A. Introduction

1. Under Rule 6E of the General Dental Council (Fitness to Practise) Rules 2006 (“the Rules”), the Case Examiners may review and if they consider it appropriate revise a determination made by them that an allegation or allegations ought to be considered by a particular Practice Committee:

   (a) on a reference back to them from a Practice Committee under section 27B(4) or section 36P(5) of the Act; or

   (b) on an application made by:

      (i) the Council (i.e. the GDC’s prosecutions team or external solicitors);

      (ii) the Registrar (for these purposes, the Registrar’s powers are exercised by the GDC’s Casework team);

      (iii) the person who is the subject of the allegation or allegations (“the Registrant”); or

      (iv) any person making the allegation or allegations (“the Informant”).

2. The process by which the Case Examiners are asked to review a previous determination to refer an allegation (or allegations) to a particular Practice Committee is known as ‘Rule 6E’.

1 and not a determination made by the Investigating Committee
B. Information for all applicants

3. Should the Council, Registrar, Registrant or Informant wish to make a Rule 6E application, the application (i.e. the letter requesting a Rule 6E review plus supporting information) should be submitted by e-mail to Statutoryreviews@gdc-uk.org.

4. In order to assist the Case Examiners, it would be helpful if the application made specific reference to the Case Examiners’ previous determination(s) and outlined:
   (i) what (if anything) has changed since the previous decision;
   (ii) the reasons for making the application;
   (iii) the reasons why the previous Case Examiners’ decision can and/or should be distinguished, including how the concerns of the previous Case Examiners have been addressed/are no longer relevant; and
   (iv) any other relevant evidence and useful information, including whether there is any linked case in relation to another Registrant.

5. Upon receipt of a Rule 6E application, the Case Examiner Support Team will check that:
   (i) the application falls within the scope of those determinations which the Case Examiners can review;
   (ii) the application is accompanied by written submissions in support (and that those written submissions are complete, and include all supporting documentation);
   (iii) the Practice Committee hearing has not yet commenced and that there is sufficient time before the scheduled commencement of the Practice Committee hearing for a Rule 6E application to be listed and considered by the Case Examiners; and
   (iv) (in the case of a Council or Registrar Rule 6E application only) that it has been appropriately authorised.

6. Provided that the above conditions have been met, the Case Examiner Support Team will refer the matter for consideration to the Case Examiners and will notify those who are entitled to comment of the application (“relevant persons”).

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2 The Case Examiners can only review a determination made by them that an allegation or allegations ought to be considered by a particular Practice Committee, and not a determination that a matter should be closed with a warning, advice, or no further action; in addition, when considering a Rule 6E review application the Case Examiners do not have power to adjourn consideration of the allegation and direct the Registrar to carry out further enquiries, but may refer a case to the Interim Orders Committee

3 Rule 6E(1)(b) provides that the Case Examiners may review a determination upon an application, but only if such review is carried out before the commencement of the Practice Committee hearing, or (where there is not to be a hearing) before that Practice Committee have begun to consider written statements or representations

4bearing in mind the need to provide the other relevant persons with reasonable opportunity to provide written representations, as required by Rule 6E(5), as well as the time needed to create a bundle and to provide it to the Case Examiners for consideration
7. As per point (ii) above, the Case Examiner Support Team will not ordinarily refer a case for consideration by the Case Examiners until the complete application (i.e. letter requesting a Rule 6E review, together with all supporting information) has been received by the Case Examiner Support Team.

8. The Case Examiner Support Team will always aim to ensure that a Rule 6E application is listed for reconsideration by the Case Examiners as soon as possible, bearing in mind the steps that have to be taken to comply with the legislative regime and matters of practicality. Ordinarily, an application will be reviewed by the Case Examiners approximately 6 – 8 weeks after the application is received by the Case Examiner Support Team.

