General Osteopathic Council

Council
6 November 2014
Investigating Committee Annual Report

Classification	Public
Purpose	For noting
Issue	This paper presents the 2013-14 annual report of the Investigating Committee covering the period 1 October 2013 to 30 September 2014.
Recommendation	To note the content of the report.
Financial and resourcing implications	None
Equality and diversity implications	On-going monitoring of equality and diversity trends in the decisions made by the Investigating Committee will form part of the Regulation Department's future quality assurance framework.
Communications implications	None
Annexes	None
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Introduction

1. This is my third report to the Council following my appointment as Chair of the Investigating Committee (IC) in December 2011. The period covered by this report is from 1 October 2013 to 30 September 2014.

2. I have included, in bold and in brackets, figures from the 12-13 and 11-12 years for comparison. However, it should be noted that the period covered by the report provided to Council last year was 1 December 2012 to 30 September 2013 (a period of ten months, as against the 12 month period covered in this report and the 11-12 report).

3. In making this report I am conscious that the Council is provided with a quarterly report on the work of the IC and the Osteopathic Practice Committee also considers papers on fitness to practise matters. To some extent this report will repeat information previously provided to the Council.

Meetings of the Investigating Committee

4. During the twelve months covered by this report there have been nine meetings of the IC to consider complaints **(12-13 comparison: seven in ten months, 11-12: five).** One meeting was an 'all members' meeting, where all members are invited, and the remaining eight have each been attended by five or seven members of the Committee.

5. In addition, panels of Committee members have sat on eight occasions to consider applications by the Council for the imposition of Interim Suspension Orders on registrants **(12-13 comparison: five, 11-12: two).**

Casework

Numbers of complaints and the Committee's decisions

6. During the period accounted for in this report, the IC has made decisions on 41 complaints against registrants **(12-13 comparison: 30, 11-12: 21).** In 22 of these, the complaint was referred to the PCC, and three cases were referred to the Health Committee (61% complaints referred). In 16 cases, the Committee decided that there was no case for the registrant to answer **(12-13 comparison, 20 'case to answer' eight 'no case to answer' (71% referred), 11-12: 12 'case to answer' nine 'no case to answer' (55% referred)).**

7. In comparison to the last reporting period, the number of cases considered by the IC increased by 11 cases and the Committee held two more meetings. There has also been an increase in number of health matters being referred to the Health Committee.

8. In all but five cases, the IC was able to make a decision when the complaint was first considered by the Committee. In these five cases, the Committee adjourned the case to allow for further investigations to be carried out or to afford the registrant further time to respond to the complaint **(12-13 comparison, two adjournments).**

9. The IC was asked to provide its view on whether a hearing should be held in relation to two complaints that it had referred to the Professional Conduct Committee. This procedure is followed where a complaint has been referred by the IC to the PCC but subsequently further information comes to light which calls into question whether a hearing should go ahead (whether the hearing goes ahead is a decision for the PCC) **(12-13 comparison: the Committee was asked to provide its view on whether a hearing should be held in three cases.)**

Issues raised by complainants

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

    - Providing inappropriate treatment
    - Failure to store patient records safely
    - Failure to provide osteopathic notes when requested
    - Failure to respond to complaints appropriately
    - Failure to charge fees responsibly and in a way that avoids bringing the profession into disrepute
    - Providing treatment without appropriate qualification i.e. injecting patients
    - Breaching patient confidentiality
    - Failure to explain the risks of treatment
    - Failure to obtain valid patient consent for examination and/or treatment
    - Failures to communicate effectively with patients
    - Failure to have in place professional indemnity insurance
    - Disputes between osteopaths, including use of website or domain names and disputes arising from the break up business arrangements
    - Failure to report concerns to GOsC or police
    - Failure to respect patient dignity and modesty
    - Dishonesty
    - Concerns about the health of registrants

11. Other areas of concern include the crossing of appropriate professional boundaries, both friendship and the exploitation of patients, and sexually motivated conduct. These have featured in eight cases this year **(2012-13 comparison, six cases).**

Targets

12. Once a complaint is received by the GOsC, it must be screened by a registrant member of the IC in order for it to be considered by the Committee. The GOsC target is for screening to be completed within three weeks of receipt by the GOsC. That target was met in all cases and screening was usually much quicker (sometimes as little as one or two days).

13. The GOsC also has a target for cases to be considered and determined by the IC within four months of receipt of a formal complaint. Of the 41 considered and determined in this reporting period, 23 were determined within target and 18 cases were outside (56% within target)[1] **(2012-13 comparison 18 cases within target [60%] and 12 outside target).**

Interim suspension orders

14. There has been an increase in the number of Interim Suspension Order hearings compared to last year.

15. During the period of this report, the Committee considered whether to impose an Interim Suspension Order in eight cases. It imposed four Orders and made no order in the other four cases (in one of these the registrant had voluntarily imposed restrictions on his practice prior to the hearing).

