



Department
of Health

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

Consultation report: 18 November 2015

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Department of Health

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Executive summary

The Dentists Act 1984 established in legislation the General Dental Council (GDC), and set in statute the GDC's functions and processes. Ministers within the four countries are keen to ensure that the GDC has the appropriate framework in place so that it can carry out its statutory responsibilities effectively. However, at present the legislation surrounding the early stages of an investigation into a dental professional's conduct, professional performance or health (the "fitness to practise process") does not provide a sufficient level of flexibility to enable the GDC to carry out this function in the most effective and efficient way. Legislative change is needed to address this.

The Government proposes to make the necessary changes through an Order under section 60 of the Health Act 1999 ('a Section 60 Order'), which requires the Secretary of State for Health to consult on all draft Orders prior to their introduction into Parliament. The measures within this Order make provision for professionals whose regulation is a devolved matter in Scotland (dental nurses, dental technicians, clinical dental technicians and orthodontic therapists). Therefore, Ministers in Scotland are also under a statutory obligation to consult on the draft Order. Whilst there is no legislative requirement to consult, Ministers in Wales and Northern Ireland are supportive of the proposals.

The Department of Health undertook a UK wide consultation, on behalf of all four UK health departments from 26 September – 21 November 2014 on proposals to amend the GDC's early investigation stage fitness to practise processes. The draft amendment Order was published alongside the consultation paper. The Department received 43 consultation responses from a range of organisations and individuals and this document provides a summary of them.

The amendments proposed in the consultation paper will apply to all practitioners working in the UK that are required to register with the General Dental Council. The changes 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, in certain cases, to address concerns about a registrant's practice by agreeing appropriate undertakings with that registrant instead of referring them to a Practice Committee;
- introduce a power to review cases closed following an investigation (rules to be made under this power will provide that a review can be undertaken by the registrar if he considers that the decision is materially flawed or new information has come to light which may have altered that decision and a review is in the public interest);
- introduce a power to enable a review of the registrar's decision that a complaint or information received did not amount to an allegation of impairment of fitness to practise;
- introduce a power to enable the Investigating Committee and the Case Examiners to review their determination to issue a warning; and

- ensure registrants can be referred to an Interim Orders Committee at any time during the fitness to practise process.

The purpose of these amendments is to 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. The majority of respondents agreed with this, recognising the significant benefits the amendments will achieve and therefore supported all of the proposals. However, a number of points were raised that misunderstood the policy intentions or the current working of the GDC's fitness to practise system and we have attempted to provide clarification around these points.

Once introduced these amendments will require the GDC to amend the procedural rules governing their fitness to practise procedures (the General Dental Council (Fitness to Practise) Rules Order of Council 2006 (SI 2006 No.1663)). The GDC has consulted on its proposed rules changes, which opened on 17 November 2014 and closed 12 January 2015. It will also publish a summary of responses. Should you wish to access more detail it can be found at <http://www.gdc-uk.org/Newsandpublications/Pressreleases/Pages/Consultation-on-GDC-Fitness-to-Practise-processes.aspx>.

A full impact assessment of these measures has been undertaken and has been published alongside this report document. A separate equality analysis has been carried out. The Government intends to lay the General Dental Council (Fitness to Practise etc.) Order before the Westminster and Scottish Parliaments at the earliest opportunity.

Background

For several years, the UK Law Commissions have been undertaking a review of health, and in England, social care professional regulation matters. The outcome of which is intended to streamline and simplify the existing regulatory framework. The Government is now considering options for taking forward this work.

During the period of the Law Commissions' review only minimal changes have been made to the health and care professional regulatory bodies' frameworks. During the review the regulators identified a number of areas in which improvements could be made to their governing sets of legislation, both for the protection of the public and in terms of efficiency savings, which were fed into the review. However, many change requests made during the review period were deferred until the Law Commissions' findings were published.

