



**Audit Committee**

**24 October 2019**

**Professional Standards Authority Performance Review Report**

<b>Classification</b>	Private
<b>Purpose</b>	For discussion
<b>Issue</b>	This paper provides Audit Committee with an update on the 2018-19 Professional Standards Authority (PSA) performance review and on actions identified from the previous years report.
<b>Recommendation</b>	To discuss the content of the paper.
<b>Financial and resourcing implications</b>	None.
<b>Equality and diversity implications</b>	None.
<b>Communications implications</b>	None.
<b>Annex</b>	Annex D1: Professional Standards Authority (PSA) performance review report 2018-19  Annex D2: Actions arising from the PSA 2017-18 report
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### Background

1. The General Osteopathic Council (GOsC) is subject to an annual performance review undertaken by the Professional Standards Authority (PSA). The results of the performance reviews are reported to Audit Committee and Council.

### Discussion

2. In 2018-19 the GOsC once again met all 24 PSA standards, the ninth year in succession that we have done so. The PSA performance review report for 2018-19 is attached at Annex D1 - <https://www.osteopathy.org.uk/news-and-resources/document-library/about-the-gosc/professional-standards-authority--annual-review-of-performance/>.
3. Earlier this year, the June 2019 Audit Committee received a copy of the PSA Performance Review for the prior year, 2017-18, which had been published later than normal due to the PSA undertaking a targeted audit of our fitness to practise activity. Attached to the Audit Committee paper was an 'action plan' which was prepared by the former Chief Executive and Registrar, Leonie Milliner.
4. That document, attached at Annex D2, has been updated to reflect our current position, while recognising large parts of the 'action plan' were already out of date when presented to the Audit Committee as it related to the 2017-18 year.
5. The actions which are considered outstanding relate mainly to the Initial Closure Procedure (ICP), which also features in the 2018-19 report. Audit Committee should take some assurance from the fact that the Executive is alive to these issues and indeed, the assurance audit activity discussed at Item 5 of this October 2019 agenda, supports this as an area for review.

### *PSA Performance Review 2018-19*

6. The table below sets out points which have been identified from the Performance Review Report 2018-19 as being of interest to the Audit Committee.
7. In line with how actions were identified from the 2017-18 report, the basis for highlighting areas from the report is as follows:
  - Items which the PSA has indicated it will consider further in the next performance review (2019/20)
  - Items the PSA has indicated it will report on or monitor in future performance reviews
  - Prospective activity the PSA has noted GOsC has committed to undertaking
  - Items which the PSA has indicated GOsC might like to review.

Section	Standard	PSA observation
Education and training	Standard 2: The process for quality assuring education programmes is proportionate and takes account the views of patients, service users, students and trainees so that they meet the regulator's standards for registration.	Following its consideration of the responses to the consultation, the GOsC agreed to implement the proposals to remove expiry dates for RQs and to publish conditions placed on education institutions after a quality assurance visit. The GOsC has said it will continue to develop its proposals for a more risk-based approach, and we will consider the outcomes of this work once the new arrangements have been introduced.
Registration	Standard 6: Through the regulator's continuing professional development/revalidation systems, registrants maintain the standards required to stay fit to practise.	The new CPD scheme reinforces the requirements for registrants to work in accordance with the OPS and requires registrants to evidence learning in line with the four themes of the OPS. We will monitor the effectiveness of the new CPD scheme in future reviews.
Fitness to Practise	Standard 1: Anybody can raise a concern, including the regulator, about the fitness to practise of a registrant.	The GOsC has not updated the guidance used by Screeners. However, we note that our last report was published on 13 December 2018, towards the end of this review period and as such, there has not been sufficient time for the GOsC to review the guidance and introduce amendments in response to our suggestions. Whilst the evidence we assessed in the period under review did not suggest additional concerns in this area, we will consider any updated guidance as part of future reviews of the GOsC's performance against the Standard.
		In the period under review, the GOsC did not receive any advertising concerns. Last year we had some concerns about the way in which the ICP was being applied to these cases but did not identify any public protection concerns. In our report, we

