



BRIEFING PAPER

Keeping Regulation Relevant

Contents

| | |
|--|----|
| Introduction | 3 |
| The Impact of COVID-19 on Complaints | 4 |
| How Mediation Supports FtP | 7 |
| Insights from the General Osteopathic Council (GOsC) | 8 |
| Conclusion | 14 |

Introduction

As we embark on a new year facing renewed challenges from COVID-19 and its attendant restrictions, it seems we are at an appropriate stage to reflect on 2020 and the lessons the year taught us.

With phrases like 'unprecedented' and 'not in our lifetime' now firmly a part of our vocabulary, the experiences of the past nine months will no doubt prove invaluable as we enter 2021. So too, will the attitudinal shifts that took place amongst the British public over the past year.

From 'clapping for carers' during the first lockdown to the anxiety and tensions which defined the tail end of the year, the mood of the public will likewise influence regulation as we move forward.

To this end, this edition of the Nockolds Regulation Briefing features insights from the General Osteopathic Council who share their thoughts on the strategic and operational impact of the decisions that were made through 2020. Designed to stimulate conversation, this paper hopes to start the conversation about how regulators will operate in a post COVID-19 world and how the backlog of complaints might be successfully managed.

In the absence of a guidebook to global pandemics, it would seem that cross-regulatory collaboration is more crucial than ever.

Faced with multiple and novel challenges, it is vital that professionals in the healthcare community come together to work collaboratively to identify the best ways to deliver a consistently high service whilst at the same time maintaining practice standards. This shift to a more collaborative working dynamic should be something that regulators strive to adopt well beyond 2021 in order to ensure that regulatory systems are as effective and as efficient as possible.

Recognising the challenges and pressures faced by patients and healthcare providers will be crucial for regulators, too. Specifically, it will be important to accept that communication will need to take place at a distance and that this will make the bringing together of parties for dispute resolution more complicated than before.

