



Council
21 November 2018
Fitness to practise committee Annual Reports 2017-18

Classification	Public
Purpose	For discussion
Issue	Each committee is required to report annually on its work to Council. These reports cover the period 1 October 2017 to 30 September 2018.
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 work of the Regulation Department.
Communications implications	None
Annexes	A. Investigating Committee Annual Report B. Professional Conduct Committee Annual Report C. Health Committee Annual Report
Author	James Kellock, Richard Davies, Philip Geering

Investigating Committee Annual Report 2017-18

Introduction

1. This is my seventh and final report to the Council. The period covered by this report is from 1 October 2017 to 30 September 2018.
2. I have included, in bold and in brackets, figures from the 2016-17 and 2015-16 years for comparison.
3. In making this report I am conscious that the Council may be provided with a quarterly report on fitness to practise and the work of the IC. To some extent this report will repeat information previously provided to the Council.

Meetings and Hearings of the Investigating Committee

4. During the twelve months covered by this report there have been 8 meetings of the Committee to consider complaints (2016-17 seven, 2015-16 seven). In addition an 'all members' meeting primarily for training, where all members are invited was held; the remaining eight meetings have each been attended by five or seven members (out of 13) of the Committee.
5. In addition, panels of Committee members (five each time) have sat on 5 occasions to consider applications by the Council for the imposition of Interim Suspension Orders on registrants **(2016-17 six, 2015-16 seven)**.

Casework

Numbers of complaints and the Committee's decisions

6. During the period covered by this report, the Committee has made decisions on 42 complaints against registrants (2016-17 59, 2015-16 44). In 26 of these, the complaint was referred to the Professional Conduct Committee, one case was referred to the Health Committee (64% complaints referred). In 15 cases, the Committee decided that there was no case for the registrant to answer (2016-17 36 "case to answer" 23 "no case to answer" [61% referred], 2015-16 32 1"case to answer" 12 "no case to answer" [73% referred]).
7. In comparison to the last two reporting periods, the number of cases decided by the Committee has dropped whilst the number of meetings has increased by one.
8. In nine cases, the Committee was not able to make a decision when the complaint was first considered by the Committee. In these nine cases, the Committee adjourned the case for further investigations to be carried out, for further allegations to be put to the registrant or to afford the registrant further

¹ 31 referred to the PCC and 1 to the HC

time to respond to the complaint (2016-17 16 adjournments, 2015-16 21 adjournments). The lower number of cases that had to be adjourned is positive.

9. In this year the Committee was asked to provide its view on whether a hearing should be held in relation to two cases that it had previously referred to the PCC. This procedure is followed where a complaint has been referred by the Committee to the PCC but subsequently further information comes to light which calls into question whether a hearing should go ahead (whether the hearing does go ahead is a decision for the PCC not the IC) (2016-17 3 cases, 2015-16 0 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
- Criminal convictions

11. Other areas of concern include the inappropriate crossing of professional boundaries and sexually motivated conduct. These have featured in four cases this year (2016-7 6 cases, 2015-16 7 cases), fewer than last year. This figure however probably does not represent a reduction in such allegations as at its latest meeting on 23rd October 2018 (outside the reporting period) the Committee was asked to consider six such cases.

12. Nearly every case involving osteopathic assessment/treatment, as in previous years, has involved a complaint by a single patient and allegations of Unacceptable Professional Conduct, rather than Professional Incompetence.

Targets

13. Once a complaint is received by the GOsC, it must be screened by a registrant member of the Committee before it can be considered by the Committee. The GOsC target is for screening to be completed within three weeks of receipt of the complaint by the GOsC. The median time for screening this year was 2.71 weeks (previous year 2.29 weeks).

14. The GOsC also has a target for cases to be considered and determined by the Committee within four months of receipt of a formal complaint. 27 cases [**64%**] were decided within the target period and 15² were decided in a longer period (**2016-17 41 were determined within target [66%] and 21 were outside), 2015-16 no information available**).

Interim suspension orders

15. There have been a similar number of Interim Suspension Order hearings compared to last year.
16. During the period of this report, the Committee considered whether to impose an Interim Suspension Order in five cases. It imposed two orders, accepted undertakings in one case and made no order in the other two cases (2016-7 6 applications [two orders made and undertakings accepted twice], 2015-16 7 applications [**five orders made, no cases where undertakings were accepted**]). The proportion of applications resulting in an order has remained similar to last year.

