



General
Osteopathic
Council

Council
1 May 2014
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	None
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	Dashboard Report
Author	David Gomez and Kellie Green

Fitness to practise case trends

1. In this reporting period, the Regulation department received 24 informal complaints and six formal complaints. During the same period last year, the figures were 14 informal and seven formal complaints.
2. In this reporting period, three applications for an Interim Suspension Order were made in respect of formal complaints.
3. The complaints concerned the provision of treatment without being adequately qualified or insured, transgressing sexual boundaries and allegations relating to registrants' health.
4. The Regulation Department is currently handling a caseload of 87 fitness to practice cases (35 formal and 52 informal).

Section 32 cases

5. 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.
6. In the current reporting period, two criminal prosecutions have been initiated in the Magistrates Court. The Regulation department has also continued to act on other reports of possible breaches of section 32.
7. The Regulation department is currently handling 26 active section 32 cases. Cease and desist letters have been sent in 10 and investigations are ongoing in the remaining cases.
8. Council will be asked to approve a Protection of Title Enforcement Policy for consultation at its meeting on 1 May 2014.

Dashboard reporting

9. Following discussion at Council in October, it was agreed that a dashboard format would be introduced using the indicators of efficiency, effectiveness and economy, and including comparative trends over time.
10. The dashboard report is enclosed at the Annex (please note that financial figures for Q4 have yet to be confirmed and an update should be available at the meeting).
11. This quarter has seen an improvement in the median time taken for cases to be considered at both the IC and PCC.
12. In December last year, we recruited an additional legally qualified caseworker on a six month basis to assist with the caseload, and to ensure cases continue to be

progressed in accordance with our performance indicators. This has helped to achieve the improvements mentioned above.

13. Three interim suspension orders were applied for during the quarter. Two of these related to allegations about the registrants' health and one related to the provision of treatment without being adequately qualified or insured.
14. In relation to whether cases before the PCC have been properly brought, in this reporting period, there was one successful 'half time submission' under rule 27(6) of the PCC Rules. Under rule 27(6), after the close of the Council's case, a registrant may submit that any facts adduced or admitted are insufficient to support a finding of unacceptable professional conduct ("UPC").
15. Interestingly, the registrant in this case admitted the material facts but disputed whether or not the facts could amount to UPC. The question of UPC is, of course, a matter of judgment for the PCC to determine.

Monitoring of 'Rule 8 Procedure'

16. On 7 April 2014, the Professional Conduct Committee considered the first application to consider a case using the "Rule 8 procedure" agreed by Council last year.
17. At the time of writing, the case had not been formally concluded. It would therefore be inappropriate to comment on the individual case at this time.
18. However, feedback from the PCC was very positive. It was considered that the Practice Note worked well. Helpful suggestions were made for the development of a Chair's briefing note, which we shall take forward.

Quality assurance of fitness to practise

Case preparation

19. In July 2013, the Regulation department introduced new template case history, case management and risk assessment forms; chronologies and evidence grids as part of effective case management. Each case must have these documents on file and they are regularly reviewed as part of case management meetings.
20. In September 2013, the OPC considered draft proposals for a quality assurance framework and received an update in February 2014, which included comments on the framework that had been received from the Chair of the PCC. The Regulation department is currently compiling a quality assurance manual and template library, which are key elements of the quality framework. The intention is to map each part of the FTP process against the PSA performance and audit standards, and to identify areas where processes could be made more effective.

Peer review processes

21. As part of on-going quality work, the Regulation and Professional Standards teams have established a peer review mechanism to assess compliance with case management and customer service standards. Council received a report on the results of the first review at its meeting in January 2014.
22. The Head of Professional Standards and the Professional Standards Manager undertook a second peer review of fitness to practise cases on 31 March 2014. They reviewed a total of 38 cases, which included 16 cases that had been reviewed in December 2013 and had continued to progress through the fitness to practise process and 22 new cases (18 informal and four formal).
23. In broad terms, the reviewers looked for evidence that there was continuous activity on each case; that the parties were kept updated; that compliance with key performance indicators was being met; that risk was continually being assessed; that case management documentation was present on file and completed; and that relevant policies, such as the Notification of Fitness to Practise Investigations and Outcomes were being complied with.
24. The review identified that there was generally good case progression and compliance with case management and customer service levels. However, learning points were identified and these included:
 - a. In five out of 13 of the new informal complaints, there had been some delay in acknowledging receipt of the complaint and case progression. As a result, the team has changed the way in which it manages informal cases to ensure that these delays do not occur in the future.
 - b. Registrants were not routinely providing information about their employment and registration status causing case managers to chase this information, which caused additional work and delay. Those reviewing the files suggested that a simple form be developed for registrants to provide this information on, which might help to ensure that it is provided by return. This will be developed and implemented.
 - c. Three of the new formal complaints received did not, at the time of review, have completed investigation plans and evidence grids. These had been newly received complaints which were being prepared for Interim Suspension Order hearings. Following the review, the required case documentation on file has been properly completed.