KEY CONTACT



Jennie Jones
Head of Nockolds Resolution

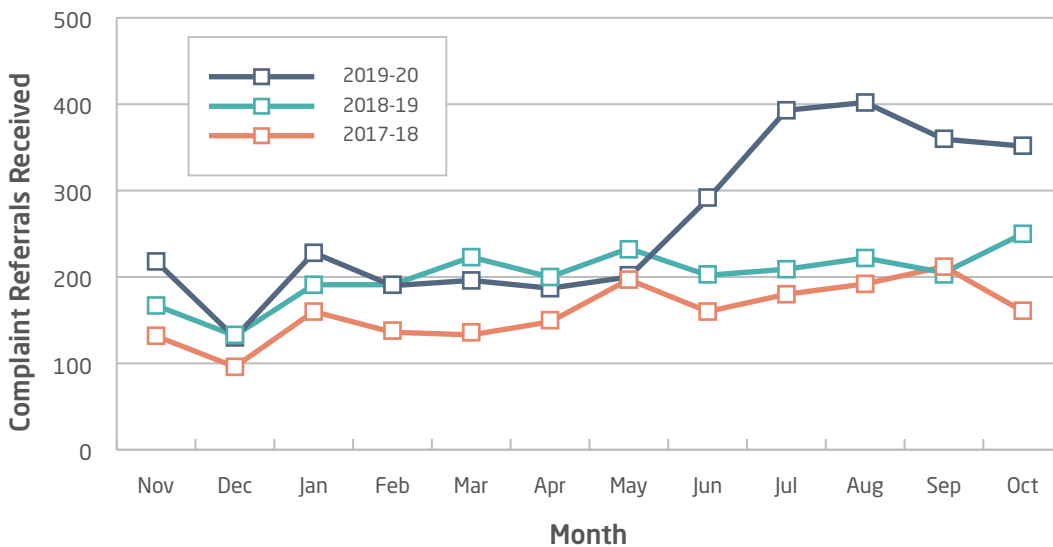
t: 01279 712580
e: jsj@nockolds.co.uk

The Impact of COVID-19 on Complaints

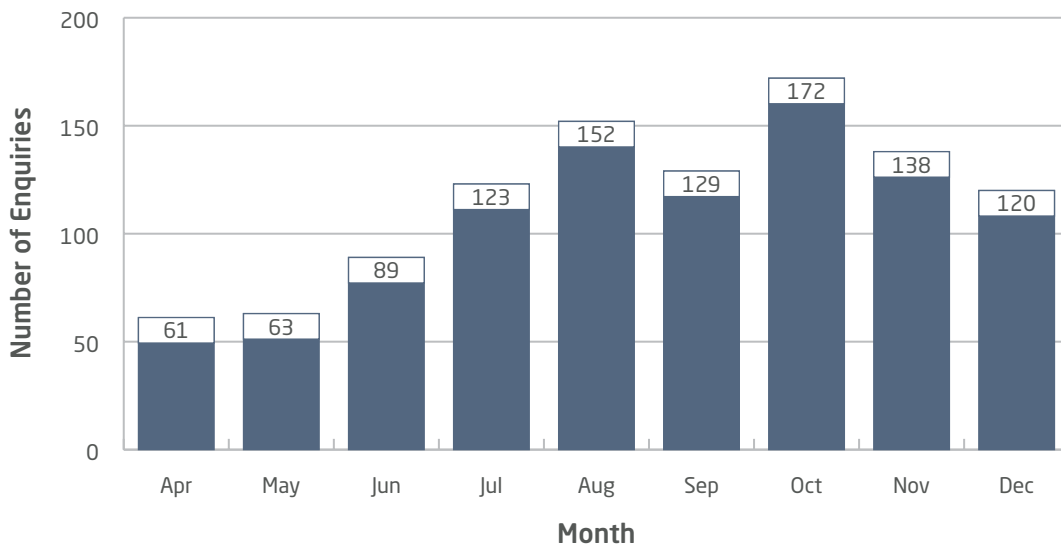
In many sectors, we have seen an increase in complaints and service user dissatisfaction over the course of the last year. Periods of uncertainty and fast paced change do impact on our individual response to both the everyday interactions and stress incidents. In addition, many organisations are operating very differently. These factors combined, have created a ‘perfect storm’ The evaporation of societal goodwill and the impact of the pandemic on mental health and well being does appear to have contributed to an increase in dissatisfaction, and also made local, early resolution that much harder.

To help illustrate the increase in the complaints and enquiries received by the VCMS over the last year, the following two graphs demonstrate how things escalated quite significantly in June. Continuing into winter, this trend of greater demand was sustained through October and, at its peak, represented a 100% increase. Clearly signalling the growth of the service, this data supports the view that the VCMS is growing in stature and provides an effective solution at a time when people need it most.

VCMS INCREASE



OCCS VOLUMES (APR-DEC)



This is in the context of reduced optical and veterinary interactions due to lockdown restrictions.

Faced with greater potential for conflict at the lower levels of regulated practice, identifying alternative ways to resolve disputes is more important than ever.

At Nockolds Resolution, we have found that mediation remains an effective approach to complaint resolution. As well as bringing about a satisfactory outcome for all parties, this method also provides valuable insights that allow us to invest and drive real change.

What Does this Mean for the Future?

Traditional approaches to dispute resolution may not be as effective and time saving in 2021. With timelines under pressure with postponed or stayed activity during lockdown 1.0 in 2020, Nockolds Resolution is continuing to explore how mediation could provide an interim support mechanism for disputes and concerns raised within the regulated environment.

Ensuring that concerns are heard and properly understood is increasingly important - the patient voice must be heard and people remain at the centre of all processes. A creative blank canvas to explore and hone resolutions to produce an outcome which is effective and achievable has also been essential in mediated conclusions this year.