However, the GDC has seen a 110% increase in its fitness to practise complaints case load within the last 3 years, putting a significant strain on the GDC's resources. To counterbalance this, and to ensure a satisfactory level of public protection, the GDC need to be able to deal with complaints more efficiently to prevent an unmanageable backlog of cases and ensure that public protection is maintained.

It has, therefore, been identified that in order to maintain the correct levels of patient safety, confidence in dental regulation and to generate necessary efficiency savings, changes need to be made to the GDC's early investigation stage fitness to practise processes.

Whilst the GDC has already made a number of changes to its procedures, in order to improve the efficiency of its early investigation processes, changes to the GDC's governing legislation is required. The Government therefore intends to lay an Order under section 60 of the Health Act 1999 making changes to the Dentists Act 1984.

Consultation Process

The Department of Health consulted on a UK wide basis on behalf of the four UK Health Departments, for an 8 week period on the draft S60 Order to make a small number of amendments to the Dentists Act 1984.

The consultation asked respondents to consider 10 questions about the effects these provisions could have and sought clarification on the costs and benefits or any impacts that would arise as a result of the proposals, to individual healthcare professionals, the GDC or other organisations involved in the fitness to practise process. The Department has received 43 replies, which have been allocated the following categories:

Category	Number of respondents	Percentage
Dentists/health professionals	21	49%
Member of the Public	2	5%
Legal profession / defence organisation	4	9%
Dentist organisation	5	12%
Royal college	4	9%
Regulatory body	4	9%
Education establishment	3	7%
Total	43	100%

It should be noted that not all of the respondents answered all of the questions in the consultation. Where percentages of respondents have been given, these figures have been rounded in order to total 100%.

The Department would like to thank all of those who responded to this consultation and is grateful to them for their input.

Consultation Responses

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?

A majority of respondents (74%, 32 in total) agreed the GDC should be provided with a power to introduce case examiners in to the fitness practise process, who will have the ability to exercise the functions of the Investigating Committee (IC). It was recognised that the introduction of such a role will streamline the process, bringing the GDC into line with other professional regulators such as the General Medical Council, the General Optical Council and Nursing and Midwifery Council. It will also generate a greater consistency in decision making due to the opportunity for these individuals to be exposed to a greater number of cases, than is currently the case for panellists of the IC. In addition, benefits will be seen for all involved in the process; patients and registrants as cases will be investigated more quickly, reducing the stress for both parties and enhancing public protection. Also for the GDC as it will see a reduction in its operational costs.

A point was raised that because powers will be invested in fewer people robust checks should be carried out to assure the quality of decision making. We agree robust checks should be in place and all decisions taken at the end of the investigation stage (whether made by case examiners or the IC) will continue to be subject to the Professional Standards Authority for Health and Social Care's (PSA) power to audit investigation stage decisions. The PSA will also continue to monitor how the GDC's fitness to practise process as a whole is working as part of its annual performance review. In addition the GDC will provide the case examiners with robust training and guidance.

A number of individuals raised concerns about the reduction in number from a 3 person panel decision to a two person lay / registrant split case examiner decision as there may be a reduction in fairness in the decision making process. A number of respondents also felt that there should be a 3 person decision making process, with a registrant majority. The Department does not agree with this; for a number of years, in order to secure the confidence of patients, the public and the professions, professional regulation has been moving away from the model of professional self-regulation towards a model of independent professional regulation. Requiring a registrant majority at this decision making point would be contrary to this.

A point was also made that the case examiners appear to be taking over only part of the IC's functions. Whilst it is true that the IC will remain, this will only be used in those cases where the case examiners cannot reach agreement on the next steps for a case. The IC will then be utilised to make a final determination on whether the case ought to be considered by a Practice Committee. We continue to think this is a suitable process.

In addition a further 5% (2) of respondents agreed in principle with the introduction of case examiners, but subject to the contents of the GDC's rules. The GDC's rules changes have been consulted on and the relevant details can be found at the link provided on page 6 of this document.

