



Council
25 November 2021
Fitness to practise committee Annual Reports 2020-21

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 2020 to 30 September 2021.
Recommendation(s)	To discuss the annual reports of the Investigating Committee, Professional Conduct Committee and Health Committee.
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
Annex(es)	A. Investigating Committee Annual Report B. Professional Conduct Committee Annual Report C. Health Committee Annual Report
Author	Brian Wroe (IC), Andrew Harvey (PCC and HC)

Investigating Committee Annual Report 2020-21

Introduction

1. I am delighted to present this, my third annual report to the Council. The period covered by this report is from 1 October 2020 to 30 September 2021. I took up the role of Chair to the Investigating Committee (IC) on 1 April 2019.
2. I have included, in bold and in brackets, figures from the 2019-20 and 2018-19 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 7 meetings of the IC to consider complaints **(2019/20, 9 meetings; 2018/19, 10 meetings)**. At time of writing, one 'all members' training day is planned to take place on 24th November 2021.
5. In addition, the IC has sat on 6 occasions to consider applications by the Council for the imposition of Interim Suspension Orders on registrants **(2019/20, 4 occasions; 2018/19, 2 occasions)**.

Casework

Numbers of complaints and the Committee's decisions

6. During the period covered by this report, the Committee has made decisions on 25 complaints against registrants **(2019/20, 48 complaints; 2018/19, 47 complaints)**. In 14 (56%) of these, the complaint was referred to the Professional Conduct Committee, nil cases were referred to the Health Committee. In 9 cases (36%), the Committee decided that there was no case for the registrant to answer **(2019/20, 23 case to answer and 24 no case to answer; 2018/19, 31 case to answer and 12 no case to answer)**.
7. In comparison to the last reporting period, the number of cases decided by the Committee has decreased by 23 whilst the number of meetings has reduced by two.
8. There have been 2 adjournments in this reporting period. The reason for this was that the Committee determined that consideration should be given by the Council to join the two cases (same registrant) together. **(2019/20, nil adjournments; 2018/19, 3 adjournments)**. 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) **(2019/20, nil cases; 2018/19, nil cases)**.

Issues raised by complainants

10. The complaints considered by the Committee covered a wide variety of areas including:

- Transgression of sexual boundaries (8)
- Conviction (4)
- Inadequate clinical treatment (2)
- Poor record-keeping (2)
- Misuse of acupuncture (2)
- Poor health (1)
- Breaching data (1)
- Poor infection control (1)
- Lack of insurance (1)
- Misuse of social media (1)
- Concerns relating to mis-advertising (1)
- Conduct not linked to treatment (1)

11. Areas of concern include the inappropriate crossing of professional boundaries and sexually motivated conduct. These have featured in 8 cases this year **(2019/20, 8 cases; 2018/19, 11 cases)**. As can be seen, the same number of 'sexual boundaries' cases were considered this year despite the Committee considering fewer cases overall. Allegations arising from communication issues continue to feature prominently.

12. Of the cases considered in the reporting year, 20 of the 25 have involved allegations of Unacceptable Professional Conduct, 1 Health allegation and 4 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 (6 during this reporting period compared to 4 last year).

14. During the period of this report, when the Committee considered whether to impose an Interim Suspension Order in 6 cases, it imposed 2 orders, accepted 1 undertaking and made no order in the other three cases **(2019/20, 4 applications, 1 order made, 2 no order made, 1 undertaking; 2018/19, 2 applications; 1 order made, 1 no order made)**.

All members meeting and Annual Performance Appraisal

15. An all-members meeting and training day is scheduled to take place later on 24th November 2021.
16. I can also report that Annual Performance Appraisal reports for all members of the Committee have been completed and submitted within the identified time frame.

Composition of the Investigating Committee

17. The current strength of the Investigating Committee is 7 lay members (including the Chair) and 7 osteopaths. 1 lay member has been recruited during the current reporting period.

Other changes in the year

18. Members of the IC are all fully aware of the Osteopathic Practice Standards and ensure that they are referred to and utilised as appropriate.
19. One significant change to report is the migration from DocMonster to Caselines for reviewing evidence. I am pleased to report that all members of the Committee are trained and familiar with Caselines and make full use of this platform for all IC meetings and ISO hearings. For obvious reasons, the Committee has continued to meet remotely during this reporting period. Meetings have, by and large, been successful, with some minor interruptions due to poor connection or other technical difficulties. While there is clearly a role for remote hearings, the Committee will also gain benefit from holding face-to-face meetings when safe to do so, in order to engender a team ethic and to promote personal interaction and effective feedback among members.

