

This guidance is in effect up until 6 January 2026. From 6 January 2026, this guidance will continue to be used for hearings which started before 6 January 2026 and did not conclude before this date (i.e. were part-heard).

Guidance for the Practice Committees including Indicative Sanctions Guidance

Effective 1st October 2016

Last Revision: December 2020

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Update log

Update	Date	Author	Change
1.0	03.05.19	Shaun Round	Update to Section 10 – Restoration; Minor amendment to para 5.17.
2.0	16.12.20	Shaun Round	Updates to sections 3.7 - 3.28 (proceeding in absence / postponements / adjournments); 4.6, 4.7 (decision-making process); Minor amendment to 5.18; Amalgamation of sections 6 and 8 (explaining decisions) Minor amendment to 7.1 Appendix A – paras 1; 3 – 6; 10; 11; 19; 54 – 64; 66 – 69.

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 (PPC) and the Health Committee (HC), 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, as amended, ("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 27B (dentists) or 36P (dental care professionals) of the Act)^{3,4}.
- 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 along with details of any ongoing hearing outcome 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 also may be found on the ‘Hearings’ section of the GDC website⁶.

¹ [The Dentists Act 1984](#)

² [The General Dental Council \(Fitness to Practise\) Rules of 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 <https://www.gdc-uk.org/>

⁶ <https://olr.gdc-uk.org/hearings>

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 a 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 representations 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

Proceeding in the absence of a registrant

- 3.7 As a regulatory body, the GDC cannot enforce attendance of a registrant at a hearing. If they do not attend, they can still be represented either by a legally qualified person or by someone else including a friend or family member, whether or not legally qualified.
- 3.8 If a registrant is unable or unwilling to attend and is not represented, the PCC can choose to proceed with the hearing in their absence. This is because the GDC’s Practice Committees have an obligation to conduct fitness to practise proceedings expeditiously by making sure decisions are not unduly delayed, particularly if there is a deliberate failure to engage with the proceedings. It is in the interests of all parties, and the wider public interest, that hearings are held as soon as possible.
- 3.9 When deciding whether to proceed with a hearing in the absence of a registrant, the PCC must exercise utmost care and caution, with fairness to both parties being a prime consideration.

⁷ Rule 53(1) and (4) of [The General Dental Council \(Fitness to Practise\) Rules of Order of Council 2006](#)

⁸ Rule 54 of [The General Dental Council \(Fitness to Practise\) Rules of Order of Council 2006](#)

- 3.10 The PCC must first consider whether all reasonable efforts have been made to serve the Notice of Hearing (NoH) on the Registrant.⁹ This should be considered alongside the Registrant's duty to cooperate with the GDC's investigation and to provide them with a registered address or address for correspondence.¹⁰
- 3.11 The PCC should consider all of the information before them and be guided by the following principles¹¹:
- The public interest in the expeditious disposal of the case;
 - The inconvenience to any witnesses that have attended or are due to attend and the effect of any delay on their memories;
 - The nature and circumstances of the Registrant's behaviour in absenting themselves, and their reasons for non-attendance (whether deliberate and voluntary, and whether those reasons are supported by independent evidence);
 - The potential unfairness to the Registrant if the proceedings were to continue in the Registrant's absence, bearing in mind the reasons for their non-attendance;
 - Fairness to the GDC as the regulator;
 - The likely length of any adjournment and whether such an adjournment would be likely to result in the Registrant's attendance;
 - Whether the Registrant wishes to be legally represented at the hearing and whether they have waived that right by their conduct;
 - Whether the absent Registrant's legal representatives (if instructed) are able to receive instructions from the Registrant during the hearing and the extent to which they can present the case for the Registrant;
 - Whether it is fair, appropriate and proportionate to proceed in the Registrant's absence.
- 3.12 If the PCC decide not to proceed in the absence of the Registrant, the Committee will need to consider whether to postpone the hearing to a later date. The PCC should provide reasons for its decision.