The cost of regulating and the income levels of regulators may also require consideration over the coming year. Indeed, regulators may face an even more acute budgetary pressure. Namely, it will be crucial to identify how to deliver more with a reduced budget at a faster pace. This will mean that regulators will need to explore alternative approaches to cost models and return on investment analysis.

Despite the adversity of 2020, the ongoing work of the Nockolds Healthcare Regulators Complaints Forum remains something worthy of celebration.

Established to help regulators work collaboratively and share best practices, a recent meeting

explored how regulators can best navigate and conduct performance assessments during the ongoing COVID-19 pandemic.

Sharing his insight into the effectiveness of the forum, Ben Wesson, the Head of Customer Enquiries and Complaints - People and Organisational Effectiveness at the Nursing & Midwifery Council, and also a sitting member on the forum, remarked how:



'Being part of the Healthcare Regulators Complaints Forum (HRCF) has been hugely beneficial for the Nursing and Midwifery Council. It has helped us to connect with other corporate complaints teams across each of the regulators. This has in turn led to more effective working relationships and enabled colleagues to share best practice to improve customers' experiences of making corporate complaints. Recently we heard from our oversight body - the Professional Standards Authority (PSA) - at one of our HRCF meetings. The PSA shared helpful insight and intelligence around complaints handling and sharing organisational learning. We look forward to continuing this conversation with the PSA through the HRCF.'

The briefing paper also contains some exciting data from the General Optical Council (GOC) that signals how the benefits of mediation are clearly having an increasing influence on the work of regulators. Tracing the impact, the OCCS service has had on the fitness to practise (FtP) process since 2014, this data reveals some highly positive trends that we expect to continue over the coming years.

The paper also examines how government legislation will remain a key focus for the year ahead. Particularly, the publication of the 'Response on Promoting Professionalism, Reforming Regulation' consultation looks set to be a salient piece of literature which will help to guide mediation in 2021.

Set to prompt legislative changes to regulators frameworks, the changes set out by this government publication will help to shape modern processes, a more responsive and accountable regulation, and will ultimately help to better support professionals. Setting out proposals which will help to improve the efficiency and overall effectiveness of mediation, a closer look at this white paper promises to be highly informative.

The reflections in this briefing paper should hopefully pose some interesting questions and stimulate debate around the range of options available to regulators.

We hope, too, that the ideas expressed in this paper can be evaluated and ultimately help those in regulation to develop and implement measures to help ensure that regulation remains relevant for 2021 and beyond.

How Mediation Supports FtP

In the GOC’s new FtP bulletin, the role and benefits of complaint mediation within the optical professions are explored.

The bulletin details the positive impact of triage remodelling and acceptance criteria at the GOC, which has been supported and enabled by the existence of a trusted and respected complaint mediation service.

In 2018, the OCCS was heavily involved in a project to implement Acceptance Criteria and to support the remodelling of the GOC FtP triage process. This remodelling commenced in late 2018 following PSA approval of the Acceptance Criteria.

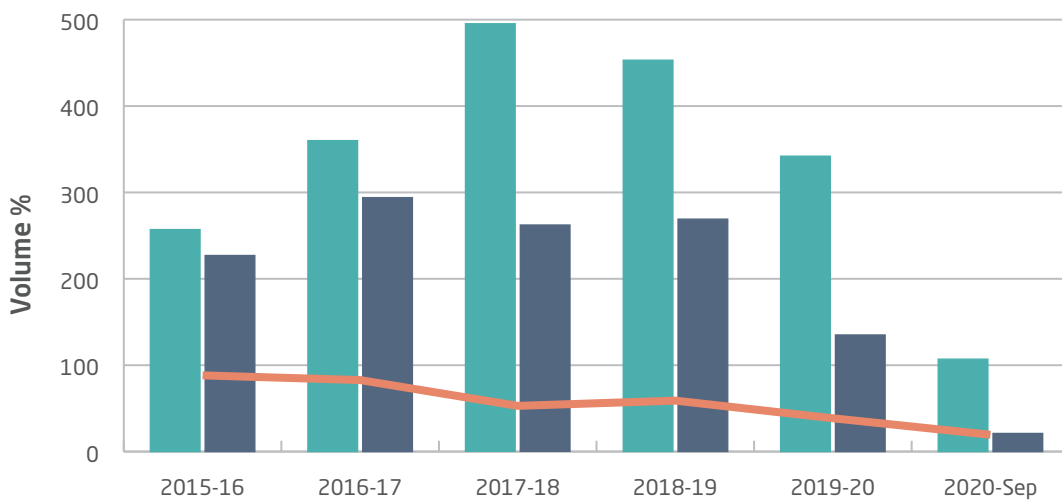
As can be seen from the graphic below:

- » Percentage of cases progressing to investigation dropped from **88% to 20% over five years;**
- » Number of investigations opened reduced from a peak of **294 to 135 in the last full year** (the OCCS and GOC are confident we will reduce this further this year).

In addition, the number of erasures/sanctions is consistent across the five years (not shown on graph) which provides reassurance that substantive regulatory issues are being properly addressed.

TRIAGE NUMBERS

Concerns received and opened in triage, 2015-2020



| | | | | | | |
|----------------|-----|-----|-----|-----|-----|-----|
| Receipts | 257 | 360 | 495 | 453 | 324 | 107 |
| Investigations | 227 | 294 | 262 | 269 | 135 | 21 |
| % Opened | 88 | 82 | 53 | 59 | 39 | 20 |

Operating Year

Reflections on Health Regulation as a Result of the Pandemic

by *Matthew Redford, Chief Executive and Registrar at the General Osteopathic Council*

1. As 2021 begins, we can look forward with hope that the vaccination rollout will soon start to lead us out of lockdown restrictions. The last year was dominated by the impact of the novel coronavirus (COVID-19) global pandemic and in such a short space of time our way of life was so fundamentally altered.
2. However, as the science continues to lead us forward, it would be a mistake to immediately fall back into previous ways of working, for despite the challenges, there is much learning that we can take from the experiences of 2020, at a personal and organisation level.
3. In this briefing document we set out our reflections and our learning so far; however, at the outset we think it is important to highlight that for us, the pandemic has highlighted even more acutely, the need to ensure the patient voice is not lost and that our regulatory approach remains truly patient-centred.

About the General Osteopathic Council (GOsC)

4. The GOsC is the independent statutory regulator for the profession of osteopathy. The Osteopaths Act 1993 requires us to develop and regulate the profession of osteopathy: our overarching objective is to protect the public.



5. Our statutory objectives are:
 - » To protect, promote and maintain the health, safety and well-being of the public.
 - » To promote and maintain public confidence in the profession of osteopathy.
 - » To promote and maintain proper professional standards and conduct for members of the profession.
6. As at February 2021, there are 5,437 osteopaths registered with the GOsC. Osteopaths predominately work in independent practice, and since 2017, in England, are Allied Health Professionals,

Reflections Arising Through COVID-19

7. Our reflections have been captured under the following themes:
 - » Patient voice

- » Wellbeing
- » Collaboration within our osteopathic sector
- » Collaboration across the healthcare sector
- » Regulatory reform
- » Equality, Diversity and Inclusion
- » Changing how we work

