Academy of PHYSICAL MEDICINE

Transcript

Fitness to Practice

Cast List

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Steven: We live in an age where it's increasingly apparent that people resort to litigation early on. We live in a 'blame culture' some would say. And that is probably becoming very apparent, particularly to chiropractors at the moment, but also to osteopaths; not in the least thanks to the Good Thinking Society.

But complaints are increasing: lots of people are going through the Fitness To Practice process, going in front of the Professional Conduct Committees. And what we want to do, this evening, is to address why

that happens, what the process is and, perhaps, explore opportunities to make the process better in some ways. That may be over-optimistic of me, but let's see where we go this evening.

As I said earlier, I've got a panel of experts around me, so let me introduce them:

On my right, Tim Walker. A regular on our panel. I think this is your third or fourth time, is it?

Tim: Third-

Steven: Third time, on a panel. He is, of course, the Chief Executive and Registrar at the General Osteopathic Council. He's been there for eight years, and this is almost his swansong because he's about the leave for pastures new and, according to the Chair of the Council at the GOSC, you've done, "a damned good job."

But it's great to have you back, Tim. Thank you for joining us.

Tim Walker: Thanks.

Steven: With Tim is Sheleen McCormack. Sheleen is a barrister, and his head of Fitness To Practice, so has a close interest in how these matters go on.

Welcome to you too, Sheleen.

Sheleen: Thank you.

Steven: And representing the GCC, we have Niru Uddin, who is also a barrister. Also, the Head of Fitness to Practice, and is also Head of Investigations, I believe. She's been there for three years, has quite a background in regulatory matters, including, at the General Pharmaceutical Council, and the General Optical Council; so a lot of expertise. And, no doubt, getting a lot of experience with the current bevy of complaints that are going through.

Niru, great to have you with us.

Niru: Thank you.

Steven: If I move a little bit further over to my left many of you will recognize, Maurice Cheng, Chief Exec of the Institute of Osteopathy. Great orator, well known singer, and looks very dashing in a kilt! But it's great to have you back with us, Maurice.

Maurice obviously has overall responsibility for what goes on at the Institute of Osteopathy; the trade body for all the osteopaths, if you like. But he's joined by Georgina Leelodharry who is his Head of Operations, and she has the day-to-day responsibility for helping out osteopaths who are subject to the complaints process.

And right at the left hand end of our panel I have, Berni Martin. Berni's got here by the skin of her teeth, thanks to train delays on the way up from Portsmouth. But it's great to have you with us Berni. Berni's President of the McTimoney Chiropractic Association, but is here today representing the Alliance of UK Chiropractors, which is a tripartite organization, probably, the largest representative body of chiropractors in the country.

And, on my immediate left, I have Jonathan Goldring. Jonathan is a regulatory lawyer, a barrister. He, at one time, was the legal assessor for the General Osteopathic Council: that's the bloke who sits in on the PCCs and makes sure that they make their decisions in accordance with the law, and I'm sure had lots of other responsibilities, there, as well. He now acts in defense of Registrants, from both the chiropractic and osteopathic professions, in their dealings with the PCC, and so on.

Is that fair Jonathan?

Jonathan: That's a fair assumption.

Steven: It is ... great.

So, what I want to see ... what do I want to do this evening? I've kind of outlined that. But I want to do, first of all, is to start with a story from an osteopath who was acquitted after two years. But just to give you an idea of what that process felt like for him.

And this is Badrul Huda's story:

Badrul Huda: My name is Dr. Huda. I live in Jersey, and I'm an osteopath, acupuncturist and colonic hydrotherapist. I've been practicing all these therapies for the last 30 years. And I used to have a thriving practice in Jersey, Guernsey, and in Cornwall.

This complaint was not generated by a patient. It was generated by a consultant psychiatrist in Jersey. The consultant made the complaint with the Safeguarding Board in Jersey. And the Safeguarding Board, obviously, has to take over the complaint, and they went to the GOSC, and I just received a registered letter from the General Osteopathic Council. And there was a whole lot of different documents, and the Charge Sheet, saying that "You are charged with professional

misconduct and professional incompetence." And there were nine different allegations listed. All nine allegations seemed totally ridiculous to me, and I was feeling more angry then.

But, for example, I was, "On my letterhead, I was calling myself General Practitioner." Well, it was very simple to prove because I've got leaflets in my reception, and none of them has actually mentioned anything about General Practitioner. Also, "I was calling myself a practitioner ... General Practitioner on my website." Well, that's easy to prove, because I don't manage my website. My website is managed by an outside source. And the third one was "During a colonic procedure, I left my ... finishing on the colonic table with the machine connected." And I said, "Oh, can you sort yourself out because I've got to attend a meeting somewhere? And, "Please lock the door behind me?" And it is an impossible task if you're a colonic hydrotherapist.

And another thing is "You were treating an anorexic patient with colonic hydrotherapies, and giving this patient a colon cleanse medication. You did not take an adequate medical history." Which his ridiculous because I use [Rushcliff] software and I record everything, which is easy to prove: just give them a copy of it.

So I was given 28 days to reply. I replied within 48 hours, because I knew I had proof of every single one of the documents. And within three days, I had a letter back from General Osteopathic Council, saying, "I need to attend a meeting before the Investigation Committee for possible suspension." Within two weeks I was at the ICC hearing. I was represented by the solicitor appointed by my insurance company. And I got suspended 'to protect the public' without them hearing any of the facts. And I provided the right documents. I provided the documents from my website manager. I provided all the leaflets. I provided them with the man's medical history form. But they took no notice of anything.

So I had two months' suspension pending their investigation. And then, as the two months was expiring, they pulled me up for a further 18 months' suspension. And the outcome of that meeting was they did not have any prima facie case against me, but they would leave the case open for GOSC to find evidence. And they immediately re-instated my professional ... my license. And, also, there was an internet alert that immediately raises any internet alert against me. Also, my name was published in the GOSC website with all the allegations, so anybody who was looking for an osteopath, like, in Jersey, they will see three osteopaths, Badrul Huda and, next to me was an undertaking. So you click on the undertaking and you see everything. My alert is is for two years, just over two years.

My barrister asked them, "Why has it taken GOSC to take all this time to take all this time to conclude, to bring it to this stage?" And there answer was, "That they had an awful lot of investigations to do."

It has affected me, because we live in a village, everybody knows everybody. And I lived in Jersey for 37 years, so everybody knows me, and the fact that this happened, people immediately think, "There's no smoke without fire." So that is has affected my business massively. And, obviously, stress-wise it affected my family. And just financially. And I used to see ... to give you an example, I used to see between seven or eight new patients a week. , probably get, about, barely two new patients a month.

Steven: Now, I want to make this clear before I open the discussion that what you've just been watching, there, is just one practitioner's story. It's his perspective on what happened to him as a result of the complaints process. We are not here to discuss any individual complaint itself, because it would be unfair on everybody here, if they were asked to comment on people's personal experiences on this. This is the wrong forum for that.

But there are some interesting points that come out of what Badrul had to say, and they are also reflected in several of the other cases that I've looked at and, probably, many others. One is: that it took two years for this to finally be resolved at the PCC; the Professional Conduct Committee. For the first two months he was suspended and, actually, there are others who've been suspended for longer than that, with the obvious effect upon their business, their reputation, and their business after the suspension is lifted because they've got to rebuild it, they've got to reestablish that reputation.

In Badrul's case, there is also the issue of which regulatory authority has responsible for dealing with him, because there is an authority which deals with colonic hydrotherapists, and that was part of the complaint.

So there are lots of things going on there. And I apologize for the quality of the video but it was surprisingly difficult to get any practitioners, either osteopaths, or chiropractors, to come here this evening, in person, because, to quote many of them, " They are frightened of the general councils." They're frightened of what would happen to them if they turned up here and said, "This is what happened to me."

This is a psychologically draining ... it's a terrifying ordeal for many people to go through. And I have no sympathy with people who have committed serious offenses and deserve to be suspended, but there

are people who are acquitted at the end of two years. There are people, perhaps, who suffer sanctions which are out of proportion to the offense; I don't know; that's for us to, perhaps, discuss, later on.

I was going to ask Berni to give us some examples from the chiropractic world, but perhaps it's a bit early and unfair on you, to ask that, having just rushed off the train as you do. So, [Tim], perhaps can I ask you to comment on what the actual process is and what the role of the council is in doing this?

Tim: Well, thank you Steven, and I do think it's a very important discussion we're having this evening. I think it's probably better in terms of explaining the process if [Sheleen] does that, but I just want to make I suppose an opening comment.