In addition 7% (3) of the respondents did not agree with the introduction of case examiners as it provides the GDC with the power to become “judge and jury” and there is a danger that the independence of decision making may be lost as the case examiners will be officers of the Council. It is important to remember that case examiners will not be making findings of fact in respect of whether a registrant’s fitness to practise is impaired but rather they will make the decision as to whether a case needs to proceed to the adjudication stage and be considered by a practice committee. Additionally the GDC in its rules and guidance will set the clear direction that the case examiners must make decisions based on documentary evidence, supplied to them in the same manner as is currently the case for the IC. The case examiners will not be involved in evidence gathering. These individuals will be equally split between lay and registrant providing another safeguard in the process ensuring fairness.

12% (5) of respondents were unsure whether case examiners should be introduced because of a reduction from a 3 person panel to a 2 person case examiner decision or would like to see an overhaul of the regulatory system as a whole. A further 2% (1) of the respondents held no view on whether the regulatory process should include case examiners but outlined features they saw as important for inclusion in the process. All of which have been covered above or further detail can be found through the GDC’s rules consultation.

The Department proposes to continue with this proposal.

Opinion	Number	%
Agree	32	74
Agree but subject to sight of the GDC’s rules	2	5
Disagree	3	7
Unsure	5	12
No views but comments	1	2
Total	43	100

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

88% (38) of respondents agree or agree in principle that the Investigating Committee should have the power to agree undertakings with a registrant. It was recognised that the inclusion of such a power would streamline the fitness to practise process and in circumstances where undertakings can be agreed it will remove the costs of an unnecessary hearing. It was pointed out by a number of respondents that undertakings will also remove the stress and anxiety from the process for both the complainant and the registrant. It was further highlighted by the Faculty of Dental Surgery at the Royal College of Surgeons of England that undertakings will be particularly helpful when the GDC has been asked to consider health issues assisting to swiftly remove any risks.

A comment was made that it will be vital to ensure adequate training had been provided by the GDC of its case examiners to undertake this role. The Department has received assurances from the GDC that appropriate training will be undertaken and guidance supplied to both case examiners and the Investigating Committee.

A view was expressed that information was not supplied within the consultation documentation about the ability of the IC to dismiss the case when it ought not to be considered by a Practice Committee. This particular question is concerned with the ability of the IC / case examiners to agree undertakings. The process by which the IC makes a determination that there is no case to answer and therefore the case does not need to be considered by a Practice Committee will remain the same and so it was felt unnecessary to supply such information. Further detail was also requested on how undertakings will work in the various circumstances. The practicalities of how the system will operate are dealt with in more detail in the GDC's response to its rules consultation.

A question was also raised, by the dental protection arm of the Medical Protection Society, about whether agreed undertakings would always be placed in the public domain. Where these have been agreed the IC / case examiners have been provided with the ability to direct the Registrar to enter details on to the register when considered appropriate. We understand that undertakings that are agreed will be published in the majority of cases, and the GDC has consulted on what the timeframe for publication should be. The GDC will also consult on a guidance document separately which will set out measures to ensure the process for agreeing undertakings and issuing warnings is open and transparent, including its approach to publication of warnings. The details will be published in the GDC's response to its consultation.

During the consultation a concern was also raised about the current drafting of the Order, in so much as it does not reflect the policy position set out in the consultation document. The current drafting provides undertakings as a method of disposal after the Investigating Committee has determined a matter ought not to be referred to a Practice Committee (the rationale being that it need not be referred to a Practice Committee as it can be dealt with by way of undertakings). This was identified as an area that may reduce the range of cases in which undertakings could be agreed. This would also mean that if undertakings were proposed and the registrant refused them, then arguably the IC / case examiners may not reasonably be able to do anything other than conclude the case, which could then present a patient safety risk.

We will amend the Order to clarify the position. The Order will therefore make clear that where the case examiners or IC determine that an allegation ought to be considered by a Practice Committee they may, in appropriate circumstances, instead agree with the dental professional that they will comply with such undertakings as the case examiners / Investigating Committee consider appropriate. In addition if undertakings are not appropriate or the registrant does not agree to comply with the undertakings, or these are breached and subsequently revoked the IC / case examiners *must* refer the case to the Practice Committee.

