

**Guidance for the Practice Committees
including Indicative Sanctions Guidance**

Effective 1st October 2016

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1 Introduction and background

- 1.1 This guidance has been developed by the General Dental Council (GDC) for use by fitness to practise panels in cases which have been referred to them for a hearing. The aim is to provide guidance for panels on exercising their powers in relation to fitness to practise matters and on considering what sanction (if any) to impose following a finding that the registrant's fitness to practise is impaired. This guidance outlines the decision-making process and the factors which should be considered when deciding on sanction.
- 1.2 This guidance and its appendix are intended to assist the Professional Conduct Committee (PCC) at fitness to practise hearings. It may also be used by the Professional Performance Committee and the Health Committee, insofar as guidance provided in this document is relevant to those committees.
- 1.3 This guidance is supplemented by an appendix which covers decision making considerations.
- 1.4 The guidance and appendix should be used to support the committee's decision making but does not seek to impose a tariff or to fetter the committee's discretion.
- 1.5 The GDC is governed and enabled by the Dentists Act 1984, amended 2005 ("the Act") to regulate dentists and dental care professionals in the United Kingdom. Dental care professionals are:
 - Clinical Dental Technicians;
 - Dental Hygienists;
 - Dental Nurses;
 - Dental Technicians;
 - Dental Therapists;
 - Orthodontic Therapists.
- 1.6 The GDC's purpose is to protect the public by regulating the dental team. We do this by:
 - Registering qualified professionals;
 - setting standards of dental practice and conduct;
 - assuring the quality of dental education;
 - ensuring professionals keep up to date;
 - helping patients with complaints about dental professionals; and
 - working to strengthen patient protection.
- 1.7 The GDC has a statutory role in providing guidance to dental professionals on standards of professional conduct, performance and ethics. The standards are set out in Standards for the Dental Team (effective from 30 September 2013) and its predecessor Standards for Dental Professionals. These documents set out the principles of practice and the standards which patients, the profession and the wider public expect of registrants.
- 1.8 This document replaces the Guidance for the Professional Conduct Committee produced in November 2009 and the Indicative Sanctions Guidance effective from 6 April 2015 insofar as that document provided advice on the application of sanctions following a finding of impaired fitness to practise.
- 1.9 The purpose of this guidance is to provide a link between two of the Council's key regulatory roles, namely setting standards for the professions and taking action on registration when a dental professional's fitness to practise is called into question because those standards have not been met. It aims to ensure a consistent and proportionate approach when determining sanction, and to support transparency by making clear for all parties what the PCC's approach will be when considering sanctions.
- 1.10 The Guidance and appendix will be reviewed regularly to ensure that the contents remain current and useful for panels.

2 The Professional Conduct Committee (PCC)

- 2.1 The proceedings of the PCC are governed primarily by the Act¹ and The General Dental Council (Fitness to Practise) Rules Order of Council 2006 (“the Rules”)². Other legislation, such as the Human Rights Act 1998, and common law will also influence the way the PCC operates and the procedures it adopts.
- 2.2 The charge before the PCC will derive from the allegations referred to it by the Case Examiners / Investigating Committee (under Sections 27B³ (dentists) or 36P⁴ (dental care professionals) of the Act).
- 2.3 Sections 27B(6) and 36P(7) of the Act provide in respect of dentists and dental care professionals respectively that the PCC, if it determines that a dental professional’s fitness to practise is impaired, may:
- reprimand a dental professional; or
 - make an order imposing conditions with which a dental professional must comply whilst working for a specified period not exceeding three years; or
 - direct that a dental professional’s registration in the register shall be suspended for a period not exceeding twelve months; or
 - direct that a dental professional’s name shall be erased from the register.
- 2.4 It is open to the PCC to take no action against a registrant, notwithstanding a finding of impairment. The circumstances in which a panel might be justified in taking such a course are likely to be very rare ones: if a panel decides to take no action, the determination should set out clear reasons why, in spite of a finding of impairment, no action has been taken.
- 2.5 Any restrictions (conditions or suspension) placed on a dental professional’s registration (except restrictions which may convey confidential information about a registrant’s health, private or family life) are published with that registrant’s entry on the GDC’s online register⁵. Erased registrants continue to be listed and individuals are searchable by name. Copies of the outcomes of cases heard by the PCC may be found on the Hearings and Appeals section of the GDC website⁶.

¹ [The Dentists Act](#)

² [The General Dental Council \(Fitness to Practise\) Rules Order of Council 2006](#)

³ <http://www.legislation.gov.uk/ukxi/2005/2011/article/18/made>

⁴ <http://www.legislation.gov.uk/ukxi/2005/2011/part/4/made>

⁵ <http://olr.gdc-uk.org/searchregister>

⁶ <https://www.gdc-uk.org/patients/hearings-appeals>

3 Hearings

- 3.1 The Act says that in principle all Practice Committee hearings should be in public. However, rules of procedure allow all Practice Committees to proceed in private on a discretionary basis.⁷
- 3.2 Circumstances in which all or part of a PCC hearing maybe held in private include (this is not an exhaustive list):
- where it is necessary to protect the interests of any of the parties, for example juvenile or vulnerable witnesses; or
 - where it is necessary to protect information about a registrant’s health;
 - where it is necessary to protect the private or family life of the registrant;
 - where the Committee is of the opinion that publicity would prejudice the interests of justice.
- 3.3 Before deciding to hear a case or part of a case in private, the PCC should:
- invite representation from the registrant and other parties to the hearing ; and
 - take advice from the legal adviser.
- 3.4 The PCC should limit the private part of any hearing to the minimum necessary in order to achieve the identified objective.
- 3.5 Where all or part of a hearing is held in private, the PCC must still ensure that its decisions are recorded properly and adequate reasons are given. The full determination is retained by the Council, and provided to parties to whom it would not give rise to inappropriate disclosure. A shortened determination, that omits any private aspects, forms the public record of the hearing.
- 3.6 The PCC may proceed with a hearing when the registrant is not present, provided that it is satisfied that the registrant has received sufficient notification of the proceedings.⁸

4 The Decision Making Process

- 4.1 The PCC’s decision making process is in three parts:
- i. Factual inquiry – at this stage the Committee hears evidence and must decide whether it finds the facts alleged to be proved or not.
 - ii. Submissions – if some or all of the facts are found proved, the Committee will hear submissions from both parties regarding whether, in the light of the facts found proved, the registrant’s fitness to practise is impaired and, if so, what action the party recommends should be taken by the Committee.
 - iii. Impairment can only be found on the basis of one or more of the statutory grounds, which include misconduct, deficient professional performance, adverse health, convictions, cautions and certain other determinations by other bodies.⁹ Case law establishes that “misconduct” must be “serious” in order for that ground to be met; deficient professional performance involves an unacceptably low standard of professional performance, and will normally only be found if there is evidence of such low standard based upon review of a fair sample of the registrant’s work.
 - iv. Determination – the Committee must then decide whether or not, in its judgment, the registrant’s fitness to practise is impaired and, if so, what action, if any, it should take.

