



Council
2 November 2016
Fitness to practise committee Annual Reports 2015-16

Classification	Public
Purpose	For noting
Issue	Each committee is required to report annually on its work to Council. These reports cover the period 1 October 2015 to 30 September 2016.
Recommendation	To note the Annual Reports of: a. Investigating Committee b. Professional Conduct Committee c. Health Committee
Financial and resourcing implications	None
Equality and diversity implications	Ongoing monitoring of equality and diversity trends in the decisions made by the fitness to practise committees form part of the Regulation Department's quality assurance framework.
Communications implications	None
Annexes	A. Investigating Committee Annual Report B. Professional Conduct Committee Annual Report C. Health Committee Annual Report
Author	James Kellock, Judith Worthington, Richard Davies

Investigating Committee Annual Report

Introduction

1. This is my fifth report to the Council. The period covered by this report is from 1 October 2015 to 30 September 2016.
2. I have included, in bold and in brackets, figures from the 2014-15 and 2013-14 years for comparison.
3. In making this report I am conscious that the Council is provided with a quarterly report on the work of the IC and the Osteopathic Practice Committee also considers papers on fitness to practise matters. To some extent this report will repeat information previously provided to the Council.

Meetings of the Investigating Committee

4. During the twelve months covered by this report there have been seven meetings of the IC to consider complaints (2014-15 eight, 2013-14 nine). Unusually this year two meetings were held on the same day as the IC considered applications for the imposition of Interim Suspension orders. In addition an 'all members' meeting primarily for training, where all members are invited was held; the remaining seven meetings have each been attended by five or seven members of the Committee.
5. In addition, panels of Committee members (five each time) have sat on seven occasions to consider applications by the Council for the imposition of Interim Suspension Orders on registrants (2014-15 twelve, 2013-14 eight).

Casework

Numbers of complaints and the Committee's decisions

6. During the period accounted for in this report, the IC has made decisions on 44 complaints against registrants (2014-15: 43, 2013-14: 41). In 31 of these, the complaint was referred to the PCC, and one case was referred to the Health Committee (73% complaints referred). In 12 cases, the Committee decided that there was no case for the registrant to answer (2014-15: 23 "case to answer" 20 "no case to answer" [54% referred], 2013-14: 22 'case to answer' 16 'no case to answer' [57% referred]).
7. In comparison to the last two reporting periods, the number of cases decided by the IC has remained the same whilst the number of meetings has reduced.
8. In 21 cases, the IC was not able to make a decision when the complaint was first considered by the Committee. In these 21 cases, the Committee adjourned the case for further investigations to be carried out or to afford the registrant further time to respond to the complaint (2014-15 10 adjournments, 2013-14 5

adjournments). The very considerable rise in cases that had to be adjourned is noteworthy.

9. In this year the IC was not asked to provide its view on whether a hearing should be held in relation to any case that it had previously referred to the Professional Conduct Committee. This procedure is followed where a complaint has been referred by the IC to the PCC but subsequently further information comes to light which calls into question whether a hearing should go ahead (whether the hearing goes ahead is a decision for the PCC not the IC) (2014-15 two cases, 2013-14 two cases).

Issues raised by complainants

10. The complaints considered by the Committee covered a wide variety of areas, as in previous years, including:
 - Providing inappropriate treatment
 - Advertising on osteopaths' websites
 - Failure to respond to complaints appropriately
 - Breaching patient confidentiality and data security
 - Failure to explain the risks of treatment
 - Failure to obtain valid patient consent for examination and/or treatment
 - Failure to communicate effectively with patients
 - Failure to have in place professional indemnity insurance
 - Failure to respect patient dignity and modesty
 - Dishonesty
 - Concerns about the health of registrants
11. Other areas of concern include the inappropriate crossing of professional boundaries and sexually motivated conduct. These have featured in seven cases this year (2014-15 11 cases, 2013-14 eight cases) a slight reduction on previous years.

Targets

12. Once a complaint is received by the GOsC, it must be screened by a registrant member of the IC in order for it to be considered by the Committee. The GOsC target is for screening to be completed within three weeks of receipt by the GOsC. Information on whether this target has been met is not available this year.
13. The GOsC also has a target for cases to be considered and determined by the IC within four months of receipt of a formal complaint. Again information on whether this target has been met is not available this year (2014-15 36 were determined within target [84%] and 7 were outside, 2013-14 23 were determined within target and 18 cases were outside [56% within target]).