Postponements

- 3.13 A postponement is a decision to delay the start of a hearing that has been formally listed i.e. the NoH has been served on the Registrant but the hearing itself has not yet started. Applications for postponements can be made either by the Registrant or the GDC, or the Committee can postpone the hearing of its own volition.¹²
- 3.14 An application for a postponement should generally be made in writing by the party requesting it and should be supported by good reasons and evidence where possible.
- 3.15 The written application should be sent to the GDC's Hearings team who will forward it to the other parties to proceedings and seek their representations. Both the written application and any responses will then be provided to the Committee for consideration. Where it is possible, such applications will be considered at a preliminary meeting of the Committee.

⁹ GMC v Adeogba; and GMC v Visvardis [2016] EWCA Civ 162, para 23 and Rule 13(2) and Rule 65 of The General Dental Council (Fitness to Practise) Rules of Order of Council 2006 (as amended). Rule 65 refers to notification being 'sent' for the purposes of notification of proceedings.

¹⁰ Rule 9 of the GDC (Dentists Register) Rules 2014 and Rule 13 of the GDC (Dental Care Professionals Register) Rules 2014

¹¹ GMC v Adeogba; and GMC v Visvardis [2016] EWCA Civ 162

¹² Rule 58(1) of the General Dental Council (Fitness to Practise) Rules of Order of Council 2006 (as amended)

- 3.16 The postponement decision is at the discretion of the Committee. Such discretion will be exercised fairly, after taking account of any representations from the parties and any legal advice. The Committee's decision must be notified to all parties providing sufficient reasons explaining the rationale behind their decision.
- 3.17 If a postponement is refused, the hearing will proceed as originally planned.
- 3.18 If a postponement is granted, a new date for the hearing will be set, which may be before a differently constituted panel of the same Committee.

Adjournments

- 3.19 An adjournment is a decision not to continue with the hearing at any point after the charges have been read and the factual inquiry has begun.¹³
- 3.20 Once a hearing has begun, the Committee may, at any stage during the proceedings, decide to adjourn those proceedings. Such a decision can be made following an application by the Registrant, the GDC or on the Committee's own volition.
- 3.21 If either party seeks an adjournment, they will need to explain why it should be granted. An application for adjournment must be supported by good reasons and evidence where possible.
- 3.22 An adjournment should only be granted provided that no injustice is caused to the parties and the decision is made after hearing representations from the parties (where present) and taking advice from the Legal Adviser. Such discretion must be exercised fairly. The Committee's decision must be notified to all parties providing sufficient reasons explaining the rationale behind their decision.
- 3.23 If a hearing is adjourned, when it resumes, it will be before the same constituted panel of the Committee unless, due to unforeseen and/or unavoidable circumstances, this is not possible. In such circumstances, all parties will be notified as soon as practicable to discuss the future listing of the case.

Considerations on whether to postpone or adjourn

- 3.24 In deciding whether to grant a postponement or adjournment, the Committee should first explore with the party making the application, whether the issue can be resolved by a short adjournment (minutes or hours) within the current listing timeframe. If not, then the Committee should consider, when deciding whether to grant a longer adjournment or postponement, all relevant factors, including:
- **The public interest in the expeditious disposal of the case** – there is a public interest in considering fitness to practise allegations swiftly; protecting the public; and maintaining confidence in dental professionals and the GDC as a regulator. Although delaying a hearing may mean that witnesses find it harder to remember their evidence, there may also be a public interest in delaying the hearing. For example, if more time is needed to obtain further evidence that will provide the Committee with a full understanding of the concerns when they make their decision.
 - **The potential inconvenience caused to a party or any witness to be called by that party** – postponing or adjourning a hearing may cause inconvenience to people who have made

¹³ Rule 19(1) of the General Dental Council (Fitness to Practise) Rules of Order of Council 2006 (as amended) states the factual inquiry only commences when the presenter opens the case and presents their evidence.

themselves available to attend and give evidence on the original hearing dates, and who may be unable to attend a hearing at a later date. Consideration must also be given to whether delay will lead to the loss or degradation of evidence, and whether that impacts on the fairness of proceedings; and

- **Fairness to the respondent** – Postponing a hearing may allow a registrant who is unable to attend the original hearing dates, to attend a future hearing and give their evidence either in person or, where applicable, remotely. For example, due to short term ill health or other commitments that were arranged before they were informed of the hearing date.

