



BRIEFING PAPER

# Keeping Regulation Relevant

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# Introduction

## Welcome to the Regulation and Alternative Dispute Resolution Briefing, produced by Nockolds Resolution

Cross-regulation collaboration is a common strategic objective across healthcare regulators in the UK. As leaders in regulation, Nockolds Resolution continually addresses the challenges and explores the opportunities of regulatory reform. We are experienced in evolving regulation in fast paced clinical professions, with diverse audiences and differing approaches to the delivery of healthcare.

In leading the Nockolds Resolution team, and developing complaint resolution services in regulated sectors, I am regularly involved in discussions around the importance of agility; how we maintain focus on the outcome we are seeking to achieve. This involves an investment in reflective practice - we collectively develop innovative approaches to regulation.

Within this document we will highlight and showcase current areas of innovation and agility within regulation and regulated professions. In this initial edition we look at:

- » One of the major impacts of the COVID-19 lockdown on the regulatory core functions - FtP substantive hearings;
- » PSA research and an update on the 2020 academic conference; and
- » Recent analysis of the impact of an independent complaint mediation service in optical profession, and how this has underpinned the development and implementation of Acceptance Criteria.

## KEY CONTACT



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# Remote Hearings - A New and Necessary Approach

On 19 March 2020, the GOC office was closed to visitors in order to ensure the safety and wellbeing of everyone concerned. The GOC also announced it would no longer be conducting office-based hearings that required stakeholders to be present in person.

The GOC made an immediate decision to proceed with as many of its substantive and non-substantive hearings as possible and practical. The GOC's statement: *'Our approach in fitness to practise for the service of documents and facilitating hearings during the COVID-19 emergency'*, outlined the a new, 'remote' approach and addressed a number of challenges, including:

- » **Identifying the most appropriate software application to run remote hearings** - the GOC's existing Microsoft Teams (MST) application was both fit for purpose and addressed any security concerns. Importantly, 'private rooms' on MST allow separate links to be set up for the relevant parties, for example; for panel deliberations or for advocates to have discussions outside of the main remote hearing;
- » **Enabling members of the public to access public hearings** - members of the public were able to join remotely. Strict ground rules for any member of the public wishing to observe a hearing included muting their microphone and turning off their camera throughout the proceeding, and reminders that recording a hearing is strictly prohibited;
- » **Managing and supporting hearing participants remotely, including witnesses** - MST allowed the host of the hearing to manage all participants, restricting access to certain functionalities such as the recording or screen sharing function, as well as allowing virtual lobbies to be set up, enabling the host to only allow access to those who it was appropriate for, when it is appropriate; and
- » **The increased strain created by remote hearings** - the time estimates for hearings were reassessed, resulting in additional time being added to substantive hearings (up to 50%), and only one (rather than the usual two) interim order cases being allocated to each panel. New expectations were also specified for more frequent breaks, a minimum period for lunch breaks to support the wellbeing of all parties, and allowing time to resolve any unexpected technological issues.

Throughout this process, keeping stakeholders (internal and external) fully informed and engaged remained key to the successful planning and delivery of remote hearings. The GOC also embraced all opportunities to learn from experience and to explore any reservations or challenges.

These included:

- » Commissioning a leading QC to host a number developmental sessions for hearing panel members on managing and maintaining professionalism during remote proceedings;
- » Hosting drop-in sessions in conjunction with the IT department to support hearing

- participants' understanding of the capabilities of MST;
- » Role-specific good practice guides on managing remote hearings;
- » Developing a 'How To' guide on managing the MST application for all hearing participants; and
- » Undertaking test calls for hearing participants in advance of each hearing.

In addition, the GOC organised a dedicated meeting (initially weekly) with inter-regulatory FtP director colleagues to discuss the COVID-19 emergency and the response to it. This proved to be an invaluable resource network, and the GOC was able to lead the way in progressing a 'business as usual' approach.

With speed, agility, consultation and consideration of the needs of all parties, this new and necessary approach has been a resounding success. Furthermore this approach is unique in its ability to support public access from the outset. So far, all hearings have concluded within the allotted time and no hearing days have been wasted.

