

## THE GENERAL DENTAL COUNCIL'S POLICY ON COMPLIANCE WITH AND ENFORCEMENT OF THE DENTISTS ACT 1984 OFFENCES

### INTRODUCTION

The General Dental Council ("GDC") is the statutory body which regulates dental professionals in the UK. All dentists, dental nurses, dental technicians, clinical dental technicians, dental therapists, dental hygienists, and orthodontic therapists must be registered with us to work in the UK.

Our overarching objective as the UK's dental regulator is public protection. Our work is funded by the annual retention fees paid by those who must register with us to practise dentistry lawfully in the UK.

To further our pursuit of our overarching objective, the Dentists Act 1984 ("the Act") gives us the power to investigate allegations of illegal practice of dentistry by unregistered individuals or registered dental professionals who continue to practise whilst suspended from the register.

This policy document sets out the approach to be adopted by the GDC when considering information received that a criminal offence has been, or may have been, committed by an individual contrary to one of the following sections of the Dentists Act:

- **s.38: the practice of dentistry (as defined in s.37 of the Dentists Act) by laypeople.** For example, dentistry performed by an individual who is not registered with the GDC.
- **s.39: the use of practitioners' title by laypeople.** For example, the title dental technician being used by an individual who is not registered with the GDC.
- **s.41: carrying on the business of dentistry (as defined by s.40 of the Dentists Act) by laypeople.** For example, operating a dental practice, as the owner, director or partner, when you are not registered with the GDC.
- **s.43(1): carrying on the business of dentistry as a body corporate when a majority of its directors are not registered dentists or dental care professionals.**
- **s.43(2): being a director of a body corporate carrying on the business of dentistry at any time when erased or suspended from a register.**

In outline, our objective is to encourage compliance through proportionate use of a range of tools rather than relying solely on prosecuting.

This policy document covers the purpose of ensuring compliance with the Act and when justified, enforcement of the Act, which includes the criteria for investigation and prosecution of offences and applications that may flow as a result of a conviction.

This statement also notes the GDC's policy in relation to publicity prior to and after prosecution.

## **THE PURPOSE OF COMPLIANCE OR ENFORCEMENT ACTION**

The purpose of compliance or enforcement action by the GDC is to:

- Protect the public;
- Promote and achieve sustained compliance with the Act, including by increasing knowledge and understanding of the Act and the GDC's role;
- Maintain public confidence in the dental profession and the regulation of dental services;
- Ensure that individuals or businesses/companies who fail to comply with the Act are held to account, which may include bringing alleged offenders before the courts in England and Wales or recommending prosecution in Scotland or Northern Ireland.

Before considering whether any enforcement action is necessary and proportionate, including prior to conducting a thorough investigation, the GDC will conduct initial enquiries and research into the circumstances following receipt of allegations from an informant.

In some cases, proportionate compliance or enforcement action(s) may be appropriate without a formal investigation being undertaken. This may include the provision of information, other correspondence, warning letters or letters requiring individuals to take (or cease) certain actions or activities. In addition, in suitable cases, this may include a compliance visit or contact by telephone (further details about which are set out below).

Factors which are relevant to whether a more detailed and formal investigation is undertaken are also set out below. A formal and thorough investigation will always be undertaken before a prosecution is considered.

It should be noted that enforcement action taken by the GDC is distinct from civil claims for compensation and is not undertaken in all circumstances where civil claims may be pursued, nor is it taken with the aim of assisting in such claims.

In deciding what resources to devote to these investigations, the GDC will have regard to the principles of enforcement set out below and the objectives published in the GDC's Corporate Strategy and business plan.

## **THE PRINCIPLES OF COMPLIANCE AND ENFORCEMENT**

The GDC believes in the fair enforcement of the above sections of the Dentists Act through evidence-based decision-making. This is informed by the principles of Right-touch Regulation:

- proportionality in applying the law and seeking to secure compliance;
- consistency of approach;
- targeting of enforcement action;
- transparency about how the GDC operates and what those being investigated for criminal offences can expect;
- accountability for the GDC's actions;
- agility of approach and action.

## **Proportionality**

Proportionality means evaluating taking enforcement action given the resource and other implications of doing so, against the risk of possible harm to public safety and/or the seriousness of any breach. Action taken by the GDC should be proportionate. In practice, this means that the GDC will take account of the seriousness of the alleged offence, what the Act requires, the extent of risk to the public's health, safety and well-being resulting from any breach, whether action is required to ensure public confidence in the dental profession and its regulation, and the available GDC resources.