All members meeting

17. An all members meeting and training day was held on 28 June 2018.
18. The all members meeting comprised three elements – the revised Osteopathic Standards, a case law update concentrating on dishonesty and the then draft new guidance for the Committee. Over lunch members were able to meet privately to discuss topics of common interest which was much appreciated, since each meeting and hearing of the Committee is attended by only a selection of members of the Committee. The Committee had asked for further training on the preliminary stages of its work, undertaken by individual members prior to consideration of complaints at its meetings or ISO hearings, and it is to be hoped this can be included next year, if there is to be a training day.

Composition of the Investigating Committee

19. During the year two further lay members were appointed as panel chairs (four out of the six lay members are now panel chairs). All the new members who joined the Committee following interviews in January 2017 have now attended at least one IC meeting and hearing, although this has taken a long time to achieve.

Other changes in the year

20. During the year the GOsC introduced, following public consultation, new guidance to the Committee. The changes were not substantial.

² The numbers do not necessarily equate to the earlier figures as a number of cases were considered more than once.

21. A new software programme was trialled in this year to permit a reduction in hard copies of case papers (this programme is in addition to DocMonster). One of the issues encountered in the trial has been the difficulty in keeping all members of the Committee up to date with the changes given the infrequency with which members attend meetings.

Support to the Committee

22. Despite a number of staff changes the improvement in support to the Committee noted last year has continued and the Committee now receives good administrative support.
23. In terms of remuneration members continue to find some payments erratic. The new allowance for case reading introduced last year (£12.50 per case) has attracted some strong criticism. This is especially on the occasions when there are a large number of cases on the agenda, individual case papers are extensive and when papers are provided not long before a meeting leading to very little time in which to prepare them.

General reflections

24. 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 five or six years ago and many more than eleven years ago (the proportion of cases where the Committee finds there is a case to answer is not dissimilar to that eleven years ago).
25. This year saw far fewer advertising cases than the previous years. These had impacted particularly on the screeners (the registrant members of the Committee).
26. In most other respects the overall workload and performance of the committee seem to reflect 2016-17. While the number of cases involving the crossing of professional boundaries and sexual misconduct has not grown those cases, together with those involving allegedly inappropriate communication, continue to take up a high proportion of the Committee's time. Allegations of practising without professional indemnity insurance also show no signs of being eradicated.
27. Finally, as this is my last report to the Council, I would like to record my thanks to the different members of the GOsC executive over the years. I would also like to thank the members of the Committee over the past seven years. They have provided me with support and with wisdom and they have unfailingly worked hard, in sometimes difficult circumstances, to uphold the standards of the osteopathic profession and to protect the public and the public interest.

James Kellock
Chair, Investigating Committee
5 November 2018

Professional Conduct Committee Annual Report 2017-18

Introduction

1. This is my second Report to Council on the work of the Professional Conduct Committee (PCC). It relates to the period September 2017 to September 2018. During the year, one Osteopath and one Lay member resigned. Four others were appointed – two Lay, and two Osteopathic. The PCC currently consists of 17 members in total.
2. The **PCC's primary obligation to Council** is of longstanding. The Committee must exercise independent and reliable judgment in deciding the cases brought before it fairly, properly and on the basis of clear and accessible reasoning. Throughout, it must apply the overarching objective of the Council – that is, to protect patients; to sustain professional standards, including those of conduct and behaviour; to uphold the reputation of the profession; and to maintain that of the Council as regulator.

Overview

3. In terms of **case throughput and profile**, this has been a largely unremarkable year. The full picture is set out at the **Appendix**. In total, 45 cases were considered by the PCC – with 35 full hearings, compared with 46 in 2016-17, and 23 in 2015-16. It is to be expected that over time the caseload will remain variable and unpredictable.
4. The key issue as regards any assessment of the PCC's overall **performance** relates to two benchmarks. The first relates to the elapsed time between the publication of Notices of Hearing and the Committee's final determinations. The second concerns the quality of the determinations themselves. From that perspective the measures taken to continuously improve case management and guidance protocols are invariably of considerable importance.
5. Last year, I pointed to the steps that had been taken since 2015-16 to provide assurance as to the sustained robustness and reliability of the PCC hearings process. These included the recruitment of new legal assessors; focused annual training; the circulation of case bundles to Committees before hearings start; and new guidance on drafting determinations.
6. This year has seen publication of the following.
 - Updated Osteopathic Practice Standards
 - Amplified Indicative Hearings and Sanctions Guidance
 - A revised Practice Note for Consensual Disposal under Section 8
7. Each of these will have powerful influence on the Committee's work downstream, **and I propose to highlight the principal effects in future reports**. The PCC has already been much assisted by initiatives to buttress advance case preparation that have featured prominently this year.