⁷ (1) to (4) of [The Fitness to Practise Rules Order of Council](#)

⁸ 54 of [The Fitness to Practise Rules Order of Council](#)

⁹ S36N of the [Act](#).

This document mainly provides guidance on this third stage of the decision-making process, specifically “what action [the PCC] should take” following a finding of impairment.

- 4.2 Submissions may be made on behalf of both the GDC and the registrant in respect fact-finding, impairment and sanction, and the Committee should take account of any submissions which are made.
- 4.3 Findings of fact are made to the civil standard of proof. In other words, the committee must find that each individual head of charge (including the stem of the charge) is more likely than not to be true.
- 4.4 “Finding impairment” means finding current impairment of fitness to practise. It is not sufficient to find that the dental professional’s fitness to practise was impaired at the time that the matters alleged occurred. In order to make a finding of impairment, it must be found that the dental professional’s fitness to practise is impaired currently.
- 4.5 Historic conduct or behaviour can lead to a finding of current impairment, if the matters alleged are sufficiently grave. On the other hand, old allegations of poor clinical performance might not give rise to a finding of current impairment if a dental professional could demonstrate that they have taken effective action to remedy any shortcomings in their practice, and that they have practised safely since the time of the events in question.
- 4.6 Findings of impairment are not made to a particular established standard of proof (such as civil or criminal); rather, it is a matter of judgment for the panel. Failure to adhere to fundamental GDC Standards is likely to lead to a finding of impairment.

5 Decision Making Considerations when determining sanction

When considering cases, the panel should bear the following in mind:

Individual case

- 5.1 Each case heard by the PCC is different and should be decided on its particular facts and merits. As noted in the introduction, this guidance should be used to support the Committee’s decision making but does not seek to impose a tariff or to fetter the Committee’s discretion.

Advisers

- 5.2 The PCC will be advised on questions of law by a legal adviser and may also be advised by professional and medical advisers.
- 5.3 Legal and – when present – medical and professional advisers sit with, but not as part of, the PCC panel. Advisers provide the panel with impartial and objective technical advice. With the Chair’s permission, advisers may question a witness at a hearing. Advisers stay with the panel when it deliberates in private and the attendees at a hearing will be informed of any advice provided to the PCC by the advisers.
- 5.4 The legal adviser will advise the PCC on questions of law, including questions about the use of this guidance. The legal adviser will only provide advice on matters of legal opinion in relation to a case and should not act beyond their scope as a legal adviser.
- 5.5 Legal advice can include advice on matters that the PCC should, or should not take into account during its deliberations. This is the reason the legal adviser remains with the Committee during its private deliberations. Any advice which the legal adviser gives to the Committee in private is repeated in public before the parties at the next available opportunity.

5.6 A Committee Secretary sits with the panel throughout the proceedings, including private deliberations. The Secretary's role is to guide the panel through the procedures and voting processes and to remind them of guidance and resources such as the Conditions Bank and relevant reference or training materials. The Secretary assists the panel in drafting decisions and the determination but does not take part in the decision making process or seek to influence decisions.

Proportionality and level of sanction

5.7 In deciding what sanctions to impose, the PCC must apply the principle of proportionality by weighing the interests of the public with those of the practitioner. The panel should commence their consideration of sanction with the least restrictive. If the least restrictive sanction is, in the panel's judgment, insufficient, it should move to consider the next sanction, and so on until it reaches the appropriate sanction.

5.8 Having established the sanction they are minded to apply, the Committee should also consider the next most severe sanction to satisfy themselves that the sanction they are minded to apply is appropriate. It is good practice for panels to explain in their determination why it is not necessary to impose the next most severe sanction to that which they are minded to apply.

5.9 Any sanction, and the period for which it is imposed, must be necessary to protect the public interest (see section 7).

5.10 Further guidance on the factors to bear in mind when considering each of the sanctions is set out in paragraphs 7.7-7.33 below.

5.11 The PCC exists to protect the public interest, which includes:

- protecting patients, colleagues and the wider public from the risk of harm;
- maintaining public confidence in the dental profession;
- upholding the reputation of the dental professions; and
- declaring and upholding appropriate standards of conduct and competence among dental professionals.

5.12 The public interest also requires that the dental professional:

- receives a fair and impartial hearing; and
- when appropriate, is given the opportunity to return to safe and competent practice.

5.13 Whilst there may be a public interest in facilitating a dental professional's return to safe practice, and the PCC should recognise this and promote this where appropriate when making their decisions, it should always bear in mind that its main concerns are the protection of patients and the maintenance of public confidence in the profession.

5.14 The purpose of imposing a sanction is not to punish the registrant but to protect patients and the wider public interest described above. However, the sanction imposed may be punitive in effect.

Mitigation, aggravation, references and testimonials

5.15 The PCC will need to consider mitigation offered by the registrant at the impairment and sanction stages and decide the extent to which this should influence its judgment on the sanction to be imposed. This will depend on the individual circumstances of each case and should always be balanced against the primary aims of sanctions: the protection of patients; the maintenance of public confidence in the professions; and the promotion of appropriate standards and behaviour in the professions.

5.16 In some cases, a registrant's conduct or performance may be so seriously below appropriate standards that he or she will be judged to be fundamentally unsuited for registration as a dental professional: in that case, remorse, apologies or positive personal qualities would not be relevant considerations. Similarly, because past conduct can call into question current fitness to practise, time having elapsed may not provide mitigation for certain behaviours, in the context of continuing registration and the public interest.

5.17 Mitigation may include:

- evidence of the circumstances leading up to the incident in question;
- evidence of good conduct following the incident in question, particularly any remedial action;
- evidence of previous good character;
- evidence of remorse shown/insight/apology given;
- evidence of steps taken to avoid a repetition;
- no actual harm or risk of harm to a patient or another;
- no financial gain on the part of the registrant;
- the fact that the incident was a single, isolated event;
- time elapsed since the incident.

