## Whistleblowing Update

<table>
<thead>
<tr>
<th>Purpose of paper</th>
<th>This paper sets out proposed changes to the whistleblowing policies which were approved in 2016 and highlights the GDC’s approach to the new requirement to report certain whistleblowing matters.</th>
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<tbody>
<tr>
<td>Status</td>
<td>Public session</td>
</tr>
<tr>
<td>Action</td>
<td>For approval</td>
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| Corporate Strategy 2016-19 | Partners  
Objective 2: To work with the NHS, regulators, and other stakeholders to improve the overall system of dental regulation.
Performance  
Objective 3: To be transparent about our performance so that the public, patients, professionals and our partners can have confidence in our approach. |
| Business Plan 2017 | Priority three: Drive improvement in dental regulation |
| Risk register    | N/A                                                                                                                                                                                            |
| Decision Trail   | The current whistleblowing policies for staff and Council members and Associates were approved by Council in June 2016.  
The additional reporting requirements were discussed at the Executive Management Team meeting on 11 July 2017 and at the ARC meeting on 5 September 2017. The ARC also reviewed the amendments to the GDC’s whistleblowing policies at its meeting on 5 September 2017. |
| Next stage       | The report on whistleblowing matters dealt with by the GDC as a prescribed person will be prepared by the deadline of September 2018.                                                           |
| Recommendations  | Council is asked to:  
• note the matters set out in this paper; and  
• approve the revised policies. |
1. Executive summary

1.1. In 2016 the GDC drafted new whistleblowing policies for employees and workers, and for Council Members and Associates. Council approved both of these documents in June 2016, and they were introduced to the organisation, along with guidance for both those raising concerns and their managers. The policies and guidance required a review in June 2017. Amendments have been made to the policies in relation to the GDC’s role as a prescribed person, for clarity. No amendments have been made to the guidance documents.

1.2. In addition to responsibilities for its own workers, the GDC has wider obligations as a “prescribed person” for the purposes of whistleblowing. There are over 60 organisations which are prescribed persons, who have been chosen because they have an authoritative or oversight relationship with their sector. In practice, being a prescribed person means that the GDC is an alternative route for someone wishing to blow the whistle in relation to matters concerning our statutory functions.

1.3. From April 2017, there is an additional requirement for prescribed persons to publish an annual report – the first of which is due by September 2018 – detailing the concerns which have been raised and what the GDC has done in relation to them.

1.4. The GDC has reviewed the legislation and guidance in this area and noted that, on the basis of the legislative wording alone, it is arguable that all FTP complaints should be included in this report. However, the debates in Parliament and the guidance provided by the Department for Business, Energy & Industrial Strategy, make clear that is not the aim of the reporting requirement. The intention appears to be to capture matters which have been raised with a prescribed person as an alternative to the whistleblower’s employer. The GDC has therefore taken a decision to focus on these matters in the report.

1.5. A system to capture these matters is in place, and the 2017/18 report will be prepared by the Governance team, who have overall responsibility for whistleblowing. This will need to be a separate report to the Annual Report and Accounts as the reporting year does not match the GDC’s current timetable. It is suggested that the Audit and Risk Committee review the draft report, prior to publication.

1.6. The Council is asked to

- note the matters set out in this paper, and
- approve the revised policies.
2. **Raising a concern (background)**

2.1. The Employment Rights Act 1996 (the Act) sets out how someone who wants to raise a concern about something at work can do so, whilst protecting their employment status. There are a number of people with whom such a concern can be raised, including an employer (or another responsible person), a Minister of the Crown and a prescribed person.

2.2. The Act sets out a two-stage approach to this issue:

1. is the information a qualifying disclosure; and
2. depending on the person it is made to, does it fulfil the additional criteria (if any)?

2.3. In respect of whether the information is a qualifying disclosure, the disclosure must be made:

- by a worker (a wider legislative definition than an employee and includes agency workers, self-employed dentists and student nurses) or a former worker;
- regarding a concern that a crime is being committed, someone is failing to do something required by law, a miscarriage of justice is occurring, there is a risk to health and safety, the environment is being damaged, that someone is hiding any one of these issues, or that any of them are likely to happen or have already happened;
- in the public interest (according to the whistleblower’s reasonable belief).

