepting at face value a complainant's subjective perception of offence was not the appropriate test, but rather an objective evaluation should be undertaken as to whether a social worker's social media posts had over stepped the line in terms of their content and potentially offensive nature.
28. Serious shortcomings were identified in SWE's investigation which the ET concluded meant they had a 'preordained view' as to the Claimant's gender critical views being unacceptable, offensive, transphobic and discriminatory. Deficiencies identified included:

- a failure to ascertain whether the Claimant's Facebook was private and the assumption it was not.
 - referencing to up to 70 of the Claimant's Facebook posts in the Case Examiners decision without appropriate and consistent differentiation of those which were considered to go beyond the mere manifestation of the Claimant's gender critical beliefs.
 - continuing to include references to the petitions the Claimant had signed even though they did not form part of the decision.
 - implicit acceptance of the complainant's position because he was a social worker.
 - the title of the investigation as "transphobic".
29. The tribunal concluded that the prolonged investigation was such that it created an intimidating and hostile environment for the Claimant. SWE's treatment of the Claimant was 'of a magnitude, that both subjectively and objectively...created an intimidating, hostile and offensive environment for her.' As the Claimant's Regulator, telling her that her conduct was discriminatory, the Claimant initially felt compelled to accept that she was at fault given that she was stressed, felt under duress and understandably took the view that if the Regulator said her posts were discriminatory that was likely true.
30. Subjecting the Claimant to a prolonged investigation into her beliefs 'constituted a serious abuse of its power as a regulatory body'.
31. The tribunal recommended that within six months of this judgment (in April 2024) SWE had to ensure that all its triage staff, investigation staff, and case examiners received training on freedom of expression and protected belief.

Recommendation:

To note the report.