5.18 Similarly, the PCC will need to consider whether there are any aggravating factors to the case.

Aggravating factors may include:

- actual harm or risk of harm to a patient or another;
- dishonesty;
- premeditated misconduct;
- financial gain by the registrant;
- breach of trust;
- the involvement of a vulnerable patient or other vulnerable individual;
- misconduct sustained or repeated over a period of time;
- blatant or willful disregard of the role of the GDC and the systems regulating the profession;
- attempts to cover up wrongdoing;
- previous warnings, convictions or other adverse findings;
- lack of insight (see below).

5.19 A dental professional may provide references and testimonials to support his or her standing in the community and/or the profession.

5.20 When considering such references, the PCC should consider how recent they are, whether the writers were aware of the allegations against the dental professional and whether they were aware that their letters would be put to the PCC in mitigation.

5.21 However, the panel should not draw negative inference from an absence of references or testimonials.

Insight

5.22 In the context of a hearing, insight on the part of the dental professional is an important factor. Insight might be defined as an expectation that they will be able to:

- review their own performance or conduct;
- recognise that they should have behaved differently in the circumstances being considered; and
- identify and put in place measures that will prevent a recurrence of such circumstances.

- 5.23 When considering whether or not a dental professional has insight, it will be necessary for a panel to consider whether or not the dental professional has demonstrated insight consistently throughout the hearing – for example, in the giving of their evidence. The panel should also consider whether the dental professional has displayed insight prior to the hearing – for example by putting measures in place to prevent a repetition of the circumstances which led to the hearing (if appropriate).
- 5.24 The panel should be aware that individuals may have different ways of expressing insight and that these may be impacted upon by an individual’s circumstances as well as questions of culture and language.
- 5.25 For example, an individual using a second language may be using the constructs of their first language to order their sentences and statements, which could result in a loss of subtlety or of appropriate emphasis in the second language.
- 5.26 Given that the panel’s interests are the protection of patients, the maintenance of public confidence in the profession and the promotion of appropriate standards and behaviour in the profession, the fact that a dental professional has recognised that corrective actions need to be undertaken is more important than the manner in which their insight is expressed.

6 Reasons for decisions

- 6.1 All decisions given by the PCC should be written using clear language and vocabulary so that the dental professional, the other parties to the hearing, members of the public and any appellate court will understand the decision and the reasons for it. Decisions will be produced in English. Decisions are made public on the GDC website.
- 6.2 Sanctions are considered at the determination stage, following findings of fact and submissions (see 4.1 for further explanation). The PCC will only consider sanction once they have made and expressed their findings of fact and their decision that the registrant’s fitness to practise is impaired on one of the statutory grounds¹⁰.
- 6.3 The panel must state the sanction that it is imposing and give clear reasons for imposing it. The reasons should include:
- the factual basis for the decision (i.e. a summary of the case and the facts found proved);
 - any mitigating or aggravating factors taken into account with reference, where appropriate, to the parties’ submissions on mitigation;
 - the legal jurisdiction used – any sections of the Act, Rules or case law that form the legal basis for the decision;
 - any legal advice provided by the legal adviser and whether that advice was accepted or otherwise.

¹⁰ S 36N.

7 Sanctions

- 7.1 The PCC may impose a sanction when it determines that the dental professional's fitness to practise is currently impaired. Sanctions are intended to protect the public interest, which includes:
- the protection of patients, colleagues and the wider public from the risk of harm;
 - maintaining public confidence in the dental professions;
 - protecting the reputation of the dental professions and;
 - declaring and upholding appropriate standards of conduct and competence among dental professionals.
- 7.2 The particular deficiencies highlighted by the case may also determine the appropriateness of particular sanctions. For example, if a registrant's competence in a particular area of practice had been found to be deficient, and repetition is a concern, a Conditions of Practice order requiring the registrant to undertake remedial action may be more appropriate than a reprimand, which does not require any action on the registrant's part henceforth. Alternatively, if the case concerns an act of professional misconduct and the likelihood of repetition is felt to be very low, imposing a reprimand may be more appropriate than imposing conditions.
- 7.3 When determining the appropriate sanction in a case, the panel should commence their consideration of sanction with the least restrictive. If the least restrictive sanction is, in the panel's judgment, insufficient, it should move to consider the next sanction, and so on until it reaches the appropriate sanction.
- 7.4 The sanctions available to the Committee are:
- to issue a reprimand;
 - to make an order imposing conditions with which the registrant must comply for a specified period not exceeding three years;
 - to direct that the dental professional's registration be suspended for a specified period not exceeding twelve months; or
 - to direct that the person's name be erased from the register.
- 7.5 The sanction chosen should always be the least severe sanction which deals adequately with the identified issues whilst protecting the public interest (see 7.1 above). Having established the sanction they are minded to apply, the Committee should also consider the next most severe sanction to satisfy themselves that the sanction they are minded to apply is appropriate.
- 7.6 The Committee must give reasons for discounting the sanctions it rejects. For example, if the panel directs that a dental professional's registration be suspended, it should give reasons why neither a reprimand nor conditions were appropriate. It is good practice for panels to explain in their determination why it is not necessary to impose the next most severe sanction to that which they are minded to apply.

Reprimand

- 7.7 A reprimand is the lowest sanction which can be applied and may therefore be appropriate where the misconduct or level of performance is at the lower end of the spectrum. A reprimand does not impose requirements on a registrant's practice and should therefore only be used in cases where he or she is fit to continue practising without restrictions. A reprimand might be appropriate if the circumstances do not pose a risk to patients or the public which requires rehabilitation or restriction of practice.

- 7.8 A reprimand is publicly recorded as the outcome of the case against the registrant it concerns (the holding of the case is itself a matter of public record). The fact that the registrant has been issued with a reprimand and a copy of the public determination will appear alongside the registrant's name on the GDC register. A reprimand forms part of a registrant's fitness to practise history and is disclosable to prospective employers and prospective registrars in other jurisdictions.
- 7.9 A reprimand may be suitable where most of the following factors are present (this list should not be taken to be exhaustive):
- there is no evidence to suggest that the dental professional poses any danger to the public;
 - the dental professional has shown insight into his/her failings;
 - the behaviour was an isolated incident;
 - the behaviour was not deliberate;
 - the dental professional acted under duress;
 - the dental professional has genuinely expressed remorse;
 - there is evidence that the dental professional has taken rehabilitative/corrective steps;
 - the dental professional has no previous history.

