

Council
18 November 2020
Fitness to practise committee Annual Reports 2019-20

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 2019 to 31 September 2020.
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 arising from this paper.
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	<ul style="list-style-type: none"> 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)

Investigation Committee: Annual Report 2019-20

Introduction

1. I am delighted to present this, my second annual report to the Council. The period covered by this report is from 1 October 2019 to 30 September 2020. 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 2018-19 and 2017-18 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 9 meetings of the IC to consider complaints **(2018/19, ten meetings; 2017/18, eight meetings)**. One 'all members' training day was cancelled due to Covid-19 restrictions and has been rescheduled to take place remotely in November. However, one Screener training half-day took place in February 2020.
5. In addition, panels of Committee members have sat on 4 occasions to consider applications by the Council for the imposition of Interim Suspension Orders on registrants **(2018/19, two occasions; 2017/18, five occasions)**.

Casework

Numbers of complaints and the Committee's decisions

6. During the period covered by this report, the Committee has made decisions on 48 complaints against registrants **(2018/19, 47 complaints; 2017/18 42 complaints)**. In 23 (48%) of these, the complaint was referred to the Professional Conduct Committee, nil cases were referred to the Health Committee. In 24 cases, the Committee decided that there was no case for the registrant to answer (1 no case to answer with advice) **(2018/19, 31 "case to answer" 12 "no case to answer" nil referral to Health Committee [66% referred]; 2017/18, 26 "case to answer" 15 "no case to answer" [64% referred])**.
7. In comparison to the last reporting period, the number of cases decided by the Committee has increased by one whilst the number of meetings has reduced by one.
8. In my last report for 2018/19, I informed Council that 3 cases had been adjourned due to the need for further legal advice (1 case), for expert advice to be sought (1 case) and to obtain additional witness statements (1 case) **(2018/19, 3 adjournments; 2017/18, 9 adjournments)**. I am pleased to report that, for the current reporting period, nil cases have been adjourned which is testament to the efficiency of case workers and the system as a whole. The Committee will seek to keep this figure 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) **(2018/19, nil cases; 2017/18, 2 cases)**.

Issues raised by complainants

10. The complaints considered by the Committee covered a wide variety of areas including:
- Providing inappropriate treatment (13)
 - Concerns about data management (3)
 - Failure to have in place professional indemnity insurance (7)
 - Communicating inappropriately (5)
 - Misleading information or advertising (5)
 - Failure to respect patient confidentiality (2)
 - Dishonesty/Fraud (14)
 - Sexually motivated conduct with patient (8)
 - Failure to obtain patient consent for treatment (4)
 - Conviction (2)
 - Conduct outside of work (4)
11. Areas of concern include the inappropriate crossing of professional boundaries and sexually motivated conduct. These have featured in 8 cases this year **(2018/19, 11 cases; 2017/18, 4 cases)**, a reduction of 3 on last year. Failure to have in place professional indemnity insurance and allegations arising from communication issues continue to feature prominently.
12. Of the cases considered in the reporting year, 45 of the 48 have involved allegations of Unacceptable Professional Conduct, 1 Health allegation and 2 of conviction. This largely reflects the trend in recent years.

Interim suspension orders

13. There has been a small increase in the number of Interim Suspension Order hearings compared to last year.
14. During the period of this report, the Committee considered whether to impose an Interim Suspension Order in 4 cases. It imposed 1 order, accepted 1 undertaking and made no order in the other two cases **(2018/19, 2 applications [1 order made, 1 no order made]; 2017/18, 5 applications [2 orders made, 1 undertakings given, 2 no order made])**.

All members meeting

15. An all members meeting and training day was scheduled for summer 2020. The training day was postponed due to Covid-19 reasons and has now been rescheduled to take place remotely in November 2020.

16. Following a review and audit of the screening process in 2019, a half-day training was held in February, 2020 at which all members of the IC attended in person.

Composition of the Investigating Committee

17. The current strength of the Investigating Committee is 7 lay members (including the Chair) and 7 osteopaths. 1 osteopath left the IC during the reporting period, to join the Council.

Other changes in the year

18. Members of the IC are all aware of the new Osteopathic Practice Standards and ensure that they are referred to and utilised as appropriate.
19. 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. Since the start of the pandemic, the IC has met remotely. This has worked well in the main. The IC started its remote meetings using www.gotomeeting.com. Certain members, including the Chair, found this to be problematic at times, with connection being lost sometimes at a crucial moment. Based upon feedback, the IC has recently used Microsoft Teams and, to date, this has been successful. Holding meetings remotely has been necessary for obvious reasons. While this represents an efficiency saving of sorts (saving on travel and accommodation), the general view appears to be that some face-to-face meetings should be reintroduced when it is safe to do so in order to engender the team ethic of the IC and to preserve the integrity of ISO hearings when the registrant wishes to attend or to be represented.