Postponement/Adjournments on the grounds of ill health

- 3.25 Where an application for a postponement or adjournment is made on the ground that the Registrant is unable to attend due to ill health, independent medical evidence must be presented to the Committee that the individual is unfit to participate in the hearing, and that evidence must clearly demonstrate the individual's condition and explain how and why that condition prevents their participation in the hearing. Such an opinion or prognosis on a registrant's ability to participate in the hearing should be based on a proper examination by a relevant medical professional.¹⁴
- 3.26 The Committee can, if it considers it appropriate to do so, take account of its own assessment of the individual's capacity to participate effectively at a hearing, as part of its overall assessment of the evidence before it, including any expert medical evidence.¹⁵ The Committee is not bound to accept the expert evidence, even if agreed. If, having weighed up all of the material before it, the Committee intends to depart from the expert medical opinion, it must do so with caution. Reasons must be given by the Committee for its decision.

Postponement/Adjournments on the grounds of seeking legal representation

- 3.27 A registrant does not have an unfettered right, in any case, to insist on instructing a legal representative, regardless of the consequences for the public interest and the other parties involved.¹⁶ Where an application for a postponement or adjournment is made at the outset of the hearing on the ground that the Registrant wishes to obtain legal representation in the first instance, or new representation, to assist them at the hearing, the considerations to which the Committee must have regard, remain those set out at paragraph 3.24 above.
- 3.28 If the Committee decide to refuse such an application at the outset of a hearing, it is open to them to keep their decision under review throughout the proceedings if they subsequently consider that a registrant cannot properly put forward their case, or properly represent themselves without further assistance from a legal representative.

¹⁴ *General Medical Council v Hayat* [2018] EWCA Civ 2796

¹⁵ *Maitland-Hudson v Solicitors Regulation Authority* [2019] EWHC 67 (Admin)

¹⁶ *Hussain v General Pharmaceutical Council* [2016] EWHC 656 (Admin)

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.¹⁷ 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.

4.2 Submissions may be made on behalf of both the GDC and the Registrant in respect of 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 When considering the issue of impairment, the Committee need to assess, by way of evidence presented to it, the extent of any remorse, insight and remediation provided by a registrant and whether it demonstrates that they have reflected on their misconduct and would act differently in future i.e. that the risk of repetition of such behaviour is low.

¹⁷ Sections 27 (Dentists) and 36N (Professions Complimentary to Dentistry) of the Act

- 4.7 Evidence of remediation should be precise and detailed in cases of both clinical misconduct and personal misconduct, including misconduct relating to attitudinal failings or specific types of misconduct, for example, dishonesty or sexual conduct. The Committee should bear in mind the basis on which evidence of remediation is offered when determining what weight should be attached to it.
- 4.8 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 financial gain on the part of the Registrant;
- the fact that the incident was a single, isolated event;
- time elapsed since the incident.

(Note: the absence of actual harm should not be considered as mitigation.)

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 (n.b. evidence of clinical competence cannot mitigate serious and/or persistent 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 wilful 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 Sanctions

- 6.1 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.
- 6.2 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.
- 6.3 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.
- 6.4 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.
- 6.5 The sanction chosen should always be the least severe sanction which deals adequately with the identified issues whilst protecting the public interest (see 6.1 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.

- 6.6 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

- 6.7 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.

- 6.8 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.

- 6.9 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

- 6.10 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.

- 6.11 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.

- 6.12 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 noncompliance are due to circumstances, rather than due to the Registrant.
- 6.13 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.
- 6.14 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 6.35-6.38).
- 6.15 The PCC must decide whether the conditions will be reviewed at a specified time and inform the dental professional of this when the conditions are 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).
- 6.16 At any time while conditions are in force, the PCC may review them and determine whether they should continue unchanged or should be amended. If amending the conditions, the PCC can:
- extend the period for which the conditions are in force (up to a maximum of three years);
 - revoke or vary any of the conditions;
 - reduce the period for which the conditions are in force; or
 - revoke the conditions.
- 6.17 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 conditions are 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 of Practice Order forms part of a registrant's fitness to practise history and is disclosable to prospective employers and prospective registrars in other jurisdictions.
- 6.18 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 6.19.

