

# **Guidance**

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**Fitness to Practise:  
Guidance for the practice committees**

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## Introduction and background

1. The General Dental Council (GDC) is the UK-wide statutory regulator of dental professionals. Its overarching objective is the protection of the public and, in pursuit of this, it aims:
  - a. to protect, promote and maintain the health, safety and well-being of the public
  - b. to promote and maintain public confidence in the dental professions
  - c. to promote and maintain proper professional standards and conduct for members of those professions<sup>1</sup>.
2. One of the ways the GDC pursues its objective is through the investigation of concerns which are raised about dental professionals' fitness to practise.
3. When a concern about a dental professional's fitness to practise is raised, the Registrar must investigate and determine whether that concern amounts to an allegation of impaired fitness to practise. Where it does, the Registrar must refer the allegation to case examiners for consideration<sup>2</sup>. Where the case examiners determine that the allegation ought to be considered by a practice committee (PC), and undertakings are not agreed to or viable, they must refer the allegation to a PC<sup>3</sup>.
4. The GDC has three PCs<sup>4</sup>: the Professional Conduct Committee (PCC), the Health Committee (HC), and the Professional Performance Committee (PPC). Those committees are established under the Dentists Act 1984 (the Act)<sup>5</sup> and their proceedings are governed by the Act and the General Dental Council (Fitness to Practise) Rules 2006 (as amended) (the Rules).
5. PCs consider charges in relation to allegations that registrants' fitness to practise may be impaired on one or more of the following grounds:
  - a. Misconduct.
  - b. Deficient professional performance.
  - c. Adverse physical or mental health.
  - d. Conviction or caution for a criminal offence.
  - e. Certain other outcomes for criminal offences.
  - f. Determinations by certain other regulatory bodies<sup>6</sup>.

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<sup>1</sup> Sections 1(1ZA) and 1(1ZB) of the Dentists Act 1984 (the Act).

<sup>2</sup> Rule 3 of the General Dental Council (Fitness to Practise) Rules 2006 (as amended) (the Rules).

<sup>3</sup> Rule 6(6) of the Rules.

<sup>4</sup> Section 2(3) of the Act.

<sup>5</sup> Sections 2(1) and 2(2) of the Act.

<sup>6</sup> Sections 27(2) and 36N(2) of the Act.

6. The role of PCs includes making findings of fact, determining whether the facts found amount to the statutory ground of impairment, determining whether a registrant's fitness to practise is currently impaired by reason of the alleged statutory ground, and if so, what sanction should be imposed.
7. The aim of this guidance is to promote consistency of approach, transparency, and proportionality in decision making by PCs when they are considering allegations referred to them. It does not seek to restrict their discretion.
8. This guidance is intended for use by PCs. However, it may also be helpful to others including (but not limited to):
  - a. registrants whose cases are referred to a PC
  - b. representatives appearing before a PC
  - c. medical/legal advisers who advise PC members.
9. As a public authority, the GDC is subject to the public sector equality duty under the Equality Act 2010<sup>7</sup>. As such, it follows that the PC should have due regard to this.
10. Appendix 1 follows this main guidance and sets out considerations in particular categories of cases.

## **Dental Professionals Hearings Service**

11. The Dental Professionals Hearings Service (Hearings Service) provides the adjudication function for the General Dental Council. It operates independently of the GDC's investigatory function.
12. The Hearings Service facilitates the hearings, providing pre-hearing and in-hearing support and management of processes.

## **Practice committee procedure**

### **Personnel**

13. PCs normally consist of three members, which must include at least one registered dentist, at least one lay person, and, in any case concerning allegations against a registrant on the dental care professionals' register, one registered dental care professional<sup>8</sup>.

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<sup>7</sup> Section 149(1) of the Equality Act 2010.

<sup>8</sup> Rule 4(7) of the General Dental Council (Constitution of Committees) Rules 2009.

14. The 'presenter' is the representative of the GDC presenting the case<sup>9</sup>. In carrying out its role, a PC will be assisted by a legal advisor and a committee secretary, and may be assisted by:
  - a. a medical adviser
  - b. a professional adviser.
15. A legal adviser sits with PCs (including while deliberating in private) but does not play any role in decision making. Instead, legal advisers advise on questions of law, including the use of this guidance.
16. Any advice which a legal adviser gives to a PC in private must be repeated before the parties at the next available opportunity, and every party or their representative shall be notified if a legal adviser's advice is not accepted by a PC<sup>10</sup>.
17. Legal advisers may, with the Chair's permission, question a witness at a hearing<sup>11</sup>.
18. PCs may be assisted by a medical and a professional adviser, who sit with them (including while deliberating in private session) but do not play any role in decision making. Instead, medical and professional advisers provide PCs with impartial and objective technical advice.
19. Any advice which a medical or professional adviser gives in private must be repeated before the parties at the next available opportunity. In addition, every party or their representative shall be notified if a medical or professional adviser's advice is not accepted by a PC<sup>12</sup>.
20. Medical and professional advisers may, with the Chair's permission, question a witness at a hearing<sup>13</sup>.
21. A committee secretary sits with the PC throughout proceedings, including private deliberations. The committee secretary does not play any role in decision making. They have an administrative and facilitative role, which will include preparing drafts of the determination for consideration by the PC.
22. To support the preparation of the determination, the committee secretary may take notes at the hearing. If requested by the PC, the committee secretary will explain GDC policies and procedures, and direct the PC to where evidence might be found in the bundle or where they might find relevant GDC Standards. Committee secretaries may also provide guidance on uncontroversial issues, primarily by reference to existing procedural guidance and resources, but must not provide legal advice.

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<sup>9</sup> Rule 2 of the Rules.

<sup>10</sup> Rule 62(1) of the Rules.

<sup>11</sup> Rule 62(2) of the Rules.

<sup>12</sup> Rules 63(1) and 64(1) of the Rules.

<sup>13</sup> Rules 63(2) and 64(2) of the Rules.

## Order of Proceedings

23. PC proceedings have four stages:

- The preliminary stage (see paragraphs [24] to [145]).
- The factual inquiry (see paragraphs [146] to [194]).
- Submissions by the parties (see paragraphs [195] to [199]).
- The determination in the case<sup>14</sup> (see paragraphs [200] to [301]).

## Practice committee hearings: the preliminary stage

### Introduction

24. Issues which may be addressed at the start of the hearing as preliminary matters include:

- Referral to a different PC.
- Referral back to case examiners.
- Proceeding in the absence of the registrant.
- Postponement and adjournments.
- Proceeding in public/private.
- Joinder.
- Amendment of the charge.
- Special measures for vulnerable witnesses.
- Applications for measures to support the registrant.
- Abuse of process.
- Admissions.
- Conflicts of interest.

25. Many of the matters listed at paragraph [24] can also be addressed in a preliminary meeting in advance of a hearing<sup>15</sup>.

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<sup>14</sup> Rule 14 of the Rules.

<sup>15</sup> [Fitness to Practise: Preliminary Meeting Guidance](#).

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## Referral to a different type of PC

26. PCs can refer a matter to another type of PC at any stage during the proceedings before them<sup>16</sup>.
27. PCs may exercise their power to do this when two or more allegations against the same registrant have been referred to different PCs, on the basis of different grounds of impairment. For example, if a registrant faces an allegation of misconduct or conviction before the PCC and there is also a parallel allegation of adverse health which has been referred to the HC, the PCC can refer the misconduct or conviction allegation to the HC so both allegations can be joined and heard together.
28. In the rare instance where a PC considers that an allegation has been erroneously referred to it, the referral power may also be used to refer the allegation to the correct type of PC.
29. Referral of a matter to another PC can be made on application from either of the parties, or of the PC's own volition.

## Referral back to case examiners

30. Where a PC considers that an allegation should not have been referred to them, it may refer that allegation back to the case examiners<sup>17</sup>.
31. In practice, this situation will most commonly arise where new evidence comes to light shortly before the hearing with the effect that there is no longer a real (as opposed to fanciful) prospect of the allegations being found proved. For example, where expert witnesses have held a joint meeting and there is no longer sufficient evidence to support the allegation, but there is not enough time available before the hearing for one of the parties to make an application for case examiners to review their decision<sup>18</sup>.
32. In such circumstances, the matter may be handled as a preliminary issue before the PC. Upon referral, the matter will then be reviewed by case examiners.

## Proceeding in the absence of the registrant

33. Where a PC is satisfied that the notification of hearing has been duly sent, it has discretion to proceed in the absence of the registrant<sup>19</sup>.
34. Where the registrant fails to attend the hearing, and is not represented, the presenter will present evidence of reasonable efforts made to send the notification of hearing to the registrant in accordance with the Act and Rules<sup>20</sup>. There is no requirement for the GDC to do anything

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<sup>16</sup> Rule 26(1) of the Rules.

<sup>17</sup> Sections 27B(4) and 36P(5) of the Act.

<sup>18</sup> Rule 6E of the Rules.

<sup>19</sup> Rule 54 of the Rules.

<sup>20</sup> Section 50A of the Act and Rule 65 of the Rules.

further in terms of service, but in practice attempts will also be made to send relevant documents to the registrant by email.

35. The discretion to proceed in the absence of the registrant must be exercised with great care, with fairness to the registrant being a prime consideration. However, fairness to the GDC and the interests of the public must also be taken into account, guided by the context provided by the GDC's overarching objective which is protection of the public. As such, the fair, economical, expeditious and efficient disposal of allegations made against dental professionals is of very real importance<sup>21</sup>.
36. Furthermore, when exercising this discretion the PC must have regard to all the circumstances of the case, including:
  - a. The inconvenience to any witnesses that have attended or are due to attend and the effect of any delay on their memories.
  - b. 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).
  - c. The likely length of any adjournment, and whether an adjournment would be likely to result in the registrant's attendance.
  - d. Whether the registrant wishes to be legally represented at the hearing and whether they have waived that right by their conduct.
  - e. 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.
  - f. Whether it is appropriate and proportionate to proceed in the registrant's absence.
37. The PC must provide reasons for its decision.

## Postponements and adjournments

### Introduction

38. A central principle, well-established by legal precedent, is that any culture of adjournment is to be discouraged, recognising that - while the discretion on whether to grant a delay must be exercised fairly and should take account of all relevant factors - the efficient and expeditious disposal of fitness to practise hearings is of significant public interest<sup>22</sup>.

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<sup>21</sup> [R v Jones \[2002\] UKHL 5](#), as applied to the disciplinary context in [General Medical Council v Adeogba \[2016\] EWCA Civ 162](#).

<sup>22</sup> [General Medical Council v Adeogba \[2016\] EWCA Civ 162](#)

## **Postponements**

39. Prior to the notification of hearing being served, an application to postpone (or reschedule) a hearing may be made to the Hearings Service. However, once the notification of hearing has been served, the decision to postpone a hearing can only be made by the PC. That decision will typically be taken either by the PC in advance of, or immediately prior to, the start of the substantive hearing<sup>23</sup>.
40. An application for a postponement should be made in writing by the party requesting it, and should be supported by reasons and evidence where possible.
41. The written application and any submissions in response should be sent to the Hearings Service which will forward these materials to the PC to which the case is allocated.
42. The postponement decision is at the discretion of the PC. Such discretion must be exercised fairly, and taken after consideration of any representations from the parties and any legal advice. The PC's decision must be notified to all parties, providing reasons and the rationale for their decision.
43. If a postponement is refused, the hearing will proceed as originally planned. If a postponement is granted a new date for the hearing will be set, which may be before a differently constituted PC.

## **Adjournments**

44. An adjournment is a decision by a PC not to continue with the hearing. A PC can decide to adjourn of its own volition or following an application from a party. PCs can decide to adjourn at any stage of the hearing, provided no injustice is caused to the parties, and the decision is made after it has heard representations from the parties present and taken advice from the legal adviser<sup>24</sup>.
45. If either party seeks an adjournment, they will need to explain why it should be granted. An application for adjournment must be supported by reasons and evidence where possible.
46. The adjournment decision is at the discretion of the PC. The PC's decision must be notified to all parties, providing reasons and the rationale for its decision.

## **Considerations on whether to postpone/adjourn**

47. In deciding whether to grant a postponement or adjournment, PCs should first explore, with the party making the application, whether the issue can be resolved by a short adjournment (minutes or hours) within the listing timeframe.
48. If this is not possible, PCs should consider all relevant factors when deciding whether to grant a longer postponement or adjournment, including:

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<sup>23</sup> Rule 58(1) of the Rules.

<sup>24</sup> Rule 58(2) of the Rules.

- a. 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, where it comes to light that there is new relevant evidence that is likely to be material to the PC's determination, and time is needed to obtain this evidence.
- b. 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 all parties who have made 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.
- c. Fairness to the registrant, taking into account the individual circumstances of their case<sup>25</sup>.

#### **Postponements/adjournments on the grounds of ill health**

- 49. Where an application for a postponement or adjournment is made on the ground that the registrant or witness is unable to attend due to ill health, medical evidence that the individual is unfit to participate in the hearing must be presented to the PC.
- 50. That evidence should be from a medical practitioner with familiarity with the registrant or witness' medical condition, must clearly demonstrate the individual's condition, and explain how and why that condition prevents their participation in the hearing<sup>26</sup>.
- 51. The PC is not bound to accept the medical evidence, even if agreed. The medical evidence is one of the factors to be taken into account, and may not be the determining factor, if there are other considerations which weigh against it, including the PC's own assessment of the registrant or witness' capacity to participate<sup>27</sup>.
- 52. The PC must proceed with caution if, having weighed the evidence, it decides to depart from the opinion in the medical evidence, including giving reasons for its decision.

#### **Postponements/adjournments on the grounds of seeking legal representation**

- 53. Registrants appearing before a PC have the right to a fair hearing. Any party may be represented before a committee by counsel or a solicitor<sup>28</sup>. However, a registrant does not have an unfettered right to insist on instructing a legal representative, regardless of the consequences for the public interest and the other parties involved<sup>29</sup>.

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<sup>25</sup> Rule 58(4) of the Rules.

<sup>26</sup> Levy v Ellis-Carr & Ors [2012] EWHC 63 (Ch), as confirmed in General Medical Council v Hayat [2018] EWCA Civ 2796.

<sup>27</sup> Maitland-Hudson v Solicitors Regulation Authority [2019] EWHC 67 (Admin).

<sup>28</sup> Rule 52 of the Rules.

<sup>29</sup> Hussain v General Pharmaceutical Council [2016] EWHC 656 (Admin).

54. 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, or new representation, the PC must consider the factors set out at paragraph [48].
55. If a PC decides to refuse such an application at the outset of a hearing, it can keep that decision under review throughout the proceedings. If the PC subsequently considers that a registrant cannot properly put forward their case or represent themselves without further assistance from a legal representative, it may grant an adjournment to the registrant to enable them to seek legal representation.

## Proceeding in public/private

56. By default, PC hearings are held in public<sup>30</sup>, supporting transparency, as well as the principle of open justice which applies in regulatory proceedings<sup>31</sup>.
57. The principle that PC hearings should be held in public should not be departed from, except where it is necessary<sup>32</sup>. The circumstances in which the PC has discretion to allow a hearing to proceed in private include:
  - a. Where it is necessary to protect the interests of the parties, or the private and family life of the registrant (for example, but not limited to, where the registrant's health is concerned, or where the registrant wants to make reference to mitigating factors in their family life) or any other person (for example, but not limited to, where the allegation relates to sexual misconduct and a hearing in public might lead to identification of the alleged victim).
  - b. Where a PC is of the opinion that publicity would prejudice the interests of justice<sup>33</sup>.
58. The risk that a registrant's reputation may be harmed by the allegations against them being made public would not generally amount to sufficient reason to depart from the principle of open justice that underpins public hearings<sup>34</sup>.
59. The decision on whether a hearing should be held in private may be taken by a PC of its own volition or following a request by either party. Before deciding whether to hear a case, or part of a case, in private, the PC should:
  - a. invite representations from both parties to the hearing
  - b. take advice from the legal adviser.
60. Where a party wishes to make an application for a private hearing, they should indicate that as early as possible in the case management process, although it can also be considered at the substantive hearing. The application to hear the case, or part of the case, in private, can be

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<sup>30</sup> Rule 53(1) of the Rules.

<sup>31</sup> Solicitors Regulation Authority v Spector [2016] EWHC 37 (Admin), Lu v Solicitors Regulation Authority [2022] EWHC 1729 (Admin).

<sup>32</sup> Miller v General Medical Council [2013] EWHC 1934 (Admin).

<sup>33</sup> Rule 53(2) of the Rules.

<sup>34</sup> Lu v Solicitors Regulation Authority [2022] EWHC 1729 (Admin).

made in private session where appropriate. PCs should limit the private part of any hearing to the minimum necessary to achieve the objective set out in paragraph [56].

61. Even where all or part of the hearing is held in private, the PC should still ensure that its decisions are recorded, including whether the decision is taken under paragraph [57] (i) or (ii) and that public reasons are given where it is possible to do so without undermining the purpose of allowing the hearing to proceed in private.

## **Joinder**

62. The PCC or the PPC may consider, at the same hearing, allegations which relate to two or more registrants<sup>35</sup>. Any PC may consider, at the same hearing, two or more allegations which relate to the same registrant (i.e. allegations received separately and considered separately by the Registrar at the assessment stage of the fitness to practise process). Such a procedural approach is referred to as a 'joinder'<sup>36</sup>.
63. Ordinarily, the issue of joinder will have been considered and resolved by the parties as a matter of case management before the hearing takes place, and will have been determined at a preliminary meeting. Joinder applications can, however, be considered by the PC at the preliminary stage of the substantive hearing.