And the first is that I don't think people should live in fear of this process, and the reason for that is that relatively few osteopaths, and the same with chiropractors, actually go through it. The chances of you having a complaint made to the GOSC or GCC is low. The chances of that reaching the PCC is lower still. Very few people are suspended under interim suspension orders, and very few people have a serious sanction against them. And I can't speak for other regulators but the median time for a case at the GCC from start to finish is approximately 54 weeks.

Steven: Is that from complaint to resolution?

Tim: Yes, it is. Somewhere in 52 to 54 weeks, it's been slightly higher in the last year, and I think it's the best in the sector. So it's not in the interests of patients, it's not in the interests of registrants, for these things to be drawn out, but there is a process, and perhaps it'd be a good idea if Sheleen just ran through parts of that.

Sheleen: I'd be very happy to, but if you could give me an indication about how much detail and how long? It's just I get so [crosstalk].

Steven: Well just give us a [crosstalk]. What happens when a complaint is received? Let's say a patient, or in this case, in [Badrul's] case, it was another professional-

Sheleen: [crosstalk] safeguarding, yes.

Steven: Refers something to the council, what then happens?

Sheleen: So what happens is we need to determine, in an average case, we need to determine whether the concern has sufficient information attached to us for us to determine whether it's in fitness to practice, something that we can deal with under the act.

Steven: Who does that?

Sheleen: So we undertake an assessment of whether we've got some information to determine, so within the regulation team. It's very much a practical assessment to see if we've got sufficient information or detail. If we feel that we don't then we will approach the complainant, so the informant, the individual who has alerted us to the actual concern. If it's a whistleblower, for example if it's somebody who's anonymous, then we would see if we could seek information from another alternative verifiable source.

It's quite a quick process but it can be quite lengthy because a number of complainants or informants may be from other sources such as CQC or the NHS England or the police et cetera. So it's not just patients although they do form the majority.

Steven: At what stage do you tell the practitioner there's been a complaint?

Sheleen: If we're not able to get sufficient information or any information to determine whether there is a concern that's capable of forming an allegation under the act, then we wouldn't necessarily alert the registrant unless we felt that they would be able to make submissions that would be helpful for us to determine the next steps.

And we don't close the case ourselves in the team. That goes to an independent committee member of the investigating committee who's called a screener. They're called a screener under the act and the rules which govern the procedure, which we follow, and a screener is the person that makes the decision to close the case at that point.

Steven: Okay.

Sheleen: A minority of cases are closed that way.

Steven: A minority?

Sheleen: Yes. The majority of cases do progress, given the fact that we are under an obligation, a statutory obligation to actually investigate cases. And those cases could be closed under what we call a threshold criteria, which means they don't reach the level of seriousness such that they should engage any kind of statutory response on the part of the investigating committee or referral to a hearing. So some cases are closed by screeners under that threshold criteria, but I would say maybe about two-thirds of cases are referred to an investigating committee to determine whether there's a case to answer.

Now in the extract that [crosstalk].

Steven: So hang on, wait, just to interrupt. At that stage presumably the registrant is informed that a complaint has been made?

Sheleen: Yes. We do seek what are called the submissions, which is the written response of the registrant and the osteopath. May I just say at this point that we have produced guidance for registrants that is widely available and that we do send to registrants, which takes them through ... Obviously it can't answer every single question, but it does take them through the procedure and the process.

Steven: It's very nice, it's a very little A5 size booklet, isn't it?

Sheleen: Yes.

Steven: And it makes it sound as though it's a walk in the park this, when actually I've watched people go through this and talked to people who've gone through this and it's terrifying.

Sheleen: It is.

Steven: It is not supposed to be a court procedure but it damned well feels like one.

Tim: We're talking about the initial stages here, Steven, which is an investigating committee which the osteopath is not present at.

Steven: Can they be?

Sheleen: Well I was just going to mention in the extract that was shown, what Mr [Huda] was referring to was an interim order hearing. So interim order hearings clearly need to be compliant with Article 6 of the Human Rights Act, and therefore individuals are entitled to come along and make representations to the investigating committee members to determine whether an interim order, which we can only, because our legislation only provides for suspension, which means that only a suspension can be imposed.

However, undertakings can also be offered by the registrant to the investigating committee or indeed to the professional conduct committee, and I understand in the particular case in question that that did form an undertaking made by the registrant at the professional conduct committee stage. So undertakings are what they say, voluntary promises to undertake not to do something, or indeed to undertake to do something, depending on the actual circumstances of the allegation.

Steven: But again not speaking particularly about Badrul Huda because we don't want to cover an individual case. If I were to appear before the

investigating committee, I suspect I would only make that undertaking if there were some sanction threatened if I didn't.

Sheleen: No, I mean I think an undertaking is a recognition that there is a risk presented by the actual allegation. Now the risk must be to patient safety. Other regulators such as the General Medical Council or the Dental Council, for example, they have a broader spectrum of limbs, statutory limbs, in which to impose interim orders, such as in the wider public interest. So if it's reputationally impactful against a profession or for example for the registrant's own interests, but we are only allowed one limb which is patient safety. And if the allegation or the information discloses, without it being adjudicated on or resolved, if it discloses a risk then sometimes a registrant who has insight and wishes to engage with their regulator, and as Tim says the vast majority do seek to do so that are involved in the fitness to practice process, then they may offer an undertaking.

Steven: Okay.

Sheleen: So that's the early stages.

Steven: So, and then [crosstalk], if I think I've got that right, there will only be an interim order such as a suspension if it's a threat to patient safety, a risk to patient safety.

Sheleen: That's right. Those are the basic [crosstalk].

Steven: Failing that, it will then be, if it's decided that there is a case to answer, and is there such as there is in the Crown Prosecution Service some sense that you've got to have a reasonable chance of this being a successful prosecution for want of another word?

Sheleen: So the investigating committee meet and that's separate to an interim order hearing, and they meet to consider the case, and the basis or the test which they must apply is what is called a real prospect test, which is, there must be a real prospect both to establishing the facts of the allegation but also that those facts amount to what is called unacceptable professional conduct, for example. And that is one of the criteria under the act that forms part of the allegation.

Another one, for example, is the lack of confidence on the part of the registrant.

Steven: If I can just focus on-

Sheleen: Or indeed conviction.

Steven: Yes. Unacceptable professional conduct means presumably that they have failed to meet one of the osteopathic practice standards or one of the standards in the chiropractic code, is that right?

Sheleen: So the osteopathic practice standards, a breach of that may be evidence that could go towards unacceptable professional conduct, but it's not in and of itself amount to UPC as we call it for short. UPC means in effect a falling far short of the standards expected of the registrant osteopath. It has been described, not by me but in case law, which is before the High Court, as 'moral opprobrium', something that is seen as being quite severe. So it's not every negligent act or every breach of the standards that could amount to unacceptable professional conduct, but of course it's not so serious that an admonishment, which is one of the sanctions, would be too lenient.

Steven: Right. And the sanctions are admonishment, conditions of practice, temporary suspension and removal from the register, are those the only sanctions that you have?

Sheleen: That's right.

Steven: And again, not wishing to cut you short, but there are other people here. Having gone through the investigating committee, and there is a case to answer, it would then be referred to the professional conduct committee?

Sheleen: Yes, or the investigating committee indeed can actually close the matter or they can close the matter and issue advice. The advice itself is no sanction, it doesn't appear on the register against the osteopath's name, rather it is a suggestion to enable the osteopath to reflect on their practice and so therefore if they follow the advice offered it's likely that they won't have another complaint made against them because it's an opportunity for them to actually have reflective practice which most osteopaths do have.

Steven: And just speaking from my experience of observing these things, if you ever were to appear before the professional conduct committee, you would enter that, what's that room called, tribunal room or...?

Tim: No. It's just a meeting room at the GOSC.

Steven: The big meeting room, I thought it had its own name?

Tim: It's called the Counsel Chamber. It's where the Counsel meets when they're at Court-

Steven: The Counsel Chamber. As you enter, on the right, will be where you and your representative would sit. On the left is where the GOSC's

barrister, because they effectively are representing the Complainant ... and if I get this wrong I know I'll be corrected by somebody. There will be a Clerk sitting a bit further on, on the right. And, then, there is a Witness Stand a bit further on the left. And in front of you is a panel of three comprising; a professional member, which would be, in the GCC's case, the chiropractor; for osteopaths it would be an osteopath; a lay chairman, and a lay member. And I think, sometimes, one of those two could be an osteopath or some other professional, couldn't they, but it doesn't matter.

