

Executive Summary

In September and October 2017, the General Dental Council (“the GDC”) consulted on proposed operational changes to the fitness to practise case observations process under Rule 4 of the General Dental Council (Fitness to Practise) Rules Order of Council 2006 (“the Rules”).

The GDC currently requests observations from the registrant on the allegation(s) made against them, followed by comments from the informant, and then final observations from the registrant only. Going forward, it was proposed that informants will be invited to comment on the registrant’s observations only if the content of those observations calls for a response.

The consultation ran until 1 November 2017. In that period, we received 128 responses to the consultation on the proposed change, both online and directly via email. Of those, ninety-two (71.9%) supported the proposed change. Eleven respondents (8.6%) were not in support of the proposal, and 25 (19.5%) indicated that they were unsure or neutral on the matter.

After careful consideration of all the responses received, the GDC has decided to progress with the change, but will first draft detailed *Guidance on inviting the informant to comment on the registrant’s response*, which will clearly set out the circumstances in which the registrant’s comments should be shared with the informant for comment.

The new guidance will be published on the GDC’s website and come into effect from 1 May 2018.

Background

The GDC’s fitness to practise investigation process is governed by Rules 3 and 4 of the Rules. Rule 3(1) states that the Registrar must investigate a complaint or other information received in relation to a registered dentist or DCP, and must determine whether a complaint or information amounts to an allegation.

In practice, this role is fulfilled by the GDC’s Casework Team, and at the end of the investigation process, a Casework Manager completes a case assessment to determine whether the information gathered amounts to an allegation. If it does, they will refer the case to the Case Examiners, in accordance with Rule 3(2)(a).

Following the referral decision and before the case is transferred to the Case Examiners, Caseworkers complete the case observations process. This process is guided by obligations imposed on the Registrar by Rule 4, and the aim is to provide the registrant with the full details of the complaint, and to give them an opportunity to present any additional evidence before the Case Examiners consider the allegation and determine whether it ought to be referred to a Practice Committee for a public hearing.

For a number of years, the case observations process has involved:

- sending a summary of the allegation and the relevant evidence to the registrant and the informant;
- the registrant being invited to comment on the allegation within 4 weeks;
- any comments received from the registrant being sent to the informant, and the informant being invited to comment on the registrant’s observations within 2 weeks; and
- the registrant being provided with a further week in which to provide any final observations.

This process can theoretically take up to 46 working days (9.2 weeks) when both the timeframes provided to the external parties, as well as the internal administrative timeframes, are adhered to. This has a considerable impact upon the overall timeliness of the fitness to practise process.

As a result, the GDC proposed to amend this process so that while registrants will still be invited to comment in all cases, caseworkers will only seek comments from informants on those registrants' observations if the caseworker determines it to be necessary.

To support caseworkers in making these decisions, the GDC proposed to update its internal guidance to make clear those situations in which seeking informant observations is appropriate and likely to yield new information. These were proposed to include:

- Cases where the content of the registrants' observations calls for a response. For example, in the presence of new or conflicting evidence.
- Cases where the GDC considers that informants' direct experience of the events is particularly relevant. This includes:
 - (a) allegations of failures in communication with patients;
 - (b) allegations relating to informed consent with patients;
 - (c) cases where registrant identifies a witness to allegations (not mentioned by the informant); and
 - (d) sexually motivated or concerned allegations.

Reducing the length, and therefore improving the efficiency, of the case observation process will be of benefit to both the registrant and informant, by streamlining a process which is considered lengthy and stressful by both parties.

The GDC expects that making this change will shorten the case review process by 29 working days – from an average of 9.2 weeks to 5.8 weeks – without any corresponding decrease in the quality of investigation. The GDC will continue to ensure that both registrants and informants have reasonable opportunities for comment so that the process is fair and proportionate.

The proposed change was then consulted upon over an eight-week period from September to November 2017.