### **Two or more registrants**

64. Unless it is of the view that there is a risk of prejudice to the fairness of the proceedings, and upon taking the advice of the legal adviser, the PCC or PPC may consider allegations against two or more registrants at the same hearing where:
  - a. the allegation against each registrant arises out of the same circumstances, or
  - b. in the view of the PCC or the PPC, it would be just to do so.
65. Considerations under paragraph [64](i) will include where the allegations relate to the same underlying factual matrix, e.g. treatment of the same patient or allegations relating to the joint running of a practice.
66. In considering paragraph [64](ii), PCs should take into account both the public interest in the expeditious and efficient disposal of proceedings, and fairness to the parties.
67. In respect of the public interest in the expeditious and efficient disposal of proceedings, the PC should consider:
  - a. whether a likely delay to proceedings will arise either by refusing the joinder (e.g. if one, or more, case would need to be relisted) or accepting the joinder (e.g. if relisting is required because only one case is ready for hearing and the other is not)

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<sup>35</sup> Rule 25(1) of the Rules.

<sup>36</sup> Rule 25(2) of the Rules.

- b. the impact on any witnesses, including whether any witnesses will be required to give evidence twice (or more) if the matters are considered separately
- c. the efficient use of resources, and whether this is better served by considering all matters at one hearing.

68. In respect of fairness to the parties concerned, the PC should consider the potential effects of delays arising by either refusing or accepting the joinder.

69. Where there is an allegation involving two or more registrants, hearing the cases separately might result in different evidence being heard in relation to each registrant. In the interests of justice, the PC should consider whether this is likely to lead to an inconsistency between outcomes which is not accounted for by genuine differences in the registrants' culpability, insight or remediation. It may be appropriate to join the cases if such a risk appears to the PC to be present.

### **Two or more allegations**

70. If an allegation has been referred to the PC but not yet heard and a new allegation of a similar nature or founded on the same alleged facts is received by the GDC about the same registrant, the PC may consider the new allegation at the same time as the original allegation, even if it has not been included in the notification of hearing<sup>37</sup>.

71. Where a joinder of allegations is contested, the PC should first consider whether the new allegation is of a similar nature or founded on the same alleged facts. This may include, for example, where the original allegation is clinical, and further clinical concerns are raised post-referral. These may be similar concerns relating to additional patients, or wider concerns relating to the same patient (including other areas of treatment or an extension of timeframe).

72. Where the two allegations are raised on different statutory grounds or, for example, the original allegation relates to clinical practice and the new concern relates to personal conduct, the PC is unlikely to consider these allegations to be of a similar nature or founded on the same alleged facts.

73. Even where allegations are of a similar nature, or are founded on the same alleged facts, the PC has discretion on whether to consider them at the same hearing. When considering whether to exercise that discretion, PCs should take into account both the public interest, and fairness to the parties.

74. That a new allegation which is similar or founded on the same facts has not first been considered by case examiners is not a barrier to joinder. When considering joinder, PCs should keep in mind the public interest in the expeditious disposal of regulatory proceedings<sup>38</sup>.

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<sup>37</sup> Rule 25(2) of the Rules.

<sup>38</sup> R. (on the application of Rudling) v General Medical Council [2018] EWHC 3582 (Admin).

75. Fairness to the registrant, however, is also a key consideration, and the PC should consider whether the registrant has, for example:
  - a. been informed of the full extent of the allegation made against them
  - b. been provided with all the evidence upon which the presenter is relying
  - c. been given a fair opportunity to defend the allegation, which includes time to consider the allegation and evidence, to take legal advice and/or obtain any evidence of their own.
76. The loss of an opportunity for the new allegation to be considered by case examiners (and therefore the opportunity for case examiners to consider alternative methods of disposal such as advice, warning, or undertakings for the new allegation) is not in isolation a sufficient reason for joinder to be refused.

## **Amendment of the charge**

77. The Hearings Service will serve on the registrant, no later than 28 days before the start of the hearing, a notification of hearing which will include the charge against the registrant<sup>39</sup>.
78. Once notification of hearing has been served, amendments to charges can occur up until the PC makes its findings of fact, either by application to the PC or of the PC's own volition. Because an amendment of the charge can ordinarily only occur before the findings of facts, any applications to do so must arise before then<sup>40</sup>. However, as addressed at paragraph [83], the PC does have discretion to amend charges after findings of fact to avoid serious procedural errors.
79. Amendments to the charge can be minor alterations, such as typographical errors or the correction of a date, or they may be more substantive, e.g. due to a change in the evidence.
80. In the case of minor amendments, it may be appropriate for them to be dealt with at the outset of a hearing, by way of an oral application.
81. Substantive and/or contested amendments (e.g. those involving significant redrafting or the introduction of new heads of charge) may need to be addressed at a preliminary meeting.
82. Before deciding whether to grant an amendment to the charge, the PC:
  - a. must invite representations from the parties (i.e. the registrant and the presenter<sup>41</sup>)
  - b. should take advice from the legal adviser.
83. The PC is entitled, of its own volition, to make amendments to the allegations before it, where that is necessary to avoid serious procedural error, which would otherwise risk

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<sup>39</sup> Rule 13 of the Rules.

<sup>40</sup> Rule 18(1) of the Rules.

<sup>41</sup> Rule 18(2).

'undercharging'<sup>42</sup>. This principle applies even after findings of fact have been made. Such discretion must be exercised fairly and have regard to the merits of the case and the GDC's overarching objective to protect the public. Before deciding whether to amend the allegations in such circumstances, the PC should:

- a. invite representations from the parties (i.e. the registrant and the presenter)
- b. take advice from the legal adviser.

84. The PC will refuse the amendment if it considers that it cannot be made without injustice<sup>43</sup>. In considering amendments, the PC should be mindful of fairness to the parties, the public interest and whether fair hearing procedure can be followed. Where unfairness to the registrant may otherwise prevent an amendment which is necessary to avoid serious procedural error, the PC should consider whether that unfairness could be mitigated by an adjournment to provide the registrant with more time to respond.

85. All parties must be notified of the PC's decision, providing sufficient reasons, which explain the rationale for the decision.

## **Special measures for vulnerable witnesses**

86. When requested, witnesses should attend the hearing, whether the hearing is in person or being held remotely (or hybrid, i.e. partially in person and partially remotely), to give their evidence and respond to questioning and cross-examination. If a witness is vulnerable, a PC may adopt such measures considered necessary to support the witness to give their best evidence.

87. The PC may treat the following witnesses as vulnerable:

- a. Any witness who is under the age of 18.
- b. Any witness who has a physical or mental disability or condition that would affect their ability to give their best evidence (this could include learning or social functioning difficulties).
- c. Any witness where the subject matter of the hearing is of a sexual nature and the witness was the alleged victim.
- d. Any witness who complains of intimidation<sup>44</sup>.

88. The PC may of its own volition, or following an application by one of the parties, adopt special measures to enable them to receive evidence from a vulnerable witness. The PC should consider what adjustments are necessary, and the potential measures include, but are not limited to:

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<sup>42</sup> [Professional Standards Authority v The Health and Care Professions Council & Doree \[2017\] EWCA Civ 319](#).

<sup>43</sup> Rule 18(1) of the Rules.

<sup>44</sup> Rule 56(1) of the Rules.

- a. Screens, so that the registrant cannot see the witness
- b. The use of a video link (so the witness can give evidence from somewhere else)
- c. Where the hearing is remote or hybrid, the use of 'camera off' arrangements so the witness is unable to see the registrant on screen (the registrant will still be able to see the witness).
- d. The use of pre-recorded evidence, as the witness' evidence in chief, provided that the witness is available at the hearing for questioning and cross-examination (subject to paragraph [91]).
- e. The use of an interpreter (including signers and translators).
- f. Hearing the evidence in private<sup>45</sup>.

89. The measures that the PC considers necessary will depend on the circumstances of the individual witness. Support for witnesses may also be offered by the Hearings Service Participant Support Officer.

90. The PC may of its own volition, or following application from one of the parties, make similar adjustments for other witnesses where it considers that the quality of evidence given by them is likely to be diminished by reason of fear or distress in connection with giving evidence in the proceedings. Where such adjustments are opposed by one of the parties, the PC should hear representations from both parties and seek the advice of the legal adviser before deciding this matter.

91. For cases where the proceedings concern an allegation of a sexual nature, and where the witness is the alleged victim, the registrant shall not be allowed to cross-examine the witness directly in person<sup>46</sup>. If the registrant is not represented, the questioning of the witness must instead be undertaken by another person who the PC considers appropriate<sup>47</sup>.

### **Considering an application for special measures**

92. An application for special measures may be considered at a preliminary meeting or during the substantive hearing. If the application is considered during the hearing, it should be made at the beginning of the proceedings, wherever possible. The PC should first consider whether the individual is a vulnerable witness.

93. The party making the application should, as part of their application, provide the following information, which will enable the PC to fully consider the application:

- a. Details of why the witness is vulnerable, with supporting evidence for this, which may include details of the evidence they intend to give.

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<sup>45</sup> Rule 56(2) and (3) of the Rules.

<sup>46</sup> Rule 56(4) of the Rules.

<sup>47</sup> Rule 56(5) of the Rules.

- b. An explanation of how the witness's evidence will be affected if no special measures are put in place.
- c. Details of the special measures applied for and an explanation of how they will assist the PC to receive the witness's evidence.
- d. information about the practical arrangements for implementing the proposed measures, if appropriate (e.g. the availability of video link facilities to the witness).

94. The PC must hear representations from both parties and seek the advice of the legal adviser when considering an application for special measures<sup>48</sup>.

95. If it determines that the witness should be treated as vulnerable, it should go on to consider what measures, if any, are necessary to enable the witness to give their best evidence.

## **Applications for measures to support the registrant and witnesses**

- 96. Registrants have the right to a fair hearing and must be able to participate effectively in the proceedings<sup>49</sup>.
- 97. Furthermore, where a registrant or witness has a disability, reasonable adjustments may be required where the registrant or witness may otherwise be put at a substantial disadvantage<sup>50</sup>.
- 98. Therefore, in those circumstances or where a registrant or witness has a health condition, it may be necessary for a PC to adopt measures to ensure they are able to understand and fully participate in the hearing. Such measures may include permitting the use of a video link or providing for regular breaks. The measures that the PC considers necessary will depend on the circumstances of the individual registrant or witness.

## **Abuse of process**

- 99. PCs have a duty to ensure that registrants before them receive fair treatment and are given fair hearings<sup>51</sup>.
- 100. An abuse of process occurs if there is a procedural unfairness which affects the PC's ability to give the registrant a fair hearing. Some examples of circumstances that might give rise to an application for a stay, on the basis of abuse of process, are considered at paragraphs [104] to [117]<sup>52</sup>.
- 101. If an application for a stay on the basis of abuse of process claim is made, the PC should consider whether there has been a disregard for the registrant's human rights or for the principles of fairness, such that either:

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<sup>48</sup> Rule 56(2) of the Rules.

<sup>49</sup> Article 6 of the European Convention on Human Rights, and Stanford v UK [1994] 2 WLUK 324.

<sup>50</sup> Section 20 of the Equality Act 2010.

<sup>51</sup> Connolly v DPP [1964] A.C. 1254.

<sup>52</sup> Martin, R. v [1997] UKHL 56.

- a. it will be impossible for the registrant to have a fair hearing
- b. it offends the PC's sense of justice and propriety to continue with the hearing in the circumstances of the case<sup>53</sup>.

102. If the registrant has made the application, the burden is on them to establish serious prejudice, on the balance of probabilities, to the extent that no fair hearing can be held<sup>54</sup>. It is only in exceptional circumstances that a case will be stayed for abuse of process<sup>55</sup>. A stay should only be granted where a registrant cannot receive a fair hearing or where it would be unfair for them to face a hearing<sup>56</sup>.

103. If an abuse of process is found to have occurred, the PC should consider whether there are alternative ways to remedy the injustice, or whether the only option is to stay proceedings.

### **Unreasonable delay**

104. Registrants are entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal<sup>57</sup>. The 'reasonable time' period begins when the registrant is informed of the proceedings against them.

105. Where there has been unreasonable delay (i.e. one that gives rise to real concern), the registrant may seek a stay in proceedings on the basis of abuse of process. Such an application should only be granted if the registrant suffers such a serious prejudice as a consequence of the delay, that they are not able to have a fair trial, or it would be otherwise unfair for the hearing to take place<sup>58</sup>.

106. Factors that may be relevant to a PC's consideration of the reasonableness of a delay include:

- a. The stage the proceedings have reached<sup>59</sup>.
- b. The reason for the delay.
- c. The seriousness of the matter to the registrant.
- d. The impact of the delay on the registrant.
- e. The complexity of the case.
- f. The conduct of the parties<sup>60</sup>.

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<sup>53</sup> R. v Maxwell [2010] UKSC 48.

<sup>54</sup> Attorney General's Reference (No.1 of 1990) [1992] 1QB 630.

<sup>55</sup> Haikels v General Medical Council [2002] UKPC 37.

<sup>56</sup> R. (on the application of Gibson) v General Medical Council [2004] EWHC 2781 (Admin).

<sup>57</sup> Article 6(1) of the European Convention on Human Rights.

<sup>58</sup> Attorney General's Reference No. 2 of 2001 [2003] UKHL 68.

<sup>59</sup> R. (on the application of Gibson) v General Medical Council [2004] EWHC 2781 (Admin).

<sup>60</sup> Okeke v NMC [2013] EWHC 714 (Admin).

## **Failure to disclose material**

107. Registrants are entitled to be provided with sufficient information to understand the case against them, and to receive evidence which may assist their case or undermine the GDC's case.
108. There may be circumstances where, due to its statutory powers to obtain information, the GDC is better placed than a registrant to obtain information that is relevant to the charges. In those circumstances, it may be reasonable for the GDC to obtain the information on the registrant's behalf. However, the GDC is not under a positive duty to gather evidence that is favourable to the registrant<sup>61</sup>.
109. If an argument is raised that there has been an abuse of process on the basis of failure to disclose material, the PC will need to consider whether the charges and evidence disclosed to the registrant are sufficient for them to understand the case against them and prepare their defence. If not, the following factors are likely to be relevant to the PC's consideration of the abuse of process application:
  - a. the reasons for the non-disclosure or partial disclosure of evidence
  - b. whether the conduct of the registrant has contributed to problems with obtaining evidence.
110. If there is potential prejudice to the registrant caused by the non-disclosure or partial disclosure of evidence, the PC should consider whether the injustice can be addressed without staying proceedings. For example, the PC may be able to adjourn the hearing for new evidence to be obtained, or it may decide not to admit parts of the GDC's evidence.

## **Legitimate expectation that a charge will not be pursued**

111. If a registrant has received an assurance from the GDC that an allegation against them will not be pursued, and that allegation is subsequently progressed and included in the notification of hearing, this could amount to an abuse of process.
112. Closure decisions by the Registrar or case examiners can be reviewed within two years<sup>62</sup>. Because these reviews are explicitly permitted by the Rules, such a re-opening of a matter would not amount to an abuse of process.
113. If an application for a stay is made on the basis of abuse of process in other circumstances, i.e. where a registrant has been informed that a charge will not be pursued, factors that may be relevant for the PC to consider include:
  - a. The terms of the assurance.

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<sup>61</sup> R. (on the application of Johnson) v Professional Conduct Committee of the Nursing and Midwifery Council [2008] EWHC 885 (Admin).

<sup>62</sup> Rule 9 of the Rules.

- b. Whether the registrant relied on the assurance to their detriment and, if so, whether it was reasonable for them to do so.
- c. Any new information that has come to light since the assurance was made.

114. If there is prejudice to the registrant caused by the retraction of the assurance, the PC should consider whether there are alternative ways to remedy the injustice, or whether the only option is to stay proceedings.

### **Serious procedural or other irregularity**

115. An abuse of process claim may arise if there has been any procedural irregularity in the investigation or adjudication of a case. Where an issue of procedural unfairness is raised, the PC should consider firstly whether the issue does amount to a serious procedural or other type of irregularity. If so, consideration should move to whether it is so serious that it would render any determination arising from the hearing unjust.

### **Allegation previously considered in another forum**

116. It is not necessarily an abuse of process to invite a court or tribunal to make a finding that is inconsistent with one made in earlier proceedings. In each case, there has to be a fact-specific assessment.

### **Bad faith**

117. If a GDC employee or decision-maker involved in the registrant's case has acted in bad faith, this could amount to an abuse of process. If such a claim is made, the PC should first consider whether there is evidence to prove, on the balance of probabilities, bad faith. If the claim is found to be established, the PC should next consider whether it gives rise to a procedural unfairness which affects whether the registrant is able to have a fair hearing.

## **Admissions made at the preliminary stage of a PC**

### **Introduction**

118. Before the presenter opens the case, the PC will ask the registrant to indicate whether any of the heads of charge are admitted (in whole or in part). Where admissions are made, the PC will consider, and make determinations, in respect of each head of charge before the factual enquiry commences<sup>63</sup>.

119. Where heads of charge are admitted and accepted by the PC, no further factual inquiry is required, as these matters are effectively concluded. However, the factual basis, context, and seriousness of the conduct must be set out in the presentation of the case to enable appropriate decision making by the PC at a later stage of the hearing<sup>64</sup>.

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<sup>63</sup> Rule 17(4) of the Rules.

<sup>64</sup> [Professional Standards Authority for Health and Social Care v General Medical Council & Anor \[2023\] EWHC 967 \(Admin\).](https://www.judicature.ac.uk/judicature/judicature/2023/03/Professional-Standards-Authority-for-Health-and-Social-Care-v-General-Medical-Council-&Anor-[2023] EWHC 967 (Admin).pdf)

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## **Accepting and rejecting admissions**

120. Where heads of charge are admitted, the PC proceeds to determine those facts based on the admission(s). In most instances, this will result in the facts being found proved on the basis of the admission(s) without the need to adduce any further evidence.
121. Before accepting admissions, the PC should ensure that any admissions are full and that there are no substantial disputes between the basis of the registrant's admissions and the way the GDC is presenting the case. If there are substantial disputes, the PC should consider whether these can be addressed at a later stage of the hearing, or whether they represent a factual dispute which requires evidence to be called to determine whether the admissions should be accepted or rejected.
122. In rare instances, the PC may determine that a registrant's admissions are not accepted. For example, this may arise where there is concern that the admissions are being made under duress, or if a registrant is unrepresented and the PC believes the registrant does not understand the basis for, or consequences of, the admission. In such rare cases, the PC should set out its reasons for not accepting the admission(s).
123. Where admissions are not accepted, the charges are treated the same as any other disputed charge at the subsequent stages of the hearing.

