



Council
20 November 2019
Fitness to practise committee Annual Reports 2018-19

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 2018 to 31 September 2019.
Recommendation(s)	To note the Annual Reports of: <ul style="list-style-type: none">a. Investigating Committee (IC)b. Professional Conduct Committee (PCC)c. Health Committee (HC)
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
Authors	Brian Wroe (IC), Richard Davies (PCC), Philip Geering (HC)

Introduction

1. I am delighted to present this, my first annual report to the Council. The period covered by this report is from 1 October 2018 to 30 September 2019. I took up the role of Chair to the Investigating Committee (IC) on 1st April 2019.
2. I have included, in bold and in brackets, figures from the 2017-18 and 2016-17 years for comparison.
3. In making this report I am conscious that there may be some repeat information which is made available to Council in other reports.

Meetings and Hearings of the Investigating Committee

4. During the twelve months covered by this report there have been 10 meetings of the IC to consider complaints **(2017/18 eight meetings, 2016/17 seven meetings)**. Those 10 meetings have each been attended by between five and eight members (out of 13) of the Committee. In addition an 'all members' meeting, primarily for training, where all members are invited was held.
5. In addition, panels of Committee members have sat on 2 occasions to consider applications by the Council for the imposition of Interim Suspension Orders on registrants **(2017/18 five occasions, 2016/17 six occasions)**.

Casework

Numbers of complaints and the Committee's decisions

6. During the period covered by this report, the Committee has made decisions on 47 complaints against registrants **(2017/18 42 complaints, 2016/17 59 complaints)**. In 31 (66%) of these, the complaint was referred to the Professional Conduct Committee, nil cases were referred to the Health Committee. In 12 cases, the Committee decided that there was no case for the registrant to answer **(2017/18 26 "case to answer" 15 "no case to answer" 1 referral to Health Committee [64% referred]; 2016/17 36 "case to answer" 23 "no case to answer" [61% referred])**.
7. In comparison to the last reporting period, the number of cases decided by the Committee has reduced whilst the number of meetings has increased by two.
8. In 3 cases, the Committee was not able to make a decision when the complaint was first considered by the Committee. In these 3 cases, the Committee adjourned the case for further legal advice (1 case), for expert advice to be sought (1 case) and to obtain additional witness statements (1 case) **(2017/18 9 adjournments, 2016/17 16 adjournments)**. The significantly lower number of cases that had to be adjourned is positive and the IC will seek to keep this number low while recognising that its influence in this respect is limited.

9. In this year the Committee 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 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) **(2017/18 2 cases, 2016/17 3 cases)**.

Issues raised by complainants

10. The complaints considered by the Committee covered a wide variety of areas including:
- Providing inappropriate treatment
 - Incomplete treatment
 - Misuse of patient data
 - Failure to have in place professional indemnity insurance
 - Communicating inappropriately
 - Misleading advertising
 - Failure to respect patient confidentiality
 - Dishonesty/Fraud
 - Inappropriate relationship with patient
 - Sexually motivated conduct with patient
 - Failure to obtain patient consent for treatment
 - Conviction
 - Failure to engage with GOsC fitness to practise process
 - Practising while suspended
11. Areas of concern include the inappropriate crossing of professional boundaries and sexually motivated conduct. These have featured in 11 cases this year **(2017/18 4 cases, 2016/17 6 cases)**, an increase on last year.
12. Of the cases considered in the reporting year, 44 of the 47 have involved allegations of Unacceptable Professional Conduct, 1 case alleging Professional Incompetence and 2 of conviction. This largely reflects the trend in recent years.

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 3 weeks **(previous two years were 2.71 weeks and 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. This is a median target. In this period 24 cases were in target and 19 were outside of target **(2017/18 27 cases within target, 15 cases outside of target)**.

Interim suspension orders

15. There has been a small reduction in the 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 2 cases. It imposed 1 order and made no order in the other case **(2017/18 5 applications [2 orders made, 1 undertaking, 2 no order made], 2016/17 6 applications [2 orders made, 2 undertakings, 2 no order made])**.

All members meeting

17. An all members meeting and training day was held on 25 July 2019.
18. The meeting covered reflections on PCC hearings; screening complaints; reflection upon recent case law and court decisions; review of 'case to answer' and 'conflict of interest' and, finally, the independence of the IC. Over lunch members were able to meet privately to discuss topics of common interest.