## **Targeting**

Targeting means focusing the GDC's resources on the most serious breaches of the Act in the public interest.

## **Consistency**

Consistency means adopting a similar approach in comparable circumstances to achieve similar results. It does not mean standardisation of procedure, as each case will be considered on its own merits. The GDC recognises that there are multifaceted reasons that will need to be evaluated and considered in each case. The GDC will ensure that its decisions and reasons are recorded so that it can be held accountable for its decisions.

## **Transparency**

Transparency means helping individuals who come under investigation to understand what is expected of them and what they should expect from the GDC. Transparency also requires the GDC to ensure that potential witnesses and other parties are kept informed, subject to legal constraints. In addition to transparency in individual cases, given the criminal nature of the offences (listed above) and to prevent any prejudice to an investigation, the GDC will consider when it is appropriate to disclose information about an investigation outside of its publicity policy.

The GDC also recognises the importance of being open and transparent about our enforcement policy.

## **Accountability**

To ensure accountability, the GDC has policies, standards and procedures in place against which it can be judged. The GDC also has a system for handling and processing comments and complaints.

## **Agility**

Agility means anticipating changes that are going to occur in the GDC's regulatory remit and considering what, if any, action should be taken to mitigate any risks to the public.

## **INVESTIGATION**

Upon receipt of information which alleges the commission of an offence under the Act, a decision will be made as to whether to commence an investigation.

In considering whether or not it is appropriate to commence an investigation, the GDC will consider each case on its own facts and will adopt a merits-based approach, recognising the principles of compliance and enforcement identified above. Factors that may be taken into account in deciding whether to commence an investigation are:

- Any harm that has resulted as a consequence of the alleged offence(s).
- The number of patients and / or members of the public treated or affected during the relevant time.
- Whether the offending activity is ongoing or has ceased.
- The length of time over which the alleged offence(s) took place.
- Whether the offending is likely to be continued or repeated, for example, by a history of recurring conduct.
- Whether the GDC has engaged with the individual or company before.
- Whether the individual or company was warned about their conduct prior to committing the alleged offence.
- Whether we have prosecuted the individual or company before.
- Whether the individual has a previous conviction or other adverse finding, including a finding by a regulator.
- Whether the offending involved a breach of trust or abuse of position.
- Whether there are any other aggravating features (such as age or vulnerability of the complainant).
- The number of complaints received.
- Whether the individual is currently subject to a regulatory determination, such as suspension by the GDC from the register of dentists or dental care professionals.
- The mitigation offered by the individual.
- Whether the individual has revealed or admitted the illegal practice.
- Whether the matter could be better pursued by another body (such as Police, ASA, Trading Standards, CQC, GMC, NMC etc.).
- Whether the GDC could work in partnership with another body (such as Police, Trading Standards, CQC, GMC, NMC etc...).
- Whether a compliance visit is likely to have the desired effect of ceasing the alleged illegal practice.
- Whether a prosecution is likely to have a significant effect on maintaining public confidence in the profession or in deterring others from committing an offence.
- Whether a prosecution is likely to have an adverse effect on the complainant's physical or mental health.

This is a non-exhaustive list and other factors may also be considered by the GDC. Additionally, not all factors are of comparable importance. The weight of each factor will be determined by the GDC's reviewing lawyer when considering the individual circumstances of each case.

During the course of the investigation stage, if it is deemed appropriate to ask an individual questions under caution, these questions may be put either by way of an oral recorded interview or by way of written correspondence. The individual will be advised of their right to independent legal advice and cautioned in accordance with the law. The decision as to whether to question under caution and, if so, which method to use, is made on a case-by-case basis by the reviewing lawyer.

If, at any time during the course of the investigation, it appears to the reviewing lawyer that sufficient evidence is unlikely to be obtained to bring a prosecution, they may decide to take alternative compliance or enforcement action or to close the case.

## **COMPLIANCE VISITS**

The GDC may carry out compliance visits as part of its compliance and enforcement activities to seek to secure compliance with the requirements of The Dentists Act 1984. The purpose of a compliance visit is to engage with individuals who are the subject of an illegal practice investigation, and to provide them with information and guidance on what constitutes illegal practice under the provisions of the Act, with the stated aim of ensuring compliance with the Act, i.e., stopping any illegal practice. In suitable cases, contact may be made by telephone.