6.19 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.

6.20 The GDC Conditions Bank may assist the PCC to devise appropriate conditions.

Suspension

6.21 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.

6.22 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.

6.23 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).

6.24 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.

6.25 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.

6.26 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.

- 6.27 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 6.35-6.38)
- 6.28 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).
- 6.29 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

- 6.30 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.
- 6.31 A practice committee may not erase a registrant whose fitness to practise has been found to be impaired solely on health grounds.
- 6.32 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.
- 6.33 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 6.35-6.38).
- 6.34 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

- 6.35 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.
- 6.36 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.
- 6.37 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.
- 6.38 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.

7 Explaining decisions

- 7.1 All decisions given by the PCC, including in respect of their findings of fact, decision on impairment and sanction, should be written using clear language and vocabulary so that the dental professional, the other parties to the hearing, those who have no prior knowledge of the case (such as members of the public) and any appellate court will see that all relevant issues have been addressed and understand the decision and the reasons for it. Decisions will be produced in English and made public on the GDC website. Copies of decisions produced in Welsh can be made available upon request in writing.
- 7.2 Reasons should not disclose any confidential information about a registrant's health, private or family life.
- 7.3 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.
- 7.4 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 grounds.¹⁸
- 7.5 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.
- 7.6 The panel must express decisions in sufficient detail that the parties (and other relevant observers) can understand why a particular determination was made.

¹⁸ Sections 27 (Dentists) and 36N (Professions Complimentary to Dentistry) of the Act

8 Notification of decisions

- 8.1 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.

9 Restoration following erasure

Introduction

9.1 The purpose of this section is to provide the PCC with a comprehensive set of guiding principles and key factors which it must consider when determining whether to restore an applicant to the register following a period of erasure.

The essentials

- Erasure is a serious sanction.
- While it is possible for an individual to be restored to the register following erasure, in order to underpin the serious nature of such a sanction, a period of at least five years must elapse before restoration can be considered.
- Even when that period has elapsed, restoration will only be granted if the PCC is satisfied that it is consistent with the objectives of public protection, maintaining public confidence in the profession and promoting and maintaining proper professional standards.

The detail

9.2 Applications for restoration are considered by the PCC.

9.3 A dental professional who has been erased by the PCC may not apply for restoration to the Register until a period of five years has elapsed, starting from the date in which the decision by the PCC to erase took effect. Subsequent applications for restoration may not be made until a period of twelve months has elapsed following an unsuccessful application.

9.4 The burden of proof is on the applicant to satisfy the PCC that they:

- **are fit to practise.** This means satisfying the PCC that not only do they have the necessary knowledge and skills to practise the profession safely and effectively, but also as to their identity, good character, necessary knowledge of English and health, as specified in the Act;
- **meets the requirements of any CPD rules relevant to their case;** and
- **meets any other requirements as to education and training as directed by the PCC.**

9.5 When considering the applicant's application for restoration, the PCC must have regard to all three aspects of the over-arching objective of the Council, as set out in the Dentists Act i.e. the protection of the public via the pursuit of the following objectives:

- to protect, promote and maintain the health, safety and well-being of the public;
- to promote and maintain public confidence in the professions regulated under the Act; and
- to promote and maintain proper professional standards and conduct for members of the dental professions.

Order of proceedings

9.6 Unless the PCC determine otherwise, the order of proceedings at a restoration hearing is as follows:

i. The GDC **shall**:

- inform the PCC of the background to the case;
- direct the attention of the PCC to any relevant evidence considered by a previous PCC including transcripts of previous hearings;
- present any relevant evidence not previously considered by a PCC; and
- make submissions as to the matters being considered by the PCC.

ii. The applicant **may**:

- present any relevant evidence on which they intend to rely (including any evidence directed by the PCC); and
- make submissions as to the matters being considered by the PCC.

