



Department
of Health

The General Dental Council – proposed amendments to enhance the effectiveness and efficiency of its fitness to practise processes

A paper for consultation

September 2014

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The General Dental Council – proposed amendments to enhance the effectiveness and efficiency of its fitness to practise processes

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Foreword

The General Dental Council (GDC) is responsible for regulating dentists and dental care professionals (DCPs) (clinical dental technicians, dental hygienists, dental nurses, dental technicians, dental therapists and orthodontic therapists) working in the United Kingdom. The GDC's powers and duties include setting the standards of conduct, performance and behaviour that registered dentists and DCPs are expected to adhere to, and investigating any complaints or concerns which suggest that a dental professional may have failed to meet those standards.

The Health Departments in the Devolved Administrations recognise the important work that the GDC, and the other eight health professional regulatory bodies, undertake in protecting the public and delivering efficient and effective regulation. The four countries are therefore committed to working with the GDC to ensure the legislative framework surrounding dental regulation remains fit for purpose.

Consequently, the intention is to take forward priority amendments to the Dentists Act 1984 via an Order under Section 60 of the Health Act 1999. These proposed amendments are designed to allow greater flexibility in carrying out the early stages of an investigation into a dental professional's conduct, professional performance or health (the "fitness to practise process"). These measures should improve the efficiency of the GDC's processes and lead to the swifter resolution of complaints and investigations, whilst also enhancing patient protection and public confidence in dental regulation.

This document provides information on what the proposed amendments are, what they will do and in addition seeks your comments and views on the proposals.

Executive summary

This consultation is being taken forward in accordance with the requirements of Section 60 of the Health Act 1999. Section 60 permits modifications to the regulation of healthcare professionals by means of an Order in Council. The power requires the Secretary of State for Health to consult on draft Orders prior to their introduction into Parliament. Section 60 Orders are subject to appropriate Parliamentary scrutiny through the affirmative resolution procedure.

Orders which make provision for professions whose regulation is a devolved matter in Scotland (i.e. where they include matters relating to any profession which was not subject to compulsory statutory regulation prior to the Scotland Act 1998) must be laid before the Scottish Parliament in addition to the Parliament in Westminster. As these proposals concern amendments to devolved professions (dental nurses, dental technicians, clinical dental technicians and orthodontic therapists) Ministers in Scotland are also under a statutory obligation to consult on the draft Order.

While there are no legislative requirements for the draft order to be laid before either the Northern Ireland Assembly, or the National Assembly for Wales, the policy proposals in this document have the support of Ministers in those countries. Therefore, this consultation is being undertaken on behalf of all four parts of the United Kingdom and the outcome of it will be reported to all UK health ministers. The proposed amendments will apply to all practitioners working in the UK that are required to register with the General Dental Council.

The Section 60 Order will make a small number of amendments to the Dentists Act 1984, which is the legislation that established the GDC and sets out its powers and responsibilities. The changes to the Act are designed to improve the efficiency and effectiveness of the GDC's fitness to practise processes. The amendments to the legislation should reduce the length of time it takes to deal with the fitness to practise cases, whilst improving the consistency of decision making.

In addition, the GDC is also proposing to make changes to its fitness to practise rules. The new Rules would gain their legal footing from the changes to the Dentists Act being proposed within this document. The GDC is consulting on the proposed changes to its Rules, and its consultation will run in November 2014. Details of how to take part in the GDC's consultation will be available at www.gdc-uk.org nearer the time.

1. Introduction

- 1.1. The purpose of professional regulation is to set standards of training, conduct and competence for each statutorily regulated profession to ensure that professionals work to an expected standard. Professional regulation's ultimate aim is the protection of the public. This is underpinned by practitioners' personal accountability for maintaining safe and effective practice, wherever they are employed. Regulators must have in place effective measures to deal with individuals whose continuing practice presents a risk to the public, or otherwise renders them unfit to be a registered member of the profession.

- 1.2. Under the Dentists Act 1984, the General Dental Council (GDC) has the responsibility for the above functions in respect of dentists and Dental Care Professionals (DCPs). There are difficulties for the GDC in making its early investigation processes more efficient without changes to the legislation. The Government therefore intends to lay an Order under Section 60 of the Health Act 1999 to make a small number of amendments to the Dentists Act 1984. These amendments will:
 - enable the GDC to delegate the decision-making functions currently exercised by its Investigating Committee to officers of the GDC, known as Case Examiners,
 - enable both case examiners and the Investigating Committee to address concerns about a registrant's practice by agreeing undertakings with that registrant,
 - introduce a power to review cases closed following an investigation if the decision is materially flawed or new information has come to light which may have altered that decision, and
 - ensure registrants can be referred to an Interim Orders Committee at any time during the fitness to practise process.

