

Guidance on the considerations for voluntary removal applications

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Introduction

1. A General Dental Council (“GDC”) registrant who has ceased to practice may, upon application, be removed from the GDC register. This process is known as voluntary removal¹.
2. A registrant may submit an application for voluntary removal at any time. When such an application is submitted whilst the registrant is subject to ongoing fitness to practise proceedings, the application will be referred to the Registrar or person with delegated authority² for consideration.
3. This guidance sets out the factors that will be taken into account by the Registrar when considering an application for voluntary removal when a registrant is subject to ongoing fitness to practise proceedings.
4. Where there are no ongoing proceedings, this Guidance will not apply but instead an application for voluntary removal will be dealt with administratively by the GDC’s registration team.

The Voluntary Removal process

5. In order to request voluntary removal, a registrant is required to complete and return the “*Fitness to Practise – Voluntary Removal Statutory Declaration*” (Appendix 1 to this Guidance) to the case owner at the GDC. The registrant will, via that statutory declaration, confirm that they have ceased to practise and do not intend to return to practice in the future. The registrant should also provide any supporting documentation.
6. Where there are ongoing fitness to practise proceedings, the application will be assigned to the case owner at the GDC. The case owner will, prior to submitting the application to the Registrar:
 - ask the registrant to confirm whether they admit the allegations against them and whether they accept that their fitness to practise is impaired;
 - contact the informant (if any) to notify them of the application for voluntary removal, and invite them to submit any comments to be placed before the Registrar when the application is considered; and
 - collate the information for the Registrar to consider³.
7. The Registrar will review the available information and will decide whether to grant voluntary removal. The Registrar will prepare a written decision which will include the reasons for the decision

¹ see section 23(2) of the Dentists Act 1984 which provides that if a registered dentist has ceased to practise, the registrar may with his consent erase his name from the register.

² this will usually be the Director of Fitness to Practise but, if unavailable, may be a senior GDC lawyer with appropriate delegated authority.

³ this will include the “*Fitness to Practise Request for Voluntary Removal*” form containing relevant factual information regarding the registrant, details of all ongoing fitness to practise proceedings (including any Interim Order in place), details of the registrant’s fitness to practise history (if any) plus any admissions made, comments obtained from the informant, and the supporting documentation provided by the registrant. The information will ordinarily be shared with the registrant in full, prior to the application being considered by the Registrar.

and the matters taken into account in reaching it. The registrant, informant and any employers or contracting bodies will be informed in writing of the Registrar's decision.

8. If the application is accepted, the registrant's name will be removed from the register. This has the effect that the outstanding fitness to practise case(s) will not proceed at that time and any interim, immediate or substantive order in place affecting the registrant's registration will lapse.
9. If the application is refused, the fitness to practise case(s) will continue. In those circumstances, a fresh application for voluntary removal made before the fitness to practise proceedings are concluded will only be considered where the registrant is able to supply new information which was not previously available to the Registrar, or where there has otherwise been a material change in circumstance.
10. The Registrar's decision to grant or refuse an application for voluntary removal is not an appealable decision under the GDC's statutory scheme. However, the grant or refusal of voluntary removal may be amenable to judicial review.

Factors to be considered where there is an ongoing fitness to practise investigation

11. When considering whether to allow voluntary removal, the Registrar must be satisfied in all the circumstances that it is right to do so. In making that assessment, the Registrar will balance the interests of the public and the interests of the registrant, as set out below.

The public interest

12. The public interest includes protection of the public and, in particular, patients requiring dental services, from registrants whose fitness to practise is impaired; the maintenance of public confidence in the dental and dental care professions and their regulation; and the declaring and upholding of proper standards for the dental and dental care professions. The public interest also includes the need for proportionate decision making with reference to the risks posed by the particular case.
13. In the voluntary removal context, the following considerations are likely to be relevant.
 - (i) *Public protection*
14. Protection of patients and the public in general, from registrants whose fitness to practise could be impaired is the primary consideration when deciding whether or not voluntary removal is appropriate. Granting voluntary removal may be the quickest and most effective way of protecting the public from harm. However, it must be borne in mind that voluntary removal is not necessarily permanent and that the risk posed by a registrant may become an issue in future should the registrant apply for restoration. The Registrar should therefore consider whether the public will be adequately protected now, and in the future, if voluntary removal were to be granted.
15. It will not ordinarily be appropriate for an application for voluntary removal to be considered before the GDC has completed its initial investigation and, if the information/complaint is considered to amount to an allegation, until that allegation has been considered by the Case Examiners or Investigating Committee (as the case may be).
16. This is because allowing a fitness to practise investigation to run its course can assist in establishing the extent of any failings on the part of the registrant. It can also assist in ensuring that relevant evidence has been gathered, in the event that the allegations do fall to be considered at a later date.