9.7 When considering an application, the PCC **may**, if they consider it necessary and appropriate in a particular case, direct the applicant to produce evidence as to his or her fitness to practise and/or meet further requirements, including as to education and training.

Criteria for restoration

9.8 Before granting an application for restoration, the PCC will need to be satisfied that:

- **the applicant is fit to practise.** This means being satisfied that the applicant has demonstrated that they not only have the necessary knowledge and skills to practise the profession safely and effectively, but also that they have met the criteria for their identity, good character, necessary knowledge of English and health, as specified in the Act;
- **the need to uphold proper professional standards and the public's trust and confidence in the profession will not be undermined if the applicant is restored to the register.**

9.9 When assessing good character, the PCC should consider whether the applicant has acted in the past or there is reason to believe they are liable in future to act:

- in such a way that puts at risk the health, safety or well-being of a patient or other member of the public;
- in such a way that their registration would undermine public confidence in the profession;
- in such a way that indicates an unwillingness to act in accordance with the standards of the profession;
- in a dishonest manner.

9.10 Erasure from the register is usually the result of one or more of the above factors. Nevertheless, it is for the PCC to determine whether in fact any, some or all of the factors above apply to the applicant whose restoration application is under consideration.

9.11 Factors which are likely to be relevant when the PCC consider an application for restoration include:

- the circumstances which led to the erasure;
- the reasons given by the previous panel for the erasure (which the PCC should not seek to consider afresh);

- the passage of time since the erasure;
- the effect erasure has had on the applicant;
- the level of remorse and insight demonstrated by the applicant;¹⁹
- the extent of any remediation and how well it has been embedded (in cases involving the abuse of a position of trust, dishonesty or sexual misconduct, the fact that the applicant has taken remedial action may be of far less significance than in other cases, such as those involving clinical errors or incompetence.)
- the applicant’s conduct since being removed from the register;
- steps taken to keep clinical knowledge and skills up to date insofar as possible;
- the risk of repetition;
- whether the applicant poses a risk or is safe to resume practice.

9.12 The PCC should note that the five-year minimum period before a restoration application can be made is designed to underpin the seriousness of the sanction of erasure. It is not a ‘tariff’ to be “served” by an individual in order to remove concerns about their fitness to practise. Even after the minimum five-year period has elapsed, the PCC must still consider whether granting restoration would be consistent with all three aspects of the over-arching objective: public protection, maintaining public confidence in the profession and maintaining and promoting proper professional standards. If the PCC is not satisfied that granting restoration would be consistent with the over-arching objective, it should decline the application, regardless of the time that has elapsed since erasure.

Restoration with conditions of practise

9.13 If the PCC grant the application, they may direct that restoration is conditional:

- on satisfying the registrar that they have satisfied the legal requirement to have insurance or indemnity cover in place; and/ or
- on their compliance with such conditions as the PCC think fit to impose for the protection of the public or in their interests for a period not exceeding three years.

9.14 When the PCC consider whether to impose conditions for the protection of the public or in the applicant’s own interests, a relevant factor is likely to be the passage of time since the applicant last practised.

9.15 A PCC which was considering imposing conditions would consider the same factors as are set out in section 7 above in the paragraphs covering Orders of Conditions.

Subsequent restoration applications

9.16 If, during the same period of erasure, a second or subsequent restoration application is unsuccessful, the PCC may direct that the applicant’s right to make any further applications is suspended indefinitely. The decision of the PCC to suspend further applications indefinitely may not be reviewed until a period of three years has lapsed since the date on which the PCC’s direction to suspend further applications indefinitely took effect.

¹⁹ Please refer to section 5 of the guidance above.

9.17 If or when such a review takes place after the three-year minimum period, should the PCC confirm the decision of the previous PCC to indefinitely suspend further applications, an applicant cannot make any further application for a review of that direction until a further three years minimum has lapsed since the date of the most recent review decision.