Patient Voice

- 8.** As we considered our response to the pandemic, we recognised that health organisations were producing guidance at such speed that the patient voice was greatly diminished, if not eliminated. This cannot be a sustainable position in 2021 and we are determined that our regulatory approach will continue to ensure the patient remains at the centre of what we do.
- 9.** At the GOsC, we were keen to ensure that we proactively took steps to hear from patients directly, so their voice was reflected in our policy development approach, which itself also needed to move at speed.
- 10.** During the summer our Fitness to Practise department developed important interim guidance to facilitate the introduction of blended hearings, i.e. where some parties participate in person at Osteopathy House and some parties participate using remote technology. We recognised the need for Remote Hearings Guidance and a Practice Note on Questioning Witnesses using remote technology. Both of these documents needed to be introduced before a full public consultation could commence; however, we did not feel we could move forward without ensuring the patient voice was heard in the development of the interim guidance.
- 11.** We pro-actively held workshops with patients and used their feedback to shape the guidance, by identifying issues that were important to the patient. This approach of listening, engaging and understanding was and remains critical to our regulatory style. Holding the workshops ensured our interim guidance, developed before full consultation, was informed by the patient voice.
- 12.** We do however recognise that the pandemic is ongoing and that the full impact of the erosion of the patient voice in the wider public guidance/policy development has not yet been fully understood or measured. This may have an impact moving forward on outcomes and standards for osteopaths and other health professionals, and we will ensure we remain abreast of these developments.
- 13.** Over the summer, we held two online focus groups to explore the impact of the coronavirus pandemic on patient perspectives about osteopathic practice. The first focus group took place on 4 June as lockdown restrictions began to ease. The second was held in late August to gauge how patient views had evolved as the UK moved to a state of 'new normal'. In addition, we conducted one-to-one telephone interviews with patients who did not feel comfortable using video conferencing, creating a safe space to promote meaningful feedback.
- 14.** A mix of ten patients from Scotland, London, and the south east of England took part in the

online focus groups and calls, ranging in age from mid-thirties to early eighties. Four of the participants regularly attend education provider clinics while the majority are either new or returning patients of sole practitioners in private practice.

Key Findings

- 15.** There were marked differences between the two groups' attitudes to treatment. At the first focus group there was a strong sense of risk aversion to treatment, with none of the attendees having sought treatment during lockdown and expressing reservations about booking a treatment in the near future. In contrast, many of the participants in the August focus group had long term health conditions and had accessed telehealth appointments during the pandemic. All but one of these patients had booked face-to-face treatment very soon after lockdown restrictions eased and they continue to have regular appointments with their osteopath.
- 16.** In both focus groups there was a strong sense of having the right to make decisions for themselves about their care and the right to access it. Unsurprisingly a common concern focused on safety and infection control as a result of being in close contact with an osteopath. This included the need for transparent health and safety policies as well as detailed communication from osteopaths before, during, and after treatment. Underpinning some of the patients' decision-making appeared to be a lack of confidence and trust in government guidance and data, rather than a lack of trust in their osteopath.
- 17.** Making sure we continue to have the patient at the centre of all that we do is absolutely critical and this will be a core feature in our Business Plan for 2021-22 and beyond.

Wellbeing

- 18.** While there was no prohibition placed on osteopaths during the pandemic, many practitioners took the decision to close their practices having balanced the risk of continuing to treat patients against potentially catching, and spreading, a highly infectious disease. This was a hugely difficult decision for many as, with many osteopaths being self-employed practitioners, the decision to close their practices meant a complete loss of income.
- 19.** The impact of the pandemic on registrants who mostly work in private practice was considerable, and during the pandemic, we made sure that we frequently communicated about the need for registrants to focus on their own wellbeing. We did this through our regular ebulletin communications which signposted a number of resources available to registrants including those provided by:
 - » Federation of Small Businesses
 - » UK Government
 - » Stonewall
 - » NHS, Every Mind Matters
 - » Mashable UK
 - » BBC

- » Institute of Osteopathy , Let's Talk Osteopathy Facebook group

20. For those osteopaths who were already going through a fitness to practise process, or who found themselves entering a fitness to practise process, the pandemic exacerbated levels of stress. While a fitness to practise process is a legal process, with different steps outlined in legislation, we absolutely recognise that the process involves real people. To that end, we had previously introduced a support line for patients and osteopaths, going through a fitness to practise process, using expertise from Victim Support. This mechanism was invaluable during the pandemic and we will ensure this remains a feature of our fitness to practise activity for the long-term.