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Section	Standard	PSA observation
		suggested that the GOsC should consider documenting its processes in relation to these types of cases. We note that since the publication of our last report, there has been limited time for the GOsC to consider this suggestion. We will continue to monitor this area.
	Standard 3: Where necessary, the regulator will determine if there is a case to answer and if so, whether the registrant's fitness to practise is impaired or, where appropriate, direct the person to another relevant organisation.	<p><i>Concerning the Investigating Committee Decision Making Guidance:</i></p> <p>As the guidance was only recently introduced and the number of decisions where it has been applied is likely to be low, we will consider the impact of the guidance on decision-making in our next performance review when there is likely to be a larger number of decisions for us to review.</p>
		<p><i>Concerning the number of 'no further action decisions':</i></p> <p>This information shows that the number of no further action decisions has remained relatively stable year on year since the inception of the threshold criteria in 2015 and since last year's performance review period. While the proportion of case to answer and no further action decisions has varied from year to year, this is across a very small number of cases and does not on its own raise concerns. We will continue to monitor this.</p>
	Standard 8: All fitness to practise decisions made at the initial and final stages of the process are well reasoned, consistent,	During this performance review period, the GOsC Decision Review Group (DRG) met once and reviewed the determinations of four final PCC hearings. The DRG provided the following feedback to the GOsC:

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Section	Standard	PSA observation
	protect the public and maintain confidence in the profession.	<ul style="list-style-type: none"> <li>Consider how it can improve clarity on the use of expert evidence.</li> <li>Develop guidance for the IC and PCC in respect of expert evidence.</li> </ul> <p>The GOsC is in the process of considering these suggestions and we will report on these when we next consider its performance against the Standard.</p>

8. Audit Committee will note many of the PSA observations will be addressed as part of the 2019-20 performance review.

### *PSA performance review 2019-20*

9. For the GOsC, our PSA performance review process for 2019-20 commences in December 2019. As with all other regulators, we will be assessed against the new performance review standards and during the summer the GOsC took part in a pilot exercise around one of those new standards, which had a specific focus on Equality and Diversity.

10. There was useful learning arising from the pilot and the Executive team met with PSA colleagues in late September 2019 to discuss their findings. Based on the pilot, PSA have advised us that if they had been undertaking a performance review of the GOsC's performance against the new standard, they would have required additional evidence before being satisfied that the standard had been met. Audit Committee can take assurance that the pilot will have no bearing on the GOsC performance review assessment for 2019-20.

11. We were advised by the PSA that as 2019-20 represents the first year that regulators are being assessed against the new standards, we will have the option of completing an initial self-assessment analysis against the standards or undertaking a targeted review. The purpose of the self-assessment or targeted review is so that PSA can establish a baseline for each regulator against the new standards. Our preferred approach will be the completion of a self-assessment.

**Recommendation:** To discuss the content of the paper.

## PSA Performance Review Report 2017/18 - Analysis

For the 2017/18 GOsC Performance Review report - please see [https://www.professionalstandards.org.uk/docs/default-source/publications/performance-review---gosc-2017-18.pdf?sfvrsn=5e137520\\_0](https://www.professionalstandards.org.uk/docs/default-source/publications/performance-review---gosc-2017-18.pdf?sfvrsn=5e137520_0)

Extract from PSA report 2017/18	Management response	Lead	Outstanding action?
<p>The GOsC's business plan 2017/18 contained a commitment to scope the need for additional guidance for students based on the outcome of this research, with particular reference to student/tutor and student/student relations.</p>	<p>In the 2017/18 Business Plan Monitoring at year end considered by Council in May 2018 we stated: 'Literature review commissioned in partnership with GCC reported in December 2017. The report has been considered by the Executive and will be considered by the PAC in June 2018.'</p> <p>The literature review was considered by Policy Advisory Committee (PAC) in June 2018, and they agreed to note the overview findings of the boundaries literature review and to hold a collaborative stakeholder workshop to scope out next steps.</p> <p>Two workshops were held on 26 and 27 March 2019 and the findings of these are due to be considered by the PAC later in 2019.</p> <p>In the meantime, we continue to present to staff and students about boundaries and we have recently updated</p>	<p>Prof. Stands</p>	<p>No, PSA point addressed.</p>