Most of the regulators proceeded with urgent non-substantive matters - interim orders, for example - and Social Work England proceeded with substantive events from the outset. Most of the regulators are now starting to schedule remote substantive hearings and we expect that by September 2020 most, if not all, will be scheduled remote substantive events as well.

Between 19 March and 30 June 2020, 34 remote hearings were completed at the GOC. In addition, between March and May 2020 five applications to adjourn substantive events were granted - though greater familiarity and confidence with both the technology and the new way of working means that more substantive hearings could now be held remotely, including those with more witnesses and engaged registrants.

Careful consideration needs to be given to balancing the needs and preferences of all parties with the requirement to reach a determination on a potential public protection risk all whilst ensuring that a fair process is both seen and felt.

To support such aims, and to assist an FtP panel in its management of applications requesting or opposing a virtual hearing, additional guidance was produced and approved by the GOC in May 2020. Following this guidance, the FtP Committees have undertaken three procedural hearings in which there had been an application to oppose a virtual hearing. This resulted in two substantive hearings being directed to proceed remotely and another being adjourned. None of the participants have indicated an intention to challenge the process or the hearing outcomes by way of appeal or judicial review.

A second document - GOC's remote hearing protocol - provides guidance to all parties in respect of the conduct of remote hearings during this emergency period. This document is supported by further guidance, tailored specifically for witnesses giving evidence remotely.

Dionne Spence, GOC Director of Casework and Resolutions, explains:

*'As we develop our working practice in the current environment, we will need to consider what the 'new normal' may look like. We do not anticipate a return to our 'old normal'.*

*Remote hearings can have wider benefits - not only for participants, but also financially - and as a registrant-funded process/organisation this will need to form part of our consideration. The*

*interest of justice and our commitment to ensuring a fair and robust process in the delivery of our statutory objective is paramount. We are mindful that some registrants will continue to want to attend a physical hearing and be able to address the committee in person.*

*'We will therefore be exploring over the next few weeks whether we should continue to list remote hearings, in appropriate cases, even after the [COVID-19] emergency has ended. We are mindful that we will need to consult closely with our stakeholders about this to address and respond to any concerns they may have and to continue to ensure that we are acting in the interest of fairness, justice and our overarching objective to protect the public.'*

# A Solution for Fitness to Practice in Healthcare Regulation?

This year's PSA Research and Academic Conference posed the question -Regulation in the future will it matter? The international audience and contributors discussed a wide range of topics looking at what regulation needs to deliver to remain relevant. One area considered was how FtP may need to evolve to meet the future needs of the professionals regulated, patients and the wider society. Jennie Jones and Richard Edwards of Nockolds Resolution delivered an informative session which highlighted how mediation was being used in the UK optical professions through the specificity of a complaint mediation service resolving complaints, and supporting the implementation of Acceptance Criteria in the GOC's new FtP triage process.

**2020 Vision for Regulation**



**From Lose Lose to Win Win**

**The key role of mediation in the Healthcare Regulator of the Future**

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PSA Academic & Research Conference

6 March 2020

[https://www.professionalstandards.org.uk/docs/default-source/conferences/presentation/2020-conference/jones-and-edwards.pdf?sfvrsn=b4517720\\_2](https://www.professionalstandards.org.uk/docs/default-source/conferences/presentation/2020-conference/jones-and-edwards.pdf?sfvrsn=b4517720_2)

Regulation in the future will it matter? Last Year the UK and Devolved Governments' white paper 'Promoting Professionalism, Reforming Regulation', announced amended legislation prioritising the delivery of:

- » Modern and efficient fitness to practise (FtP) processes
- » Better support for professionals;
- » More responsive and accountable regulation.

Acknowledging that the UK's model of professional regulation for healthcare professionals had become increasingly complex, outdated, adversarial and legalistic, this document made specific reference to the use of mediation, and committed to enabling regulatory bodies to include this form of dispute resolution in their FtP processes.

It was a recommendation wholly welcomed by Nockolds Resolution, part of Nockolds Solicitors, which is an alternative dispute resolution approved body and the only law firm assessed an

certified by the Chartered Trading Standards Institute under the ADR Regulations 2015.

Over the last six years the Nockolds team have developed and delivered an effective and proportionate alternative dispute resolution model that provides a catalyst for service improvement and facilitates a significant improvement in managing regulatory concerns.

