General Osteopathic Council

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Osteopathic Practice Committee
27 February 2014
Quality Management and Assurance Framework

Classification	Public
Purpose	For discussion
Issue	This paper provides an update to the Committee about the introduction of a 'Quality Management and Assurance Framework' as a mechanism for providing greater assurance to Council about the fitness to practise and protection of title processes. Essentially, the framework will assist in answering the key question: whether all those involved in fitness to practise and protection of title issues *are doing the right things, in the right way, at the right time.*
Recommendation	To consider the draft Quality Management and Assurance Framework set out in Annex A.
Financial and resourcing implications	Any new activities identified will need to be incorporated into the current or future budgets.
Equality and diversity implications	Equality monitoring in relation to FTP cases is part of the draft quality framework.
Communications implications	None identified at present.
Annex	A. Draft Quality Management and Assurance Framework B. Comments on Draft Framework from PCC Chair
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Background

1. At its meeting on 19 September 2013, the Osteopathic Practice Committee considered the first draft of the Quality Assurance Framework document.

2. The purpose of the Framework is to provide assurance to the GOsC Chief Executive and Council, the Professional Standards Authority, members of the public and other stakeholders, that concerns about the fitness to practise of our registrants, and improper use of titles protected by our legislation, are properly handled.

3. The framework will enable the regulation team to define in tangible terms, what the regulatory process is seeking to achieve; to self assess performance against key measurables and time scales; and in doing so, to provide assurances to Council.

4. In simple terms, the Framework is intended to help us demonstrate that we are doing the right things, for the right reasons, within the right timeframes.

5. The draft Framework has three main limbs: the Framework document, which is set out in the Annex; a quality casework manual which will set out all procedures and operational matters; and a template library.

Discussion

Update on quality initiatives and progress on the draft framework

6. In July 2013, the Regulation Department introduced new template case history, case management and risk assessment forms, chronologies and evidence grids as part of effective case management. Each case must have these documents on file and they are regularly reviewed as part of case management meetings.

7. In July 2013, the FTP Users Forum was established. The Forum consists of the GOsC and registrant representatives, and legal assessors that frequently appear before or advise, the GOsC's Fitness to Practise Committees. The forum has provided extremely useful feedback on draft practice notes and the operation of the 'Rule 8 Procedure.'

8. In September 2013, the Investigation Committee agreed that 'Particulars of Concern' should be drafted and sent to the complainant when he or she is asked to comment on the complaint. The intention was to aid the identification of the key issues in any case, and any subsequent referral by the IC. In turn, this measure will focus the investigation and assist in obtaining the best evidence from witnesses. Feedback from the Chair and members of the Investigating Committee on the Particulars of Concern has been very positive.

9. In September 2013, the Regulation and Finance Departments agreed a new method of recording all the costs associated with a particular case. Members of

the Regulation Team now record time spent on a sample of cases that have been identified as 'routine' and 'complex'.

10. One member of the team (on short term contract) records all the time spent on the cases in her case load. The intention is that by September 2014, the GOsC will be able to predict, with greater granularity, the average cost of a case in relation to staff time, committee time and expenses, and external legal fees.

11. A first draft of the Regulation Quality manual was produced in December 2013. The template library is in the process of being compiled. The intention is that the manual and template library will have been completed by June this year.

12. In December 2013, the Regulation and Professional Standards teams initiated a peer review mechanism to assess compliance with case management and customer service standards. The intention is that the Professional Standards team will review all cases received in that quarter on a rolling basis for the lifetime of the case against agreed criteria.

13. On 23 December 2013, the Regulation team and the General Optical Council piloted a mechanism for peer reviewing GOsC cases in which the Professional Conduct Committee has concluded that the allegation was not 'well founded' or in which a hearing has to be cancelled under rule 19 of the GOsC (Professional Conduct Committee) (Procedure) Rules. Rule 19 provides for the cancellation of a hearing where, due to exceptional circumstances, the hearing of the case cannot properly take place.

14. In January 2014, a legal consultant from Bevan Brittan LLP reviewed all decisions made by the Investigating Committee during the period 1 October 2012 to 30 September 2013. The purpose of this exercise was to establish a qualitative baseline in terms of a minimum level of quality for decisions made by the Investigating Committee and IC Chair, which it would be desirable to maintain (or exceed) each year. Setting a baseline in this way will also assist any future evaluation of the effectiveness of the introduction of the Particulars of Concern, and the Quality Assurance Framework.