Collaboration Within Our Osteopathic Sector

21. Throughout the pandemic there was, and continues to be, a gap in terms of the government guidance issued to healthcare professionals operating within the independent sector. This has placed a greater onus on professional bodies and regulators to collaborate to understand how guidance applies within our context and we anticipate this will continue in the future.

22. As a regulator which already has regular and close contact with its stakeholders, we were able to be agile in our approach to collaboration within our sector. We feel this demonstrates an effective and positive approach to how we worked in partnership with others during the healthcare crisis, and examples include:

- » Issuing a statement to all Osteopathic Educational Institutions (OEI) about our requirements within a COVID-19 context in that, while standards clearly needed to continue, our regulatory approach would be flexible and proportionate in understanding how those standards would be met.
- » Facilitating communication between the OEIs through online meetings and workshops to identify learning and support required. This approach ensured that OEIs supported each other and shared intelligence throughout the early stages of the pandemic.
- » Supporting registrants to provide safe treatment to patients. There was never a prohibition on osteopaths practising through the pandemic and we issued clear guidance to registrants around infection control, conducting remote consultations and osteopathic practice, which was based on the health advice issued by the four UK Health Departments, Public Health England, Public Health Wales (PHW), Public Health Agency (PHA NI) Northern Ireland, and Health Protection Scotland (HPS).

23. Within the osteopathic community, we have worked very closely with the Institute of Osteopathy, the professional membership association, to facilitate the delivery of information to the profession as quickly, and as clearly, as possible. This collaboration was critical, especially during the early phase of the pandemic, however we have recognised that not all registrants understand the difference between the role of the regulator and the association.

24. We are taking steps to better articulate those differences and this work will continue into 2021, although this was also something identify within other healthcare regulators and so there might be some collective thinking that is required across the sector.

25. During the early phase of the pandemic we identified a related, albeit different matter,

which was around the application of professional judgement in the context of COVID-19. As referenced earlier, there was no prohibition on osteopaths practising during the pandemic, and there was much discussion about the balance of risk between osteopaths providing face-to-face treatment, remote care or whether to close practices. As autonomous, regulated healthcare professionals, osteopaths were, and continue to be, free to use their professional judgement in partnership with each patient, to reach a decision about whether osteopathic care is an appropriate course of action.

- 26.** We provided information to osteopaths to help them apply their professional judgement using the Osteopathic Practice Standards (OPS) as a framework for decision-making. This information was presented to osteopaths in written form but also through an online video discussion.

Collaboration Across the Healthcare Sector

- 27.** There was, and continues to be, significant collaboration across the healthcare sector at a strategic and operational level, and it will be important that looking ahead, we do not lose all of the gains made in 2020. Our key aim was to support care for patients and to remove unnecessary barriers in the context of the pandemic, examples include:
- » The issuing of a joint-statement by the regulators about how we would regulate in the context of a national healthcare emergency. The statement clearly articulated that patient care would be the first concern of professionals on the register; that individuals would need to use their professional judgement to assess risk to deliver safe care; that in these challenging circumstances, professionals may need to depart from established procedures to care for patients; and that regulatory standards would be flexible to provide that framework for decision-making supporting professionals to work within the limits of their own competence.
 - » Our issuing of a joint-letter with the four Chief Allied Health Professions Officers and the Health and Care Professions Council (HCPC) to all Allied Health Professionals supporting them to operate in a national emergency using their professional judgement.
 - » The sharing of regulatory intelligence to inform the development of new guidance and ways of working. The enhanced collaboration between the Directors of Fitness to Practise commenced with a joint Working Group update sent to the PSA in March 2020. This detailed the fitness to practise arrangements at each regulator from the outset of the pandemic and the commitment to share learning together with continued regular meetings.
 - » GOsC led the way in developing new guidance (remote hearings protocol, questioning witnesses) and new ways of working (remote hearings, trialling of CaseLines, an online platform for managing evidence and bundles securely in virtual hearings) supported by a bespoke half day training session, attended by all Committee Members led by a professional regulatory specialist and leading QC.
 - » In addition, discussion amongst the education inter-regulatory group, to understand how to support students and registrants to join the workforce enabled us to ensure

that our statement for the osteopathic educational institutions was aligned with the other regulators, even though we were not included in the emergency legislation at that time.