Compliance visits are reserved for cases where the GDC has evidence to indicate the illegal practice of dentistry *may* be occurring and such a visit is appropriate, necessary and proportionate to stop any further criminal offences taking place, to achieve compliance with the law and to ensure that the public remain protected from further risk of harm.

A compliance visit may be undertaken at any stage following the receipt by the GDC of allegations or information about potential illegal practice. Previous illegal practice history may be a factor indicating that a compliance visit may be appropriate without a formal or detailed investigation being undertaken.

Alternatively, a compliance visit may be undertaken during or following any investigatory process into whether an offence under the Dentists Act has been committed. In addition, and as set out below, the reviewing lawyer considering whether a prosecution may be appropriate in a specific case may determine that a compliance visit is the appropriate and proportionate means of seeking to secure compliance with the Dentists Act 1984 in all the circumstances of the relevant case.

## **PROSECUTION**

Once an investigation has been carried out, a decision will be made as to whether to prosecute an individual for one or more offences under the Act (unless an alternative compliance or enforcement action short of prosecution has been identified as appropriate in all the circumstances). A decision on whether to instigate a prosecution is made by a reviewing lawyer authorised on behalf of the GDC. In taking this decision, the reviewing lawyer will apply the provisions of one of the following:

- a) the two-stage 'Full Code Test' set out in the Crown Prosecution Service Code for Crown Prosecutors (if the suspect offence took place in England or Wales);
- b) the two-stage 'Test for Prosecution' set out in the Public Prosecution Service Code for Prosecutors (if the suspected offence took place in Northern Ireland);
- c) the evidential and public interest considerations set out in the Crown Office and Procurator Fiscal Service Prosecution Code (if the suspected offence took place in Scotland).

The GDC relies upon the common law power to instigate private prosecutions preserved under section 6(1) of the Prosecution of Offences Act 1985.

### **TIME LIMITS IN RELATION TO SUMMARY ONLY OFFENCES**

In order to start the court process, an 'information' alleging a summary only offence must be 'laid' (i.e., sent to the court by the GDC) within six months of the date of the commission of the offence itself. This is applicable to all offences committed under the Dentists Act, with the exception of section 38 – the illegal practice of dentistry.

Whilst the time limit for an offence under section 38 of the Dentists Act is also subject to a six-month time limit, it can also be calculated in a different way to the above. Section 38(3) of the Act states:

**s.38(3):** *“Summary proceedings for an offence under this section may be brought within the period of six months beginning with the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to his knowledge; but no such proceedings shall be brought by virtue of this subsection more than two years after the commission of the offence.*

*For the purposes of section 38(3) above, a certificate signed by or on behalf of the prosecutor and stating the date on which such evidence as is mentioned in that subsection came to his knowledge shall be conclusive evidence of that date, and any certificate purporting to be so signed shall be taken to have been so signed unless the contrary is proved.”*

Sufficient evidence to warrant a prosecution means sufficient evidence to provide a realistic prospect of conviction. Information is not evidence, nor is a letter of complaint. Evidence relied upon must follow the rules of evidence as set out in the Criminal Procedure Rules 2020. Examples of evidence include a witness statement with the inclusion of a statement of truth and properly produced exhibits.

The relevant time for calculating time limits begins when the latest piece of evidence, which forms the body of evidence upon which the prosecutor either then or subsequently takes the decision to prosecute, comes to their knowledge. For the section 38 offence of the illegal practice of dentistry only, therefore, the time limit is six months from the date on which this body of evidence comes to the GDC's knowledge (subject to a maximum time limit of two years from the alleged commission of the offence).

## **MAXIMUM PENALTY FOR DENTISTS ACT OFFENCES**

On 12 March 2015, subsections (1), (2) and (4) of section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 were brought into force. This means that Magistrates' Courts are no longer restricted to specified upper limits when deciding what fine to impose upon conviction (s.85(1)). In real terms, this means that any criminal offence committed under the Dentists Act 1984 **carries the maximum penalty available to the court for any offences contrary to the Dentists Act 1984 which is an unlimited fine.**

## **THE DECISION-MAKING PROCESS**

### **General principles**

The reviewing lawyer, who is authorised to make decisions on behalf of the prosecutor, considers each case on its own facts and merits and applies the following general principles to every case. The reviewing lawyer:

- Must be fair and objective, independent and proportionate.
- Must not let any personal views about age, gender (including reassignment), race, religion or belief, disability, sexual orientation of the suspect, informant or witness influence their decisions.
- Must not be affected by improper or undue pressure from any source.
- Must always act in the interests of justice and not solely for the purposes of obtaining or securing a conviction.