Support to the Committee

20. I am pleased to say that the administrative support provided to the IC and its Chair is excellent. Staff members are responsive and are more than helpful in ensuring that matters are addressed promptly. I wish to pay tribute to Ms Hannah Smith who left GOsC in October and who has provided the IC with excellent support.
21. I am aware, from a previous report, that there was some comment regarding the level of reading fee received by members of the IC when screening cases. The comment referred to the growing complexity of cases together with the added implications of the Initial Closure Procedure and the Threshold Criteria. After canvassing individual members of the IC for their independent comment and armed with information gained at the February 2020 training event, I requested a review of the level of fee. I understand the issue was discussed by the Remuneration Committee at its most recent meeting, and while a final decision is currently awaited, I wish to put on record my appreciation to members of the Remuneration Committee for their kind consideration of this matter.

General Comments

22. 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 several years ago. The proportion of cases where the Committee finds there is a case to answer has reduced this year. 48% of cases were referred to PCC, compared to 66% and 64% in the previous two reporting periods.
23. The number of cases involving the crossing of professional boundaries and sexual misconduct remains high although it has reduced from 11 to 8 in this current period. Other issues of note include treatment-related complaints, consent and 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.
24. 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.
25. Council will be aware that feedback from the PSA and last year's review of cases which were screened and then closed under the Initial Closure Procedure have consistently underlined the importance of adequate reasons being given in all of our deliberations. Council can be reassured that adequacy of reasons remains at the forefront of the minds of IC whether that is at IC meetings, ISO applications or during the screening procedure. Adequacy of reasons was a central issue at the training session attended by all IC members in February 2020. I wish to remind Council that, in the external legal audit carried out in 2019, there were no concerns raised about the reasons given by the IC as to whether there was a case to answer in the screening procedure.
26. Finally, the previous and current Chair of Council have both 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 2020

Professional Conduct Committee: Annual Report 2019-20

Introduction

1. As I demit early next year, this will be my last report as Chair of jurisdiction for the Professional Conduct Committee (PCC). It relates to the period September 2019 to September 2020. Throughout, the PCC has consisted of 7 Osteopathic Members; 5 Lay; and 5 Chairs. A number of colleagues will similarly demit next year and a recruitment exercise is in train to identify replacements. This has featured noteworthy social media presentations on the work of the Committee, along with other publicity, and information for potential candidates.
2. The PCC's primary obligation remains 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. In short, 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. Of course, the Committee's work this year has been significantly affected by the necessity to respond appropriately to the challenges presented by COVID-19. On 26 March 2020, Council decided to postpone all final hearings that had not then begun until after 3 July 2020. This followed government advice about the virus and took account of action in other healthcare regulators. The object was to help protect the health of osteopaths, witnesses, and indeed all parties who would ordinarily be scheduled to attend hearings at Osteopathy House.
4. Council and the Executive also moved very quickly to identify and prioritise hearings that could be managed remotely – in particular those involving interim suspension orders, reviews, and some part-heard cases. At the same time consideration was given to extending virtual or remote arrangements to substantive hearings too.
5. In the light of experience in the civil courts and at other regulators, the use of remote arrangements was ultimately extended to suitable substantive hearings from 3 July 2020 onwards. This allowed for the possibility that cases might feature 'blended' hearings, in which some participants would attend virtually and others at Osteopathy House.
6. In parallel, measures were taken so as to assist the Committee to make a successful transition. In particular:
 - An *Interim Protocol for Remote Hearings* was introduced;
 - A *bespoke half day training session* was held, attended by all Committee Members, and led by an experienced Legal Assessor;

- Tailored *training and assistance* on the use of the relevant electronic meeting platforms was made available for every Member;
 - A revised *Practice Note on Questioning Witnesses* was made available, partly with remote hearings in mind; and,
 - A cloud-based system for sharing evidence bundles securely, known as *Caselines*, was piloted successfully.
7. PCC Members have been, and remain, most appreciative of the deft and effective efforts that have been made by the Regulatory Team, and others in the Executive, to enable the Committee to adjust to the new situation, and to novel e-based processes, so quickly. Although remote working demands that careful attention be given to matters of pace and document handling, no insurmountable problems have emerged thus far. Remote substantive hearings can sometimes take more time than they would at Osteopathy House, but there do not appear to be any inhibitions about recognising the realities, and making practical allowances, through scheduling arrangements wherever appropriate.
8. **That said, the picture is still evolving. It is unlikely that a general assessment of the new arrangements, and of their implications, could be made until mid-2021, and until the progress of the pandemic has achieved still clearer definition. I recommend that this should be done.**

