

Council
25 November 2021
Fitness to Practise report

Classification	Public
Purpose	For noting
Issue	Quarterly update to Council on the work of the Regulation department and the GOsC's Fitness to Practise committees.
Recommendation	To note the content of the report.
Financial and resourcing implications	Financial aspects of Fitness to Practise activity are considered in Annex B of the Chief Executive and Registrar Report.
Equality and diversity implications	Ongoing monitoring of equality and diversity trends form part of the Regulation department's quality assurance framework.
Communications implications	None
Annex	A - Fitness to Practise Data Set
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Key messages from the paper:

- We continue to list and hold meetings and hearings through the use of remote hearings and blended hearings, ensuring the safety and wellbeing of all participants.
- At the time of writing, we have listed 6 of the 16 cases referred by the Investigating Committee (IC) to the Professional Conduct Committee (PCC).
- In this reporting period, we received 27 concerns and 15 formal complaints were opened which is slightly higher to the previous year.
- We have met or exceeded KPI's at all three stages of the FTP process.
- An external audit of fitness to practise Interim Order decisions made by the Investigating Committee and Professional Conduct Committee was undertaken in August and September 2021. No concerns regarding patient safety were identified within the report.
- On 23 September 2021, we hosted the third in our series of live Fitness to Practise webinars with over 100 attendees joining the event.
- On 2 September 2021, we emailed osteopaths and stakeholders the first in a new series of 'Insights on Fitness to Practise' ebulletins.

Fitness to practise case trends

1. In this reporting period, the Regulation Department received 27 concerns and 15 formal complaints were opened. During the same period last year, the figures were 20 concerns received and 9 formal complaints opened.
2. Of the 27 concerns, five related to a transgression of sexual boundaries, three relates to poor communication and conduct, one related to a conviction received by the registrant, one related to a breach of data, one related to a driving offence (non-conviction), one related to health, one related to a lack of insurance, one related to poor record keeping and 13 related to concerns of poor clinical treatment.
3. The 15 formal complaints related variously to: boundaries (3), conviction (1), driving offence (1), conduct (1), health (1), lack of insurance (1) and poor clinical treatment of which there were 7 cases.
4. There was one application made to the Investigating Committee (IC) for the imposition of an Interim Suspension Order (ISO) and an order was imposed.
5. During this reporting period, the Regulation Department serviced four PCC substantive hearings, one PCC review hearing, one PCC ISO hearing, one HC Review hearing, one IC ISO hearing and two IC meetings.

Fitness to practise case load and case progression

6. As at 30 September 2021, the Regulation Department's fitness to practise case load was 53 fitness to practise cases (38 formal complaints and 15 concerns). 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).
7. Performance against the new performance targets for this reporting period, is as follows:

Case stage	Key Performance Indicator	Performance Target	Median figures achieved this quarter
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	24 weeks
Professional Conduct Committee	Median time from receipt of concern to final PCC decision	52 weeks	50 weeks

8. In this reporting period the Screener KPI was met.
9. The IC KPI was exceeded in this quarter by two weeks. This goes some way to evidence that, although numbers of cases are higher than usual at this stage, cases are actively progressing without impacting upon the quality of investigations.
10. For the first time since Q3 (2019-2020) the end to end KPI was exceeded.
11. We are continuing to run the majority of hearings remotely. However, we are individually reviewing all cases referred by the IC for hearing that have not yet been listed, to determine which cases may benefit from taking place in person. In this regard we are proceeding incrementally as we are mindful of the potential for the current situation to change in respect of the pandemic. We have also prepared a return to hearings guidance document for all parties for those who do attend Osteopathy House for in person hearings.

Section 32 cases

12. 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.
13. The Regulation department continues to act on reports of possible breaches of section 32 and as at 30 September 2021, is currently handling 34 active section 32 cases.
14. There have been no prosecutions commenced in this quarter.

Training for the Investigating Committee and Professional Conduct Committee

15. The Investigating Committee all members training day has been scheduled for 24 November 2021. The agenda includes a case law update, training on cognitive bias in decision making and feedback on the external audit of interim order cases that was completed in September 2021.
16. The Professional Conduct Committee all members training day has been scheduled for 3 December 2021. The agenda encompasses case law updates and training on cognitive bias in decision making.
17. Legal Assessors have been invited to attend both training events. We are intending to hold both the training days as remote events given the continuing uncertainty around rising Covid 19 infections.