- » Reviewing and updating the Statement on Remote Consultations so that it was relevant to the context within which osteopaths were working.

Regulatory Reform

- 28.** The need for regulatory reform, to introduce a system where regulators are free from prescriptive legislation, was re-emphasised during the pandemic. Legislation which is not modern or sufficiently flexible, presents challenges for all regulators and responding to the pandemic within the constraints of outdated legislation was undesirable. There are clear future strategic and operational risks should there be further waves of the virus or other crises without reform of our legislation.

Equality, Diversity and Inclusion

- 29.** The pandemic has highlighted once again the inequalities within the healthcare system and while we recognise that a discussion about the full impact of coronavirus on individuals who are from a Black, Asian or Minority Ethnic background is underway, this is a gap in the strategic regulatory system/thinking which needs to be addressed.
- 30.** While the pandemic does not discriminate in terms of who might catch the virus, there is a disproportionate effect on some individuals who fall ill. The death rates for those individuals who are from a Black, Asian or Minority Ethnic background is disproportionately high, and for those individuals who identify as being from the LGBT+ community, some national health organisations have warned that they might also be particularly vulnerable to the effects of the disease.
- 31.** It is incumbent on all organisations to ensure that we have the right systems and mechanisms in place to ensure that consideration of equality, diversity and inclusion issues is central to what we do, and not thought of as an 'add-on' at the end.

Changing How We Work

- 32.** We have been keen to ensure that we use the pandemic as a catalyst for positive change and to take the opportunity to streamline what we do to such an extent that we will not go back to our old ways of working, even we are able to do so.
- 33.** In the summer we asked our staff team to identify what positive changes had occurred to the way that we worked as a result of enforced homeworking. The range of ideas and feedback was magnificent and included the use of online technology, e-communications and different ways of approach longstanding work process, which means that moving forward we will be more efficient and cost-effective as an organisation.

Conclusion

Cross regulatory collaboration got underway from day 1 in 2021, with the Healthcare Regulators Complaint Forum meeting (remotely) on 12 January.

At this meeting, delegates from across healthcare regulation shared their organisations' experience of regulating and the complaint landscape during COVID-19, phase 2 as restrictions eased and we then faced with rising infection rates, the renewed pressure in the NHS and lockdown 2.0 across all four nations.

Discussing the capability and capacity within regulators to effectively resolve corporate complaints, capture feedback and use both to drive operational and cultural change produces some thought provoking outputs. Sharing innovative approaches and exploring challenges means that the diverse experience and organisational differences within the forum group, are highly effective in bring regulators closer together and centring focus on the people involved in regulation - the professionals they regulate, the patients cared for, students embarking on their professional careers and those employed in the organisation.

As Chair, I very much look forward to our next meeting, when we will once again be joined by representatives from the PSA and our colleagues from PSNI.

The challenges faced will continue to evolve and working collaboratively to meet those challenges benefits those regulating, those regulated and most importantly patients and the wider public.

Late January I was delighted to address attendees at the NHS Complaints Summit 2021. Joined by Ben Wesson from the NMC, we shared our insight and perspectives on providing compassionate and effective complaint resolution. Such a collaborative form of engagement ultimately helped to stimulate discussion around this process and is something I look to doing more of in the future.

KEY CONTACT



Jennie Jones
Head of Nockolds Resolution

t: 01279 712580
e: jsj@nockolds.co.uk