External Peer review

25. The Regulation team and the General Optical Council are now piloting a mechanism for peer reviewing GOsC cases in which the Professional Conduct Committee has concluded that the allegation was not 'well founded' or in which a hearing has to be cancelled under rule 19 of the GOsC (Professional Conduct

Committee) (Procedure) Rules. Rule 19 provides for the cancellation of a hearing where, due to exceptional circumstances, the hearing of the case cannot properly take place.

26. On 23 December 2013, the Head of Legal Compliance at the General Optical Council attended the GOsC offices to review a sample of cases as part of the pilot. Findings from the review were presented to Council at its meeting in January.

Investigating Committee

27. In September 2013, the Investigation Committee agreed that 'Particulars of Concern' should be drafted and sent to the complainant when he or she is asked to comment on the complaint. The intention was to aid the identification of the key issues in any case, and any subsequent referral by the IC. In turn, this measure will focus the investigation and assist in obtaining the best evidence from witnesses.
28. In January 2014, a legal consultant from Bevan Brittan LLP reviewed all decisions made by the Investigating Committee during the period 1 October 2012 to 30 September 2013. The purpose of this exercise was to establish a qualitative baseline in terms of a minimum level of quality for decisions made by the Investigating Committee and IC Chair, which it would be desirable to maintain (or exceed) each year. Council received a report on the review and its findings at its meeting in January 2014.
29. The review made helpful suggestions for improving the presentation of the Investigating Committee's reasons. These included matters such as including more detail on the legal advice received by the Committee, and including references to the GOsC's Guidance and to the Osteopathic Practice Standards in the Committee's reasons.
30. The review was considered by the IC in January and is on the agenda for the IC all members training day on 21 May 2014. Copies of the review were also provided to the legal assessors who regularly advise the IC. Following the review, legal assessors are now required to record the advice they provide to the Committee using a pro-forma document. A new template for the IC minutes is also now in operation.
31. New standard legal advice on the real prospect test and the application of the Spencer Judgment in misconduct cases has been agreed by all legal assessors and is now read out to the Committee at the start of each meeting. A laminated copy of the text is available for reference during the Committee's deliberations.
32. Council is reminded that the Professional Standards Authority will be undertaking its review of cases closed by the GOsC's Investigating Committee in the first week of May 2014.

Equality monitoring

33. Since the beginning of April 2014, the GOsC has begun sending Fitness to Practise Equality Monitoring Questionnaires to registrants when they are first notified that an allegation has been made against them. This is in line with the GOsC's duties under the Equality Act 2010 and will assist the GOsC to obtain more real time information.

Feedback loops

34. The Regulation Team produced an FTP e-bulletin which was emailed to all registrants at the end of March. The bulletin highlighted the number of allegations received by the GOsC recently which involved a breach of sexual boundaries and set out the relevant guidance and practical considerations which registrants may find it helpful to keep in mind when seeing patients. The e-bulletin also includes items on protection of title and data protection.
35. In addition, the FTP Annual Report will be published in the April/May edition of the Osteopath Magazine. The report provides information and statistics on the cases considered by the GOsC's fitness to practise committee during the period 1 April 2013 to 31 March 2014.

Training and development

36. On 1 February 2014, an all day induction and training session was held for the nine new medical assessors, appointed by Council in January this year.
37. In addition to an introduction to osteopathy, the assessors received detailed legal training from an external provider about their role as advisers to the GOsCs fitness to practice committees. In relation to their limited role as medical examiners, the assessors were provided with a medical report template and guidance on the use of that template as part of their induction pack.
38. On 18 March 2014, an induction and training day was held for the two new registrant members of the Investigating Committee appointed by Council in January this year. An all members training day for all members of the IC will be held on 21 May 2014.
39. During the reporting period, members of the regulation team attended a training session on time management and team working; and training sessions held by external solicitors on "Regulated Professionals and Criminal Proceedings" and "Regulators and Article 1 of the first Protocol to the European Convention on Human Rights."
40. We are in the process of finalising arrangements with a set of barristers' chambers to provide a workshop to the team on the drafting of allegations.

Working with other regulators and keeping abreast of good practice

41. Representatives from the Regulation department attended the regulators' fitness to practice forum on 24 October 2013. The GOsC will host a fitness to practise forum on 29 April this year.
42. During this reporting period, the Regulation Manager and Regulation Assistant met with colleagues from four healthcare regulators (General Chiropractic Council, General Dental Council, General Optical Council and Health Care Professions Council) to learn about their processes for listing final fitness to practise hearings, and to explore what support they provide to their panels prior to (and during) hearings. The purpose of the meetings was to identify ways in which we can improve our listing and pre-hearing preparation processes and the support we provide to the PCC/HC. We also intend to hold meetings with the remaining regulators and the Medical Practitioner Tribunal Service.
43. As a result of these meetings, we have begun developing new template briefing notes for panel chairs and templates for the various decisions that may need to be made at hearings. We are exploring options for improving the early identification of potential conflicts of interest. We also intend to introduce a new case management form to assist with the listing of cases. The form will require the parties to identify an estimated length of hearing, and to provide information about representatives' details, the number and type of witnesses to be called, and whether any special measures are required.

Recommendation: to note the report.