## **Where the admitted facts are different to the heads of charge in the charge**

124. There may be some circumstances in which a registrant admits heads of charge on a different factual basis to those set out in the charge. In such instances, an amendment of the charge will need to be applied for and accepted by the PC, before admissions can be considered.
125. Regardless of whether the GDC and the registrant agree on the proposed amendment to the charge (in which case a joint application should be made), or the parties do not agree (in which case an opposed application is likely to be made by the registrant), it is for the PC to decide whether to grant the amendment (see paragraphs [77] to [85]).
126. Where a PC grants an amendment to the charge, it will consider the admission of the amended charge in the same way as set out above (see paragraphs [118] to [123]).

## **Bias and conflicts of interest**

127. The concepts of bias and conflict of interest, while related and potentially overlapping, are separate and distinct. In applying these principles, all the relevant circumstances should be considered.

### **Bias**

128. Bias refers to a predisposition or prejudice which affects a decision-maker's ability to consider an allegation fairly.

129. Bias can be actual or apparent. There will be actual bias where, for example, there is evidence that a decision-maker consciously favours one party. The test for apparent bias is whether a fair-minded and informed observer, considering all relevant facts, would conclude that there is a real possibility that the decision-maker was biased<sup>65</sup>.
130. Before proceedings begin, and prior to considering an allegation referred by case examiners, members of the PC must consider not only whether bias exists but also whether the circumstances create the appearance of bias. Where bias, or a real possibility of the appearance of bias, arises, the process for recusal set out at paragraphs [137] to [141] should be followed.

### **Conflict of interest**

131. A conflict of interest arises when a decision-maker's personal interests influence, or are capable of influencing, their ability to make decisions impartially.
132. An actual conflict of interest will exist where a decision-maker's view is actually influenced, or capable of being influenced, by their personal interests, whereas a potential conflict of interest will arise where the facts are reasonably suggestive of a conflict<sup>66</sup>. A conflict of interest may arise for example where a member of the PC:
  - i. has a financial or other personal interest in the outcome of the matter
  - ii. has a personal or professional relationship with any individual connected with the case
  - iii. has had previous acrimonious personal or professional dealings with one of the parties or the representatives in the matter
  - iv. has previously been involved in the case (e.g. at an IOC hearing), or in relation to a previous fitness to practise matter concerning the registrant
  - v. is active in an organisation which has declared a particular stance on an issue under consideration.
133. Members of the PC must, before considering an allegation referred to them by the case examiners, consider not only whether an actual conflict of interests exists but also whether a potential conflict of interest arises.
134. Where a conflict, or potential conflict, of interest exists, the process for recusal set out at paragraphs [137] to [141] should be followed.

### **Declaring potential conflicts of interest**

135. As far as possible, any potential bias or conflict of interest should be identified and addressed before a hearing begins. PC members are asked to declare in advance of a hearing whether they have any interest in the case, know anyone involved in it, or are otherwise aware of the

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<sup>65</sup> [Magill v. Porter \[2001\] UKHL 67](#), [Suleman v General Optical Council \[2023\] EWHC 2110 \(Admin\)](#).

<sup>66</sup> [Bux v The General Medical Council \[2021\] EWHC 762](#).

case. Consideration will then be given to whether this amounts to potential bias or a conflict of interest by applying the guidance set out at paragraphs [127] to [133]. If there is a conflict, the PC member should not sit on that case, and they will be substituted for another member in advance of the hearing.

136. In some cases, an issue might be identified at the hearing, rather than in pre-hearing checks. Where a PC member identifies a connection to a person involved in the case, or to the case in some other way (e.g. a relationship with a witness), which may give rise to an actual or apparent bias or conflict of interest, the PC member should declare it at the earliest possible opportunity.

### **Recusal**

137. Where risk of bias or conflict of interest is identified, provided the charges have not yet been entered into the record, and all parties and the PC agree, a panel member can be substituted without the formal recusal process, set out in paragraphs [138] to [141], being followed. However, in all other circumstances the formal process should be followed.
138. An application may be made by either party for the PC member to recuse themselves. A PC may also of its own volition consider whether it is necessary for a member to recuse themselves.
139. The PC should first ascertain all the facts that are relevant to the question of whether the PC member has a bias or conflict of interest in hearing the case. Both parties to the case should have the opportunity to make representations on the matter and the Legal Adviser should provide advice to the PC before it makes a determination.
140. The PC should then consider whether there is a bias or conflict of interest.
141. If the PC determines that a bias or conflict of interest exists, it will be necessary for the member to recuse themselves. A reasoned decision must be set out in writing.

### **Substitution of a PC member following recusal**

142. If a member of the PC recuses themselves, the Hearings Service will be notified. The recused member may be substituted during a hearing, provided that:
  - a. the substitution is for a proper purpose
  - b. proper recusal procedures have been followed
  - c. it is in the interests of justice to do so<sup>67</sup>.
143. Where a new panellist is available, the PC may hear submissions from the parties and assess whether the criteria set out at paragraph [142] has been met. If the PC does not consider these criteria have been met, the hearing will need to be relisted. If satisfied, it should go on to

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<sup>67</sup> [R. \(on the application of Michalak\) v General Medical Council \[2011\] EWHC 2307 \(Admin\).](#)

consider the stage from which the hearing should recommence. Factors which may be relevant include:

- a. The stage the hearing reached before the member recused themselves.
- b. The complexity of the allegations.
- c. The evidence already received.
- d. Whether it is possible to recall witnesses.
- e. Whether transcripts of witness evidence already given are available.
- f. Any potential prejudice to the parties.
- g. The public interest.

## **Substitution of a PC member for other reasons**

144. A PC member may need to step down for other reasons during a hearing (e.g. ill health).
145. In such circumstances, substitution may be considered by the PC, in line with the principles set out in paragraphs [142] to [143].

## **Practice committee hearings: the factual inquiry stage**

### **Introduction**

146. The presenter begins this stage of the hearing by opening the case and presenting the evidence on behalf of the GDC. When the presenter has concluded setting out the evidence, the registrant or their representative may open their case, which may include a submission that there is no case to answer (see paragraphs [188] to [190]).
147. Where there is no submission of no case to answer, or such a submission has been unsuccessful, the registrant or their representative shall present evidence. After the evidence has been presented, the registrant or their representative shall conclude the case for the defence.
148. The PC will then retire into private session (in camera) to deliberate on its findings of fact.

### **Standard of proof**

149. Findings of fact are made to the civil standard of proof, which is the balance of probabilities, i.e. the PC must be satisfied that it is more likely than not that the matters set out in the notification of hearing occurred. The burden of proof is on the GDC and the registrant is not required to prove anything.

## Admissibility of evidence

### General evidential issues

150. Fitness to practise proceedings are conducted in the public interest with the objective of protecting the public. As such, PCs have a proactive role in making sure cases are properly presented and that the relevant evidence is presented<sup>68</sup>.
151. PCs may receive oral, documentary or other evidence which would be admissible in civil proceedings<sup>69</sup>. In civil proceedings, evidence considered relevant will be admissible, unless there is a legal reason to exclude it<sup>70</sup> or the Court exercises its discretion to exclude it. Evidence will be relevant if it has the potential to affect the likelihood of proving the allegations against the registrant.
152. If the evidence is from the Family Court, permission is needed from that Court for it to be lawfully used at a PC hearing. If it is not clear that permission has been granted, the PC should seek clarification on this matter from the case presenter.
153. A PC can exercise discretion to treat other evidence as admissible if, after it has consulted with the Legal Adviser, it considers it would be helpful to the PC, and in the interests of justice, for that evidence to be heard<sup>71</sup>.
154. The PC may be asked to consider whether the admission of evidence on which one party seeks to rely may result in unfairness to the other party.

### Overseas evidence admissibility

155. A PC may have occasion to receive remote evidence from a witness in another jurisdiction. The Foreign, Commonwealth and Development Office has clarified that their permission process is only for tribunal proceedings where the UK State exercises authority and is involved in conducting or managing those proceedings. On that basis, there is no requirement to obtain any separate permissions for PC hearings.

### Hearsay evidence

156. Hearsay evidence is any evidence, other than the oral evidence of any witness who has direct first-hand experience of the matter the evidence relates to.
157. A written witness statement is hearsay evidence if the witness who made the statement is not called to give oral evidence. Where an individual gives evidence about a matter they did not personally witness, and is recounting information provided to them by another individual with direct experience of the matter, it is also hearsay evidence.

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<sup>68</sup> [Ruscillo v Council for the Regulation of Health Care Professionals & Anor \[2004\] EWCA Civ 1356](#).

<sup>69</sup> Rule 57(1) of the Rules.

<sup>70</sup> Such legal reasons include evidence which is subject to legal professional privilege, is excluded on public interest immunity grounds, has been obtained by torture, or is opinion evidence (where the witness is not giving expert evidence).

<sup>71</sup> Rule 57(2) of the Rules.

158. If a party wishes to rely on hearsay evidence in proceedings before the PC, they must make an application for that evidence to be admitted.

### **Admissibility of hearsay evidence**

159. Where relevant, hearsay evidence can be admitted, provided it would not be excluded in civil proceedings. The PC can also exercise discretion to admit hearsay evidence, which would be excluded in civil proceedings, where it considers it would be helpful and in the interests of justice (see paragraphs [150] to [154]).

160. The key considerations when determining the admissibility of hearsay evidence are relevance and fairness<sup>72</sup>. In terms of relevance, this will depend on the extent to which it assists the PC to determine the matters in question when the evidence is adduced.

161. Where hearsay evidence is admitted the effect is that the other party is deprived of an opportunity to cross-examine the witness concerned. The right to cross-examine witnesses is not unfettered, but the PC must consider the fairness of admitting the evidence in all the circumstances<sup>73</sup>. In addition, registrants have the right to a fair hearing, of which cross-examination forms an important part<sup>74</sup>.

162. The extent of the efforts made to secure the attendance of a witness with direct first-hand experience of the matters concerned will be relevant to the question of whether it is fair to admit their evidence as hearsay<sup>75</sup>. Similarly, if there are good and cogent reasons for a witness's non-attendance at the hearing, this would be an important factor for the PC to consider. However, the absence of such reasons does not automatically mean that the evidence is inadmissible<sup>76</sup>.

163. The PC should also consider the nature and seriousness of the allegations. If the allegations are serious and likely to give rise to significant adverse consequences for the registrant if found proved, any hearsay evidence relied on by the GDC in a critical point of dispute between the parties where there are no issues preventing the attendance of the witness must only be allowed if the PC has been provided with compelling reasons for why the registrant's right to a fair hearing does not entitle them to cross-examine the witness in question<sup>77</sup>.

164. The PC should also consider whether the hearsay evidence is the sole or decisive evidence in relation to the charges. If so, the PC should carefully assess the relevant factors, including the circumstances and facts of the case, any other evidence, and the potential consequences if the evidence is admitted. The PC's assessment should take into account whether the hearsay evidence is demonstrably reliable, or whether its reliability can be tested without the witness being available to give oral evidence<sup>78</sup>.

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<sup>72</sup> [Nursing and Midwifery Council v Ogbonna \[2010\] EWCA Civ 1216](#).

<sup>73</sup> [Bonhoeffer, R. \(on the application of\) v General Medical Council \[2011\] EWHC 1585 \(Admin\)](#).

<sup>74</sup> Article 6 of the European Convention on Human Rights.

<sup>75</sup> [Nursing and Midwifery Council v Ogbonna \[2010\] EWCA Civ 1216](#).

<sup>76</sup> [Thorneycroft v Nursing and Midwifery Council \[2014\] EWHC 1565 \(Admin\)](#).

<sup>77</sup> [Bonhoeffer, R. \(on the application of\) v General Medical Council \[2011\] EWHC 1585 \(Admin\)](#).

<sup>78</sup> [Thorneycroft v Nursing and Midwifery Council \[2014\] EWHC 1565 \(Admin\)](#).

165. The PC should consider any animosity between the registrant and a witness as a relevant factor when considering whether it is fair to admit hearsay evidence. Other relevant factors include how the parties have conducted themselves, and their approach to producing evidence<sup>79</sup>.
166. The PC may be able to address any potential unfairness to the other party by limiting the weight it attaches to the hearsay evidence it admits, but this, on its own, will not always be sufficient to address concerns about fairness<sup>80</sup>.
167. PCs should take particular care when considering an application to admit anonymous hearsay evidence. The combination of a witness's anonymity and non-attendance will remove the other party's ability to cross-examine them, and will substantially impede their ability to test the evidence through any other means. Where anonymous hearsay evidence relied on by the GDC is potentially significant to the charges, the circumstances in which it would be fair to admit the evidence are likely to be rare<sup>81</sup>.
168. It will also be necessary for the PC to give consideration to the weight of the evidence when deciding whether to admit it in order to assess the extent to which it is demonstrably reliable and capable of being tested.

#### **Weight of hearsay evidence once admitted**

169. If hearsay evidence is admitted, the PC must go on to consider what weight it should attach to that evidence. This should be considered separately to the issue of admissibility<sup>82</sup>.
170. Hearsay evidence cannot be tested before the PC by cross examination, or questions from members of the PC. As such, the PC should consider carefully what weight should be given to any hearsay evidence admitted.
171. The PC has discretion over the weight to attach to hearsay evidence. When making its assessment of the weight to be given, the PC shall consider any relevant factors as to the reliability or otherwise of the evidence. This may include, but is not limited to:
  - a. the reasons for why a witness with first-hand experience of the matter is not available to give evidence in person
  - b. how long after the events in question the hearsay evidence was recorded
  - c. whether the evidence involves multiple hearsay
  - d. whether any person involved had any motive to conceal or misrepresent matters
  - e. any other factors which undermine the credibility of the hearsay evidence.

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<sup>79</sup> [Nursing and Midwifery Council v Ogbonna \[2010\] EWCA Civ 1216](#).

<sup>80</sup> [Thorneycroft v Nursing and Midwifery Council \[2014\] EWHC 1565 \(Admin\)](#).

<sup>81</sup> [White v Nursing and Midwifery Council \[2014\] EWHC 520 \(Admin\)](#).

<sup>82</sup> [El Karout v Nursing and Midwifery Council \[2019\] EWHC 28 \(Admin\)](#).

## **Witness credibility**

172. Where witness evidence is contested, to make its findings of fact, the PC will need to make an assessment of credibility of the respective witnesses.
173. The PC should exercise caution in placing reliance on demeanour as a means of assessing the truth or reliability of a witness. Confidence should not be used as an indicator or accuracy of recollection, and honest witnesses can construct false memories. Events can come to be recalled as memories which did not happen at all, or which happened to someone else, and the process of acting as a witness in legal proceedings in itself subjects the memories of witnesses to powerful biases<sup>83</sup>.
174. The PC should start by considering the objective facts as shown by contemporaneous documents, independent of the witness, and use a witness's oral evidence as a means of scrutinising those facts. This becomes more important as the events in question become older<sup>84</sup>.
175. A witness's credibility may also be affected by "bad character" evidence, which is evidence speaking to their character, including of previous criminal convictions and previous adverse fitness to practise findings. If a registrant asks for enquiries to be made into the character of a proposed witness, the GDC's obligation to carry out these enquiries will depend on what is necessary in the interests of justice. Such an obligation may arise only as a result of an identified reason to believe a witness's character may be in question<sup>85</sup>.
176. Where bad character evidence has been obtained, it is a matter for the PC to determine whether that evidence is admissible in proceedings before it. In making that assessment, the PC should consider whether:
  - a. the evidence is relevant to the issue to be determined
  - b. it would be helpful, or in the interests of justice to admit the evidence
  - c. there are any rules set out in law which render it inadmissible.
177. Where bad character evidence is admitted, the PC should carefully consider the weight that should be given to it.

## **Registrant character and dishonesty**

178. Evidence of a registrant's bad character is not directly relevant to proving a dishonesty allegation against them and should not be permitted to be introduced as part of the evidence relied on to prove dishonesty on a specific occasion. Instead, in considering allegations of

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<sup>83</sup> [Kimathi & Ors v The Foreign and Commonwealth Office \[2018\] EWHC 2066 \(QB\)](#).

<sup>84</sup> [Dutta, R. \(On the Application Of\) v General Medical Council \[2020\] EWHC 1974 \(Admin\)](#).

<sup>85</sup> [Gleadall v Huddersfield Magistrate's Court \[2005\] EWHC 2283 \(Admin\)](#).

dishonesty, the PC should give primary consideration to evidence which goes to whether or not the alleged act occurred<sup>86</sup>.

179. Evidence of good character is not usually relevant at the factual enquiry stage, and is typically only introduced and considered at the submissions and determination stages of the hearing. Evidence of a registrant's good character is though relevant to the PC's assessment of the registrant's credibility as a witness, and to propensity (i.e. the registrant's inclination to behave in the manner alleged)<sup>87</sup>. However, evidence of good character is not itself a defence to allegations, and the weight to be given to it is a matter of PC discretion.
180. Good character evidence should not detract from the primary focus on the specific evidence directly relevant to the alleged wrongdoing. The PC is entitled to weigh the specific factors relating to the actual events more decisively than the general factors relating to credibility and propensity<sup>88</sup>.