- Securing skeleton arguments from the parties to enable the Committee to deal with the principal elements of each case where there is agreement or dispute on matters of fact or law;
- Ensuring that statements of common ground are received from experts where their evidence is required in any case.

Quality of decision making

8. The Committee remains keenly conscious that its **determinations** must command the confidence of the profession and of the public. Cases must be disposed of with evident application both to their substance, and to making the best use of available time. The PSA annual report for 2016-17 made no adverse comment about the PCC or the Council's associated procedures. There has been no intimation that this assessment is likely to have changed in any significant way for 2017-18. However, I have instituted twice yearly meetings between Chairs to exchange experience on how best to achieve continuous improvement in the pace and reliability of the PCC process.
9. No adverse conclusions should automatically be drawn from the incidence of **appeals** to the High Court. Such events are inevitable, as is the necessity to learn from them. In 2018, one case was partially upheld on appeal, and one other appeal has yet to be decided. For the former, the Court decided against upholding a conditions of practice order originally imposed by the PCC. The case related to a Registrant's alleged conduct affecting four patients, and the Court substituted an admonishment in relation to one of them. The judgment turned on a notably punctilious approach to reasoning. It may have implications for the Committee's treatment of charges that allege 'inadequacy' in adherence to standards, as much as for its explanations as to precisely how far a Registrant may or may not have fallen short.
10. The case is a reminder that the High Court may sometimes be unwilling to uphold an expert panel's decision on facts based on the civil standard of proof without their giving reasons in forensic and extensive detail. This is notwithstanding the expectation that the panels should reach 'perfected' conclusions without delay, and protect the public interest. The case will be addressed in the context of collective development and training in due time.

Training

11. This year, as in the past, new members have received appropriate induction. All PCC members will undertake **annual training** at the end of November 2018, facilitated by an experienced judicial trainer. The day will focus on:
 - Structuring in-camera discussions;
 - Effective decision making in Committee;
 - The updated Osteopathic Practise Standards;
 - The amplified Sanctions and Hearings Guidance;
 - The implications of Standard Case Directions;
 - Civility and Judicial Behaviours.

12. One of the benefits of the joint training day held in 2017 with colleagues from the General Chiropractic Council was that Chairs were able to discuss the management problems that can arise in hearings, and techniques for making the best use of available hearing time. A recurring concern has been the behaviour of a very few advocates before the PCC. Chairs were able to reflect on how to deal with them. It may be that our unwillingness to tolerate unprofessional behaviours should be signalled at the start of every hearing with a deft and suitable form of words. That is being considered currently. For the rest, I am supporting PCC Chairs to be still more assertive in their handling of the problems that can arise for procedural management.

Adjournments

13. Chairs have been very sensitive to those occasions in which cases have gone **part heard**. No one considers such adjournments to be some sort of default position. There is a ready understanding that wherever possible they should be avoided. Apart from any other consideration, once a delay arises it can take many months for the parties to reconvene – with attendant stresses, especially for Registrants.
14. There is **no clear pattern** visible in the incidence of adjournments. For each of the last three years the percentage of full hearings affected by adjournment has been 43%; 17%; and 28% respectively. The circumstances of each case can vary widely and there are often good reasons why adjournments have necessarily to be granted. However, it is accepted that a relaxed view of 'breaks' during hearings is wholly inappropriate. Where a case goes part heard it is not altogether easy to capture the reasons why, and to reflect on them. This might usefully be addressed by instituting a process improvement feedback form for Chairs to complete, with input from their colleagues - so that where part heard adjournments arise for reasons that recur, they can be identified and dealt with systematically.