2.4. Disclosures to prescribed persons, such as the GDC, also require the maker to reasonably believe that the matter falls within the remit of the body that they are making it to, and that the information disclosed and the allegation contained in it are substantially true.

3. **Reporting Requirements**

3.1. In a bid to increase the transparency of whistleblowing practices there is now a requirement for prescribed persons to publish (on the website or otherwise) an annual account of whistleblowing reports about other organisations. These requirements are set out in the Prescribed Persons (Reports on Disclosures of Information) Regulations 2017 and include:

- the number of disclosures received during the reporting period that the GDC reasonably believes are qualifying disclosures within the meaning of the Act and which fall within our statutory remit;
- the number of disclosures where further action has been taken – and a summary of that action;
- an explanation of how the disclosures received have impacted on the GDC’s ability to perform its functions and meet its objectives; and
- an explanation of the GDC’s functions and objectives.

3.2. When considering what to report there was a question as to whether all FTP complaints should be included. This question arose due to the structure of the legislation, as set out above (paragraph 2.2).

3.3. It is clear from the section relating to disclosures made to an employer, that any concern must be raised with the whistleblower’s own employer. The legislation states that the qualifying disclosure must be made by a worker:

“(a) to his employer, or
(b) where the worker reasonably believes that the relevant failure relates solely or mainly to –
(i) the conduct of a person other than his employer, or
(ii) any other matter for which a person other than his employer has legal responsibility, to that other person.” [my underlining].
3.4. This narrow remit is not mirrored in the section relating to prescribed persons. Therefore, it is arguable that a disclosure made by any worker or former worker would qualify. This could include any patient complaint about a registrant on the basis that the patient is, or is likely to be, a worker, the issue is about the health and safety of an individual and the disclosure is arguably in the public interest.

3.5. However, the debates in Parliament and the guidance for reporting make it clear that simply capturing the numbers of FTP complaints (which are already reported on) is not the intention behind these new regulations. The GDC has therefore decided to limit the matters reported to those it considers are qualifying disclosures which are made about a person’s own employer – or other responsible person. These can be published alongside FTP data.

3.6. It is envisaged that the draft report is approved by the ARC before being published, following the closure of the reporting year in March next year.

4. Amendments to policies

4.1. Part of the work programme following the 2015 PSA report was to review the whistleblowing policies for workers and for Associates. New policies were drafted, with support from the whistleblowing charity Public Concern at Work. These policies were approved by Council in June 2016 and were due for review this year.

4.2. Amendments have been suggested to both policies to further clarify the role of the GDC as a prescribed person and to set out what an individual should do if they receive a disclosure.

5. Internal systems

5.1. Within the GDC, mechanisms have been put in place to identify such disclosures, which include all staff being made aware of the GDC’s responsibilities and information and guidance being available on the intranet, including the requirement to report the disclosure to the whistleblowing champion for the relevant part of the GDC. Information is being developed, which will be available on the GDC website, explaining the GDC’s role as a prescribed person and the GDC’s Standards are being updated accordingly.

5.2. ARC asked for an internal procedure for staff on dealing with these disclosures to be brought back to the next ARC meeting on 1 November 2017. This in the process of being developed.

6. Risk and considerations

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<th>Communications</th>
<th>Guidance on the GDC</th>
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<tr>
<td>Equality and Diversity</td>
<td>The whistleblowing policies apply to all staff, workers and Council members and Associates equally</td>
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<tr>
<td>Legal</td>
<td>The GDC’s role as a Prescribed Person is set out in legislation. Details can be found in the paper.</td>
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<tr>
<td>Policy</td>
<td>N/A</td>
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7. **Recommendations**

7.1. The Council is asked to:

- note the matters set out in this paper, and
- Approve the revised policies.

8. **Internal Consultation**

8.1. Where the matter covered in the paper has implications for other areas of the organisation, or where the knowledge and experience of another team has been taken into account, please note their input in this section by, at least, completing the table and including additional comments where applicable.

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<thead>
<tr>
<th>Department</th>
<th>Date and consultee name</th>
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<tbody>
<tr>
<td>HR</td>
<td>Alex Bishop</td>
</tr>
<tr>
<td>Governance</td>
<td>Clare Mitchell</td>
</tr>
<tr>
<td>Corporate Legal</td>
<td>Melissa Sharp</td>
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<tr>
<td>Executive Management Team</td>
<td>Bobby Davis</td>
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