



Council
2 November 2016
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 (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	FtP Dataset
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Fitness to practise dataset

1. In November 2015, the Professional Standards Authority (PSA) introduced a new fitness to practise dataset which it has requested each healthcare regulator to provide about their performance. The PSA uses this data to routinely report on comparators in each regulator's performance review report, and in their overarching reports on performance across the sector.
2. Following discussion at Council in July 2016, it was agreed that a new GOsC fitness to practise dataset, which is reflective of the PSA key comparators, would be brought before Council in November 2016.
3. The FtP dataset is attached at the Annex.

Fitness to practise case trends

1. On 12 July 2016, Council approved the Initial Closure Procedure. Within this procedure it was noted that traditionally we have used the term 'informal complaint' to describe enquiries or concerns we receive which contain information which may amount to an 'allegation' or 'complaint' but where we have insufficient information to make progress. The purpose of the Initial Closure Procedure is to improve transparency in our investigative process while clarifying the timeframe over which we will undertake our initial information gathering to determine whether there is sufficient information to assess whether a fitness to practise enquiry may amount to a 'complaint' or 'allegation'.
2. The GOsC now uses the term fitness to practise 'concern' to describe any professional conduct communication containing information which may amount 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 now reflected within the fitness to practise quarterly report.
4. In this reporting period, 46 concerns and 14 complaints were submitted to the Regulation Department. During the same period last year, the figures were 61 concerns and nine complaints or allegations.
 - a. Of the 46 concerns, 24 related to advertising, six related to treatment, four to competency, three related to patient modesty and dignity and/or transgressing sexual boundaries, three related to issues of general conduct, three to injury arising from treatment, and single complaints relating to value for money, health of a registrant and a possible police caution.
 - b. Of the 14 complaints, seven related to advertising, three to treatment, two to general conduct and two to patient modesty and dignity and/or transgressing sexual boundaries.

5. Two applications were made to the Investigating Committee for the imposition of an Interim Suspension Order, and one application was made to the PCC/HC. During the same period last year, the number of applications made was one and four respectively.
6. Of the three Interim Suspension Order (ISO) applications made during this reporting period, two related to alleged transgression of sexual boundaries/ failing to uphold patient dignity and modesty with the remaining application relating to a registrant's health.
7. Two of the three ISO applications were granted with the third resulting in undertakings by the Registrant being accepted.
8. As reported in detail within the quarterly report to Council in November 2015, since July 2015, we have been receiving approximately 25 concerns per month relating to osteopaths advertising on their websites. However, no further advertising concerns have been received since July 2016. As at 30 September 2016, the total number of advertising concerns the Regulation Department has received is 334. The current position and progression of the advertising concerns is summarised in the table below:

Total number of advertising concerns received (=A+B+C)	334
Number closed under the threshold criteria	192
Number closed other than under the threshold criteria	29
Total number closed (A)	221
Number screened in for consideration by the Investigating Committee (B)	13
Number closed by the IC	4
Number referred by IC to a Professional Conduct Committee hearing	0
Number awaiting screening (C)	100

Costs considerations

9. During this reporting period, the Regulation Department serviced 13 Committee and hearing events, including substantive, review and ISO hearings before the PCC and IC as well as IC meetings.

Fitness to practise case load

10. As at 30 September 2016, the Regulation Department's fitness to practise case load was 90 fitness to practise cases (67 complaints and 23 initial concerns).

Case Progression

11. 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 Health Committee are all within KPI, with the exception of the screening of advertising cases. In these cases the concerns are risk assessed but may not be sent for immediate screening as, in most cases, the registrant is given a period of time in which respond to the concern.
12. The Professional and Conduct Committee heard six cases during the period. Of these, four were adjourned part heard and no UPC was found in the remaining two cases.
13. The median figures for this reporting period are as follows:

Case stage	Key Performance Indicator	Median figures achieved this quarter
Screening	3 weeks	2 week
Investigating Committee	17 weeks	14 weeks
Professional Conduct Committee	52 weeks	29 weeks
Health Committee	52 weeks	0 (no cases heard)

14. During the reporting period, the Investigating Committee adjourned 10 cases in order to obtain further information. Of these six cases related to advertising and were adjourned for, amongst other matters, to seek advice from the ASA.