And there will be one legal assessor there, as well, who, as I said earlier on, this is what Jonathan used to do, is the person advising the PCC on keeping within the law. Have I got that more or less right?

Sheleen: More or less.

Tim: And there is a video guide, actually showing you-

Steven: Right, excellent-

Tim: ... exactly what this looks like in the room.

Steven: If you want to know what it's like, then go to the video guide.

So, [Niru], how does it differ with the Chiropractic Council?

Niru: So ... very similar. Our legislation is pretty much identical to the osteopathic legislation. And in terms of the process that [Sheleen's] gone through, the differences are that we don't have a threshold criteria. So, when a complaint comes in, what we're looking for is, is the complaint made against somebody who is one of our Registrants? Is the allegation, on its face, an allegation of UPC? And, if so, we are under a duty to refer that to the IC for consideration.

There's no screening, as such. We wouldn't be able to close down a complaint on the basis that we think it's not serious. Or, say, for example, it's an anonymous complaint; again, that's not something that we'd be able to close down. If it meets that very basis test, it has to go through to the IC to close down, or to consider whether there's a case to answer.

Steven: Okay. And I'm going to turn to the left hand panel in a minute, but, just before I do, we've already had one comment come in, and I'm not going to read out the questioner's name: most people are likely to comment anonymously for reasons I gave earlier.

But, in this case, the questioner says, "It's all very well to say we shouldn't worry, but it's impossible not to." This person's case lasted

14 months, and he's an osteopath who felt that he was, "treated like a criminal", and the GOSC had "no empathy" and "they were happy to take his professional service, but they acted in a very slow and fairly unprofessional manner," and he has, "No wonder that so many practitioners have no trust in the process and are frightened."

And I read that out, Tim, because you and I had this discussion over the phone, the other day, about, "You're not there," you told me, "to empathize or sympathize with the practitioner."

Tim: No, I didn't ... I did not say that, actually, at all. We recognize that this is always going to be a stressful period of time for any Registrant who has a complaint made against them. Our job is to manage the process of ensuring that that is considered, impartially-

Steven: You said to me, that, "You were not an impartial body." You definitely used those words.

Tim: No. I said, "We were there to act ... to present the case to the investigating committee, provide the material to the investigation committee and, also, to present the case before the Professional Conduct Committee.

I also said to you ... and I think this is really, really important, is that we are not there to resolve a complaint between an osteopath and a patient, or any other Complainant. We are there to ensure that a test is carried out of whether the complaint has an impact on an osteopath's fitness to practice. And that's why I think this perception comes along, that we are on the side ... we're against the osteopath.

Your Crown Prosecution Service analogy is actually quite a good one, because nobody actually says that they should be on one side or the other, that's quite obvious. But they do actually have to act within the law; they can't 'cook up' a case against somebody; they have to present the facts that they have, and present those in a properly legally sound way. Otherwise, the decisions that are then made by independent panels would be challenged all the time, and they're not.

Steven: Do you think this perception on the part of the profession arises, because when you pitch up at the Professional Conduct Committee, there is a barrister there who is employed by the GOSC to present that case. And he will, because he's a prosecuting barrister ... that may be the wrong terminology, but that's what he feels like, who is going to question very rigorously the Complainant ... sorry, the Registrant, and therefore they feel that it's the GOSC who is against them?

Tim: Yeah, but, equally, let's be honest about this process, the osteopath will usually have their own barrister there, as well. And that barrister is there to cross-examine, or to question witnesses, as well, who are before the committee.

I think one of the problems with the process is that it can become too adversarial on both sides. And, personally, and [Sheleene] and I have reflected on this quite a lot, if we could de-escalate that process to make it less confrontational, and that's something that needs the co-operation of professional bodies, the insurers, everybody in the process, to just calm things down. Because, actually, what we want to do is ensure that the right thing is done by all parties within a hearing.

Steven: Okay.

Niru, I've got a question that's come in for you, but I did want to ask, "Is the time between complaint and PCC ... or, completion of the hearing, similar for you, to GOSC?"

Niru: I don't have the exact-

Steven: I think you said it was 54 weeks?

Tim: Yeah; 52, 54 weeks, is the median.

Niru: I think, in terms of the investigation side ... so we have very clear KPIs, internally, about how we manage cases. So, from receipt of complaint, we aim to get straightforward complaints through the the committee within five to six months. If it's a bit more complex; six to nine month. And if it's very complex, then, nine months.

Steven: You've got two waiting to be heard on your website at the moment. Both of which exceed 18 months. One of them is two-and-a-bit years.

Niru: So that would probably be from receipt of complaint through to a PCC, as opposed to receipt of complaint to an investigation committee.

Steven: That's a long time to be worrying about your professional future, though, isn't it?

Niru: Yep. Yep. No, we appreciate that. I think the delay sometimes might be to do with, if it's a PCC hearing, ensuring that all of your witnesses are available, but, also, whether the Registrant is available for that hearing. So there's external issues, there, as to why that case can't get listed.

Steven: Okay.

Maurice, let's come across to your side of the table. What's the IO's perspective on that process? What do you do for Registrants? How do you help them? What do you see from Registrants who go through this?

Or Georgina, if it's more your part of ship?

Maurice: I'll kick off, and she can do all the detailed stuff.

The principle, basically, is that the process is what process is. As someone who's actually worked for other regulators in health, I can unfortunately verify what Tim's just said, which is that the elapsed time is actually better at GOSC than many others: there are others who run far higher rates of median between complaint and resolution.

We have to be as supportive of, in that case, the member or, even, non-member, as possible. And I think trying to see what we can do to ensure that the process ... Sorry, the individual concerned… is looked after and cared for during the whole process is actually very much part of what we're there for. It isn't pleasant. It is over-long. I don't know what the solution is in terms of why it takes so long, why it takes 18 months or six months or whatever. A lot of it, I suppose, is the legal process of actually trying to get the appropriate people together in a room and do the investigation to get to the [crosstalk]-

Steven: During that time, what do you actually do for the osteopath?

Maurice: We spend a lot of time actually talking to the osteopath and then trying to ensure that they understand what the process is and what the risks are taking various turns in the process. Actually, at the point, let me hand over to-

Steven: Now Georgina, you've got an organization or a body called [Cossic], haven't you, which is-

Georgina: Which is a body of Samaritan trained osteopaths who are there to support osteopaths when we are not. So evenings and weekends.

Steven: But they're not trained counselors, they're osteopaths who've done-

Georgina: They've done-

Steven: Is it the same training with Samaritans?

Georgina: They've done basic Samaritans training. Yeah, so they're there because often issues like this cause people stress and it's not always

between working hours or during the week Monday to Friday. So they're there to speak to the osteopaths when we're not.

Steven: How do you perceive the reaction from osteopaths who are going through this process? From what I think, and from limited exposure I've had, that it's akin to post-traumatic stress disorder for some of them. It's a very, very, very stressful experience.

Georgina: Yeah, I think it completely depends case by case and person by person. So some people react differently to others. Undoubtedly it's going to be a stressful procedure. What we try and do, as Maurice said, is we try and provide information to explain what's going to happen so that people are not more overwhelmed than they need to be, for example, when they have to go before a PCC. So we do work, and as [Shelline] said, those resources now, that show you what the room looks like and guidance for registrants to help.

Steven: Okay. Berni, what is it that the alliance does to help chiropractors, and I don't know if you can speak for what the BCA does for chiropractors, but-

Berni: I can't speak for BCA, but I would say that they almost certainly do what we do and pretty much what Georgina's just said, is we look after our members as they go through the process. So a lot of it is giving that information, and as we've already said, the information's available, that doesn't mean a registrant knows. They're not expecting to get a complaint, so they're not au fait with the actual process. Often, I don't know whether it's the experience of the others, but often we seem to get these notifications of complaints at the end of the week. So you have a registrant that spends a weekend worrying themselves to death over it.

We have emergency phone numbers so our members can contact us over the weekend and out of hours, but it's a lot of hand holding, reassurance, people will immediately escalate the whole thing in their mind that this is the end of their career, regardless of what the complaint is, they're always going to go into the worst case scenario.

Steven: Give me those figures that you shared with me a few weeks ago, the number of chiropractors facing complaints at the moment. It was-

Berni: At the moment, it's approximately ... I think [Niru] would be able to give you an exact number. I think it's in the region of 312?

Steven: 312. If you look at the General Council's websites, plural, you wouldn't get any sense that there are hundreds of complaints waiting to be heard.