5% (2) of respondents disagreed with the introduction of undertakings on the basis that there is not enough professional input to the system and the registrant will not get a proper outcome if they accept a “lesser sanction” rather than proceed to a Practice Committee. We do not agree that there will be insufficient professional input as one of the case examiners will have to be a registered dental professional. If the case examiners feel they have insufficient information to make a decision on a case, they will be able to require further investigations, for example that the GDC obtains an expert report. Case examiners will have access to comprehensive decision-making guidance documents, and will receive training. Also, registrants need not agree undertakings with the case examiners of the Investigating Committee if they are of the view that they would prefer a full hearing before a Practice Committee.

7% (3) of respondents were unsure whether undertakings should be introduced or, in the case of the PSA, that the system proposed meets its suggested principles for consensual disposal of cases. The PSA is of the view that in order to agree undertakings the registrant should be required to admit impairment of fitness to practise and sign a statement of agreed facts.

Implementing a consistent approach to consensual disposal according to the principles identified by the PSA would require a consolidation of the legislation. The report of the Law Commissions’ of England and Wales, Scotland and Northern Ireland review of the regulation of health and (in England) social care professionals set out how consolidation might be achieved including in relation to consensual disposal. The Government is currently considering how best to take forward this work. This s60 introduces a power for CEs and ICs in appropriate circumstances, to agree undertakings with a registrant. A registrant need not agree to these, in which case the allegation would be referred to a Practice Committee.

The GDC recognises the importance of operating a robust system for monitoring undertakings. Whilst business processes have not been finalised, it is anticipated that the GDC’s Case Review Team will monitor undertakings. This team currently monitors registrants working under conditions, and the GDC anticipates that undertakings will be broadly commensurate with conditions applied by practice committees. The GDC is confident that its Case Review Team has the requisite expertise to monitor undertakings robustly. If additional staffing resource was required, it is understood that this would be offset by the broader savings that introducing undertakings could make.

The Department proposes to continue with this proposal, subject to the changes outlined.

Opinion	Number	%
Agree	38	88

Disagree	2	5
Unsure	3	7
Total	43	100

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?

The majority of respondents (64%, 27 in total) agreed that the GDC should be provided with a power to review decisions of the Registrar not to refer to the IC / case examiners and of the IC / case examiners not to refer to a Practice Committee. It was recognised that the approach will allow for greater public protection within the system and for greater openness in the fitness to practise process.

Three respondents also commented that it would provide a fair opportunity for interested parties to seek a review of decisions taken in cases where a warning has been applied or undertakings agreed.

A decision to agree undertakings with a registrant rather than refer the allegation to a Practice Committee will not be reviewable under the new powers. These new powers to review are there to ensure the protection of the public and, in respect of IC and case examiners decisions, it is the decision not to refer to a Practice Committee that is reviewable. This will be set out in the fitness to practise rules which have been consulted upon and can be accessed at the link provided on page 6. Where undertakings have been agreed, there will be safeguards for the registrant in that undertakings can be varied or revoked. It should be noted that if undertakings are not appropriate or the registrant does not agree to comply with the undertakings, or these are breached and subsequently revoked the IC / case examiners *must* refer the case to the Practice Committee.

3% (2) of respondents agreed in part that these review powers should be introduced. One such respondent stated that cases should only be reviewed where the issue was serious and a matter of actual fitness to practise concerned. The GDC will use these powers where there is evidence to suggest the original decision taken by the Registrar or the IC/case examiners was materially flawed or where new information has come to light that may have led to a different decision and that a review is necessary in the public interest, or in the interests of the registrant or public protection. The GDC have consulted on these rules and a summary of findings will be produced.

The NMC also felt that whilst the decision to introduce a review power for cases not referred to the Practice Committee by the IC / case examiners was the right one, a power should not be provided for Registrar non-referral decisions. It considers that the Registrar can consider further information relating to a fitness to practise referral without having to call into question the previous decision not to refer.

