Policy on referral of allegations of criminal conduct to the police
Contents

1. Introduction.................................................................................................................. 3
2. Scope ................................................................................................................................. 4
3. Action the gdc may take in response to information obtained which indicates possible criminal conduct ........................................................................................................... 4
4. What to report, to whom, and how ................................................................................. 5
5. Deciding to report alleged criminal conduct to the police .............................................. 7
6. Data protection and confidentiality .................................................................................... 8
7. Where the informant has supplied information about alleged criminal conduct to the gdc, but is reluctant to contact the police ........................................................................ 9
8. Concurrent gdc and police action .................................................................................... 10
9. Review .............................................................................................................................. 11
10. Associated policies and documents .................................................................................. 11
1. INTRODUCTION

1.1. The General Dental Council ("GDC") is the statutory body which regulates dental professionals in the UK. All dentists, dental nurses, dental technicians, clinical dental technicians, dental therapists dental hygienists and orthodontic therapists must be registered with us to work in the UK.

1.2. The GDC’s role as the regulator of dental professionals is to protect the public and to promote public trust and confidence in the professions. This role includes investigating concerns raised about a registrant’s fitness to practise. On occasion, those concerns may also indicate that a criminal offence has taken place or is suspected. The GDC’s role does not extend to investigating the alleged criminal offence itself.

1.3. The GDC recognises the public interest in the proper and effective prevention, detection and prosecution of crime, and in effective liaison between the GDC as a regulator and the police.

1.4. The GDC recognises that it may become aware of alleged criminal conduct in the course of its investigations. Such matters may already have been reported to or considered by the police and/or Crown Prosecution Service, but in some cases the matter will not previously have been referred to the police.

1.5. The primary responsibility for investigating alleged criminal conduct sits with the relevant police force. The decision on prosecution is for the Crown Prosecution Service, and not for the GDC. Where the GDC uncovers or suspects criminal activity, the GDC will seek to ensure that concerns are reported to the appropriate authorities and will consider whether there are also implications for regulation of the dental professional concerned (i.e. whether the alleged criminal conduct raises concerns about the individual's fitness to practise).

1.6. This policy sets out the GDC’s general position on referral of allegations of criminal conduct on the part of a registrant or any other person to the police.
Necessarily, each case will need to be considered on its own facts, but this policy provides general guidance on the issues in question.

2. SCOPE

2.1. This policy covers information received in the course of an investigation where there is (or emerges) a reasonable and obvious indication of serious criminal conduct. Criminal conduct which may fall within such a category includes, but is not limited to:

2.1.1. murder and gross negligence manslaughter;
2.1.2. rape and sexual assault, including any in particular sexual offences involving children, or those with learning disabilities, or who lack capacity;
2.1.3. other offences against the person that have resulted in serious injury;
2.1.4. fraud;
2.1.5. supply of drugs contrary to the Misuse of Drugs Act 1971.

2.2. This policy does not cover matters relating to the GDC’s decision-making in respect of the illegal practice of dentistry, for which the GDC is ordinarily the prosecuting authority. Such matters are addressed in the GDC’s separate policy on illegal practice, https://www.gdcuk.org/Membersofpublic/Illegalpractice/Documents/GDC%20Policy%20Statement%20on%20Enforcement%20of%20Dentists%20Act%20Offences.pdf

3. ACTION THE GDC MAY TAKE IN RESPONSE TO INFORMATION OBTAINED WHICH INDICATES POSSIBLE CRIMINAL CONDUCT

3.1. The GDC may take one or more of the following actions following receipt of information indicating criminal conduct:

3.1.1. decide to take no further action directly;
3.1.2. advise the person making the allegation of criminal conduct to refer the matter to the police directly (and/or another regulator);
3.1.3. investigate and take regulatory action against the person to whom the allegation relates; and/or,
3.1.4. refer the matter to the police directly itself, if any offences are suspected of being or have been committed.

4. WHAT TO REPORT, TO WHOM, AND HOW

4.1. It is the GDC’s concern for the proper reporting, investigation, and detection of suspected crime, and public protection, that is the driver for reporting alleged criminal conduct to the police. The question of whether the police will open an investigation should not determine whether the GDC reports the suspected offence to them. The police will generally record details of alleged crimes reported and they will then decide whether to open a criminal investigation.

To whom should the alleged criminal conduct be reported?

4.2. Ordinarily, the location and nature of the alleged crime determines to which police force or unit a report is made. In general terms the force which is responsible for the geography in which the alleged crime took place is the appropriate point of contact. Whilst the focus of this policy is in respect of referrals to the police, in certain circumstances, referral to a particular specialist unit, such as HMRC (criminal division), the National Crime Agency, Medicines and Healthcare Products Regulatory Authority, the NHS Business Services Authority (NHS Protect), or Care Quality Commission may be appropriate.