Pressures on the Regulation Team and Forward Planning

15. In my last report I indicated that the PCC was increasingly conscious that the pressures on the Regulation Team – especially those of pre-hearing case management and preparation – were very demanding. In contrast to the arrangements at other regulators the team is very small, and encompasses all the functions from investigation to prosecution and tribunal administration.
16. Naturally, it is for the Chief Executive to advise the Chair and Council as to the disposition of resources. **I have been reassured** that:
 - a. the Regulatory Team is now up to full strength;
 - b. following a review of the scheduling process, the Team it is more able to make realistic assessments of whether a case needs to be heard over three, five, or seven days;

- c. the emerging Standard Case Directions should help to promote more orderly engagement from Registrants' representatives; and
 - d. the stresses arising from the multiple cases associated with shortcomings in advertising or holding Professional Indemnity Insurance largely have passed.
17. The consultation on **Standard Case Directions** ended in October. The Directions themselves represent an important innovation. Even though they cannot be made mandatory, they are likely to condition the behaviour of Counsel and others. They will strengthen the expectation that the parties will resolve as many issues as possible before a hearing begins, and strive to ensure that preliminary matters are dealt with expeditiously. This has the potential to be of considerable assistance to the Committee's overall case management, not least by improving the scope for effective time management (including the avoidance of adjournments).
18. One other development has been noteworthy. I am grateful that, following discussion with Chairs, the Executive has devised a **forward action plan** for dealing with recurrent administrative and other matters, on an agreed and manageable footing. Amongst other things this relates to the following, and **I shall report on progress in future.**
- a. The preparation of a listings protocol, and quarterly listing updates;
 - b. The introduction of a regular communication Bulletin;
 - c. Progressive improvement for printing and other facilities;
 - d. The consideration of revised guidance and stronger specifications for experts covering both training and expertise;
 - e. Further training for PCC Chairs, possibly in conjunction with other regulators.

Unacceptable Professional Conduct and Issuing Advice

19. Council will appreciate that the PCC does not operate under statutory rules that would be wholly familiar in 'fitness to practise' jurisdictions elsewhere. It is a matter of regret that the Council has faced continuing obstacles to their revision. I continue to urge that were an opportunity to make positive changes to the existing Rules to arise, it should be seized.
20. That said, the Council's Corporate Strategy 2016-19 indicated a commitment to continue to make improvements to PCC procedures wherever possible. By way of example, and subject to Council approval, a consultation is envisaged to set out a revised protocol for cancelling hearings in exceptional circumstances under existing **Rule 19**, even where UPC has been found. This could well be helpful in disposing of cases whose continuance is demonstrably unnecessary.
21. Of still more note, the new Hearings and Sanctions Guidance introduces an important **additional measure** for the Committee to consider and apply where

appropriate. In the past, once a PCC has made no finding of Unacceptable Professional Conduct (UPC), that has been the end of the matter. The new Guidance indicates that there is nothing to prevent the Committee from issuing advice to a Registrant where there have been proven breaches of Osteopathic Practice Standards, but where neither UPC nor professional incompetence is made out. In my view this is likely to have a notably positive effect both in attending to the Council's overarching objective, and on the acuity with which Committees reach their judgments.

Conclusion

22. Council is invited **to note:**

- a. The contents of this report, and particularly paragraphs 3, 17 and 21;
- b. The commitment to provide further report on the matters covered at paragraphs 7 and 18.

Richard J. Davies
Chair of the PCC
October 2018

Appendix

PCC Substantive Hearings	Q3 1/10/17- 31/12/17	Q4 1/1/18 - 31/3/18	Q1 1/4/18- 30/6/18	Q2 1/7/18- 30/9/18	TOTAL
Total cases considered	17	9	10	9	45
Allegation not 'well founded'	6	2	4	1	13
Admonished	3	1	2	0	6
Conditions of Practice	4	0	0	1	5
Suspension	0	1	1	2	4
Removal	0	1	0	1	2
Adjourned/Part heard	3	2	2	3	10
Rule 19	0	1	0	1	2

PCC ISO Hearings	Q3 1/10/17- 31/12/17	Q4 1/1/18- 31/3/18	Q1 1/4/18- 30/6/18	Q2 1/7/18- 30/9/18	Total
ISO Hearings	1	0	2	1	4
ISO Imposed	1	0	2	1	4
Not Imposed	0	0	0	0	0
Undertaking	0	0	0	0	0