16. By way of comparison, in the previous reporting period, the Committee considered five applications and imposed three orders and made no order in the other two cases (in one of these, the registrant had voluntarily imposed restrictions on his practice prior to the hearing). In 11-12 the Committee considered two applications and made no orders.

All members meeting

17. An all members meeting and training day was held on 21 May 2014 which covered a very large number of topics including exercising our judicial functions and decision making and reasons. As part of this, the Committee took the opportunity to consider as a whole, the report of the review of Committee decisions undertaken by Bevan Brittan LLP in January 2014.

18. The Committee also received presentations from a number of barristers that work in the field of health care regulation and public law.

19. During the afternoon session, members held a workshop on the development threshold criteria. Draft criteria were produced and these have been fed back the Council's Osteopathic Practice Committee as part of that committee's work. The IC was also updated on the considerable number of recent developments

[1] This figure does not include cases in which the IC is asked to express its view on whether a hearing should be cancelled. The IC considered two such cases within this reporting period.

including the Risk Assessment Framework, the Quality Assurance Framework, Practice notes and the Council's views on Information Governance.

20. Members very much appreciated the opportunity to meet with all colleagues to discuss topics of common interest and to receive news and training.

Composition of the Investigating Committee

21. In January 2014, the Council appointed two new osteopath members of the Investigating Committee: Caroline Guy and Helen Bullen. One appointment was a replacement for Claire Cheetham, whose term on the Committee expired, and the other reflected a need to widen the pool given the frequency osteopath members have a conflict and to ease finding dates for meetings.

22. In May 2014, the Council appointed Jacqueline Pratt as a panel chair of the IC. This means that there are now two panel chairs (Dr Michael Yates was appointed a Panel Chair by the Council in October 2013) who will be able to chair proceedings if I am unable to consider any particular case. Both have chaired meetings/hearings of the Committee or parts thereof.

Procedural Changes

23. There have been a considerable number of changes this year including:

    - Particulars of Concern
    - New IC Guidance and Decision making flowchart (October 2013)
    - Minutes now incorporating feedback from Bevan Brittan LLP (December 2013)
    - Standard legal advice on UPC (April 2014)
    - Practice Note on consideration of Undertakings at ISO hearings (May 2014).

    Of these the most significant is possibly the provision of Particulars of Concern. These enable the registrant to understand more clearly what is alleged by the complainant leading to more focussed responses and to more efficient decision-making by the Committee.

    In addition the provision to the Committee of recommendations by the Executive on case outcomes is currently being trialled.

Support to the Committee

24. New medical assessors were appointed by the Council with effect from 1 April 2014. Whilst it is rare for the Committee to sit with a medical assessor (it only happens on ISO hearings where there is a concern that the registrant is unfit) the expectation is that the change will lead to an improvement in the quality of medical advice and remove a barrier to the setting of hearing dates (previously there was only one medical assessor).

25. The IC has continued to be well supported by Legal Assessors in the reporting period.

26. The Committee has also been well supported by the GOsC's staff in this period, for which we are especially grateful given the changes that have taken place in the regulation team. The Committee would especially like Council to note our thanks to Kellie Green who ably supported the Committee over many years.

General reflections

27. It is very difficult to establish any trends when the number of complaints is very low but that said there has continued to be a rise in the number of complaints as well as an increase in the number of cases where an application for an ISO is made. Committee members have noticed an increase in cases where it is alleged the registrant has crossed professional or sexual boundaries which given the tiny number perhaps shows either heightened awareness of this as an issue or a perception that the allegations in this category are now more serious. It might be tempting to link these changes to publicity about Jimmy Savile and others but I am not aware of any evidence to support a connection.

28. As in previous years I have been struck by the very wide variety of allegations made against osteopaths and by the differences in allegations, especially when compared to opticians (I chair the GOC's Investigation Committee). Two differences stand out. First there are very few allegations that an osteopath has been convicted of or cautioned for a criminal offence. Second a noticeable proportion of allegations concern commercial arguments between rival osteopaths in the same area. These often involve allegations that an osteopath has 'stolen' data (which then enables him to approach prospective patients) or has advertised his services in such a way as to unfairly increase his caseload to the detriment of rival osteopaths.

29. My final reflection concerns how the gender balance of osteopaths complained against reflects the balance in the profession. My sense is that the majority of osteopaths complained against are men whilst the Council's website says there is rough equality between the genders in the profession. Certainly when it comes to cases of crossing professional/sexual boundaries my recollection over the last three years is that all cases bar one involved female patients and male osteopaths (and with cases where a failure to respect patient modesty is alleged again my sense is that they invariably involve female patients and male osteopaths).

James Kellock
Chair, Investigating Committee
30 September 2014