

COUNCIL

**Fitness to Practise (FtP) Performance Update**

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**Meeting:** 13 May 2020

**Status:** For noting

**Lead responsibility:** Dionne Spence (Director of Casework and Resolutions)  
**Paper Author:** Keith Watts (Head of Case Progression)  
**Council Lead:** Helen Tilley

**Purpose**

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1. To provide Council with an update on progress against our revised 2019-2020 performance projections, and a remodelled set of expectations for 2020-2021.

**Recommendations**

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2. Council are asked to **note** the contents of this paper.

**Strategic objective**

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3. This work is included in our 2019/20 Business Plan and contributes towards the achievement of the following 2020-25 strategic objectives: transforming customer service and continuous improvement.

**Background**

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4. The Professional Standards Authority (PSA) carries out an annual performance assessment on the healthcare regulators' effectiveness in protecting the public and promoting confidence in the profession. Ten of the 24 standards apply to FtP and although we have performed well against the other standards, over the last four reviews we have not met the standard for the timely progression of cases.
5. In July 2019, we presented our formal programme of improvement work, in part to ensure we work to an operational model that delivers on our regulatory functions, improves efficiency and improves the user journey through what can be a very traumatic and emotional process for all involved.
6. We focused on streamlining our end-to-end processes, minimising repetition and applying a continuous review of the risk to public health and the public interest. This requires an approach which is proportionate to each complaint, that is simple, speedy and fair to all parties. The annual update on progress against the FtP improvement programme is due to be shared with Council in July 2020.
7. Also in July 2019, we provided Council with our revised projections of FtP performance through to 31 March 2020 and this paper seeks to provide the year end

achievement against those projections along with our revised forecasts through to March 2021.

8. It is appropriate within this paper to report a miscalculation in data presented to Council regarding Q2's closed case median. We reported in November and February that this had dipped to 97 weeks before rising, when in fact it had risen, in line with the projections stated in July to 111 weeks.
9. In late March of this year we identified an issue with our CRM reporting scripts which were found to have miscalculated the age of a portion of our open cases. On average, the error added an average of 19 weeks on about a third of our open stock, although individually ranged from between two weeks and 69 weeks. While this continues to be investigated we have reverted to a manual counting system with appropriate assurance checks. The data and projections provided in this paper are based off those calculations.

## Analysis

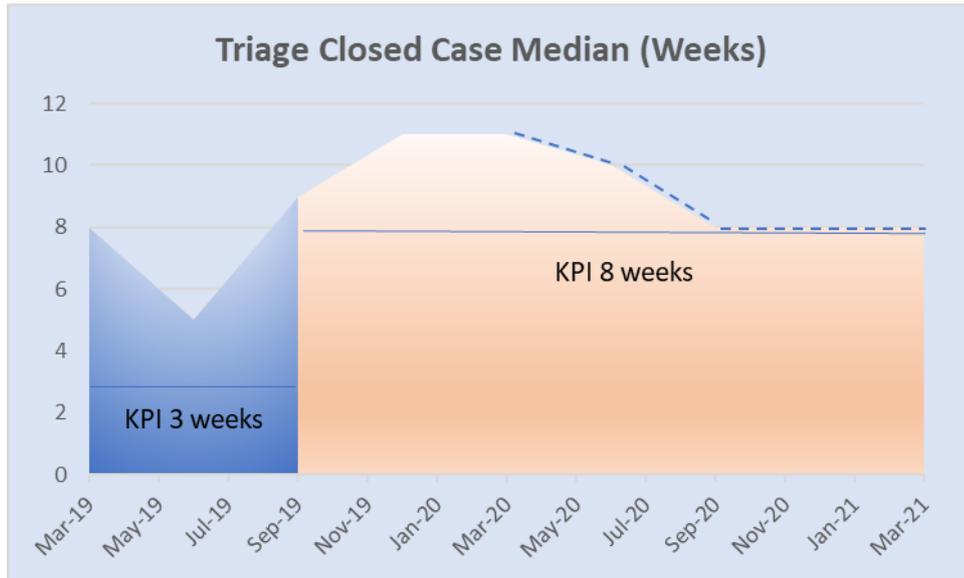
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### Stage One: Triage