The reviewing lawyer will also provide guidance and advice to the GDC's Compliance and Protection Officer, and any other professional investigators whose services are sought throughout the investigative and prosecuting process. This may include matters such as lines of inquiry, evidential requirements and assistance in any pre-charge procedures. The reviewing lawyer will be proactive in identifying and, where possible, rectifying any evidential deficiencies and in bringing to an early conclusion those cases that cannot be strengthened by further investigation.

It is the duty of the reviewing lawyer, on behalf of the prosecutor, to ensure that all relevant evidence in relation to a case is put before the court and that obligations of disclosure are complied with.

In addition to the above principles, since the GDC is a public authority for the purposes of the Human Rights Act 1998 ("the HRA"), the reviewing lawyer must apply the principles of the European Convention on Human Rights in accordance with Section (6) of the HRA. This section states that it will be unlawful for the public authority to act in a way which is incompatible with the ECHR.

The reviewing lawyer will consider whether there are European Convention rights which would be relevant to the decision to prosecute. For example: whether the right against self-incrimination has been infringed; how the evidence was collected and obtained; whether the right to privacy was infringed through access to correspondence or medical information. These are all subject to the test of proportionality.

A number of factors may have been taken into account when considering whether to commence an investigation, however, when deciding whether to prosecute it is only the available evidence and the public interest that will be considered by the reviewing lawyer in accordance with the applicable test for prosecution depending on where the commission of the offence took place.

### **The Full Code Test (England & Wales)**

Once the matter has been referred to the reviewing lawyer for consideration, they will review the case to make sure that it is appropriate and proportionate to proceed with a prosecution. The reviewing lawyer will only start a prosecution when the case has passed both stages of the Full Code Test under the Code for Crown Prosecutors. The Code is a public document issued by the Director of Public Prosecutions (DPP) that sets out the general principles Crown Prosecutors should follow when they make decisions on a case. As such, it is the same test utilised by the Crown Prosecution Service in relation to public criminal prosecutions in England and Wales.

#### *The Evidential Stage*

The first stage is consideration of the evidence. If the case does not pass the evidential stage, it must not go ahead no matter how important or serious the allegations may be. In order to pass the evidential stage, the reviewing lawyer must be satisfied that there is sufficient evidence to provide a 'realistic prospect of conviction' against the accused in relation to the charge. The reviewing lawyer must consider what the defence case may be, and how that is likely to affect the prosecution case, including its prospects of success.

A 'realistic prospect of conviction' is an objective test. It means that an objective, impartial and reasonable jury, bench of magistrates or a judge hearing a case alone, properly directed and acting in accordance with the law, is more likely than not to convict the accused of the charge alleged.

When deciding whether there is enough evidence to prosecute, the reviewing lawyer must consider the admissibility of the evidence and its importance in relation to the evidence as a whole, its reliability and its credibility.

#### *The Public Interest Stage*

If the case does pass the evidential stage, the reviewing lawyer must proceed to the second stage and decide if a prosecution is in the public interest. A prosecution will usually take place unless there are public interest factors tending against prosecution, which clearly outweigh those tending in favour, or it appears more appropriate in all the circumstances of the case to divert the person from prosecution.

Therefore, when deciding whether a case should be prosecuted in the courts, the reviewing lawyer should consider the alternatives to prosecution.

The Code for Crown Prosecutors lists some common public interest factors both for and against prosecution, emphasising that they are not exhaustive and that the factors that apply will depend on the facts of each case.

Some of the common public interest factors listed in the Code for Crown Prosecutors guidance which may be relevant to a decision to prosecute an offence under the Dentists Act are as follows:

- Severity of offence committed (the more serious the offence, the more likely it is that a prosecution is required).
- Culpability of the suspect (level of involvement, whether it was planned, degree of benefit obtained, whether the suspect suffers from any mental or physical impairment)
- The circumstances of, and the harm caused to the victim.
- Whether the suspect was in a position of trust or was perceived to be by the patient or customer.
- The suspect's age and maturity at the time of the offence.
- The impact on the community (the greater the impact, the more likely it is a prosecution is required).
- Whether prosecution is a proportionate response. This includes consideration of cost to the GDC and the wider criminal justice system in bringing a prosecution.