The Nockolds model offers a better resolution for low-level complaints, and drives improvements in care. The insight gained during mediation is shared with clinicians, professionals and business leaders. This upstreaming supports engages professions with regulators. The registrant population is able to see the regulator supporting the sharing of insight as a learning tool, and demonstrates the wide regulatory focus beyond FtP.

Nockolds has been effective in reducing the number of inappropriate FtP referrals - allowing regulators to focus resources on the cases that merit investigation, and to conclude those investigations in a timely manner.

Known as 'The Nockolds Resolution', the ADR model acknowledges and addresses the emotive nature of complaints through a simple, proportionate and relatively high-paced methodology. This process has been proven to:

- » Be successful in mediating 98% of cases received;
- » Be cost effective, reducing the unit cost per complaint handled by 60% since 2014/15;
- » Identify and progress FtP concerns to the Regulator in an efficient and timely fashion;
- » Protect the public;
- » Maintain trust in healthcare professionals - in feedback to OCCS, 44% of responders indicate they would now return to the practice involved in the complaint, illustrating a longer term benefit of mediation in repairing the relationship between practice and patient;
- » Support local resolution through preliminary mediation and guidance where the complaint has not yet exhausted the practice's own complaint process. This advice and early mediation facilitates a constructive complaint dialogue, with over 95% of those complaints then resolved at practice level;
- » Drive improvements in standards; and
- » Safeguard the health and wellbeing of professionals by reducing practitioner distress caused by inappropriate referrals into FtP.

With a focus on these key areas, our approach to ADR has already produced clear benefits and opportunities for two regulatory bodies.

The OCCS and VCMS handle 3,900 complaints a year, either received directly from the consumer, directed to it by practices, or referred by the regulator. Regulator referrals account for, on average, 16% of complaints that would, otherwise, be seeking to escalate into FtP, legal processes, and, where frustrations arise, be publicised in negative social media reviews.





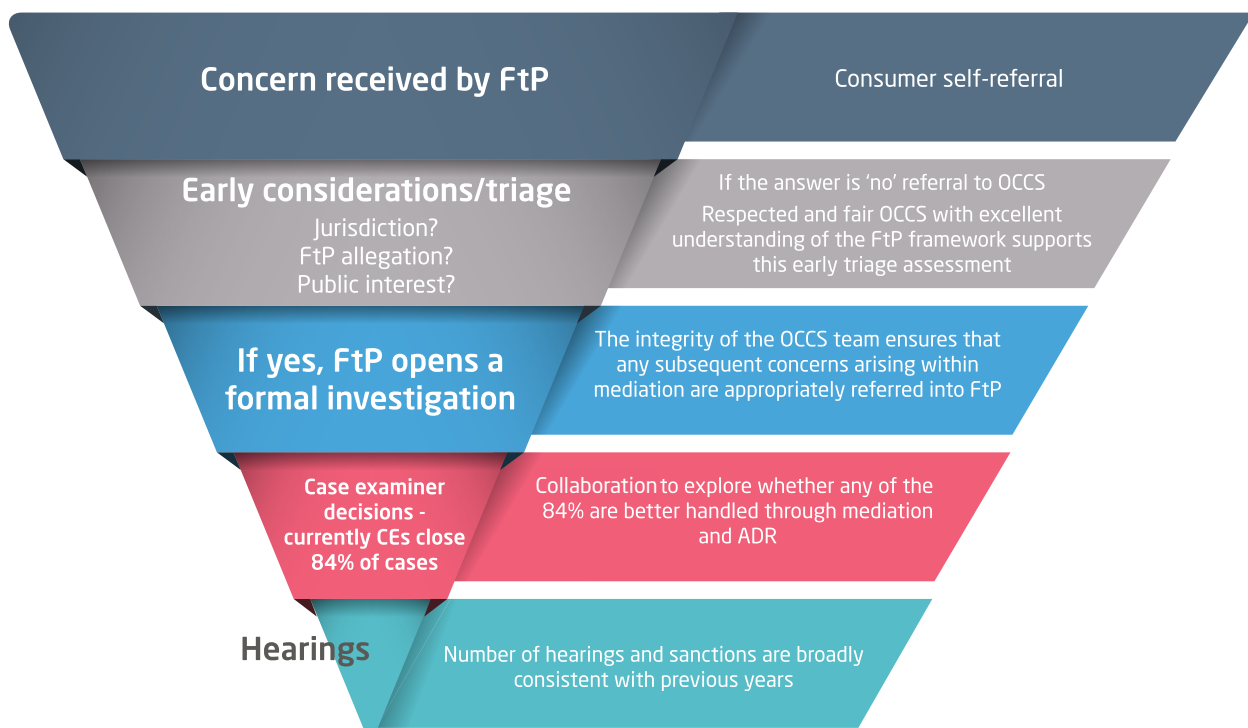
*Mediation encourages the parties to consider and explore a wide range of resolutions. Unlike legal proceedings, mediation is not limited to financial resolutions, which is why it is effective in resolving disputes with emotional triggers and drivers.*