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 September 2016, was currently handling 26 active section 32 cases.
17. The GOSc has commenced a section 32 prosecution against Mr Jonathan Cove, a former registrant who was removed from the register of osteopaths in February 2015 following a fitness to practise hearing. On 2 August 2016, Mr Cove appeared at Redhill Magistrates' Court, in relation to two charges of falsely describing himself as an osteopath, contrary to section 32(1) of the Osteopaths

Act 1993. A trial is scheduled to take place at Redhill Magistrates Court on 25 October 2016.

Training and development/working with others/ feedback loops

18. On 20 September 2016, the Regulation Manager attended the Professional Standards Authority (PSA) to take part in its planning meeting for its health regulators conference to be held in February 2017.
19. The Head of Regulation attended the Fitness to Practise Directors meeting on 5 July 2016, hosted by the General Pharmaceutical Council. Topics discussed by the group ranged from the PSA Annual Performance Review process and timetable and the GMC's application for leave to appeal to the Supreme Court in relation to the case of Michalak. Briefly, in this case the Court of Appeal concluded earlier this year that decisions made by a regulator are now susceptible to discrimination claims made in the Employment Tribunal.
20. To further improve and stream line the efficiency of our hearings, we have arranged an initial meeting with defence organisations and other stakeholders who deal with registrants during the fitness to practise process (for example: insurers of osteopaths, solicitors who represent them at fitness to practise hearings and their professional membership body) to take place at Osteopathy House on 9 November 2016. The purpose of the meeting is to provide an opportunity for us to discuss as a group how we can work together to improve the efficiency of the hearings process.
21. The fourth Committee circular designed specifically for GOsC fitness to practise committees was distributed to all Committee members and Legal Assessors in August 2016. Within this edition, the Regulation team provided a regulatory case law update and commentary on the reported case of the General Medical Council v Adeogba and the General Medical Council v Visvardis [2016] together with a detailed introduction to the new scheduling and listings protocol introduced in September 2016 to help facilitate the timely and advanced listing of cases for hearing directly following referral from the Investigating Committee.

Recruitment

22. As previously reported to Council, over the course of the last year three individuals stepped down as Legal Assessors to the fitness to practise committees. We are currently undertaking a limited recruitment campaign with the intention of refreshing and expanding this pool by appointing additional legal assessors. Interviews will be taking place in the last two weeks of October and the first week of November 2016. The successful candidates will then be recommended for appointment by Council.
23. After being with the GOsC for nearly two and a half years, Russell Bennett, the former Regulation Manager, has moved back to Australia.

24. Interviews were conducted for a new Regulation Manager on 16 September 2016. We have appointed Kevin Morgan, who commenced his role as Regulation Manager with us on 1 November 2016. Kevin joins us from the General Dental Council.

Pilot of witness feedback form

25. At its meeting on 13 October 2015, the Osteopathic Practice Committee considered the draft guidance for witnesses. This guidance has been developed as part of a range of support tools the GOsC put in place to ensure witnesses are properly assisted and are enabled to give best evidence.
26. In the Annual Performance Review 2015/16, the PSA concluded that the witness support measures as a positive move, in particular for vulnerable witnesses, observing that this should enhance public protection by affording all parties to a hearing the necessary support. The PSA said because it has only been recently introduced, the GOsC could not report on what impact it has had.
27. As part of the continuing work in this area and also taking into account comments made by Bevan Brittan solicitors in the audit undertaken of final PCC decisions in 2015, a witness feedback form has been developed. This feedback form will be piloted with all witnesses at the conclusion of hearings for a three month period up to and including hearings commencing in December 2016. Feedback will then be reviewed. It is hoped this will assist in providing an objective measure of the effectiveness of the witness guidance resources.

Training for the Professional Conduct Committee

28. The annual training day for the Professional Conduct Committee has been confirmed as 21 November 2016. The agenda for the day includes: equality and diversity training; drafting decisions; effective time management of hearings and feedback and learning arising from the external audit of PCC decisions conducted in March and April of this year.

Recommendation: to note the report.