Conditions

- 7.10 A Conditions of Practice Order ("conditions") may be imposed to restrict a dental professional's practice, for example by preventing him or her from: practising in certain circumstances; from carrying out certain treatments; or from treating particular categories of patient. Conditions may also make positive requirements of a dental professional, such as a requirement to undergo training in a particular area of their practice.
- 7.11 The PCC's determination should make the aim of the conditions very clear so that the dental professional knows what is expected of them, and to maintain public confidence in the process of applying conditions. The PCC should make the derivation of the imposed conditions clear by identifying in turn each of the issues which have resulted in conditions, and explain how the conditions are intended to address them.
- 7.12 Conditions can only be considered to provide adequate public protection if the panel can reasonably be confident in the registrant's capacity to comply with them. If the panel is concerned that a registrant may not comply with the conditions they are minded to impose, suspension may be a more appropriate sanction to ensure public protection. This applies equally if concerns about non-compliance are due to circumstances, rather than due to the registrant.
- 7.13 Conditions should be imposed for a specific period. The period should be the minimum time that the PCC considers will be necessary to protect the public, but this period cannot exceed three years. Conditions can be reviewed within or at the end of the specified period, and the PCC should explain any proposals for future review hearings.
- 7.14 Conditions take effect 28 days from the date the notification of the decision is served on the registrant as there is a statutory appeal period of 28 days. The PCC should therefore consider whether, in order to protect patients and members of the public, it is necessary to impose an immediate conditions order in addition to the substantive order. (See paragraphs 7.35-7.38).

- 7.15 The PCC must decide whether the Order will be reviewed at a specified time and inform the dental professional of this when the Order is imposed. The PCC should also indicate what, if any, information it would expect the registrant to be able to provide at the review hearing (for example, evidence of a successful outcome of any retraining that the conditions require the dental professional to undertake).
- 7.16 At any time while Conditions are in force, the PCC may review the Order of Conditions and determine that it should continue unchanged or that it should be amended. If amending an Order, the PCC can:
- extend the period for which the Order is in force (up to a maximum of three years);
 - revoke or vary any of the conditions;
 - reduce the period for which the Order is in force; or
 - revoke the Order.
- 7.17 Should the dental professional wish to appeal against the decision to impose conditions, they must do so within 28 days of the date on which notification of the decision is served upon them. The conditions applied to the dental professional's registration will appear alongside their name on the online register for the period during which the Order is in force. The fact that the registrant has been issued with conditions, and a copy of the public determination, will appear alongside the registrant's name on the GDC register. A conditions order forms part of a registrant's fitness to practise history and is disclosable to prospective employers and prospective registrars in other jurisdictions.
- 7.18 Conditions may be appropriate when all or most of the following factors are present (this list is not exhaustive):
- there are discrete aspects of the registrant's practice that are problematic;
 - any deficiencies are not so significant that patients will be put at risk directly or indirectly as a result of continued – albeit restricted – registration;
 - the registrant has shown evidence of insight and willingness to respond positively to conditions;
 - it is possible to formulate conditions that will protect the public during the period they are in force;
 - it is possible to formulate conditions that satisfy the requirements set out at 7.19.
- 7.19 The Committee must ensure that the conditions they impose are:
- necessary in order to protect patients, the public or the interests of the profession;
 - clear;
 - relevant to the identified shortcomings;
 - proportionate to the identified impairment;
 - workable (conditions must not be such that in reality they amount to suspension);
 - capable of being monitored for compliance by the executive and/or at a review hearing;
 - addressed only to the registrant and not to a third party.
- 7.20 The GDC Conditions Bank may assist the PCC to devise appropriate conditions.

Suspension

- 7.21 If the PCC finds that the withdrawal of registration is necessary but that it does not need to last the five-year term that would be the minimum period for erasure, it may suspend the registrant. Suspension prevents the registrant from practising as a dental professional for the length of the Suspension Order.
- 7.22 A Suspension Order should be set for the minimum amount of time that the PCC considers

necessary to protect the public and may not exceed 12 months.

7.23 The PCC must decide whether the suspension will be lifted automatically at the end of its term or whether it will be subject to a review hearing. This must be made clear in the determination. If a review hearing is to take place, the PCC should indicate what, if any, information it would expect the registrant to be able to provide at the review hearing (for example, evidence of the successful outcome of any retraining that the dental professional has undertaken).

7.24 If the suspension is reviewed at the end of the given period, the PCC can:

- renew the suspension (for up to 12 months);
- impose conditions on registration;
- allow the registrant to return to unrestricted practice.

The registrant will be notified of the continuation of, or any changes to, the Order.

7.25 The dental professional is expected to continue to meet the GDC's CPD requirements during any period of suspension and make any CPD declarations or submissions to the GDC when required. The dental professional's competence may be affected by prolonged periods of suspension, which their CPD activity during this time may take into account. They must ensure the CPD activities they undertake during any period of suspension will not lead to a breach of the suspension order.

7.26 At any time while a Suspension Order is in force, the PCC may following a further hearing:

- extend the period of suspension (for up to a further 12 months);
 - revoke the suspension order and impose conditions on registration;
 - revoke the suspension order allowing the registrant to return to unrestricted practice.
- The registrant will be notified of any changes to the Order.

7.27 A Suspension Order takes effect 28 days from the date the notification of the decision is served on the registrant (there is a statutory appeal period of 28 days). The PCC should therefore consider whether it is necessary, in order to protect patients and members of the public, to impose an immediate suspension in addition to the substantive order (see paragraphs 7.35-7.38)

7.28 Suspension is appropriate for more serious cases and may be appropriate when all or some of the following factors are present (this list is not exhaustive):

- there is evidence of repetition of the behaviour;
- the registrant has not shown insight and/or poses a significant risk of repeating the behaviour;
- patients' interests would be insufficiently protected by a lesser sanction;
- public confidence in the profession would be insufficiently protected by a lesser sanction;
- there is no evidence of harmful deep-seated personality or professional attitudinal problems (which might make erasure the appropriate order).

7.29 The PCC is able to specify appropriate and practical actions for the registrant to carry out during the period of suspension. It should be possible to verify the completion or otherwise of any such actions.

Erasure

- 7.30 The ability to erase exists because certain behaviours are so damaging to a registrant's fitness to practise and to public confidence in the dental profession that removal of their professional status is the only appropriate outcome. Erasure is the most severe sanction that can be applied by the PCC and should be used only where there is no other means of protecting the public and/or maintaining confidence in the profession. Erasure from the register is not intended to last for a particular or specified term of time. However, a registrant may apply for restoration only after the expiry of five years from the date of erasure.
- 7.31 A practice committee may not erase a registrant whose fitness to practise has been found to be impaired solely on health grounds.
- 7.32 The PCC is obliged to consider sanctions in increasing order of severity. Therefore, before considering erasure the PCC must have considered all the preceding sanctions before determining that the decision to erase the registrant is proportionate.
- 7.33 An order for erasure takes effect 28 days from the date the notification of the decision is served on the registrant (there is a statutory appeal period of 28 days). The PCC should therefore consider whether it is necessary, in order to protect patients and members of the public, to impose an immediate suspension in addition to the substantive order (see paragraphs 7.35-7.38)
- 7.34 Erasure will be appropriate when the behaviour is fundamentally incompatible with being a dental professional: any of the following factors, or a combination of them, may point to such a conclusion:
- serious departure(s) from the relevant professional standards;
 - where serious harm to patients or other persons has occurred, either deliberately or through incompetence;
 - where a continuing risk of serious harm to patients or other persons is identified;
 - the 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;
 - a persistent lack of insight into the seriousness of actions or their consequences.