10. Council will recall that our approach to decision-making in Triage had historically been low risk, with the determination as to whether alleged misconduct amounts to serious professional misconduct generally being left to case examiners following an investigation process. In 2018-19, this approach resulted in 84 per cent of investigations being closed 'on the papers' by case examiners.
11. In July 2019, we revised our Acceptance Criteria to provide further clarity and support for the Triage team to filter out very low-level complaints - issues that, even at their highest, could never amount to impaired fitness to practise. Off the back of that, in September 2019, we commenced a four-month pilot of a revised Triage process. This new process expanded the enquiries undertaken at Triage stage, to include, where appropriate, patient or other records, clinical or legal input, employer input and registrant input regarding any remediation already sought.
12. The reform of our Triage function has been very successful, and we are delighted with the positive indicators, which include:
  - 45 cases closed at Triage between 1 September 2019 and 24 April 2020 that would previously have led to formal investigation.
  - Only 43% of concerns received were opened in Q2-Q4 of 2019-2020, against 81% for the same period the previous year.
  - With only 31 new investigations opened in the final quarter, this will continue to help decrease our investigation caseload as described in the performance section below.

13. To mitigate any risk introduced by the new criteria and processes, we hold regular meetings with our independent mediation service, the Optical Consumer Complaints Service (OCCS), to discuss complaints that are unlikely to reach the threshold for a fitness to practise investigation, but where the OCCS may be able to assist the complainant in achieving an acceptable outcome through mediation with the optical practice. This has been helpful when it is not initially clear whether there is a regulatory concern and where the complainant would not be best served by a lengthy fitness to practise investigation. This approach supports us in keeping lower-level concerns out of FtP, thus minimising the impact on registrants of opening a formal FtP investigation.
14. We have also introduced a process where decisions not to open a formal investigation can be reviewed by the Director at the request of either party and we have also arranged for our independent auditor to review a sample of Triage decisions as part of the annual audit of FtP decisions.
15. Since July 2019, we have reduced the number of cases open at Triage, from 103 at to 77. Keeping the number of open cases under control (we cannot of course control what comes through the door), and reducing it further, is critical to both open and closed case median performance.
16. In the six months to 31 March 2020 we made 199 Triage decisions. As the process bedded in, the number of decisions to open a formal investigation decreased from 42 per cent in Q3, to 28 per cent in Q4. Although all decisions are dependent upon the nature of the allegation, we expect these lower numbers to continue. This means that, unless the number and nature of the complaints we receive were to change significantly, there will be a sustained positive impact on the investigation caseload.
17. During 2019-20, our open Triage case median fluctuated, from a low of seven weeks at the start of the period, to a high of 19 weeks at the end of Q2. We are pleased that we have since reduced this to eight weeks at 31 March 2020. This is in line with our revised closure KPI of eight weeks for the new Triage process. However, we recognise that the guaranteed achievement of the eight-week closure median is dependent upon us further reducing the open median. We have therefore set ourselves an expectation of reducing the open median to six weeks or less and maintaining it at this level.
18. Performance in respect of the time taken to make Triage decisions fluctuated during the past year, with a final annual median of 11 weeks. However, the improved open case median age gives us an improved starting position, so our forecast is that we expect to achieve, maintain and potentially improve on the eight-week closed case median objective this year (figure one).

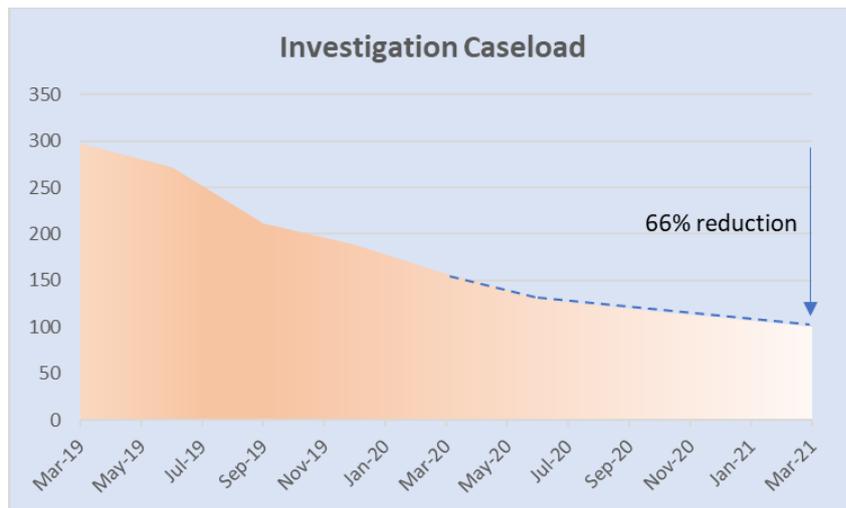
Figure One:



**Stage Two: Investigation**

19. In July 2019, we had an open caseload in investigations of 272 complaints and forecast that we would reduce this to below 200 cases by 31 March 2020. We far exceeded this forecast, with a final caseload on that date of 157 cases. At the time of writing, the caseload is down further, to 147 and confidently forecast a further reduction down to 100 cases over the next reporting year (figure two).

