

**Council**  
**20 November 2019**  
**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>	<ol style="list-style-type: none"><li>1. To note the report.</li><li>2. To agree to report against the new Fitness to Practise dataset at Annex B.</li></ol>
<b>Financial and resourcing implications</b>	Financial aspects of Fitness to Practise activity are considered in Annex B of the Acting Chief Executive and Registrar 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>Annex</b>	<p>A - Fitness to Practise Data Set</p> <p>B - New Fitness to Practise Data Set with proposed targets</p> <p>C – Timeline of a Fitness to Practise case: current and proposed targets</p>
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## **The future of fitness to practise reporting**

1. Following a review of the dataset requested from regulators in 2017, the Professional Standards Authority (PSA) implemented revised dataset from 1 April 2018. Some of this information is asked for on a quarterly and annual basis. A key change was the requirement that regulators report from when a concern is received by the GOsC. This is referred to as an 'FtP referral' which is defined as 'any piece of information received and recorded by the regulator that potentially raises concerns with the regulator that require examination'.
2. During the seminar at Council in February 2019, it was clarified why we needed to change our Key Performance Indicators (KPIs)/targets (because of changes we have made in the initial stages of our processes through the initial closure procedure and the threshold criteria) and feedback was also obtained on the development of our proposed targets and internal timescales.
3. During the presentation, it was explained that Council is provided with additional information aligned with the PSA's key comparators which highlight any pinch-points in case progression. In February 2019, Council approved the Standard Case Directions (SCDs) Practice note which sets out the obligations the GOsC and the Registrant will be expected to comply within during preparation for final hearings. The practice note has not yet been implemented as the current KPIs and the SCDs do not complement each other. The SCDs place a shorter timeframe of 6 weeks for service after an Investigating Committee decision. Council noted therefore that the changes to KPIs outlined in the paper only related to pre-IC KPIs.
4. Council requested that the Regulation department continues to provide it with this data. A copy of the FtP dataset with existing information and current KPI's is at Annex A.
5. It was also decided that a pilot of the proposed new targets should be undertaken and reported separately to Council in private session. These new targets were presented to Council at both May and July Council. At its meeting in July, Council agreed that the case timeline outline provided was clear and useful and decided that the new target dataset could be presented in public session at its next meeting.
6. Council also requested that it is provided with all the data that is sent to the PSA. A copy of the proposed new fitness to practise dataset for the period 1 July to 30 September 2019 together with new targets has been tabled for consideration by Council at Annex B. Council will note the proposed dataset incorporates the data provided to PSA quarterly.
7. Council have previously discussed the new proposed new pre-IC KPI in order to understand what would be changing. For ease of reference, Annex C sets out the timeline of a fitness to practise case against both the current and proposed new targets. The key areas for Council to note in relation to this new target are:

- Counting begins from the initial contact from the complainant which is in line with PSA requirements.
  - A greater volume of activity is being undertaken pre-IC meeting, including obtaining an expert report, supplementary statements, medical reports. The purpose is to provide the IC with the greatest amount of information in order to base its decisions upon so that the case is 'hearing-ready' at the point of referral.
  - The SCD (previously approved by Council) provide for a six-week period post IC to list a PCC hearing.
  - The overall 52-week target (a self-imposed target) remains unchanged.
8. While we recognise that the pre-IC KPI, and the associated frontloading of work is a challenging target, we feel this is necessary to ensure the IC has the fullest available information on which to base its decisions.

### **Fitness to practise case trends**

9. In this reporting period, the Regulation Department received 27 concerns and 13 formal complaints. During the same period last year, the figures were 15 concerns and 11 formal complaints.
10. Of the 27 concerns: eight related to inappropriate treatment, communication failures during treatment and treatment without valid consent; six involved sexually motivated conduct, five related to a failure to maintain professional indemnity insurance, two related to police investigations, two related to misleading advertising, one related to use of patient data, one to an ongoing civil suit, one to personal conduct and one to a police caution.
11. Of the 13 formal complaints: three related to a failure to maintain professional indemnity insurance; two related to sexually motivated conduct, two involved inappropriate physical contact during treatment, three related to a conviction, conditional discharge and caution for criminal offences; one related to the use of patient data and one to inappropriate treatment; and one was a health concern.
12. No application was made to the Investigating Committee (IC) for the imposition of an Interim Suspension Order.
13. No application was made to the Professional Conduct Committee (PCC) for the imposition of an Interim Suspension Order.
14. During this reporting period, the Regulation Department serviced 14 Committee hearing and training events, including substantive hearings, a review hearing, IC meetings and IC training.

### **Fitness to practise case load and case progression**

15. As at 30 September 2019, the Regulation Department's fitness to practise case load was 65 fitness to practise cases (37 formal complaints and 28 concerns). At the 30 September 2018, the caseload was 61 fitness to practise cases (41 formal complaints and 20 concerns).
16. 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	3 weeks
Investigating Committee	17 weeks	20 weeks
Professional Conduct Committee	52 weeks	60 weeks
Health Committee	52 weeks	n/a (no cases heard)

17. In this reporting period, the median figures for screening are within target. The Investigating Committee and Professional Conduct Committee median figures are outside KPI. The factors affecting performance against the IC and PCC targets this quarter are outlined in Annex A.
18. The Professional Conduct Committee heard 12 cases over 22 days during the relevant period. One case went part heard. In six cases no UPC was found; one case resulted in an admonishment; one case resulted in conditions of practice and one resulted in a suspension. In one case an existing suspension order was reviewed, and the order was allowed to lapse without extension. One case was stayed following the PCC's decision to remove the registrant from the register in another fitness to practise matter.
19. During the reporting period, the Investigating Committee considered six cases and referred four cases for a final hearing, closing two cases.

