

**Council**  
**18 November 2020**  
**Fitness to Practise report**

<b>Classification</b>	Public
<b>Purpose</b>	For noting
<b>Issue</b>	Quarterly update to Council on the work of the Regulation department and the GOsC's Fitness to Practise committees.
<b>Recommendation</b>	To note the report.
<b>Financial and resourcing implications</b>	Financial aspects of Fitness to Practise activity are considered in Annex B of the 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>	A. Fitness to Practise Data Set
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### **Key messages from the paper:**

- We are managing the impact of COVID on our caseload through the use of remote hearings and blended hearings, ensuring the safety and wellbeing of all participants.
- In this reporting period, we received 25 concerns and 9 formal complaints were opened which is comparable to the previous year.
- We commenced the first in a series of fitness to practise webinars to directly engage with the profession and patients through developing understanding and improving communication.

### **COVID-19 Update**

1. As reported to Council at its meeting in July 2020, at the start of lockdown on 26 March 2020, the GOSC took the decision to postpone all final hearings that had not yet commenced until the beginning of July 2020. This followed government advice on COVID-19 and our decision to postpone hearings was in line with the other healthcare regulators. This decision was taken to help protect the health of osteopaths, witnesses, and all parties who were scheduled to attend our hearings at Osteopathy House in London.
2. Throughout the whole period of lockdown and continuing restrictions imposed due to the pandemic, we have continued to manage urgent hearings remotely, including hearings of interim suspension orders, reviews and some part-heard cases. Over a short period of time we have acted quickly, flexibly and responsibly in adapting to significant challenges thrown up by the pandemic.
3. We were mindful that the indefinite postponement of substantive hearings and meetings is not in the public interest or the interests of justice and the timely consideration and determination of fitness to practise concerns remain vital to fulfilling our overarching duty of protecting the public. However, the health and safety of all hearing participants at our hearings remains of paramount importance. We therefore explored how we could progress cases given some form of social distancing measures may be in place for an extended period of time.
4. In May and June 2020, we began the process of individually reviewing all cases awaiting consideration by the Professional Conduct Committee, identifying those which could be heard at remote hearings where all participants attend the hearing on-line. We then recommenced listing substantive hearings virtually. We have also been holding some cases as 'blended' (or 'hybrid') hearings (hearings in which some people attend virtually and others are present at Osteopathy House) to ensure that all those involved fitness to practise hearings can participate in proceedings safely and effectively.
5. Prior to substantive hearings restarting, we arranged virtual training in June 2020, for all the PCC panelists on the interim practice note on questioning witnesses together

with the interim remote hearings protocol. This training was facilitated by one of our legal assessors who is a QC and experienced regulatory specialist.

6. As transparency remains of fundamental importance in promoting public confidence in our regulatory processes, we developed an interim Remote Hearings Protocol to support the work of our FtP Committees at virtual hearings. The protocol sets out what to expect and how to participate in remote hearings covering the whole hearing process and addressing anticipated questions about joining and participating in remote hearings. The interim Remote Hearing Protocol was approved by Council in July 2020.
7. At the time of writing, we have listed 10 of the 19 cases referred by the Investigating Committee (IC) to the Professional Conduct Committee (PCC) which have not yet concluded.

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

8. In this reporting period, the Regulation Department received 25 concerns and 9 formal complaints were opened. During the same period last year, the figures were 27 concerns received and 13 formal complaints opened.
9. Of the 25 concerns:
  - five related to the transgression of patient/professional boundaries;
  - five related to inappropriate comments about COVID-19 on social media or another public forum;
  - three related to inadequate infection control measures;
  - two related to convictions for driving under the influence of alcohol or drugs;
  - two related to health conditions;
  - one related to record-keeping;
  - one related to pain caused during treatment;
  - one related to poor communication;
  - one related to exploitation of patients and members of the public for money;
  - one related to inaccurate clinical advice;
  - one related to a business dispute;
  - one related to the management of a non-registered member of staff, and;
  - one related to a lack of professionalism.
10. The 9 formal complaints related variously to: the transgression of patient/professional boundaries, treatment, record-keeping, statements about COVID-19 on social media and a conviction for driving under the influence of alcohol.
11. No applications were made to the IC or the PCC for the imposition of an Interim Suspension Order (ISO).
12. During this reporting period, the Regulation Department serviced 14 Committee hearing and meetings events remotely. This included 8 final hearings, 2 review

hearings, two IC meetings, and two PCC meetings to consider the consensual disposal of a case under Rule 8 of the PCC Rules.

