



Council
14 May 2015
Fitness to Practise Report

Classification	Public
Purpose	For noting
Issue	Quarterly update to Council on the work of the Regulation department and the GOC'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 to Item 5 (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
Annex	Dashboard Report
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Fitness to practise case trends and Dashboard reporting

1. Following discussion at Council in October 2013, it was agreed that a dashboard format would be introduced using the indicators of efficiency, effectiveness and economy, and including comparative trends over time.
2. The dashboard report is attached at the Annex. Comparative data from the same quarter last year has been included (the figures are bracketed and highlighted in red).
3. In this reporting period, the Regulation Department received 13 informal complaints and seven formal complaints. During the same period last year, the figures were 24 informal complaints and six formal complaints.
4. Of the 13 informal complaints, four related to concerns about advertising; three about treatment; with the remainder concerning transgressing sexual boundaries; a business dispute; record keeping; dishonesty and practising without insurance.
5. Of the seven formal complaints, five related to concerns about patient modesty and dignity and/or transgressing sexual boundaries; with the other two concerning treatment and a registrant's health.
6. In this reporting period, four applications were made to the Investigating Committee for the imposition of an Interim Suspension Order, and two applications were made to the PCC. During the same period last year, the number of applications made was three and zero respectively.
7. Of the six Interim Suspension Order (ISO) applications made during this reporting period, four related to alleged transgression of sexual boundaries/failing to uphold patient dignity and modesty and two related to a registrant's health.
8. Two out of the six ISO applications were granted. In one case, the registrant became ill at the hearing and the hearing had to be adjourned. In the remaining three cases, the Committee considered that on the evidence before it, the statutory test for the imposition of an ISO was not made out.

Fitness to Practise case load

9. As at 31 March 2015, the Regulation Department's Fitness to Practise case load was 79 fitness to practice cases (33 formal and 46 informal).

Case Progression

10. In this reporting period, the median figures for the length of time taken for cases to be screened, and to be considered by the Investigating Committee and Professional and Conduct Committees are all within KPI.

11. However, the median figure for consideration by the Health Committee is just outside KPI and reflects difficulties in dealing with an unwell registrant.
12. The median figures for this reporting period are as follows:

Case stage	Key Performance Indicator	Median figures achieved this quarter
Screening	3 Weeks	1
Investigating Committee	17 Weeks	11
Professional Conduct Committee	52 Weeks	51
Health Committee	52 Weeks	53

13. During the reporting period, the Investigating Committee adjourned three cases in order to obtain further information.

Indicators of whether cases are being properly brought

14. In relation to whether cases before the PCC have been properly brought, in this reporting period, there were no successful 'half time submissions' under rule 27(2) or 27(6) of the PCC Rules¹.
15. During this reporting period, UPC was found in three out of the five cases considered by the Professional Conduct Committee. One case was adjourned part heard, and UPC was not found in the remaining case.

Section 32 cases

16. 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.
17. At its meeting in November 2014, the Council approved a new Section 32 Enforcement Policy.
18. The Regulation department continues to act on reports of possible breaches of section 32, and as at 31 March 2015, was currently handling 55 active section 32 cases.

¹ Under rule 27(2), a registrant may submit that any facts admitted are insufficient to support a finding of UPC or Professional Incompetence. 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").

Judicial Reviews and appeals of Decisions made by FTP Committees

19. On 25 February 2015, the GOsC was notified that an appeal had been lodged at the High Court against a determination of the Professional Conduct Committee which related to a finding of Unacceptable Professional Conduct.
20. Counsel has been instructed and the advice of our external lawyers is to resist the appeal. No date has yet been fixed for the appeal hearing.
21. In February 2015, the application for judicial review against an interlocutory decision made by the Professional Conduct Committee was settled by consent between the parties. The only live issue relating to that matter now is the settlement of costs.

Costs considerations

22. The Regulation Department is having to accommodate an increasing number of hearing days. During this reporting period, we have serviced 16 Committee and hearing events, including substantive, review and ISO hearings before the PCC and HC; IC meetings and IC ISO hearings; directions hearings before the HC and one registration appeal before an Appeal Panel of the Council.
23. As previously indicated to Council, an increasing number of interim order applications, health cases, and increased use of conditions by the Professional Conduct Committee (which require a review hearing) all contribute to the increase in fitness to practise costs.
24. As noted above, the GOsC has also had to incur training costs in relation to induction of new Panel chairs and legal assessors; and external legal costs in relation to High Court litigation.
25. The Regulation and Registration and Resources Departments are continuing to monitor the effect of these increases in hearing costs and related matters.

Quality assurance of fitness to practise

Peer review processes

26. As part of on-going quality work, the Regulation Department has established a peer review mechanism to assess compliance with case management and customer service standards.
27. On 23 February 2015, a member of staff from the General Optical Council undertook a peer review of 19 Fitness to Practise case files at the GOsC's Office.