### **Section 32 cases**

20. 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.

21. The Regulation department continues to act on reports of possible breaches of section 32 and as at 30 September 2019, is currently handling 20 active section 32 cases.
22. The Regulation department has also identified two cases to be prepared for prosecution because of a failure by the individuals concerned to respond to the GOsC's cease and desist letters. The outcome of these prosecutions will be reported to Council in due course.

### **Judicial Reviews and appeals of decisions made by FTP Committees**

23. The statutory appeal case of Alexander v General Osteopathic Council was concluded by way of a consent order. The sealed consent order was approved by His Honour Judge Halliwell on 2 October 2019. There were two grounds of appeal.
24. The first ground of appeal against the finding of "lack of integrity" by the Professional Conduct Committee was dismissed. The second ground of appeal against sanction was allowed. The sanction of suspension imposed by the PCC at the substantive hearing was replaced with an order that Dr Alexander be admonished. No order for costs was made. This means the parties bore their own costs.

### **Listings protocol**

25. The Executive are aware that Council have asked whether the listings protocol is an equitable system, i.e. one that ensures each panel member is used sufficiently over the course of a year and which avoids a scenario where one member is empanelled for a disproportionate amount of time when compared to another panel member.
26. The system is designed to provide equal opportunity for all members to be empanelled, as referenced by the Chair of the PCC in his report to Council under Item 9 on the Council agenda. To ensure that the system continues to operate as intended the Executive will put into place an internal control whereby a quarterly review (carried out at the same time as the PSA quarterly dataset is produced) be undertaken and information provided by the Regulation team to the Chief Executive and Registrar. This internal control, which will commence from January 2020.

### **Working with other regulators/stakeholders**

27. A meeting of the Determination Review Group (DRG) took place on 7 July 2019 attended by two senior lawyers from the General Optical Council and the Acting Head of Fitness to Practise at the General Chiropractic Council. In addition to members of the Regulation team, the GOsC Director of Education,

Standards and Development was also in attendance. The group reviewed four cases concluded by the Professional Conduct Committee.

28. On 16 September 2019 a meeting with defence stakeholders took place to discuss updates to the fitness to practise process and ways of working together to support registrants during investigations. The agenda included the GOsC new practice note on Rule 19 and the draft guidance on Insurance Requirements for Osteopaths. Both documents were well received by stakeholders.

### **Initial Stages Audit**

29. By way of background, the GOsC Business Plan for 2018/19 states that we will 'continue to monitor and further develop, the Quality Assurance Framework, including internal/external audits and peer review of decision making'. In 2018, the PSA conducted a targeted review of our initial stages processes within fitness to practise. The PSA did not conduct a targeted review of our processes over 2018/19. Notwithstanding this, we continue to seek assurance about the quality of our processes alongside our on-going programme of continuous improvement.
30. An independent audit took place over July/August 2019. The audit reviewed 20% of all concerns/cases closed at the different decision points during the initial stages of the GOsC fitness to practise processes up to and including Investigating Committee decisions.
31. The cases were chosen by the auditor at random from concerns closed at various decision-making points over a review period January 2018 – December 2018. The audit focused on the decisions of Screeners and the Investigating Committee in relation to concerns/cases that were closed under the initial closure procedure/threshold criteria/no case to answer. The review also encompassed the quality of the investigation undertaken including whether sufficient information/evidence was acquired as part of the investigation process and the allegations were adequately particularised.
32. The audit tool included review criteria and a methodology which also included the PSA new standards of good regulation as a reference point. These can be accessed on the following link:  
[https://www.professionalstandards.org.uk/publications/detail/standards-of-good-regulation-\(revised\)-2019](https://www.professionalstandards.org.uk/publications/detail/standards-of-good-regulation-(revised)-2019).
33. Overall, the audit findings were reassuring. No public protection concerns were identified from the cases reviewed. The overarching theme that emerged from the review related to the adequacy of reasons given in screening decisions where concerns were closed under the Initial Closure Procedure. Planning on bespoke training on drafting reasons for the

Investigating Committee (all Screeners are members of the Investigating Committee) in January / February 2020.

34. The auditor also recommended that comprehensive, consolidated Guidance for Screeners produced. A first draft of consolidated 'Guidance for Screeners' has commenced with the expectation that this will be available at the planned training event early next year.

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

35. Following the successful appointment of two new members to the IC and PCC in July of this year, induction training for these new Committee members took place on 4 October 2019. The final agenda included an interactive session on equality and diversity training delivered by an external specialist trainer followed by a session on interim orders and training on the role of Screeners and the IC, including the meaning of 'what is a case to answer'.
36. The PCC all members training day has been scheduled for 18 November 2019. The course of the last year, has seen significant developments in case law within professional regulation. A separate session on updates in case law has been scheduled into the training day. However, the training event will focus on questioning and managing witnesses at hearings and will include input from senior disciplinary and regulatory specialists together with a consultant with extensive experience of the complainant/victims' perspective. We are also in the process of developing a draft practice note on questioning in hearings which will be shared, and input sought from the PCC on the day.

### **Recommendation:**

1. To note the report.
2. To agree to report against the new Fitness to Practise dataset at Annex B.