Niru: We wouldn't publicise the complaints before they get to the investigating committee. So the only time it becomes public information is if a case is referred by the Investigating Committee, the IC, through to the PCC. Prior to that it's not a hearing, it's a meeting that the IC ... It's a private meeting where they will consider the papers. So the registrant wouldn't attend. No arguments are put forward. It's the committee looking at the papers and making a decision.

Steven: It struck me ... There's a ... A difference has arisen between the two General Councils, because the General Osteopathic Council no longer publishes the nature of the complaint before it goes to the PCC, as far as I could see. They… there's a complaint of unprofessional conduct, unacceptable professional conduct. They don't tell you the details of it. You still publish the full details of the allegations on yours. Somebody told me that's because you think it might encourage others who've experienced a similar sort of problem with their practitioner to come forward. Others would argue, perhaps, that that is very unfair to practitioners who maybe suffering of a vexatious malicious complaint.

Tim: Well I can't account for the different practice. We do-

Steven: You stopped doing it some time ago, actually. You used to do it.

Tim: I don't think we've ever done that, in fact. The notice of hearing doesn't list the allegations. When an interim suspension order is granted, the allegations are listed, and we do have examples of where further individuals have come forward. Particularly in cases involving things like sexual assault, where it has actually been an important part of how things have developed, and has been a key component in how the public as been protected from registrants who, I have to say, I think none of us would want to treated by.

Steven: Okay.

If I come back to you, Berni. When we discussed this before, you mentioned that actually a lot of these complaints stem from possibly a single source, which is the Good Thinking Society.

Berni: Yes.

Steven: Is that a major problem for chiropractors at the moment?

Berni: I think it's a major problem for health care practitioners in general. It was seen that osteopaths have been targeted in the same way.

Steven: Possibly not as heavily yet. I don't know the figures. So-

Tim: We had somewhere over 400 complaints made by the Good Thinking Society about ... over a two and a half year period, but we deal with them in a slightly different way from the GCC for reasons that we could probably spend an hour and a half broadcast discussing.

Steven: Okay. And presumably then, that is a matter of some concern to a lot of your members. Because I imagine a lot of those complaints will center around advertising.

Berni: They're all around advertising. Yes.

Steven: This question is in front of me here: Anonymous says, "Given that GCC complaints procedure explicitly says they will not investigate complaints that are vexatious in nature ... Sorry, this might be a bit... or those that lie solely within the jurisdiction of another regulator, how come they're proceeding with investigating complaints that are both vexatious and lie solely within the jurisdiction of the advertising standards authority?"

Who shall I turn to for that one?

Berni: I would ask Jonathan that one.

Steven: Hey Jonathan, let's not leave you out of the conversation.

Jonathan: Not at all, thank you.

Steven: You've probably defended a lot of these-

Berni: He's been dealing with it.

Jonathan: I've defended a lot of chiropractors, I've defended a lot of osteopaths. There is a marked difference in my opinion between the way that the Osteopathic Council and the Chiropractor Council filter complaints. Tim says he had 400 complaints made against him. How many of those ended up at an investigating stage? Probably none. The General Chiropractor Council, because they don't have screeners, because they ... They have the ability to have screeners, the act is identical. For some reason in 2000, they decided not to incorporate screeners into the roles. The difference is, as Niru has said, that the Chiropractic Council, they think, have a duty to refer everything that comes before them to the investigating committee, which causes a huge amount of financial stress, emotional stress, and time.

Steven: And must add to the time between-

Jonathan: It certainly does. But in terms of the question that's been asked, which is vexatious complaints and when it's within the jurisdiction of

another regulator, namely the Advertising Standards Agency, I think all health professionals would have to accept that albeit they're regulated by the Osteopathic Council or the Chiropractic Council, they still have to comply with the general broader picture, which is the Advertising Standards Agency. The real question is how far those regulators adopt the decisions of the Advertising Standards Agency, because of course, the Advertising Standards Agency cannot erase you from the register, stop you working. They can't suspend you. They can fine you. The powers of the regulators are obviously much stronger and the sanctions that are available are much higher. So I think there should be, in my view, a different test to apply when it comes to looking at the conduct of an individual from a regulator's perspective and from an advertising perspective.

Tim said it's not an adversarial process, it is. The number of times I've heard that this is inquisitorial, it's not adversarial.

Tim: No, I didn't say that.

Jonathan: These are people's lives that are being put under scrutiny. These are individuals, as you've seen from Badrul's case, that the effect is enormous. They're being accused of doing things in most cases that they disagree with. It is adversarial. One person says this, the other person says that. So you have to challenge it, you have to go in, and you have to represent, frankly, your clients with vigor, because you are protecting their lives, their family's lives, their patients' lives.

Tim: Can I come back on that? I didn't say it wasn't adversarial, I said-

Jonathan: It was too adversarial.

Tim: ... It could be ... It was too adversarial. And it was actually incumbent on all parties within hearings, regulators and those supporting registrants to actually reduce the stress and tension for everybody in the hearing room. So I think ... and that's what I was saying about reducing how adversarial it was.

Jonathan: The difficulty, of course, is that when you've got a witness that's in the stand under oath saying that you've done XYZ, it's going to be stressful whether you've got a barrister there or not. I accept to a degree that there is a tendency ... and there's I don't know how many barristers in the room, but there is a tendency for us to perhaps become emotional. But that's something that happens when you've dealt with a client for two years and you know all about their lives and you're trying to represent their best interests, it happens. It's part of the process.

Steven: There two related questions that have come through, which are for you Niru, both of them effectively say ... I'll read the first one: "Does the GCC not think it would be prudent to follow a similar format to the GOSC where they don't put forward a complaint with obviously no credit?" The other one being, "Mass complaints could be dealt with much easier that way." I don't expect you to tell us about change in policy at the GCC over broadcast here. Are you considering changing the process to make it more pleasant for the practitioners?

Niru: I think in the past we have considered, this was prior to my time, I think we have considered whether it would be appropriate for the GCC, under its current legislation, to look at screeners. My understanding is that at the time, the organization took the view that it would be outside of our powers to do that, which is why we don't have screeners.

Steven: So, one of you two is acting outside the law then, because it is the same act effectively and they've got screeners and you haven't.

Berni: It's the rules, though.

Steven: Different rules.

Berni: The rules are different. We are have different rules.

Tim: The act provides the ability to make the rules. The Osteopathic Council decided to make the screening rule but the chiropractic society [crosstalk]

Steven: Your career as a barrister is over, so.

Niru: We are, we're in an unfortunate situation, I think, for the regulator as well because we're having to, in our view, put cases to the ICE that if we had a process where we're able to screen, many of these complaints wouldn't get to that stage.

Steven: Right, but you've decided not to screen.

Niru: We don't have the rules for screening.

Steven: But you could change the rules. Not you personally, but the GCC could change it's rules?

Niru: Yes.

Steven: How would that happen?

Tim: Through the council. [crosstalk]

Steven: It could be done.

Berni: It's a section 60 order.

Tim: To be fair, it's quite a complicated process and it involves not just the council, you know, sitting down on a Wednesday afternoon and saying it wants to change the rules. It has to get through quite a long, complicated process. It has to get permission from the Department of Health. They have to be approved by the private council and it is very rare for the smaller regulators to get legal resource provided to them by the department for this to happen.

Steven: Interesting, though. I've got a question somewhere and I can't find at the moment because there are so many on my list, but somebody has asked do the general councils not have a duty of care not to make life so unpleasant for practitioners? I mean there is obviously the responsibility to pursue a complaint properly, but actually this sounds as though, it may not be over by Wednesday, but it sounds as though it would be worth doing and just because it's difficult doesn't mean it shouldn't happen.

Tim: Well, I'll be up front and say that we have been told explicitly by the Department of Health that we will not get rule changes approved because they will not provide lawyer time to do that. The only rule changes that we've had in recent years have been in relation to the new CPD scheme, which was actually a requirement [crosstalk] the Department of Health, so they could hardly refuse, and also reductions in fees that also required rule changes. So, yes. There's, you know there are big chunks of our rules that we would like to change to make the process more streamlined, more efficient, quicker, but we're slightly hand-tied to do that.

And yes, we do have a duty of care to everybody involved in the process and we have regular conversations with Georgina and colleagues about individuals who do these supports. You know, we will always suggest to every registrant that they get support from their professional association. We'll probably go beyond what they should, by recommending people to join the professional association so they can have that support if they need it, because it's actually not good for anybody if somebody comes to a hearing who is not getting that legal support.