Interim suspension orders

14. There has been a fall in the number of Interim Suspension Order hearings compared to last year.
15. During the period of this report, the Committee considered whether to impose an Interim Suspension Order in 7 cases. It imposed five Orders and made no order in the other two cases (2014-15 12 applications [five orders made and undertakings accepted once] 2013-14 comparison eight applications [four orders made]). The proportion of applications resulting in an order has risen, although the numbers are very low.

All members meeting

16. An all members meeting and training day was held on 17 June 2016, partly with new members of the PCC. This included training in Equality and Diversity, which focussed on unconscious bias. The committee found this particularly interesting.
17. During the lunchtime session, members were consulted on the GOsC's proposals to change the OPS and were able to meet privately. Members very much appreciated the opportunity to meet with all their colleagues, since each business meeting and hearing of the committee is attended by only a selection, to discuss topics of common interest.
18. In the afternoon session the committee received training from an external solicitor on the drafting of decisions.

Composition of the Investigating Committee

19. During the year four new members joined the committee following interviews in February this year. Three of the four have now attended at least one IC meeting/hearing. Other members are due to leave next year, at the conclusion of their term of appointment and the Council has recently advertised for replacement members.

Support to the Committee

20. New Legal Assessors were appointed by the Council with effect from 1 April 2015 so this is the first full year the committee has been advised by the new panel. The extension of the panel to fourteen has resulted in a wider range of quality than hitherto.
21. One meeting was held without a Legal Assessor present as none was available.
22. The Committee has been less well supported by the GOsC's staff in this period. There were a number of staff changes in the year and the committee was sad to see Vanessa Taylor leave after her return as the Regulation Assistant last year.

General reflections

23. It is very difficult to establish any trends when the number of complaints is very low but that said there has continued to be a higher number of complaints, compared to four or five years ago. On the other hand the increase in the number of cases where an application for an ISO is made has been reversed as has the increase in cases noticed in previous years where it is alleged the registrant has crossed professional or sexual boundaries.
24. The one area where there has been a big change this year is the number of complaints considered by screeners (the screener, an individual member of the IC, gives an opinion whether the Osteopaths Act 1983 gives "power to deal with [the allegation] if it proves to be well founded") and the opinions of screeners. This has not been the subject of reports I have made in earlier years for two reasons. First it is not an area I am involved in, in that screening takes place outside Committee meetings and second in previous years, so far as I am aware, the results of the screening process have all followed a pattern (that cases are screened in for consideration by the IC). This year there have been a very large number (several hundred) of complaints that osteopaths are dishonestly advertising that they can treat certain conditions for which, it is said, there is no evidence to support such claims. The GOsC has devised a unique process for these cases and the great majority of these cases have been screened out (i.e. they are not considered by the IC). This has caused a huge increase in the work of screeners as well as them having been required to follow a different process from other cases.
25. In most other respects the overall workload and performance of the committee seems to reflect that in 2014-15. However it is disappointing that more cases were adjourned on first coming before the Committee for further investigation or out of fairness to the registrant.
26. As in previous years I have been struck by the very wide variety of allegations made against osteopaths and by the differences in allegations when compared to other healthcare professions of which I have experience. Three differences stand out. First there are very few allegations that an osteopath has been convicted of or cautioned for a criminal offence (especially "drink-driving" which seems to more prevalent amongst some other healthcare professions). Second, a very high proportion of complaints concern claims made by osteopaths (although the vast majority came from a single source). Finally the number of complaints of crossing of professional and/or sexual boundaries is not something I have encountered elsewhere.

James Kellock
Chair, Investigating Committee
19 October 2016

Professional Conduct Committee Annual Report

1. Introduction

This is my third and final report to the Council, my term of office as a PCC member, panel chair and PCC chair coming to an end on 31 March 2017. This has been a busy year in comparison with previous two years and one that has seen a number of new appointments to the Committee.

2. Matters considered by the PCC.

2.1. This annual report covers the period 1 October 2015 to 30 September 2016. The number of matters considered by the PCC during this reporting period is set out below. For comparison, the figures in the two previous years are also given.

