

COUNCIL

Professional Standards Authority (PSA) performance review 2016/17

Meeting: 14 November 2018

Status: for noting

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Purpose

1. To set out the outcome of our PSA performance review for the period October 2016 to September 2017¹.

Recommendations

2. Council is asked to **note** the PSA's assessment of our performance and our work in engaging with the review process.

Risks

3. The PSA, as our oversight body, judges our performance against its 24 Standards of Good Regulation. The performance review process can help to highlight areas where we need to improve to better protect the public. However, failing standards does carry a reputational risk and can undermine stakeholders' confidence in us. We mitigate this risk by clearly explaining how we plan to improve in these areas. On the other hand, a positive review creates an opportunity to boost confidence in our work.

Strategic Objective

4. The PSA's review of our performance helps us to assess whether we are achieving our strategic objectives and fulfilling our overarching duty to protect the public. These objectives cover the learning and development of optical professionals, a targeted approach to regulation and organisational transformation.

Background

5. The PSA oversees our work and that of the eight other UK healthcare professional regulators. Every year the PSA conducts a performance review of the regulators it oversees. The PSA published its report on our 2016/17 performance on 28 September 2018.

¹ : https://www.professionalstandards.org.uk/docs/default-source/publications/performance-reviews/performance-review---goc-2016-17.pdf?sfvrsn=eda27520_9

Analysis

6. We have met 22 of the PSA's 24 standards of good regulation. This is the same as the PSA's last performance review (2015-16) although the standards we met were not the same ones. This year we passed the tenth fitness to practise standard (information governance) when we had not done so previously; but we did not pass the first FTP standard due to PSA concerns with how we recorded triaged decisions. We failed the sixth FTP standard, around overall timeliness of the complaints process, for the third year running.
7. As part of the review, the PSA audited a sample of our FTP cases from 2017. This was the first time we had been audited since 2011 and involved five members of the PSA's staff coming to our offices for a four-week period to conduct the audit.

The tenth fitness to practise standard, around information governance

8. We have continued to make improvements in our information governance processes and this has led to us meeting the standard this year. The ICO and internal auditors have both acknowledged these improvements as well as the PSA.
9. We have actively encouraged a culture of openness and transparency internally and externally regarding information governance and breach reporting. This was in part, preparation for implementation of the General Data Protection Regulation (GDPR). We have taken on board the lessons learned as part of our overall breach reporting process and this has enabled us to improve and strengthen our policy and processes.
10. The two standards we did not pass were:

The sixth fitness to practise standard, around the end-to-end time of the fitness to practise process

11. We know that meeting this standard is a longer-term challenge for us but we are confident that the components for tackling this are mostly in place, including:
 - 11.1 the Case Progression Team has just been expanded and restructured. Additional caseworker resource in FTP (which is now in place) will significantly drive down timescales at Triage and Investigation stages over the next nine months;
 - 11.2 over the past year we have stripped away all extraneous functions (e.g. Triage, interim order work) from Investigation Officers so that they are now solely focused on the progression of substantive cases;
 - 11.3 we have freed up Investigation Manager time to enable us to improve and enhance our management control systems;