Support to the Committee

20. I wish to express my heartfelt thanks for the excellent administrative support provided to the IC and its Chair during this challenging period. Staff members are responsive and are more than helpful in ensuring that matters are addressed promptly.

General Comments

21. Members of Council will note that the number of IC meetings has reduced (7, down from 9) along with the number of complaints considered (25, down from 48). There may be various reasons to explain this reduction. For my own part, it would appear that there have been less concerns raised during this reporting period in comparison to recent years. Furthermore, less concerns have been progressed to a 'formal' stage. The Regulation Manager will have a view on this issue. I have also observed that 'remote' meetings take longer to complete. This is largely due to the challenges posed by technology and the slightly longer time taken by the legal assessor to complete his or her report and then to share and amend with IC members. It is clear that additional IC days are being planned to

ensure meetings continue to be held, and complaints considered in a timely fashion.

22. It is appropriate to highlight the number of cases involving the crossing of professional boundaries and sexual misconduct. That number remains high at 8 (same as last year) although that is a small reduction of the 11 which were considered two years ago.
23. There is a 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 Professional Standards Authority (PSA) in that investigating committees must remain aware of potential underlying health issues when considering cases. Members of the IC will keep this in mind when they consider allegations.
24. Council can be reassured that adequacy of reasons remains at the forefront of the minds of members of the Committee whether that is at IC meetings, ISO applications or during the screening procedure. Adequacy of reasons was a central issue at a training session attended by all IC members in February 2020.
25. Finally, the Chair of Council has underlined the need for the IC to maintain its independence. I wish to reassure Council that I have found nothing 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, at all times, maintained to the highest standard.

Brian Wroe
Chair, Investigating Committee
November 2021

Professional Conduct Committee Annual Report 2020-21

Introduction

1. This is my first report to Council as Chair of the jurisdiction for the Professional Conduct Committee (PCC), covering the period October 2020 to September 2021. There are currently 18 members of the PCC (the maximum number set down in the rules), 7 of whom are osteopaths and 11 lay (5 of whom are appointed as chairs). Whilst the Committee has powers to invite the Council to co-opt additional members, it has not done that at present.
2. I took up office on 1 April 2021 and was hugely helped by an engaging and effective handover from my predecessor, Richard Davies. The good order and sense of shared purpose with which the Committee undertakes its work are testament to Richard's dedication to the role and his effectiveness in it. I shall do my best to build on the solid foundations that he has put in place.
3. The PCC's purpose and statutory terms of reference are unchanged since the last report to Council. The Committee hears cases concerning serious unacceptable conduct, incompetence or criminal convictions. If it finds any such case proved, it imposes an appropriate sanction on the osteopath.
4. In its work, the PCC 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. At the same time, as members of Council well appreciate, the Committee must approach its decision making from a position of independence. My early view is that the objectives and need for independence are very well understood by all PCC members and that they work hard to ensure that the decision making process is fair and proportionate.

COVID-19 impact on hearings

5. Unsurprisingly, a key feature of the past year has been the continued effect of the COVID-19 pandemic, both in the way in which the PCC undertakes its business and in the changed ways of working that both it and the staff team have had to continue to deploy.
6. By the time of my appointment, appropriate arrangements for digital hearings were not only established, but in consistent and effective use. In my judgment, the arrangements at GOSc compare favourably with those in place at other regulators, in healthcare and beyond the sector. There are inevitable 'technical problems' from time to time but, although these can be the cause of delay and frustration, they do not have a deleterious effect on the fairness or efficiency of hearings.
7. Of particular note is the importance of reliable access to papers in a digital format. Caselines performs well in that respect and, when used effectively by counsel, is a helpful tool; particularly for witnesses who need to be directed to evidence and for

whom appearance in a tribunal setting may be a worrying and/or unfamiliar experience.

8. That having been said, PCC members are well aware that some cases are better heard (for a variety of reasons) in a physical hearing setting and look forward to the opportunity to assist staff colleagues in the development of an appropriate (post-pandemic) strategy for determining which events should be held physically and which digitally.
9. Such a review should, in my submission, reflect on which changes have proved positive (and should, therefore, be retained) and which have hindered the achievement of the PCC's objectives. It should reflect the views and needs of the staff team, legal assessors and representative bodies as well as those of PCC members. Importantly, it should also reflect on the experiences of witnesses whose appearance at hearings is such a vital part of the process.

