

GDC consultation response

Department of Health and Social Care consultation: Licensing of non-surgical cosmetic procedures

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GDC response to the Department of Health and Social Care (DHSC) consultation: [Licensing of non-surgical cosmetic procedures](#)

1. About the GDC

The General Dental Council (GDC) is the UK-wide statutory professional regulator of over 117,000 members of the dental team, including around 45,000 dentists and around 73,000 dental care professionals (DCPs). As of 15 October 2023, there were 103,174 dental registrants in England.

An individual must be registered with the GDC to practise dentistry in the UK. Unlike other health professional regulators, we register the whole professional team, across the four nations of the UK: dental nurses, clinical dental technicians, dental hygienists, dental technicians, dental therapists, orthodontic therapists and dentists.

Our primary objective is to protect the public, and in doing so to:

- Protect, promote and maintain the health, safety, and well-being of the public.
- Promote and maintain public confidence in the professions regulated.
- Promote and maintain proper professional standards and conduct for members of those professions.

All patients should be confident that the treatment they receive is provided by a dental professional who is properly trained, qualified, and meets our standards. To achieve this, we register qualified dental professionals, set standards for the dental team, investigate complaints about dental professionals' fitness to practise, and work to ensure the quality of dental education.

We welcome the opportunity to respond to this consultation. We recognise that there is a growing consumer market for non-surgical cosmetic procedures and a growing range of procedures – associated with different types and levels of risk – accessible to the public. We also recognise that there are increasing numbers of dental professionals performing non-surgical cosmetic procedures, such as botulinum toxin and dermal filler injections.

We support the intention for a clear regulatory framework around the provision of non-surgical cosmetic procedures – to reduce risks to patient safety and address the current gaps in regulation which may arise when GDC registrants deliver procedures that are not technically dentistry.

However, it will be important that the resultant cosmetics framework takes into account:

- The legislative requirement in the GDC's existing regulatory model that the practice of dentistry is restricted to GDC registrants only.
- The range of training and scope of practice across different dental professional groups.
- The need for clarity amongst professionals, regulators and the public about the specific roles of different bodies involved in cosmetics and/or healthcare professional regulation when concerns relating to the delivery of cosmetic procedures are raised.

2. How we have responded to this consultation

In section 3, we have set out our overarching concerns around proposals, which are also referenced in subsequent parts of our response.

In section 4, we have responded to selected consultation questions which are directly related to our role as dental professional regulator. We have disregarded questions which are outside of our remit to answer, in particular those around the categorisation of specific procedures based on their associated levels of clinical risk.

We would be happy to provide further information to DHSC as this work develops. We would also welcome further discussion with DHSC and other stakeholders about the issues we describe where alignment of positions and approaches is required.

3. Overarching issues

3.1. Lack of recognition of legal restrictions around “the practice of dentistry”

The proposed cosmetic framework does not explicitly recognise, or allow for, the GDC’s existing regulatory framework in relation to “the practice of dentistry”. This poses risks around the possibility of conflicts arising between legal frameworks, the ‘double’ regulation of the practice of dentistry, and inadvertently encouraging illegal practice offences, as explained below.

The practice of dentistry is defined under [Section 37 of the Dentists Act 1984](#) (“the Act”). In broad terms, practising dentistry means:

- providing the treatment, advice or attendance that would usually be given by a dentist, or
- providing any treatment, advice or attendance to a person in connection with fitting dentures, artificial teeth or other dental appliances.

For the purpose of public protection, the practice of dentistry is restricted to GDC registrants only, unless a legal exemption applies. In accordance with [Section 38 of the Act](#), it is a criminal offence for a person who is not a GDC registrant to practise dentistry, or to offer or imply they are prepared to practise dentistry. Anyone who practises while unregistered is at risk of prosecution for an illegal practice offence by the GDC.

We recognise that under the Health and Care Act 2022, cosmetic procedures exclude “dental procedures” by definition. Therefore, it may appear that procedures which constitute the practice of dentistry are not in the scope of the proposed cosmetics framework; however, we emphasise that this is not the case, as the “practice of dentistry” does not have the same meaning as “dental procedure”. Consequently, there is a risk that activities which we consider to be the practice of dentistry could come to be regulated in two different ways by two separate frameworks.