15. Feedback from the review has been provided to the members of the Investigating Committee and the recommendations made in the review about presentation of the Committee's reasons have been implemented.

16. In January 2014, a new dashboard reporting format was introduced to provide information to the Council in relation to the indicators of efficiency, effectiveness and economy.

17. In January and February 2014, members of the Regulation Department undertook a programme of visits to other health care regulators to identify best practice in listing and scheduling and committee clerking.

18. In February 2014, the OPC considered draft guidance for experts in the form of a PCC Practice Note.

19. Going forward, the GOsC intends to capture data about the protected characteristics of registrants going through its fitness to practise processes at an earlier stage. This work in an important part of ensuring compliance with our duties under the equalities legislation.

20. Currently, certain information is captured on feedback forms which are sent directly by the registrants after the fitness to practise process has been completed, to a consultancy engaged by the GOsC. The intention is to seek to gain fuller information from registrants at the time that we notify them of the allegations made against them. We envisage this process beginning in March 2014.

21. At its meeting in June 2014, the OPC will consider revised guidance for Screeners and draft threshold criteria for use by the Investigating Committee when deciding whether or not to refer cases.

Comments on the draft framework

22. In September 2013, the draft framework document was provided to the Chair and members of the Professional Conduct Committee. The Chair made a number of comments which are set out in Annex B to this paper. In addition, the document was discussed at the PCC all members day on 15 November 2013, at which further feedback and comments were invited from the Committee members.

23. The draft at Annex A has incorporated most of the comments from the Chair: the material exceptions being the comments relating to the real prospect test; quality objective on pre-hearing arrangements; and the quality objective on allocation of hearing days.

24. One of the intended outcomes of our programme of visits to other regulators, is to achieve a consensus on the default number of days that should be allocated to a particular type of case.

25. Aspects of the draft framework are already operational, and we are actively monitoring compliance with performance indicators. However, the development of the framework is an iterative process, and we intend to undertake further analysis of case trends and performance before implementing a formal 'start date' later on this year.

Recommendation: to note progress on the introduction of the Quality Assurance Framework.

General Osteopathic Council

Regulation Department

Quality Management and Assurance Framework

Contents

1. THE PURPOSE OF THIS FRAMEWORK

The purpose of this Framework is to provide assurance to the GOsC Chief Executive and Council, the Professional Standards Authority, members of the public and other stakeholders, that concerns about the fitness to practise of our registrants, and improper use of titles protected by our legislation, are properly handled.

In simple terms, the Framework is intended to help us demonstrate that we are doing the right things, for the right reasons, within the right timeframes.
In doing so, we have not set out to be fully complaint with all aspects of the ISO 9001: 2008 Quality Management System. However, as a matter of good practice, the Framework seeks to adopt the key requirements and criteria of ISO 9001, with appropriate modifications for the size of the organisation.

The Framework consists of:

a. this document, which sets out our quality policy and objectives, how we measure quality and the tools we use to assure ourselves that quality measures are being achieved;

b. the Regulation Department's Quality and Casework manual; and

c. the Regulation Department's standard document template library.

2. THE ROLE OF THE REGULATION DEPARTMENT

The General Osteopathic Council (GOsC) was established under section 1 of the Osteopathy Act 1993. It has a statutory duty to develop and regulate the profession of osteopathy.

The Council of the GOsC retains ultimate responsibility for ensuring that the organisation fulfils its statutory duties.

The Regulation Department has two main functions. These are:

a. the investigation and prosecution (before a Fitness to Practise Committee) of certain allegations about the fitness to practise of osteopaths registered with the GOsC; and

b. the investigation and prosecution (in the Criminal Court) of persons who are not registered with the GOsC but who are holding themselves out as practising osteopaths.