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/current impairment 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. 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 to restrict their registration to:
 - protect, promote and maintain the health, safety and well-being of the public;
 - promote and maintain public confidence in the profession;
 - promote and maintain proper professional standards and conduct for members of the profession.
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) Fleischmann* [2005] EWHC 87 (Admin)). There may have been personal circumstances that led the court to be lenient. For example, the court may have expressed an expectation that the regulatory body would erase the Registrant. Considerations taken into account by a criminal court may be different from those relevant to a regulatory body.
4. The GDC's *Standards for the Dental Team* state at 9.3 that a registrant 'must inform the GDC immediately if [they] are subject to criminal proceedings or a regulatory finding is made against [them] anywhere in the world'. Additionally, the GDC's *Guidance on Reporting Criminal Proceedings* states that a registrant *must* inform the GDC if, anywhere in the world, they:
 - Are charged with a criminal offence;
 - Receive a conditional discharge for an offence;
 - Accept a criminal caution (including a conditional caution), or otherwise formally admit to committing a criminal offence;
 - Accept the option of paying a penalty notice for a disorder offence (in England and Wales), a penalty notice under the Justice Act (Northern Ireland) 2011 or a fixed penalty notice under the Antisocial Behaviour etc (Scotland) Act 2004;
 - Receive a formal adult warning (in Scotland).
5. A failure to inform the GDC of a conviction or caution, or declare one at the point of application for registration is considered very serious. This is because a registrant's character and conduct since the offence are important issues in the context of assessing their ongoing fitness to practise. Disclosure of such information, therefore, provides a useful factual basis on which to assess whether the offence(s) were indicative of attitudes or personal characteristics which are fundamentally incompatible with professional registration due to the risk they present to the public or the wider public interest.

6. The Registrar must be able to carry out their function of scrutiny effectively, including consideration of the implications of any convictions or cautions on an applicant or registrant's suitability to be on the register. If a registrant fails to disclose a conviction or caution at the point of registration or, if already registered, at any point after receiving it, it strikes at the very heart of the registration process and the reliability and integrity of the register i.e. to ensure that only fit and proper persons are registered as dental professionals. Therefore, a failure to disclose a conviction or caution may not only impact on the protection of the public, but it may also undermine the public's confidence in the profession and its regulation. Such a failure may also give rise to other allegations of misconduct such as dishonesty or a lack of integrity on part of the Registrant, which might further raise the seriousness of the misconduct alleged.

Convictions

7. "Convictions" refer 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.
8. 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.
9. 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 by 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.
10. As a general principle, where a registrant has been convicted of a serious criminal offence or offences, they should not be permitted to resume unrestricted practice until they have completed their sentence. Only circumstances which plainly justify a different course should permit otherwise. Examples include a period of disqualification from driving as part of the duration of a sentence, or time permitted to pay a fine. The rationale for the principle is not that it can serve to punish the Registrant whilst serving their sentence, but that good standing in a profession must be earned if the reputation of the profession is to be maintained.²⁰
11. The general principle is not only applicable to sentences of immediate imprisonment, but also to the suspended period of any sentence of imprisonment, as well as the duration of any Community Order that may have been imposed by the criminal court.

Cautions

12. 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.
13. 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

²⁰ *Council for the Regulation of Health Care Professionals v (1) General Dental Council (2) Alexander Fleischmann* [2005] EWHC 87 (Admin)

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.

14. 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.
15. 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 convictions²¹ and the relevant sections of The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2013.²²

Conditional discharges

16. 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

17. 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

18. “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.

²¹ [GDC Logo Blue Header for Word \(gdc-uk.org\)](http://www.gdc-uk.org)

²² <http://www.legislation.gov.uk/ukxi/2013/1198/made>

Clinical or Professional Cases

The impact of retirement upon fitness to practise

19. Where a registrant is intending to continue to practise, the likelihood of repetition is relevant to the issue of impairment. Where the likelihood of repetition is improbable only because the Registrant has retired, or has indicated that he or she will soon be retiring, that cannot be regarded as indicative that the Registrant is fit to practise. If anything, cessation of practice may point in the opposite direction²³, since a registrant's skills may deteriorate through lack of use; in addition, the fact that a registrant has not undertaken CPD may also be taken into account.