Non-GDC-registrants undertaking cosmetic procedures must not be put in a situation where they are at risk of GDC prosecution because they are practising dentistry without GDC registration.

Similarly, it is essential to avoid a situation where dental professionals are expected to fulfil additional requirements to practise procedures which they may already lawfully perform (and are regulated to perform) as GDC registrants.

Procedures which the GDC recognises as the practice of dentistry – both now and in future – must not be in the scope of the licence, nor legislated for as high-risk ‘red’ procedures. This should be made explicit.

Additionally, we note that:

- For the avoidance of doubt, in these proposals, we would not consider any of the procedures currently listed in ‘red’, ‘amber’ and ‘green’ categories to be the practice of dentistry. However, we recognise that other procedures may need to be considered for inclusion in the proposed legislation or guidance as a result of this consultation, or over time as new risks emerge. The resultant framework should be future proofed.
- The Act also sets out registration requirements in relation to the business of dentistry. [Section 40 of the Act](#) provides a definition of the business of dentistry, which is centred around the receipt of payment for the practice of dentistry. If someone conducts the business of dentistry without GDC registration, then unless they can rely on a legal exemption, they have committed an offence and are at risk of GDC prosecution.
- As set out in Section 37 of the Act, an exemption from GDC registration may apply for appropriately qualified healthcare professionals, registered with another regulator, who are carrying out dentistry as a “medical task”. The circumstances in which this exemption can be relied upon are explained in [a GDC position statement](#).

3.2. Differences in training and scope of practice amongst the dental professions

Under the proposals, the delivery of high-risk ‘red’ procedures and the supervision of medium-risk ‘amber’ procedures could only be undertaken by regulated healthcare professionals. However, no distinction is made as to the particular group of healthcare professionals who can undertake these activities, despite the broad variation that exists in training and scope of practice amongst healthcare professions.

Even if there were new requirements around training standards for cosmetic procedures and their supervision in future, the fact that any registered healthcare professional could perform activities which a lay practitioner could not, would incorrectly imply that the training and scope of all professionals is broadly equivalent. Professional registration in and of itself will not provide an additional layer of assurance unless it is associated with requirements which are appropriate to the provision of cosmetic procedures.

The GDC regulates seven dental professions, and there are several factors which may have implications for determining whether certain cosmetic procedures or supervision could be delivered safely by different professional groups:

- There is significant variation across professions in the knowledge and skill requirements for registration – as reflected by GDC [guidance which contains the](#)

[learning outcomes](#) that individuals must be able to demonstrate by the end of the pre-registration education or training.

- As shown in the [GDC's Scope of Practice guidance](#), there is significant variation in the skills and abilities in the scope of each of the dental professions. For example, some dental professions do not diagnose, plan treatment, or provide invasive treatment to patients, meaning they have relatively limited clinical – or even patient-facing – scope compared to others. Further, some dental professionals would not usually be involved in other activities which may apply to the provision of cosmetic procedures, such as explaining risks and benefits of different treatment, or taking informed consent.

Within each professional group, scope of practice will vary between individuals, and may change over the course of an individual's career, based on their training, experience and continuing professional development.

We note that the Scope of Practice guidance outlines key competences within the boundaries of each professional role and is not exhaustive. If a professional expands their scope of practice, this does not extend to undertaking key competences that fall under another professional title.

- The GDC also regulates which dental professional groups can provide treatment to patients independently, known as 'direct access'. The [GDC's Direct Access guidance](#) explains when certain dental care professionals can provide care to patients without prescription by a dentist. Some DCPs, such as dental nurses, dental technicians and orthodontic therapists, perform most or all of their work under supervision by another registrant or under prescription by a dentist.
- Under medicines legislation, dentists have broad entitlement to prescribe, administer and supply medicines. In keeping with GDC's guidance on [Prescribing Medicines](#), the GDC expects dentists to prescribe within their competence.

Other arrangements exist which allow dental care professionals to supply or administer (but not prescribe) some medicines in particular circumstances – sometimes independently, and other times under prescription. We also note the Government's recent proposals to enable dental hygienists and dental therapists to supply and administer specific medicines under legal exemptions.

We therefore consider that dental professionals should only perform cosmetic procedures or supervision activities which are appropriate to their training and scope, and which they are trained, competent and indemnified to perform.