3. THE LEGISLATIVE BASIS FOR OUR ROLE

Professional conduct and fitness to practise

Under s20 of the **Osteopathy Act 1993**, the GOsC (in practice the Regulation Department) has a duty to investigate certain allegations made about osteopaths registered with the GOsC. These are that:

- the osteopath has been guilty of conduct which falls short of the standard required of a registered osteopath (unacceptable professional conduct);
- the osteopath has been guilty of professional incompetence;
- the osteopath has been convicted at any time in the UK of a criminal offence which is materially relevant to the fitness of the osteopath concerned to practise osteopathy; and
- the osteopath's ability to practise as an osteopath is seriously impaired because of his/her physical or mental condition.

Following investigation, the matter must be considered by the Investigating Committee (.20(3)) which decides if there is a 'case to answer' (s.20 (11)).

In making its decision, the Investigating Committee uses the real prospect test. The proceedings of the Investigating Committee are set out in the **General Osteopathic Council (Investigation of Complaints) (Procedure) Rules 1999** (SI 1999/1847).

If the Investigating Committee finds a case to answer, the allegations will be referred to the Professional Conduct Committee (PCC) or to the Health Committee (HC), for consideration (s.20 (12)). The role of the PCC and the HC is to consider whether or not the allegation is well founded, and if so, to impose the appropriate sanction (sections 22 and 23).

In considering sanction, the PCC and HC will have regard to the **Indicative Sanctions Guidance** approved by Council.

The procedures of the PCC are set out in the **General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules 2000** (SI 2000/241). The procedures of the PCC are also supplemented by **Practice Notes**, which deal with issues such as adjournment.

The procedures of the HC are set out in **the General Osteopathic Council (Health Committee) (Procedure) Rules 2000** (SI 2000/242).

All three committees have the power to impose an interim suspension order. The test for doing so is that the Committee is satisfied that it is necessary to do so in order to protect members of the public (ss.21 (2) and 24(2)).

When deciding whether or not to apply for an interim suspension order, the regulation department will use **the risk assessment framework.**

All three committees sit with an independent legal assessor who has the general function of giving advice. The role of the legal assessor is set out in the **General Osteopathic Council (Legal Assessors) Rules 1999 (SI 1999/1848)**

All three committees may also sit with an independent medical assessor who has the general function of giving advice. The role of the medical assessor is set out in **the General Osteopathic Council (Medical Assessors) Rules 1999 (SI 1999/1879).**

All three committees are "statutory committees" created by the Osteopaths Act 1993, and the membership of these committees does not include members of the GOsC Council.

In relation to the exercise of their statutory adjudicative functions, the committees exercise their discretion on individual cases, having proper regard to relevant guidance issued by the GOsC, to the statutory objectives and functions of the GOsC, and to the public interest which includes:

a) the protection of the public;
b) the maintenance of public confidence in the profession; and
c) declaring and upholding proper standards.

Restricted title cases

Under section 32 of the Osteopathy Act, it is a criminal offence to describe oneself (either expressly or by implication) as an 'osteopath, osteopathic practitioner, osteopathic physician, osteopathic, osteotherapist, or any other kind of osteopath' unless registered with the GOsC.

4. THE CONTEXT IN WHICH WE REGULATE

The regulation of healthcare and healthcare professionals, remains an area of considerable public concern and media interest.

The GOsC is one of the nine statutory regulators of healthcare professionals in the UK. All these regulators have the protection of the public as their primary concern.

The GOsC is committed to developing and sharing good regulatory practice to ensure the protection of the public; the maintenance of public confidence in the osteopathy profession; and upholding proper standards for the osteopathy profession.

The GOsC is subject to oversight by the Professional Standards Authority (PSA). The PSA undertakes annual performance reviews of our organisation, and a periodic

audit of cases that have been closed without being referred to our Professional Conduct or Health Committees.

The PSA also reviews all decisions of our Professional Conduct and Health Committees, and has the power to refer to the High Court (or Court of Session in Scotland) for review, any decisions that it considers to be unduly lenient, or which it considers should not have been made; and where it considers that it would be desirable to take such action for the protection of members of the public.

5. OUR APPROACH TO QUALITY ASSURANCE

Quality assurance encompasses all the policies, standards, systems and processes directed to fulfilling and enhancing our statutory role in relation to fitness to practise and protection of title matters.