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

13. As at 30 September 2020, the Regulation Department's fitness to practise caseload was 52 fitness to practice cases (32 formal complaints and 20 concerns). At 30 September 2019, the caseload was 65 fitness to practise cases (37 formal complaints and 28 concerns).
14. Performance against the new performance targets for this reporting period, is as follows:

<b>Case stage</b>	<b>Key Performance Indicator</b>	<b>Performance Target</b>	<b>Median figures</b>
Screening	Median time from receipt of concern to the screener's decision	9 weeks	9 weeks
Investigating Committee	Median time from receipt of concern to final IC decision	26 weeks	28 weeks
Professional Conduct Committee	Median time from receipt of concern to final PCC decision	52 weeks	60 weeks

15. In this reporting period, the median figures for screening was on target.
16. The IC median figure was two weeks outside of the target.
17. The PCC median figure was eight weeks outside the target. This reflects the impact of the postponement of all unheard substantive cases between 26 March and 3 July 2020 due to COVID-19.

### **Section 32 cases**

18. 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.
19. The Regulation department continues to act on reports of possible breaches of section 32 and as at 30 September 2020, is currently handling 19 active section 32 cases.
20. There is one outstanding prosecution pending for an alleged breach of section 32. As reported to Council in May 2020, this case has been delayed by the COVID-19

outbreak. This case had been listed for a case management hearing scheduled for September 2020. However, this has now been postponed until 16 December 2020.

### **Caselines**

21. Following a successful pilot in August 2020, we plan to implement Caselines for all PCC hearings commencing in December 2020 / January 2021, following training being provided to both the IC and PCC members in November 2020. Caselines is an electronic evidence preparation and presentation system. It enables confidential hearing documents to be prepared, shared and accessed securely for fitness to practice hearings.

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

22. On 20 August 2020, GOsC received a sealed notice of appeal together with grounds of appeal pertaining to the PCC decision of Wray. This appeal was lodged at the Royal Courts of Justice in London and is listed to take place virtually on 18 November 2020. We have instructed counsel and will be resisting the appeal.
23. On 15 September 2020, GOsC received a sealed notice of appeal together with grounds of appeal pertaining to the PCC decision of Sayer. This appeal was lodged at the Royal Courts of Justice in London and has been listed to take place virtually on 21 January 2021. We have instructed counsel and will be resisting the appeal.

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

24. Throughout this reporting period, we have continued to liaise regularly with other healthcare regulators around the planned DHSC regulatory reforms and continued meetings of the Directors of Fitness to Practise via on-line platforms.
25. On 28 September 2020, we held a live FtP webinar with the Director of Fitness to Practise and Regulation Manager. The event was chaired by Nimi Bruce a partner at Capsticks Solicitors. Topics covered the work of the IC, what happens at hearings and what the process is like for the patient or witness, including the role of the Victim Support Helpline.
26. Over 60 people registered for the event which provided an opportunity for all attendees to ask questions of the panel. It was a lively and interesting session lasting from 6.30pm - 7.45pm. This is the first of a series of future webinars and engagement opportunities where we intend to share insights on fitness to practise by familiarising and demystifying our processes for the profession and the public.

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

27. Training on Caselines for both the IC and PCC has been scheduled to take place in November 2020.

### **A welcome and a farewell**

28. Our new regulation manager, David Bryan, is due to join us on 9 November 2020, following the departure of Hannah Smith. We would like to take this opportunity to welcome David but also to thank Hannah for the work she has done with GOsC over the past 2 years and to wish her every success in her future endeavours.

**Recommendation:** To note the report.