Composition of the Investigating Committee

19. During the reporting period, two new lay members have joined the committee along with two registrant panel members. During the period, one lay panel member left along with one registrant panel member. The current strength of the Investigating Committee is 7 lay members and 8 osteopaths. 4 lay panel members are also trained panel chairs.

Other changes in the year

20. During the year the GOsC introduced the new Osteopathic Practice Standards. All members of the IC have been made aware of the new standards.
21. The DocMonster programme has continued to be used by members of the IC. This ensures that hard copies of files need not be circulated. Members of the IC are able to access their case bundles safely and remotely prior to attending IC and use hand-held devices during deliberation at IC. Furthermore, on one occasion, IC met 'remotely' whereby only the IC Chair and Legal Assessor attended Osteopathy House. Other members of the committee joined the meeting 'on screen.' The system worked well and has the potential for future use which would be an efficiency saving. That having been said, it is too early to use the system for a meeting 'attended' by a high number of IC members.

Support to the Committee

22. I have been in post since 1st April 2019, about 7 months. I am pleased to say that the administrative support is excellent. Staff members are responsive and are more than helpful in ensuring that matters are addressed promptly.

23. I am aware, from the last annual report, that there was some criticism of the reading fee of £12.50 per case in that some bundles of evidence are a significant size and, by necessity, are not received by panel members until shortly before the meeting. I will continue to gauge the strength of feeling on this matter. On a related financial matter, while I appreciate the need for financial constraint, on occasions the accommodation allowance of £150 in London can be restrictive, especially during periods of high public demand for hotel space.

General Comments

24. It is difficult to establish any trends when the number of complaints is low but, that said, I recognise that there has continued to be a higher number of complaints, compared to six or seven years ago. The proportion of cases where the Committee finds there is a case to answer is fairly consistent.
25. The number of cases involving the crossing of professional boundaries and sexual misconduct (11 in this year) appears to be increasing and is a concern. Other issues of note include inappropriate communication, misuse of patient data/fail to respect patient confidentiality. Allegations of practising without professional indemnity insurance also remain a regular feature of the IC workload.
26. There is a notable lack of health referrals appearing before the IC. While, on the face of it, this is to be welcomed, I am mindful of advice from the PSA in that investigating committees must remain aware of potential underlying health issues when considering cases. For example, a registrant who appears before court for drinking and driving may have an underlying alcohol dependency issue. Members of the IC will keep this in mind when they consider future allegations.
27. Council will be aware that the GOsC commissioned an external legal audit in 2019 focussing, among other things, upon cases that are closed under the Initial Closure Procedure. Details of the outcome of that audit have previously been shared with Council. As far as the IC is concerned, 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. There were no concerns raised about the reasons given by the IC as to whether there was a case to answer. As part of the GOsC action plan, further training on providing reasons for all IC members is planned for early 2020.
28. Finally, the Chair of Council has, quite rightly, underlined the need for the IC to maintain its independence. I wish to reassure Council that I have found no evidence to suggest that the IC acts in any way other than independently of the Executive. The IC will continue to reach its decisions in a fair, just and independent manner and will ensure that the reputation of the GOsC is maintained to the highest standard.

Brian Wroe
Chair, Investigating Committee
November 2019

Professional Conduct Committee Annual Report 2018-19

Introduction

1. This is my third report to Council as Chair of the jurisdiction for the Professional Conduct Committee (PCC). It relates to the period September 2018 to September 2019. The PCC currently consists of 17 members in total – 7 Osteopathic; 5 Lay; and 5 Chairs. Following on from decisions taken last year, Chairs meet by telephone half yearly. I also sit as a Lay member from time to time to gain an overall view both of the pressures on PCCs, and their responses.
2. The PCC's primary obligation is unchanged. The Committee must exercise independent and reliable judgment in deciding 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. Council is well aware that the Professional Standards Authority has lately reported favourably on the Council's fitness to practise function – and much else besides. Neither my colleagues nor I take the view that this should be treated as a signal to relax the PCC's efforts to secure continuous improvement in its performance.
4. With that in mind it is important to keep the following topics in view:
 - **Caseload**
 - **Adjournments and scheduling**
 - **Determinations, disposal and listing**

Caseload

5. As regards **caseload**, the year has exhibited no special features. The picture is set out at Appendix. In total 44 cases were considered by the PCC during the period, compared with 45 in 2017-18; 46 in 2016-17; and 23 in 2015-16.
6. Timely decision-making is an important aspect of the Committee's effectiveness. Indeed, the time between the publication of Notices of Hearing (remitting cases to the PCC) and the production of the Committee's final determinations is perhaps of key significance. There is no evidence that the elapsed time has grown, notwithstanding the increased level of throughput since 2015-16.
Nonetheless it would be undesirable to overlook any adverse trend. So following discussion with the Executive, work is in hand to capture the necessary monitoring data. I shall update the Council on what this shows in due course.