Immediate conditions and suspension orders

- 7.35 The dental professional can appeal against any sanction which will restrict their registration (conditions, suspension or erasure). The appeal period expires 28 days after the date on which the notification of the determination is served on the registrant. The sanction does not come into effect until the end of the appeal period or, if an appeal is lodged, until it has been disposed of. During this period the dental professional's registration continues unaffected by the sanction unless the PCC imposes an immediate order.
- 7.36 When the PCC imposes conditions, it may also impose immediate conditions. This means that the registrant is subject to those conditions straightaway. The registrant is subject to the immediate conditions until either the appeal period expires or until any appeal is disposed of. If the sanction is not changed at appeal, the substantive conditions then come into effect.
- 7.37 When the PCC imposes suspension or erasure, it may also impose immediate suspension. This means that the registrant is suspended straightaway. The registrant is subject to the immediate suspension until either the appeal period expires or until any appeal is disposed of. If the sanction is not changed on appeal, the substantive suspension or erasure then comes into effect.

7.38 The basis of imposing an immediate order must be that the PCC is satisfied that such an order is necessary for the protection of members of the public or is in the public interest. An immediate order might be appropriate where:

- the registrant's behaviour is considered to pose a risk;
- the registrant has placed patients at risk through poor clinical care; or
- immediate action is required to protect public confidence in the profession.

8 Explaining decisions

8.1 The PCC must give full reasons for imposing the particular sanction decided upon. Its determination must show that all relevant issues have been addressed and allow the registrant, his or her representatives, advisers, witnesses (which may include patients and the initial informant) and the public to see why a particular course of action has been taken.

8.2 Reasons should not disclose any confidential information about a registrant's health, private or family life.

8.3 The registrant and the Professional Standards Authority (PSA) have the right to appeal a decision of the PCC. A clear explanation will help a potential appellant to decide whether to exercise that right and assist the Court which considers the appeal.

8.4 The PCC must give a comprehensive explanation of its reasons for applying the particular sanction it decides to impose. The reasons should include:

- the factual basis for the decision (i.e. a summary of issues in the case and the facts found proved);
- any mitigating or aggravating factors taken into account with reference, where appropriate, to the parties' submissions on mitigation;
- conclusions on the main submissions made by the parties and/or their representatives;
- the legal jurisdiction used – any sections of the Act, Rules or case law that form the legal basis for the decision;
- any legal advice provided by the legal adviser and whether that advice was accepted or
- otherwise;
- if the panel did not accept particular advice from the legal adviser, the reasons why the advice was not accepted;
- a demonstration that each less severe sanction was considered and the reasons why the chosen sanction was selected.

8.5 The panel must express decisions in sufficient detail that the parties (and other relevant observers) can understand why a particular determination was made.

9 Notification of decisions

9.1 The Registrar is obliged to notify an informant or any other person who, in his opinion, has an interest in a hearing, of the decision made by the Committee.

10 Restoration following erasure

10.1 A dental professional who has been erased by the PCC may apply for restoration to the Register after a period of five years. Applications for restoration are considered by the PCC.

10.2 When considering an application for restoration, the PCC must be satisfied that the applicant:

- is fit to practise;
 - meets the requirements of identity, health and character specified in the Act;
 - meets the requirements of any CPD rules relevant to their case; and
 - meets any other requirements of registration as specified by the Act or registration Rules.
- 10.3 Factors which the PCC should take into account when considering an application for restoration and the registrant's fitness to practise include:
- the circumstances which led to the erasure;
 - the reasons given by the previous panel for the erasure;
 - the seriousness of the previous findings;
 - the level of insight demonstrated by the registrant;
 - the applicant's conduct since being removed from the register;
 - steps taken to keep clinical knowledge and skills up to date insofar as possible;
 - steps taken towards rehabilitation;
 - the effect erasure has had on the registrant.
- 10.4 When the PCC agrees to restore a person's name to the register, they may also give one or both of the following directions:
- the restoration shall be conditional on satisfying the Registrar that he or she meets the insurance requirements specified in the Act; and/or
 - the restoration shall be conditional on compliance with conditions which the PCC thinks fit to impose for the protection of the public or in the person's interest. The conditions must be specified in the direction and can apply for a maximum of three years.
- 10.5 The effect of paragraph 10.4 is that the PCC may specify that the person they have agreed to restore to the register must demonstrate that they have appropriate indemnity and/or that they must comply with certain conditions for a period not exceeding three years.
- 10.6 A committee which was considering imposing conditions on the registration of a person seeking to restore would consider the same factors as are set out in section 7 above in the paragraphs covering Orders of Conditions.

Appendix A

Guidance on some particular issues that arise in fitness to practice hearings

This appendix sets out guidance and factors which a panel will need to consider in particular types of case. It covers a range of issues seen by panels, relating to the factual, statutory grounds/fitness to practice and sanction stages.

Cases arising from criminal proceedings and determinations

- 1 The purpose of the fitness to practise process is not to punish the registrant a second time for the offence or offences of which they have been found guilty.[1] The purpose is to consider whether the registrant's fitness to practise is impaired as a result of the criminal conduct and, if so, whether there is a need to impose a sanction which could restrict the registration of the individual in the public interest.
- 2 When considering issues of criminality the PCC should bear in mind the GDC's guidance to registrants, which requires registrants to maintain appropriate standards of personal as well as professional behaviour.
- 3 The PCC should bear in mind that the sentence imposed for a criminal offence may not always be a definitive indicator of the seriousness of the offence (for example, see *CHRP v (1) GDC and (2) Mr Fleischmann* [2005]EWHC87 (Admin)). Considerations taken into account by a criminal court may be different from those relevant to a regulatory body.