17. If an application for voluntary removal is received by the GDC at an earlier stage in the investigation process, the Registrar will need to consider whether there are factors which point towards voluntary removal being granted in any event⁴. If so, it may be appropriate for the application to be considered at that time. Otherwise, the registrant may be asked to re-submit the application after the allegation has been considered by the Case Examiners or Investigating Committee.
18. At that stage, the registrant may also be asked, as part of the voluntary removal process and prior to the application being considered by the Registrar, whether they admit the allegations against them and that their fitness to practise is impaired.
19. If so, any admissions made should be recorded and, in the event that voluntary removal is granted, may be disclosed to those with an interest in the outcome of the fitness to practise case including the informant (if any), and/or the registrant's employers or contracting bodies. In addition, any admissions made may be disclosed upon request to relevant enquirers, including prospective employers, overseas authorities, and otherwise where it is in the public interest for such information to be disclosed⁵. Any admissions made may also be considered in the event that the registrant applies for restoration in the future.
20. If the registrant does not admit the allegations, and/or does not admit that their fitness to practise is impaired, or, if he or she does, there would appear to be a dispute as to the seriousness of the allegation or any relevant surrounding circumstances, that will be a factor that the Registrar should consider, and may militate against granting voluntary removal.
21. Where there is evidence that a registrant who is seeking voluntary removal is only doing so to avoid a finding of impairment of fitness to practise, and intends to move his or her practice overseas with an associated risk to patients, this may be a factor for the Registrar to take into account. However, the Registrar should only give weight to such a consideration if there is compelling evidence that not only has a registrant expressed a wish or an intention, but also that it is a realistic one, rather than being a distant hope.
22. Evidence of a realistic intention to practise abroad might include where the registrant holds registration in one or more overseas countries, or has applied to the GDC for a certificate of current professional status ("CCPS"), which is used by competent authorities when considering applications for registration.
 - (ii) *Maintenance of confidence in the professions and their regulation: the nature and seriousness of the allegations*
23. As well as protection of the public, the public interest also encompasses the maintenance of public confidence in the dental and dental care professions and their regulation.

⁴ these may include that the allegation relates solely to the registrant's health (as the registrant would be required to satisfy the registrar that they are of good health in order to be restored to the register in future); that the registrant has a chronic or long-term health condition and is unlikely to recover sufficiently to return to work; that the registrant is seriously ill and would be unfit to participate in the fitness to practise procedures; or there is evidence that the process carries with it a risk of suicide or serious self-harm on the part of the registrant concerned. Whether the registrant admits the allegations, and that their fitness to practise is impaired, may also be a relevant factor.

⁵ Section 33C(3) of the Dentists Act 1984 states that the Council or the Registrar may disclose to any person any information relating to a person's fitness to practise as a dentist, including information relating to an allegation under section 27, where they consider it to be in the public interest for the information to be disclosed.

24. In that context, the Courts have held that the nature of the allegations against the registrant is a factor which regulators are entitled to consider and give some weight, when considering an application for voluntary removal⁶.
 25. The Registrar should therefore have regard to the extent of harm alleged to have been caused to patients. Where serious and/or widespread harm to a patient or patients is alleged to have been caused, or where the GDC has more than one open case regarding the same registrant, there may be an impact on public confidence in the dental professions and their regulation if voluntary removal is granted without those allegations having been investigated via the GDC's fitness to practise processes.
 26. Even without serious or widespread harm to a patient or patients, there will always be a wider public interest in the scrutiny of serious allegations of misconduct. Only in exceptional circumstances will it be appropriate for an application for voluntary removal to be granted where the allegations are such that, if substantiated, there may be a presumption of impairment of fitness to practise⁷.
 27. Such "exceptional circumstances" might include where uncontested, appropriate and up to date medical evidence from a verifiable source gives a clear indication that the registrant is seriously ill and would be unfit to participate in the fitness to practise procedures, or where there is evidence that the process carries with it a risk of suicide or serious self-harm on the part of the registrant concerned.
 28. In addition, where there is reason to believe that a registrant who is seeking voluntary removal intends to continue to work in a field related to dentistry (for example, for a dental body corporate) or otherwise in healthcare, the Registrar should also consider whether there may be an impact on public confidence in the dental professions and their regulation if voluntary removal is granted.
- (iii) *Declaring and upholding proper standards: is there a need for public ventilation of the allegations?*
29. The public also has an interest in the declaring and upholding of proper standards for members of the dental professions. As such, there will ordinarily (absent some special and sufficient reason) be a public interest in allegations of impairment of fitness to practise being properly investigated and publicly ventilated before a Practice Committee⁸.
 30. This is particularly likely to be the case where the allegations are such that there may be a presumption of impairment of fitness to practise if those allegations are substantiated (see footnote 7, above).