This may mean that:

- some dental professionals would require supervision to undertake some or all 'amber' procedures
- some dental professionals would not be able to supervise some or all 'amber' procedures

- some dental professionals would not be able to undertake some or all ‘red’ procedures, and
- some dental professionals would require supervision by an appropriate healthcare professional to undertake some or all ‘red’ procedures.

Given that amongst the dental professions, dentists are the only group with independent prescribing rights only a dentist could potentially serve the role of the prescribing supervising clinician during the supervision of procedures which require prescription-only medicines – where they are trained, competent and indemnified to do so.

3.3. Professional accountability and interaction between Fitness to Practise and other enforcement approaches

To adhere to the principle of right-touch regulation and ensure that professionals are regulated fairly and proportionately in the cosmetics context, it will be important that the lines of accountability for registrants delivering or supervising cosmetic procedures, and the roles of different regulatory bodies, are clarified and understood by all stakeholders. This will enable healthcare professional regulators and other organisations involved in cosmetics regulation to develop co-ordinated, co-operative and consistent approaches when requiring things of registrants (e.g. meeting particular standards), or dealing with concerns raised about registrants. Existing gaps in regulation should be addressed without placing inappropriate burdens on professionals, or creating new gaps or needless overlaps in the way regulatory bodies work together.

We seek further information on the scenarios below.

A. Delivery of ‘green’ or ‘amber’ procedures by regulated healthcare professionals

Under the proposals, a Local Authority licence would be required to carry out ‘green’ or ‘amber’ procedures. Were a concern to be raised about a healthcare professional undertaking ‘green’ or ‘amber’ procedures, our understanding is that the Local Authority would take enforcement action if the professional was practising these procedures without a licence, or the standards required for the professional to hold a licence were breached. However, we seek clarification as to the circumstances in which a Local Authority would take action and what the nature and extent of that action would be – in order to consider how this would interact with our approaches around professional standards and Fitness to Practise.

B. Arrangements under the licensing scheme for supervised ‘amber’ procedures

Under the proposals, non-healthcare professionals could only undertake ‘amber’ procedures with supervision by a named regulated healthcare professional who has gained an accredited qualification to prescribe, administer and supervise aesthetic procedures. This raises questions around where liability falls when there are problems linked to an ‘amber’ procedure.

Whilst healthcare professional supervision may provide additional safety assurances, the role of the supervisor (as should be reflected by the supervisory requirements of the licensing scheme) must not be confused with the role of the Local Authority operating the

licensing scheme. The Local Authority must be ultimately responsible for determining whether a non-healthcare professional has met and maintains the requisite standards to hold a licence to practise a particular cosmetic procedure. Neither the healthcare professional, nor the healthcare professional's regulator, can legally require things of the supervisee in relation to standards.

We consider that if a healthcare professional has properly fulfilled their supervisory requirements and upheld professional standards, they should not be held responsible for the actions of their supervisee.

Were a concern to arise in connection with a supervised 'amber' procedure, we seek clarification as to the circumstances in which a Local Authority would take action and what the nature and extent of that action would be with regard to both supervisee and supervisor – in order to consider how this would interact with our approaches around professional standards and Fitness to Practise.

Further, we consider that there is a lack of clarity over what appears to be a potential overlap in regulatory requirements where, for example, green or amber procedures or supervised by a regulated professional in a Care Quality Commission (CQC) registered premises. The proposals do not appear to address the scenario in which a premises is already registered with the CQC and therefore falls under that regulatory framework. We would therefore welcome clarity as to the intended approach and would question the need for dual registration under the local authority licensing scheme in these circumstances.

C. CQC registration for high-risk 'red' procedures

Under proposals, regulated healthcare professionals would have to be individually registered with the CQC to carry out specified high-risk 'red' cosmetic procedures. Were a concern to be raised about a healthcare professional undertaking a 'red' procedure, our understanding is that CQC would take action if professionals did not meet the standards required for CQC registration. However, we seek clarification as to the circumstances in which CQC would take action and what the nature and extent of that action would be – in order to consider how this may interact with our approaches around professional standards and Fitness to Practise.

4. Consultation questions

4.1. Restriction of cosmetic procedures

To better protect individuals who choose to undergo high-risk non-surgical cosmetic procedures, we propose introducing regulations to ensure that these procedures may only be undertaken by qualified and regulated healthcare professionals.