Introduction of case examiners

- 1.3. When the GDC receives a complaint or information about a dentist or DCP, the complaint or information is assessed by GDC staff (acting on behalf of the Registrar) and if it is thought to amount to an allegation that the dentist or DCP's fitness to practise is impaired, it will be referred to the Investigating Committee (IC) for consideration. The Investigating Committee will decide what action needs to be taken – no action; issue a letter of advice; issue a warning; refer the case for a full hearing before a practice committee.
- 1.4. The Investigating Committee (IC) meets in private, and each panel has three members that are drawn from a wider pool. Each panel must have at least one lay member, and at least one registrant member. If the case concerns a dentist, the registrant member must be a dentist and if the case concerns a DCP, the panel must have at least one DCP registrant. The requirement to convene a panel of three people can prolong the time it takes for the GDC to achieve a decision on a case. A prolonged investigatory stage can cause undue stress to those whose fitness to practise is being considered, and can present a risk to public protection.
- 1.5. It is proposed that this could be resolved through the introduction of case examiners, who will exercise the functions of the IC. The case examiners will be officers of the Council and will make decisions at the same stage in the process as the IC do currently. When considering an allegation, two case examiners will be used, one lay individual and one from the same profession as the registrant whose fitness to practise is being investigated. The two examiners will, in the same manner as the current IC, review any information gathered by those carrying out the preliminary investigations and will make a decision about how to progress or dispose of the case.
- 1.6. The IC will continue to have a role, in that should the case examiners fail to agree on the appropriate outcome of a case, the case will then be referred to the IC for consideration.
- 1.7. The introduction of case examiners will lead to the swifter resolution of fitness to practise cases, which will increase public protection and should reduce costs. Cases will not be held in the system, awaiting a panel meeting. In addition there should be greater consistency in decision-making. The individuals undertaking the role will be officers of the GDC, and will deal with a greater number of cases than each of the current panellists therefore, gaining a greater depth of expertise and experience.
- 1.8. The amendments to the Dentists Act will enable the GDC to delegate the IC's powers to its case examiners via new procedural Rules. The General Medical Council and General Optical Council already have a case examiner system and it is also being introduced for the Nursing and Midwifery Council through the amendments being made to the Nursing and Midwifery Order 2001 through a Section 60 Order.

- 1.9. The GDC will also be consulting on these procedural rules that would give effect to the changes described above. Should you wish to view or respond to this, it can be accessed through the link provided at page 6, at the appropriate time.

Q1 – Do you agree the GDC should be provided with the power to introduce case examiners, who have the ability to exercise the functions of the Investigating Committee?

2. Power to agree undertakings

- 2.1. If the Investigating Committee (or case examiners, under the new proposals) consider that an allegation indicates that the registrant's fitness to practise may be impaired, they must refer the case to the relevant Practice Committee. This will result in a hearing and the relevant Practice Committee will make a determination in that case. The Practice Committee can issue a range of sanctions, including imposing conditions on the individual's registration.
- 2.2. If the IC determine that an allegation ought not to be considered by a Practice Committee, it can issue a warning or advice to the registrant.
- 2.3. There is no power contained within the GDC's legislation that allows the IC to agree 'undertakings' with a registrant. Undertakings amount to a formal binding agreement between the regulator and the registrant that the registrant will undertake activities such as particular types of training or operate under supervision. They are designed to address alleged deficiencies in a registrant's practice. We propose providing the IC and Case Examiners with the power to agree undertakings with GDC registrants. It is intended that any undertakings agreed would be in the public domain, and would be published in the online register.
- 2.4. The introduction of this change will mean that some cases which are currently referred to a practice committee may not need to be, if it is determined that the agreement of undertakings would lead to the resolution of a case in a way which is sufficient to protect patients and the public. Therefore, if the IC or case examiners consider that an allegation indicates that the registrant's fitness to practise may be impaired, but that the matter need not be considered by a practice committee, they would have the power to agree undertakings with the registrant. For example, if it is alleged that a registrant is deficient in a particular clinical skill, an undertaking to complete specific retraining could be agreed. This may be more proportionate than referring the case for a full hearing, which would increase the time and cost of reaching a decision.
- 2.5. Similarly, if a case involved an allegation that a registrant's health was affecting their fitness to practise, it may be possible to agree undertakings that would address any risks posed to the public and to the registrant themselves as a result of this health condition. This would also avoid the anxiety, time and cost incurred by referring the case for a full hearing.
- 2.6. It should be noted that undertakings will only be used where the undertaking applied satisfactorily protects the public and addresses the concern about the professional. Undertakings would not be proposed where the IC or case examiners felt that there was a possibility that, if the case was referred to a practice committee, the practice committee would erase his or her name from the register.
- 2.7. This provision will be introduced through amendment of the Dentists Act 1984 to allow the IC and case examiners to agree with the registrant that he or she will comply with

such undertakings as the IC or the case examiners consider appropriate. It will also introduce a power to allow the GDC to make rules in relation to undertakings, for example consequences of a breach of undertakings. The GDC will consult on the changes it is proposing to make to its Rules. The consultation will commence in November 2014 and will be available at www.gdc-uk.org.