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Extract from PSA report 2017/18	Management response	Lead	Outstanding action?
	<p>this to include the PSA research <a href="https://www.professionalstandards.org.uk/docs/default-source/publications/sexual-behaviours-between-health-and-care-practitioners---where-does-the-boundary-lie.pdf?sfvrsn=bae87220_0">https://www.professionalstandards.org.uk/docs/default-source/publications/sexual-behaviours-between-health-and-care-practitioners---where-does-the-boundary-lie.pdf?sfvrsn=bae87220_0</a> about behaviours between practitioners.</p> <p>It is intended that a discussion paper taking into account communication and miscommunication in the context of touch and boundaries will be considered by the PAC later in 2019.</p>		
<p>The GOsC's aim to make its education quality assurance function more transparent and to reduce the burden of its oversight while maintaining appropriate standards is to be welcomed. The outcomes of this work will be considered as part of the performance review next year.</p>	<p>A paper was considered by the PAC in June 2019 on Quality Assurance: levels of assurance and risk. The PAC considered and provided feedback on the paper including the review of the role of the external examiners within osteopathic education and our approach to making standards and processes more explicit.</p>	<p>Prof. Stands</p>	<p>No, PSA point addressed.</p>
<p>As part of its review of education quality assurance the GOsC consulted on a procedure for dealing with concerns about osteopathic education, which sets out the types of concerns that the GOsC will and will not consider, and each stage of its</p>	<p>The draft concerns procedure was subject to some minor comments at consultation. We took the final document back to the OEIs in November 2018 and this was published in March / April 2019 with no further changes.</p>	<p>Prof. Stands</p>	<p>No, PSA point addressed.</p>

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Extract from PSA report 2017/18	Management response	Lead	Outstanding action?
procedure for dealing with concerns. We will report on the outcome of the consultation in our next performance review.			
The information published as part of the GOsC's quality assurance of courses run by osteopathic education institutions is being considered as part of the GOsC's review of its quality assurance function. We will report on the outcomes of that review in our next performance review.	A paper was considered by the PAC in June 2019 on Quality Assurance: levels of assurance and risk. This included the removal of expiry dates and the publication of conditions and action plans.	Prof. Stands	No, PSA point addressed.
'...the ICP Screener's report template would be amended to include a section for the Screener's reasons for their decision.'	The report template has already been amended but further consideration will be given based on the findings of the independent audit discussed at Item 5 on the October 2019 Audit Committee agenda.	FTP	No, PSA point addressed
The GOsC has told us that in future any individual who raises a concern with the GOsC about advertising will be recommended to raise the concern locally with the registrant in the first instance and	All concerns undergo an initial assessment. This is not meant to be a detailed risk assessment given there is usually a paucity of evidence at this initial stage. Rather, the triage determines whether there are serious issues	FTP	No, PSA point addressed.



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Extract from PSA report 2017/18	Management response	Lead	Outstanding action?
<p>then with the ASA if the registrant fails to address the concerns raised. However, the GOsC has also confirmed that it would always review the material provided and retain the option to open a fitness to practise case where the concerns appeared at the outset to be serious enough to merit further immediate consideration. It is not clear whether this review would be documented in each case. There is no formal policy setting out what its approach is.</p>	<p>that require immediate action, in particular an interim order.</p> <p>There is no separate policy for our approach to advertising cases. If a concern involving advertising was assessed as requiring urgent action, then this would be progressed under our existing processes for interim measures.</p>		
<p>We are concerned that there appears to be no publicly available written policy (so that all complainants are aware of how their complaint is likely to be managed) and that the GOsC's present approach did not document its assessment of risk.</p>	<p>This is part of the PSA narrative specifically addressing our approach to advertising concerns as we have clear guidance on how complaints are managed and how risk is assessed  <a href="https://www.osteopathy.org.uk/standards/complaints/our-complaints-process/">https://www.osteopathy.org.uk/standards/complaints/our-complaints-process/</a></p> <p>We do not differentiate our initial approach to handling concerns based on the type and nature of the complaint. All concerns are subject to an initial risk assessment.</p>	FTP	No, PSA point addressed.

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Extract from PSA report 2017/18	Management response	Lead	Outstanding action?
<p>The GOsC may wish to consider documenting its processes transparently so that they are clear and indicate the circumstances in which it will take immediate action where it appears that there is a serious breach of the ASA/ CAP Code. It is an issue that has relevance to a number of other organisations providing oversight of health and care professionals and we may consider it further in the future</p>	<p>Our position in relation to advertising cases has been clear and consistent from the beginning. We do not consider that it is the GOsC's role to interpret another regulatory body's guidance such as the Advertising Standards Authority (ASA).</p> <p>In the UK, the determination on the lawfulness of advertising rests with the ASA, the UK's independent regulator for advertising across all media. In fulfilling this function, the ASA has regard to the Code and guidance issued by its partner body: the Committees on Advertising Practice.</p> <p>It is not appropriate for the GOsC or a Screener to seek to interpret the CAP Code, nor to adjudicate on it. In the absence of evidence of a clear breach (i.e. an ASA ruling on the matter or CAP advice) the Screener is not in a position (indeed it would be wrong, see below) to decide that there is a breach.</p> <p>Consequently, the Osteopathic Practice Standards (D14) places on all osteopaths a duty to ensure that their</p>	FTP	No, PSA point addressed.