To what extent do you agree or disagree that we should set out in regulations that high-risk procedures should be restricted to qualified and regulated healthcare professionals only?

We consider that high-risk non-surgical cosmetic procedures should be restricted to qualified and regulated healthcare professionals whose training and scope of practice are

relevant to the procedure, and who are trained, competent and indemnified to undertake the procedure.

In addition, it may be necessary to consider whether some healthcare professionals require supervision by other healthcare professionals when carrying out high-risk procedures – for example, to support safe delivery of the procedure, to manage the prescription and administration of prescription-only medicines, and to ensure access to the necessary skills if complications arise.

Please see our comments at section 3.2 which are relevant to this question.

To what extent do you agree or disagree with the proposal to amend CQC's regulations to bring the restricted high-risk procedures into CQC's scope of registration?

We have no objection to classifying restricted high-risk procedures as CQC regulated activity, but seek clarification as to the intentions in respect of CQC registration, noting that providers of care/services are required to register with the CQC as opposed to individual professionals.

We also seek assurance that CQC would have powers to take enforcement action when a 'red' procedure was carried out by someone who was not on their register and/or was not a regulated healthcare professional.

It is also unclear from proposals whether the requirement for individual professionals to register with the CQC would remain when they are performing 'green', 'amber' or 'red' procedures which meet existing criteria for CQC regulated activity of treatment of disease, disorder or injury. We seek clarification here.

Please see our comments at section 3.3, which are also relevant to this question.

4.2. Procedures in scope of the licensing scheme

The 3-tier system uses green, amber and red to categorise procedures depending on the risks (including level of complexity and degree of invasiveness) and potential complications associated with the procedure.

To what extent do you agree or disagree with using the 3-tier system to classify the different categories for cosmetic procedures based on the risk they present to the public?

We agree that approaches to categorisation and system-design should be based around the risks of procedures and their complications in order to most effectively protect the public. However, it is not obvious from proposals presented what methodology has been adopted to determine the level of risk for different procedures. We suggest that the methodology is clarified and ratified by the appropriate bodies for consistent future use.

Further, we highlight the following issues associated with the design of the licensing scheme, from which other risks could arise if not addressed.

A. Legal restrictions around “the practice of dentistry”

As discussed in section 3.1, all categories must exclude procedures which constitute the practice of dentistry – to avoid tensions arising between cosmetics and GDC regulatory frameworks and the issues that would flow from that.

We also note that on the face of it, it may seem sensible to categorise anything which is considered to be the practice of dentistry as ‘red’, and then restrict it to regulated dental professionals only. However, we would disagree with an approach that required GDC registrants to register with the CQC to perform procedures which they are already lawfully able and regulated to perform.

B. Suitability of training and scope of healthcare professionals

As discussed in section 3.2, qualified and regulated healthcare professionals should only perform cosmetic procedures or supervision activities which are appropriate to their training and scope, and which they are trained, competent and indemnified to perform.

It is not enough to rely on a person’s regulated professional status to provide assurance that they are capable of carrying out or supervising cosmetic procedures at various levels of risk.

Legal, regulatory and best practice controls should also be considered with regards to the prescription, supply and administration of medicines by different healthcare professionals.

C. Oversight or supervision requirements

Please see our comments at section 3.2 and the first question at section 4.1 which are relevant to this question.

Additionally, proposals should make clear:

- The nature of supervision in different circumstances, based on risk – for example, when direct supervision is required, when a supervisor is required to be on the premises, or when it is safe enough for remote supervision to be appropriate.
- That if a prescription-only medicine (POM) is used in a supervised procedure, the POM must be prescribed by a supervising professional. We note that this may not necessarily preclude non-prescribing clinicians from supervising certain aspects of the procedure – for example, if there was an appropriately designed joint supervision arrangement – however, that should be determined based on patient and procedural risk and clarified in proposals.

We also draw attention to the risks to safety which may arise as unintended consequences of the supervisor-supervisee relationship. This relationship would likely involve a contractual arrangement in a commercial setting; therefore, all practitioners should be supported to mitigate risks associated with potential conflicts of interest when entering into such arrangements.