Convictions

- 4 "Convictions" refers to a decision by a criminal court in the United Kingdom or a finding by an overseas court of an offence which would constitute a criminal offence if committed in the United Kingdom.
- 5 Where the PCC accepts a certificate of conviction, it must accept the certificate as conclusive proof of the offence having been committed. The only exception is if the PCC receives evidence to the effect that the registrant is not the person referred to in the certificate.
- 6 A conviction is a means by which a registrant's fitness to practise can be impaired under the Act (Section 27 (2d) and Section 36N (2d)). Therefore, in a conviction case, the allegation of impairment is made in virtue of the conviction itself. The PCC should not seek to challenge or reinvestigate the conviction itself, or the truth or falsehood of the events which led to the conviction. It is for the panel to determine whether the conviction is sufficient to warrant a finding of current impairment.

Cautions

- 7 In England and Wales, a caution may be given by the police when there is sufficient evidence for a conviction but it is not considered to be in the public interest to pursue criminal proceedings. The registrant must have admitted guilt and consented to a caution in order to have been given one.
- 8 A caution is a means by which a registrant's fitness to practise can be impaired under the Act (Section 27 (2d) and Section 36N (2d)). Therefore, in a caution case, the allegation of impairment is made by virtue of the caution itself. The PCC should not seek to challenge or reinvestigate the caution, or the truth or falsehood of the events which led to the caution. It is for the panel to determine whether the caution is sufficient to warrant a finding of current impairment.

- 9 The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2013 came into force on 29 May 2013. The Order states that certain spent convictions and cautions are “protected” which means there is no requirement on individuals to disclose these and they cannot be taken into account when making a decision on an individual’s suitability to carry out a particular occupation.
- 10 The effect of this is that a person applying to register with the GDC is not obliged to declare cautions or convictions considered spent under The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2013. If considering a case which involves cautions/convictions which have not been declared to the GDC, the PCC should consult the GDC’s guidance on this subject: Guidance for decision makers on the impact of criminal cautions and convictions¹¹ and the relevant sections of The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2013¹²

Conditional discharges

- 11 A conditional discharge may only be imposed on a person following a finding of guilt. However, Section 14 of the Powers of Criminal Courts (Sentencing) Act 2000 states that a conditional discharge is not a conviction for any purpose other than the proceedings in which the order was made. The PCC is not able to treat a conditional discharge as though it were a caution or conviction, and thus a means by which a registrant’s fitness to practise may be impaired under the Act. Rather, the PCC must consider whether the events that led to the conditional discharge being applied amount to misconduct, such that the registrant’s fitness to practise is impaired.

Alternatives to prosecution – Scotland

- 12 In Scotland, the Procurator Fiscal may decide that prosecuting an alleged offence is not in the public interest and may apply an alternative measure. Alternatives to prosecution include: a warning; a Fiscal fine; a compensation order; a work order; a road traffic fixed penalty; or rehabilitative support. The acceptance of the offer of an alternative to prosecution does not, unlike a caution, amount to an admission of guilt by the accused. Because of this the PCC is not able to treat a Scottish alternative to prosecution as though it were a caution or conviction, and thus a means by which a registrant’s fitness to practise may be impaired under the Act. Rather, where an offer of an alternative to prosecution has been accepted, the PCC must consider whether the events that led to the offer and acceptance of an alternative to prosecution amount to misconduct, such that the registrant’s fitness to practise is impaired.

Determinations

- 13 “Determinations” refers to decisions made by another health , social care regulator or body in the United Kingdom (or elsewhere) responsible under any enactment for the regulation of a health or social care profession, which has determined that the fitness to practise of a registrant as a member of that profession was impaired, or an equivalent finding.

Clinical or professional cases

Candour

- 14 Candour means being open and honest with a patient when something goes wrong with their treatment, whether or not the patient has suffered harm. Failure to be open with a patient can amount to misconduct, and a panel should take very seriously a finding that a dental professional took deliberate steps to avoid being candid with a patient or to prevent someone else from being so.

¹¹ <https://www.gdc-uk.org/api/files/Convictions%20and%20Cautions%20Guidance.pdf>

¹² <http://www.legislation.gov.uk/uksi/2013/1198/contents/made>

- 15 A joint statement by the Chief Executive of the Council and 7 other Chief Executives of medical regulatory bodies has emphasised the importance of the professional duty of candour, and sets out what is expected of registrants.¹³

Consent

- 16 The issue of informed or valid consent is a cornerstone of the public interest and must be paramount in a registrant's mind prior to carrying out any treatment or investigation. Failure to obtain consent is a serious matter and, if the panel is satisfied that it amounts to misconduct the PCC should consider whether a finding of impairment and the imposition of a sanction is appropriate in the public interest. If there were minor or no consequences and the matter related to a single patient, the PCC may consider whether a reprimand or period of conditional registration might be appropriate.
- 17 In cases involving these issues, the outcome of an incident should not be considered in isolation. The PCC should also consider:
- the circumstances in which the incident occurred;
 - whether the registrant's actions fell below what could reasonably be expected of a registrant at the relevant level of experience or scope of practice;
 - whether the clinical records are sufficient to allow the PCC to determine what planning and judgment were exercised and whether or not the patient was provided with sufficient information to make an informed decision;
 - that registrants may exercise clinical judgment so long as this is done in partnership with patients and documented so that they can justify their decisions;
 - that different registrants will differ in their clinical judgment and that a subsequent treating practitioner simply disagreeing with the treatment provided or proposed does not necessarily indicate misconduct or deficient professional performance.
- 18 In the case of a serious untoward incident, the fact that the incident occurred does not automatically indicate that there should be a finding of misconduct, deficient professional performance, or impairment. The PCC should also consider how the incident arose, how it was handled and other issues such as the public interest and particularly public confidence in the profession.

Continuing professional development

- 19 A commitment to the continuing development of knowledge and skills is an essential aspect of professional life. Neglecting, or in the past having neglected, this responsibility may in itself call into question a registrant's current fitness to practise.

Cosmetic treatments

- 20 A registrant who chooses to offer non-surgical cosmetic procedures should apply the same standards to this aspect of their work as when carrying out dental treatment. The PCC should do likewise and apply the same standards to the registrant's conduct and performance when considering a case relating to non-surgical cosmetic procedures as they would have done if the allegations related to dental treatment.

¹³ <https://www.gdc-uk.org/api/files/Duty%20of%20Candour.pdf>

Delay in making complaints

- 21 The GDC does not have time limits but it is likely to be more difficult to establish current impairment in relation to events which happened a long time ago. (The PCC are seeking to establish whether the registrant's fitness to practise is impaired currently). However, there are some instances where this can be the case –for example if periodontal disease is left untreated for a long time and the patient does not become aware of the problems for some years. The PCC should bear in mind when considering cases which appear to be old that the underlying misconduct may not have become apparent for some time.