Figure Two:

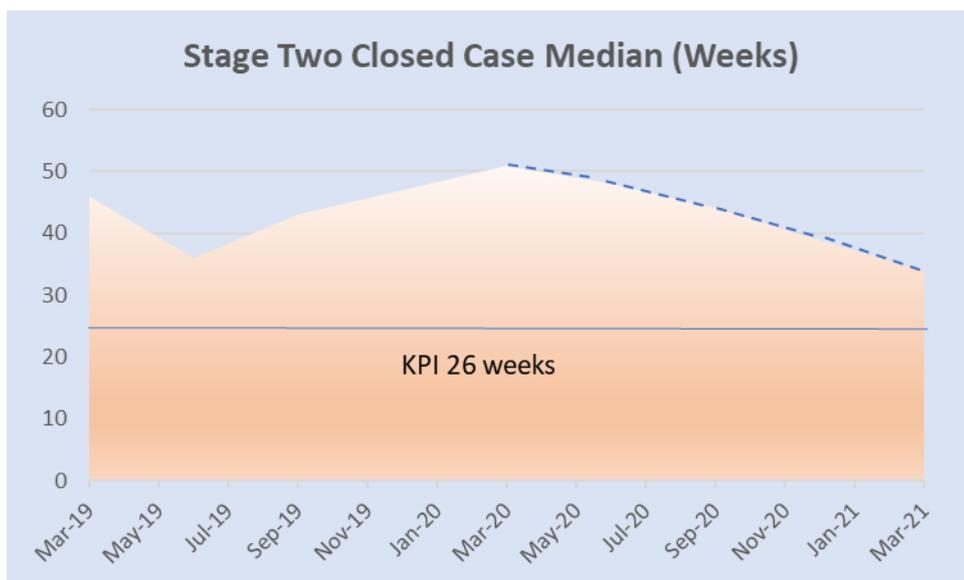


20. Where we were less accurate with our July 2019 forecast was in respect of the median age of the open investigation cases. We significantly underestimated the extent to which the push to reduce case numbers would result in a residual caseload comprising a significant rump of older, more complex cases. Adding to this the

positive impact of the revised Triage process (less new, younger, cases coming into stage two) has resulted in a much reduced, but older, investigation caseload.

21. However, over the past two months we have seen the median age of the open cases starting to reduce and our forecasting (which factors in the progress of new cases we will receive) for the year ahead indicates that we will continue to see this reduce further, we project down to approximately 30 weeks, much closer to the investigation stage KPI of 26 weeks.
22. Regarding the closed case KPI of 26 weeks, we have been consistently well short of this for some time, with the 2019-20 median being 47 weeks. In line with our forecast that the open median will improve significantly, and despite the number of older cases currently at stage two, we expect the median time for cases to complete stage two to reduce significantly. This is because the current older cases will be balanced by the swifter progression of new cases coming into the system in the first half of the year.
23. Although our forecasting indicates that achievement of the 26-week KPI is possible, we must anticipate some impact from the Covid-19 crisis (delays obtaining patient records/expert reports) and are therefore forecasting that our median will reduce to 34 weeks (figure three). Although not quite at KPI level, an open case median at this level will put us in excellent position for achievement of the end-to-end KPI in early 2021-22.

Figure Three:



24. We have set an objective in our Business Plan for case examiners to make 210 decisions in 2020-21. This is significantly less than the 313 made in the previous year and reflects that there are now substantially less cases in the system for case examiners to deal with.

25. We expect the rate of referral of cases to the FTPC to increase this year from 23 per cent in March 2020, towards 30 per cent, or possibly slightly higher. This is a welcome increase as it will reflect that the (reduced) investigation caseload contains a higher proportion of more serious cases than it did prior to the new Triage process being piloted.