Adjournments

7. Finer grain analysis of the extent to which cases are dealt with timeously, within the expected schedules, necessarily concerns the incidence of **adjournments**. Principally these relate to cases having been only 'part heard', and which cannot be completed without more time than planned. There is no clear pattern of adjournments. Indeed, it would be surprising and troubling if such a pattern were to emerge given the diverse nature of factual allegations put to Registrants before the Committee; the varying degrees to which they are contested; and the great differences in their overall temper and profile.
8. For this reporting period, adjournments have arisen for about 18% of the total caseload. In the previous three years, the equivalent figures were 43%; 17%; and 28%. Chairs have used the existing post-hearing feedback mechanism this year to explain why adjournments have occurred, and to help prevent cases from going part heard on grounds that recur and that need systematic attention. Again, there is no evidence that adjournments are happening for reasons that need attention (but aren't getting it), or because of an absence of procedural grip.
9. The only instance where a question has arisen as to whether sufficient *scheduling* time has been allowed for hearings relates to PII cases – a very few of which have proved more troublesome than predicted in the past. The Committee has become more practised in dealing with these cases. They can be deceptively complex – especially given divergent judgments in the Courts about the meaning of dishonesty and absent integrity. Both are often alleged in insurance cases. **The Executive has already drafted Guidance to help the Committee in handling these cases, and to assist the profession as a whole. Subject to Council approval, and decisions following any public consultation, I would propose to report on outcomes that bear on the Committee's responsibilities in due course.**

Determinations

10. When it comes to **determinations**, timely disposal is only one of the key aspects of Committee performance. The quality of those determinations – the clarity and reliability of the reasoning they express; their credibility in upholding the public interest; and the extent to which case disposal attends to overall principles of justice and fairness – is of very considerable significance as well.
11. Three cases have been subject to appeal before the High Court this year. One was dismissed, with costs. A second has been resolved, and the outcome of the third was undeniably disappointing. Council has already been briefed on the judgment in the latter case. It is worth acknowledging that wherever regulatory proceedings are actioned, the possibility of appeal is intrinsic to the process.

Healthcare regulators frequently have to face it. Like so many regulatory matters subject to appeal, the circumstances in the recent case were highly unusual.

12. Nonetheless there are useful lessons to learn from the outcome as regards '*fail safe*' and '*disposal*' mechanisms for the Committee and Legal Assessors alike. In particular, this year's training day for the PCC will focus extensively on witness management and questioning during hearings. This will include input from experienced legal practitioners and a complainant/victim support group.
13. The Executive is preparing a draft Practice Note on questioning witnesses which will be shared with the PCC at the forthcoming training day. The balance between PCC members making legitimate inquiry, whilst also 'keeping out of the arena', is always testing. However, in my view, the unfavourable High Court decision is likely to have fruitful effect.

Listing

14. Regular performance evaluation, training and development for the Committee provides an essential buttress for reliable decision making and strong hearing management. However, the PCC has to be careful to ensure that its work does not inadvertently become dependent upon a few members who happen to be regularly available to sit. The Executive goes to considerable trouble to ensure balance and diversity in empanelling members. This is not always easy – and has been made more difficult this year by a combination of factors including ill health, travel distances, and member resignation.
15. These pressures would be eased if it were possible to recruit a modest additional number of panellists. The Council will recall my previous comments on the desirability of taking such legislative opportunities as may arise to bring the PCC Rules into line with those of fitness to practise regimes elsewhere. That aside, I have given close attention to whether the current *listing arrangements* might usefully be altered - mindful that this has been subject to separate consideration within Council, and not least in the context of the public Fitness to Practise Paper (C19/022) of 17 July 2019.
16. The question is this. Would it assist (notably to sustain the quality of decision making) for cases to be listed for the year ahead first, and then for Committee members to be sought against hearing dates set so much more in advance than at present? This model is applied in regulators with significantly larger caseloads than that of the PCC - but not in all of them, nor always in those with much larger registers. In some, gaps caused by the inevitable turbulence and unpredictability of case preparation can be smoothed by ready substitutions in the schedules.
17. On that basis, panel members are not faced with being stood down following last minute cancellations. For many PCC members – especially self-employed

osteopathic practitioners – such cancellations would be very difficult to cope with. Requests for financial compensation would certainly arise, and if they were not met the likelihood of members being willing to give priority to PCC business would diminish sharply. Plainly the Council would not wish to take any view on listing arrangements without consideration of cost and practicability.