## Propensity/cross-admissibility

181. Where a registrant is facing multiple allegations of similar conduct concerns (i.e. where there is sufficient connection and similarity between the allegations) and the PC finds one of the allegations proved, it may go on to consider whether that proven allegation is capable of establishing a propensity to act in that manner<sup>89</sup>.
182. If the PC concludes that such a propensity is established, this will be capable of supporting the GDC's case in relation to other allegations.

## Adverse inferences

183. An inference is a conclusion which may be drawn by the PC, on the basis of evidence and reasoning.
184. An adverse inference is a conclusion which may be drawn against the registrant who is the subject of the case, based on that registrant's failure to give evidence. The adverse inference which may be drawn includes that the registrant is unable to answer the case against them, in whole or in part.
185. However, the drawing of an adverse inference is a matter of discretion for the PC, and whether one should be drawn will be highly dependent upon the facts of the particular case. Ordinarily, no adverse inference should be drawn unless the following factors are satisfied:
  - a. A *prima facie* case to answer has been established. This means that the presenter has presented sufficient evidence to establish the facts. This will involve the presenter opening the case and presenting evidence in relation to each head of charge, and there being either

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<sup>86</sup> [McLennan v General Medical Council \[2020\] ScotCS CSIH\\_12](#).

<sup>87</sup> [Donkin v The Law Society \[2007\] EWHC 414 \(Admin\)](#).

<sup>88</sup> [Sawati v General Medical Council \[2022\] EWHC 283 \(Admin\)](#).

<sup>89</sup> [Khan v General Medical Council \(Rev 1\) \[2021\] EWHC 374 \(Admin\)](#), referencing [Chopra, R. v \[2006\] EWCA Crim 2133](#).

no half-time submissions (see paragraph [188] to [190]), or such submissions being unsuccessful.

- b. The registrant has been given appropriate notice, and appropriate warning, that if they do not give evidence, such an inference may be drawn. The registrant should also be provided with an opportunity to explain why it would not be reasonable for them to give evidence and, if it is found that they have no reasonable explanation, an opportunity to give evidence. In practice, the relevant warning will most likely be given at notification of hearing, but it may also be given by the PC where the registrant attends the hearing.
- c. There is no reasonable explanation for the registrant not giving evidence.
- d. There are no other circumstances which would make it unfair to draw such an inference.

186. Where the PC decides that such an adverse inference should be drawn, it should explain the reasons for that decision in its determination by reference to the factors listed at paragraph [185]. The PC should explain whether the adverse inference drawn strengthens the evidence adduced by the presenter, or weakens the evidence adduced by the registrant.

187. In particular, an adverse inference by itself cannot be determinative of the allegation in issue. Instead, an adverse inference is one factor to be taken into account when deciding whether an allegation is proved.

## Half time submissions

188. When the presenter has finished presenting evidence, the registrant or their representative may open the case for the defence. That may include a "half time" submission that there is no case to answer, either on the facts, or in relation to the statutory ground.

189. The PC should consider each individual head of charge when determining whether there is a case to answer.

190. Decision making at the half time stage should not be conflated with that at the full time stage. The question at half time is whether, on one possible view of the evidence, there is evidence upon which a reasonable PC (not all reasonable PCs) could find the matter proved when making the final decision at the end of the case. If the answer is yes, then there is a case to answer<sup>90</sup>.

## Reasons

191. The PC should give clear reasons for the decisions which it makes at factual enquiry. Those reasons must enable the parties and the public to understand the decision which has been reached.

192. However, the level of detail required is context specific. The PC does not need to give comprehensive reasons addressing every point or argument. Summary reasons are often

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<sup>90</sup> [Solicitors Regulation Authority v Sheikh \[2020\] EWHC 3062 \(Admin\)](#).

sufficient in the context of fitness to practise proceedings. However, there may be circumstances where more detailed reasons should be given. These include where the PC prefers the account of one witness over another, or it rejects the evidence of a suitably qualified expert witness (in which case the PC should provide an explanation as to why it has rejected that opinion).

193. The reasons provided should be consistent between the allegations which the PC is determining.
194. The PC should include in its reasons any heads of charge that were admitted at preliminary stage.

## Practice committee hearings: submissions by the parties

195. Where facts have been proved, the presenter will:
  - a. address the PC on the registrant's fitness to practise history
  - b. make submissions on the question of whether the facts found amount to the alleged statutory ground
  - c. make submissions on the question of whether the registrant's fitness to practise is impaired by reason of the alleged statutory ground
  - d. make submissions as to what action should be taken.
196. The presenter's submissions on impairment and sanction may make reference to relevant guidance issued by the GDC.
197. After the presenter has made submissions, the registrant or their representative will:
  - a. address the PC on the registrant's fitness to practise history
  - b. make submissions on the question of whether the facts found amount to the alleged statutory ground
  - c. make submissions on the question of whether the registrant's fitness to practise is impaired by reason of the alleged statutory ground
  - d. make submissions as to what action should be taken.
198. As part of their submissions, the registrant or their representative may adduce evidence.
199. The registrant or their representative may, on concluding their address and submissions, make a plea in mitigation by reference to the personal circumstances of the registrant<sup>91</sup>.

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<sup>91</sup> Rule 20(4) of the Rules.

# Practice committee hearings: the determination of the case

## Introduction

200. Following completion of submissions by the parties, the PC will withdraw to deliberate in private session (in camera). The PC should first determine whether the statutory ground is established, before going on to consider whether the registrant's fitness to practise is currently impaired.
201. Impairment can only be found on the basis of one or more of the statutory grounds, which are:
  - a. Misconduct.
  - b. Deficient professional performance.
  - c. Adverse physical or mental health.
  - d. Conviction or caution for a criminal offence.
  - e. Certain other outcomes for criminal offences.
  - f. Determinations by certain other regulatory bodies<sup>92</sup>.
202. It does not matter whether the allegation of impaired fitness to practise is based on a matter alleged to have occurred:
  - a. outside the United Kingdom
  - b. at time when the registrant was not on the register<sup>93</sup>.
203. Impairment is a matter of judgment for the PC, which will consider this question in the context of GDC's overarching objective to protect the public through the pursuit of the following aims:
  - a. To protect, promote and maintain the health, safety and well-being of the public.
  - b. To promote and maintain public confidence in the dental professions
  - c. To promote and maintain proper professional standards and conduct for members of the dental professions<sup>94</sup>.
204. Where the PC determines that a dental professional's fitness to practise is impaired, it may:
  - a. issue a reprimand<sup>95</sup>
  - b. impose conditions of registration with which a dental professional must comply for a specified period not exceeding three years

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<sup>92</sup> Sections 27(2) and 36N(2) of the Act.

<sup>93</sup> Sections 27(3) and 36N(3) of the Act.

<sup>94</sup> Sections 1(1ZA) and 1(1ZB) of the Act.

<sup>95</sup> Published for one year, in line with the GDC's [Disclosure and Publication Policy](#).

- c. direct that a dental professional's registration shall be suspended for a period not exceeding 12 months
- d. direct that a dental professional's name shall be erased from the register<sup>96</sup>.

205. A PC can decide to take no action against a registrant, despite a finding of current impairment. The circumstances in which a PC might be justified in taking such a decision are likely to be rare. Where the PC decides to take no action when a finding of current impairment has been made, the determination should set out clear reasons for its decision.

206. The purpose of imposing a sanction is not to punish the registrant but is to fulfil the overarching objective set out at paragraph [203]. The aim of any sanction is to ensure that the dental professional is fit to practise. However, it may be that the sanction is punitive in effect.

207. When making its decision on sanction, the PC should also consider the public interest in registrants being given the opportunity, when appropriate, to return to safe and competent practice.

208. A key consideration when determining the appropriate sanction is proportionality (i.e. that the sanction will be commensurate with the risks posed in the particular case). In practical terms, the PC should apply the principle of proportionality by weighing the interests of the public with those of the registrant. The PC must begin its consideration of sanction with the least restrictive sanction. If the PC considers the least restrictive sanction to be insufficient, it should move to consider the next least restrictive sanction, and so on, until it reaches what it considers to be the appropriate level of sanction.

209. The PC must give clear reasons for discounting the sanctions it rejects e.g. if the PC has directed that a dental professional's registration be suspended, it must give reasons why neither a reprimand nor conditions were appropriate.

210. It is good practice for the PC to explain in its determination why it is not necessary to impose the next more restrictive sanction. If the reason is that that sanction would be disproportionate, the PC should explain why, with specific reference to the protection of the public and the public interest, rather than simply asserting that it would be disproportionate.

211. Further guidance on factors that PCs should consider in particular categories of cases are provided at [Appendix 1].

## Statutory grounds

### Misconduct

212. Misconduct denotes serious acts or omissions, suggesting a significant departure from what would be proper in the circumstances. There are two principal types of misconduct<sup>97</sup>. The first type of misconduct is that which arises in the exercise of a registrant's professional practice,

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<sup>96</sup> Sections 27B(6) and 36P(7) of the Act.

<sup>97</sup> Remedy UK Ltd, R. (on the application of) v General Medical Council [2010] EWHC 1245 (Admin).

and which is sufficiently serious to call their fitness to practise into question. The following factors should be considered in those circumstances:

- a. In respect of clinical matters, mere negligence does not constitute misconduct. Nevertheless, and depending upon the circumstances, negligent acts or omissions which are particularly serious may amount to misconduct.
- b. A single negligent act or omission is less likely to cross the threshold of misconduct than multiple acts or omissions. Nevertheless, and depending upon the circumstances, a single negligent act or omission, if particularly grave, could be characterised as misconduct.
- c. Misconduct need not arise in the context of clinical practice but must be in the exercise of a registrant's calling as a dental professional. Such misconduct may properly be described as linked to the practice of dentistry, even though it involves the exercise of administrative or managerial functions, where they are part of the day-to-day practice of a registrant, and where, depending on the nature of the duties, a continuing obligation to focus on patient care may exist.
- d. Misconduct may also fall within the scope of a registrant's calling as a dental professional where there is no direct link with clinical practice at all e.g. acting as an expert witness, or being involved in education or research where the registrant's professional skills are directly engaged.
- e. There is no specific ground of impairment with regards to insufficient command of the English language giving rise to a direct risk of harm to a patient. Such rare instances however would be considered as impairment on the grounds of misconduct.

213. The second type of misconduct involves conduct of a disreputable, morally culpable, or otherwise disgraceful kind which may, and often will, occur outside the course of professional practice but which brings disgrace upon the registrant and thereby undermines confidence in the professions. The following factors should be considered in those circumstances:

- a. It does not matter whether such conduct is directly related to the exercise of professional skills.
- b. Action taken in good faith and for legitimate reasons, however inefficient or ill-judged, is not capable of constituting misconduct merely because it might damage the reputation of the professions.

214. Misconduct can also be assessed against guidance for registrants produced by the GDC, including the Standards for the Dental Team (the Standards).

215. The GDC publishes supplementary guidance on a range of other specific issues which may assist the PC in assessing whether a registrant's conduct has fallen far short of what would be expected in the circumstances.

## **Deficient professional performance**

216. Deficient professional performance suggests a standard of professional performance that is unacceptably low, which (save in exceptional circumstances) has been demonstrated by reference to a fair sample of the registrant's work. A single instance of negligent treatment, unless very serious, would be unlikely to constitute deficient professional performance<sup>98</sup>. Poor judgment cannot of itself constitute negligence so serious that it amounts to misconduct, but it may in an appropriate case, and particularly if exercised over a period of time, constitute deficient professional performance. In addition, deficient performance may arise from the inadequate performance of any function which is part of a registrant's calling as a dental professional<sup>99</sup>.

217. The appropriate statutory ground will depend on the seriousness of the alleged failings. Failings falling short of serious negligence, but which still constitute an unacceptably low standard of professional performance, will fall under deficient professional performance.

## **Adverse physical or mental health**

218. In most cases, where an allegation on the ground of adverse health has been referred by case examiners, the PC will be guided by expert evidence. The expert evidence will give an opinion as to the registrant's health condition and whether that condition impairs the registrant's fitness to practise.

219. Factors which may support a finding of impairment of fitness to practise on health grounds may include where the registrant's condition:

- has created a risk to patients, or may create a risk to patients in the future
- has led to involvement in criminal activity (e.g. in relation to possession of drugs, or driving while under the influence of alcohol)
- is likely to recur in the future
- raises concerns about a lack of insight, failure to seek treatment, or compliance with medical advice.

## **Conviction or caution for a criminal offence**

220. Where a PC considers allegations that fitness to practise is impaired on grounds of a criminal conviction, a copy of the certificate of conviction (or, in Scotland, an extract conviction) shall be conclusive proof of the conviction<sup>100</sup>. The only evidence which may be presented by the registrant in rebuttal of a conviction is evidence that they are not the person referred to in the

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<sup>98</sup> [Calhaem, R. \(on the application of\) v General Medical Council \[2007\] EWHC 2606 \(Admin\)](#).

<sup>99</sup> [Remedy UK Ltd, R. \(on the application of\) v General Medical Council \[2010\] EWHC 1245 \(Admin\)](#).

<sup>100</sup> Rule 57(5)(a) of the Rules.

certificate or extract<sup>101</sup>. The PC should not seek to go behind the fact of a conviction by reinvestigating the matters which led to it.

221. Further factors of consideration in relation to this statutory ground are set out at paragraphs [68] to [85] of Appendix 1.

### **Protected criminal convictions or cautions**

222. There are some criminal convictions and cautions which are “protected”<sup>102</sup>, which means there is no requirement on the individual to disclose them, and they cannot be taken into account when making decisions about an individual’s suitability to practise a particular occupation.

223. A criminal conviction can never be protected where it is received for a “specified offence”<sup>103</sup>. A criminal conviction is also never protected where there was a custodial sentence, including when that sentence was suspended.

224. A criminal conviction is not protected unless:

- 11 years have passed since the date of conviction, and the registrant was 18 or over at the date of conviction, or
- five and a half years have passed, and the registrant was under 18 at the date of conviction.

225. A caution is immediately protected if the registrant was under 18 at the time the caution was given. A caution given when the registrant was over 18 at the time is protected where:

- It was not given for a specified offence, and
- more than six years have passed since the caution was given.

226. The timelines set out in paragraphs [224] and [225] apply at the point the consideration or decision is being made. As such, PCs must be mindful that a criminal conviction or caution may have become protected in the time between the case examiners’ consideration concluding and the PC hearing beginning

### **Certain other outcomes for criminal offences**

227. A registrant’s fitness to practise may also be regarded as impaired by reason of:

- having accepted a conditional offer under section 302 of the Criminal Procedure (Scotland) Act 1995 (fixed penalty: conditional offer by procurator fiscal)<sup>104</sup>

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<sup>101</sup> Rule 57(6) of the Rules.

<sup>102</sup> The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amendment).

<sup>103</sup> Such as those which are set out in the Disclosure and Barring Service List of offences that will never be filtered from a DBS certificate.

<sup>104</sup> Sections 27(2)(e)(i) and 36N(2)(e)(i) of the Act.

- b. having agreed to pay a penalty under section 115A of the Social Security Administration Act 1992 (penalty as alternative to prosecution)<sup>105</sup>
- c. in proceedings in Scotland for an offence, having been the subject of an order under section 246(2) or (3) of the Criminal Procedure (Scotland) Act 1995 discharging him absolutely)<sup>106</sup>

### **Determinations by certain other regulatory bodies**

228. A registrant's fitness to practise may also be found to be impaired on the basis of a determination of impaired fitness to practise made by a body in the United Kingdom responsible for the regulation of a health or social care professional, or by a regulatory body elsewhere to the same effect<sup>107</sup>. It is the finding of impairment made by that body which the PC must consider and, other than in exceptional circumstances, it should not revisit the truth of the facts underlying that body's determination<sup>108</sup>.

### **Impairment**

229. Where the PC determines that one or more of the statutory grounds is established, it must go on to consider whether the registrant's fitness to practise is currently impaired as a result.

230. There is no statutory definition of impairment, but the test of impairment is a current test. However, factors for consideration include:

- a. Whether the registrant in the past acted, and/or is liable in the future to act, so as to put a patient or patients at unwarranted risk of harm.
- b. Whether the registrant in the past brought, and/or is liable in the future to bring, the dental professions into disrepute.
- c. Whether the registrant in the past breached, and/or is liable to breach, one of the fundamental tenets of the professions, with reference to the principles of practice in the Standards.
- d. Whether the registrant, in the past acted dishonestly, and/or is liable to act dishonestly in the future<sup>109</sup>.

231. Impairment is a matter of judgment for the PC. To make a finding of impairment, the PC must determine that the registrant's fitness to practise is currently impaired by the alleged matters.

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<sup>105</sup> Sections 27(2)(e)(ii) and 36N(2)(e)(ii) of the Act.

<sup>106</sup> Sections 27(2)(f) and 36N(2)(f) of the Act.

<sup>107</sup> Sections 27(2)(g) and 36N(2)(g) of the Act.

<sup>108</sup> Peckitt v General Dental Council [2016] EWHC 1803.

<sup>109</sup> Council for Healthcare Regulatory Excellence v Nursing and Midwifery Council & Anor [2011] EWHC 927 (Admin).

## **Impairment on the grounds of public health, safety and well-being of the public<sup>110</sup>**

232. An assessment of current impairment on the grounds of public health, safety, and well-being of the public, will involve consideration of whether the reason by which fitness to practise is alleged to be impaired is easily remediable, whether it has been remedied, and if it is highly unlikely to be repeated in the future<sup>111</sup>.

233. Factors which may be relevant to the assessment of whether a registrant's fitness to practise is currently impaired include:

- Demonstration of insight and remorse (i.e. recognition of the issue by the registrant, and whether the registrant recognises that they should have behaved differently in the circumstances).
- Any remedial action taken by the registrant (i.e. measures put in place to prevent a recurrence such as evidence of learning undertaken which addresses the impairment, reflective writing, formulating a personal development plan).
- The risk of recurrence.