### **Stage Three: Case Preparation (Referred to FTPC)**

26. We identified in our July 2019 forecasting that this stage has historically been a part of the process where we have struggled to expedite cases (median of 35 weeks for this stage in 2018-19). Although there has been some limited improvement since then (median of 28 weeks for 2019-20), we are still not progressing cases to our desired standard of ten weeks (median).
27. However, with the stage two caseload hugely reduced, stage three is now our primary focus. We are holding weekly stage three case clinics to review and progress cases and we have reflected this focus in our forecast that, by 31 March 2021, stage three will have a much reduced caseload and will have become the expedited process that we have been working towards since we first introduced the frontloading of cases at stage two.
28. The current split of FTPC-referred cases is 60 - 40 (stage three v stage four). We need this split to swing significantly in the other direction, to an end-of-year split of 30 – 70.
29. We recognise that there is a different skill-set required for preparing allegations for a hearing over the presentation of information for a case examiner decision and so are reviewing stage three procedures with a view to enhancing in-house knowledge of the process in order to progress cases more swiftly and confidently at this stage.

### **Stage Four: FTPC Hearings**

30. Our hearings KPI is to achieve a median of 39 weeks from the date the case is served on hearings to its conclusion. During 2018-19 we achieved a median of 30 weeks, and in 2019-20 through a combination of more robust scheduling practices and increased committee and we reduced this further to 25 weeks. We were expecting our median number to increase in 2020-21, to around 28 weeks, based on the older referrals that are currently in stage four. However, given the cases that have already postponed due to the coronavirus outbreak, we have increased this to 34 weeks but are mindful that we do not yet know the impact of the emergency, particularly as we are receiving more applications to adjourn our substantive matters until such time that we may be back at 10 Old Bailey.

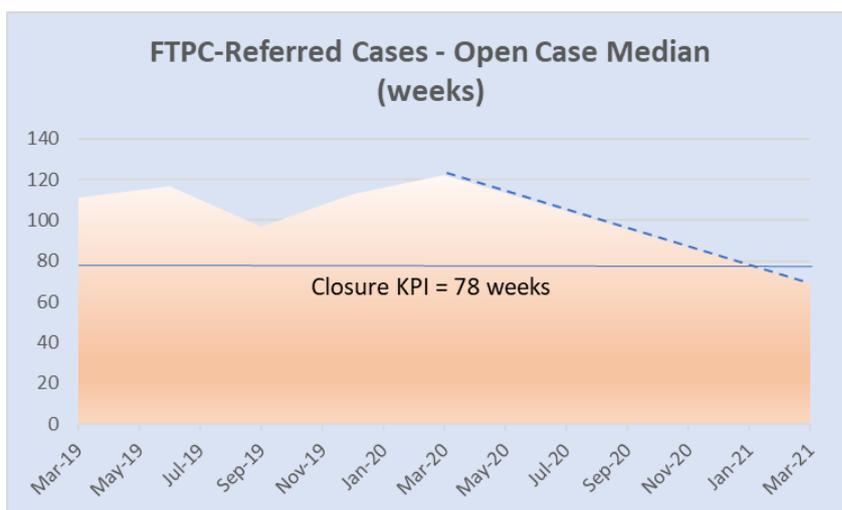
31. At our previous update, Council were informed that one third of our oldest cases in Hearings were on hold, due primarily to linked cases working their way through the process. All these cases were scheduled and due to conclude by the end of Q4. All the hearings commenced however following the Coronavirus outbreak, a few of these hearings did not conclude and have been postponed to a later date, which will naturally affect our end-to-end median timescales.
32. In order to improve end-to-end KPI performance by Q2-3 of 2020-21, we increased the number of FtPC hearings we needed to conclude in our business plan from 46 to 49. We did not meet the increased stage four closure target primarily due to the projected number of stage three disclosures not materialising which impacted on our ability to schedule the required increase in hearings. We were also affected late in the year with a small number of events not concluding as expected during March.
33. The effect of the Coronavirus outbreak resulted in several substantive hearings being postponed or adjourned. We have been proceeding with straightforward substantive hearings remotely and closed two cases in Q4 of 2019-20, and one so far in Q1 of 2020-21. We are able to run more substantive hearings through Q1 and Q2 but this is subject to the cases being suitable to proceed via a remote hearing. Council has a separate paper on guidance for our committees during this time which also sets out the potential impact on our Hearings budget for 2020-21 and beyond. We are currently finding that in these early days, remote events can 30 - 50 per cent longer to complete than physical hearings, however, hope that the successful implementation of our case management procedure, and the savings in member expenses, will help counterbalance some of these increased estimates and costs.
34. We were planning to complete 60 substantive events in 2020-2021. However, given the immediate impact of the Coronavirus outbreak on existing hearings and the ability to finalise some investigations, there is already a risk that this may not be met, and we are (subject to how long the lockdown lasts) now projecting that we will resolve between 46 and 50 substantive events. This is still a 10 to 20 per cent increase on achievements from 2019-20 but is more realistic in the current climate. In order to achieve this however, we require an additional 27 cases to be disclosed on Hearings before the end of September 2020, hence the focus on stage three.