Hearings and workload

10. There are no particular features of the caseload in 2020/21 to report to Council, the raw data is set out at Appendix 1 to this paper. The PCC considered 30 cases in 2020/21 (2019/20: 32). Minor variations in a jurisdiction of this size are not statistically significant; matters of complexity of caseload are hidden from view on case numbers alone.
11. As an alternative measure of workload, the PCC sat on 91 days in the year (2019/20: 58), Council colleagues will appreciate that the number of sitting days in 2019/20 was artificially depressed as a result of the impact of the early days of the COVID-19 pandemic.
12. Whilst timely decision making is a valuable KPI for the GOsC fitness to practice function, it is not something that is more than partially under the control of the PCC (indeed, elements of that measure are not under the control of the Regulation team either). That having been said, PCC members are keen to play their part in the Council achieving a performance deemed acceptable by the PSA. I have no evidence that PCC performance, or delays in it hearing cases, are a matter of concern. The need for hearings to adjourn part-heard has been effectively unchanged, that having happened on 7 occasions in 2020/21 (2019/20: 8).

Determinations

13. The downward trend in the proportion of cases where the allegation was not 'well founded' (ie not proven) fell again to 4 cases in 2020/21 (2019/20: 8). It may be suggested that this implies that cases are being more appropriately managed at earlier stages in the process (and that may well be the case), but it remains somewhat heroic to draw firm conclusions from a small base number of events.

14. Council will be well aware of the background to appeals against decisions of the PCC and of the recent Court of Appeal hearing in the case of Wray. As might be expected, members of the PCC follow such developments with interest; indeed several watched the live YouTube broadcast of the recent Court of Appeal hearing, both out of interest and as a personal development activity. Beyond the immediate interest, PCC members will be keen to understand, in detail, any implications that flow from the Court's determination of this case and how practice might need to be updated to reflect that.

PCC composition and ways of working

15. Three new members joined the Committee in April; each of us was given the opportunity to observe a hearing and participated in a one-day training programme involving external speakers and members of the Regulation team.
16. I have been hugely helped in my taking on of my role by one-to-one sessions with each PCC chair, members of the GOsC staff team and the Chair of Council. Each has been very generous in the time they have given me and their reflections, observations and ideas have been a great help.
17. Composition of the PCC is likely to remain stable over the next 18 months, with only one member reaching the maximum term of office. However, in the two year period after that, no fewer than 12 members will demit office. A task, therefore, for the next year is to plot out how best succession planning may be developed to minimise any risk to the effectiveness of the PCC.
18. The PCC's annual development day has been postponed to December and the programme for it is being developed by the GOsC team. It is my aim that, for future such events, there should be a degree of 'co-creation', involving members of the Committee in identifying what the most relevant and useful content would be.
19. Alongside that annual event, PCC members have agreed a model where they will meet digitally on an informal basis, twice a year. This will give the Committee three occasions a year on which its members can exchange good practice, seek answers to questions and share concerns. The first such Zoom call, in July, created strong interest from members; post-event feedback and evaluation indicates that it was helpful. A further call is planned for January 2022.
20. Issues covered in our communications have included members wish to understand the decision-making process for mode of hearing (ie digital or in-person), delays in the payment of members' fees and questions about GOsC's approach to listing.
21. To assist, in-between such sessions, I send an occasional newsletter to members. This helps in pulling into one place important, but non-urgent, communication and has been well received.

22. Between May and July, I held the annual review conversation with each member of the Committee. Each of these was a very positive experience, with members preparing well for the session and offering their candid views about their own performance and wider issues.
23. Brian Wroe and I have formed an effective working relationship, sharing information between us and identifying issues and ideas that may be equally relevant to members of the IC and PCC.
24. It is clear to me that an important element of my work is to provide occasional support to PCC members, across any and all topics related to their role. I am in regular contact with members and do what I can to assist, whilst remaining careful in respect of the importance of a panel's independence, limiting any advice I give to the generic.

