



**Council**  
**1 November 2017**  
**Fitness to practise report**

<b>Classification</b>	Public
<b>Purpose</b>	For noting
<b>Issue</b>	Quarterly update to Council on the work of the Regulation department and the GOSC's fitness to practise committees.
<b>Recommendation</b>	To note the report.
<b>Financial and resourcing implications</b>	Financial aspects of fitness to practise activity are considered in Annex B to the Chief Executive's Report.
<b>Equality and diversity implications</b>	Ongoing monitoring of equality and diversity trends will form part of the Regulation department's future quality assurance framework.
<b>Communications implications</b>	None
<b>Annexes</b>	A. Fitness to practise dataset B. Committee circular
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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 30 concerns and 6 formal complaints. During the same period last year, the figures were 46 'informal complaints' (concerns) and 14 formal complaints.
  - a. Of the 30 concerns: 16 related to advertising (15 from the GTS and one from a member of the public); five cases concerned treatment; five concerned patient modesty and dignity and/or transgressing sexual boundaries; one related to adjunctive therapies; one concerned indemnity; one concerned inappropriate communication and conduct; and one related to probity concerns.
  - b. Of the six formal complaints: four related to treatment; one concerned transgressing sexual boundaries; and one concerned adjunctive therapies.
4. Three applications were made to the Investigating Committee for the imposition of an Interim Suspension Order, and no applications were 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 concerns about adjunctive treatment.
6. The IC did not consider that an interim suspension order was necessary for public protection in any of the cases. Undertakings were offered by the registrant and accepted in two of the cases.
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 have been managed under the initial closure procedure.

8. As at 30 September 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 <sup>[1]</sup>	100
Total number closed (A)	372
Number screened in for consideration by the Investigating Committee (B)	19
Number closed by the IC	17
Number referred by IC to a Professional Conduct Committee hearing	2
Number awaiting screening (C)	16

9. During this reporting period, the Regulation Department serviced 12 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 September 2017, the Regulation Department's fitness to practise case load was 128 fitness to practise cases (51 formal complaints and 77 concerns). At the 30 September 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:

<b>Case stage</b>	<b>Key Performance Indicator</b>	<b>Median figures achieved this quarter</b>
Screening	3 weeks	2 weeks
Investigating Committee	17 weeks	14 weeks
Professional Conduct Committee	52 weeks	43 weeks
Health Committee	52 weeks	(no cases heard)

12. In this reporting period, the median figures for the length of time taken for cases to be screened, IC Decision and for a PCC decision are within KPI.
13. The Professional Conduct Committee heard seven cases at seven hearings during the relevant period. Six of the cases concluded and one case was part heard. In four cases the registrant received an admonishment and in two cases no UPC was found.

<sup>[1]</sup> This figure includes concerns closed under the Initial Closure Procedure.

14. During the reporting period, the Investigating Committee considered 19 cases and concluded 15. The IC adjourned four cases, three were adjourned to obtain additional information and one case was adjourned as the IC was inquorate.

### **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 2017, is currently handling 25 active section 32 cases.

### **Feedback to committee members**

17. The fifth Committee circular designed specifically for GOsC fitness to practise committees was distributed to all Committee members and Legal Assessors in July 2017. Within this edition, we covered how we manage and list a case for a final hearing; the current workload of the Regulation department and the statutory committees over the previous quarter (April – June 2017) and feedback from the Professional Standards Authority through a Learning Points letter relating to a professional indemnity insurance case. The Committee circular is attached at Annex B.

### **Training for the Investigating Committee and Professional Conduct Committee**

18. On 29 September 2017, the GOsC planned and hosted a well received chairs' training session for committee chairs. The event was attended by all GOsC chairs and three legally qualified chairs from the General Chiropractic Council. Topics covered key chair competencies including effective time management and control of a hearing and management of witnesses and counsel.
19. The annual training day for the Professional Conduct Committee has been confirmed as 27 November 2017. The agenda items include an innovative session on situational awareness training within a fitness to practise context together with a session on listening and questioning skills and a regulatory case law update.