The GOsC is committed to the principles of right touch regulation as defined by the Professional Standards Authority:

'Right touch regulation is based on a proper evaluation of risk, is proportionate and outcome-focussed: it creates a framework in which professionalism can flourish and organisations can be excellent.' (Right Touch Regulation', August 2010)

In assessing quality, we adopt the five principles originally developed by the Better Regulation Executive. The framework seeks to address these principles in the following way:

PRINCIPLE	**HOW ADDRESSED**
Proportionality	Active case management and case review
Accountability	Reporting mechanisms to Council and external stakeholders
Consistency	Regular internal and external audit; post hearing wash-ups; and peer review
Transparency	Reporting mechanisms to Council and external stakeholders
Targeting	Scrutiny of charges and allegations; audit mechanisms

6. OUR QUALITY POLICY

The Regulation Department is committed to ensuring that allegations about our registrants, or persons improperly using titles protected by legislation, are investigated promptly and effectively in line with best regulatory practice.
In particular, we seek to ensure that: we carry out proportionate investigations in which risk is continually assessed; that meetings and hearings are run efficiently; that our staff and committee members have the right knowledge, skills and support for their respective roles; that complainants and witnesses are kept fully informed

throughout the process; that decisions are evidence based and well reasoned; and that learning from individual cases is disseminated back to the wider profession.

We aim to measure the quality of our work by undertaking periodic audits and satisfactory feedback from stakeholders, including complainants and members of the GOsC's Fitness to Practise Committees.

7. OUR QUALITY OBJECTIVES AND HOW WE MEASURE THEM

This section sets out the Regulation Department's quality objectives; the way in which these objectives are measured; and the targets we hope to achieve.

a. Case investigation by GOsC employees and external legal providers

In all investigations undertaken by the Regulation Department we will:

QUALITY OBJECTIVE	**HOW MEASURED/ASSURED**	**TARGET**
Continuously monitor and assess risk	Standard Risk Assessment Form reviewed at every case management meeting	Where potential interim suspension order identified: Screened within three days from receipt of formal complaint One week from receipt of formal complaint, the IC Chair makes decision on whether or a hearing should be held ISO hearing held within three weeks from receipt of formal complaint
Ensure that all allegations are investigated	Caseworker chronology, investigation plan and evidence grid reviewed at periodic case reviews Adjournments of IC	Plans in all cases to be prepared within one week of receipt of formal complaint No adjournments of cases at IC because of failure to investigate an allegation

	Feedback from Committees Feedback from PSA initial stages audit	No negative feedback No negative feedback
Be proportionate	Number of charges at IC and PCC Investigation plan reviewed at case reviews	There should not normally be more than 20 heads of charge in respect of a single registrant
Present the case to the best of our ability, and provide all available and relevant evidence, which is sufficient for the relevant Committee to make its decision	Number of adjournments made by Committee to seek further evidence Observation of case presenters by Regulation Manager and Head of Regulation Feedback from Committee Members Feedback from PSA initial audits and S29 learning points, or appeals Appeals/Judicial reviews challenging the decision of a Committee for insufficient evidence	No adjournments specifically to obtain more evidence No negative feedback at IC (based on six meetings a year) No more than five negative feedback forms from PCC (based on 15 hearings a year) No negative feedback from PSA relating to lack of evidence No successful appeals/judicial reviews based purely on insufficient evidence
Have properly formulated Particulars of concern (IC) or charges for the relevant Committee to consider	Feedback from Committees	No more than five negative feedback from IC, based on 30 cases a year No more than five negative feedback from PCC, Based on 15 hearings a year

Be cost effective	Cost reports from external solicitors Internal cost monitoring	**(No Target set as yet. Cost modelling work is currently being undertaken within the regulation department)**
Be progressed in a timely manner	Case review and monthly reports	Monthly report on each case sent to Head of Regulation by last working day of each month
Ensure that complainant(s) and witnesses are kept informed	Case Management sheet/Monthly reports	Regulation team will provide an update on case progress each month. Evidence on this must be on the case file

b. The hearing process

In all meetings and hearings of the Investigation Committee, Professional Conduct Committee and Health Committee we will:

QUALITY OBJECTIVE	**HOW MEASURED**	**TARGET**
Make effective use of hearing time	Time recording hearing events Number of part-heard cases Parties compliance with time estimates and hearing timetabling	 No more than three part-heard cases (based on 15 hearings a year)
Have satisfactory administrative arrangements (room layout, bundles, microphone and recording equipment)	PCC Hearings checklist Chairs feedback form	40% of feedback forms have no negative comments about administrative arrangements
Have appropriate measures in place for witness who require Special measures	Parties feedback form Case Management sheet	No negative feedback

c. Decision making by Committees

In all decisions made by the Investigating Committee, Professional Conduct Committee we will:

QUALITY OBJECTIVE	HOW MEASURED	TARGET
Address all allegations/charges	Determination	No more than three PSA learning points per year (based on 15 hearings a year) No s29 Appeals No registrant Appeals
Give adequate and sufficient reasons for: a) findings of fact; b) findings on Unacceptable Professional Conduct/Performance/Criminal Conviction/Health; and c) sanction	Determination PSA audits and learning points	No more than three PSA learning points per year (based on 15 hearings a year) No s29 Appeals No Appeals
Give sufficient reason for preferring the evidence of one party over another	Determination PSA audits and learning points	No more than three PSA learning points per year (based on 15 hearings a year) No s29 Appeals No Appeals
Refer to any relevant Standards and guidance	Determination PSA audits and learning points	No more than three PSA learning points per year (based on 15 hearings a year) No successful s29 Appeals No successful Registrant Appeals
Refer to any legal advice received by the Committee	Determination PSA audits and learning points	No more than three PSA learning points per year (based on 15 hearings a year) No successful s29 Appeals No successful Registrant

		Appeals
In relation to sanctions, refer to Indicative Sanctions Guidance	Determination PSA audits and learning points	No more than three PSA learning points per year (based on 15 hearings a year) No successful s29 Appeals No successful Registrant Appeals
Be delivered promptly	Case Management Sheet	IC – sent to parties within two weeks of the IC meeting PCC/HC – sent to parties within two days of hearing
Notified to PSA	Case Management Sheet	PCC within two days of hearing
Publicised in accordance with GOsC FTP Publications Policy	Case Management Sheet	Uploaded to website within two days

d. Feedback loops and wider learning within the profession

The Regulation Department will:

QUALITY OBJECTIVE	**HOW MEASURED**	**TARGET**
Identify common factors, root causes, drivers and trends	Common classification system developed with insurers Quarterly Report to Council Annual Report to policy committees FTP Annual Report FTP E-Bulletin	Annual Report and reports to Council will contain more cross-sectional analysis of data arising from complaints.
Monitor hearings data in relation to protected characteristics	Registrant Feedback Quarterly Report to Council Annual Report to policy committees FTP Annual Report	Annual Report and reports to Council will contain more cross-sectional analysis of data arising from complaints.

8. OUR PUBLISHED KEY PERFORMANCE INDICATORS AND INTERNAL TIME SCALES

Issue	**Time to be completed**	**Published KPI or internal time frame?**
Initial concern raised and complaint information provided	Two working days	Internal time frame
If statement of complaint to be taken	Within one week	Internal time frame
Complaint chased if no reply to complaint information	5-6 weeks from initial concern raised	Internal time frame
2nd chaser letter sent if no reply to complaint information and chaser letter	3-4 weeks from complaint chaser letter	Internal time frame
Case closed if no reply to complaint information and 1st and 2nd chaser letter	14 days from second chaser letter.	Internal time frame
Acknowledge complaint	Two working days if received electronically Five working days if received by post	Published KPI
Screening decision	Within three weeks of receipt of complaint	Published KPI
Notification of screening decision to parties	Within five days of decision. Except where Rule 18 applies (further investigation required)	Internal time frame
Acknowledging registrant's response	Within two working days of receipt	Internal time frame
Registrant's response sent to complainant	10 working days of receipt	Internal time frame
Acknowledging complainant's response	Within two working days of receipt	Internal time frame
IC Decision	Within four months receipt of formal complaint	Published KPI
Notify parties of IC decision	Within 10 working days of IC decision	Internal time frame
Conclusion of investigation and charges approved	Within two months of IC decision	Internal time frame
Decision of PCC/HC	Within 13 months of	**Published KPI**

	receipt of formal complaint	
Notify parties of PCC/HC decision	Within two working days of decision	Internal time frame
Notify PSA	Within two working days of decision	Internal time frame
Publish decision in line with FTP Publications Policy	Within two working days of decision	Internal time frame