## **Insight**

234. Insight on the part of the dental professional is an important factor. It is relevant to the PC's consideration of current impairment because it is highly relevant to their assessment of risk of repetition. Insight can be defined as an expectation that the dental professional will be able to:

235. Insight involves developing a degree of empathy with the perspective of other parties, including victims, professional colleagues, and the public. Insight is a necessary precondition of remorse, or genuine regret for the impact on others. It is distinguishable from willingness to offer an apology and from the regret about the personal consequences of misconduct being revealed and as a result the regulatory action that follows.

236. Examples of how a registrant may demonstrate insight include:

- Reviewing their own performance or conduct.
- Recognising that they should have acted differently in the circumstances being considered.
- Identifying and putting in place measures that will prevent a recurrence of such circumstances.
- Reflecting on the magnitude and consequences of their conduct for others.

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<sup>110</sup> Section 1(1ZB)(a) of the Act.

<sup>111</sup> Cohen v General Medical Council [2008] EWHC 581 (Admin).

237. The existence of insight is a matter of fact and judgment for a PC in light of the evidence before it. In assessing a registrant's insight, the PC should weigh all the relevant evidence, both oral and written, including:

- Any objective evidence, such as specific work the registrant has done, or training attended, in an effort to address the failings identified.
- The registrant's own evidence, given orally and tested by cross-examination.
- Evidence given by other witnesses about the registrant's conduct as an employee or as a professional colleague and, where this is also relevant, the quality of their work with patients.

238. The PC's focus should be on evidence of the registrant's insight, and not on unsupported wishful thinking that, if given more time, the registrant might develop insight into the allegations found proved<sup>112</sup>. Where a PC considers there is potential for the registrant to develop further insight, it should explain the reasons for that decision.

239. Where the registrant does not attend the hearing, this will deprive the PC of the opportunity to test their level of insight which, in turn, is likely to be damaging to a registrant's defence<sup>113</sup>.

240. When considering insight, the PC should be aware that individuals may have different ways of expressing insight, and the way it is expressed may be impacted by an individual's circumstances as well as cultural background and language. Given the PC's interest is protection of the public, the registrant's recognition that corrective actions need to be undertaken is more important than the way in which their insight is expressed.

241. The stage at which insight is developed may also be a relevant factor for the PC to consider. As a matter of principle, the way in which a healthcare professional reacts to the discovery of their misconduct is an important part of the assessment of their attitude, their insight into the wrongdoing and the effects on a victim, and the sanction necessary in the public interest<sup>114</sup>.

### **Denial**

242. A registrant has the right to advance any defence and is entitled to a fair trial of that defence without facing the jeopardy, if the defence is disbelieved, of further charges or enhanced sanctions. Equally, if the registrant admits the facts but denies impairment, their stance should not be held against them by the PC at the impairment or sanction stage.

243. In the absence of a significant break between hearing stages, it is unlikely that a registrant, who has defended the case on the basis that they did not do what was alleged, will be able to demonstrate insight by fully accepting in a sincere manner everything found against them.

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<sup>112</sup> Professional Standards Authority v (1) Nursing and Midwifery Council (2) Judge [2017] EWHC 817.

<sup>113</sup> Burrows v General Pharmaceutical Council [2016] EWHC 1050 (Admin).

<sup>114</sup> Professional Standards Authority for Health and Social Care v Health and Care Professions Council & Anor [2019] EWHC 2819 (Admin).

244. Maintaining innocence after findings have been made against a registrant, does not automatically mean they do not have insight, or that they are incapable of gaining insight. The PC should consider whether the evidence of insight provided by the registrant demonstrates that they understand the gravity of the offending behaviour, such that they are unlikely to behave in that way in the future.
245. Insight may also be linked with candour. As such, the PC should consider how forthcoming the registrant was in the account they gave when first confronted with the allegations, about the consistency of those accounts, and whether they could be considered to be self-serving.

### **Remediation**

246. The PC should examine the type of remediation undertaken, evaluate its relevance to the facts found proved, and satisfy themselves that it addresses the concerns raised.
247. With regards to any training completed, the PC should, as well as evaluating the relevance of the training, consider evidence of its duration and whether there were any practical elements, assessment, or reflection undertaken at the end of the course through which the registrant might demonstrate their understanding of the topics covered.

### **Impairment on the grounds of public interest<sup>115</sup>**

248. Factors such as demonstration of insight and remorse, remedial action taken, and the risk of recurrence (i.e. those set out at paragraph [233] as being of potential relevance in the consideration of current impairment on public safety grounds), should be weighed against the public interest in maintaining public confidence in the professions and upholding proper professional standards, which are of fundamental importance in assessing impairment of a registrant's fitness to practise. The public interest will weigh particularly heavily in cases where there is a serious failure to meet the standards required of a registered dental professional. For example, where the allegations found proved relate to the following matters:
  - a. Violence.
  - b. Sexual misconduct.
  - c. Dishonesty which is more than minor in nature.
  - d. Serious criminal convictions.
  - e. Discrimination and harassment.
  - f. Serious cross-infection control breaches.
  - g. Abuse, neglect, or exploitation of children or vulnerable adults.
  - h. Abuse of the privileged position enjoyed by registered professionals.

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<sup>115</sup> Sections 1(1ZB)(b) and (c) of the Act.

- i. Breach of restrictions imposed by the GDC.
- j. Failure to hold adequate and appropriate indemnity insurance.
- k. Practising outside scope of practice.

249. In such circumstances, where the PC concludes that a finding of current impairment is required in the interests of maintaining public confidence and promoting proper professional standards, remedial efforts made by the registrant may be of far less significance than in other cases, such as those involving clinical errors or incompetence<sup>116</sup>.

250. It may be the case that the PC makes a finding of impairment on the grounds of both public protection and on public interest. However, even when public protection is no longer an issue, the PC may (and in appropriate cases, such as those set out at paragraph [248], should) make a finding of impairment solely on the grounds of public interest.

## **Sanction**

### **Purpose and proportionality**

251. Once the PC has determined the statutory grounds and impairment (see paragraph [212] to [250]), the PC must carefully consider the appropriate sanction.

252. The purpose of imposing a sanction is not to punish the registrant but is to protect the public and the public interest, as set out in paragraph [203]. However, it may be punitive in effect. When determining the appropriate sanction, proportionality is a key consideration. The PC must weigh the public interest with the interests of the registrant and commence its consideration of sanction with the least restrictive. If the PC considers the least restrictive sanction to be insufficient, it should move to consider the next sanction, and so on until it reaches the appropriate sanction. Once the appropriate sanction is identified, the PC should consider the next most restrictive sanction and record why it goes too far.

253. When considering sanction, the PC should first balance the mitigating and aggravating factors. The outcome of this balancing exercise will depend on the individual circumstances of the case with the overarching objective of public protection in mind.

### **Mitigating factors**

254. Mitigating factors relevant at the sanction stage may be personal (i.e. relevant to the personal circumstances of the registrant) or environmental (including systemic environmental factors).

255. When considering sanction, mitigation should carry less weight where there has been a fundamental and/or serious breach of the Standards.

256. Personal mitigation may include:

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<sup>116</sup> [Yeong v General Medical Council \[2009\] EWHC 1923 \(Admin\)](#).

- a. Previous good character.
- b. That the incident in question was isolated and/or out of character.
- c. That there was no financial or other gain on the part of the registrant.
- d. That there is evidence of good conduct following the incident in question (particularly where time has lapsed since the incident in question).
- e. Evidence of remorse, insight and/or apology.
- f. Remedial action taken.
- g. Other personal factors, such as bereavement, stress or ill-health.

257. Environmental factors, (including systemic environmental factors) may include:

- a. Excessive workload.
- b. Inexperience due to the registrant being at an early stage of their career.
- c. A lack of experience of dentistry in the UK due to the registrant having recently lived, worked, or studied abroad.
- d. Lack of support within the workplace.

258. The absence of actual harm, engaging with the GDC's investigation, and notifying the GDC of criminal convictions or cautions, are neutral, rather than mitigating, factors.

### **Testimonials**

259. A dental professional may provide references and testimonials to support their standing in the community and/or the profession. The PC should approach testimonials with caution, and carefully consider:

- a. how recent they are
- b. whether the providers of testimony were aware of the allegations against the dental professional
- c. whether they were aware that their letters would be put forward in mitigation
- d. the relevance of the testimonial evidence to the impairment that has been found.

260. The PC should not draw a negative inference from an absence of references or testimonials.

### **Aggravating factors**

261. Aggravating factors relevant at the sanction stage may include:

- a. Actual harm or risk of harm to a patient, colleague, or other member of the public.

- b. Premeditated misconduct.
- c. Financial gain by the registrant.
- d. Abuse of trust/abuse of professional position.
- e. The involvement of a vulnerable patient or other vulnerable individual.
- f. An imbalance of power between the registrant and the victim.
- g. Misconduct sustained or repeated over a period of time.
- h. Blatant or wilful disregard of the role of the GDC and the systems regulating the professions.
- i. Attempts to cover up wrongdoing.
- j. Adverse fitness to practise history with the GDC.
- k. Lack of insight.

## **Types of sanction**

### **Reprimand**

262. A reprimand does not restrict a registrant's ability to practise, and may therefore be appropriate where the issues identified are at the lower end of the spectrum of seriousness, where a restrictive sanction is not required to protect the public or the public interest.

263. A reprimand may be suitable where most of the following factors are present:

- a. The issues identified are at the lower end of the scale of seriousness.
- b. There is no evidence to suggest the dental professional poses any risk to the public.
- c. The dental professional has shown insight into their failings.
- d. The behaviour was an isolated incident.
- e. The behaviour was not deliberate.
- f. The dental professional has genuinely expressed remorse.
- g. There is evidence the dental professional has taken rehabilitative/corrective steps.
- h. The dental professional has no adverse fitness to practise history with the GDC.

### **Conditions**

264. A conditions of practice order may be imposed on a dental professional's registration. Such conditions can include preventing or restricting them from practising in certain circumstances,

carrying out certain treatments or treating particular categories of patient, without supervision. Registrants may also be required, for example, to undergo particular training or to provide reports, logs, and/or audits to the GDC.

265. Conditions will only be appropriate when there is reasonable confidence in the registrant's ability to comply with them. That judgement may be related to circumstances and practicalities which prevent the registrant from complying with conditions, or where there is evidence of previous issues with compliance on the part of the registrant.
266. If the PC cannot be reasonably confident in the registrant's ability to comply with conditions, it must consider whether to impose an order of suspension.
267. When imposing conditions, the PC should explain clearly the specific shortcomings which have led to conditions being imposed. The aim of the conditions should be explained, so it is clear to the dental professional why the sanction is relevant and proportionate, and what is expected of them in terms of addressing the shortcomings identified.
268. Conditions should be imposed for a specific period. It should be the minimum time that the PC considers necessary, up to the maximum period of three years.
269. When imposing conditions, the PC should also explain whether a review is required and, if so, what evidence it considers may be helpful for a reviewing PC to consider.
270. Conditions may be appropriate when the following factors are present:
  - a. There are discrete aspects of the registrant's practice where shortcomings have been identified.
  - b. Those shortcomings are not so significant that patients will be directly or indirectly put at risk as a result of continued - albeit restricted - registration.
  - c. The registrant has shown evidence of insight (please refer to the section on insight, as set out at paragraphs [234] to [241] above) and willingness to respond positively to conditions.
  - d. It is possible to formulate conditions that will protect the public during the period they are in force.
  - e. It is possible to formulate conditions that uphold the wider public interest.
  - f. It is possible to formulate workable conditions that do not in effect amount to a suspension.
271. When imposing conditions of practice, the PC will have regard to the PC Conditions Bank [6 January 2026]. In general terms, however, conditions should be:
  - a. necessary to protect the public, maintain the public confidence in the professions, or maintain proper professional standards
  - b. workable

- c. enforceable, including (where applicable) having clear and appropriate timeframes for compliance
- d. clear
- e. relevant
- f. addressed only to the registrant (not to third parties)
- g. proportionate to the issues identified
- h. written in such a way that compliance can be monitored.

## **Suspension**

272. An order of suspension prevents the registrant from practising as a dental professional. Such an order should be imposed for the minimum necessary period, with the maximum period being 12 months.

273. When considering the necessary term of suspension, the PC should consider:

- a. the overarching objective of public protection
- b. the seriousness of the findings
- c. any mitigating or aggravating factors
- d. the time needed for remediation
- e. the time needed to prepare for a review hearing.

274. When considering the proportionality of the order to be imposed, the PC should have regard to any interim order and its effect on the registrant. In particular, if proceedings are delayed and a person is subject to suspension in the interim, that period of suspension may affect the proportionality of the length of the subsequent period of suspension. Whether it has that effect is for the PC to determine<sup>117</sup>.

275. Where the period of suspension is being imposed on public protection grounds, prior periods of interim suspension may have little or no relevance. However, where the period of suspension is being imposed on public interest grounds, it may be appropriate to take into account prior periods of interim suspension<sup>118</sup>. In all cases, the PC should explain the reasons for the length of suspension imposed.

276. When imposing an order of suspension, the PC should also explain whether a review is required and, if so, what evidence it considers may be helpful for a reviewing PC to consider.

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<sup>117</sup> Kamberova v Nursing and Midwifery Council [2016] EWHC 2955 (Admin).

<sup>118</sup> Adil v General Medical Council [2023] EWCA Civ 1261.

277. Suspension may be appropriate when all, or some, of the following factors are present:

- a. There is evidence of repetition of the behaviour.
- b. The registrant has not shown insight into the issues which led to a finding of current impairment being made, and/or poses a significant risk of repeating the behaviour.
- c. A lesser sanction would be insufficient to meet the public interest.
- d. There is no evidence of harmful deep-seated personality or professional attitudinal problems (which might make erasure the appropriate order).

### **Erasure**

278. The sanction of erasure is the most severe and reserved for conduct that is so damaging to a registrant's fitness to practise and to public confidence in the dental professions that removal from the register is the only appropriate outcome.

279. An erasure order should only be imposed where there is no other means of protecting the public and/or maintaining confidence in the professions.

280. Erasure from the register is not intended to last for a particular or specified period. However, a registrant may only apply for restoration once five years have passed since the erasure from the register took effect.

281. The PC may not direct that a registrant's name be erased from the register where fitness to practise has been found to be impaired solely on health grounds<sup>119</sup>.

282. Erasure will be appropriate when the registrant's behaviour is fundamentally incompatible with continued registration, and when all, or some, of the following factors are present:

- a. The findings include serious departure(s) from the relevant professional standards.
- b. Where serious harm to patients, colleagues, or other persons has occurred, either deliberately or through incompetence.
- c. Where a continuing risk of serious harm to patients, colleagues, or other persons is identified.
- d. Where the findings include the abuse of a position of trust or violation of the rights of patients, colleagues, or other persons, and particularly if involving vulnerable persons.
- e. Where there are convictions or findings of a sexual nature in relation to patients, colleagues, or other persons, including involvement in any form of child sexual exploitation and abuse.
- f. Where the findings include serious dishonesty, particularly where persistent or covered up.

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<sup>119</sup> Sections 27B(7) and 36P(8) of the Act.

- g. Where there is a persistent lack of insight into the seriousness of actions or their consequences.
- h. A lesser sanction would be insufficient to meet the public interest.

## **Sanction and dental professionals with more than one registered title**

- 283. If the registrant who is the subject of an allegation is a dental care professional who is also registered in the dentists register, a PC shall, in exercising its functions, make a separate determination in relation to that registrant's fitness to practise as a dentist and as a dental care professional<sup>120</sup>.
- 284. In circumstances where a registrant holds more than one registered title (either as a dentist and a dental care professional, or two different titles in the dental care professional category (e.g. a dental therapist and dental hygienist), the PC should consider whether it is necessary to restrict their registration in respect of each of those titles, or just the one to which the concerns relate.

## **Immediate orders**

- 285. The registrant can appeal against any sanction which will restrict their registration. 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 PC imposes an immediate order.
- 286. When the PC imposes conditions, it may also impose immediate conditions. That would mean the registrant is subject to those conditions straightaway. The registrant would then be 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.
- 287. When the PC imposes suspension or erasure, it may also impose immediate suspension. That would mean the registrant is suspended straightaway. The registrant would then be 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<sup>121</sup>.
- 288. The basis of imposing an immediate order must be that the PC is satisfied that such an order is necessary for the protection of the public or is in the public interest. An immediate order might be appropriate where:
  - a. the registrant's behaviour is considered to pose a risk

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<sup>120</sup> Section 36P(4) of the Act.

<sup>121</sup> General Dental Council v Aga [2025] EWCA Civ 68.

- b. the registrant has placed patients at risk through poor clinical care
- c. immediate action is required to maintain public confidence in the professions.

## **The PC's power to hold an Interim Orders hearing**

- 289. The PC can hold an interim orders hearing at any stage during proceedings when considering an allegation against a registrant. The PC may decide to hold an interim orders hearing either of its own volition or on receipt of an application<sup>122</sup>. In practice, this most commonly occurs when a matter is adjourned part heard.
- 290. Before an interim order decision is made, the registrant must be given the opportunity to appear before the PC and make representations.
- 291. Interim orders hearings will observe the following order of proceedings unless the PC determines otherwise:
  - a. Submissions will be heard from the presenter.
  - b. The registrant or their representative will then have the opportunity to respond to the submissions.
  - c. Having heard submissions from both parties, the PC will withdraw to deliberate in private on whether to make an interim order.
  - d. The Chair announces the PC's determination and reasons in public<sup>123</sup>.
- 292. When holding an interim orders hearing the PC should have regard to the Guidance for the Interim Orders Committee<sup>124</sup>.

### **Referring an allegation to the IOC**

- 293. The PC may, instead of convening its own interim orders hearing, refer an allegation to the IOC. The PC may do so of its own volition, or on the application of the presenter, in respect of any allegation which it considers should be dealt with by the IOC<sup>125</sup>.