The PSA highlighted areas where extra information would be helpful. Both it and the GDC have raised a point about the drafting of the Order, in that in its current form it will be possible to review a decision that has been referred from the Registrar to the IC / case examiners. The GDC also raised a point that there is potential for a review when referring from the IC / case examiners to the Practice Committee. We agree there is a point of concern in that within the current drafting a decision to refer onward from the Registrar to the IC / case examiners would

be a reviewable decision. This is not the policy intention. The draft Order will therefore be amended to make clear that the review power will apply only to those cases that are closed and not referred onward.

We disagree that there is potential for a review when referring from the IC / case examiners to the Practice Committee. As s27(AB) within the Order expressly limits the review to a determination under s27A(1) that an allegation ought not to be considered by a Practice Committee. The Order will therefore not be amended in this regard.

Further details on when the review power can be used were set out within the GDC's rules consultation, a link to this can be found at page 6. For clarity a review can be triggered when the Registrar believes the original decision was materially flawed *or* new information comes to light *and* it is either in the interest of public protection, the dental professional or necessary for public protection and except in exceptional circumstances, a review of the relevant decision cannot be commenced more than two years after the date of that decision. The GDC's consultation proposes that a dental professional, complainant or another interested party can apply for a review.

The PSA further query why, within the draft Order, the Registrar has been provided with a power to review an IC / case examiner decision not to refer to a Practice Committee, as this infringes on the separation of the investigation and adjudication functions because the Registrar could ultimately be the decision maker who refers the case to a Practice Committee. There has been a misunderstanding of the process here.

When a request for a review is received by the GDC it will be the Registrar who will make a determination on whether a case should have been referred to the IC / case examiners where the original decision was taken not to, by the Registrar. The Registrar can look again at such a decision in the light of any new information received. In cases where the IC / case examiners original determination was not to refer to a Practice Committee, the request for review will be made to the Registrar who will then decide whether the case should be reconsidered by the IC / case examiners for potential onward referral to a Practice Committee. The decision to refer, or not to refer, to the Practice Committee will always be taken by the IC / case examiners and not the Registrar.

19% (8) of respondents disagreed with the introduction of such a review power. The Medical and Dental Defence Union for Scotland pointed out this is because the review power will cause added stress for registrants through the fitness to practise process for an additional two years and acts as a constant double jeopardy. Whilst the Department agrees that this may produce some additional stress for those registrants concerned, we do not envisage this power being used for a majority of cases. We also feel the public protection benefits add weight to the need for this review power.

14% (6) of respondents were unsure whether such a power should be introduced. One individual questioned whether members of the public would have the right to escalate a concern further, if there were no grounds for doing so. This power would not be used in such circumstances, new information would need to have been brought to the GDC's attention or the original decision would need to have been materially flawed.

In addition a view was expressed that the power was too vague. It should be noted that the proposed draft Order is an enabling piece of legislation, allowing the GDC to make further rules specifying the detail. Further information on the detail can be found through the link provided at page 6.

The Department proposes to proceed with this proposal, subject to the modifications outlined.

Opinion	Number	%
Agree	27	64
Agree in part	2	3
Disagree	8	19
Unsure	6	14
Total	43	100

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

The majority of respondents (84%, 36 in total) agreed that upon the imposition of a warning there should be an ability introduced to review the decision taken. Views were expressed that as warnings can potentially have long term effects on an individual's employability, even a number of years down the line. Therefore in the interests of fairness the registrant should have the right to apply for a review of a warning. A comment was also made that clearly defined criteria should be introduced as to when a registrant could apply for a warning. See later in this chapter for an explanation as to why the Department does not propose such a measure.

2% (1) of respondents agreed in part to the proposals to introduce a right to request a review. A comment was made that the GDC's resourcing levels should have been taken in to account when making this proposal. Within the current system a registrant's only opportunity to challenge a decision to impose a warning is through a judicial review, which is costly for both parties. Whilst some of the GDC's resources may be utilised in conducting such reviews, the GDC anticipates that as a result of introducing review powers, the number of applications it receives for judicial reviews will reduce. The GDC anticipates that this reduction will begin to balance the resources required to address review applications. If additional staff resource is required, the GDC is of the view that this can be weighed positively against the benefits of developing a system which is more effective, fair and more efficient overall.

