



Council
6 November 2014
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 report.
Financial and resourcing implications	FTP costs are currently within budget but it is likely that by the end of the year the budget will be exceeded. Costs will continue to be monitored closely by the Regulation and Registration and Resources Departments.
Equality and diversity implications	Ongoing monitoring of equality and diversity trends will form part of the Regulation department's future quality assurance framework.
Communications implications	None
Annexes	A. Dashboard Report B. PSA Initial Stages Audit Report
Author	David Gomez, Russell Bennett and Vanissa Tailor

Fitness to practise case trends

1. In this reporting period, the Regulation department received 22 informal complaints and nine formal complaints. During the same period last year, the figures were 15 informal complaints and six formal complaints.
2. Of the nine formal complaints, two involved allegations of inappropriate treatment leading to injury, two involved dishonesty, one case involved breaches of professional and sexual boundaries and two involved convictions (one for drink driving and one for possession of a controlled drug). There were two health cases raised as a result of the drink driving and drug possession convictions.
3. Of the 22 informal complaints, six related to allegations of deficient clinical care/treatment, five related to breaches of professional and sexual boundaries, three related to forceful treatment, two related to failures to obtain valid consent, two related to business disputes, two related to failures in communication, one related to failures to protect patient modesty and one related to unhygienic premises.
4. In this reporting period, three applications were made for the imposition of an Interim Suspension Order. During the same period last year, one application was made. Of the three applications made during this reporting period, two applications related to transgressing professional and sexual boundaries and one related to allegations of dishonesty.
5. As at 16 October 2014, the Regulation Department is currently handling a caseload of 77 fitness to practice cases (34 formal and 43 informal).

Section 32 cases

4. 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.
5. On 29 July 2014, the GOsC successfully prosecuted Mr Lesley James Bailey at Redhill Magistrates' Court. Mr Bailey was found guilty of five counts of falsely describing himself as an osteopath, contrary to Section 32 of the *Osteopaths Act 1993*, and was fined a total of £10,000. The Court found that Mr Bailey had intended to mislead the public. Mr Bailey was described as an osteopath on the website for the Back and Joint Pain Centre at 175 Coulsdon Road in Caterham, and on various other websites, including Google Plus. The charges also related to the wording on his business card, information provided to people attending the centre and details on the practice literature.
6. The Regulation department has also continued to act on other reports of possible breaches of section 32, and is currently handling 57 active section 32 cases.

7. The public consultation on the draft Protection of Title Enforcement Policy has now been completed and is the subject of a separate paper for consideration by Council.

Dashboard reporting

8. Following discussion at Council in October 2013, it was agreed that a dashboard format would be introduced using the indicators of efficiency, effectiveness and economy, and including comparative trends over time.
9. The dashboard report is attached at Annex A. Comparative data from the same quarter last year has been included (the figures are bracketed and highlighted in red).
10. The median figures for length of time taken for cases to be screened, and to be considered by the Investigating Committee and Professional and Conduct Committees is within KPI.
11. In September this year, we recruited an additional legally qualified senior regulation officer on a permanent basis to assist with the caseload, and to ensure cases continue to be progressed in accordance with our performance indicators. This brings the total number of staff with the Regulation Department to five, including the Head of Regulation.
12. During the reporting period, the Investigating Committee adjourned two cases in order to obtain further information.
13. The relatively high number of no case to answer decisions made by the IC is reflected in part by the number of cases which arose out of the same complaint; one complaint about the content of a course related to five individual osteopaths. Other cases which were not referred by the IC included disputes about web domain names, and commercial/business disputes between osteopaths.
14. During this reporting period two cases did not conclude within the scheduled period. One case was adjourned on the application of the defence representatives. The other case took longer than anticipated.
15. The figures appear to indicate that the PCC is taking longer to decide on facts and sanction. In part, this may be explained by the nature and complexity of cases; and greater detail being provided in the reasons. This will be kept under review.

16. In relation to whether cases before the PCC have been properly brought, in this reporting period, there were no successful 'half time submissions' under rule 27(2) or 27(6) of the PCC Rules¹.

Judicial Reviews of Decisions made by FTP Committees

17. At its meeting in July 2014, Council was informed that two applications had been lodged, seeking permission from the Court to judicially review decisions made by the GOsC FTP Committees.
18. One application related to the decision to impose an interim suspension order in a health case. Permission for judicial review was refused at first instance. The litigant made a renewed application for permission at an oral hearing in the High Court, and permission was again refused. An appeal to the Court of Appeal was also dismissed on the papers.
19. The remaining application relates to an interlocutory decision made by the PCC in a case that is currently on-going. Permission for judicial review was refused at first instance, but the litigant has applied to the Court of Appeal.