Q2 – Do you agree that the Investigating Committee should have the power to agree undertakings with a registrant?

3. Power to review cases

- 3.1. Under the GDC's current legislation, when a decision has been taken by the IC that a case should not be referred to a Practice Committee, the GDC does not have the power to review that decision. Similarly, if the Registrar investigates a complaint or information and decides that it does or does not amount to an allegation of impairment (and so does or does not refer the complaint or information to the Investigating Committee or case examiners), this decision cannot be changed.
- 3.2. We are therefore proposing that amendments are made to provide for a power to review cases that are concluded by the Registrar or IC/case examiners, as described above, where the decision is considered to be materially flawed in some way or if new information has come to light. This would also apply to decisions to agree undertakings and to issue a warning.
- 3.3. The power to review such decisions will be limited to certain circumstances, which will be set out in new fitness to practise Rules. The circumstances being proposed:
 - the decision not to refer to the case examiners or a Practice Committee may for any reason be materially flawed,
 - where there is reason to believe that there is new information which might have led to a different decision,
 - where it is necessary for the protection of the public , in the interests of the registrant, or otherwise be in the public interest, and
 - the review must take place within 2 years, save for exceptional circumstances, of the date of the original decision
- 3.4. The introduction of the above powers to review such decisions would improve public protection by enabling a decision to close a case to be reviewed if that decision was found to be flawed. Additionally, it would enable a decision to close a case to be reviewed if new information was received. It would improve the fairness of the process by enabling a dental professional to apply for a decision taken against them to be reviewed.
- 3.5. The GDC will consult on the changes it is proposing to make to its Rules. The consultation will commence in November 2014 and will be available at www.gdc-uk.org.

Q3 – Do you agree the GDC should be provided with a power to review decisions of the registrar not to refer to the Investigating Committee or case examiners and of the Investigating Committee not to refer to a Practice Committee?

4. Warnings

- 4.1. If the Investigating Committee decide that a case does not need to be considered by a Practice Committee, the IC can issue a warning to the registrant concerned. With the proposed introduction of case examiners for the GDC, we propose that the ability to issue a warning should be extended to them.
- 4.2. At present, a warning issued by the IC can be published in the GDC's online register, or can be issued to the registrant by a private letter. If it is published, this will be for a specified period of time. The fact that a warning was issued remains part of a registrant's registration history, and is disclosable to future employers. The registrant is offered the opportunity to comment on the allegation being made against them, however, they are not given the opportunity to comment specifically on the prospect of receiving a warning. There is currently no mechanism by which the decision to issue a warning can be reviewed by the GDC – the only means of revisiting a decision to warn a registrant is through an application for a Judicial Review of the decision.
- 4.3. Where a warning has been issued, we are proposing to enable the IC to be able to review such a decision on the application of the registrant or the registrar and, if it thinks appropriate, revoke the warning and direct the Registrar to remove the warning from the registrant's entry in the register. We propose to set a two year time limit within which an application for a review can be made.
- 4.4. We do not propose to define particular criteria that a request for the review of a warning must meet before it will be considered. This will help to ensure the fairness of the process over all. However, in order to protect the GDC from the risk of receiving repeated review applications from any one registrant, we are considering the possibility of establishing a limit on the number of times a person can apply to have a determination to issue a warning reviewed.
- 4.5. It is proposed that where the IC or case examiners are minded to issue a warning to a registrant, the registrant should be given the opportunity to submit written representations specifically on this point and that these representations should be considered before the warning is issued.
- 4.6. The detail of this provision will be contained in the GDC's Rules. The GDC will consult on the changes it is proposing to make to its Rules. The consultation will commence in November 2014 and will be available at www.gdc-uk.org.

Q4 – Do you agree that upon the imposition of a warning, there should be the ability to review the decision taken, as described above?

Q5 – If the answer to question 4 is yes, should a limit be placed on the number of applications a person can make within the period to have the determination to issue a warning reviewed?