Analysis of consultation responses and the GDC's position

A number of organisations with members who are dental professionals responded to the consultation. These included the Dental Defence Union (DDU), Dental Protection Society (DPS), the Medical and Dental Defence Union of Scotland (MDDUS) and the British Dental Association (BDA).

The Professional Standards Authority (PSA) submitted a response, as did the General Medical Council (GMC). Individual responses were also received from dentists and other members of the public.

Responses supporting proposed change

The majority of dental professionals responding to the consultation were in support of the proposed change. The most common reason given was that any reduction in the length of the fitness to practise process would be welcome.

The Professional Standards Authority (PSA) welcomed the *"measures designed to shorten investigations, particularly in the early stages of complaint handling and investigation."*

As the Association of Dental Groups noted, *"[the] process... is stressful for registrants and informants tend to become more anxious the longer they feel the case is not addressed. It also incurs additional costs for all parties."*

This opinion was echoed in the response from MDDUS, which “welcome[d] the recognition that it is not necessary for the Registrant’s observations to be shared with the Informant on every occasion and agree[d] that this policy change will avoid unnecessary repetition, duplication and elongation of the initial stages of the GDC’s investigation.”

The proposed change was also supported by BLM Law, the British Association of Oral Surgeons, the British Dental Association, the British Society of Dental Hygienists and Therapists, the Dental Technologists Association, the DDU, and Simplyhealth Professionals (formerly Denplan), albeit in some cases with caveats, which are detailed further in this document.

The Architects Registration Board supported the proposal, having recently introduced a similar change itself. It has “found it to be useful and proportionate to allow the case managers the flexibility to decide when they have sufficient information to proceed with an investigation. It is unhelpful to require, or restrict, the number of representations. Each case will be different.”

Responses not supporting proposed change

A minority of respondents did not support the proposed change, including a number of dental professionals who do not support the GDC’s approach to fitness to practise in general, and wish to see more frequent resolution of complaints at the local level.

In addition, the GMC did not support the change, citing its own approach to case observations as justification:

“We routinely disclose the registrant’s initial comments in response to fitness to practise concerns to the complainant in all cases because we have a statutory requirement to do so. Where a registrant provides a substantially different version of events to those alleged by the complainant in their final comments, we also disclose this to the complainant. We believe this approach delivers significant benefits as engaging with patients and other complainants supports the transparency of our proceedings.”

In its response, the PSA noted that “it would be beneficial to members of the public to standardise the approach taken” by regulators when sharing a registrant’s response with complainants, although “variation amongst the regulators remains.”

Responses unsure of support of proposed change

A significant minority (19.5%) of respondents were unsure about the proposal, generally because they felt further information or clarification was required.

Several dental professionals indicated dissatisfaction with the proposal because they did not think it went far enough to reform the GDC’s fitness to practise process. Although the proposal might shorten the overall process by a few weeks, that saving would mean little in the big picture.

Dental Protection echoed this concern: “[T]he GDC should focus its energy and resource to improving the case investigation stage. In many cases, this stage can take several months. The process of seeking additional comments from the informant takes on average 29 working days. This is significantly longer than the normal timeline that is allowed for the substantive observations to be submitted. Given that the GDC is often not willing to accept requests for short extensions to the deadline for submitting observations, we believe that there are time savings to be made elsewhere in the process and we would encourage the GDC to thoroughly explore

these first.... Dental Protection does not believe that this proposal will have a meaningful impact on the timeline."

Respondents placed great importance on the guidance that caseworkers will be relying upon when deciding whether to seek additional observations, and in the absence of that guidance from the consultation, felt unable to support the proposal or to comment in detail.

The PSA stressed the importance that the GDC *"has clear criteria on the kinds of cases which may require a specific invitation for the complainant to comment on the registrant's response to the allegations, and that robust guidance is provided to case workers to enable them to make this decision."* It also noted that the examples given in the consultation on when additional observations would be called for *"are quite brief and therefore... difficult to envision what the guidance for case workers might look like."*

"We feel somewhat distant to the level of training and expectations of the caseworkers," wrote the Society of British Dental Nurses, *"and from this perspective we would need further information. "The giving of such power/authority needs to clearly match the expertise and competence of the case workers."*

The British Association of Clinical Dental Technology was concerned that *"the caseworker may feel pressured to ignore this stage out of expediency,"* while one dentist was concerned that a caseworker would always find justification to seek further comments from the informant.