### **Interim orders made by other committees**

- 294. The PC cannot review an order that has been made by another committee. If the PC is made aware of information it considers relevant to an interim order made by the IOC, it should refer the matter to the IOC for a review of the interim order.

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<sup>122</sup> Rule 15(1) of the Rules.

<sup>123</sup> Rule 16 of the Rules.

<sup>124</sup> [GDC Guidance for the Interim Orders Committee](#).

<sup>125</sup> Rule 26(1)(c) of the Rules.

## Reasons

295. The PC should give clear reasons for the decisions it makes. Those reasons must enable the parties and the public (and where needed the appellate courts) to understand the decision reached.
296. The level of detail needed will be context specific. The PC does not need to give comprehensive reasons addressing every point or argument. Summary reasons are normally sufficient in the context of fitness to practise proceedings. However, there may be circumstances where more detailed reasons should be given.
297. The reasons given by the PC should include:
  - a. Relevant details of its decision on the facts, as referenced at paragraph [191] to [194].
  - b. Relevant details of its decision on the statutory ground (including, where the statutory ground is misconduct, explaining which of its findings amount to misconduct).
  - c. Relevant details of its decision on current impairment.
  - d. Any legal advice provided by the legal adviser at the determination stage of the hearing and whether that advice was accepted (and if not, why not).
  - e. The final outcome, including sanction.
298. In respect of current impairment, where allegations of a serious nature are proved but a finding of no impairment is made, the PC should give clear reasons for their decision. In particular, the PC should explain in clear terms why such a case does not warrant a finding of impairment on public interest grounds to mark the seriousness of the conduct and to uphold public confidence and professional standards.
299. In respect of sanction, the PC should explain its reasons for applying the sanction it has decided to impose. Those reasons should include:
  - a. Aggravating or mitigating factors considered with reference to, where appropriate, the parties' submissions.
  - b. Conclusions on the main submissions made by the parties, including reference to the GDC's sanction bid.
  - c. An indication that each sanction was considered in turn, starting with the least restrictive sanction and the reasons why the chosen sanction was selected,
  - d. Why the next most restrictive sanction was not appropriate.

## Publication of determinations

300. The PC should consider whether to produce private and public versions of their determination. This is most likely to be necessary in cases where all or part of the hearing has been held in

private. In such cases, it may be necessary to apply redactions to the public version of the determination to remove references to the registrant's health, or to confidential information relating to the registrant's private or family life.

301. The PC may have regard to the [GDC's Disclosure and Publication Policy](#) in that consideration. It sets out the GDC's policy on what information will be published by the GDC when the PC has made its determination.

## Resumed hearings

### Overview

302. Resumed hearings are PCs convened to review an order of suspension or conditions applied by a previous PC<sup>126</sup>. The registrant may opt not to attend and have the resumed hearing conducted on the papers.
303. The reviewing PC will consider whether a registrant's fitness to practise is impaired by reason of the matters previously found against them, and, if so, what sanction should be imposed.
304. At this stage, the onus is on the registrant to demonstrate that their fitness to practise is no longer impaired i.e. they acknowledge the deficiencies identified at the initial hearing and have sufficiently addressed them.
305. When the reviewing PC is considering the issue of impairment and sanction, it should not re-open the previous findings of fact. However, it is entitled to reassess the risk posed to the public at the date of the review and can make a finding of impairment on public protection grounds, even if such a finding was not made at the substantive hearing<sup>127</sup>.
306. Where a registrant has denied the alleged conduct, they are entitled to maintain that denial even after the PC has found the facts proved. In such circumstances, it may be that they accept the findings made by the PC, whilst still maintaining a denial of the conduct underpinning the findings.
307. When considering whether fitness to practise remains impaired, it is relevant for the reviewing PC to know whether or not the registrant now admits the misconduct. However, admitting to the misconduct is not a prerequisite in establishing that the registrant understands the gravity of the conduct and is unlikely to repeat it.
308. If the registrant does not accept the findings, questioning should not focus on the denials and the previous findings; that said, a lack of candour and/or continued dishonesty at the review hearing may be a relevant consideration when considering impairment.

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<sup>126</sup> Sections 27C and 36Q of the Act.

<sup>127</sup> [Dhoorah v Nursing and Midwifery Council \[2020\] EWHC 3356 \(Admin\)](#).

309. The reviewing PC should be mindful that a registrant's clinical competence may be affected by prolonged periods out of practice due to restrictions on their registration. The reviewing PC should consider whether the registrant has been able to address any possible deskilling by continuing to meet the GDC's CPD requirements or by undertaking other training activities, within the restrictions imposed on their registration. Where identified deskilling has not been addressed through ongoing CPD, the reviewing PC should consider whether further or altered restrictions are required to ensure patient safety.
310. Where a registrant's fitness to practise remains impaired, the options available to the reviewing PC include imposing a further period of conditions (whether on the same or different terms) or a further suspension, with or without a review hearing. A PC cannot make an order for erasure at a resumed hearing.
311. The reviewing PC should, when determining sanction, apply the principle of proportionality by weighing the interests of the public with those of the dental professional. The reviewing PC must begin its consideration of sanction with the least restrictive. If the PC considers the least restrictive sanction to be insufficient, it should move to consider the next sanction, and so on until it reaches the appropriate level of sanction. Once the appropriate sanction is identified, the PC should consider the next most restrictive sanction and record why it goes too far.

## **Previous order of suspension**

312. Where the registrant has been previously suspended by a PC, but the reviewing PC finds the registrant's fitness to practise is not impaired, the suspension may be revoked.
  - a. If the reviewing PC determines that a suspended registrant's fitness to practise remains impaired, however, the options available to the PC are:
    - b. To extend the period of suspension for a period of up to 12 months, starting from the date on which it would otherwise expire.
    - c. To revoke the order of suspension and replace it with conditions of registration for up to three years.
    - d. To impose an order of indefinite suspension (see paragraphs [317] to [320] below)<sup>128</sup>.

## **Previous order of conditions**

313. Where the registrant has previously had conditions of registration imposed by a PC, but the reviewing PC finds the registrant's fitness to practise is not impaired, the PC may direct that the conditions of registration be lifted from a date specified.
314. However, if the reviewing PC determines that the registrant's fitness to practise remains impaired, the options available to the PC are:

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<sup>128</sup> Sections 27C(1) and 36Q(1) of the Act.

- a. To extend the period of conditions for a further period of up to three years, beginning with the date on which they would have otherwise expired.
- b. To vary, revoke, or add to, one or more of the conditions.
- c. To impose an order of suspension for a period of up to 12 months<sup>129</sup>.

315. Where conditions are varied, or where conditions are replaced with an order of suspension or vice versa, the reviewing PC should consider whether to impose an immediate order to cover the period between the date the determination is made, and the date the new order comes into force<sup>130</sup>.

## Failure to comply with conditions

316. Where the registrant has previously had conditions imposed by a PC, but the reviewing PC determines that the registrant has failed to comply with any condition, the PC may, upon review, direct that the registrant's registration be suspended for up to 12 months<sup>131</sup>. There is no other provision for the early review of substantive conditions.

## Indefinite suspension

317. A reviewing PC may give a direction for indefinite suspension if the registrant's period of suspension will, on the date that the direction for indefinite suspension takes effect, have been in effect for two years and it is made not more than two months before the date on which the period of suspension would have otherwise expired.

318. Indefinite suspension may be appropriate where, for example, the registrant has ceased to engage with the GDC, is not actively seeking to remediate any deficiencies previously identified, or is in poor health.

319. Where the PC has given a direction for indefinite suspension, it must review that direction if:

- a. the registrant requests it
- b. at least two years have elapsed since the direction took effect; and
- c. if there has been a previous review of the indefinite suspension, at least two years have elapsed since that review<sup>132</sup>.

320. When reviewing of an order for indefinite suspension, the PC may direct that the order be:

- a. terminated
- b. continued

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<sup>129</sup> Sections 27C(2) and 36Q(2) of the Act.

<sup>130</sup> Sections 33(3) and 36W(3) of the Act.

<sup>131</sup> Section 27C(3) of the Act.

<sup>132</sup> Sections 27C(4) and 36Q(4) of the Act.

c. replaced with conditions, for a period of up to three years<sup>133</sup>.

## Following an appeal

321. Where:

- the PC has imposed an immediate order on the registrant, and directed that a review is required of their substantive order of conditions or suspension, and
- the registrant appeals that sanction to the High Court and is unsuccessful

the registrant may request that the PC convene a resumed hearing to review the substantive sanction order as soon as is practicable after their appeal has been disposed of.

322. In such circumstances, the reviewing PC may, where appropriate, take account of the time spent by the registrant subject to an immediate order pending the disposal of their appeal.

## Restoration following erasure

### Introduction

323. Someone erased from the register may apply for restoration to the register after a period of five years has passed from when the direction of erasure took effect<sup>134</sup>. Such applications for restoration are considered by the PCC.

### Burden of proof

324. It is for the person applying for registration to satisfy the PCC that they:

- are fit to practise (i.e. that they have the necessary knowledge and skills to practise safely and effectively)
- meet the statutory registration requirements in relation to identity, good character, necessary knowledge of English, and that they are in good physical and mental health)
- meet the requirements of the CPD rules relevant to their case<sup>135</sup>
- meet any other requirements on education and training as directed by the PCC<sup>136</sup>.

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<sup>133</sup> Sections 27C(5) and 36Q(5) of the Act.

<sup>134</sup> Sections 28(2)(a) and 36R(2)(a) of the Act.

<sup>135</sup> Rule 10 of The General Dental Council (Continuing Professional Development) (Dentists and Dental Care Professionals) Rules Order of Council 2017.

<sup>136</sup> Sections 28(5) and 36R(5) of the Act.

## **Relevant factors when considering fitness to practise**

325. Factors likely to be relevant when a PCC considers an application for restoration include, but are not limited to:

- a. The circumstances which led to erasure.
- b. The reasons given by the PC for erasure (which the PCC should not revisit).
- c. Amount of time passed since erasure.
- d. The effect erasure has had on the applicant.
- e. The level of remorse and insight demonstrated by the applicant.
- f. 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).
- g. The applicant's conduct since being erased.
- h. The steps taken to keep clinical knowledge and skills up to date (acknowledging the limitations of the applicant not being registered).
- i. The risk of repetition.
- j. Whether the applicant poses a risk or is safe to resume practice.

## **Relevant factors when considering good character**

326. 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 a way:

- a. that puts at risk the health, safety or well-being of a patient or other member of the public
- b. that their restored registration would undermine public confidence in the professions
- c. that indicates an unwillingness to act in accordance with the standards of the professions
- d. that is dishonest.

327. It is for the PCC to determine whether any, some, or all of the factors above apply to the applicant whose restoration application is being consideration and assess the weight to be attached to each factor when determining the application.

## **The overarching objective**

328. Regardless of the time that has elapsed since erasure, restoration should only be granted where the PCC is satisfied that it is consistent with the GDC's overarching objective which is the protection of the public through the pursuit of the following aims:

- a. To protect, promote and maintain the health, safety and well-being of the public.
- b. To promote and maintain public confidence in the dental professions.
- c. To promote and maintain proper professional standards and conduct for members of the dental professions<sup>137</sup>.

## **Seriousness of erasure sanction**

329. 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.

## **Restoration with conditions of practice**

330. If the PCC grants the application, it may direct that restoration is conditional on the registrant:

- a. satisfying the Registrar that they have satisfied the legal requirement to have indemnity cover in place
- b. complying 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<sup>138</sup>.

331. 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.

332. Where the PCC considers imposing conditions, the same factors are to be considered as are set out in paragraphs [264] to [271]. When the conditions are reviewed, paragraphs [302] to [315] will apply.

## **Subsequent restoration applications**

333. Following an unsuccessful application for restoration, a further application cannot be made for 12 months<sup>139</sup>.

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<sup>137</sup> Sections 1(1ZA) and 1(1ZB) of the Dentists Act 1984 (the Act).

<sup>138</sup> Section 28(6) and section 36R(6) of the Act.

<sup>139</sup> Section 28(2)(b) and section 36R(2)(b) of the Act.

334. 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<sup>140</sup>.

335. The decision to suspend further restoration applications indefinitely may not be reviewed until a period of three years has lapsed from the date on which the PCC's direction to suspend applications indefinitely took effect<sup>141</sup>.

336. When considering whether to indefinitely suspend an applicant's right to make further restoration applications, the PCC should have regard to:

- the nature of the concerns which led to the applicant's erasure from the register
- any new concerns which have arisen since, particularly where those concerns are serious and involve criminal convictions, cautions or investigations, illegal practice, sexual misconduct, or concerns about the applicant's probity
- the reasons why restoration has been refused
- the number of unsuccessful applications made by the applicant, and the spacing of those applications.

337. In relation to paragraph [336ii], the PCC should examine these reasons and consider whether the risks posed to public safety, to public confidence, and/or to proper professional standards, are capable of being adequately addressed by the applicant within 12 months. If not, this may point towards suspending their right to make further applications, as it may evidence a continuing lack of insight.

338. The more unsuccessful applications made by an individual, the more appropriate it is for the PCC to make a direction to indefinitely suspend an applicant's right to make further applications, particularly where the PCC observes little change between applications in relation to the factors listed at paragraph [336].

339. Directions to indefinitely suspend an applicant's right to make further restoration applications can be reviewed after three years. Should the reviewing PCC confirm the decision to indefinitely suspend an applicant's right to make further restoration applications, no further applications for review can be made for a further three years.

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<sup>140</sup> Section 28(9) and section 36R(9) of the Act.

<sup>141</sup> Section 28(11) and section 36R(11) of the Act.

## Appendix 1: Considerations in particular categories of cases

### Sexual misconduct

1. Sexual misconduct includes a wide range of conduct, both verbal and physical, from criminal convictions for sexual offences (e.g. sexual assault, sexual harassment, child sexual abuse including possession or distribution of images of child sexual abuse, physical contact, or online contact) to other sexual misconduct with patients, colleagues or the wider public, whether or not this takes place in the context of the registrant's professional life.
2. As well as raising public protection considerations, sexual misconduct by dental professionals has the potential to seriously undermine public confidence in the dental professions. As a result, cases relating to sexual misconduct are inherently serious<sup>142</sup>. In such cases, where there has been a fundamental breach of professional standards, efforts to remediate/mitigate might be afforded less weight.
3. Where the alleged sexual misconduct is related to sex or another protected characteristic under the Equality Act 2010, the PC may also be asked to consider a linked allegation of harassment related to a protected characteristic. Relevant considerations for the PC in relation to allegations of harassment are set out in paragraphs [15] to [27] below.

#### The factual enquiry stage

4. Allegations of sexual misconduct may be framed in different ways in the charge appearing before the PC. For example, the charge may set out that the alleged conduct of the registrant was sexual, or sexually motivated, depending on the circumstances of the individual case. When considering an allegation of sexual misconduct - in whatever way the charge is framed - the PC should first determine whether the facts are found proved in relation to the alleged conduct. The PC should then consider whether the conduct either:
  - a. was sexual because of its nature, irrespective of the circumstances in which it occurred
  - b. may have been sexual because of its nature, and was sexual because of the circumstances in which it occurred<sup>143</sup>.
5. If sexual motivation is an element of the charge against the registrant, the PC will also need to determine what the registrant's state of mind was at the relevant time. This will involve consideration of whether the conduct was done either in pursuit of sexual gratification or in pursuit of a future sexual relationship<sup>144</sup>. It is not necessary for the PC to determine what the registrant's state of mind was in cases where the allegation is of sexual, rather than sexually motivated behaviour.
6. Where the Registrant does not admit that their actions were sexual or sexually motivated, and there is no direct evidence of this, the PC should examine the facts and circumstances

<sup>142</sup> [Arunachalam v General Medical Council \[2018\] EWHC 758 \(Admin\)](#).

<sup>143</sup> [General Medical Council v Haris \[2020\] EWHC 2518 \(Admin\)](#).

<sup>144</sup> [Basson v General Medical Council \[2018\] EWHC 505 \(Admin\)](#).

surrounding the conduct and should determine whether an inference that the conduct was sexual or sexually motivated can be drawn.

7. Where the allegations concern touching, the best evidence as to whether the touching was sexual or sexually motivated may be the registrant's behaviour. An inference that the conduct was sexual or sexually motivated may be drawn by reference to factors such as the location of the touching on the alleged victim's body, whether it was accidental or intentional, whether (in a clinical setting) there was any clinical justification for the touching, or whether there was any other plausible reason for the touching to take place.

#### **The determination of the case**

8. Given the inherent seriousness of sexual misconduct, erasure will often be the appropriate sanction, and will usually be considered. Erasure in such cases, however, is not inevitable, and each case must be considered on its own facts.
9. Where allegations of sexual misconduct are found proved, the PC should assess seriousness by reference to the aggravating and mitigating factors in the case. Those factors should be balanced against each other when considering what sanction is appropriate.
10. Aggravating factors for the PC to consider include, but are not limited to, whether:
  - a. the registrant has been required to register as a sex offender, and/or there has been other regulatory action in relation to sexual misconduct
  - b. there was abuse of a position of trust
  - c. the registrant otherwise used their professional position to pursue a sexual or improper emotional relationship with a vulnerable patient
  - d. the victim was aged under 18 at the time of the conduct
  - e. there was an abuse of power by the registrant, or an imbalance of power between the registrant and the victim by reason of their respective professional positions, age, and/or physical stature<sup>145</sup> or any other factors which the PC may consider relevant.
  - f. the incident was premeditated, calculated or deliberate
  - g. the incident took place in circumstances where the victim was isolated
  - h. there was an impact upon the victim's physical or emotional wellbeing (including, but not limited to, whether the conduct made the victim feel vulnerable, anxious, embarrassed etc.) either immediately after the event or subsequently
  - i. the incident was part of a course of conduct, or conduct that was otherwise repeated, involving one or more victims.