9. The lodging of a Rule 6E application will not necessarily mean that the fitness to practise process is halted, or that an upcoming Practice Committee hearing will be vacated or postponed. In fact, where an application is made within 6 weeks (or less) of the scheduled Practice Committee hearing, it may be more appropriate for the issues to be dealt with at a preliminary meeting of that Practice Committee.

Linked cases

10. Where two or more Rule 6E applications are made in respect of linked cases, e.g.

   (i) those regarding different Registrants but which arise out of the same initial complaint, or otherwise from the same circumstances; or

   (ii) those regarding the same Registrant, but where the allegation or allegations were originally considered by the Case Examiners on two or more occasions,

these will ordinarily, and unless there is good reason not to do so, be listed for Rule 6E consideration by the same Case Examiners.

11. However, it is not usually appropriate to reference anywhere in the application (i.e. letter requesting a Rule 6E review and supporting information):

    (i) the outcomes of cases relating to other Registrants, even where the facts may be linked; or

    (ii) other ongoing fitness to practise issues relating to the same Registrant.

Notification to relevant persons

12. Once the application has been provided to the Case Examiner Support Team, the Team will email and/or post letters as follows:

| Applicant | • Acknowledgement of the application  
|           | • The date they can expect to receive, as information only, the submissions of the other relevant persons |

5 i.e. those which may be considered for joinder at a PC hearing pursuant to Rule 25 of the Rules
Respondents (Council, Registrant, Registrar or Informant as appropriate)⁶

- The Rule 6E application (written submissions and supporting documentation)
- The deadline to submit their written representations in response to the application; and
- The date they can expect to receive, as information only, the written representations of the other relevant persons.

13. The Informant will, as a general rule, be sent all relevant information. However, the Case Examiner Support Team will check with the submitting party as to whether information should be “redacted”; i.e. removed from the application to ensure that no evidence relating to the health or private and family life of the Registrant or a third party is disclosed to the Informant⁷.

14. In addition, the Case Examiner Support Team will check with the GDC Prosecutions Team as to whether there is information contained within an application, or supporting documents, which should not be disclosed to the Informant in order to avoid the risk of contaminating their evidence at any future Practice Committee hearing. If so, the GDC Prosecutions Team will be asked to redact the material prior to disclosure to the Informant. The views of the Registrant may be sought at this time.

15. In either case, where redactions have taken place, they should be explained so that the Informant is able to understand why the material sent to them has been redacted.

Representations

16. Rule 6E(5) provides that where the Case Examiners receive an application for review of a previous determination, the Case Examiners must, before considering the applicant’s written representations in support of the application, satisfy themselves that any other person entitled to make such an application has been provided with a reasonable opportunity to submit written representations in response to the application.

17. As such, when a Rule 6E application is made, the Case Examiners must first satisfy themselves that all relevant persons have been provided with a reasonable opportunity for making written representations on the application.

18. What amounts to a “reasonable opportunity” is likely to depend on all of the circumstances of the case, which will include (but are not limited to):

   (i) the length and complexity of the application for review;
   (ii) the number and complexity of the allegations to which the application for review relates; and
   (iii) the quantity of documentary evidence in the case.

19. Ordinarily, the Case Examiner Support Team will provide relevant persons with 14 days in which to provide written representations in response to the application. However, there may be exceptional circumstances in which an extended period should be provided to a relevant person or persons, or on occasion (including where the scheduled Practice Committee hearing of the case is imminent) where a shorter period may be appropriate.

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⁶ Documents provided to the Informant may need to be redacted – see below
⁷ See Rule 6(8) of the Rules
20. Whilst the Registrar is entitled to provide representations on Rule 6E applications made by others, the policy of the GDC is that the Registrar will not usually do so.

21. Once written representations in response to the application have been received, the Case Examiner Support Team will send these to the applicant and to the other relevant persons for their information only.