Candour

20. 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.
21. 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.²⁴

Consent

22. 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.
23. 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;

²³ [General Optical Council v Clarke \[2018\] EWCA](#)

²⁴ <http://www.gdc->

[uk.org/Newsandpublications/Pressreleases/Documents/Joint%20statement%20on%20candour%2013%20Oct%202014%20%2082%29.pdf](http://www.gdc-uk.org/Newsandpublications/Pressreleases/Documents/Joint%20statement%20on%20candour%2013%20Oct%202014%20%2082%29.pdf)

- 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.
24. 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

25. 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

26. 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.

Delay in making complaints

27. 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

28. 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.
29. In essence, a registrant must act in a responsible manner and be prepared to justify their actions if questioned.
30. 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

31. 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.
32. 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.
33. 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

34. 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.
35. The Council supports the Training Standards in Implant Dentistry²⁵ published by the Faculty of General Practice (UK), and publishes this fact on the GDC website.²⁶

Indemnity

36. 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

²⁵

<http://www.fgdp.org.uk/assets/pdf/publications/policy%20documents/implant%20training%20stds%20jun%2012.pdf>

²⁶ <http://www.gdc-uk.org/DentalProfessionals/Standards/Pages/Implantology.aspx>

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.

37. 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.
38. 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

39. 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.
40. 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.
41. 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

42. 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 (by 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.
43. A dental professional must not undertake work that is outside their scope of practice.
44. 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.
45. 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

46. 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

47. 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.
48. 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.
49. 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”.²⁷ 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

50. 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.
51. 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

52. 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.
53. 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.

Dishonesty²⁸

54. When making decisions on charges involving dishonesty, the Committee must first establish whether or not the conduct took place, and if so, what the Registrant’s state of mind was at the time.
55. The Committee needs to consider the following:

²⁷ NMC press statement.

²⁸ [Ivey v Genting Casinos UK Ltd \(t/a Crockfords Club\) \[2017\] UKSC 67](#)

- What were the facts at the time;
 - What was the Registrant's knowledge or belief as to those facts;
 - Whether the Committee considers that the Registrant's actions were, objectively, dishonest (i.e. dishonest according to the standards of ordinary decent people), or
 - Whether there is evidence of alternative explanations, and if so, which is more likely (on the balance of probabilities).
56. As part of drawing conclusions about the Registrant's state of mind, the Committee must consider what the evidence says about the background facts or circumstances, and what the Registrant knew or believed about what they were doing.
57. Evidence as to the Registrant's own beliefs about what is dishonest or what they perceive society sees as dishonest is not relevant to the Committee's assessment of whether the Registrant's actions were dishonest. It is not necessary, when establishing dishonesty, that the Registrant must appreciate that what they were doing was dishonest. The question of what is honest or dishonest in a particular set of circumstances, is a question for the Committee to determine by applying what it understands the standards of ordinary, decent people to be. The law assumes that people from all walks of life can easily recognise dishonesty when they see it, and that in most situations it is not difficult to identify how an honest person would behave.
58. It is important, however, that the Committee considers whether there is another, innocent explanation for the Registrant's conduct, which points away from them having behaved dishonestly. Such considerations must be based on identifiable evidence and not on speculation. Where there is evidence which might suggest the existence of an alternative explanation for why the Registrant might have done something, other than with dishonest intent, the question for the Committee is which explanation is more likely?
59. Patients, employers, colleagues and the public should be able to rely on a dental professional's honesty and trustworthiness. 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, *e.g. submitting fraudulent NHS claims;*
 - falsifying and/or improperly amending patient records;
 - deliberately breaching the professional duty of candour, to cover up things that have gone wrong, especially if it causes harm to a patient;
 - issuing practice policies which unduly influence patients to receive expensive or unnecessary treatment;
 - misrepresenting the NHS position, *e.g. informing patients a treatment is not available on the NHS when it is, or misrepresenting the costs of treatment on the NHS;*
 - submitting or providing false references;
 - providing more than merely misleading information on a CV;
 - Failing to inform the GDC that you are subject to criminal proceedings;
 - failing to take reasonable steps to ensure that statements made in formal documents are accurate, *e.g. failing to declare a conviction to the GDC at the point of application to the register;*
 - misconduct in relation to research for example presenting misleading information in publications or dishonesty in relation to clinical trials;
 - making dishonest claims when advertising services, or exploiting patients' vulnerability or lack of clinical knowledge;