Jennie Jones, head of Nockolds Resolution explained to the Conference: ‘The role of mediation in complaint resolution is now clearly established as providing an effective means of supporting the resolution of concerns in the right forum, the right timescale and with the right outcome. We welcome regulatory reform focusing on mediation and the role it can play within the FtP and regulation process. Over the past year, we have had interesting discussions with regulators to develop a deeper understanding of mediation and what it can achieve, and explore how the benefits of this resolution process can be brought to life within FtP. We are excited to continue to bring the insight and learnings from Nockolds Resolution to inform and encourage these explorations to design pilot approaches which can be evaluated.’

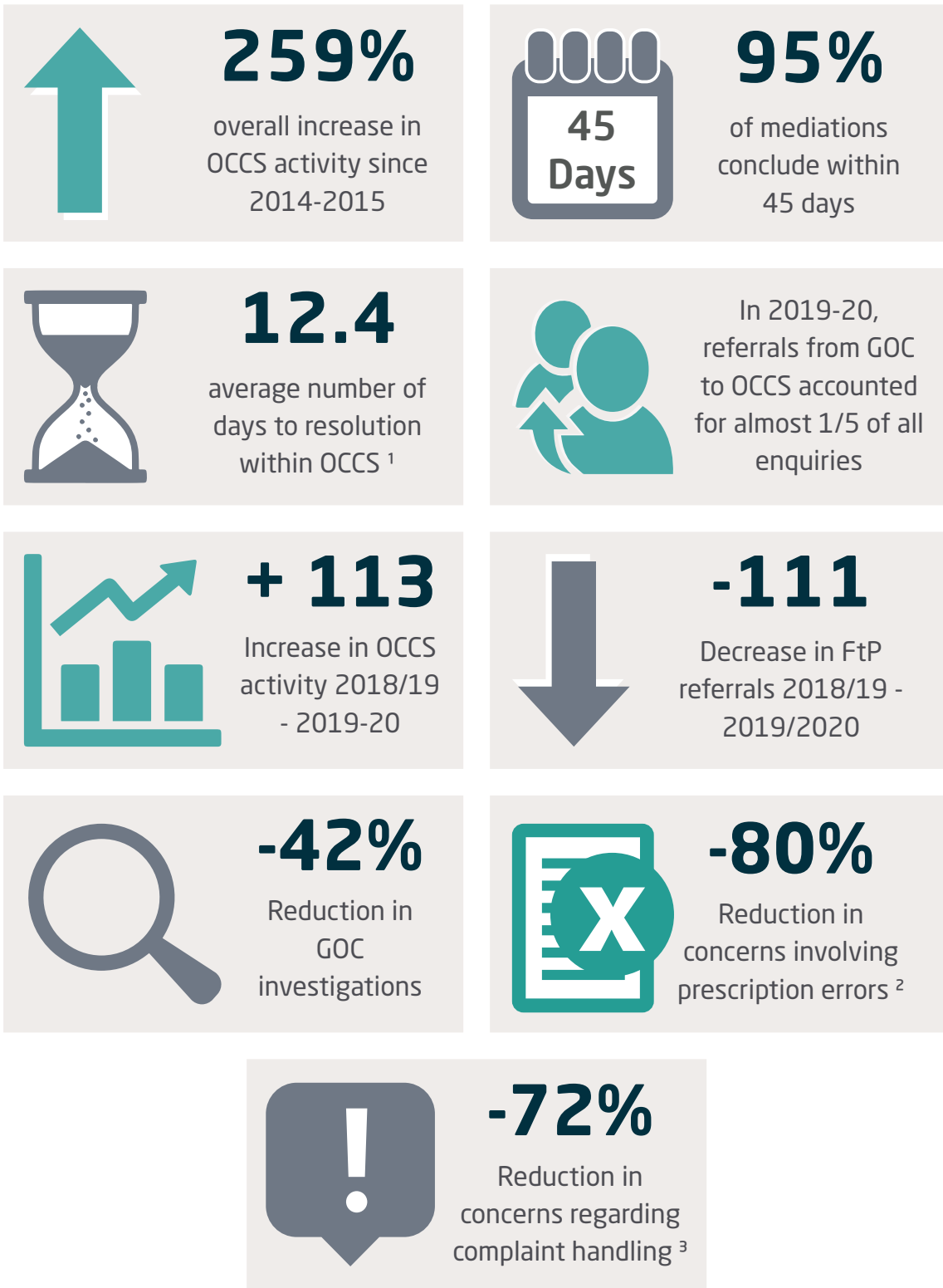
During the session, the audience reflected on the impact of mediation as an initial escalation stage where local resolution was exhausted, and then in the FtP triage stage in ensuring complaints were managed in the most proportionate and appropriate forum.