Steven: One of the other questions that has been raised is that to many of us, I think, and myself included, this process appears to be a cost-free, pain-free exercise for a malicious complainant where it is exactly the opposite for a practitioner. I can think of one complaint, and I'm not going to get into it, but it seemed vexatious, because you have no

right to impose compensation or anything like that so a complainant is not going to get anything out of it other than to make it miserable for the practitioner as I understand things. So once they complain. the GOSC pays for a barrister to present the case. In other words, the registrants pay for the barrister to present the case. The insurers pay for a barrister or solicitor to defend the case, in other words the registrants who are obviously going to be, should have to pay that.

And at this point, I will admit to having been hopping in my seat for the last half an hour at the recognition of what an ill-mannered host I am, because I failed to introduce our two mystery guests this evening. Sitting on the sidelines, I have David Balen, who's of Balen's Insurance. And I have Penny Sawell, who runs a fantastic blog called osteofm, and has been with us on two occasions before.

But David, this is your opportunity to tell us, what's the effect on insurance premiums of the mass complaints by the Good Thinking Society? What's it going to do for our professionals?

David: It already has had a substantial effect, and I didn't quite understand that, you know, the law is the law, the procedures the procedures, and of course protection of the public is paramount. I do feel, though, that there are perhaps slicker and smarter ways that things can be dealt with.

Steven: But ...

David: Well, if I could just continue, I think what we would see is that the premiums, for example, if we look at the osteopathic premiums, they started out about 120 pounds in the early nineties. Yes, we were doing that then. Looking after people then. We now see premiums escalating substantially. In particular, the legal costs, the legal defense costs for disciplinary hearings have escalated beyond, in fact, actually the malpractice premiums. The insurers are saying these premiums are still unsustainable. There has to be a way of containing costs. Because otherwise you are going to end up with premiums that are rivaling medical doctors.

I do take the point about the adversarial nature of the structure. It's inbuilt in the DNA of how the thing has been designed, so that I understand is not an easy, quick fix. But to give you a quick example, because I don't want to bore you with a load of numbers, they are massive, I've got them here. It doesn't make good bedtime reading. But one issue in particular that is annoying me somewhat is that people are accidentally lapsing their insurance policies. I should be looking there, shouldn't I. They're accidentally lapsing their insurance policies. Their intent is to carry on cover.

Unfortunately, for whatever reason, it hasn't actually been renewed at the renewal date and we then are spending thousands of pounds, 20, 30, 40 thousand pounds. 50 thousand pounds so far on a number of cases, to actually go through an adversarial process to prove that that person was in fact wrong, when we have a timeline that shows that clearly they didn't renew it in time. So surely there must be a slicker process for something like that, where there is a set, if you like, there's a sanction, or if there's a fine, or if there's a procedure. Whatever that has to be that could be inbuilt into your procedures to cut costs. Because if our cost per case is anywhere between six to eight thousand, yours must be similar. And I don't quite see the point of going through a whole adversarial process when it's quite clear cut and obvious that someone did lapse their insurance.

And, you know, yes it is a risk to the public, because there aren't any ...

Steven: Do, do you want to comment?

David: But I just think the actual process could

Steven: Let's let Sheleen come back and ...

Sheleen: I agree, and so therefore we recently changed one of our practice notes, which is in relation to what is called Rule 8, which is consensual disposal of concerns without having to go to a hearing and hear evidence. And so therefore those matters can be resolved in a non-adversarial way. There are prescriptive requirements under the Rule 8 of the professional conduct/consumer rules, in that the individual registrant would need to accept the allegation that it's UPC and dispose of that admonishment. But if those matters are in place, then the case can be disposed of without a hearing. And so we have changed it to accommodate those kinds of cases.

Tim: There is a specific problem, though, and I think it's worth mentioning. That is, we are required to take action against people whose insurance lapses. There's no getting away from that. What sometimes happens, though, is people then try to cover that up in some way, and then they end up with an allegation of dishonesty against them. And once we're in that territory, we have to charge dishonesty as well, and that's where it gets really complicated.

You know, I think it's an important message from you, David, saying people mustn't let their insurance lapse, but if they do, being upfront and honest about it with us as soon as they can is going to do them a lot of favors.

David: I think what would help you is if the timeline came quicker, for example, from our point or from your point, where it's just a clear sequence of events, clear lapse, no schedule for that period. That would shortcut that presumably. I think there's a way that perhaps we could work together.

Steven: Can we have a no-claims discount?

David: When there are no claims. What, per person you mean? I think the problem with insurance and premiums, really, is that you have a fixed pool. Is it about 5,000 or something?

Steven: 5,000, 4,000 chiropractors?

Berni: 3,300.

David: Being fairly static for the last number of years, unfortunately, because the claims for all sorts of boring reasons, has been escalating, and it's a fixed pool. The insurance will look at that class of therapist held professional, and will raise accordingly. So I'm afraid that you're looked at as a group rather than individuals now.

Steven: Alright, going back to the other side of the table, I'll bring you back in again. 350 complaints from the Good Thinking Society, they're all about advertising. Why are they not going straight to the advertising authority?

Berni: Our understanding was that that was going to happen. We were advised when this all started back in 2016 that that's where they had been sent. It's only really since December 2017 that the notifications of complaints received or concerns received were being rolled up by the GCC. I don't actually know the answer, all I know is that some of these complaints go back to 2016, and some of our members are being told about them in the last sort of 12 months.

Steven: It does strike me that a complaint based on advertising can only go forward if there's a genuine court case to be answered. So people must be advertising things that they know are not acceptable. Aren't we all well aware now? You must publish these guidelines on the iO websites, on your own website. We know what we're not allowed to say.

Berni: I think ...

Steven: And I know that could be contentious and so I'm choosing not to go down that route, but that's an issue of whether the advertising standards have got it right, not whether the council's are doing it right.

Berni: I don't think it's as black and white as that. I think a lot of it is interpretation.

Steven: Can you give us an example then of the sorts of things that you think were open to interpretation?

Berni: An example is sports injuries.

Steven: Right.

Berni: Chiropractors can't say sports injury, they treat sports injury, but they can say they treat minor sports injury. And there are incidents that I have seen and Jonathan has seen where the Good Thinking Society who have literally picked out, where a word has been left off. So for example, prevention of migraines or headache, we can say headache providing we put cervicogenic headache.

Steven: Which means everything to the public?

Berni: Yes. So, because the ASA has been prescriptive about this list, and lots of chiropractors and I'm sure Osteopath the same, they don't actually write their own material for their websites. They go through a company who produces information, and yes they're responsible for it, we're all responsible for our own websites, but I haven't seen one single case where there's been a deliberate attempt to mislead. I think it's been unfortunate, accidental. And in the case ... And I can say with all of our members, all of our members have upon receiving the notification of a concern raised, have immediately changed their websites. Immediately. They removed any words that the GTS had not liked. We have been working with our members, checking their websites. And in a lot of cases a lot of our members have simply taken their websites down because they actually don't want to risk any further complaints by the GTS.

Steven: You said there's no deliberate attempts to mislead.

Berni: No.

Steven: I agree, that's probably the case, almost certainly the case, but actually, the ASA doesn't say mislead, it says there's gotta be reasonable evidence for what you claim, and there's a big difference between that and attempting to mislead. Lots of practitioners believe that they can treat babies for colicky symptoms, and actually I would agree, they probably can, but they're not allowed to say that.

Berni: Correct.

Steven: So they wouldn't be misleading, it just wouldn't be acceptable for the ASA.

Berni: Correct, and that is the case and we are talking about in this case, advertising what you do, not doing what you do or discussing with a patient what it is that you do. But the GTS, and again I've seen the GTS, some of the comments made by them, and they're talking about, it's not just about advertising. They're not satisfied that we would change our advertising, they're concerned that we will continue to talk to patients about what we're going to do or what we would suggest. And that's a completely different rule within our code of practice. And it seems very unfortunate that every utterance, if you like, has been scrutinized and Jonathan will agree on this [crosstalk].

Jonathan: Yeah, the difference is that we're dealing with UPC. Unprofessional Professional Conduct. That's been helpfully explained by [Sheleen]. If conduct which is considered deplorable effectively by your peers, that's one of [crosstalk].

Steven: By your peers?