Conclusion

25. I am grateful to my fellow PCC members and to members of the staff team for their support, as I have taken up the role of Chair. I am lucky to have taken on this role following a period of significant change and improvement. Equally, I intend to continue to identify areas for improvement in the PCC's practice and ways of working that will support the Council in achieving its over-arching objective.
26. Council is invited to:
 - Note the contents of this report
 - Ask questions of the author in respect of the work of the PCC, both related to the contents of this paper and any other matter

Andrew Q Harvey
Chair, Professional Conduct Committee
November 2021

Annex B

PCC Substantive Hearings	Q3 (2020- 2021)	Q4 (2020- 2021)	Q1 (2021- 2022)	Q2 (2021- 2022)	TOTAL
Total cases considered	9	6	4	5	24
Allegation not 'well founded'	2	0	1	1	4
Admonished	3	2	0	0	5
Conditions of Practice	0	0	1	0	1
Suspension	0	0	0	0	0
Removal	1	2	0	1	4
Adjourned/Part heard	2	1	2	2	7
Conditions/Suspension to expire	1	1	0	1	3

PCC ISO Hearings	Q3 (2020- 2021)	Q4 (2020- 2021)	Q1 (2021- 2022)	Q2 (2021- 2022)	TOTAL
ISO Application Hearings	0	1	0	1	2
ISO Imposed	0	1	0	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	1/10/18 to 30/9/19	1/10/19 to 30/9/20	01/10/20 to 30/9/21
Full hearings	43	24	24
Rule 8 decisions[1]	3	2	1
Reviews of Suspension Orders and Conditions of Practice Orders	5	4	3
Interim Suspension Order applications	2	2	2
Rule 19 applications to cancel a hearing	0	0	0

PCC Outcomes Last Three Years	1/10/18 to 30/9/19	1/10/19 to 30/9/20	01/10/20 to 30/09/21
Admonishment	6	5	5
Conditions of Practice Order	1	0	1
Suspension Order	6	6	0
Removal from the Register	5	0	4

Annex B

PCC Outcomes Last Three years	01/10/18 to 30/09/19	01/10/19 to 30/09/20	01/10/20 to 30/09/21
Unacceptable Professional Conduct found not proved	11	8	4
Of which -			
Some of the facts alleged found proved	8	7	4
None of the facts alleged found proved	3	0	0
Successful half-time submissions under rule 27(2)[1]	0	0	0
Successful Half-time submissions under rule 27(6)	2	1	1
Conviction not found to be materially relevant	0	1	0
Adjournments	8	8	7

Health Committee Annual Report 2020/21

Introduction

1. This is my first report to Council as Chair of the jurisdiction for the Health Committee (HC), covering the period October 2020 to September 2021. The HC is currently composed of 18 members in total (the maximum set down in the rules), 7 of whom are osteopaths and 11 lay (of whom 5 are appointed as chairs). Whilst the Committee has powers to invite the Council to co-opt additional members, it has not done that at present.
2. I took up office on 20 July 2021. As the membership of the HC is identical and, except where prescribed otherwise by statute or rules, it works in the same manner as the Professional Conduct Committee (PCC); I only comment in this report about the specific aspects of the work of the HC.
3. Accordingly, this report should be read in conjunction with the annual report of the PCC.
4. Since my appointment as Chair of the HC, my aim has been to build on the hard work of my predecessor, Philip Geering, whose work I pay tribute and to whom I offer my thanks.
5. Council will be aware that the intention is that I occupy the role of Chair of the HC only until such a time as it is able to appoint a successor. I shall do all that I can to support that appointee in taking up their role.

Caseload

6. During 2020/21 only one HC event has been held, a review of a suspension order.
7. Data for the year and for the preceding two years is set out below.
8. 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	01/10/2019 to 30/10/2020	01/10/2020 to 30/10/2021
Rule 6 Directions hearings	0	1	0
Rule 8 meetings	0	0	0
Applications to cancel a hearing under Rule 36	0	0	0
Full hearings	1	1	0
Review of Suspension Orders	0	1	1
Interim Suspension Order	1	0	0

Annex C

applications			
Health Committee Hearing outcomes	01/10/2018 to 30/09/2019	01/10/2019 to 30/10/2020	01/10/2018 to 30/09/2019
Findings of impairment of fitness to practise	0	1	0
Conditions of Practice Orders	0	0	0
Suspension	0	1	0
Interim Suspension Order imposed	1	0	0

9. 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 area 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.
10. The Committee is very alive to the fact that witnesses in such cases, specifically registrants themselves, are more likely to be vulnerable by nature of the health matters under discussion. Health Committee members seek to reflect that vulnerability in the way in which hearings are managed.

Conclusion

11. Council is invited to:
 - a. Note the contents of this report.
 - b. Ask questions of the author in respect of the work of the Health Committee, both related to the contents of this paper and any other matter.

Andrew Q Harvey
Chair, Health Committee
November 2021