Hearings Profile

9. Once again there were no special features of *caseload* in the year to September 2020. The relevant data is set out at **Appendix**. In total 32 cases were considered in 2019-20 compared to 44 in 2018-19; 45 in 2017-18; 46 in 2016-17; and 23 in 2015-16. Comparisons of this sort are not especially useful as they take no account of the weight and complexity of the cases themselves. However, they do not suggest that the caseload has been, or is becoming, unmanageable, or otherwise provides a signal pertinent to the overarching objective. At this stage, there is no evidence of any patterns having a bearing on the substance and presentation of the 2019 Osteopathic Practice Standards (OPS).
10. In my previous Report I stressed that timely decision making would always be an important aspect of the Committee's effectiveness and that the elapsed *time between the publication of Notices of Hearing and the PCC's final determinations* should be kept in view. I have judged that the pressures associated with the pandemic should be given higher priority than this monitoring. However there has been no indication that lead times have increased. Meanwhile, the Professional Standards Authority has continued to report favourably on the Council's Fitness to Practise function.
11. As to *adjournments* – that is, cases which could not be completed without more time than planned – once again, there is no clear pattern. Broadly, adjournments have been flat over the last three years. However, fewer cases

were listed this year. That inevitably affects the figures for adjournments as a proportion of caseload – up from 18% last year to 25% this, compared to 28% in 2017-18. My assessment is that there is no evidence that adjournments have happened for reasons that need attention (but are being ignored) or because of failures of procedural grip. Where cases have emerged involving matters of some technical complexity – as they did in time past in relation to Professional Indemnity Insurance – guidance for the profession on the statutory obligations, and associated communication initiatives, have substantially assisted the PCC over reaching determinations timeously.

12. Council will be well aware that timely disposal is only one of the key components of the PCC's 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 fairness and justice – is of very considerable significance as well. Two cases have been subject to appeal before the High Court this year. It is inevitable that there will be appeals from time to time. The possibility is intrinsic to the process and these cases have yet to be decided. However, quality will always demand close attention and review, whether there are appeals or not.
13. In 2018-19, 25% of cases before the PCC concluded with *no finding of Unacceptable Professional Conduct (UPC)* – 37% in 2017-18. In 2019-20 33% of all cases resulted in the PCC making no finding of UPC. The revised Sanction Guidance has enabled the Committee to issue advice to Registrants where there have been departures from the OPS, but where neither Unacceptable Professional Conduct, nor professional incompetence, has been found. The Committee has duly made appropriate use of the scope to issue advice. It is to be hoped that the data will be monitored for the future both where advice has issued and where it has not. It remains the case that where no UPC is found but the PCC still makes adverse findings of fact, the regulatory and salutary effect for Registrants should not be underestimated.

Retrospective

14. In the past four years there have been very significant developments of material assistance to the PCC. For example:
 - Structuring development sessions for the PCC each year;
 - Strengthening case and allegation management;
 - Prompting case parties to prepare skeleton arguments;
 - Streamlining expert evidence wherever possible;
 - Circulating electronic bundles to be read in advance;
 - Introducing new measures for witness support;
 - Giving close attention to the recruitment of Legal Assessors;
 - Upgrading the voice amplification and video-link suites; and
 - Making greater use of consensual disposal procedures.

15. In my view it would not have been possible for the Committee to respond to the practical and procedural challenges presented by COVID-19 expeditiously, if those developments had not been pursued so constructively by the Executive, with Council approval.
16. I very much hope that work will continue on osteopathic standards and *therapies adjunct* to osteopathy, and on the role of *expert witnesses* in osteopathic cases, and that it will have positive impacts for the obligations of the PCC in future.

Conclusion

17. Last, I wish to express my gratitude for the highly professional support that I have received from my colleagues, and indeed for the immensely patient understanding that the Council and the Executive have invariably shown to me – without ever, it must be said, trespassing on the Committee’s independence of function.
18. **I invite the Council to note the contents of this Report** – and in particular paragraphs 8 and 17 above. **I recommend** that a wider consideration of the effects of remote or virtual hearings should be undertaken in the course of 2021.