PCC Review Hearings	Q3 1/10/17- 31/12/17	Q4 1/1/18 - 31/3/18	Q1 1/4/18 - 30/6/18	Q2 1/7/18- 30/9/18	Total
Reviews	0	1	0	0	1

Annex B to 7

PCC Activity Last Three Years	1/10/15 to 30/9/16	1/10/16 to 30/9/17	1/10/17 to 30/09/18
Full hearings	23	46	35
Rule 8 decisions[1]	0	2	1
Reviews of Suspension Orders and Conditions of Practice Orders	3	5	1
Interim Suspension Order applications	4	4	4
Rule 19 applications to cancel a hearing	0	3	2

PCC Outcomes Last Three Years	1/10/15 to 30/9/16	1/10/16 to 30/9/17	1/10/17 to 30/09/18
Admonishment	2	14	6
Conditions of Practice Order	2	2	5
Suspension Order	2	4	4
Removal from the Register	4	4	2
Unacceptable Professional Conduct found not proved	3	14	13
Of which:			
Some of the facts alleged found proved	2	11	10
None of the facts alleged found proved	1	0	2*

Annex B to 7

Successful half-time submissions under rule 27(2)[1]	0	0	0
Successful Half-time submissions under rule 27(6)	0	3	1
Adjournments	10	8	10

*In one of these cases the GOsC offered no evidence and the case was dismissed by the PCC

Health Committee Annual Report 2017-18

Introduction

1. This is my second report as Chair of the statutory Health Committee.
2. My aim has been to play my part in promoting the smooth running of Health Committee hearings that produce fair, evidenced-based, independent decisions that can with-stand scrutiny and which carry the confidence of all concerned.

Caseload

3. It will be apparent from the charts below that this has been a very quiet year for the Health Committee. The data for the year, which is almost wholly of zero, and data for the preceding two years is set out below.

Health Committee	01/10/17 to 30/09/18	01/10/16 to 30/9/17	01/10/15 to 30/9/16
Rule 6 Directions hearings ³	1	0	0
Rule 8 meetings ⁴	0	0	0
Applications to cancel a hearing rule 36 ⁵	0	0	0
Full hearings	0	1	1
Reviews of Suspension Orders	0	1	1

³ 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 reports available and to determine what further information is required.

⁴ 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 a registrant should be subject to a Conditions of Practice Order.

⁵ Under Rule 36 of the Health Committee Rules, the Committee has the power to cancel a hearing in exceptional circumstances, provided that the registrant consents to the cancellation, and the views of the complainant and the Investigating Committee have been obtained.

Interim Suspension Order applications	0	0	1 (suspension imposed)
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Health Committee Hearing outcomes	01/10/17 to 30/09/18	01/10/16 to 30/9 17	01/10/15 to 30/9/16
Findings of impairment of fitness to practise	0	1	1
Conditions of Practice Orders	0	1	0
Suspension	0	0	1

4. Given the near absence of Health Committee work in the reporting year it is not proposed to draw out any significant themes or observations in this report.
5. Health will inevitably subsist as a category of case work: amongst the population of registered osteopaths, individuals will suffer with physical and/or mental ill-health that may impact on their ability to practise. Professional Standards require registrants to manage the impact that any health issue may have on their practice. From time-to-time, the health of registrants will require regulatory intervention involving the Health Committee.
6. The nature of ill-health and the degree of regulatory intervention required can vary enormously but will often give rise to matters of sensitivity requiring careful handling. Ordinarily, regulatory hearings are heard in public as a means of promoting transparency and public confidence. Health issues are a ground for departing from that general rule with hearings held in private so that evidence of a personal nature can be fully shared with the Committee thereby enabling the Committee to make the best decisions it can in the public interest.

Health Committee Members

7. The Statutory framework, as set out in the Governance Handbook, provides for there to be 18 members of the Health Committee, made up of osteopaths and lay members. For much of the year the Committee has been up to full strength, with 11 Lay Members and 7 Osteopathic Members. During the year one Osteopathic Member resigned.

Closing

8. I have had the benefit of seeing the annual report to Council of Richard Davies, Chair of the PCC. I have worked alongside during Mr Davies during the year, including undertaking some of the annual appraisals of Members. I support the observations made in his report.
9. This concludes the Health Committee report for 2017-18.

Philip Geering
Chair, Health Committee
October 2018