

## Annual DSG Report 2018

<b>Purpose of paper</b>	This paper sets out a summary of the work undertaken by the Decision Scrutiny Group (DSG) in 2018.
<b>Action</b>	For <b>noting</b>
<b>Corporate Strategy 2016-19</b>	<i>Performance - Objective 1:</i> To improve our performance across all our functions so that we are highly effective as a regulator.
<b>Business Plan 2016</b>	<i>Priority 2:</i> Improve our overall performance.
<b>Decision Trail</b>	This paper is prepared on an annual basis as previously agreed with Council.
<b>Next step</b>	N/A
<b>Recommendations</b>	Council is asked to <b>note</b> the annual report of the Decision Scrutiny Group.
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<b>Appendices</b>	1. Quarterly breakdown of DSG

## Executive summary

1. This paper is a summary of the work of the Decision Scrutiny Group in 2018. This is the first full year this group has been in place following the proof of concept in 2017.
2. Overall 382 reviews were completed in 2018, with 360 decisions being rated as green, 14 decisions rated as amber and eight decisions rated as red.

Case Stage	Green	Amber	Red	Total
IAT	110	3	5	118
Casework	123	2	0	125
Case Examiner	93	6	3	102
Hearing	34	3	0	37
<b>Total</b>	<b>360</b>	<b>14</b>	<b>8</b>	<b>382</b>

3. Of these 94 cases were discussed at quarterly meetings. From these meetings discussion 53 further actions were raised.
4. As this is a newly established group most early actions relate to review of the terms of reference, sampling methods, reporting and review methods. As the time went on the group identified learning and actions relating to guidance improvements, feedback for decision makers and general areas for improvements.
5. The establishment of DSG enabled QAG to be entirely criterion based in determining what decisions to consider. This has had a significant positive benefit for QAG.
6. To provide support and consistency the facilitation team has been formed to cover the Quality Assurance Group (QAG) and the DSG. This team is made up of the Head of Right Touch Regulation, the Quality Assurance Specialist, and the FTP Administrator, and came into effect in September 2018, however the management of the DSG was fully handed over after the Q3 DSG meeting in October 2018.
7. This team ensures a clear link between QAG and DSG while allowing each group to fully exercise their individual remit. This team also ensures that the sampling and reviews are completed appropriately each month, that the papers are clear and circulated in reasonable time prior to the meeting, and that actions and learning are delegated suitably, and updates are chased.
8. Following completion of their 12-month term, Rosemary Carter stepped away from the position of Chair of DSG to be succeeded by the newly appointed independent chair, Steve Townsley.

## Background

9. The purpose of the DSG is to work collaboratively to improve the quality of decision making by scrutinising a randomly selected sample of decisions made across the Fitness to Practise (FtP) process.
10. The DSG considers a sample of decisions from all stages of the FTP process and:
  - 10.1 Identifies if relevant processes were followed correctly, and if the decision reached is within the reasonable range of outcomes;
  - 10.2 Identifies and highlights good practice or areas for improvement within a decision and process;
  - 10.3 Refers any thematic or strategic concerns identified in reviews to the Regulatory Policy Forum;
  - 10.4 Works in tandem with QAG to provide learning and identify areas of improvement, monitoring trends and progress, providing feedback where appropriate.

## Findings

11. In total 382 reviews were completed on decision made in 2018, the group discussed 94 of these cases at 4 meetings over the year.

Case Stage	Green	Amber	Red	Total
IAT	110	3	5	118
Casework	123	2	0	125
Case Examiner	93	6	3	102
Hearing	34	3	0	37
<b>Total</b>	<b>360</b>	<b>14</b>	<b>8</b>	<b>382</b>

12. The operation of the group had the following major benefits
13. A total of 382 cases were reviewed in 2018. This compared to 160 cases that were randomly selected and independently audited by Penningtons and 136 cases chosen for scrutiny by QAG. This additional level of assurance of FtP decision making and associated processes is a significant strengthening of the QA infrastructure.
14. The random nature of case selection demonstrated its value by identifying a small number of decisions of concern that otherwise would not have been detected. For example in Quarter 4 an (albeit rare) set of circumstances arose resulting in a failure of process within the IADG forum. This was identified solely due to random sampling.
15. Best practise is also being identified and disseminated as appropriate, improving quality from a position of strength as well as dealing with areas of weakness.
16. A fuller overview of learning is provided in Appendix 1

## Actions and outcomes

17. Of the 94 cases discussed at DSG, 52 raised further actions. 42 Of these actions are complete with 10 still in progress or ongoing.

Actions	Q1	Q2	Q3	Q4	Total
Complete	2	16	16	8	42
In Progress	0	1	1	8	10
<b>Total</b>	<b>2</b>	<b>17</b>	<b>17</b>	<b>16</b>	<b>52</b>

18. The majority of the actions raised in the first two quarters relate to review of the terms of reference, sampling methods, reporting and review methods. As the time went on the group identified learning and actions relating to guidance improvements, feedback for decision makers and general areas for improvements.
19. Over the last year three cases were found to have materially flawed decisions and a rule 9 referral was made, and two cases were found to be cancelled incorrectly and have been referred back to the IADG for further investigation.