22. In order to ensure that a case is reviewed by the Case Examiners in good time, all those providing comments should ensure that they:
   
   (i) comply with deadlines - extension requests and applications for late addenda will only be agreed in exceptional circumstances;
   
   (ii) submit documents electronically where possible - either via e-mail (to Statutoryreviews@gdc-uk.org), GDC File Secure, or digital media (CD/USB stick);
   
   (iii) collate documents appropriately - including pagination and indexing. There is no need to provide further copies of information which was provided to the Case Examiners which originally considered the matter, as the material which was before the Case Examiners will be provided to the subsequent Case Examiners in any event.

**Adjournments**

23. Where a Rule 6E application is made and one or more relevant person is not in a position to provide a response within the requested timeframe, an application may be made to the Case Examiner Support Team, who may, at their discretion, provide additional time for that person to respond.

24. If the Case Examiner Support Team rejects an application for further time, or that time has elapsed, the matter will be considered by the Case Examiners who will determine whether a reasonable opportunity to submit written representations in response to the application, in line with Rule 6E(5), has been provided.

**Rule 6E bundles**

25. The Case Examiner Support Team will compile the Rule 6E bundle which will include:
   
   (i) the Rule 6E application (i.e. written submissions and all supporting documentation);
   
   (ii) written submissions received in response to the application, and supporting documents;
   
   (iii) the material which was before the Case Examiners who originally considered the matter (including any addenda) and the notification of outcome letter (which contains the Case Examiners’ original determination); and
   
   (iv) where a previous Rule 6E application has been considered by the Case Examiners, the bundle from that review (redacted as necessary).

26. Whilst there may be circumstances where comments made or information provided by a relevant person is likely to prejudice the Registrant’s position (or the position of another relevant person) such that redaction would be necessary prior to the provision of the comments or information to the Case Examiners,

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8 This does not apply to the Informant’s comments which can also be received by either post or fax. Where digital media is being posted, it should be sent via secure post to the Case Examiner Support Team at 37 Wimpole Street, London, W1G 8DQ.

9 Previously presented evidence can be referenced using the pagination of the last Case Examiners bundle.
this is likely to be rare and compelling reasons would need to be provided as to why the redaction is considered to be necessary. The Case Examiners are professional, experienced and independent and are well placed to make a decision as to the relevance and weight of the information before them. Further, should the Case Examiners consider that there are irrelevant matters before them in submissions they are capable of putting these aside in order to perform their functions.

Addenda

27. Where a relevant person wishes to submit an addendum or addenda by way of further information to the Case Examiners, the addendum or addenda will be circulated to the other relevant persons, and will be provided to the Case Examiners.

28. Once you have been notified that the case has been allocated to the Case Examiners no further addenda will be accepted.

Notification of the Case Examiners decision

29. Relevant persons will be provided with the written determination usually within four working days of the Case Examiners’ decision.
C. Council applications

Authorisation

30. If a Rule 6E application by the Council is considered necessary, appropriate authorisation must be obtained from the Senior FTP Lawyer.

31. If the Council does not oppose, wishes to remain neutral, or wishes to support an application made by another relevant person, authorisation must be given by the Senior FTP Lawyer.

32. Where a Rule 6E application has been authorised as set out above, a record of the authorisation must be made on the case file.

Format

33. Council Rule 6E applications should include the following details:

(i) the date of the previous Case Examiners’ decision(s) in respect of which the application is made;
(ii) the Registrant’s name and registration number;
(iii) whether the Registrant is a dentist or DCP;
(iv) confirmation of which Practice Committee the Registrant’s case was referred to (Conduct, Performance or Health) and on the basis of what allegation (misconduct, deficient professional performance, adverse physical or mental health etc.);
(v) whether the matter has been listed for a Practice Committee hearing, and if so, the date;
(vi) whether a draft or final charge or the Notice of Hearing has been served, and if so when;
(vii) Casework and Prosecution case reference numbers;
(viii) details of the Registrant’s defence organisation (where available);
(ix) details of any Interim Order currently in place, or of any IOC hearings or reviews which are pending, including the listing date;
(x) whether there are any other issues or circumstances to consider, such as ongoing investigations (criminal, regulatory, NHS, Coroner’s or otherwise) or relevant persons being difficult to contact.