⁶ See *R (on the application of Gibson) v General Medical Council and another* [2004] EWHC 2781 (Admin), paragraph 67

⁷ allegations falling into this category may include abuse of a position of trust or violation of the rights of patients, particularly if involving vulnerable persons; convictions or findings of a sexual nature, including involvement in any form of child pornography; serious dishonesty, particularly where persistent or covered up; violence; findings of impairment by another regulator; or where serious harm has occurred to patients or other persons, deliberately or recklessly

⁸ see *R (on the application of Toth) v General Medical Council* [2000] 1 WLR 2209

31. In those circumstances, the Registrar should proceed with caution when considering an application for voluntary removal, bearing in mind that the grant of such an application has the consequence that there will be no public scrutiny of the substantive allegations against the registrant.

The interests of the registrant

(i) Health

32. When an allegation relates exclusively to the registrant's health, the Registrar will generally grant voluntary removal, even where the registrant has indicated they may apply for restoration if their health improves. This is because there will ordinarily be no public confidence issues to consider, and in the event that the registrant does apply for restoration in the future, in order to be restored to the register they will be required to satisfy the Registrar that, amongst other matters, they are in good health, physically and mentally⁹.
33. However, where there is evidence that the registrant does not accept the health allegation, or has little or no insight into it, this will be a factor that the Registrar may take into account, since there may be a public interest in establishing the registrant's current state of health at a fitness to practise hearing.
34. In cases that involve multi-factorial allegations of adverse health and deficient professional performance, misconduct, and/or any other ground of impairment, the Registrar should consider the seriousness of any underlying health condition, the likelihood of recovery, and the impact on the registrant's ability to participate in the fitness to practise process.
35. In those circumstances, it is less likely to be appropriate for a registrant with an acute or short-term condition to be granted voluntary removal, than a registrant who has a chronic or long-term condition and who is unlikely to recover sufficiently to return to work.

(ii) Interests and future plans: likelihood of returning to practice

36. Where there are ongoing fitness to practise proceedings, it is only likely to be appropriate to grant voluntary removal where the registrant has ceased to practise. The Statutory Declaration which the registrant is required to complete asks for confirmation of this point.
37. If there is evidence that the registrant is likely to seek restoration to the register in the future, the Registrar will not ordinarily grant voluntary removal, except where the allegations relate solely to the registrant's health.
38. Factors which the Registrar may consider when assessing whether the registrant is likely to apply for restoration in the future include:
- the registrant's career stage: as a general rule, a registrant who is in the later stages of their career, and can provide evidence to support an intention to permanently retire from the professions, is less likely to apply for restoration in the future than a registrant who is at an early or mid-point in their career. That said, the Registrar should consider all the circumstances, including, in relation to registrants at an early or mid-career point, whether there is evidence of intention to pursue an alternative career;

⁹ See section 15(3)(c) of the Dentists Act 1984

- the length of time since the registrant last practised: in general, the longer it is since a registrant last practised, the less likely he or she is to apply for restoration in the future;
- whether there is a genuine desire for voluntary removal: the Registrar should consider whether there is evidence of the registrant having begun the retirement process prior to the concerns being raised with the GDC. This may include the registrant having made arrangements to sell or otherwise hand over their practice. The Registrar should exercise caution, however, where the desire for voluntary removal appears to have been prompted by the fitness to practise proceedings, which may suggest that the application is being made to avoid a finding of impairment being made. The Registrar may also, when assessing whether there is a genuine desire for voluntary removal, take into account the registrant's insight into the allegations, as well as the veracity of any previous communications between the registrant and the GDC and any employers, contracting bodies etc.; and
- evidence of intention to practise elsewhere: this might include where the registrant holds registration in one or more overseas countries, or has applied to the GDC for a certificate of current professional status.