- 11.4 ongoing enhancements to CRM are enabling us to further improve the way we use the system to support FTP case management (improved task management functions for example);
 - 11.5 the introduction of additional in-house advocates will support the high-quality frontloading of cases, which will accelerate cases through the process if they are referred to the FTPC;
 - 11.6 we have expanded our expert witness pool (non-availability of experts was a significant problem previously);
 - 11.7 we have introduced Acceptance Criteria which provides a more robust framework for our decision-making in terms of allegations that are accepted for investigation. Although not designed for that purpose, there is an expectation that the criteria will prevent some lower-level cases from entering the system, enabling resources to be appropriately focused on cases where a fitness to practise concern is raised. We continue to work closely with the OCCS in this regard; and
 - 11.8 we have introduced Consensual Panel Disposal of cases. This is expected to only impact a small number of cases, but these are likely to be cases that could otherwise remain in the system for a long time (e.g. health cases).
12. We also continue to make the case that there are certain areas where legislative change would further help us to improve the efficiency of the FTP process.
13. We are also conscious that there are customer service issues arising from delays in progressing cases. Although some of these will naturally be mitigated by improving timescales, we have taken, or are taking, an additional range of measures to improve customer service:
- 13.1 we moved to a system of end-to-end (E2E) casework on 5 November. This means that cases will stay with the original caseworker throughout the entire process. This will provide complainants, witnesses and registrants with a single point of contact, including case officers attending hearings to provide additional witness support;
 - 13.2 we are reviewing and improving our communications to complainants, witnesses and registrants, post-referral to the FTPC (as we develop new processes for the implementation of in-house advocacy for substantive cases);
 - 13.3 we have recently designed and implemented an online virtual tour of the GOC hearings suite to allow witnesses and registrants the opportunity to see what the venue looks like, and to understand the role of the various participants; and
 - 13.4 we are close to implementing a system of undertaking (consensual) interim order reviews 'on the papers', meaning that registrants and their representatives do not have to attend review hearings if they don't wish to.

14. The review also raised concerns relating to the how the GOC assesses risk and the frequency of recorded risk assessments. We have accepted that we can improve in this area and arising from this we have commenced a 'root and branch' review of our risk assessment processes that will report by the end of the year, with changes implemented in January.

The first fitness to practise standard, around how we receive complaints.

15. This predominantly related to how we recorded FTP triage decisions, leading to a lack of assurance that all fitness to practise concerns were being captured and investigated. We do not accept any failure to investigate fitness to practise concerns, but we do accept that the recording of decisions could have been clearer. We are confident that improvements we made to our triage decision-making form in November 2017 has already addressed the Authority's concerns in this area.
16. Triage decisions are already subject to at least two layers of consideration. With the implementation of Acceptance Criteria, within which we have provided for a complainant and registrant right of review of Triage decisions, there will be additional scrutiny by the Director of FTP of disputed decisions.
17. We are also increasing the number of Triage control checks being undertaken by the Triage Manager. We have also asked our independent external auditor to include a review of Triage decision-making in future audits.

Other issues

18. The PSA also suggested the Love Your Lenses campaign represented a conflict of interest in that it involved working with industry stakeholders, although this did not result in a failed standard. We disagree with the PSA's analysis of this issue, the campaign being part of our illegal practice strategy and directly linked to our public protection role. Our viewpoint was reflected within the relevant section of the report.
19. The PSA has now run two consultations on the future of the performance review process – the first on the process itself and the second on standards of good regulation. We expect the new process to be implemented next year. We are generally supportive of the proposals on which they consulted, which have consolidated some of the existing standards while adding others in areas such as governance, and equality, diversity and fairness. They are also proposing to remove the standard on information governance as the ICO considers this.
20. We have suggested some improvements as part of our response and would like to see the PSA introduce a more nuanced system of grading than pass/fail, perhaps with four grades similar to a CQC/OFSTED model. We would also like

the reports to do more to promote good practice and allow us to learn from other regulators' successes.

Impacts

21. This work has the following implications:
- GOC reserves, budget and resources – we believe we have adequately budgeted to address the PSA's concerns raised in the report;
 - legislation – we have repeatedly made the point that in certain areas, especially FTP, legislative change would help us meet certain standards; and
 - equality and diversity and Human Rights Act – no known implications.

Devolved Nations

22. The PSA's remit is UK-wide and we have shared with them the good work we are doing to engage with stakeholders in, and take account of issues specific to, the devolved nations.

Communications

23. We sent a press release about the review to our stakeholders and the trade press welcoming the review, setting out our improvement plans against the two standards we failed and reiterating our call for legislative reform.

Timeline for future work

24. The next PSA performance review will cover the 13-month period 1 October 2017 – 31 October 2018. We have already provided the PSA with some initial information and we expect to hear from them before Christmas in respect of whether we will be subject to a targeted review next year. Given that we failed two standards this year, we would expect as a minimum that those two standards would be subject to review. We are aware that some stakeholders have already provided third party feedback to the PSA as part of this process.