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<sup>145</sup> [Professional Standards Authority for Health and Social Care v General Medical Council & Anor \[2021\] EWHC 588 \(Admin\)](#).

11. Dependent on the circumstances, physical touching or exposure may be aggravating factors. However, verbal sexual misconduct should also be treated as serious.
12. Mitigating factors for the PC to consider include that the registrant:
  - a. has insight into their conduct
  - b. has demonstrated genuine reflection including a clear understanding of the impact on the victim and the profession.
13. The absence of evidence that the registrant has engaged in similar conduct before or since should be considered a neutral rather than a mitigating factor<sup>146</sup>. The victim being a colleague rather than a patient is not a mitigating factor. The courts have held that where the victim is a colleague, rather than a patient, "severe sanctions in such cases... are generally necessary... to protect and uphold the dignity of workers in the profession and to protect their freedom to work without being molested"<sup>147</sup>.
14. Where the majority of the aggravating factors listed above are present, and/or any of the aggravating factors are assessed as particularly serious, it is likely that the only proportionate sanction will be erasure. However, the PC should approach the matter of appropriate sanction proportionately, as in any other category of case, as is set out in paragraph [252] of the guidance. That is, by commencing its consideration of sanction with the least restrictive option and, where it considers the least restrictive sanction to be insufficient, moving to the next sanction, and so on until it reaches the appropriate sanction. Should the PC stop short of selecting erasure as the appropriate sanction, it should consider and clearly record why erasure goes too far.

## Discrimination and harassment

15. As a public authority, the GDC is subject to the public sector equality duty, and must have due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited under the Equality Act 2010. As such, it follows that the PC should have due regard in their decision making to the definitions as set out in that Act<sup>148</sup>.
16. Discrimination is behaviour which treats one individual less favourably than another because of a characteristic that is protected under the Equality Act 2010<sup>149</sup> (a protected characteristic). Patients, colleagues, and other members of the public can all be victims of discrimination which can take various forms, including verbal remarks, assumptions and judgements, aggressive or violent behaviour, and differential treatment. It may also include, for example, a failure to listen to a patient or colleague or take them seriously, or a failure to meet an individual patient's needs, based on one or more protected characteristic.

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<sup>146</sup> [Professional Standards Authority for Health and Social Care v General Medical Council & Anor \[2021\] EWHC 588 \(Admin\)](#).

<sup>147</sup> [Arunachalam v General Medical Council \[2018\] EWHC 758 \(Admin\)](#).

<sup>148</sup> [Professional Standards Authority for Health and Social Care v Health and Care Professions Council & Anor \[2021\] EWHC 52 \(Admin\)](#).

<sup>149</sup> Section 13(1) of the Equality Act 2010.

17. Harassment, in this context, is unwanted conduct towards a person which is related to a protected characteristic, and which has the effect of violating their dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for them<sup>150</sup>.
18. The Standards require registrants to ensure their conduct, both at work and in their personal life, justifies patients' trust in them and the public's trust in the dental professions. Registrants must treat others fairly, with respect, and in line with the law. In addition to these public interest considerations, discrimination or harassment relating to a protected characteristic may have a detrimental effect on that person's health, well-being and/or sense of safety.
19. There is also a specific requirement in the Standards to treat patients without discrimination. If discriminatory or harassing conduct is directed towards a patient, it is likely that this will result in the patient receiving a lower standard of care, and it may deter them from seeking treatment when it is needed.
20. Discriminatory or harassing behaviour is an abuse of the position of privilege and trust which dental professionals have in society, and is highly damaging to the confidence that the public places in the dental professions.

#### **Considering use of discriminatory language at the factual enquiry stage**

21. Where it is alleged that a registrant's language was discriminatory, the meaning of the words used is an objective test, entirely independent of the registrant's state of mind or intention<sup>151</sup>. Whether or not the registrant intended the words used to be discriminatory is irrelevant to whether they were, in fact, so. The reaction of an audience in another context is irrelevant. The PC should consider how an ordinary reasonable person would respond to the words or conduct in question.
22. Where it is alleged that the use of discriminatory language was intentional, e.g. that the actions were racially motivated, the PC will also have to consider the registrant's state of mind at the time. There are two elements to this consideration. The first is whether the act in question had a purpose behind it which was, at least in significant part, related to a protected characteristic. The second is whether the act in question was done in a way that showed hostility, or a discriminatory attitude, to persons with the relevant protected characteristic<sup>152</sup>.

#### **The determination of cases where findings of discrimination and/or harassment have been made**

23. Discrimination and harassment cannot be excused, condoned or tolerated within the dental professions. Given the public interest considerations, any conduct of a dental professional that is of a discriminatory or harassing nature is likely to result in a finding of impaired fitness to practise.

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<sup>150</sup> Section 26 of the Equality Act 2010.

<sup>151</sup> Loveless v Earl [1999] EMLR 530 CA, as referenced in Professional Standards Authority for Health and Social Care v General Pharmaceutical Council & Anor [2021] EWHC 1692 (Admin).

<sup>152</sup> Lambert-Simpson v Health and Care Professions Council [2023] EWHC 481 (Admin).

24. Where findings of discriminatory behaviour or harassment have been made against a registrant, the PC should assess the seriousness by reference to the aggravating and mitigating factors in the case. Those factors should be balanced against each other when considering what sanction is appropriate.
25. Aggravating factors for the PC to consider include, but are not limited to, whether:
  - a. the behaviour was intentional
  - b. there are deep-seated attitudinal issues, which are fundamentally incompatible with continued registration
  - c. there was an impact upon the victim's physical or emotional wellbeing (including, but not limited to, whether the conduct made the victim feel vulnerable, anxious, embarrassed etc.) either immediately after the event or subsequently
  - d. there is evidence of repetition, or a pattern of behaviour.
26. Mitigating factors for the PC to consider include, but are not limited to, whether:
  - a. the behaviour was an isolated incident with no evidence of repetition
  - b. the behaviour stemmed from a lack of knowledge and understanding
  - c. there is no evidence of a deep-seated attitudinal issue
  - d. the registrant has demonstrated remorse and apologised
  - e. the registrant has demonstrated insight and there is evidence of remediation.
27. Where the balancing of aggravating and mitigating factors leads the PC to conclude the registrant's conduct, although serious, is at the lower end of the scale, this may point towards a reprimand being the appropriate level of sanction. Where the PC concludes the instance to be at the higher end of the scale of seriousness, it is likely that a restrictive sanction will be required.

## Offensive behaviour

28. Behaviour which is not discriminatory or harassing may still be offensive, detrimental to the health and wellbeing of others, and damaging to public confidence in the professions. Offensive behaviour includes language or conduct which is insulting, abusive, bullying, intimidating, or threatening to patients, colleagues or other members of the public.

### Considering the use of offensive language at the factual enquiry stage

29. Where it is alleged that a registrant's language was offensive, the meaning of the words used is an objective test, entirely independent of the registrant's state of mind or intention<sup>153</sup>. Whether

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<sup>153</sup> Loveless v Earl [1999] EMLR 530 CA, as referenced in [Professional Standards Authority for Health and Social Care v General Pharmaceutical Council & Anor \[2021\] EWHC 1692 \(Admin\)](#).

or not the registrant intended the words used to be offensive is irrelevant to whether they were, in fact, so. The reaction of an audience in another context is irrelevant. The PC should consider how an ordinary reasonable person would respond to the words or conduct in question.

### **The determination of the case**

30. The Standards require registrants to ensure their conduct, both at work and in their personal life, justifies patients' trust in them and the public's trust in the dental professions. Behaviour which is offensive, and which demonstrates a persistent disregard for the safety, rights or dignity of others risks undermining the confidence of patients and the public, and is likely to lead to a finding of impaired fitness to practise.
31. The PC should assess the seriousness of the registrant's conduct by reference to the aggravating and mitigating factors in the case. Those factors should be balanced against each other when considering what sanction is appropriate.
32. Aggravating factors for the PC to consider include, but are not limited to, whether:
  - a. the behaviour was intentionally offensive
  - b. there are deep-seated attitudinal issues, which are fundamentally incompatible with continued registration
  - c. there was an impact upon the victim's physical or emotional well-being (including, but not limited to, whether the conduct made the victim feel vulnerable, anxious, embarrassed etc.) either immediately after the event or subsequently
  - d. there is evidence of repetition, or a pattern of behaviour.
33. Mitigating factors for the PC to consider include, but are not limited to, whether:
  - a. the behaviour was an isolated incident with no evidence of repetition
  - b. there is no evidence of a deep-seated attitudinal issue
  - c. the registrant has demonstrated remorse and apologised
  - d. the registrant has demonstrated insight and there is evidence of remediation.
34. Where the balancing of aggravating and mitigating factors leads the PC to conclude the registrant's conduct is at the lower end of the scale, this may point towards a reprimand being the appropriate level of sanction. Where the PC concludes the instance to be at the higher end of the scale of seriousness, it is likely a restrictive sanction will be required.

### **Dishonesty**

35. It is a fundamental requirement under the Standards that registrants are honest. Honesty is of key importance in protecting the public and promoting and maintaining public confidence in the professions.

36. As a result, findings of dishonesty against a registrant are at the higher end of the scale of seriousness, even where it has not involved harm to patients, and even if it is unlikely to be repeated.

### **The factual enquiry stage**

37. When determining whether or not a registrant has acted dishonestly, the PC must first establish whether the conduct took place and, if so, what the registrant's state of mind was at the time (i.e. what the registrant's knowledge or belief was as to the facts).

38. The PC must then go on to consider whether the registrant's actions were, objectively, dishonest (i.e. dishonest according to the objective standards of ordinary decent people). Dishonesty does not have any subjective element and, as such, it is not necessary for the registrant to have appreciated that what they were doing was dishonest<sup>154</sup>.

39. However, the PC should consider whether there is another, innocent explanation for the registrant's conduct, which would weigh against a finding of dishonesty. Such considerations must be based on identifiable evidence and not on speculation. Where such evidence exists, the question for the PC is which scenario is more likely.

### **The determination of the case**

40. Where allegations of dishonest conduct are found proved, the PC should assess seriousness by reference to the aggravating and mitigating factors in the case. Those factors should be balanced against each other when considering what sanction is appropriate.

41. Aggravating factors for the PC to consider include, but are not limited to, whether:

- the conduct was persistent, multifaceted, or attempts were made to cover it up
- the conduct occurred in the performance of the registrant's duties, or involved a breach of the trust placed in dental professionals by society and other members of the professions. This includes fraud upon the NHS or otherwise upon the public purse, or fraudulent charging of patients
- the registrant lacks insight.

42. Mitigating factors for the PC to consider include if the registrant's conduct was:

- isolated or opportunistic
- an uncharacteristic lapse in a challenging situation
- did not result in any direct personal gain (or attempted personal gain) to the registrant.

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<sup>154</sup> Ivey v Genting Casinos (UK) Ltd. t/a Crockfords [2017] UKSC 67.

43. Where dishonesty is found, a finding of impairment is likely to follow. A PC will need to identify weighty factors in favour of the registrant concerned, if it is to conclude that the protection of the public does not necessitate a finding of impairment<sup>155</sup>.
44. Evidence of clinical competence cannot mitigate serious and/or persistent dishonesty. In addition, in cases of significant professional dishonesty, personal mitigation has a limited role. In such circumstances, the PC may consider that the registrant's conduct is fundamentally incompatible with continued registration, such that erasure is the only appropriate sanction.

## **Integrity**

45. It is a fundamental requirement under the GDC's Standards that registrants act with integrity.
46. In professional codes of conduct, the term "integrity" is a useful shorthand to express the higher ethical standards which society expects from regulated professionals, and which the professions expect from their own members. The underlying rationale is that the professions have a privileged and trusted role in society and, as such, professionals are expected to adhere to high professional and ethical standards.
47. That does not mean professionals 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<sup>156</sup>.
48. The Standards provide some examples of integrity, but this is by no means an exhaustive list.

## **Candour**

49. Candour means being open and honest with a patient when something goes wrong with their treatment or care which causes, or has the potential to cause, harm or distress.
50. GDC guidance emphasises the importance of the professional duty of candour and sets out what is expected of registrants<sup>157</sup>.
51. Failure to be open with a patient can amount to misconduct, and the PC should take 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.

## **Non-cooperation**

52. The Standards require registrants to cooperate with any relevant formal or informal inquiry and to give full and truthful information when asked.
53. The courts have held that all professionals subject to a regulatory regime have a duty to engage with their regulator, both in relation to the investigation and to the ultimate resolution of

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<sup>155</sup> [General Medical Council v Armstrong \[2021\] EWHC 1658 \(Admin\) \(23 June 2021\)](#).

<sup>156</sup> [Wingate & Anor v Solicitors Regulation Authority \[2018\] EWCA Civ 366](#).

<sup>157</sup> GDC guidance: [Being open and honest with patients when something goes wrong](#).

allegations made against them. This is part of the responsibility they sign up to when being admitted to a profession<sup>158</sup>.

54. Non-cooperation with a GDC investigation may take various forms, including failure to:
  - a. provide employer information
  - b. provide proof of indemnity when requested
  - c. provide a GP reference
  - d. provide consent to the health assessment process
  - e. cooperate with the health assessment process, including non-attendance of appointment(s) for health assessment or sample collection
  - f. provide any other information necessary to progress a fitness to practise investigation.
55. Failure to cooperate with the GDC is a serious matter, breaches the Standards and, depending on the facts of the case, is likely to amount to misconduct which impairs the registrant's fitness to practise<sup>159</sup>. In respect of impairment, even where the PC determines that the risk of repetition is low, a finding of impairment should be considered on public interest grounds i.e. on the basis of the need to promote and maintain public confidence and to promote and maintain proper professional standards and conduct.

### **The determination of the case**

56. Where allegations of non-cooperation are found proved, the PC should assess seriousness by reference to aggravating and mitigating factors in the case. Those factors should be balanced against each other when considering what sanction is appropriate.
57. Aggravating factors for the PC to consider include, but are not limited to, whether:
  - a. the GDC has been unable to investigate the substantive concerns due to non-cooperation (e.g. the registrant has not provided dental records needed to consider clinical issues, or has refused to provide evidence of indemnity insurance)
  - b. patients have been harmed, or put at risk of harm, by the non-cooperation.
  - c. there is evidence of repetition or a pattern of behaviour.
58. Mitigating factors for the PC to consider include:
  - a. where there is evidence that the registrant was suffering from adverse physical or mental health at the time and, if so, whether the non-cooperation was attributable to this

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<sup>158</sup> General Medical Council v Adeogba [2016] EWCA Civ 162.

<sup>159</sup> Saha v The General Medical Council [2009] EWHC 1907 (Admin).

- b. the registrant otherwise has a reasonable justification for not complying with the GDC's request, including that they did not receive the correspondence in question.

59. As part of the requirements for ongoing registration<sup>160</sup>, registrants must provide a current address. Where a registrant has failed to do so and, as a result, has not received fitness to practise correspondence, this does not provide a reasonable justification (see paragraph [58ii] above). However, where the failure to do so was unintentional, this may have an impact on sanction.

60. In relation to sanction, due to the registrant's non-engagement, conditions are unlikely to be appropriate because the PC is unlikely to have assurance of the registrant's willingness or ability to comply with conditions.

61. Where the balancing of aggravating and mitigating factors leads the PC to conclude the non-cooperation is at the lower end of the scale of seriousness, this may point towards a reprimand being the appropriate level of sanction. However, where the PC conclude the instance to be at the higher end of the scale of seriousness, it is likely that a restrictive sanction will be required.

## **Breach of IOC or PC conditions, or breach of undertakings**

62. Conditions imposed by the IOC or the PC, or undertakings agreed with case examiners, are restrictions on a registrant's registration that are put in place after a regulatory process examining the circumstances of the case. Patients are entitled to be seen, diagnosed, and treated by registrants in line with their registration and any conditions or undertakings attached.

63. As a result, where the dental professional is found to have knowingly or deliberately breached conditions or undertakings, their conduct is likely to amount to a serious regulatory breach. Such breaches create a risk to the public, in terms of the registrant practising contrary to their registration status (i.e. in circumstances where their professional regulator has explicitly directed they must not), and potentially in relation to invalidation of indemnity. This may also undermine public confidence in the dental professions<sup>161</sup>.

### **The determination of the case**

64. Where such allegations are found proved, the PC should consider the facts and circumstances of the breach and balance any aggravating and mitigating factors when considering what sanction is appropriate.

65. Aggravating factors for the PC to consider include, but are not limited to, whether:

- a. the breach was knowing and deliberate
- b. the breach was sustained over a period of time

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<sup>160</sup> Rule 9 The General Dental Council (Dentist Register) Regulations 2014, and Rule 13 The General Dental Council (Dental Care Professionals Register) Rules 2014.

<sup>161</sup> [General Medical Council v Donadio \[2021\] EWHC 562 \(Admin\)](#).

- c. the breach relates to transparency/anti-avoidance elements of the restrictions (e.g. a requirement to inform employers of the restrictions)
- d. there was a lack of candour with regulatory authorities when the registrant was challenged (e.g. making a false claim that they were not aware the restrictions were in force)
- e. the registrant lacks insight into the breach.

66. Mitigating factors for the PC to consider include, but are not limited to, where:

- a. the breach was accidental or inadvertent
- b. the breach was isolated
- c. it was the registrant themselves who brought the matter to the attention of the GDC
- d. the registrant has shown insight into the breach.

67. Where most of the mitigating factors above are present, it may be appropriate for a reprimand, or for a period of suspension at the shorter end of the spectrum to be imposed. Where, there are one or more aggravating factors present, it is likely that a longer period of suspension with a review, or erasure will be the only appropriate sanction.