A comment was also made that the current drafting of the Order is unclear regarding the difference between the two types of reviews:

- i. the ability to review the Registrar's determination not to refer an allegation to the IC / case examiners and the ability to review IC / case examiner decisions not to refer to a Practice Committee; and
- ii. the ability to review the determination to issue a warning.

It was suggested that a review of a warning may be captured within the powers listed under i. We do not agree with this as the two types of review perform different functions.

The power to review cases closed at the investigation stage and are not referred onward through the different stages, is for use in those instances where the decision taken may not have been the correct one and the case may need to have been referred to a Practice Committee for consideration. This is in instances where the original decision was materially flawed *or* new information comes to light *and* it is either in the interest of public protection, the dental professional or necessary for public protection.

However, the case examiners or ICs decision to issue a warning after a finding that an allegation ought not to be considered by a Practice Committee will be reviewable on any grounds – the registrant will need to submit that issuing the warning was not appropriate (for example if a mitigating factor had not been considered) or for an application to be made by the registrar for a review directly to the IC / case examiners, within two years from the date of the issue of a warning. If the decision taken is that the application of a warning was not necessary,

the only recourse for the IC / case examiners in this instance will be to direct the Registrar to revoke the warning and remove the relevant annotation from the register. The Department is therefore content with the current drafting of the Order and does not intend to amend it.

12% (5) of respondents disagreed with the proposal. One was on the basis that the IC should be independent of the GDC, we are not clear what this is referring to in respect of the power to review a warning. A view was also expressed that reviews of clear cut decisions are a waste of time and money. A point was also made that misunderstands the reasons behind why a warning may be issued (in that the respondent felt a warning may result in an individual's name being removed from the register) and the reason for a review. A comment was also made by the Dental Defence Union that the GMC's model of utilising an oral hearing for reviewing a warning should be replicated in the GDC's legislation. We have taken the decision not to include a right to an oral hearing in this instance as this is unnecessarily burdensome for all parties and increases the costs involved for all. We consider that a written review provides an added fairness into the current system for registrants. Particularly given (as outlined above) that at present a registrant's only opportunity to challenge a decision is through a judicial review.

2% (1) of respondents were unsure whether a right to request a review of a warning should be established, given the need to balance patient safety against the rights of registrants.

The Department intends to proceed with this proposal.

Opinion	Number	%
Agree	36	84
Agree in part	1	2
Disagree	5	12
Unsure	1	2
Total	43	100

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?

The majority of respondents (56%, 24 in total) suggested that a limit should be placed on the number of applications a person can make within the 2 year time frame. With a number of respondents stating that a limit should be established to protect the GDC from receiving a vast number of repeat review requests. 2% (1) of respondents agreed in principle that a limit should be included in certain circumstances, but that this could be achieved through rules.

30% (12) of respondents disagreed with an express limit being established as it could lead to injustice in certain cases. The Royal College of Surgeons of Edinburgh highlighted that it saw reasons behind preventing cases becoming protracted but it saw no reason to prevent individuals from resubmitting review requests where new evidence has presented itself and could affect the outcome of the case.

6% (3) of respondents were unsure whether a limit should be set, 2% (1) of respondents expressed no views and 4% (2) of respondents did not answer this question.

The Department recognises that a number of respondents, including the GDC, agreed with the imposition of a limit of one application if the original decision was materially flawed, but no express limit should be applied should the registrant present new evidence that could affect the original decision. The Department is of the view that a limit should not be applied in view of the fact that there is a two year limit for requesting a review and the power is permissive, therefore, if numerous requests for a review are received from the same individual by the GDC, the IC / case examiners need not agree to a review.

The Department does not intend to proceed with this proposal.