## Risks and considerations

20. No new strategic or operational risks were identified in the last year.

## Recommendations

21. The Council is asked to **note** the annual report of the Decision Scrutiny Group.

## Appendix 1: Quarterly breakdown of DSG

### 1. Quarter one

Q1	Green	Amber	Red	Total
IADG	5	0	0	5
Casework	5	0	0	5
Case Examiner	1	2	2	5
Hearing	3	2	0	5
<b>Total</b>	<b>14</b>	<b>4</b>	<b>2</b>	<b>20</b>

- a. In Q1 the group discussed 20 decisions, five of which were rated as amber and two as red.
- b. For both of the red decisions the group deemed that the decisions were materially flawed, and the case merited further investigation under a Rule 9 referral.
- c. For one of the amber cases while the group considered the decision flawed it was decided it was not in the public interest for a fresh determination to be made.
- d. For four of the amber cases further feedback and training was recommended for the Case Examiners and Panellists due to contradictory decisions and lack of clarity in decision making.
- e. The group also highlighted good practice in the clarity of some of the decision making. This was particularly praised for one Assessment decision which was commended for being extremely clearly laid out and well-reasoned, making it easy to follow.

### 2. Quarter two

Q2	Green	Amber	Red	Total
IADG	5	0	0	5
Casework	5	0	0	5
Case Examiner	5	0	0	5
Hearing	4	1	0	5
<b>Total</b>	<b>19</b>	<b>1</b>	<b>0</b>	<b>20</b>

- a. In Q2 the group discussed 20 decisions, only one of which was rated as amber.
- b. For the amber case there were concerns with the conflict in what was said in the decision. As it was not written well and contained a clear contradiction it could potentially put the GDC at risk from appeal.
- c. Otherwise all other cases were agreed to be rated as green. Some feedback related to sensitivity and clarity in drafting was raised for Casework Managers and Caseworkers, and while all these decisions were deemed to be standard and reasonable no specific good practice was highlighted.

### 3. Quarter three

Q3	Green	Amber	Red	Total
IADG	8	0	0	8
Casework	7	1	0	8
Case Examiner	7	0	1	8
Hearing	6	1	0	7

<b>Total</b>	28	2	1	<b>31</b>
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- a. In Q3 31 cases were discussed by the group, of which two were rated amber and one rated red.
- b. For the red rated case the group were split on the outcome of this case. Though it was felt that the published warning issued did not fully capture the seriousness of the action, it was felt that this decision was not outside reasonable bounds and no rule 9 referral was made.
- c. For one amber case it was found that a third person account of the incident was preferred over the informant account at the casework assessment stage. It is not for the decision makers at this stage to weigh the evidence, even if the third party evidence is strong. The learning from this case was fed back to the decision makers and a rule 9 referral was made for this case. It was also highlighted to the reviewers that going forward these findings should be rated as Red.
- d. For the final amber case the group found that the committee and legal advisor appeared to be biased towards the registrant. The group's main concern was regarding the false use of the title, however the committee determined it wasn't misleading. The rationalisation behind the committee was questioned. It was also noted that there was a similar case previously of a dental nurse, who engaged with the whole process and got suspended. In this case the registrant didn't engage and had no repercussions. Noted that this would be useful to use this case for training purposes. The group re-evaluated this case as Red and it was also discussed at QAG.
- e. At this meeting The IAT was praised for one of the decisions reviewed as a good example of best practice. In this case further information was needed for a decision to be made at this early stage, therefore the case was adjourned in order to get this information though this would affect internal KPIs. It had previously been raised at QG that closing a case when asking for further information in order to meet KPIs is bad practice as this not only is misleading to the informant but will skew that registrant's FTP history as there could be two cases for one complaint. This case was also mentioned at the following QAG to highlight the best practice the IAT were displaying.

#### 4. Quarter four

Q4	Green	Amber	Red	Total
<b>IADG</b>	6	0	2	8
<b>Casework</b>	4	1	0	5
<b>Case Examiner</b>	5	0	0	5
<b>Hearing</b>	4	1	0	5
<b>Total</b>	19	2	2	<b>23</b>

- a. In Q4 23 cases were discussed by the DSG, with two cases rated as amber and two as red.
- b. Two cases reviewed at IAT stage were rated as Amber by the reviewer, and amended to Red by the DSG:
  - i. Both of these cases were raised following one of our internal Clinical Dental Advisers (CDA) raised concerns about the registrants who had acted as secondary treating dentists for the case they were advising on.

- ii. When these cases were then discussed at the IADG the Senior CDA disagreed with the referral to IAT and concluded that the concerns did not form an FTP issue. The decision at IADG was to treat these cases as created in error and cancel the cases.
  - iii. The DSG agreed that this should never have happened, as a case should only be cancelled for administrative errors and never when actual concerns have been raised. There was also a worry of placing the opinion of one CDA above the other, which raises questions on accepting the original CDA's assessment of the case.
  - iv. The DSG determined that these cases should be put forward for assessment and a 3<sup>rd</sup> opinion sought using an external CDA to ensure there is no bias. It was also agreed that the RAG rating for these cases should be amended to Red.
  - v. The IADG have been advised that a case that has been heard at IADG should never be cancelled unless raised from an admin error, i.e. duplicate case, a case raised to the wrong registrant.
- c. One case at hearing stage was rated as Amber by the reviewer, raising an issue also seen at QAG.
  - i. In this case the Review Panel determined that the registrant was no longer impaired, and the decision was to let their suspension lapse. Their reasoning for this was based on the original determination that 6 months would be sufficient time suspended to protect the public interest.
  - ii. However, it was highlighted that the review panel do not need to be beholden to the original decision, and if a person's fitness to practise is no longer impaired is it right that they should remain off the register.
  - iii. This is a continuation of the lack of clear rationale in decision drafting, as also highlighted by the PSA, and the feedback will be given to the appropriate teams along with the QAG learning of the same type.
- d. The group also identified good practice on cases. In one case in particular it was noted the way the decision maker had structured the list of mitigating and aggravating factors was helpful, especially for someone with no prior knowledge of the case. The group recommends that we use this case as an example of best practice and share this learning.