5. Referral to an Interim Orders Committee at any stage during the fitness to practise process

- 5.1. Upon receipt of a complaint or information about a registrant, the Registrar considers whether or not the matter complained of is so serious that it amounts to an allegation of impairment of fitness to practise that requires immediate intervention in order to protect the public or the registrant. If so, the Registrar will refer the matter to the Interim Orders Committee, which may impose conditions on or suspend the registrant while the matter is investigated. If the Investigating Committee decide to refer a matter to a Practice Committee, and they are of the opinion immediate action needs to be taken in the meantime, they can also refer the matter to the Interim Orders Committee.
- 5.2. The Dentists Act 1984 sets out who can refer a matter to an Interim Orders Committee and at what stage in the fitness to practise process. Presently, a referral to the Interim Orders Committee can only be made by the Registrar or Investigating Committee when they make a decision to refer to the Investigating Committee or Practice Committee, respectively. We propose amending the legislation to enable a referral to be made to the Interim Orders Committee at any point in the fitness to practise process where information becomes available which suggests an interim order may be necessary.
- 5.3. The proposed changes are to ensure that:
 - the registrar can refer an allegation to the Interim Orders Committee at any time before he has referred the allegation to the IC (or case examiners);
 - the registrar can refer an allegation to the Interim Orders Committee at any time after he has referred the allegation to the IC, prior to the IC or case examiners commencing their consideration of the case;
 - the IC can refer an allegation to the Interim Orders Committee at any time including where the IC have referred an allegation to a Practice Committee but before the hearing before that Committee has commenced and a referral can be made to the IOC by the IC when the IC adjourns to consider the allegation. We also intend case examiners in exercising the functions of the IC, will also have the ability to refer a matter to an Interim Orders Committee.
- 5.4. By making this change it will provide a higher level of patient protection, ensuring those who are potentially unsafe to practice can have their registration suitably restricted whilst enquiries and investigations are made. Public confidence in the regulatory regime will also be enhanced, by guaranteeing appropriate measures can be taken where necessary safeguarding patients and the public ensuring they are not exposed to inappropriate practice.

Q6 – Do you agree with the changes to the legislation permitting the Registrar to refer an allegation to the IOC at any time provided that, in cases which are referred to the IC, the IC has not yet commenced its consideration of the allegation?

Q7 – Do you agree that the IC should be able to refer an allegation to the Interim Orders Committee at any time, provided that, in cases which are referred by the IC to a Practice Committee, that Practice Committee has not yet begun its consideration of the case?

6. Costs and benefits analysis

- 6.1. During the development of our proposals we have considered the costs and benefits and the possible impact they might have. We believe the direct costs and benefits arising from the measures outlined above will affect the GDC only, which as a professional regulator, is not considered a business for the purposes of the better regulation processes. Therefore the proposed amendments will have no direct impacts on business.
- 6.2. Most of the costs and savings will apply to the GDC, which have been calculated on a best case and worst case scenario. The best case has been calculated on the introduction of case examiners and an assumed 20% reduction in the number of final practise hearings due to the implementation of undertakings, which provides savings of approximately £2.7m. The worst case has been calculated on the same basis but an assumed 10% reduction in the number of final practise hearings due to the use of undertakings and provides a saving of approximately £1.8m.
- 6.3. In addition to the potential savings outlined above there are also significant non-monetised benefits from introducing a more efficient system by providing better protection to the public and improving confidence in the GDC. However, we intend to gather further evidence on any potential impacts introducing these measures will create as part of this consultation exercise. Following this consultation our assessment will be reviewed to take account of the consultation responses.

Q8 – Will the proposed changes affect the costs or administrative burden on your organisation or those you represent, by way of:

- An increase
- A decrease
- Stay the same
- Unsure
- Please explain your answer.

7. Equality

- 7.1. The Department of Health and the GDC are covered by the Equality Act 2010, and specifically, the Public Sector Equality Duty.
- 7.2. The Duty covers the following protected characteristics: age, disability, gender reassignment, pregnancy and maternity, race (includes ethnic or national origins, colour or nationality), religion or belief (includes lack of belief), sex and sexual orientation.
- 7.3. There are three parts to the Duty and public bodies must, in exercising their functions, have due regard to them all. They are:
 - the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
 - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 7.4. Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:
 - remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic
 - take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it
 - encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low. The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.
- 7.5. Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular to the need to:
 - tackle prejudice, and
 - promote understanding.

Q9: Do you think that any of the proposals would help achieve any of the

following aims:

- i. eliminating discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010?
- ii. advancing equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it?
- iii. fostering good relations between persons who share a relevant protected characteristic and persons who do not share it?