## GOC

## OCCS



In the previous 12 months, there has been a reduction in FtP referrals involving complaints in core consumer areas such as low level prescription variations, spectacle dispensing disputes and single clinical incidents where no harm was caused. During the same period, the OCCS has been seen an increase in mediations in these complaint areas. With a resolution rate of around 98%, and high consumer satisfaction ratings, the OCCS has been able to effectively resolve those complaints and through mediation and insight support reflective practice at a local level.



<sup>1</sup> Down by one week on 2018-19

<sup>2</sup> Reduction in concerns referred to the GOC since 2016-17

<sup>3</sup> Reduction in concerns referred to the GOC since 2017-18

The next phase in the evolution of this increasingly effective partnership is to explore how mediation can be effectively deployed in cases where an investigation is opened at the triage stage, but the investigation concludes with case examiners (currently 84% of case examiner investigations are closed with no escalation) .

Utilising mediation to encourage reflection and quality improvement, and improve the relationship between patient and the optical professions by re-establishing trust and confidence, there is the potential to evolve the FtP process to meet the needs of patients and help optical healthcare professionals deliver the best healthcare they can, in an increasingly sophisticated and fast paced world.

In exploring how mediation can be used within FtP, regulators will need to consider the key aims and objectives of the reforms, as well as the future needs of the public and registrant populations:

- » **Timeliness and proportionality** - different pathways for different concerns. A 'one size fits all' approach may no longer be appropriate or effective, so agility within the statutory framework can be explored and built in to allow future development;
- » **Upstreaming** - improving performance and supporting registrants to be the best they can be;
- » **Reflective practice** - mediation to explore what has happened and what can be done going forward;
- » **Future-proofing the process** - Nockolds Resolution will continue to facilitate this area of development through interactions with the Professional Standards Authority, Regulators and stakeholders to support reform, and the creation of new approaches and a system which is fit or purpose today and also for tomorrow.

# The Impact of the Optical Consumer Complaints Service

The GOC and the OCCS lead the way for ADR in international healthcare regulation. Since 2014 the OCCS has seen a 259% increase in activity, but investment in technology, ways of working and engagement with the sector has maintained resolution and satisfaction rates, while delivering a highly cost-effective 59% reduction in unit cost per case. In February 2020, the GOC procurement process resulted in Nockolds Resolution being appointed for a further three to four years. This process produced over-arching analysis into the impact of the independent mediation service in both complaint resolution and the FtP approach by the GOC.

Over the past 18 months, the OCCS has been key to the GOC's success in improving the efficient management of FtP complaints. Following a robust review by the PSA, the introduction of Acceptance Criteria and a remodelling of the triage process have resulted in a truly collaborative approach aimed at delivering effective and proportionate complaint resolution, public protection and the use of shared insight to devise an implementation plan and embed these changes.