### **End-to-End**

35. Reducing the time taken to proceed all the way through to a concluded FTFC hearing remains our biggest challenge and as projected has increased for the year end. The closure median for 2019-20 was 120 weeks, against our closed KPI of 78 weeks.
36. Following the outbreak, we have undertaken a further detailed analysis of the current (all stages) caseload to plot the likely progression of cases through system in the

coming 12 months, including anticipated new cases. Given the current age profile of the existing open cases at stages two, three and four, and assuming a three to six month impact on our ability to progress and schedule as we might have pre-Covid, we are now concerned that there will be no significant improvement in the end to end closed case median by the end of March 2020, reducing by weeks, rather than months, but potentially, presenting as an initial dip, and then a further increase.

- 37. However, our forecast (figure four) is that the progression of older cases through the system this year will reduce the median age of our open FTPC-referred caseload, from 122 weeks to 69 weeks (with the median age at stage four being 77 weeks).



- 38. If we achieve our forecast with regard to the age of the open FtPC-referred cases, this will mean that achievement of the 78-week end-to-end closure KPI during early 2021-22 remains likely.
- 39. We have undertaken further detailed analysis of our current caseload, and our anticipated caseload, in order to produce projections for our expected outputs this year, in respect of the volume and age of the open caseload, and the time taken to progress cases through the end-to-end process. We have also reflected on those areas where performance has not been at the level we aspire to and this has led to a refocusing of our priorities for the immediate future.
- 40. We have applied a small degree of ‘smoothing’ the projection data, to allow for potential impacts arising from the Covid-19 emergency. This is mostly relevant to investigation stage, where delays are likely to be encountered in obtaining optical and hospital records, and to the hearings stage where some hearings may be adjourned or delayed. However, as we are projecting 12 months ahead, we have proceeded on an assumption that there will be a period of relative normality during which we will regain some of the ground that is lost in the current quarter.

**Overall**

41. In summary, the forecast for 31 March 2021 in respect of our open caseload is very positive, in that it will have reduced further in size and it will be significantly younger than it is currently. We will also make significant progress against our KPIs for progressing cases through stages one, two and three, and we expect to maintain performance in managing cases to a FTPC hearing at stage four. However, the one area where we forecast that our KPI performance will remain stubbornly high is for the end-to-end median (KPI target of 78 weeks). This is an ongoing reflection of the push to get all the older cases through the system – for each success here the median increases.
42. In order to provide more transparency for Council with regard to the direction of travel over the next year, we are introducing a further quarterly performance indicator. This will address the percentage of cases we expect to resolve within 78-weeks and will include the decisions of our case examiners.

### **Finance**

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43. The forecast improvements in case progression are all contained within the 2020-21 budget approved by Council in February.

### **Risks**

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44. There are no recommendations within this paper, and therefore no risks to be discussed. Risks associated with the issues within this paper are highlighted within the analysis above.

### **Equality Impacts**

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45. An impact assessment (EIA) has been completed in respect of the FTP Improvement Programme. The potential positive impacts are discussed in this paper. Potential negative aspects are:
  - Triage improvements lead to a perception that the GOC does not encourage FtP complaints.
  - Management of sensitive personal data within the EDI workstream requires careful handling and communications.

### **Devolved nations**

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46. There are no identified issues for the devolved nations.

### **Other Impacts**

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47. No other impacts have been identified arising from the Improvement Programme.

## **Communications**

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### **External communications**

48. There are no specific communications arising from this paper, although we will be updating, and consulting, stakeholders as indicated in the Improvement Programme section.

### **Internal communications**

49. There are no planned internal communications at present.

### **Next steps**

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27. We will provide Council with an update in respect of the broader improvement programme at the July meeting. A fuller performance update will be provided at the November Council meeting.

### **Attachments**

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Annex one: Updated FtP Performance Forecast Chart.