- Deliberately failing to disclose convictions/cautions to the GDC when required to do so;
 - Premeditated, systematic or longstanding deception.
60. Acting with honesty and integrity is a fundamental tenet of the dental profession. As such, dishonesty will always be 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 emphasised in *Dey v GMC* [2001] UKPC 44 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*”.
61. Dishonesty can take many forms, with some being more serious than others. Some forms of dishonest conduct can destroy trust instantly, whilst others can merely undermine it to a greater or lesser extent. Dishonest conduct may be considered less serious in cases of:
- One-off incidents;
 - Opportunistic or spontaneous conduct;
 - No direct personal gain;
 - No risk to patients;
 - Incidents in private life.
62. It is a matter for the Committee to determine where on the spectrum of seriousness the Registrant’s dishonesty lies. However, dishonesty that is persistent and/or covered up, is likely to result in erasure.
63. Where dishonesty is a central feature of a Committee’s decision, there will always be a severe risk of a registrant’s name being erased from the register. Where little remorse, regret or insight is demonstrated, or where a registrant fails to cooperate with an investigation, engage with the final hearing or persists in misconduct, then this may point to a more serious sanction needing to be imposed to ensure public confidence in the profession is not undermined and that proper professional standards of conduct are maintained.²⁹
64. Evidence of clinical competence cannot mitigate serious and/or persistent dishonesty.
65. 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.

Integrity

66. The issue of integrity has been explored by the Courts, and it is now established that integrity is a broader concept than honesty.³⁰ In professional codes of conduct, the term “integrity” is a useful shorthand to express the higher ethical standards which society expects from professional persons and which the professions expect from their own members. The underlying rationale is that the professions (including dental professionals) have a privileged and trusted role in society; in return they are required to live up to their own professional and ethical standards.

²⁹ *Watters v NMC* [2017] EWHC (Admin) 1888

³⁰ [Wingate & Another v The Solicitors Regulation Authority](#) [2018] EWCA Civ 366)

67. That does not mean professional persons must be “paragons of virtue” or be judged by unrealistically high standards. In every instance, professional integrity is linked to the manner in which the profession serves the public.
68. In the context of the dental professions, Standard 1.3 of [Standards for the Dental Team](#) requires that registrants must “*be honest and act with integrity*”. That guidance goes on to set out that registrants must:
- justify the trust that patients, the public and their colleagues place in them by always acting honestly and fairly in their dealings with them; this applies to any business or education activities in which they are involved as well as to their professional dealings (see 1.3.1)
 - make sure they do not bring the profession into disrepute (see 1.3.2); and
 - make sure that any advertising, promotional material or other information that they produce is accurate and not misleading, and complies with the GDC’s [Guidance on advertising](#) (see 1.3.3).
69. The above is not an exhaustive list and there may be other circumstances in which a registrant has not adhered to the ethical standards required of dental professionals, and a lack of integrity is alleged by the Council. In all cases, as the GDC’s Committees are professional tribunals with specialist knowledge of the dental professions and of the ethical standards which apply, they are well placed to identify a lack of integrity, applying an objective test.

Misleading behaviour

70. 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

71. 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.
72. 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

73. 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.
74. 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.
75. 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

76. 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.
77. The case of *CHRP v (1) GDC and (2) Fleischmann*³¹ 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.
78. 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.
79. 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.
80. 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.

³¹ [Council for the Regulation of Health Care Professionals v \(1\) General Dental Council \(2\) Fleischmann \[2005\] EWHC 87 \(Admin\)](#)