These changes are delivering real results - we have seen an increase in complaint mediations opened by the OCCS alongside a reduction in investigations opened by the FtP team.

According to the GOC Annual Report 2019, in terms of FtP activity:

- » Complaints related to laser eye surgery were down 67% since 16/17;
- » Complaints related to prescription error were down 80% since 16/17; and
- » Complaints related to effective complaint handling were down 72% since 17/18.

In 2019-20, the OCCS concluded 1,598 complaint interactions. Referrals from the OCCS to the GOC FtP process fell by 81% year-on-year - from 37 to 7, equating to 0.4% of the enquiries concluded. This demonstrates the successful implementation of Acceptance Criteria and the remodelled triage process. The average timescale for all OCCS interactions was 12.4 days - down 7.5 days compared to 2018-19 - and the average timescale for all mediations was 40.14 days.

Quantitative and narrative feedback is captured from service users at the conclusion of their interaction, and all responses are reviewed by the Mediation Services Manager and Head of Service. Any dissatisfaction is reviewed and, importantly, it is shared to support the learning culture embedded within the OCCS.

Of the consumers who gave feedback in 2019-20:

- » 98% said the OCCS was easy to contact;
- » 95% said the OCCS was efficient and understood their concerns; and
- » 93% said the OCCS was productive, they would use it again, and they would recommend it to others.

Feedback from practice representatives and optical stakeholders said:

- » The OCCS focused on 'resolving issues quickly and fairly, whilst also identifying and sharing learning points from their work';
- » The OCCS was 'a vital part of the optical infrastructure which is trusted and respected by patients, practitioners and optical providers alike'; and
- » The OCCS achieved 'excellent results for our customers and partners through very delicate and challenging negotiations, being able to reach a resolution that is acceptable to both parties'.

The OCCS remains committed to 'upstreaming' key insights from complaints back to the profession, with communications that focus on learning how to improve CX, the customer experience - particularly in areas such as communication, empathy and complaint triggers. Many GOC registrants have not fully appreciated the distinction between different levels of complaint, so the OCCS has worked to support the sector gain a clearer understanding of complaint and regulatory risk.

Complaint insights lend themselves perfectly to peer group discussion. In 2019-20 we delivered almost 50 CET sessions to thousands of registrants at no cost to the GOC/OCCS - event hosts funded each session. Wider insight sharing for the OCCS includes website and social media activity, contributions to professional media publications and the continuation of 'sold out' CET sessions at professional trade fairs, large employer conferences and at local LOC meetings. We estimate we reached 3,000 registrants at these events in 2019-20.

Presenting at the Professional Standards Authority Academic and Research Conference in March 2020, Nockolds Resolution explained how mediation has supported and underpinned the remodelling of the GOC's FtP processes.

This was an opportunity, too, for wider exploration of the benefits of mediation in healthcare regulation. In the spirit of increased collaborative working as encouraged by the PSA, Nockolds Resolution launched a Healthcare Regulators Complaint Forum, which is hosted quarterly and has excellent attendance and participation from all healthcare regulators. The forum supports regulators in corporate complaints, seeking to share mediation insights to drive consistency and effectiveness.

The OCCS continues to invest in its critical relationships with stakeholders, whose engagement remains strong.



*Our effective mediation service provides a faster, better, more cost-effective and proportionate approach to complaint resolution, and supports a learning culture through insight sharing. As such, the service benefits the regulator, healthcare professionals and patients.*

Nockolds Resolution believes that all healthcare regulators need to ensure that their FtP processes are fit for purpose both now and in the future, and that the benefits of mediation are more relevant than ever before to regulation and wider complaint resolution.

We have pioneered a mediation model that is proven to work for regulators, healthcare professionals and the public, resolves complaints in an efficient and timely manner, and drives improvements in standards,

This leaves us with a challenge.

# How Do We Use ADR to Support Regulation Remaining Relevant?

We would welcome the opportunity to share more detailed data insights, explain the principles of mediation and how its core principles can be adopted and adapted to suit a broad range of clinical disciplines.

If you would like to discuss your own perspective on the published consultation, and to investigate how we could work together to develop an effective mediation service for your sector, please do get in touch.

## KEY CONTACT



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