



Council
18 July 2017
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 content of the report.
Financial and resourcing implications	Financial aspects of fitness to practise activity are considered in (Chief Executive's 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
Annexes	A. Fitness to practise dataset B. Decision Review Group terms of reference
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Fitness to practise case trends

1. The quarterly fitness to practise dataset for the relevant reporting period is attached at Annex A to this paper.
2. As previously reported to Council, the GOsC now uses the term fitness to practise 'concern' to describe any professional conduct communication containing information which is capable of amounting to an 'allegation' or 'complaint' under the Act. Previously, the GOsC used the phrase 'informal complaint' for this purpose, as distinct from a 'formal complaint' (i.e. any allegation or complaint which had been found to satisfy the threshold statutory requirements for recognition as such). This change in terminology is reflected throughout the fitness to practise quarterly report and dataset.
3. In this reporting period, the Regulation Department received 74 concerns and 12 formal complaints. During the same period last year, the figures were 110 'informal complaints' (concerns) and 11 formal complaints.
 - a. Of the 74 concerns: Fifty-eight related to advertising (53 from the GTS and 5 from registrants), five cases concerned treatment, four concerned patient modesty and dignity and/or transgressing sexual boundaries, two related to adjunctive therapies, two concerned general conduct, one concerned record keeping, one related to a conviction and one concerned a registrant's health.
 - b. Of the 12 formal complaints: three related to transgressing sexual boundaries, three concerned health, two related to a failure to have professional indemnity insurance, one concerned advertising (GTS), one related to treatment, one concerned record keeping and one concerned conduct.
4. One application was made to the Investigating Committee for the imposition of an Interim Suspension Order, and one application was made to the Professional Conduct Committee. During the same period last year, the number of applications made was two and one respectively.
5. The Interim Suspension Order (ISO) applications made during this reporting period concerned transgressing sexual boundaries and alleged serious clinical concerns.
6. The IC and PCC did not consider that an interim suspension order was necessary for public protection in either case.
7. As previously reported in detail to Council, from July 2015 until July 2016, we received approximately 25 concerns per month relating to osteopaths advertising on their websites. No advertising concerns were received from July 2016 to March 2017. Since March 2017, we have received a further 70 individual concerns. These concerns are currently being managed under the initial closure procedure.

8. As at 30 June 2017, the total number of advertising concerns the Regulation Department has received is 407. The current position and progression of the advertising concerns is summarised in the table below:

Total number of advertising concerns received (=A+B+C)	407
Number closed under the threshold criteria	272
Number closed other than under the threshold criteria ^[1]	43
Total number closed (A)	315
Number screened in for consideration by the Investigating Committee (B)	19
Number closed by the IC	10
Number referred by IC to a Professional Conduct Committee hearing	1
Number awaiting screening (C)	73

9. During this reporting period, the Regulation Department serviced 19 Committee and hearing events, including substantive, review, IC and ISO hearings before the PCC, HC and IC.

Fitness to practise case load and case progression

10. As at 30 June 2017, the Regulation Department's fitness to practise case load was 131 fitness to practise cases (57 formal complaints and 74 concerns). At the 30 June 2016, the fitness to practise case load was 90 cases (67 formal and 23 'informal complaints'.

11. The performance against KPIs for this reporting period is as follows:

Case stage	Key Performance Indicator	Median figures achieved this quarter
Screening	3 weeks	1 weeks
Investigating Committee	17 weeks	18 weeks
Professional Conduct Committee	52 weeks	50 weeks
Health Committee	52 weeks	51 weeks

12. In this reporting period, the median figures for the length of time taken for cases to be screened, PCC decision and HC decision are within KPI. However, the median figure for progressing cases for an IC decision has increased to 18 weeks and exceeds the 17 week KPI. The IC considered a case which involved a complex investigation regarding separate allegations of professional incompetence against one registrant. These cases took 53 weeks to achieve an IC decision and had an adverse impact on the IC median figure. However, the

^[1] This figure includes concerns closed under the Initial Closure Procedure.

current listings process has had, overall, a positive impact on the PCC decision KPI.