PCC Activity Last 3 years	1/10/15 to 30/9/16	1/10/14 to 30/9/15	1/8/13 to 31/9/14 (14 months)
Full hearings	23	12	17
Rule 8 decisions[1]	0	2	1
Reviews of Suspension Orders	3	5	3
and Conditions of Practice Orders			
Interim Suspension Order applications	4	7	3
Rule 19 applications to cancel a hearing	0	2	4
PCC Outcomes Last Three Years	1/10/15 to 30/9/16	1/10/14 to 30/9/15	1/8/13 to 31/9/14
Admonishment	2	4	1
Conditions of Practice Order	2	1	3
Suspension Order	2	2	2
Removal from the Register	4	2	3
Unacceptable Professional Conduct found not proved:	3	3	8
Of which -			

Some of the facts alleged found proved	2	3	5
None of the facts alleged found proved	1	0	3
Successful half-time submissions under rule 27(2)*	0	0	0
Successful Half-time submissions under rule 27(6)**	0	0	2
Adjournments	10		

* Under rule 27(2) of the GOsC (Professional Conduct Committee)(Procedure) Rules 2000, the Registrant may submit that the facts admitted are insufficient to support a finding of Unacceptable Professional Conduct or Professional Incompetence.

** Under rule 27(6) of the GOsC (Professional Conduct Committee)(Procedure) Rules 2000, the Registrant may submit that (a) in respect of the facts alleged but not admitted, no sufficient evidence has been adduced upon which the Committee could find the facts proved, (b) that the facts admitted are insufficient to support a finding of Unacceptable Professional Conduct or Professional Incompetence.

2.2. This is the first time the number of adjournments has been recorded in the Report. There is no single theme behind reasons for adjournment. In two of the cases, adjournments were granted by the Committee because the registrant concerned was not represented. This causes delay at the hearing as, in the interests of fairness, in such circumstances more time is needed for registrants to understand the process and present their case. In one case, the registrant decided he wished to seek representation which necessitated an adjournment. In two others cases, adjournments were necessary because of changes in the expert evidence. In one case, the registrant was taken ill on the day of the hearing. In two cases, adjournments were necessary because there were insufficient planned days to complete the hearing.

2.3. The impact of lack of representation is a common problem for all regulators and consideration might be given to the information needs of such registrants to ensure that they are better prepared. This might take the form of a guidance leaflet or video in line with initiatives at other regulators, elements of which are already in place at the GOsC for witnesses who appear at hearings.

2.4. In relation to the Committee’s judgment on the issue of Unacceptable Professional Conduct (UPC), in this reporting period three out of 23 hearings

resulted in the Committee determining that the registrant had not committed UPC (13% of the cases heard. In comparison, in the previous reporting period, 3 out of 12 hearings resulted in the Committee determining that the registrant had not committed UPC (25% of cases heard).

- 2.5. Matters which led to a finding of Unacceptable Professional Conduct included sexual misconduct involving a patient (3 cases), dishonesty (1 case), conviction for an offence of violence (2 cases), failure to observe patients' dignity and modesty together with failings in consent and communication with patients (3 cases), failings in clinical care (2 cases), failure to have professional indemnity insurance (2 cases) and failing to take proper notes (2 cases). (Some cases may include more than one of these elements). In 2 cases, failings in clinical care were alleged (along with other matters) and were not found proved.
- 2.6. As reported last year, the number of cases where allegations involve failings in the approach to patients' dignity and modesty, consent and communication with patients, remains a concern. The Committee welcomes the initiatives taken by the GOsC during the year to raise practitioners' awareness of the importance of good practice in these areas. The annual Fitness to Practise bulletin (April 2016), sharing lessons the profession as a whole can learn from recent cases, drew attention to the lack of informed consent in one case, reminding the profession of the relevant osteopathic standards (OPS Standard A4). This was reinforced by an article in *The Osteopath* (April/May 2016) written by the Chief Executive highlighting the recent Supreme Court ruling (the 'Montgomery judgement') which emphasised the need for patients to be involved in decision-making about their care and treatment, a matter that goes to the heart of the meaning of informed consent.
- 2.7. A further matter of note (also highlighted last year) is the reluctance of patients to take up their concerns with their treating osteopath or the practice either at the time or soon afterwards, instead choosing to bring a complaint direct to the Regulator. It is the view of the PCC that practitioners should be reminded of the importance of having in place practice complaints procedures and ensuring that patients know of their existence and how to use them.