Failure to comply with guidance

- 22 On occasion registrants may intentionally deviate from GDC guidance, or from guidance issued by another body that they are required to follow. When considering a case where a registrant has done this, in deciding whether the deviation amounts to misconduct or deficient professional performance, the PCC should consider whether the registrant is able to:
- demonstrate proper awareness of the relevant guidance;
 - demonstrate a proper assessment of risk;
 - clearly justify their decision to deviate from the guidance
- 23 In essence, a registrant must act in a responsible manner and be prepared to justify their actions if questioned.
- 24 Factors which the PCC may wish to consider in these types of cases include the type of guidance that has been breached; and whether there has been:
- a disregard for patient safety;
 - a disregard for the rights or best interests of patient(s);
 - any harm suffered by a patient or a member of the public;
 - repetition of the breach;
 - a demonstrable lack of awareness on the part of the registrant.

Failure to provide an acceptable level of treatment or care

- 25 Dentistry is neither a precise, nor infallible, science. Dental professionals may make judgments which are questionable or simply mistaken, or carry out treatments or procedures which do not work. Not all treatments are successful and unfortunately patients sometimes suffer harm. This does not always indicate that the registrant did not provide an acceptable standard of care. Issues of misconduct, deficient professional performance and fitness to practise cannot be judged in hindsight solely on the outcome of treatment.
- 26 However, dental professionals must act in the patient's best interests and provide an acceptable level of care. In cases where this has not occurred, the PCC should be particularly concerned if the circumstances of the case demonstrated:
- evidence of a reckless disregard for patient safety; or
 - a breach of a fundamental duty required of registrants; or
 - that a registrant's conduct had harmed patients or put patients at risk of harm.
- 27 If a patient suffers serious harm which could and should have been avoided, and the dental professional knew better (or ought to have known better, but failed to inform him or herself adequately), then the PCC will need to consider whether the registrant has demonstrated behaviour that is incompatible with continued registration.

Implants

- 28 The provision of implants is a complex and high-risk area of dentistry. Registrants who undertake this area of work must be trained, competent and indemnified to do so. The Scope of Practice guidance makes clear that dentists should not undertake the provision of implants without undertaking additional training. When considering a case relating to the provision of implants, the PCC should consider whether the dentist is able to demonstrate a sufficient level of training.
- 29 The Council supports the Training Standards in Implant Dentistry¹⁴ published by the Faculty of General Practice (UK), and publishes this fact on the GDC website.

Indemnity

- 30 The GDC requires all dental professionals to have arrangements in place so that patients can claim any compensation they may be entitled to. Dental professionals who rely on cover provided by their employer still have a personal responsibility to check that such cover is in place. For example, it is acceptable to the GDC for a registrant to be covered by their employer's policy, but it is the registrant's (not employer's) responsibility to ensure that such cover is appropriate and is maintained.
- 31 When considering cases involving indemnity cover, the PCC may wish to take into account some or all of the following:
- whether the indemnity arrangements held by the registrant provided appropriate cover for the duties they were undertaking and/or the setting(s) in which they were providing treatment;
 - whether the registrant has an appropriate level of cover currently;
 - whether the registrant had an appropriate level of cover at the material time;
 - whether the registrant has acquired retrospective cover - the GDC's Standards set out the requirement that registrants must have an adequate and appropriate level of cover at all times – retrospective cover is not considered an acceptable alternative to acquiring/maintaining current cover.
 - whether any statements provided by the registrant in respect of their indemnity cover raise questions about the registrant's judgment or sense of professional responsibility, for example, expressing an assumption that they were covered by an employer's policy.
- 32 The only circumstances in which it would be acceptable for a dental professional not to have any cover would be if the risk of a patient making a claim against them was absolutely zero. In order to justify a decision not to have cover, a dental professional who considers this circumstance to apply to them must be able to demonstrate why the risk of a claim being made against them was/is absolutely zero.

Responsibility to raise concerns

- 33 Patients are entitled to be protected from dental professionals who fail in their responsibilities and thereby put them at risk. Dental professionals have a duty to protect patients and put patients' interests first by raising concerns about other professionals when it is appropriate to do so.

¹⁴http://www.fgdp.org.uk/_assets/pdf/publications/policy%20documents/implant%20training%20stds%20jun%202012.pdf

34 All registrants have a responsibility imposed by GDC guidance, as well as a professional duty, to raise concerns. Those who manage or lead teams also have a responsibility to ensure that there is an effective procedure in place to enable staff to raise concerns, and that this procedure is applied at all appropriate times.

35 Where a registrant has failed to meet their responsibility to either

- raise concerns themselves; or
- enable others to raise concerns,

the Committee should take that failure into consideration when deciding on sanction.

Scope of practice

36 The GDC's Scope of Practice document has set out in detail, by profession, the tasks that can be undertaken by the different registered dental professions. The lists set out:

- tasks that are generally considered to be within the scope of any registrant of that profession (in virtue of their primary qualification training);
- tasks that are within the scope of registrants of a profession, providing they have undertaken additional training; and
- tasks which are reserved for certain dental professions, and should not be undertaken by others.

37 A dental professional must not undertake work that is outside their scope of practice.

38 In cases involving breaches of a registrant's scope of practice where the public may have been misled, but there are no aggravating features or evidence of harm to patients, the PCC may consider that there is no issue of current impairment and that it would be sufficient to close an isolated and unrepeatable case.

39 Each case must be considered on its individual merits but factors which the PCC may wish to take into account when looking at disposal include:

- the efforts made by the dental professional to comply with the Standards Guidance and other relevant guidance;
- the level of professional responsibility and reasoning applied by the dental professional;
- the likelihood of repetition; and
- any remediation undertaken.

Single clinical incidents or single courses of treatment

40 In considering any case involving a single clinical incident, the starting point for the PCC should be to consider whether the information about the incident indicates that there may have been a failure to meet the standards required of registrants: the Committee will then need to consider whether the incident is sufficiently serious to amount to misconduct. If so, the Committee may wish to consider whether the failure was an isolated incident by a registrant who otherwise practised safely, and whether any deficiencies in practice may have been remedied by any subsequent actions, such as further training. In evaluating current impairment the PCC may wish to consider any efforts made by the dental professional to remedy any deficiency(ies) in knowledge or skill.