18. In short, and after consideration in some depth, **I have concluded** that, *although this is not ultimately a matter for me*, the existing listing protocol serves the interests of the proper regulation best in the context of the profession's relatively small register. I have taken account of past experience when the present flexible model did not apply for the PCC; when cancellations (with attendant costs) were frequent; and when the focus on 'upstream' case management was much weaker than it is now.
19. That said, I think it an essential part of my role that I should monitor colleagues' commitment, their availability profiles, and the overall constitution of Committees, to ensure that the PCC is not becoming reliant on a limited number of members. Having reviewed the data on hearing days undertaken by all PCC members in the current period, I do not consider it is in that condition now. **I would propose to report if that assessment were to change.**

Updates

20. Last year I indicated that I would update the Council on a number of matters at this stage – and stressed the significance of beneficial changes to the Sanctions Guidance.
 - a. As regards the effects of securing *skeleton arguments* from the parties before each hearing starts, the impact for effective deliberation has been overwhelmingly positive. Likewise, statements of common ground from experts have helped to illuminate those points on which the experts have useful contributions to make, and where they have not. PCC Members now read the bundles of evidence ahead of each hearing – without prejudice to the outcome. The documents are uploaded to a secure internet site and, when made available in good time, they can be accessed whenever convenient to the panellists themselves. In general, there is now little delay over dealing with preliminary matters at the outset of each hearing.
 - b. The *pressures on the regulatory team* remain considerable. There is a significant challenge ahead to secure the full benefits of the initiative on standard case directions and performance indicators. Moreover, there have been multiple unexpected operational distractions which have been understandably inhibiting. Action on shaping revised guidance and stronger specifications for expert witnesses has not been realised as quickly as had been hoped. A refreshed recruitment for the high-quality Legal Assessors, who are essential to providing draft determinations during hearings, is yet to

come. It is axiomatic that the engagement of capable Legal Assessors will remain critical to the performance of the PCC so long as its Rules remain as they are.

- c. That said, there have been a number of valuable developments of direct assistance to the PCC not least on the *housekeeping* front – especially the provision of markedly improved voice amplification, video-link and printing suites. It is all too easy to underestimate the time it takes to produce written decisions for publication. These improvements are of great assistance to the PCC in keeping things moving. Indeed, the 'look and feel' of hearings held in the Council's Conference Room is now markedly more professional, and more than bears comparison with facilities elsewhere.
- d. In addition, the *drafting of allegations* is now much sharper than in the past, and advance discussion between the parties is regularly focused on the cardinal issues of each case, so helping to ensure that the arc and tempo of the hearings can be directed firmly.
- e. *Communication and consultation* with PCC Chairs are both on a new footing. That has had direct benefits, for example over familiarising the PCC with the revised Osteopathic Practice Standards – and for the handling of cases involving therapies adjunct to osteopathy.
- f. The revised *Sanction Guidance* has enabled the PCC to issue advice to Registrants where there have been departures from the OPS, but where neither UPC nor professional incompetence has been found. 25% of cases before the PCC in 2018-19 involved no finding of UPC. This is a noteworthy figure, though the trend is not upwards. Nonetheless it is plain that the data must be monitored for the future both where advice has issued and where it has not. Plainly where no UPC is found but the PCC still makes adverse findings of fact, the regulatory and salutary effect should not be underestimated. **I shall report further in due course.**

21. I invite the Council **to note:**

- the contents of this report;
- the commitments given at paragraphs 6, 9, 19, and 20f.

Richard J Davies
Chair of the PCC
October 2019

**Professional Conduct Committee FtP Annual Report Statistics
1 October 2018 - 30 September 2019**

PCC Substantive Hearings	Q3 1/10/18-31/12/18	Q4 1/1/19-31/3/19	Q1 1/4/19-30/6/19	Q2 1/7/19-30/9/189	TOTAL
Total cases considered	11	9	8	12	44
Allegation not 'well founded'	1	3	1	6	11
Admonished	4	1	0	1	6
Conditions of Practice	0	0	0	1	1
Suspension	2	1	2	1	6
Removal	2	2	1	0	5
Adjourned/Part heard	2	2	3	1	8
Rule 19	0	0	0	0	0
Conditions/Suspension to expire	0	2	2	1	5
Stayed	0	0	1	1	2