Disclosure

39. As part of the voluntary removal process, a registrant will be asked to confirm, via their Statutory Declaration, their awareness that should any regulatory, licensing or public authority or employer (whether in the United Kingdom or elsewhere, if it appears that the registrant is intending to move his or her practice abroad) request information concerning the reasons for the registrant's removal from the register, the GDC may provide a copy of the Statutory Declaration to the enquirer.
40. In addition, in the event that voluntary removal is granted, the Registrar may, where appropriate, inform any regulatory, licensing or public authority or employer (whether in the United Kingdom or elsewhere, if it appears that the registrant is intending to move his or her practice abroad) of the concerns raised which led to a fitness to practise investigation, as well as any admissions made by the registrant during the the process.

Restoration

41. The GDC would not, ordinarily and absent a significant and unforeseen change in circumstances, expect to receive an application for restoration within 12 months of the date of a registrant's voluntary removal from the register.
42. In the event that a former registrant who has been granted voluntary removal does apply for restoration, the GDC's statutory scheme¹⁰ provides that that person's name shall, upon application, be restored to the register, if he satisfies the Registrar that he meets the requirements of:
 - section 15(3)(a) to (c) (regarding his identity, that he is of good character, and that he is in good health, both physically and mentally);
 - section 26A (that if his name were to be entered in the register, he would be covered by adequate and appropriate indemnity/insurance commencing, at the latest, on the date on which his name was to be entered); and

¹⁰ See section 23(4) of the 1984 Act.

- any rules made under section 34B which apply to his case (i.e. regarding CPD).
43. In terms of the good character requirement, when considering an application for restoration, the Registrar may also take into account any previous fitness to practise issues, including those which were unresolved (in the sense that they had not been adjudicated upon) at the time voluntary removal was granted.
44. In the event that restoration is granted, any unresolved or outstanding fitness to practise issues may be considered in accordance with the GDC's statutory scheme.

November 2016

Appendix 1: statutory declaration



FITNESS TO PRACTISE – VOLUNTARY REMOVAL STATUTORY DECLARATION

I, **[INSERT REGISTRANT'S NAME]**, (GDC Registration no: **[INSERT GDC NO.]**) of **[INSERT REGISTERED ADDRESS]**, do solemnly and sincerely declare that:

- 1. I am registered as a Dentist in the Dentists Register pursuant to Section 14 of the Dentists Act 1984] / (Insert Title e.g. Dental Nurse)in the Dental Care Professionals Register pursuant to Section 36B of the Dentists Act 1984, as above, with the qualifications **INSERT QUALIFICATIONS**.
- 2. I have ceased to practise as a Dentist/(Insert Title) have no intention of returning to practice, and therefore I request that my name be removed from the Dentists Register pursuant to Section 23(2) of the Dentists Act 1984/Dental Care Professionals Register pursuant to Section 36H(2) on the grounds that **INSERT REASON FOR REMOVAL**. I understand that if voluntary removal is granted I will no longer be able to practise as a dental professional in the United Kingdom.
- 3. I am aware that if I apply for the restoration of my name to the Dentists / Dental Care Professionals Register in future, my application may take into account any previous or outstanding Fitness to Practise issues. I am aware that if my name is subsequently restored to the Dentists Register/Dental Care Professionals Register, any outstanding Fitness to Practise issues may be investigated in accordance with the provisions of the Dentists Act 1984.
- 4. I am further aware that should any regulatory, licensing or public authority or employer (whether in the United Kingdom or elsewhere) request information concerning the matters mentioned above the General Dental Council may provide a copy of this document to the inquirer giving the full details of the reasons leading to the voluntary removal of my name from the Dentists Register/Dental Care Professionals Register. I consent to such disclosures.
- 5. I am registered as a Dentist / Dental Care Professional with the following regulatory, licensing or public authority in the United Kingdom and/or elsewhere (please list below).

.....
.....

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the Statutory Declarations Act, 1835.

Signed:	
On:	Declaration at:
Before: Justice of the Peace / Commissioner for Oaths / Notary Public / Solicitor (delete as appropriate)	