4.3. The GDC’s initial referral should be to the chief constable of the relevant police force. The point of initial contact in the relevant police force will not usually be involved in investigating the case but should be able to provide a point of onward contact.
How to report

4.4. The GDC’s report should set out clearly: the concerns of alleged criminal conduct, and the particulars/specifics of the alleged offence; and, ordinarily, the details of the person who has referred the matter to the GDC. Where an allegation of criminal conduct has come from an external source and in particular where there is no or limited supporting secondary evidence, the GDC must make clear that it is relaying information and does not have any direct knowledge of the alleged offence.

4.5. Contact with the police should always be made or evidenced by email (or letter if necessary) and the GDC should always ask for a crime reference number. Any written contact or attendance notes should be logged on the GDC’s case management system. Secure, or encrypted email, must be used unless exceptional circumstances arise to protect the security of the information shared.

4.6. The follow-up will depend on circumstances but may include:
4.6.1. a telephone conversation to discuss the issues of the case;
4.6.2. meeting with the police to discuss the case and review the evidence;
4.6.3. further correspondence to the police outlining details of the case and outlining the evidence the GDC has to support the view that alleged criminal conduct may have taken place.

4.7. It is important to keep cases referred to the police under regular review and discuss progress both from the GDC’s perspective and that of the police. In some cases the police may ask the GDC to suspend action in its own case on a temporary basis so as to avoid prejudice to the criminal investigation. In other instances the GDC may run its case concurrently with a police case. The GDC will give consideration to pursuing an interim order if this is necessary to protect the public.

4.8. Although the police may agree to investigate they will not always take a case through to prosecution. A number of factors may influence this decision, including the type of case, the adequacy of the evidence, and whether in the opinion of the Crown Prosecution Service it is in the public interest to pursue the prosecution. A decision by the police or CPS not to pursue a criminal matter (or an acquittal in any criminal proceedings) arising from the same facts does not prevent the GDC
from continuing to undertake its own investigation into the registrant’s fitness to practise: the absence of any common law double jeopardy rule in professional misconduct proceedings was specifically noted in *R v. Statutory Committee of the Pharmaceutical Society of Great Britain* [1981] 2 All ER, where disciplinary proceedings had been brought in relation to conduct in respect of which there had been an acquittal in the relevant criminal proceedings.

5. DECIDING TO REPORT ALLEGED CRIMINAL CONDUCT TO THE POLICE

5.1. The decision about whether to refer alleged criminal conduct to the police must be taken by the Principal Legal Adviser.

5.2. A written record of the decision to disclose a matter to the police (or not to disclose), including the public interest factors for and against disclosure, factual considerations, and issues relating to timing, must be maintained. Factors in favour of disclosure include:

5.2.1. the proper and effective prevention, detection and prosecution of crime generally;

5.2.2. particularly in alleged abuse cases, where evidence can be fragmented and from different/disparate sources, the importance of building a complete picture of the alleged behaviour;

5.2.3. the protection of the public through the most appropriate and proportionate means and protecting others (particularly children and vulnerable adults) from potential harm; and

5.2.4. joined up public services, including effective liaison between the GDC as a regulator and the police.

5.3. In certain circumstances, it may not be appropriate for the GDC to refer apparent criminal conduct to the police. This may be, for instance:

5.3.1. where there are reasonable concerns that the alleged conduct has been invented maliciously (although in such circumstances it may be appropriate to provide the police with details of the person that has referred the matter to the GDC), or there are other prima facie concerns at the time the referral is under consideration about the reliability of the information received relating to the alleged criminal conduct;
5.3.2. where the police are already aware of the incident in question, and have not investigated it;

5.3.3. where the alleged offence is old, trivial or its disclosure would not be proportionate;

5.3.4. where cogent reasons are given by the victim not to refer the matter to the police; and/or

5.3.5. where it would be contrary to the effective regulation of the dental profession, or otherwise contrary to the public interest, to share the information with the police.

5.4. In cases set out in paragraph 5.3, the decision about whether and what information to disclose to the police should be taken by the Director of Fitness to Practise. The source of the information concerning alleged criminal conduct should be informed of the proposed disclosure, and their views considered, unless exceptional circumstances mean that this would be inappropriate, for instance because (1) of a reasonable concern about the effects of disclosure leading to serious harm to the source or another person, (2) of the risk of ‘tipping off’ the alleged perpetrator (see paragraph 6.1 below).