Section 32 Cases

Active monitoring	Within three weeks of receipt of list, perform internet checks of removed names received from Registration Department to determine if still using protected title	Internal time frame
Acknowledging complaint	Within two working days of receipt	Internal time frame
Completion of investigation-Active monitoring cases	Within two weeks of receipt of list	Internal time frame
Completion of investigation-complaints	Within two months	Internal time frame
In cases of suspected breach, sending of initial letter	Within two days of completion of investigation	Internal time frame

10. THE TOOLS AND MECHANISMS WE USE TO ACHIEVE OUR QUALITY OBJECTIVES

The Regulation Departments uses the following tools and mechanisms to achieve the quality objectives.

Tool	**Description**	
Quality Manual	This document sets out all the procedures of the regulation department	First draft of manual produced
Induction and Training programmes	Formal induction process for staff to be set out in manual Departmental training log Periodic training for staff provided by external	First draft of manual produced OPERATIONAL

	solicitors firms (training needs identified during appraisal) Attendance by staff on external relevant courses On-going coaching and mentoring Annual training day for members of FTP committees (based on training needs identified by members during appraisal and committee feedback forms) FTP Committee members have access to periodic updates from external solicitor firms Learning points from PSA and initial stages audit disseminated to members	NEED TO CHECK WHAT MEMBERS ARE ACTUALLY SUBSCRIBED TO/RECEIVING
Risk Assessment	Undertaken on Risk Assessment Form at defined stages of investigation and at case reviews	
Case management and Case Review	Investigation Plan and evidence grid required for all cases. Reviewed by Regulation Manager at case management meetings. Case Management Sheet records all actions and dates on case. All cases reviewed by Regulation Manager every two weeks and by Head of Regulation every month	OPERATIONAL FROM 31 JULY 2013

	All draft charges approved by Head of Regulation	
Monitoring of external providers of legal services	• Approval of investigation plan by GOsC caseworkers • On-going monitoring of investigation plan and review at 2 weekly case review by Regulation Manager • Monthly case report from external solicitors	
Experts	• Established criteria for appointment • Guidance for experts who are instructed by regulation team	NOT YET OPERATIONAL
Inter-party case management	Practice Notes are in place to assist the parties and Committee members on issues such as service of bundles, adjournments and postponements FTP stakeholders forum consisting of regulation team and registrant representatives established to facilitate case management issues.	
Monitoring of Hearings	Regulation staff record key hearing events to assist audits of effective use of hearing times Feedback forms from PCC chair provide feedback on administrative arrangements	
Peer Review	Arrangements in place with GOC to allow GOC staff to review GOsC case files and investigation plans (and vice-versa) using the PSA initial stages audit criteria	

Feedback loops	Panel Chair report form post meeting/hearing reviewed by Head of Regulation and Regulation Manager Parties Research received [ ] from Moulton Hall and reviewed annually by Head of Regulation and Regulation Manager. Annual meeting between Chair, Chief Executive and Chairs of HC, IC and PCC Annual discussion of themes emerging from cases with Professional Standards Department Quarterly e-bulletin to profession	 Operational from September 2013 NOT YET OPERATIONAL
Internal audit mechanisms	For section 32 Cases and rule 8 procedure: Audit Committee undertakes periodic internal audits Six-monthly review of Section 32 and rule 8 cases undertaken by Registration/Professional Standards	NOT YET OPERATIONAL NOT YET OPERATIONAL
External audit mechanisms	PSA initial stages audit and review of final decisions Committee observing undertaken by external firms	 NOT YET OPERATIONAL
Reporting mechanisms	Regulation Department prepare/feed into: • FTP Annual Report for publication	