Jonathan: By your peers, that's one of the many tests. And if you have inadvertently put your website up and if you have inadvertently made some claims which you shouldn't have done and then you've acted upon that, taken it down immediately, one would think that most of the peers would assume it wasn't. UPC ... That's the test within the regulator, the ASA doesn't have UPC as part of their makeup and what Berni says is absolutely right. You are entitled to get a patient into your clinic and say, "I can help you and your baby who's got colic. I can help you and your baby who's got ear infections."

And they can treat them, but as soon as you put it on a bit of paper or of a website, you've got to have what the lawyers refer to, or the medics refer to as a higher level of evidence, randomized control trials. And it's a bizarre situation that on the one hand the individuals are not regulated for doing the very thing that the advertising authority says they can't claim to do. So it's a bit of a paradox, but that's the way the law is at the moment.

Tim: I don't think we should dwell too much on advertising 'cause it's very emotional subjective. People talked about it a lot and we have a whole broadcast on it in the past. But I would reflect this, we expect every other company and organization in society to abide by the ASA's rules. For instance, last week Vodafone were criticized for their broadband offering. They said that the ASA didn't understand the offer. And that is familiar words. Now, the law is the law, you have to abide by that. We've just simply taken the approach that if you can

demonstrate compliance with the ASA, we're not interested, it's only when you defy the ASA. [crosstalk].

Steven: And I think that's a very, very important distinction to make and I'm just not sure it's what's happening because of the questions here is, shouldn't the regulator only come in after the ASA have done their work?

Tim: Yes.

Steven: Because we ... Yes, and that doesn't seem to be what's happening with chiropractors. [crosstalk] going to a PCC before the ASA has ever had any involvement.

Berni: But as [Niru] said, the GCC doesn't have a way of disposing with these complaints in the same way the [crosstalk] does.

Jonathan: They do, they have the select solution that David has suggested. They did it in 2010 when the silencing complaints came in back in 2010. What they did is they instructed an outside expert, Professor [Bronkford], they got a report, they said these are all the things that you can and cannot say. And they disposed of the cases quickly.

Berni: It still went the IC though.

Jonathan: It still went to the IC, that's difficult, but what it did is it set a president of sorts.

Berni: Yes.

Jonathan: Whereby the members could say, "This is what's gonna happen to me at the end of the day." Yeah, I agree, the way that the Osteopathic council do it is a lot more streamlined in my view. But there is a way forward and as I understand it at the moment, the GCC are undertaken a similar type of task in the relation to the 400 complaints. They're getting an outside expert, they're gonna put one report before the IC, hopefully that expert is gonna say, "Look, as long as you've taken the website down, everything's okay." We don't know, but if that is the case, that should again prompt all of the complaints that are going through the IC to be disposed of. Because it doesn't amount to one acceptable professional conduct. That's the solution, it's there, it's whether the GCC want to adopt it.

Niru: I can't talk case specifics but in terms of the 300 or so complaints that we have received, we do have a project plan in place to deal with those and they are being dealt with in batches of 50 and I think we've communicated that to the association. That we are aiming to have the majority of those cases considered by the investigating committee by

the end of the year with some being considered next year. So we are trying to streamline the process as much as we can to get those through to the investigating committee, who will make the decision as to whether there's a case to answer.

Steven: It does, speaking clearly as a lay person in a legal process, it does seem to me strange that having decided that a case should be heard by the PCC, it can take two years to get there. Given that there is one complaint and one registrant, there's a set of notes and there's a person's opinion. How can that possibly take two years?

Niru: If it's a clinical case it will depend on is the complainant available to attend the hearing.

Steven: Well they're bound to be available in two years, aren't they?

Niru: I can't comment on why it's specifically taking two years [crosstalk].

Steven: Well I'll tell you why I ask the question. In the legal world, people facing the equivalent, the legal tribunal, it's almost like equivalent body for the PCC, there's a tribunal service in the legal world that does the PCC duties. Now the GMC have a tribunal [crosstalk]. And in both those professions there have been serious instances of mental health problems and even suicide.

Now, given that we've identified that this time is a huge problem, and given that I've personally witnessed people leaving the PCC under incredible stress, when one of them commits suicide, who's going to take responsibility for that at the general council? Given that you know it's a problem?

Tim: I'm not sure that's a particularly helpful path to go down. If we thought somebody was in any way in any kind of risk, we would work with them and work with their representatives to support them.

Steven: How would you know?

Tim: Well-

Steven: You've never seen them for two years.

Tim: Well, there is pretty constant communication with those individuals throughout the process. But I think there's a risk, [Steven], you're making this excessively emotive.

Steven: With [Jeremy Kyle], you said you didn't want to [crosstalk]

Tim: Yeah, yeah, I said don't go down the Jeremy Kyle route and you are. I don't think he's particularly helpful to an audience of people to get into this territory, rather than to say "What is it you can do to try and avoid getting into the process, what can you do in the process, rather than the particular route you've taken?"

Steven: But it is relevant, because actually, you know and I know, there are people who are under enormous stress because of these things. How well, how safely do you think they treat patients while they're under this form of stress? If their mind is all the time on the fact that I've got a fear of all the PCC and I think I'm going to be struck off, they can't be devoting their attention to the welfare of their patients.

Tim: I think the struck off issue is a really important one to focus on in that. How many people actually get removed from the registry?

Steven: That's not important. It's what they perceive, it's what they think.

Tim: But it's really important that we get this across, that the numbers involved are very, very small. I looked this up the other day, and I've got it in front of me, been 14 people in six years struck off by the GOSC.

Steven: Berni, you said earlier on, actually, that's what's going through their mind, is that they will be struck off, that's what they think, regardless. And I know the PCC stuff [crosstalk]

Berni: It is, and I think we ... I mean, I don't want to over-emotionalize this either, but it is emotional, and I think if you look at the history of general chiropractor counsel, I think it's somewhere in the region of 12 people who have been removed from the register period, from the beginning to now. It's not any huge number. But the possibility is there, and I think we shouldn't actually try and sort of ... yes, it's great to talk about how to avoid getting into this sort of situation when you're likely to get a complaint, but often people get complaints that we find at the end of the whole process was undeserved anyway.

I mean, we deal vexatious complaints, it's a fact of life. A regulated healthcare professional like anyone else that's regulated can be a target. And so, you've got that added layer as well, there's a fear that if you do something that upsets somebody, we have had the cases of the jilted girlfriend. I'm sure GoSC has had the same thing where we've had something that is personal has spilled over and they can use the GCC or [GoSC] as the stick. But I think you cannot underestimate the stress and the worry that registrants go through, and it's not about PCC actually, it's actually investigating as well. You can't separate them out.

I've got a number of members that are waiting to hear the outcome of an investigation by the investigating committee, and I can assure you they are

borderline de-registering. That's how worried they are. And it doesn't matter that I say "Look, this is not anything to worry about, you know, it just isn't," but they've had enough. And that's not a good place to be. This is going to prevent people from coming into our professions, people are going to look at this.

Steven: I'm sorry, [Tim], I interrupted you to get Berni's opinion.

Tim: No-

Steven: And I don't want to make this a Jeremy Kyle show, but I do think this emotional issue is quite important.

Tim: I just think, as I said right at the beginning, a certain amount of perspective. The risks of people being removed from the register are very low, and they tend to be for criminal convictions, for serious transgressions of professional boundaries, many of them sexual, for things like fraud that isn't actually prosecuted, or dishonesty. And then some people who on more minor charges, for some reason then decide to defy the process, and opt out of it, and they leave panels in that process to remove them, because they have not cooperated with the investigation, or they clearly lack insight into their own weaknesses.

So, as I said, it's very small numbers of people who actually end up being investigated, very small numbers before the PCC, and even fewer who have a serious sanction. And I think if we focus so much on that, we risk losing a more helpful, constructive conversation.

Steven: I'd like to finish on that with two comments that have come in, one of them says it's for you, Tim, but it doesn't matter, they're both for both counsels. The first says "This is an emotive process, we need to talk about So please don’t sidestep discussing the emotional stress involved. There has to be a duty of care somewhere."

The other says "We, they, you have no idea what people go through, how can it not be emotive? They have no idea ..." Sorry, it's the same thing twice, but just that is the perception from the individuals who go through it, and it is horrible. Let me say another thing, what do we do to stop it? How do we stop people finding themselves in this position? We might be offering advice to them.

Georgina: Yep, so we deal with informal complaints, that is complaints that haven't gone to the regulator. So we do a lot of work to make sure that those complaints do not escalate to the regulator, we haven't got control over patients, so we can only do our best. We also offer a lot of advice on risk management in terms of, you know, how to deal with an issue with a patient and not to ignore it, and let it escalate. So we actively encourage members to ring us when they have the first inkling that there may be an issue. So the

funny patient, something's gone a bit wrong, not sure what to do, this feels a bit strange. So we encourage them to ring us at that point. So we can help to try and stop it from going any further.