Costs considerations

20. The Regulation Department is having to accommodate an increasing number of hearing days. During this reporting period, we have serviced 18 Committee and hearing events, including substantive, review and ISO hearings before the PCC and HC; IC meetings and IC ISO hearings; directions hearings before the HC and one registration appeal before an Appeal Panel of the Council.
21. The increase in hearing costs over the financial year relates in part to a growing number of health cases. The fixed costs of health cases are more expensive than conduct cases, because they require the attendance of a medical assessor as well as a legal assessor at the hearing. The GOsC is required to commission and pay for medical testing, and the production of a medical report. The GOsC expert has to attend the hearing to hear the evidence and to be available for cross examination.
22. In health cases, our present rules require both a preliminary hearing before the Committee, and a substantive hearing to determine whether or not the registrant is fit to practise.
23. In addition, the nature of health cases is such that review hearings will often be required to assess compliance with conditions.
24. The PCC has also imposed Conditions of Practice Orders in three cases which will require review hearings this financial year. Applications to the Committee for a

¹ Under rule 27(2), a registrant may submit that any facts admitted are insufficient to support a finding of UPC or Professional Incompetence. Under rule 27(6), after the close of the Council's case, a registrant may submit that any facts adduced or admitted are insufficient to support a finding of unacceptable professional conduct ("UPC").

witness summons are also occasionally required and this is difficult to predict at the start of a case.

25. Owing to exceptional circumstances, the venue for one hearing was held in Manchester. The holding of the hearing in an external venue and the requirement to transport and accommodate staff increased the costs of the proceedings as a whole.
26. Under our current rules, Interim Suspension Order applications also effectively require two hearings-one before the Investigating Committee (which can only impose an interim order for a maximum of two months), and then if the case is referred by the Investigating Committee for a hearing – a new application has to be made to the Professional Conduct or Health Committee.
27. In addition to the costs of hearings, the Regulation Department has incurred costs relating to training of new members of the Investigating Committee and Council members sitting as an appeal tribunal. Additional training costs will be incurred following the exercise to recruit new Legal Assessors.
28. As noted above, the GOsC has also had to incur external legal costs in relation to the two applications for judicial review.
33. The Regulation and Registration and Resources Departments are continuing to monitor the effect of these increases in hearing costs and related matters.

Monitoring of Rule 8 Procedure

34. During this reporting period, no cases have been considered by the Professional Conduct Committee under the Rule 8 procedure agreed by Council last year.
35. Since its inception, only one case so far has been considered under the Rule 8 Procedure.

Quality assurance of fitness to practise

Peer review processes

36. As part of on-going quality work, the Regulation and Professional Standards teams have established a peer review mechanism to assess compliance with case management and customer service standards. Council received a report on the results of the first three reviews at its meetings in January, May and July 2014.
37. On this occasion, the review was carried by the former Regulation Manager who is now working at the General Pharmaceutical Council. This was a good opportunity to extend the range of joint working initiatives with other health care regulators, with the additional benefit that familiarity with our document management systems allowed for effective use of staff time.

38. A total of 22 cases were reviewed as part of this exercise. This included eight new informal cases, five new formal cases, which also included a review of the informal stage and nine current cases that had been previously reviewed and had moved forward to another stage in the process.
39. In broad terms, the reviewer looked for evidence: that there was continuous activity on each case; that the parties were kept updated; that compliance with key performance indicators was being met; that risk was continually being assessed; that case management documentation was present on file and completed; and that relevant policies, such as the Notification of Fitness to Practise Investigations and Outcomes were being complied with.
40. The findings from the review are set out below.

Strengths demonstrated by the Case Managers included:

- Initial risk assessment is carried out in all cases and reasons given for the risk based decisions
- Particulars of concern in all cases accurately reflected the complaint or self-declaration that had been made
- Some very good work had been done to support complainants at the informal stage of the process
- Potentially vulnerable witnesses are provided with good support and kept updated and informed on a frequent basis
- There was no period of inactivity on cases, save for one mentioned below. All cases are moving through the process and were receiving regular attention.

Areas for improvement identified during the review included:

- On-going risk assessments – while risk assessment on receipt of a formal complaint is carried out and recorded, there was no evidence on file that risk was being assessed on an ongoing basis.
- Evidence of case review meetings – it was clearly evident in some cases that the Case Manager had discussed issues and sought advice from the Regulation Manager. Very clear file notes identified the issue, the advice given and a way forward. This suggests that cases are being reviewed but there were no reviews recorded on the case management forms
- Notifying employers – two files reviewed did not contain information about employers that had been requested and there was no evidence that it had been chased. In two files, employers had not been notified when the case was referred by the IC.
- Completion of Investigation Plans and Evidence Grids – while the investigations that were being undertaken were considered robust, the plans and evidence grids on file were not completed in all cases.

- In some cases reviewed, the registrants' responses had not been sent to the complainant within 10 days. However, there was in each case a good reason for that. There were concerns about the disclosure of information contained in the responses, which had been raised by the Case Manager and considered and resolved with the help of the Regulation Manager. The issues were tackled quickly but inevitably took more than 10 days to resolve as they needed to liaise with the registrant or their representative.
- A period of in-activity in one case was identified.