5.5. Any decision not to refer a matter to the police should be kept under review throughout the course of the GDC’s investigations. The receipt of fresh information at any stage of the investigation which may impact on an earlier decision not to disclose, must be referred for review immediately to the Principal Legal Adviser.

6. DATA PROTECTION AND CONFIDENTIALITY

6.1. The GDC’s starting point is one of openness and transparency in how it regulates dental professionals. Ordinarily, the GDC will notify the person to whom the information relates of any disclosure that is being made to the police. However, it may not be appropriate to do so where this would subvert the future criminal investigation (for instance, by ‘tipping off’ the perpetrator to suspicion of criminal conduct), or be likely to prejudice the GDC’s own regulatory functions. Section 29(3) of the Data Protection Act 1998 (“DPA”) allows the GDC to disclose personal data to the police without notice to the person whom the data is about, where the disclosure is made for the purposes of the prevention or detection of
crime, or the prosecution of offenders, including where otherwise complying with the specific requirements of the DPA would be likely to prejudice the purposes by preventing the disclosure.

6.2. The definition of “disclosure” under DPA s.1(2)(b) includes disclosing the information contained in the data. This means that providing copies of data is not the only way to make a disclosure. For example, disclosing or confirming personal data orally, or allowing someone to view CCTV footage, is still ‘processing’ for the purposes of the DPA.

6.3. The GDC will approach the question of what to disclose on a proportionate and even handed basis: any disclosure to the police should be only the minimum necessary for the police to make an objective decision about what further action to take, and subsequent requests for information from the police should be dealt with in the same way.

6.4. Secure communication channels (for instance encrypted email) must be used to transfer information, to protect both patient and registrant confidentiality. Storage of the information must also be secure.

7. WHERE THE INFORMANT HAS SUPPLIED INFORMATION ABOUT ALLEGED CRIMINAL CONDUCT TO THE GDC, BUT IS RELUCTANT TO CONTACT THE POLICE

7.1. The GDC should always advise informants or members of the public providing information to it about alleged criminal conduct to make a report to the police themselves.

7.2. If the GDC is approached by a member of the public for advice on whether to report the matter, the GDC should make clear that it may need to pass information to the police even if the member of the public does not do so. This will be particularly so where the alleged offence is extremely serious, or there is an ongoing risk to public safety.
7.3. The GDC should seek to establish the reasons why the informant does not want to speak to the police directly.

7.4. Extreme reluctance on the part of the informant may be a relevant factor in determining that it is not appropriate to share information with the police, in accordance with paragraph 5.3.

7.5. As set out in paragraph 4.4 above, if it is disclosing information without the consent of the informant, the GDC must make clear that it is relaying information and does not have any direct knowledge of the alleged offence. The GDC should also provide details of the informant’s reluctance to speak to the police.

8. CONCURRENT GDC AND POLICE ACTION

8.1. The GDC’s regulatory function means that it may need to continue with action to investigate fitness to practise concerns even where a police investigation is ongoing or criminal proceedings have begun.

8.2. As set out in paragraph 4.8 above, there is nothing to prevent the GDC from continuing to act, but it is important that any action the GDC takes on its own case should not prejudice the criminal investigation and good communication with the police/CPS is essential. Depending on the circumstances, it may be appropriate to pause the GDC’s case (with or without interim orders being made) or continue with concurrent action.

8.3. In liaising with the police, the GDC shall:

8.3.1. emphasise its role, in that the GDC is examining fitness to practise issues and not investigating the crime itself;

8.3.2. consider whether it is necessary for the GDC to continue actively with its own case even where the police are investigating; this is usually because patients or the public may be at risk and the GDC needs to use its powers to protect them or prevent further alleged misconduct;
8.3.3. establish the lines of inquiry the police intend to pursue and where the GDC may need to put elements of its case on hold – for instance, interviewing witnesses - because to do otherwise might prejudice the fair outcome of criminal proceedings;

8.3.4. identify what information or evidence gathered by the police may be relevant to the GDC’s own investigation (particularly following the conclusion of the criminal investigation).

8.4. Where the GDC agrees to put its case on hold, whether prior to, or post assessment, ask through the caseworker for regular updates on progress from the police and further ask whether the GDC may resume its investigation. Exceptionally where the information relates to other matters in addition to the alleged criminal conduct, it may be appropriate to progress other matters in advance of any criminal trial.

9. REVIEW

9.1. This policy will be reviewed every three years by the Principal Legal Advisor.

10. ASSOCIATED POLICIES AND DOCUMENTS

10.1. Policy Statement On Enforcement Of Dentists Act Offences
10.2. Guidance on Reporting Criminal Proceedings
10.3. Cautions and Convictions Guidance