Steven: Interesting. I've spoken to a couple of practitioners who have gone through two years of the process, and they both said that right at the outset, there was something that they weren't quite happy with, with the patient. There was something that didn't feel right. And so often, we feel we desperately want to help patients, and we ignore that nagging thought that there's something not quite right about the consultation.

Georgina: Yep.

Steven: Jonathan, what's your opinion? How do we stop finding ourselves in these predicaments, how do we fix the process?

Jonathan: I agree, there's an element to be spotted a mile off. Most of my clients say exactly the same thing, at the end of it, they say "I knew there was something wrong, I wish I'd done something about it." The reality is, the guidance is there, the rules and the codes are there, the ASA guidance is there, for example. The best way to stop yourself having a complaint made against you in terms of a marketing scenario, in advertising, is not to have a website. The best way to stop yourself having a complaint made against you from a patient it's impossible. Some of these chiropractors are treating 3, 400 people a week. You cannot know from one day to the next what's going to arise.

The types of complaints we get is so wide and so varied, there are common themes that come through, but the reality is you can't. And when you're talking about numbers, six or so or 12 or so may have been struck off, but if we look at the numbers of actual cases that have come through the complaint process, the number of people that have been subjected to unsuccessful interim suspension hearings, when they haven't been suspended, and the number of cases we win, it's staggering. And it does beg the question, why were they there in the first place? So I think it's a question really you should be asking the regulator, rather than the individual registrants, because the regulators are the ones that make the decisions to pursue cases where frankly, in a lot of instances, there is no prospect of unacceptable professional conduct being proved.

Steven: Okay. If we ignore the advertising standards complaints, what are the most common forms of complaint, I've been asked.

Tim: Most of them have some element of poor communication. Poor consenting. We do a project where we work with the IO and we work with the insurers, and every year we aggregate data from across complaints, claims, and concerns with the IO to classify those and the common theme, all the way

through, is about communication and consent. It's not complicated things about explaining risks and benefits and things like that, a lot of the time it's quite simply doing things that took a patient by surprise. So it's all about dialogue with the patient, that's the critical advice I'm given.

Steven: I want to change the topic for a second, I've just had a question in which I was going to ask myself in a different form, it says "Can you tell us who the lay members of the panel are, and what their role is, what sort of authority do they have?" But actually I would extend that to say, who selects the PCC and how do you judge whether they're doing a good job?

Sheleen: It's their appointment-

Steven: You can pass it over to the general chiropractic council.

Tim: I mean, our investigating committee has, I think, 15 or 16 members.

Steven: How are they selected?

Tim: Hang on. About 2/3rds Osteopath, 1/3rd Lay. The PCC has, I think, 18 members, 1/3rds registrants, 2/3rds Lay. They're appointments are opened, public competition, they're advertised. For lay-members they'll be public, online advertising, Sunday Times is the usual place. Per registrants, they'll be in the magazine and area bulletins. We've had open days for registrants to [crosstalk]-

Steven: Okay. So it's advertised. Like MI5, it's advertised, but who picks them?

Tim: So there'll be a selection panel and it's usually made up of the chair of the GOsC council, who's lay, an osteopath member of the council, and usually the chair of the relevant committee. It's a process where it's competency-based. You have to go through an interview process, and then you have a considerable amount of training from experts on actually being able to work your way through the process.

Steven: Similar with the GCC?

Niru: I think so, yeah.

Steven: Got it. And then how do you monitor their competence afterwards-

Jonathan: Before you get to that, dodged the question. Who interviews them?

Tim: No, I just explained who interviews them.

Jonathan: No, but who interviews them?

Tim: I said the chair of council, the chair of the committee, and the registrant member of council. Those are the people-

Jonathan: So the same people that select the barristers to represent the council's case?

Tim: No. No, no, no.

Jonathan: No?

Tim: This is members of the council. The council of each regulator has no involvement at all in the fitness to practice process. They don't select barristers, they don't see cases, they wouldn't even know the names of people who've been investigated. The only information that they would have is statistical on processing times and the names of the people who've faced a sanction at the end.

The only exception to that is people like yourself who is appointed as a legal assessor in a batch of about 12, about five years ago for the juror's seat. And yes the council took that decision, because it's in the act that the council has to appoint a panel of legal assessors. So the council is not involved at all, and as for that matter, neither am I.

Jonathan: No, no. And the council members are selected by ... How do they ...?

Tim: Well there is a process that is gone through to select, to interview, council members. Again, open competition. That process is overseen by the Professional Standards Authority, has to meet a set of standards for appointments, and if the Professional Standards Authority doesn't think that those appointments have been made appropriately, they won't recommend to the private council that those appointments are made. I mean, Jonathan, you might have criticisms [crosstalk]

Jonathan: It's not criticisms, but it-

Tim: This is the wrong avenue to gambit.

Jonathan: No, no. I accept that. But what I regularly see, for example, in lay members on committees - not just at the General Osteopathic Council but at many councils - ex-police officers, ex-magistrates. There's a certain type of lay member that keep popping up on all of these committees, and it begs the question, how are they selected? And I think that's a valid question to me.

Tim: I think there's a very good question there. I think there are too many people who are sitting on too many regulators [crosstalk] practice panels, and sadly the easiest way to get through an interview process is to have past experience. What we're trying to do is broaden that as much as possible and seat people who don't sit at lots of other regulators. We think that diversity of the pool is really, really important.

Jonathan: Well, that's reassuring.

Tim: And actually we've been trying to get more younger people in, and more recent appointments have demonstrated that, particularly for PCC appointments.

Steven: I suppose it's quite a good path for some people to sit on multiple bodies, isn't it? I don't know what the fee is, the daily rate for somebody on the committees, but there are people who are on half a dozen different special committees-

Tim: Yes. Yes, and it's difficult. We know people have portfolio careers and do that, but as I say, we're trying to increase the diversity of the pool. You know, there's a suggestion in the question that somehow these people have some kind of vicarious interest in doing damage to professionals rather than actually having an interest in ensuring that justice is served in terms of complainants and the registrants involved.

Steven: Which comes as ... No, my question-

Tim: I think it's really important. These people are actually ... They're not paid a huge amount for what they do. One of the reasons why we have problems sometimes recruiting osteopaths to do our panels is we don't pay them as much as they would get for being in practice for the day.

Steven: How much do they get paid?

Tim: £306.

Steven: £306. For a day.

Tim: For a day.

Steven: The other part of my question is how do you monitor the professionalism and effectiveness of members of the panel? Do you ever sit in and watch the PCC at work?

Tim: I don't personally, because I've always sought to try and distance myself from the specific decision-making processes. But in fact, there is an appraisal process, there's a feedback process, there's quite a lot of review. All of the cases that go before a PCC are scrutinized by the Professional Standards Authority, regardless of the outcome, and they can appeal those. They can also provide us with learning points if they think that mistakes were made either by the GOsC or the independent panel, and that is all collected together and built into training for those panels and individuals.

Steven: The GMC recently appealed against the decision of its own tribunal quite publicly and had a doctor struck off when she had been suspended, and that

was such a... You probably don't agree with every decision you see in the PCC, have you ever considered appealing against them?

Tim: We don't actually have a power to appeal like cases at the PCC. That's unique to the General Medical Council. I'm not an expert on it. I think that was a really difficult case.

Steven: [crosstalk]

Tim: The fact that it went through, you know, three different courts and others-

Steven: But what, if it felt obvious to you that the wrong decision had been reached, what would you do?

Tim: Nothing.

Steven: Would you rely on the PSA, whose agenda may be slightly different?

Sheleen: Well there's a potential route that all regulators that don't have the right to appeal can undertake, which is a traditional review of their own PCC committee. That would be quite difficult because in fact you'd be traditionally reviewing the committist at the true committee of the council, and therefore you would have to fund the PCC in the judicial review as well as fund the actual request for the review.

But what we would do is something more practical than that, which is we have a good working, professional relationship with the Professional Standards Authority, and if we do have some concerns with decisions that have been reached by our committees, we would make them aware of that. They encourage regulators to do that.

Steven: Have you ever done that?

Sheleen: We have done that on a few occasions, yes.