One dental educator wrote that the GDC should carry out a pilot study *"before making any permanent change."* On a similar note, the PSA queried whether the GDC had *"carried out any analysis of their complaints data to identify the groups of cases which they feel should or should not warrant a request for further observations"*.

Other comments

The DDU raised concerns that the sharing of the registrant's comments with the informant in situations where it may be a matter of one person's word against another's (such as sexually motivated or concerned allegations) could lead to the contamination of the informant's evidence.

Other consultees requested further clarification on when it would be deemed necessary to go back to the informant (Simplyhealth Professionals, formerly Denplan, and BLM Law). BLM law queried whether it was necessary or appropriate to disclose the registrant's response to informants in every case, whether or not they are being asked to provide further comments. Consultees also queried what would be done with unsolicited comments which were received from the informant (BDA and the PSA).

Finally, consultees including BLM Law, the DDU and MDDUS, requested that the GDC share guidance in its draft form with stakeholders, and provide an opportunity for observations. They also requested to have access to the final guidance in order to understand caseworker decision-making.

The GDC's position

The GDC is very grateful for the feedback received and the time respondents set aside to provide us with their views.

This feedback has closely informed the final decision to proceed with the suggested changes, which we envisage will result in an ongoing improvement timeliness of our fitness to practise processes.

However, having considered and taken advice on the content of Rule 6(3), which provides that the Case Examiners must not make a determination unless they are satisfied that the respondent and the informant have been provided with a reasonable opportunity to submit written representations commenting on the allegation and the evidence relating to it, the GDC will, going forward, operate what is potentially a two stage process.

Firstly, once a case is assessed and referred to the Case Examiners the caseworker will notify the registrant and the informant of the referral, and will provide them both with the summary of allegation and the evidence relating to the allegation.

The informant will then be asked to return any observations upon the allegation and the evidence relating to it within 14 days, and the registrant within 28 days. Once any observations from the informant are received, the GDC will send them to the registrant, and will ask for any response to be included in their overall observations.

Once the registrant's observations are received, they will be reviewed by the caseworker. At that stage, if there is nothing in the registrant's observations which calls for a response, the registrant's observations will be sent to the informant for information only, and the case will be transferred straight to the Case Examiners for decision.

If, on the other hand, the caseworker considers that the content of the registrant's observations calls for a response, the informant will be offered a further opportunity to comment on those observations. If any comments are received from the informant at that stage, the registrant will be provided with an opportunity to submit any final observations, before the case is transferred to the Case Examiners for decision.

In terms of how the caseworker will determine whether the content of the registrant's observations calls for a response, the GDC agrees with the comments received from several respondents that it is necessary to have clear, detailed and transparent guidance on the issue.

Therefore, the GDC has drafted *Guidance on inviting the informant to comment on the registrant's response* which sets out in some detail the circumstances in which it may be appropriate for caseworkers to exercise their discretion to invite comments from the informant on the registrant's observations. This will be shared with stakeholders and published on the GDC's website.

The GDC also proposes to provide further training and guidance for the Case Examiners on the revised case observations process, and the interaction with Rule 6(3) of the Rules, which provides that the Case Examiners must not make a determination unless they are satisfied that the respondent and the informant have been provided with a reasonable opportunity to submit written representations commenting on the allegation the evidence relating to it.

Conclusion and next steps

The new process as described above will apply for cases which are assessed by the Registrar on or after 1 May 2018.

Any cases which are assessed before that date will continue to follow the previous process i.e. with the informant being invited to comment on the registrant's observations in every case.

The *Guidance on inviting the informant to comment on the registrant's response* is available on the GDC's website, [\[insert hyperlink\]](#)