4.3. Minimum age of client

Our intention is that licensed procedures should be restricted to those above the age of 18 unless approved by a doctor and carried out by a healthcare professional. To what extent do you think that these procedures should be age-restricted?

We consider that all cosmetics procedures in scope of the licensing scheme, and those legislated for as high-risk procedures, should be restricted to people above the age of 18 unless the procedure is being delivered for therapeutic purposes or to treat a disease, disorder or injury. We see no other reason to expose a child to the risks of a cosmetic procedure.

We agree that for children, cosmetics procedures should always be carried out by a specified healthcare professional; however, we question whether a doctor would always be the most appropriate professional to approve a cosmetics procedure for a child. Depending on the diagnosed issue to be treated, the nature of the cosmetics procedure, and the specified healthcare professional carrying out the procedure, it may be that it is more appropriate for another type of professional to assess the child and approve the procedure.

4.4. Additional comments

Do you have any other comments on the issues raised in this consultation?

Our additional comments are set out below.

A. Tooth whitening

Tooth whitening has not been included in proposals; however, we anticipate that other stakeholders responding to this consultation may suggest that it is brought into the scope of this work.

The GDC is clear in its position that tooth whitening is the practice of dentistry. This has also been established in case law, namely the case of *GDC v Jamous* [2013] EQHC 1428. As such, tooth whitening treatment can only be offered or provided by registered dental professionals in line with GDC's Scope of Practice guidance. This is regardless of the type or concentration of tooth whitening product being used.

As explained in section 3.1, the legal definition of the practice of dentistry includes giving "treatment, advice or attendance" that would usually be given by a dentist. Therefore, various activities associated with tooth whitening treatment may constitute the practice of dentistry – for example, delivering the actual treatment to a person, handing a tooth whitening tray to a person, or advising a person on application.

Noting that under the Health and Care Act 2022 definition a cosmetic procedure could include the application of light – for the avoidance of doubt, a person applying light to another person for tooth whitening purposes would still be carrying out the practice of dentistry.

To practise dentistry (in this case, providing tooth whitening treatment) without GDC registration is an illegal practice offence which carries the risk of GDC prosecution.

Therefore, we consider that tooth whitening should remain out of scope of proposals, as the practice of dentistry is regulated by the GDC.

Under the GDC's Scope of Practice guidance, only certain dental professionals can carry out tooth whitening treatments:

- dentists can carry out tooth whitening independently
- dental therapists, dental hygienists and clinical dental technicians can carry out tooth whitening under the prescription of a dentist.

Please see our comments at section 3.1 and section 4.2, which are also relevant to this question.

B. Licence for premises

Under proposals, the Local Authority license for cosmetic procedures would cover both individual practitioners and the premises from which they operate. We agree that premises should meet certain standards of hygiene, cleanliness and infection prevention and control so that they are safe to operate from. However, many venues used for cosmetic procedure provision may already be registered as healthcare providers with CQC (e.g. dental practices), and may therefore already meet the set of safety standards as would be required by the scheme. To license those venues would not confer any additional safety benefit. Therefore, we suggest that regulated premises which are already compliant with the relevant safety standards are suitable for the delivery of cosmetic procedures without a licence.

C. Training standards

We would be pleased to input into the future work proposed to develop the education and training standards which will underpin the licensing scheme. We seek clarification as to how these training standards would be enforced, including which organisations would be involved in enforcement and their specific roles.

D. Equality impact assessment

We emphasise the importance of equality and health inequalities impact assessments as this work progresses. Equality, diversity and inclusion considerations will be particularly important when developing the training standards associated with the cosmetics framework, to ensure that procedural risks are mitigated and no patient groups are disproportionately affected by adverse outcomes. For example:

- the effects of a procedure may vary across different skin types or tones, meaning people from certain ethnic or racial groups may be at higher risk of complications, or
- certain population groups may be more likely to choose to undergo particular procedures, increasingly their exposure to the risks associated with those procedures.

E. Regulatory approaches across the four UK nations

Approaches to the regulation of non-surgical cosmetic procedures should be as aligned as possible across the four nations of the UK. Members of the public may cross borders to access cosmetic treatment in different nations, and professionals may provide cosmetic services in different nations over their careers. Similar approaches would promote consistent safety standards and reduce confusion amongst the public and professionals arising from differences in the various requirements for the provision of cosmetic procedures.

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