	• Annual case analysis report to policy committees • Quarterly statistical report to CEO • Quarterly FTP report to Council • PSA Performance Review These reports will all include information on statistics, themes emerging from cases and compliance with quality measures.	
Post IC case review	Six-monthly review of all IC decisions to develop threshold criteria for discussion with IC and Council and future external consultation	Draft Threshold criteria to be considered by OPC in June 2014
Post ISO review	Six-monthly review of chairs decision not to hold ISO hearing, and ISO outcome decisions against the risk criteria to be undertaken by Professional Standards Department	NOT YET OPERATIONAL
Post PCC Case review	Post PCC wash up meeting with case worker/external solicitor, Regulation Manager and Head of Regulation Review Group consisting of two members of Audit Committee (Lay and Registrant member) meeting annually) to review a sample of cases (including cases found proved and not proved;	NOT YET OPERATIONAL

	and Rule 8 procedure cases); and analysis of all PCC decisions To review evidence bundles, transcripts and decision notices against agreed criteria	
Dissemination of good regulatory practice	Attendance by regulation staff at different fitness to practise fora	

VERSION CONTROL

DOCUMENT TITLE	DOCUMENT AUTHOR	Version	DATE CREATED	DATE AMENDED	DETAIL OF AMENDMENTS
Regulation Department Quality Assurance Framework	DAVID GOMEZ	1.1	16/7/13	n/a	n/a
		1.2		17/2/14	Incorporating drafting comments from Jenny White and comments from Chair of PCC set out in letter of 20/10/13

Comments from Chair of PCC on draft Quality Assurance Framework – version presented to OPC on 19 September 2013

General comment
This is a welcome initiative by the GOsC. It has the potential to improve performance of the fitness to practise system in the public interest. It is also commendable in its openness to feedback from a number of sources. For the initiative to be fully productive it is important that priority is given to the assessment of quality as well as the more quantitative aspect of performance. The latter is easier to measure but does not necessarily go to the fundamentals of performance in the pursuit of fairness and the interests of justice.

Specific comments
Role of Regulation Department, section 2, page 5: the Department's important role in the *prosecution* of cases is not mentioned; there is reference only to investigation. This absence, which is reflected in the document as a whole, leads to the proposed quality framework being less well-balanced than, I suggest, it needs to be. A higher profile and priority for the GOsC's prosecution function is essential to the achievement of better balance.

Legislative Basis, section 3, page 6: this section states that the Investigating Committee uses the 'real prospect test' to decide if there is a case to answer. These are two different tests with real prospect representing a higher threshold than case to answer. In another hat for another regulatory body, I am aware of two leading counsel opinions which are clear in stating that the real prospect test cannot lawfully be applied in deciding whether there is a case to answer under legislation which requires a case to answer decision for referral to the PCC. Perhaps the GOsC has received different leading counsel opinion.

This section does not explain, as it should, the status of the PCC (and the IC and HC) as independent adjudicator in individual cases exercising its discretion independently of the GOsC operating in its investigation and prosecution roles and, in support of this, with a membership which does not include members of the Council. As a result, the impression may be created that the PCC is part and parcel of the executive arm of the GOsC; I think there is a risk of this. The text should make clear the proper distance between the PCC working within the law and GOsC guidance and the executive arm of the GOsC investigating and prosecuting cases, with all parts overseen by the GOsC Council which is not able to intervene in individual cases.

PSA feedback, section 4, page 7: the text describing the PSA's legal remit refers correctly to decisions which it believes are 'unduly lenient' and 'which it considers should not have been made' but omits the important provision which follows, viz. '*and it would be desirable for the protection of members of the public to take action under this section*, the Council may refer the case to the relevant court' (which of course is not the High Court in Scotland, which it may be well to make clear, particularly in this pre-referendum year). I suggest that a brief reference to this is added.

'Our Quality Policy'" section 6, page 8: '… and committee members have the right skills *and support* for their respective roles.' Support to their role, from the GOsC in particular, is important in facilitating PCC and Committee members' performance.

'Our Quality Objectives and How We Measure Them', section 7, page 8 et seq: there is no sub-section with quality objectives covering the *prosecution* of cases referred to the PCC. This is a significant gap in the Framework. The GOsC relies in substantial part on the Regulation Department's important prosecution role for the successful delivery of its statutory fitness to practise responsibility. This gap should be filled by, for example, measures on whether evidence is presented on all parts and particulars of the Allegation, observation of prosecution performance in terms of examination-in-chief, re-examination, cross-examination and submissions, and facts/UPC/ professional incompetence/material criminal conviction alleged found proved. These latter measures should not be applied to the PCC alone as the GOsC relies on the prosecution to prove the facts … not on the PCC whose performance should be assessed in terms of adjudication not prosecution success. This is a substantial issue in relation to the proposed Framework which needs to be addressed to ensure the Framework is properly balanced which, in my view, it is not as yet. Chairs' feedback reports do give feedback on prosecution performance and the consistency with which it is given would be assisted by the addition of a box dedicated to prosecution performance.