Statutory Appeals of decisions made by FtP Committees

18. As previously reported to Council, GOsC was granted permission to appeal to the Court of Appeal against the judgment of the High Court in the appeal case Wray v General Osteopathic Council [2020].
19. The appeal took place before the Court of Appeal at the Royal Courts of Justice in London on 14 October 2021. The judgment has been reserved. However, the hearing is available to view on YouTube and can be accessed here:
<https://www.youtube.com/watch?v=xTk9vkHX6eQ>

Fitness to Practise Assurance Audits

20. In July 2021, the Audit Committee agreed to an assurance audit of fitness to practise Interim Order decisions made by the Investigating Committee and Professional Conduct Committee.

21. The audit was undertaken by Rosemary Rollason, in August and September 2021. The scope of the audit looked all IC and PCC applications for an interim order between January 2020 - March 2021.
22. In that period, the IC considered eight applications for an interim order and imposed an ISO in only two cases. They accepted undertakings in a further two cases and rejected the ISO application in the remaining four cases. Over the corresponding period, the PCC imposed only one ISO up to the conclusion of the hearing. The headline findings / recommendations from the report, which were reported to, and discussed with Audit Committee in October 2021, are as follows:
 - Refresher training for Committees on risk assessment, proportionality undertakings, consistency of decisions and the requirement to give adequate written reasons.
 - The Interim Orders Guidance and the Practice Note should be amended to set out the procedure for Committees considering an offer of undertakings by the Registrant.
 - The relevant sections of the Interim Orders Guidance, in relation to risk assessment and written reasons, could be refreshed to place enhanced focus on the issues of risk assessment and proportionality and the need to adequately explain the committees' decisions on these aspects within their written determinations.
 - In one case reviewed where no order was imposed concerns were identified in IC's decision not to impose an interim order. We went back to the Auditor to clarify within her report as to whether the decision was not sufficient to protect the public. She responded that the concerns were centred around the adequacy of the reasoning, rather than the conclusion drawn or that it wasn't sufficient for protection of the public.
23. In parallel with the external audit, we conducted an internal audit / review of all the current GOsC caseload to ensure that risk assessments are clearly documented both at receipt and throughout the lifecycle of an investigation, (including at the point after a case is referred by the IC).
24. This review revealed no concerns in relation to risk assessing. All risk assessments were up to date and correctly reflected the level of risk in each case. All cases classed as high risk have interim orders, aside from one case in which we are actively chasing and await further information from a third party. This audit activity will be reported to Audit Committee in March 2022.

Working with other regulators/stakeholders

25. On 22 September 2021, we hosted the third of our live FtP webinars with the Director of Fitness to Practise and Regulation Manager, chaired by Fameeda Shafiq a

solicitor at Ward Hadaway Solicitors. Topics focussed on fitness to practise hearings and questions ranged from decision making by the PCC, cognitive bias training, the significance of good character of registrants at hearings and sexual misconduct and professional boundaries cases. Over 100 people attended the event which provided an opportunity for all attendees to ask questions of the panel. It was a lively and interactive session lasting from 6.30 pm - 7.35 pm.

Fitness to Practise Ebulletin

26. On 2 September 2021, we launched the first in a new series of 'Insights on Fitness to Practise' bulletins designed to help demystify our fitness to practise processes, and respond to feedback we have received.
27. In this first issue, we focussed on how a fitness to practise case is handled from receipt of a concern from a complainant up to the conclusion of a case at a hearing. We also looked at a recent case considered by the PCC relating to an allegation of breaching professional boundaries.
28. We are also hoping to have it as a permanent resource on the website for FtP related resources such as recordings, podcasts and newsletters and are working with the Communications and Engagement team to achieve this outcome.

Other news

29. We have recruited for a Regulation Officer as well as a Regulation Assistant, as the outgoing Regulation Assistant left the GOsC for a new role on 1 October 2021. Both new staff members start with the GOsC early in Q3 2021-2022.

Recommendation: To note the content of the report.