Opinion	Number	%
Agree	24	56
Agree in part	2	1
Disagree	12	30
Unsure	3	6
No views	1	2
Unanswered	2	4
Total	43	100

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?

Opinion	Number	%
Agree	36	84
Disagree	3	7
Unsure	4	9
Total	43	100

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?

Opinion	Number	%
Agree	34	79
Disagree	6	14
Unsure	3	7
Total	43	100

There was a majority response to both of these questions in favour of ensuring the GDC can refer a registrant under investigation to an Interim Orders Committee at any point in the fitness to practise process. The PSA said that without this change the public could be exposed to risks that a suitable interim order would mitigate. Both the NMC and GMC agreed with this saying that this is a positive step in ensuring the GDC can quickly take action to protect the public where there is a sufficiently high level of risk posed by the registrant.

Of those respondents who disagreed with the proposal some said that they believe that a registrant is “innocent until proven guilty” or a referral to an Interim Orders Committee is an implication of guilt without due process. A referral to an Interim Orders Committee can already be made by the Registrar, the IC and the Practice Committee, the proposal here is to ensure there are no gaps in the legislative framework so as to ensure the public is not exposed to unnecessary risk.

It should also be noted the purpose of fitness to practise proceedings is to determine whether a registrant is fit to practise the profession and to treat patients. The purpose of an interim order is to manage the risk to public protection while any such allegation of impairment of fitness to

practise is being investigated and there are no findings of fact associated with interim orders proceedings. Not all allegations will represent such a degree of risk as to require a referral to the Interim Orders Committee for consideration. In addition the Practice Committee makes its final determination on the case based on the facts before it, not on whether it has previously been referred to an Interim Orders Committee.

The Department intends to proceed with these proposals.

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.

30% (13) of respondents thought that the introduction of these changes would lead to a decrease in the costs for them or those they represent. This is on the basis the proposals will allow for cases to be dealt with more swiftly, which will benefit both the GDC and those registrants involved in the fitness to practise process, who in a number of cases will be able to return to work much more quickly. Others hoped that through a much more streamlined and proportionate approach to fitness to practise cases there may be an overall reduction in indemnity fees or a reduction in legal costs. It was also noted by a number of defence unions that these changes should signal a reduction in costs and administrative burdens for them.

A further 35% (15) of respondents were unsure whether there would be any changes and 23% (10) of respondents felt that costs would remain the same. Some questioned if the GDC's costs are reduced through the introduction of these measures whether this would lead to a reduction in fees. Given the current level of fitness to practise cases received by the GDC's fitness to practise division the Department does not believe this will be the case. Others had queries about the figures being mentioned and suggested further information would be necessary to be able to make an assessment.

7% (3) of respondents expressed the view that costs may increase.

Some respondents raised concerns that within our consultation document the Department had described the costs or benefits arising from these proposed measures as not having a direct impact on business. The definition of the term 'direct impact on business' in this instance is aligned with that set out in the Better Regulation Framework (BRF) produced by the Department for Business, Innovation and Skills. The BRF sets criteria for the type of assessment required for regulatory policy measures expected to have an impact on UK businesses and/or civil society organisations. The framework operates with its own definitions regarding what organisations are classed as 'businesses' and whether impacts should be termed 'direct' or 'indirect'. As a healthcare professional regulator, the GDC is not considered a business *for the purposes of the better regulation framework* and overall the policy's expected impacts on business fall under the BRF's 'indirect' criteria. Therefore, in this context, the Department asserts that the policy measure overall will not generate direct impacts on business.

The Department does, however, recognise that the GDC is funded by its registrants, who, for an estimated 68% of them, undertake the majority of their professional activities in the private sector.

The Department has carried out a full impact assessment in relation to these proposals, and has found that the overall impacts arising from these measures will be beneficial. The impact

assessment has been published alongside this consultation response report. If you would like further details on the Departments calculations, they can be found within that document.