13. The Professional Conduct Committee heard 17 cases at 16 hearings during the relevant period. Five of the 17 cases are part heard and four of these cases have been re-listed for conclusion by the PCC later in 2017. In four cases no UPC was found, two cases concluded with a Conditions of Practice Order (COPO), two cases resulted in suspension, two cases concluded with admonishment, one case was adjourned and one review hearing concluded with the COPO expiring at the end of the order period.
14. During the reporting period, the Investigating Committee considered 11 cases and concluded 9. The IC adjourned two cases in order to obtain further information or to consider raising additional allegations.

Section 32 cases

15. 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.
16. The Regulation department continues to act on reports of possible breaches of section 32 and as at 30 June 2017, is currently handling 22 active section 32 cases.

Training and development/working with others/feedback loops

17. The Regulation Manager attended the NHS National Guardian seminar organised by the Professional Standards Authority. The National Guardian has been developed to create a culture where staff feel supported when raising patient safety concerns. The seminar provided helpful advice and guidance on handling sensitive complaints.
18. The Regulation Manager also attended the 6th meeting of the Cross-Regulatory Adjudicators Forum to discuss collaborative working and the hearings process. The forum was an excellent opportunity to build working relationships with other regulator colleagues and identify shared areas of the hearings process for improvement.
19. The Head of Regulation had meetings with several external stakeholders over this period including:
 - the Head of Professional Standards of the Architects Registration Board on 30 May 2017;
 - the Chief Executive Officer of the General Chiropractic Council on 30 June 2017;
 - the Directors of Fitness to Practise Meeting on 5 May 2017 at the General Dental Council's offices.

Determination Review Group

20. The inaugural meeting of the Determination Review Group (DRG) took place at the GOsC offices on 9 May 2017. Attendees included two senior lawyers from the General Optical Council and a senior manager from the Care Quality Commission. At this meeting the DRG reviewed the determinations of four final PCC hearings, including a recent learning points letter issued by the PSA. After discussion with the Chair of the PCC, we are planning on providing general feedback to the PCC and legal assessors in a Committee circular issued in July/August. In addition, the DRG recommended that the PCC would be assisted by training on 'situational awareness' (Human Factor) in decision making and the need for transparency within the fitness to practise context. The DRG also recommended that Committees would be assisted by guidance on professional boundaries and on directions hearings and resumed hearings.
21. As requested by Council a copy of the DRG's term of reference is attached.

Training for the Investigating Committee and Professional Conduct Committee

22. The Investigating Committee all-member training took place on 3 July 2017. The agenda included a structured discussion and feedback session on the review of the current Investigating Committee Decision Making Guidance document. Responses from this training session will form part of our pre-consultation activities for this guidance before a planned three month public consultation takes place towards the end of this year. The agenda also included a session on the review of the Osteopathic Practice Standards together with an interactive session on 'what is a case to answer' together with a case law update.
23. The annual training day for the Professional Conduct Committee has been confirmed as 27 November 2017. Proposed agenda items include a session on situational awareness training together with a session on listening and questioning skills and a regulatory case law update.

External Audit of Cases where no UPC found

24. We have commissioned an audit to be undertaken by external legal auditors in relation to eight decisions made by the GOsC's Professional Conduct Committee during the year January – April 2017, where successful half time submissions / no finding of UPC were made. The terms of reference have been agreed and encompasses both the Investigating Committee and Professional Conduct Committee decisions with the review focusing on exploring whether there is any underlying cause, or issue, or an otherwise an ad hoc phenomenon in the usual "run" of cases. The audit will take place over July/August 2017 and the findings of the audit will be reported in the next report to Council in November.

Consensual Disposal Rule 8 Consultation

25. In May 2017, Council agreed to consult on the draft Consensual Disposal: Rule 8 Practice Note. 'Consensual disposal' enables cases to be concluded by agreement following the investigation stage of a complaint. It is an alternative to referring the case forward for a full hearing by the Professional Conduct Committee (PCC), where the PCC has reviewed the evidence and considers that the complaint should be dealt with by admonishing the osteopath. The draft Practice Note for the PCC sets out how the procedure will operate in practice. A public consultation on the Rule 8 draft Practice Note will take place over July and August for a period of eight weeks. The outcomes of this consultation will be reported to Council in November.

Recommendation: to note the content of the report.