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Extract from PSA report 2017/18	Management response	Lead	Outstanding action?
	<p>advertising is legal, decent, honest and truthful and conforms to current guidance, such as the CAP code.</p> <p>In practice this means that our role in relation to advertising is to step in where an individual either fails to comply with a ruling from the ASA or, for whatever reason, fails to engage with the GOsC.</p> <p>This approach has been agreed with the ASA and was considered by the PSA as part of the 2015-16 Performance Review. As part of that review we submitted a briefing note in evidence for our work on advertising. This was subsequent to earlier correspondence and discussion between the Chief Executive of the GOsC and the Chief Executive of the PSA. This approach was endorsed in the 2015-16 PSA Performance Review.</p> <p>This reasoning is consistent with the position taken by the PSA in the Lessons Learned Review, at paragraph 4.116, to the effect that the PSA are not experts on the law governing subject access requests and Data Protection, 'the Information Commissioner exists to do that and it</p>		

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	<p>would be wrong for us to make judgements which are properly the function of that office’.</p> <p>We respectfully suggest that the PSA is not itself in a position to judge whether an osteopath’s advertising is in prima facie breach of the CAP Code. Our experience of working with the ASA and CAP on this issue over a period of nearly eight years is that in nearly all circumstances these matters are fact-specific and often finely balanced. Indeed, we have examples of where the CAP’s own advice team have taken contradictory views of the same piece of text or web page.</p> <p>As an independent decision maker, the Screener could request further information prior to making their decision, they could also have referred the case to the IC for further investigation.</p> <p>Given that there is minimal risk presented in the vast majority of advertising cases we do not consider it is proportionate for the GOsC to make a referral to the ASA for resolution and indeed the ASA has previously indicated that they would prefer the GOsC not to take such an</p>		

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Extract from PSA report 2017/18	Management response	Lead	Outstanding action?
	approach. It is of course always open to the complainant to make a complaint directly to the ASA as the independent regulator for advertising, if they chose to do so.		
<i>[...shift away from administrative closure of complaints by GOsC staff to closure by Screeners under the new processes]</i> The GOsC has not yet undertaken any detailed analysis of the impact of these new processes, though it intends to undertake some work in this area in 2018/19.	<p>We have commissioned an independent audit of our initial stages processes including the ICP and threshold criteria which was undertaken in July and August 2019.</p> <p>The findings of the independent audit are on the Audit Committee agenda and we will also report the findings back to Council.</p>	FTP	Yes. Review of the ICP to be informed by the independent assurance audit recently undertaken – Item 5 on the Audit Committee agenda refers.
The GOsC has indicated that the 42-day deadline for obtaining further information is now considered overly ambitious and may therefore be extended as part of a wider review of existing published fitness to	The KPI review was delayed taking account of the PSA performance review which was not finalised and published until mid- December 2018. We presented an FtP seminar to Council on 6 February 2019 about the fitness to practise process whilst obtaining feedback to inform our	FTP	Yes. Existing KPIs still presented alongside proposed

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Extract from PSA report 2017/18	Management response	Lead	Outstanding action?
<p>practise key performance indicators and internal timescales which it told us would begin in August 2018.</p>	<p>development of our proposed published key performance indicators and internal timescales. We presented a further paper to Council in May 2019 together with an annex with proposed new KPI's and an enhanced data set.</p> <p>The intention is that the fitness to practise report to Council should continue to report on performance against existing KPIs alongside the proposed new KPIs for the July 2019 and November 2019 Council meetings, which will include the proposed new performance indicators for fitness to practise.</p>		<p>KPIs at November 2019 Council meeting.</p>
<p>The GOsC has told us that the ICP guidance was designed to be concise and succinct, but that it will consider adding an explanatory note to clarify its position as to the point at which an assessment of whether a case raises issues of public and patient safety will be made.</p>	<p>During the PSA targeted review that took place last year we suggested to the PSA that we would add an explanatory note at the foot of the document to make it clear that an assessment of the current risk of a concern is assessed at the point the concern is sent to a Screener for closure. This update will be incorporated with any other changes made to the ICP in response to the independent assurance audit recommendations.</p>	FTP	<p>Yes. Review of the ICP to be informed by the independent assurance audit recently undertaken – Item 5 on the Audit Committee</p>