28. Following helpful suggestions about the peer review process from the Professional Standards Authority, the peer reviewer signed a confidentiality agreement before the peer review took place.
29. In broad terms, the reviewer looked for evidence that: there was continuous activity on each case; the parties were kept updated; compliance with key performance indicators was being met; risk was continually being assessed; 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.
30. The findings from the peer review were mainly positive. In particular, 100% of the cases reviewed within sample had complaints acknowledged within two working days; demonstrated evidence of continuous risk assessment; had appropriate case management documentation on file; had notified both the complainant and the registrant of the decision of the Investigating Committee within 10 working days of the decision; had notified both the complainant and the registrant of the decision of the Professional Conduct or Health Committee within two working days; and had the decision published on the website in accordance with the GOsC's Fitness to Practise Publication Policy.
31. The main area of improvement arising from the review was the need to ensure that, in all cases, information about employers and working arrangements was followed up and obtained; and that employers and those with whom an osteopath had contractual working arrangements, were also notified of the decisions made by FTP Committees.

Feedback loops

32. The Regulation and Communications teams produced the FTP e-bulletin which was sent out to all registrants in early May. Key topics included in this edition of the e-bulletin included: professional insurance and indemnity arrangements (and reminding the profession of the new rules which came into force on 1 May 2015); working within the limits of professional competence; dishonesty; and threshold criteria.
33. Learning from recent cases considered by the PCC was also highlighted to the profession.
34. On 2 April 2015, the Head of Regulation met with key staff of the Institute of Osteopathy to discuss fitness to practise issues.
35. It was a very productive meeting. The GOsC and the IO discussed the issue of registrants with blood borne conditions and the need for guidance for registrants in this area; and further progress was made towards producing a draft protocol for dealing with vulnerable registrants who are subject to fitness to practise proceedings; and potential mechanisms for identifying osteopaths within the profession who might be willing and able to act as 'mentors' or 'supervisors' for

osteopaths who are subject to conditions, and the potential criteria for such individuals.

36. Following feedback from the Investigating Committee about the number of cases relating to professional and sexual boundaries, the issue was the subject of a detailed paper which was considered by the Osteopathic Practice Committee and the Education and Registration Standards Committees at their meeting in March 2015.

Training and development/working with other regulators/keeping abreast of good practice

37. On 29 January 2015, the Head of Regulation and the Senior Regulation Officer attended the NDPB Lawyers Group Conference. The Head of Regulation also attended the Annual Disciplinary Conference in February 2015.
38. The Regulation Manager and Senior Regulation Officer attended a seminar on Whistleblowing provided by Field Fisher LLP on 17 March. The entire Regulation Team attended the Blake Morgan Professional Regulation Spring Workshop on 18 March, and the FFW Professional Regulation Seminar on 12 May 2015.
39. On 5 March 2015, the Head of Regulation attended the Health Profession Regulators FTP Directors Group. Topics discussed included difficulties in obtaining information from the police, and arrangements following the superseding of the Notifiable Occupations Scheme by a process of 'common law disclosure.'
40. In late spring 2015, the Regulation Department intends to hold a training session with other regulators on criminal procedure and evidence relating to protection of title.
41. During the reporting period, the Head of Regulation and the Head of Professional Standards have continued to engage with other regulators and the Department of Health as part of the on-going 'themed meetings' in anticipation of potential new legislation.

Induction training for new panel chairs of the Professional Conduct and Health Committees

42. The new panel chairs of the Professional Conduct and Health Committees attended the PCC training day on 20 November 2014.
43. In addition, they attended a formal induction and training session on 25 and 26 February 2015.
44. The session on 25 February 2015 was a dedicated workshop on producing and critiquing Committee Determinations, provided by Legal Experience Training.

The new chairs were joined by the Chairs of the Professional Conduct and Health Committee for the workshop.

45. Learning points from the PSA in recent cases were also reviewed as part of the workshop session.

Guidance for Professional Conduct Committee on Drafting Determinations

46. One of the outcomes from the workshop session attended by all Panel Chairs, was the production of Draft PCC Guidance and Template on Drafting Determinations. The draft guidance is the subject of a separate paper to Council.

Standard Bank of Conditions for Health Committee

47. As part of quality improvement, and in the light of a relative increase in the number of health cases now being considered by the Health Committee, work has commenced on a standard bank of conditions for use by the Health Committee.
48. The standard bank of conditions is the subject of a separate paper to Council.

Induction of legal assessors

49. On Sunday 22 March 2015, the Chief Executive and the Regulation Team held an induction and training day for the new legal assessors appointed by Council.
50. The induction included an introduction to osteopathy provided by Tim Mclune, and a session provided by a current legal assessor on the differences between sitting as a legal assessor at the GOsC, and sitting in other jurisdictions.
51. The assessors were also introduced to the draft PCC Guidance and Template on Drafting Determinations and the Standard Bank of Conditions for the Health Committee. Feedback from the day was very positive.

Recommendation: to note the report.