Opinion	Number	%
Increase	3	7
Decrease	13	30
Stay the same	10	23
Unsure	15	35
Unanswered	2	5
Total	43	100

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

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

28% of consultation respondents did not think that the proposals would help achieve the aims set out in the public sector equality duty. One respondent stated that because these proposals are related to the fitness to practise processes the majority of complaints will be received by the GDC due to deficits in the care received, which are not related to the disability or other protected characteristic that may be connected with a dentist or dental care professional. A comment was also made that the proposal to introduce the case examiner model, which replaces the 3 member Investigating Committee may increase inequality. However, the Department is confident that the GDC (which is also subject to the provisions of the Equality Act 2010) will introduce robust measures to mitigate any risk of biased decision making. These will be applied during recruitment, training, audit and reporting and performance management of decision making.

26% of respondents said that the proposals would help to achieve the aims of the public sector equality duty. One respondent commented that the introduction of case examiners could have the effect of increasing the range of backgrounds of those involved in the decision making process. Though went on to state that this should not be actively sought and should not be a consideration or an aim but may be a long term effect. Another respondent stated that the proposals should not be changed in anyway but there should be a robust communications of the changes that will be brought about through this Section 60 Order, in order to raise awareness. A further comment was made that the proposed changes may make low level fitness to practise cases less daunting for the individual and would therefore lead to a positive impact on all of the protected groups.

35% of respondents were unsure whether the proposals would help to achieve the aims of the duty. One respondent commented that registrants will be given an opportunity to question decisions and this may lead to a fairer process, but was keen to see local resolution procedures utilised more.

The GDC also made a submission in respect of the equality duty and stated that the modifications of this Order will improve the timeliness of case handling and consistency of its decision making. The GDC further believes the changes will work to the mutual benefit of registrants, informants, third parties involved in cases, professional organisations and the wider

public – including groups protected by the Equality Act 2010. As set out above the GDC will have in place robust measures to counteract any risk of biased decision making, in addition the Registrar will be provided with a power to initiate a review of a decision in certain circumstances, which is an added safeguard should a suspected biased decision have occurred. As part of package of changes the GDC will be receiving it will also undertake a revised equality assessment to ensure any changes made to its business processes have taken in to account any potential impact on the protected groups.

A point was made that by asking this question it turned meeting equality and diversity provisions in to a box ticking exercise. This was not our intention, which was to ensure that respondents to the consultation had been provided with a fair opportunity to comment on and shape the Department’s analysis of this important area.

The responses to this question have been incorporated in to the Department’s equality assessment.

Opinion	Number	%
Yes	11	26
No	12	28
Unsure	15	35
Unanswered	5	11
Total	43	100

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

A number of individuals took this, and the consultation more generally, as an opportunity to raise concerns about the GDC’s performance and the increase in the GDC’s Annual Retention Fee (ARF).

The Department recognises these are important issues for a great many people and it takes such concerns seriously. It is for this reason the Department was supportive of the independent review conducted by the PSA into certain functions undertaken by the GDC.

The GDC is an independent statutory body and it is for the GDC, in consultation, to set the level of its ARF.

The Department is committed to working with the GDC to ensure it remains fit for purpose as a regulator. As such it is anticipated that the introduction of these measures should assist the GDC in streamlining its fitness to practise processes and will help it secure approximately £2m of efficiency savings per year (see the accompanying Impact Assessment for further detail).

One respondent commented that the Registrar should be capitalised as it is a job title. The new provisions contained within the Order have been drafted for consistency with the existing provisions of the Dentists Act 1984 and the “registrar” is in lower case throughout.

A query was also submitted about why the term “officer of the council” had been used instead of directly referring to case examiners in the legislation. This term has been used within the legislation to demonstrate that such individuals will be carrying out the functions of the GDC. It is then explained within the GDC’s fitness to practise rules that the role outlined within the legislation will be fulfilled by case examiners.

Further comments were made unrelated to the drafting of the order but in relation to the powers the Order will introduce. These have been addressed throughout this response document.

Opinion	Number	%
Yes	19	44
No	24	56
Total	43	100