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Extract from PSA report 2017/18	Management response	Lead	Outstanding action?
			agenda refers.
The GOsC has indicated that it will consider making some changes to its ICP process and guidance which may address some of our concerns in that area. We will report on any changes made in future performance reviews.	<p>We have commissioned an independent audit of our initial stages processes including the ICP and threshold criteria which was undertaken in July and August 2019.</p> <p>The findings of the independent audit are on the Audit Committee agenda and we will also report the findings back to Council.</p>	FTP	Review of the ICP to be informed by the independent assurance audit recently undertaken – Item 5 on the Audit Committee agenda refers.
We consider that risk should be reassessed in light of new information received during the investigation of the case and that this consideration should be documented, including where the judgement made is that the information does not alter the risk profile of the case.	We undertook a review of our risk assessment form in September 2018. This review was reported in a public paper to the Policy Advisory Committee in October 2018. The aims of the proposed revision to the risk assessment process are to provide enhanced support to caseworkers in carrying out accurate risk assessments and ensure that all relevant factors are regularly taken into consideration.	FTP	No, PSA point addressed.

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Extract from PSA report 2017/18	Management response	Lead	Outstanding action?
	In addition, the amended risk assessment form enables risk assessment reviews to be regularly completed.		
<i>[new triage form]</i> We consider that there is scope for further changes to processes in this area to be made to ensure that the risks arising from complaints received are properly and consistently assessed and that the assessment is documented appropriately.	Please see above.	FTP	No, PSA point addressed.
The GOsC's consultation on a draft practice note on standard case directions closed in October 2018. The GOsC's consultation response has not yet been published.	Council considered a paper on the Standard Case Directions at its November 2018 meeting, which included an analysis of the consultation responses.	FTP	No, PSA point addressed.
The development of a practice note for the Rule 19 process was included in the GOsC's 2017/18 business plan, for completion by January 2018. This timeline was subsequently extended. A public	Council agreed to publish a consultation on the Rule 19 process at its meeting in November 2018. The consultation was held between March 2019 – May 2019, with the Rule 19 practice note agreed for publication by Council at its meeting in July 2019.	FTP	No, PSA point addressed.



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Extract from PSA report 2017/18	Management response	Lead	Outstanding action?
consultation on the practice note is scheduled to commence in late 2018.			
In the absence of formal guidance for the closure of cases under Rule 19, it is not clear how this process is currently being managed. However, we note that the process was only used twice during this review period. We will report on work to develop guidance in the next performance review.	See above response.	FTP	No, PSA point addressed.
<p><i>[following the targeted review which examined the impact of the Threshold Criteria for Unacceptable Professional Conduct...]</i></p> <p>We remain of the view that it should be possible to make clear that the decision-maker is a screener, and not GOsC staff, without causing such confusion, and that it is necessary to do so if the process is to be transparent. The proposed development of</p>	We have already made changes to ensure a consistent language is provided in communications with the complainant.	FTP	No, PSA point addressed.

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Extract from PSA report 2017/18	Management response	Lead	Outstanding action?
a consistent explanation is welcome, but this should make clear that the decision maker is a Screener.			
We had concerns in a small number of cases over the GOsC's management of matters relating to a registrant's failure to hold indemnity insurance. .... We will monitor the management and outcomes of cases of this nature.	<p>We are developing draft guidance on PII to assist registrants and which Fitness to Practise panellists may consider. A paper was presented to the PAC in June 2019 with a further conversation at PAC in October 2019.</p> <p>We have undertaken pre-consultation work on this document with the FtP forum group made up of lawyers and committee members and other external stakeholders to inform presentation to Council in November 2019. We will be seeking approval for public consultation.</p>	FTP	Yes. Council to be asked to approve guidance for consultation in November 2019 with public consultation to follow. Results back to Council in 2020.
<p><i>[Interim orders to cover the appeal period for substantive sanctions]</i></p> <p>We note that this appears to be a rare occurrence among GOsC cases but</p>	Legislative change will be required to resolve this matter.	FTP	Yes, but outside of GOsC control.

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Extract from PSA report 2017/18	Management response	Lead	Outstanding action?
consider that this problem arising from the GOsC's legislation, with which it is required to comply, has the potential to put the public at risk of harm.			