## Criminal convictions and cautions

68. The purpose of fitness to practise proceedings in relation to criminal convictions and cautions is not to punish a registrant for a second time for the offence or offences for which they were convicted or cautioned<sup>162</sup>. Rather, the purpose is to consider whether a registrant's fitness to practise is impaired as a result of the conviction(s) or caution(s) and, if so, what sanction should be imposed.

69. When considering what sanction to impose where the registrant's fitness to practise is impaired by reason of a criminal conviction or caution the task of the PC, looking to the future, is to decide what sanction would most appropriately meet the GDC's overarching objective of protecting the public, maintaining public confidence in the professions, and maintaining proper professional standards and conduct for members of those professions<sup>163</sup>.

70. The appropriate and proportionate sanction will depend on the facts of the case in question. In assessing seriousness in a case involving a criminal conviction, and to determine what (if any) sanction to impose, the PC should - before making due allowance for mitigating factors - have regard to:

- a. the fact that the registrant's actions have passed the threshold of criminality, which is a public interest consideration in its own right

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<sup>162</sup> Dey v. General Medical Council (GMC) [2001] UKPC 44.

<sup>163</sup> Bawa-Garba v General Medical Council & Ors [2018] EWCA Civ 1879.

- b. the relevance of the sentencing guideline's classification of the inherent seriousness of the offence and of the offending (in terms of culpability and harm, based on evidence established to the criminal standard of proof)
- c. what the criminal law and the principles of sentencing law and practice have already had to say about the public interest considerations in the case, including the sentence imposed.

71. The PC should bear in mind that the sentence imposed by the criminal court is not necessarily a definitive guide to the seriousness of the offence, as there may have been mitigating factors or personal circumstances which resulted in a reduced sentence. This may include the assumption by the Court that the GDC would erase the registrant from the register.

72. When considering a case where the registrant has been convicted and is still subject to a criminal sentence (including a suspended sentence of imprisonment, or a community penalty), the PC should take account of the principle referenced in the case of *Fleischmann*<sup>164</sup>. It states, as a general principle, that where a registrant has been convicted of a serious criminal offence, or offences, they should not be permitted to resume practice until they have satisfactorily completed that sentence. Only circumstances that plainly justify a different course should permit otherwise. Such circumstances could arise in connection with a period of disqualification from driving or time allowed by the court for the payment of a fine.

73. Where the *Fleischmann* principle applies, this is likely to require suspension of the registrant's registration until the sentence has been satisfactorily completed or criminal penalty concluded.

74. However, case law has made clear that notification requirements (such as those set out in sections 80 - 103 of the Sexual Offences Act 2003) may be distinguished from a court-imposed sentence. As such, notification requirements may not, without other reasons, warrant restrictions on registration.

75. *Fleischmann* is a general principle and should not be applied as a rule. In some instances, the application of *Fleischmann* may produce an anomalous result, for example, where a registrant has been given a short custodial sentence which is suspended for a lengthy period of time. In such cases, the *Fleischmann* principle should bend to the overarching requirement to impose an appropriate and proportionate sanction<sup>165</sup>.

76. Where the PC determines that it is appropriate to depart from the *Fleischmann* principle, it must give clear reasons for that decision.

77. In addition, while a registrant's good standing in their profession may be a mitigating feature, the absence of any adverse fitness to practise history is unlikely to be an exceptional matter that would justify a departure from the *Fleischmann* principle.

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<sup>164</sup> *Council for the Regulation of Healthcare Professionals v General Dental Council & Anor* [2005] EWHC 87 (Admin).

<sup>165</sup> *Professional Standards Authority for Health and Social Care v General Dental Council & Anor* [2024] EWHC 243 (Admin).

### **Failure to disclose criminal proceedings or regulatory findings: at point of registration**

78. A failure to inform the GDC of a conviction, caution, criminal proceedings or regulatory finding at the point of application for registration is considered particularly serious. This is because failure to declare information about criminal proceedings or regulatory findings deprives the Registrar of the ability to conduct a proper assessment of whether an applicant for registration is of good character.
79. Such a failure seriously undermines a central facet of the registration process (i.e. to ensure that only fit and proper persons are registered as dental professionals), and risks the reliability and integrity of the register.
80. As a result, a failure to disclose a conviction, caution, criminal proceedings or regulatory findings may not only impact on the protection of the public, but it may also undermine the public's confidence in the professions 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 would further raise the seriousness of the misconduct.
81. A finding that a registrant dishonestly failed to inform the GDC of criminal or regulatory findings is very serious, in that it has the potential to put the public at risk and fundamentally undermine public confidence in the professions. Such a finding is likely to call into question that registrant's suitability to remain on the register.

### **Failure to disclose criminal proceedings or regulatory findings: whilst registered**

82. Dental professionals are required to inform the GDC immediately if they are subject to criminal proceedings or a regulatory finding is made against them anywhere in the world. GDC guidance sets out the circumstances in which registrants must inform the GDC of criminal proceedings or regulatory findings<sup>166</sup>.
83. Failure to inform the GDC immediately of criminal proceedings or a regulatory finding is a serious matter. That is because failure to declare information about criminal proceedings or regulatory findings deprives the Registrar of the ability to consider the impact of those proceedings on the registrant's fitness to practise, and whether any action (including on an interim basis) needs to be taken to protect the public or the wider public interest. As a result, failure to declare criminal or regulatory proceedings has the potential to undermine the integrity of the register.
84. In addition, depending on the circumstances, a registrant may gain an advantage from failure to inform the GDC of criminal or regulatory proceedings. In those circumstances, such a failure may also give rise to allegations of misconduct, such as dishonesty or a lack of integrity on part of the registrant, which would further raise the seriousness of the misconduct.
85. A finding that a registrant dishonestly failed to inform the GDC of criminal or regulatory findings is likely to call into question that registrant's suitability to remain on the register.

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<sup>166</sup> [Guidance on reporting matters to the General Dental Council](#).

## Indemnity

86. All practising dental professionals must have indemnity arrangements in place so that, where patients are entitled to receive compensation, registrants can meet this liability. Dental professionals who rely on cover provided by their employer have a personal responsibility to check that the cover is in place (i.e. it is acceptable for a registrant to be covered by their employer's policy, but it is the registrant's, not the employer's, responsibility to ensure that this cover is appropriate and is maintained).
87. The only circumstances in which it would be acceptable for a dental professional not to have any cover would be if there is no risk of a patient making a claim against them. An example is if the dental professional works exclusively in roles which do not involve the practice of dentistry and who have no patient interactions within these roles. To justify a decision not to have cover, a dental professional must be able to demonstrate why there is no risk of a claim being made against them.
88. A dental professional who practises without having appropriate indemnity arrangements in place breaches a mandatory and fundamental requirement of professional regulation. Such conduct puts patients at risk of financial harm and is likely to be considered unacceptable by the public and fellow professionals.
89. When considering sanction, the PC should consider carefully whether there is an ongoing risk to the public, as well as the wider public interest.
90. In terms of ongoing risk to the public, the PC will need to consider whether the registrant (if currently practising in the UK) has an appropriate level of cover. This should include checking whether the registrant has acquired retrospective cover - if not, there may be a gap and a risk to patients treated by the registrant in the past, for whom there is no indemnity cover in place to meet any claim.
91. Where the registrant is no longer practising, they still need to ensure they have appropriate cover in place for their past practising roles e.g. if their past cover was a claims-made policy, make sure they have secured appropriate "run-off" cover<sup>167</sup>.

### The determination of the case

92. Where lack of appropriate indemnity has been found proved, the PC should assess seriousness by reference to the aggravating and mitigating factors in the case. Those factors should be balanced against each other when considering what sanction is appropriate.
93. Aggravating factors for the PC to consider include, but are not limited to:
  - a. where there is ongoing risk to the public
  - b. where the lack of cover spans a longer period of time (months or years)

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<sup>167</sup> [GDC guidance on professional indemnity and insurance cover](#).

- c. where the lack of cover relates to more than one period (i.e. could not be described as isolated or a one-off occasion, either in respect of the case in question, or where the registrant has fitness to practise history which relates to a lack of appropriate indemnity cover)
- d. where the lack of cover was deliberate (e.g. the registrant has actively cancelled or failed to renew their cover, rather than the lapse being an oversight)
- e. where the lack of cover has resulted in patient harm
- f. where the lack of cover is associated with dishonesty or a lack of integrity, including where a false declaration has been given at the point of registration or renewal.

94. Mitigating factors for the PC to consider include, but are not limited to, where:

- a. there is no ongoing risk to the public
- b. the lack of cover was short in duration (days or weeks)
- c. where the period without cover was a one-off occasion
- d. the lack of cover was accidental or inadvertent.

95. Where the balancing of aggravating and mitigating factors leads the PC to conclude the instance of lack of cover is at the lower end of the scale of seriousness, this may point towards a reprimand being the appropriate level of sanction. However, where the PC conclude the instance to be at the higher end of the scale of seriousness, it is likely a restrictive sanction will be required.

## **Working outside of scope of practice**

96. The Standards state that dental professionals must work within their knowledge, skills, professional competence and abilities. This principle is reiterated in the GDC's Scope of Practice Guidance which, establishing the boundaries within which each title must work, states that dental professionals must only carry out a task or a type of treatment if they are appropriately trained, competent and indemnified.

97. Undertaking work outside a registrant's scope of practice breaches a fundamental requirement of professional registration, puts patients at risk, and may undermine public confidence in the professions.

98. When considering sanction in a case involving scope of practice, the PC should consider carefully whether there is an ongoing risk to the public, as well as the wider public interest.

## **The determination of the case**

99. Where practising outside scope of practice has been found proved, the PC should assess seriousness by reference to the aggravating and mitigating factors in the case. Those factors should be balanced against each other when considering what sanction is appropriate.

100. Aggravating factors for the PC to consider include, but are not limited to:

- where there is ongoing risk to the public
- the breach took place on more than one occasion
- where the breach was deliberate
- the breach resulted in patient harm.

101. Mitigating factors for the PC to consider include, but are not limited to, where:

- there is no ongoing risk to the public
- the incident was isolated
- the breach was accidental or inadvertent
- the breach caused no harm to patients.

102. Where the balancing of aggravating and mitigating factors leads the PC to conclude the instance of practising outside scope of practice is at the lower end of the scale of seriousness, this may point towards a reprimand being the appropriate level of sanction. However, where the PC conclude the instance to be at the higher end of the scale of seriousness, it is likely a restrictive sanction will be required.

## **Working beyond training and/or competence**

103. The Standards require that dental professionals must work within their knowledge, skills, professional competence and abilities. However, it is recognised that a dental professional may, on occasion, undertake treatment that becomes more challenging or complex than anticipated. Where the PC determines that a dental professional has knowingly performed treatment which they are not trained and competent to undertake, the PC may determine their fitness to practise is impaired.

### **The determination of the case**

104. Where knowingly working beyond training and competence has been found proved, the PC should assess seriousness by reference to the aggravating and mitigating factors in the case. Those factors should be balanced against each other when considering what sanction is appropriate.

105. Aggravating factors for the PC to consider include, but are not limited to:

- where there is ongoing risk to the public
- the breach took place on more than one occasion
- where the breach was deliberate

- d. the breach resulted in patient harm.

106. Mitigating factors for the PC to consider include, but are not limited to, where:

- a. there is no ongoing risk to the public
- b. where the incident was isolated
- c. the breach was accidental or inadvertent
- d. the breach caused no harm to patients.

107. Where the balancing of aggravating and mitigating factors leads the PC to conclude the instance of working beyond training and competence is at the lower end of the scale of seriousness, this may point towards a reprimand being the appropriate level of sanction. However, where the PC conclude the instance to be at the higher end of the scale of seriousness, it is likely a restrictive sanction will be required.

## **Poor standard of treatment and/or care**

108. Not all treatments are successful, and patients sometimes suffer harm. This does not necessarily 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. However, dental professionals must act in the patient's best interests and provide an acceptable level of care.

### **The determination of the case**

109. Where poor standard of treatment has been found to impair fitness to practise, the PC should assess seriousness by reference to the aggravating and mitigating factors in the case. Those factors should be balanced against each other when considering what sanction is appropriate.

110. Aggravating factors for the PC to consider include, but are not limited to, where:

- a. patients have been harmed or put at risk of harm
- b. there is evidence of a disregard for patient safety.

111. Mitigating factors for the PC to consider include, but are not limited to, where:

- a. the poor standard of treatment was isolated
- b. poor standard of treatment was minor in nature
- c. the registrant has demonstrated insight and has remediated.

112. Where the balancing of aggravating and mitigating factors leads the PC to conclude the poor standard of treatment is at the lower end of the scale of seriousness, this may point towards a reprimand being the appropriate level of sanction. However, where the PC conclude the poor

standard of treatment to be at the higher end of the scale of seriousness, it is likely a more restrictive sanction will be required.

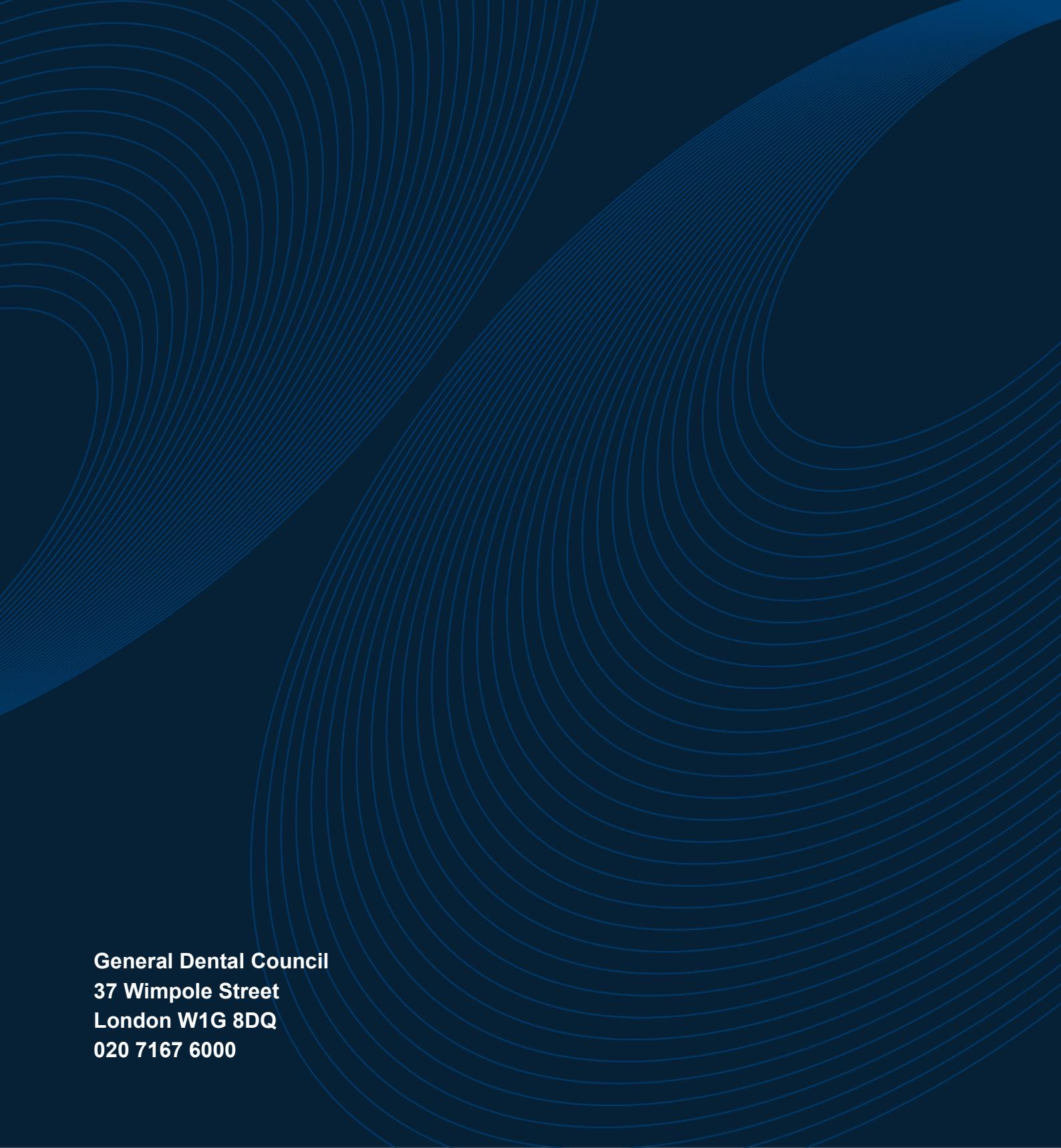
## **Impact of retirement**

113. The fact that a registrant has retired, or intends to retire from dental practice, is of little relevance to the issue of impairment.
114. In particular, where repetition is unlikely merely because the registrant will no longer be practising, the courts have held that this does not support a registrant being fit to practise going forward. If anything, ceasing to practise may lead to the opposite conclusion, since a registrant's skills could deteriorate with lack of use<sup>168</sup>.
115. Retirement will be relevant to the consideration of sanction and, in particular, to the necessity of imposing a restrictive sanction.
116. In assessing the proportionality of sanction in a case where a registrant has retired, the PC should consider whether there is an actual (as opposed to theoretical) possibility of the registrant seeking to return to practice and, if so, whether they present any likely future risk to the public.
117. If there is no such risk to the public, the PC should go on to consider the wider public interest i.e. the need to promote and maintain public confidence, and to promote and maintain proper professional standards and conduct. In doing so, the PC should consider whether the wider public interest could be served by issuing a reprimand. If not, the PC should go on to consider whether suspension is appropriate (bearing in mind that conditions are unlikely to be suitable or workable where a registrant has retired), or whether erasure is the only sanction that will adequately safeguard the public interest.

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<sup>168</sup> General Optical Council v Clarke [2018] EWCA Civ 1463.

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