Good practice identified by the review included

- Informal complainants, in a number of cases, had been given information about other agencies with whom they may raise their concern or turn to for support and help. The agencies identified were always very appropriate for the nature of the concern/complaint being raised and included, the BOA, small claims courts and employment tribunal.
 - Registrants were often asked to confirm that a solicitor who had identified themselves as on the record had actually been instructed by the registrant and that the registrant was content for the GOsC to communicate directly with the solicitor.
41. The findings from the review will be fed back to the team and considered in detail at the next team meeting.

Initial Stages Audit undertaken by the Professional Standards Authority

42. The GOsC invited the PSA to carry out an audit of its initial stages FTP process in 2014, with the aim of using feedback from the PSA as part of our quality assurance of the effectiveness of new case management processes and guidance which were introduced during 2013.
43. In May 2014, the Professional Standards Authority (PSA) audited the eight cases that were closed by the Investigating Committee at the initial stages of the fitness to practise process during the 12 month period from 1 May 2013 to 30 April 2014.
44. Three of the eight cases included in the audit were investigated by the GOsC following the changes that had been implemented during 2013.
45. A verbal update on the key findings from the audit conveyed to the executive by the PSA was provided to Council at its meeting in July.
46. The final report has now been published and a copy of the report is an Annex B.
47. The PSA concluded that:

- a. the audit did not identify any decision to close cases at the initial stages of the fitness to practise process that posed a risk to patient safety and/or the maintenance of public confidence in the profession and the regulatory process
 - b. the PSA's overall conclusion was that the GOsC's initial stages fitness to practise process protects the public and maintains public confidence in the profession
 - c. the PSA had identified good practice in relation to the handling of personal and sensitive information in fitness to practise cases.
48. However, the audit identified a number of areas for improvement in relation to customer service issues and keeping the parties informed; recording of case work decisions and compliance with key performance indicators.
49. These recommendations and learning points will be carefully considered as part of on-going quality assurance work.
50. The GOsC welcomes the feedback from the PSA and considers audits of this kind to be an important part of the quality assurance process.

Equality monitoring

51. Since the beginning of April 2014, the GOsC has begun sending Fitness to Practise Equality Monitoring Questionnaires to registrants when they are first notified that an allegation has been made against them.
52. Such monitoring is in line with the GOsC's duties under the Equality Act 2010 and will assist the GOsC to obtain more real time information, and to monitor the whole of the fitness to practise process to the sanctions stage.

Qualitative Research into complainant and registrant experience of the fitness to practise process

53. In February 2009, the GOsC began a research project, with the intention of obtaining a better understanding of the views of complainants and registrants about their experience of fitness to practise proceedings. Since the project began, a total of 70 completed questionnaires has been returned and analysed by Moulton Hall.
54. At its meeting in July 2014, Council considered the latest report provided by Moulton Hall based on an analysis of the feedback questionnaires completed by complainants and registrants, at the end of the FTP process and after the final disposal of a complaint.
55. It was agreed that the executive would develop proposals for obtaining a wider range of data which might inform future research, as well as quality improvement.

56. At its meeting on 2 October 2014, the OPC considered draft proposals for a more enhanced data set and a thinking draft of a survey for complainants. The OPC had a very useful discussion about the sorts of information GOsC should seek to obtain about both complainants and registrants. The executive will develop the proposals in the light of the discussion at OPC and update the Council on these proposals in due course.
57. The Moulton Hall project will run until the end of this year, and a final report will be commissioned in January.

Feedback loops

58. The Regulation and Communications teams produced an article in the October/November issue of the Osteopath which highlights learning from recent FTP cases relating to protecting patient dignity and modesty, and which sets out guidance on how to avoid complaints.

Training and development/ Working with other regulators/Keeping abreast of good practice

59. On 17 November 2014 the Regulation Department will be holding a training session on the drafting of allegations. Training will be provided by a set of barristers' chambers. In accordance with our commitment to cross-regulatory learning, we have invited fitness to practise staff from the General Pharmaceutical Council and the General Optical Council to attend the session.

Recruitment of legal assessors

60. Following the completion of the exercise to recruit a new pool of medical assessors earlier this year, the GOsC is currently recruiting a new pool of legal assessors. In order to ensure the fairness and transparency of the recruitment process, the selection panel will include an external member, Ms Lavin. Ms Lavin is the current Director of Fitness to Practise at the General Optical Council, and a former Director of the Bar Standards Board.
61. It is anticipated that interviews will commence in the week beginning 17 November 2014. Council will receive a report of the recruitment process at its meeting in February 2015, and will be invited to make appointments at that meeting. The intention is that the appointment of the new legal assessors will take effect from 1 April 2015.

Threshold criteria

62. At its meeting in July 2014, Council approved draft threshold criteria for consultation. That consultation commenced on 1 October 2014 and will run until 31 December 2014.

63. A dedicated focus group for patients and the public, with an external facilitator, has been arranged for 3 December 2014. The intention is to obtain good qualitative feedback on the draft threshold criteria, and also on issues relating to the duty of candour.

Recommendation: to note the report.