PCC ISO Hearings	Q3 1/10/18 - 31/12/18	Q4 1/1/19- 31/3/19	Q1 1/4/19- 30/6/19	Q2 1/7/18- 30/9/19	Total
ISO Application Hearings	1	1	0	0	2
ISO Imposed	1	1	0	0	2
Not Imposed	0	0	0	0	0
Undertaking	0	0	0	0	0
ISO Review Hearings	0	1	0	0	1
ISO Order to Continue	0	1	0	0	1

PCC Activity Last Three Years	1/10/16 to 30/9/17	1/10/17 to 30/09/18	1/10/18 to 30/09/19
Full hearings	46	35	43
Rule 8 decisions [1]	2	1	3
Reviews of Suspension Orders and Conditions of Practice Orders	5	1	5
Interim Suspension Order applications	4	4	2
Rule 19 applications to cancel a hearing	3	2	0

Annex B to 9

PCC Outcomes Last Three Years	1/10/16 to 30/9/17	1/10/17 to 30/09/18	1/10/18 to 30/09/19
Admonishment	14	6	6
Conditions of Practice Order	2	5	1
Suspension Order	4	4	6
Removal from the Register	4	2	5
Unacceptable Professional Conduct found not proved	14	13	11
Of which -			
Some of the facts alleged found proved	11	10	8
None of the facts alleged found proved	0	2*	3
Successful half-time submissions under rule 27(2)[1]	0	0	0
Successful Half-time submissions under rule 27(6)	3	1	2
Adjournments	8	10	8

Health Committee Annual Report 2018-19

Introduction

1. This is my third report as Chair of the statutory Health Committee. It covers the year to 30 September 2019.
2. PCC Members (Lay, Osteopath and Chairs) are appointed to the Health Committee, one of whom resigned in the year.
3. My aim has been to continue 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.
4. I have continued to support the work of the Chair of the Professional Conduct Committee. I have undertaken some of the annual appraisals of Members and engaged with the delivery of Committee training days.
5. I have had the benefit of seeing the Report prepared by Richard Davies, Chair of the Professional Conduct Committee. I agree with the contents of that report.
6. I was pleased to attend with Mr Davies a policy workshop focused on cases when Registrants failed to have their Professional Indemnity Insurance in place. This was a useful opportunity to bring the experience of being a Committee member back to the GOSC for the development of future policies that support the work of the Professional Conduct Committee. I will be pleased to engage with any future workshops that may benefit the work of the Health Committee.

Caseload

7. It is apparent from the charts below that this has again been a very quiet year for the Health Committee.
8. There has been just one full hearing. The data for the year and data for the preceding two years is set out below.
9. Given the near absence of Health Committee work in the reporting year it is not proposed to draw out any themes or observations in this report.

Health Committee	01/10/2018 to 30/09/2019	01/10/17 to 30/09/18	01/10/16 to 30/9/17
Rule 6 Directions hearings ¹	0	1	0
Rule 8 meetings ²	0	0	0
Applications to cancel a hearing under rule 36 ³	0	0	0
Full hearings	1	0	1
Reviews of Suspension Orders	0	0	1
Interim Suspension Order applications	1	0	0

Health Committee Hearing outcomes	01/10/2018 to 30/09/2019	01/10/17 to 30/09/18	01/10/16 to 30/9 17
Findings of impairment of fitness to practise	0	0	1
Conditions of Practice Orders	0	0	1
Suspension	0	0	0
Interim Suspension Order imposed	1	0	0

10. I commented last year how health issues will inevitably subsist as a category of case work: amongst Osteopaths there will be individuals who 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. This most likely will arise when the Registrant's health issue (a) risk impacting on their work and (b) are inadequately managed to the point that requires regulatory intervention to deliver the statutory objectives of GOSC.
11. The relevant Rules provide that a Medical Assessor may be appointed to advise the Committee in individual cases. They are not part of decision-making but may provide advice to the Committee on the health issues that arise in individual cases. This can be particularly valuable in ensuring that the evidence is properly tested and understood in cases when the Registrant is unrepresented or does not attend.

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 reports available 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 a 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 that the registrant consents to the cancellation, and the views of the complainant and the Investigating Committee have been obtained.

12. 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. As a general rule, 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 best decisions to be made in the public interest.

Closing

13. This concludes the Health Committee report for 2018 - 2019. The Council is invited to note the contents.

Philip Geering
Chair, Health Committee
October 2019