Social media and the internet

- 41 The GDC issues guidance for registrants on the use of social media. The guidance does not seek to limit registrants' use of social media per se and recognises that it can be a useful professional tool. However, the guidance does make clear that inappropriate use of social media by registrants can be damaging to public confidence in the profession.
- 42 When considering cases relating to the use of social media, the PCC may wish to take into account some or all of the following:
- whether any statements provided by the registrant in respect of their social media use raise questions about the registrant's judgment or sense of professional responsibility, for example expressing a view that social media content can be 'private', or that personal social media does not impact on professional standing;
 - whether the dental professional has shown insight into the potential impact of their behaviour;
 - whether the registrant's social media use would be likely to undermine public confidence in the profession
- 43 While the GDC has not at the time of writing considered a PCC case about the use of social media, other regulatory bodies have adjudicated on this subject:

In 2013, the Nursing and Midwifery Council considered a case involving allegations of inappropriate social media use – specifically “sexual references, references to drinking and derogatory postings about her workplace”¹⁵. The NMC panel's statement included the following: "Her comments on Facebook had been wholly inappropriate and had undoubtedly called into question her judgment and integrity." And that nurses were expected to “uphold public confidence in the profession”. The nurse was suspended for six months.

Working beyond training and competence

- 44 It is recognised that a dental professional may on occasion undertake treatment that becomes more challenging or complex than anticipated. Ordinarily, if the situation was handled appropriately, this would not in itself call into question that person's fitness to practise.
- 45 However, where the PCC determines that a dental professional has knowingly undertaken treatment or performed a task or procedure for which he or she is not trained and/or in which he or she is not competent, the PCC may find that person's fitness to practise impaired. When considering sanction, the PCC may wish to consider whether the dental professional's having knowingly acted as described may be of relevance to their likelihood to comply with conditions.

Cases relating to personal behaviour

Abuse of the privileged position of registered professionals

- 46 Patients have the right to be protected from dental professionals who seriously abuse the trust placed in them, for example in pursuit of sexual gratification or financial gain. Every patient is vulnerable when receiving treatment and therefore relies on the trustworthiness of the dental professional, which they are entitled to expect based on the professional's registered status.

¹⁵ NMC press statement.

- 47 Dental professionals also have privileges because of their registered status, ranging from the right to practise and use protected titles to less tangible privileges such as respect for their professional opinion. Dental professionals who abuse the trust which patients and wider society places in them can expect to forfeit the privileges which come with being a registered professional.

Dishonesty

- 48 Patients, employers, colleagues and the public should be able to rely on a dental professional's integrity. Dishonesty, particularly when associated with professional practice, is highly damaging to the dental professional's fitness to practise and to public confidence in the profession. Examples of dishonesty in professional practice include, but are not limited to:
- defrauding an employer or contracting body;
 - falsifying and/or improperly amending patient records;
 - issuing practice policies which unduly influence patients to receive expensive or unnecessary treatment;
 - misrepresenting the NHS position;
 - submitting or providing false references;
 - providing misleading information on a CV;
 - failing to take reasonable steps to ensure that statements made in formal documents are accurate;
 - misconduct in relation to research for example presenting misleading information in publications or dishonesty in relation to clinical trials.
- 49 Dishonesty is serious even when it does not involve direct harm to patients (for example defrauding the NHS or providing misleading information) because it can undermine public confidence in the profession. The Privy Council has emphasised that *"Health Authorities must be able to place complete reliance on the integrity of practitioners and the Committee is entitled to regard conduct which undermines that confidence as calculated to reflect on the standards and reputation of the profession as a whole"*.
- 50 The High Court has also held that, when considering impairment, a panel is entitled to take into account the way in which a registrant has conducted his or her defence and any dishonesty therein.

Misleading behaviour

- 51 Where, at the factual stage, the PCC has found proved a charge that the registrant made a statement that was deliberately misleading, the Committee would be entitled to view the matter seriously when considering misconduct, impairment and sanction, because deliberately misleading behaviour calls into question the registrant's integrity. Where, on the other hand, there is a finding that a statement was misleading (but no finding on any further charge of deliberately misleading conduct or dishonesty), then the Committee would need to consider carefully whether the tests for a finding of misconduct and/or impairment are met.

Personal behaviour

- 52 Some behaviour on the part of a registrant, such as indecency or violence, is of concern to the GDC even though it may not be connected with professional practice as it can still undermine the public's trust in the profession. Encouraging others to take part in such behaviour is likely also to be a concern.

- 53 In some cases a registrant's personal behaviour or attitudes, such as a serious or persistent contempt for the safety, rights or dignity of others can indicate that he or she is potentially unfit to be a member of the profession.

Sexual misconduct

- 54 Sexual misconduct encompasses a wide range of conduct from criminal convictions for sexual assault or sexual abuse (in the case of children, including child pornography) to sexual misconduct with patients or colleagues.
- 55 Sexual misconduct seriously undermines public confidence in the profession. The misconduct should be viewed as even more serious if:
- a. there is an abuse of a position of trust and/or
 - b. the registrant has been required to register as a sex offender.
- 56 The PCC should be aware of the potential risks to patients, the wider public and to public confidence in the profession. In cases of serious sexual misconduct, the PCC may reasonably determine that there is a real prospect of current impairment and that erasure might be the appropriate sanction.

Sexual offences and child pornography

- 57 A registrant who has been convicted of or has received a caution for an offence listed in Schedule 3 of the Sexual Offences Act 2003 is required to 'register' under Section 80 of the same Act and may be required to undertake a programme of rehabilitation or treatment. Sexual offences include involvement in child pornography.
- 58 The case of *CHRP v (1) GDC and (2) Mr. Fleischmann*¹⁶ led to the Court giving some guidance on the handling of cases involving internet child pornography. Taking, making, distributing or showing with a view to being distributed, publishing or possessing an indecent photograph or pseudo-photograph of a child is illegal and is regarded in UK society as morally unacceptable. Any conviction relating to child pornography will lead to registration as a sex offender and possibly to disqualification from working with children.
- 59 While the Courts rightly consider the degree of seriousness of the offence(s) when sentencing, the GDC takes the view that any conviction for child pornography against a GDC registrant is a matter of grave concern because it breaches the public trust and undermines public confidence in the profession. For these reasons, any involvement in child pornography by a GDC registrant should lead the committee to consider whether erasure is the only proportionate sanction.
- 60 If the PCC decides that a sanction other than erasure is proportionate it is vital that full and clear reasons are given. If a period of suspension is imposed, the PCC are reminded that a review can be prescribed in order to review the case before the suspension concludes.
- 61 In a case involving a matter as serious as child pornography, the PCC must consider imposing a review before the suspension concludes. The panel must consider very carefully that allowing a suspension to conclude without a review may convey a risk to public protection and/or public confidence.

¹⁶ Council for the Regulation of Healthcare Professionals v (1) General Dental Council (2) Alexander Fleischmann [2005] EWHC 87 (Admin).