3. Membership

- 3.1. As part of a succession-planning exercise, this year has seen some additional appointments to the PCC, with five new members (two lay and three registrant) recruited through a process which attracted some highly quality candidates. Their arrival on 1 April 2016 brought the Committee numbers up from 12 to 16 (four chairs all lay, six registrant members and six lay members). Three of the thirteen legal assessors resigned during the year – one as a result of a full-time appointment to the circuit bench.
- 3.2. Looking to the future, we will see the departure of four registrant members of the PCC and three lay members (including the Chair of the PCC) all of whom were appointed in 2009, their terms of office coming to an end on 31 March

2017. A recruitment campaign was launched on 26 September this year for new members, additional chairs of panels and a Committee chair, to fill the vacancies arising.

- 3.3. Following their induction in May, the new members have had limited opportunities to sit on panels, which has been a source of some frustration and arises because listing allocations have historically been made many months in advance of hearings. It is hoped that the new approach to listing will address this problem for future appointments.
- 3.4. Members' performance reviews were carried out with the Committee Chair in June and July 2016. As Chair, I continue to be impressed by the high level of professionalism and commitment to the role and the focus on team and self-improvement.
- 3.5. As reported last year, PCC members are fully committed and supportive of initiatives to achieve an outcome that is fair to all and seen to be so in the most effective and efficient way possible and in particular to avoid adjournment. The Committee acknowledges that estimation of the length of hearings is not an exact science, but there have been occasions this year when, in order to avoid adjournment, panels have sat until late in the day and well beyond what can reasonably be expected of them.

4. Other matters

- 4.1. Communication with the PCC: The Committee has welcomed the issue of six-monthly Committee Circulars, in May and August 2016, sharing information on plans to implement a new scheduling and listing protocol, regulatory law update, the update to the expenses policy and staff changes.
- 4.2. During the year the GOsC has produced or updated the following guidance:
 - Guidance for the Fitness to Practise Committees on Imposing Interim Suspension Orders (updated November 2015)
 - Guidance for the Professional Conduct Committee on Drafting Determinations (February 2016).
- 4.3. During the year, an external audit was commissioned by the GOsC: *'Review of decisions of the Professional Conduct Committee of the General Osteopathic Council'*, Bevan Britten LLP 14 April 2016. The auditors considered 12 cases based on a reading of the determination and in some cases, the transcript, selected by the GOsC from the 2015 hearings. The findings of the audit were generally positive and issues arising such as the questioning of vulnerable witnesses, the implementation of 'special measures' and reference to relevant practice notes or guidance in the determination, had already been the subject of the training session in November of that year. Other matters identified through the audit such as the structure and clarity of the determination, the drafting of charges in cases involving sexual motivation and understanding the subtleties of sexualised behaviour will be discussed at the next training session on 21 November this year.

- 4.4. The electronic system for providing on-line bundles for panellists before the hearing is now well-embedded and working effectively, with proven benefits. Panellists are able to familiarise themselves with the bundles thoroughly in advance and time is no longer needed for reading on the first morning of the hearing.

5. Training and development

- 5.1. During the year, panellists have participated in the Alurna Information Security Awareness on line course.
- 5.2. A training day for members of the Professional Conduct and Health Committees was held in November 2015. The agenda included: dealing with unconscious bias; raising awareness of the challenges faced by complainants in giving evidence especially for vulnerable witnesses and where there are allegations of sexual misconduct.
- 5.3. This year, the PCC and HC training day will take place on 21 November.

The agenda includes:

- Equality and diversity training
- Feedback and discussion on the external audit of PCC decisions. (see paragraph 4.3 above).
- Review of the GOsC Indicative Sanctions guidance
- The Committee's role in drafting decisions and time management of hearings
- Presentation by staff on the case management process

6. Support to the Committee

- 6.1. PCC panels continue to receive good support from the cohort of legal assessors appointed in 2014 and benefit from the experience they now have of the GOsC's legal and procedural framework.
- 6.2. Staff changes: the Committee welcomed the arrival of a new clerk in April who has since served us with enthusiasm, efficiency and good humour.

In conclusion, I would like to thank members of the GOsC staff who have worked with the Committee for their support and their professionalism in managing the task within the boundaries of the separation of function. I would also like to pay tribute to PCC members who over the past three years have supported me, through their commitment to enhancing the effectiveness of the Committee's contribution to the fitness to practise process.

Judith Worthington
Chair, Professional Conduct Committee
18 October 2016

Health Committee Annual Report

Introduction

1. The pressures on the HC have been similar to those in 2014-15, but fewer than in 2013-14. The Committee did not encounter any fundamental operational problem. Such procedural issues as have arisen in the past, or are otherwise noteworthy, originate in the existing statutory framework. Most will be familiar to the Council following last year's report. They are rehearsed at paragraphs 6 to 9 below, simply for the record.