R J Davies
Chair, PCC
October 2020

PCC Substantive Hearings	Q3 1/10/19 to 31/12/19	Q4 1/1/20 to 31/3/20	Q1 1/4/20 to 30/6/20	Q2 1/7/20 to 30/9/20	TOTAL
Total cases considered	7	9	5	11	32
Allegation not 'well founded'	2	0	4	3	9
Admonished	0	2	0	3*	5
Conditions of Practice	0	0	0	0	0
Suspension	5	0	0	1	6
Removal	0	0	0	0	0
Adjourned/Part heard	0	5	0	3	8
Conditions/Suspension to expire	0	2	1	1	4

*This includes 2 Rule 8 admonishments

PCC ISO Hearings	Q3 1/10/19 - 31/12/19	Q4 1/1/20- 31/3/20	Q1 1/4/20- 30/6/20	Q2 1/7/20- 30/9/20	Total
ISO Application Hearings	1	0	1	0	2
ISO Imposed	0	0	1	0	1
Undertaking	0	0	0	0	0
ISO Review Hearings	0	0	0	0	0
ISO Order to Continue	0	0	0	0	0

PCC Activity Last Three Years	1/10/17 to 30/9/18	1/10/18 to 30/9/19	1/10/19 to 30/9/20
Full hearings	35	43	24
Rule 8 decisions[1]	1	3	2
Reviews of Suspension Orders and Conditions of Practice Orders	1	5	4
Interim Suspension Order applications	4	2	2
Rule 19 applications to cancel a hearing	2	0	0

PCC Outcomes Last Three Years	1/10/17 to 30/9/18	1/10/18 to 30/9/19	1/10/19 to 30/9/20
Admonishment	6	6	5
Conditions of Practice Order	5	1	0
Suspension Order	4	6	6
Removal from the Register	2	5	0

PCC Outcomes Last Three Years	1/10/17 to 30/9/18	1/10/18 to 30/9/19	1/10/19 to 30/9/20
Unacceptable Professional Conduct found not proved	13	11	8
Of which -			
Some of the facts alleged found proved	10	8	7
None of the facts alleged found proved	2*	3	0
Successful half-time submissions under rule 27(2)[1]	0	0	0
Successful Half-time submissions under rule 27(6)	1	2	1
Conviction not found to be materially relevant	0	0	1
Adjournments	10	8	8

Health Committee: Annual Report 2019-20

Introduction

1. This is my fourth report as Chair of the statutory Health Committee. It covers the year to 30 September 2020.
2. Committee membership has remained stable for the year. 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.
3. I have continued to support the work of the Chair of the Professional Conduct Committee. This has included undertaking some of the annual appraisals of Members.
4. 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.

Caseload

5. The chart below gives the caseload statistics for the Health Committee for the past year and the two previous years.
6. The numbers remain very low with just one full hearing.
7. Given the near absence of Health Committee work in the reporting year it is not proposed to draw out any themes or significant observations in this report.

Health Committee	01/10/19 to 30/09/20	01/10/2018 to 30/09/2019	01/10/17 to 30/09/18
Rule 6 Directions hearings ¹	1	0	1
Rule 8 meetings ²	0	0	0
Applications to cancel a hearing under rule 36 ³	0	0	0
Full hearings	1	1	0

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.

Reviews of Suspension Orders	1	0	0
Interim Suspension Order applications	0	1	0

Health Committee Hearing outcomes	01/10/19 to 30/09/20	01/10/2018 to 30/09/2019	01/10/17 to 30/09/18
Findings of impairment of fitness to practise	1	0	0
Conditions of Practice Orders	0	0	0
Suspension	1	0	0
Interim Suspension Order imposed	0	1	0

8. 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 any health issue may have on their practice.
9. Whenever there is a question as to whether a Registrant is managing a health condition, or whose condition puts patients at risk, that may become a regulatory matter for the Health Committee. This is perhaps of particular note in the context of the current COVID-19 pandemic.
10. It remains the case that the Council and the profession as a whole have been seeking to enable individual Osteopaths to maintain a COVID-safe practice. Thus far there is no indication, by reference to cases before the Committee, that these efforts are not proving effective. However, the regulatory process will be engaged - with due consideration to the health of both practitioners and patients - should any allegation relating to safe practice arise.

Closing

11. I take this opportunity to express my thanks for having worked with Richard Davies whose appointment ends early next year. I met Richard soon after my appointment with GOsC and he's been a guide in my work here ever since, for which I am grateful.
12. This concludes the Health Committee report for 2019 - 2020.
13. The Council is invited to note the contents.

Philip Geering
Chair, Health Committee
October 2020