34. When submitting supporting documents as part of the application, the Council should ensure that:

(i) all witness statements supporting Rule 6E applications are signed by the individual providing the statement;
(ii) where assertions are made that no evidence exists to support the allegation (or grounds supporting the allegation), an explanation is provided which details the steps taken (and if appropriate discounted) to establish that no evidence exists; and
(iii) any duty of disclosure has been complied with and that confirmation of compliance and appropriate disclosure is contained within the letter of application.
D. Registrar Applications

35. Registrar Rule 6E applications will usually be limited to incidences where there is evidence to suggest that there has either been a serious procedural error, or some other serious irregularity during the Case Examiners’ proceedings which led to the referral of a Registrant to a Practice Committee. In these instances, an application may be initiated by the Registrar, either of the Registrar’s own volition or, as a result of internal or external correspondence received regarding the decision.

36. Where the Registrar makes a Rule 6E application, one of the following will usually apply:

(i) the decision is potentially unlawful, which may include (but is not limited to) cases where the Case Examiners have:

- referred matters to the Practice Committee which were not alleged in the notification of allegation; or
- referred a case to a particular Practice Committee where there was no jurisdiction to have done so (i.e. a referral has been made to the Professional Performance Committee where the only allegation referred to the Case Examiners was one of misconduct); or
- failed to apply the correct test for referral to either a Practice Committee or Interim Orders Committee;

(ii) the Registrar has been made aware that evidence relevant to the case was available prior to the Case Examiners’ consideration but was inadvertently omitted from the Case Examiners’ bundle, for example:

- observations provided by the Registrant or Informant; or
- records (including radiographs).

(iii) the Registrar has been made aware that inaccurate information was inadvertently provided to the Case Examiners, for example in relation to the Registrant’s fitness to practise history; or

(iv) the case has proceeded on an erroneous basis, for example upon the assumption that the Registrant has been convicted of a criminal offence (or has an adverse finding from another Regulator) when this is not in fact the case.

37. Disagreement with the decision made by the Case Examiners will not, unless in exceptional circumstances, result in a Rule 6E application being made by the Registrar.

38. A Registrar Rule 6E application should not, under normal circumstances, make a submission as to whether the decision of the Case Examiners was appropriate. It should also not make any submission as to the appropriate outcome of the case.

39. Authorisation for a Registrar Rule 6E application must be obtained from either the Director of Fitness to Practise or their nominated deputy and a copy of this authorisation should be retained on the case file.
E. Practice Committee referrals back

40. Where a Practice Committee has invoked its power under sections 27B(4) and 36P(5) of the Act to refer an allegation back to the Case Examiners, the Hearings Team should notify the Case Examiner Support Team and should provide the Practice Committee’s reasons for making the application, together with any information considered by the Practice Committee.

41. Upon receipt of the relevant information from the Hearings Team, the Case Examiner Support Team will provide the Registrant, the Council and the Informant with the information received from the Practice Committee.

42. Applications referred to the Case Examiners for re-consideration under these provisions of the Act do not require compliance with Rule 6E(5). As such, no submissions on the referral back will be invited by the Case Examiner Support Team.

43. Where submissions are received by the Case Examiner Support Team, these will be circulated to the other relevant persons and will provided to the Case Examiners, for the Case Examiners to decide whether to take into account. However, any submissions received after the case has been allocated to the Case Examiners will not be accepted by the Case Examiner Support Team.

44. Notification of the Case Examiners’ decision to either grant or reject the application will be available the morning after the decision is made, if relevant persons wish to request this information. Relevant persons will otherwise be provided with the written determination usually within four working days of the Case Examiners’ meeting.