Matters considered by the Health Committee

2. The number of matters considered by the HC in this reporting period is set out below with comparative data for the two previous periods.

Health Committee	01/10/15 - 30/09/16	01/10/14 - 30/09/15	01/7/13 - 30/9/14
<i>Event type</i>			
Rule 6 Directions (1)	0	0	4
Rule 8 Meetings (2)	0	0	2
Rule 36 Cancellation applications (3)	0	0	0
Full Hearings	1	1	2
Suspension Order Reviews	1	2	0
Interim Suspension Order Applications	1	1	4
<i>Event outcome</i>			
Impairment of fitness to practise	1	1	2
Conditions of Practice Order	0	1	1
Suspension Order	1	0	1

Notes to Table

- (1) Under Rule 6 of the GOsC (Health Committee) (Procedure) Rules 2000, upon referral of a case from the Investigating Committee, the Chair of the Health Committee is required to review the information and available reports and to determine what further information is required.

- (2) Under Rule 8 of the Health Committee Rules, where the medical opinion of the GOsC Medical Assessors and the Registrant's medical expert is unanimous to the effect that the Registrant is not fit to practise, the Committee is required to determine whether it is sufficient to direct that the Registrant should be subject to a Conditions of Practice Order.
- (3) Under Rule 36 of the Health Committee Rules, the Committee has the power to cancel a hearing in exceptional circumstances, provided the Registrant consents to the cancellation, and the views of the Investigating Committee have been obtained

Themes

3. There has been no reportable or material change in the kinds of medical condition which have featured in the cases considered by the Committee during the period. The case load was far too small to enable the HC to identify themes or trends. Nonetheless, the effective and sensitive handling of impairment associated with practitioner ill health has obvious implications for the public reputation of the profession, and for practitioner's views about their Regulator. Clearly that handling must be sustained. If 'lessons to learn' emerge in future they will be reported, for the Council's consideration.

Chair's feedback reports

4. Each HC consider its performance, and agrees a report, after substantive hearings, including those under Rule 8. Each report is then sent to GOsC staff by the Chair. No issues arose in 2015-16 that would require Council attention, or that were not otherwise amenable to ordinary staff work.
5. As to procedural matters, the Committee readily appreciates that issues associated with the statutory framework imposed on the Council cannot be resolved easily or quickly. In the Health Committee context three procedural matters are worth bearing in mind, in case an opportunity arises to make legislative change.
6. First, it is noteworthy that where a Conditions of Practice Order has been imposed, the HC Rules do not permit the imposition of an Interim Order for Conditions to cover the 28 day appeal period. This is plainly unsatisfactory, not least as regards patient protection.
7. Second, it is not immediately obvious why the Chair is required to determine whether a case should go to the Health Committee even after it has been referred by the Investigating Committee. This appears to be an over engineered requirement – although, more generally, the involvement of the Chair in making other case management directions is helpful in bringing cases before the HC timeously and in good order.

8. Third, the statutory Rules applying to the PCC and the HC are not the same as regards giving Notice of Hearing. There is no reason why this should be so – and the difference carries risk. When possible it may be worth considering whether there is scope to standardise and simplify the procedural requirements here.
9. Should an opportunity arise to consider these issues in future **I would recommend** that it be taken. In the meantime, **I would invite** the Council to reflect on whether action might usefully be taken to check that the Council's processes are keeping up with, or indeed ahead of, best practice adopted by other health regulators in relation to handling health cases.

Support to the Committee

10. *Legal Assessors and Medical Assessors* have given consistently positive support to the Committee throughout the period. This amply justifies the action taken by Council to focus on quality and standards two years ago.
11. *Administrative Support*. The Committee wishes to emphasise that the support it has received from the Council's executive and administrative staff has invariably been attentive and helpful.

Health Committee members

12. The appointments for some seven Members of the Committee will end in March 2017. Their service has been of real importance for the Council's overarching objective. It will be essential that new Members understand the particular nature of the HC's work and its Rules – not least because HC sits infrequently and provides little occasion for reinforcing relevant procedural and other knowledge. The 'all members' meeting and training day for the Professional Conduct and Health Committees to be held on 21 November 2016 will provide a useful opportunity to reinforce that message.

Richard Davies
Chair, Health Committee
10 October 2016