Steven: Because one of the issues that's been raised is by people to me, outside this broadcast - and maybe someone here have got a hell of a list of questions that they're not gonna have a chance to answer - is that the general councils are desperately keen to curry favor with the PSA. They don't want to get a bad report and therefore they won't do anything to rock the boat, as it were.

Tim: I don't think that's right. I mean, first of all, they do have exactly the same statutory objectives as us, the PSA. The PSA has an appeal power, and it can appeal for two reasons. One is if they think the sanction was too lenient, or if they think that we under-prosecute the case. It's not just about currying favor. Actually they review everything we do throughout the year. It is about making sure we get as much as we can right.

Steven: Have you seen any tendency, around the table, have any of you seen any tendency for people to de-register? To become osteomyologists, which seems to be the alternative for osteopaths and chiropractors who don't want to pay fees. You're nodding, Berni?

Berni: Yeah. Oh, absolutely. Yeah.

Steven: In large numbers?

Berni: Wouldn't say it's in large numbers, no. But you can see that the chiropractic register hasn't grown significantly. I think that people may retire early and still want to continue practicing in some way, and will then become something else. For example, an osteomyologist. But I do think that there is definitely a feeling at the moment within the profession, my profession, that they've had enough.

I'm not blaming the GCC for this. I mean, they're processing the complaints in the way that they're having to process them. It's the whole picture and this feeling of being targeted. The GTS are not gonna go away, and people are saying that, "It's just going to be easier if I'm not registered, because that's taking a big stick away and I can carry on practicing and call myself something different."

When I'm talking to people, I'm hearing that quite often now. "I'm getting towards the end of my career, I might as well just de-register now." Which is a shame.

Steven: Have you seen any signs of that at the general councils?

Tim: I would say no. I mean, our growth rate on our register ... Interestingly, we thought it was going to plateau around 2012 and it didn't. From 2001 to plateau three years later, it still continues to grow. I wouldn't say that's a particular problem.

I think there's one thing that is worth mentioning here, because that has been topical, is the idea that people can de-register during the course of an investigation. We call it voluntary removal. I think, we call it voluntary removal. I think one of the things that people think is that somehow they are a member of either the GCC or the GIC and not their registrants. And if somebody is in the course of an investigation, seeks to remove themselves from the register, they cannot do that automatically.

Sheleen: No.

Tim: Because it is the public interest for any investigation and any hearing process to be concluded-

Steven: Isn't the one consolation that they don't have to continue paying their fee after their registration?

Tim: Well I ... You may call it a consolation. But it is important and it does serve the public interest for any matter to be ventilated before a PCC. And I'll just come back on something Jonathan said about "Are too many things going forward?" I mean a good justice system doesn't have everything, every case succeed or every case fail. A good justice system has things that don't make it all the way. That's why we have independent panels making those decisions rather than arbitrary decision makers like myself or Sheleen. You know, just making a decision about an individual's future.

Jonathan: I completely agree. One of the issues I think that's important to this question of registration ... David will probably be better versed to comment on ... because it's not just a question now of, "Shall I call myself an [Osteo-opmologist], shall I call myself something other than a Chiropractor or an Osteopath?" There will come a point ... if we have an increase in cases and we have an increase in insurance fees ... there will come a point where they'll become un-insurable because it will be too expensive. And people will leave for that reason because there is a necessity to have indemnity insurance as part of the Act and Rules.

And that in itself is becoming from what I've seen with my clients, a real concern, year on year is the increase in their insurance fees. Which is not actually the insurer's fault.

He's nodding. I don't know if he agrees.

David: What would you like me to say?

It's a perennial problem. I've been lecturing to osteopaths since the 1990's about risk management. The word risk management got mentioned earlier, and it's a good thing to try and get good practice rather than worry about procedures if practice fails. And with regret, when I look at the summaries, I mean we've got the last five years from our book ... yours will probably mirror this ... 234 claims out of a fairly limited number of people and it's the same old, same old's that I've been lecturing about for 20-25 years.

Things made worse. Causing people pain. Lack of proper consent. On these figures we've got a trend of 16 over the last five years involving lack of proper consent. You call it communication but I think there's a consent element in that communication which ... I mean, there was one case I referred to earlier, where we were having a private conversation, where you had actually struck someone off. And this person concerned, people come from all over the world to see this person. But he didn't keep any notes. 'Cause he never did that.

Steven: Maurice, I think you-

David: So I think there's something in the training, if I can just finish this point, there's something about how they are trained, how the CPD works and how well they retain that in the coalface if you like, of professional daily practice.

Steven: Maurice.

Maurice: I just want to make a couple of points really, which is a) osteopaths always want to complain about GOsC and stuff. In fact, my osteopath does the whole time he's treating me. You know, basically dissing GOsC so I hear all of it. And yet I agree that we have not tracked significant increases in de-registrations as a result of stuff, but they just like to talk.

I would ... Sorry, I just want to step out of the mode of process bashing for a second and just point out that we're supposed to be one profession, not 5,400, and at the moment there is a tendency to think of ourselves as a bunch of individuals that are being disadvantaged. We're not. As a profession, we're actually doing really quite well. We're growing. We have increasing influence, both broadly across the consumer marketplace and with the National Health Service, which is the biggest health game in town. Let's actually think about the fact that there are rules that we have to play as a profession if we want to continue to grow as a profession. And let's stop focusing on the sort of nitty-gritty and also actually look at the bigger picture of "How do we grow?" We grow by actually behaving and growing our standards of behavior.

We, I must admit, we've not noticed either any particular increase in de-registration or in fact any particular increases in premiums as a result of masses of cases going through. So we have a different experience, possibly because of the way that-

Jonathan: Screening. Yep.

Maurice: We actually deal with our up-front approach to IC's for example. So at the end of the day, there are ways in which I think the Institute and insurers can actually help to look after those who, unfortunately, through no fault of theirs sometimes, actually get accused of stuff. But let's not try and broaden this into a "We're all in this shit and let's get out of here." Because it's not true.

Steven: Well that's good to hear. I suspect of course what we hear from, is we hear from those few people who are embroiled in the process and for them it's a different perspective and-

Maurice: And for anyone embroiled in that process, our hearts go out to them because it's a horrible process. It takes too bloody long, we know. And they need support. We do. And they need better support from all of us, including the regulators.

Steven: Indeed.

Maurice: And so let's not ignore the fact that, yes, it is very difficult for a small number of people, It is not a general beast with a large sword approaching us from the [inaudible] or GOsC or the GECC.

Steven: We've got a couple of minutes left and I wanted to finish off with just one or two questions. Tim, we talked earlier on about getting that gut feeling that something wasn't quite right. One of our enquirers had said that they had speakers from the GOsC when they were at university, who said "You can't not treat somebody without good reason." And somebody else was asking, "Can we just refuse to treat somebody if we think it's not right?" How do we stand legally in saying, "I don't wanna treat you and I've got no reason for this. I just don't want to do it."?

Tim: Funnily enough I had a discussion about this with a group of osteopaths at the weekend at a CPD event. Yes you can decline to treat somebody. The reasons you can't decline are based on the protected characteristics under the Equality Act, but other than that you can. It's in, I think it's D6 of the Osteopathic Standards. I'm probably wrong on that, but it's in there and yes, that's right. I think we need to be cautious about just simply saying, "The patient was a bit funny." We mustn't diss the rights of individuals to complain about poor treatment or poor service.

It is appropriate that people are able to raise those concerns. If they are vexatious, certainly under our process, they get filtered out, we hope, pretty early on. But it's a stressful experience for a complainant too, to summon up the courage to go against a professional's actions and approach us. And people need a lot of support through that side of the process, and it is a human thing on both sides and I just think we need to be cautious that we don't simply negate the rights of patients in this.

Steven: Okay. Can I just thank all of you for coming in this evening. For some people, particularly, it's been a long and stressful journey to get here. I suspect this discussion is far from over because no matter what reassurances we get from the General Councils, it's very hard to change people's perception about the process. But I hope you can take heart from what you heard, from both our trade bodies if you like, but also from the General Councils.

I haven't had time to answer, or to ask, a lot of the questions. There are a huge number of questions that have come in today. Not surprisingly, given the nature of the topic. I will try to deal with those over the coming weeks. If we can deal with them ourselves internally we'll do that. If I can get answers from the experts around the panel I'll do that for you as well. If you'd like to hear more about this, do let me know, because despite the fact that I do a very bad impression of Jeremy Kyle I wanted this to be more BBC Question Time. I wanted to just seek answers for us making our profession better.

Protecting ourselves from a horrible process, with at the same time delivering the quality of care that we all do for our patients.