There is no quality objective on pre-hearing arrangements. It is important that there is. An example of a relevant measure is 'no non-compliance by either of the parties with the statutory and other time limits laid down in the Practice Note'. Application for the admission of late documents is a factor in delay as application has to be made, the other party may need to take instructions before responding and then the Committee needs to decide and may need to give reasons, particularly if the application is disputed. Efforts are made to minimize this source of delay but an application when made must be addressed properly as well as pragmatically.

'b. The hearing process': there should be an additional quality objective, viz. 'Sufficient days are allocated to each case to allow a just determination within the allocation'. The absence of days allocated as a key aspect of quality of performance is a significant gap which should be filled. Success should not be judged on 'Making effective use of time' alone as this would not assist balanced conclusions. The chairs' post-hearing forms give feedback which is available to use in a measure of performance against an objective of this kind, for example no negative feedback on days allocated.

'Number of part heard cases' is not an appropriate measure of 'making effective use of time' on its own; it should be a measure which assesses both effective use of time and adequacy of days allocated. The recent [REDACTED] hearing amply demonstrates this point. This is a point to which the PCC attaches importance.

'Making effective use of time' is defined in a quantitative not qualitative way. 'Parties compliance with time estimate and hearing timetable' may be useful as a measure of

the use of time but it says little if anything about the effectiveness of that use. The quality objective is, I suggest, to present/test/weigh the evidence and reach conclusions on the allegation effectively. Assessing this requires a more qualitative measure than quantitative compliance with a timetable which is not even a proxy measure for quality. I suggest that this quality objective should be amended to include qualitative as well as quantitative aspects of the effectiveness with which hearing time is used.

'c. Decision-making by Committees" (page 11 et seq): I am not convinced by the first six quality objectives proposed here which are a mix of inputs and outputs and, as a result, lack coherence. I suggest that the quality objective should focus on the *adequacy of reasons* given for: (a) findings of fact; (b) UPC, professional incompetence or criminal conviction; and (c) sanction. This is the real quality issue and its assessment requires the application of criteria to notices of decision, a few of which are in the first six proposed quality objectives.

At a more detailed level, it is not at all clear why the distinction is made between 'Give sufficient reason for preferring the evidence of one party over another' (which, in any event, is not a consideration in all cases, though a common one) and 'Give sufficient reasons for findings and sanction'. Reasons are a mix more often than not and this would be an artificial distinction in many cases.

I suggest that the target of 'No appeals' should be amended to 'No *successful* appeals'. Unjustified appeals are made and the fact of an appeal should not be taken as significant until its outcome is known. I understand the sensitivity around the cost of an appeal but this premise should not lead to the conclusion that all appeals can somehow be avoided if only our performance was good enough. I assume that the quality of the GOsC's representation in appeals will be assessed; is this the case?

Section 10, 'The tools and mechanisms we use to achieve our quality objectives (page 15 et seq): Page 18, '*Quarterly* meeting between Chair, Chief Executive and Chairs of IC & PCC'? An annual review meeting has been introduced. Is this the intended reference? Quarterly would not be appropriate given the need to be seen to uphold the separation of function and is unnecessary in any event.

Page 18, External audit mechanisms, 'Committee observing undertaken by external firms': I am sure that the PCC will appreciate being consulted on the proposed methodology and assessment criteria for this new form of audit.

Page 20, 'Post PCC case review – to review evidence bundles, transcripts and decision notices against agreed criteria': The objective of these reviews is not made explicit; what is their purpose? Again, I am sure that the PCC will appreciate being consulted on the proposed methodology and assessment criteria. This does seem a particularly resource intensive proposal given its inclusion of transcripts as well as bundles and decision notices.

David Plank
Chair, Professional Conduct Committee