### **Paperless meetings and hearings**

20. In July 2015, GOsC commenced a pilot under which members of the Investigating Committee and the Legal Assessors were provided with access rights to case papers and other documents on the GOsC online document library. Following the success of the pilot this was extended to Professional Conduct Committees and Health Committees in advance of the hearing in all cases in

January 2016. Fitness to practise committees are still provided with paper copies of the case papers at meetings and hearings.

21. We are planning to introduce paperless hearings whereby panel members will be able to use tablets to securely access documents electronically without the need to print paper copies. The project will give panel members the ability to annotate bundles when they are at the GOsC (or another secure environment) on a secure web based platform. Members of the Regulation Team will be able to assign bundles to panel members, as they do now with the GOsC online document library. However, there will be increased functionality as panel members will then be able to make and save annotations to the bundle from any secure location using a PC, phone or tablet. When panellists come to the GOsC they will then be able to access their documents with saved annotations and use the GOsC tablets to do the same, so there is no need for printing paper bundles for meetings or hearings. When hearings are completed, the Regulation Team will then be able to remove access to the documents.
22. We are planning on providing a demonstration of the tablet project to panel members and the Legal Assessors at the Investigating Committee meeting in November. A three month pilot will then commence with the Investigating Committee in 2018 with the expectation that this can be rolled out to the Health and Professional Conduct Committees after Easter 2018.

### **Practice Note on Standard Case Management Directions**

23. We hosted for the first time a meeting with defence organisations in November 2016. The purpose of this meeting was to identify and discuss ways where we can work together to improve the efficiency and effectiveness of the fitness to practise hearings process. The agenda for that meeting included the introduction of standard case directions and other joint ways of working. A further meeting has been arranged for 22 November 2017, where a practice note on draft standard case management directions for the progression of all cases from referral by an Investigating Committee to a final hearing before a Professional Conduct Committee will be a central item on the agenda.
24. At the Policy Advisory Committee meeting on 10 October 2017, we introduced the draft practice note on standard case directions where we received feedback. Following the feedback and comments at the meeting with defence organisations on 22 November, the draft practice note will be presented to Council at the next meeting scheduled in January 2018 for approval for formal consultation.

### **External audit of Cases where no UPC found**

25. In July 2017, we commissioned an external audit which was undertaken by legal auditors, Bevan Brittan Solicitors. The audit consisted of a qualitative review of 8 cases which were concluded at hearings before the GOsC's Professional Conduct Committee (PCC) which resulted in a decision of 'no case to answer' in the

period from January to May 2017. The common issue in each case concerned an allegation of unacceptable professional conduct (UPC) and where UPC was not found by the PCC. Each decision was assessed against review criteria as specified in the agreed terms of reference. A review form was completed in respect of each decision.

26. Broadly, the purpose of the audit was to determine whether there is any underlying cause, or issue, or is just an ad hoc phenomenon in the usual 'run' of cases. A summary of the findings below:

- No common issue in terms of the type of UPC issue in these cases were identified.
- No common factors in the cases terms of the constitution of the PCC panels, the legal Assessors or GOsC case presenters in the cases were identified.
- The stage at which the findings of no UPC occurred varies from case to case. If anything, however, most of the ultimate decisions were the result of findings of 'no case to answer' (at half time submissions) or 'not proved' findings on the factual issues.
- The auditors considered whether there is an issue in relation to the extent of investigation which takes place prior to the IC consideration, for example obtaining formal witness statement and expert reports at that stage. This could indicate the robustness, or lack of robustness, of the factual evidence at the IC stage. Also, this could assist in ensuring charges referred to the PCC are correctly focussed. However, this was determined to be unlikely to be the case or have altered the IC's decision, given the relatively low threshold it must apply and that the IC is not entitled to resolve substantial conflicts of evidence.
- The auditors concluded, given the frequency in GOsC cases where there is a direct conflict of evidence between a single patient complainant and the osteopath at the heart of the case, means such issues cannot be fully explored before an oral hearing and when they are, some cases will inevitably not be proved.

**Recommendation:** to note the report.