If yes, could the proposals be changed so that they are more effective in doing so?

If not, please explain what effect you think the proposals will have and whether you think the proposals should be changed so that they would help achieve those aims?

8. The draft Order

- 8.1. The draft Order that will be made under Section 60 of the Health Act 1999 is attached at annex A to this document.

Q10 – Do you have any comments on the draft Order?

9. Summary of questions

- Q1 Do you agree the GDC should be provided with the power to introduce case examiners, who have the ability to exercise the functions of the Investigating Committee?
- Q2 Do you agree that the Investigating Committee should have the power to agree undertakings with a registrant?
- Q3 Do you agree the GDC should be provided with a power to review decisions of the registrar not to refer to the IC or case examiners and of the Investigating Committee not to refer to a Practice Committee?
- Q4 Do you agree that upon the imposition of a warning, there should be the ability to review the decision taken, as described above?
- Q5 If the answer to question 4 is yes, should a limit be placed on the number of applications a person can make within the 2 year period to have the determination to issue a warning reviewed?
- Q6 Do you agree with the changes to the legislation permitting the Registrar to refer an allegation to the IOC at any time provided that, in cases which are referred to the IC, the IC has not yet commenced its consideration of the allegation?
- Q7 Do you agree that the IC should be able to refer an allegation to the Interim Orders Committee at any time, provided that, in cases which are referred by the IC to a Practice Committee, that Practice Committee has not yet begun its consideration of the case?
- Q8 Will the proposed changes affect the costs or administrative burden on your organisation or those you represent, by way of:
- An increase
 - A decrease
 - Stay the same
 - Unsure
 - Please explain your answer.
- Q 9 Do you think that any of the proposals would help achieve any of the following aims:
- i. eliminating discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010?
 - ii. advancing equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it?
 - iii. fostering good relations between persons who share a relevant protected characteristic and persons who do not share it?

If yes, could the proposals be changed so that they are more effective in doing so?

If not, please explain what effect you think the proposals will have and whether you think the proposals should be changed so that they would help achieve those aims?

Q10 Do you have any comments on the draft Order?

10. Responding to this consultation

Consultation process

This document launches a consultation on a number of proposals that aim to make the GDC's early investigation stage fitness to practise processes more effective and efficient. It therefore seeks to amend the Dentists Act 1984. This consultation document seeks comments and views on the draft Order 'The General Dental Council (Fitness to Practise etc.) Order 2015'

The consultation is being run, as far as is practical, in accordance with the Cabinet Office Code of Practice on Consultations (reproduced below). The closing date for the consultation is 21 November 2014.

There is a questionnaire on the GOV.UK website which can be printed and sent by post to: GDC S60 Consultation, Professional Standards, 2N09, Department of Health, Quarry House, Quarry Hill, Leeds LS2 7UE.

Completed questionnaires can also be sent electronically by e-mail to: HRDListening@dh.gsi.gov.uk

Alternatively you may also complete the online consultation response document at: <http://consultations.dh.gov.uk/ftp1/gdc-proposed-amendments-to-ftp-processes>

It will help us to analyse the responses if respondents fill in the online consultation response document but responses that do not follow the structure of the questionnaire will be considered equally. It would also help if responses were sent in Word format, rather than in pdf format.

Criteria for consultation

This consultation follows the Government Code of Practice, in particular we aim to:

- Formally consult at a stage where there is scope to influence the policy outcome;
- Consult for a sufficient period.
- Be clear about the consultations process in the consultation documents, what is being proposed, the scope to influence and the expected costs and benefits of the proposals;
- Ensure the consultation exercise is designed to be accessible to, and clearly targeted at, those people it is intended to reach;
- Keep the burden of consultation to a minimum to ensure consultations are effective and to obtain consultees' 'buy-in' to the process;
- Analyse responses carefully and give clear feedback to participants following the consultation;
- Ensure officials running consultations are guided in how to run an effective consultation exercise and share what they learn from the experience.

The full text of the code of practice is on the Better Regulation website at: www.bis.gov.uk/policies/better-regulation/consultation-guidance

Confidentiality of information

We manage the information you provide in response to this consultation in accordance with the Department of Health's Information Charter:

(www.dh.gov.uk/en/FreedomOfInformation/DH_088010).

Information we receive, including personal information, may be published or disclosed in accordance with the access to information regimes (primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the DPA and in most circumstances this will mean that your personal data will not be disclosed to third parties.

Summary of consultation responses

A summary of the response to this consultation will be made available before or alongside any further action, such as laying legislation before Parliament, and will be placed on the GOV.UK website (www.gov.uk/dh).