In addition to the above factors, the reviewing lawyer will also consider whether there is a significant risk of harm to the public and whether a prosecution is likely to have an impact on the public's confidence in the profession.

The reviewing lawyer must decide how important each factor is in the circumstances of each case and go on to make an overall assessment, recording their reasons for any decision.

If the reviewing lawyer decides that the evidential test set out in the relevant guidance is not made out, and it does not appear that further enquiries would obtain evidence which would be likely to result in the evidential test set being made out, then the reviewing lawyer shall discontinue the investigation. The individual or company complained about may be informed that should further evidence come to light, the discontinuance of the investigation does not preclude the matter being re-opened at a later date.

Please note, the above test is that applied in England and Wales only. Northern Ireland and Scotland have their own prosecutor codes which are broadly similar. We work with key stakeholders when investigating matters of illegal practice in Northern Ireland or Scotland who will instigate a prosecution, if required, on behalf of the GDC. Any decision to prosecute in Northern Ireland or Scotland would be made by those acting for the GDC in the relevant nation. A summary of the prosecutor codes for Northern Ireland and Scotland is set out below.

### **Summary of the Code for Prosecutors (Northern Ireland)**

The Director of Public Prosecutions issues the Code for Prosecutors which outlines the general principles to be applied in determining whether criminal proceedings should be brought, the charges and how to conduct prosecutions.

Northern Ireland's Code for Prosecutors is the same as the England & Wales Code in that a two-stage test (referred to as the Test for Prosecution) must be met in order to bring a prosecution. The evidential test must be considered first and if passed, then the public interest test is considered. If the evidential test is not met, the matter cannot proceed, no matter how serious or sensitive it may be.

In terms of the evidential test, there must be a reasonable prospect of conviction based on there being an identifiable suspect, credible evidence and that a jury could reasonably be expected to find proved beyond reasonable doubt that the suspect had committed the crime. At this stage, it is also important to consider what the defence case may be and whether it would affect the prospect of conviction.

The public interest test of the Code for Prosecutors requires consideration as to whether the public interest requires prosecution. Broadly speaking, where there has been a contravention of the law, the public interest requires prosecution, however it is for the Public Prosecutor to determine this in every case.

There are a number of factors the Public Prosecutor must consider at the public interest test (including for and against prosecuting), and the majority of which are akin to those set out above in the England & Wales Full Code Test.

If the evidential test is met, the Public Prosecutor may decide that it is in the public interest to dispose of the case by an alternative to prosecution, known as a diversionary disposal. The Code for Prosecutors sets out the range of factors for considering an alternative disposal, including the offender's age, their mental health and a previous clear record.

### **Summary of the Crown Office & Procurator Fiscal Service's Prosecution Code (Scotland)**

Under the authority of the Lord Advocate the Crown Office & Procurator Fiscal Service provides the sole public prosecution service in Scotland. The Procurator Fiscal decides whether to begin criminal proceedings, or whether to take alternative action, in line with the Prosecution Code which sets out the legal, evidential and public interest considerations.

Firstly, the Procurator Fiscal must decide whether the conduct complained of constitutes a crime under the law of Scotland and whether there is any legal impediment to prosecution.

Secondly, the Prosecution Code sets out the evidential considerations. Similar to the England and Wales Code, if the evidence appears to be insufficient, the matter cannot proceed to prosecution. In order to meet the evidential considerations, the Procurator Fiscal must be satisfied as to the sufficiency, admissibility, reliability and credibility of the evidence.

Lastly, if the evidence satisfies the above, then the Procurator Fiscal must consider what action is in the public interest. The Prosecution Code sets out a number of considerations (which mainly mirror those set out in the England & Wales Code, including, the nature and gravity of the offence, the impact of the offence on the victim and other witnesses, the age and background of the accused, age and personal circumstances of the victim and other witnesses, motive for the crime, age of the offence, mitigating circumstances, risk of further offending and the effect of prosecution on the accused). In addition, the availability of a more appropriate civil remedy, the powers of the court and public concern will also be considered.

Where the Procurator Fiscal is satisfied that there is sufficient evidence but that it is not in the public interest to prosecute, the Prosecution Code provides for alternatives to prosecution, such as a written or personal warning which makes clear that a repetition of the alleged behaviour would likely result in a prosecution.

## **DECISION ON PROSECUTION**

After reviewing all of the evidence and making an assessment regarding public interest, the reviewing lawyer shall determine whether to:

- i. Take no further action.
- ii. Send a warning letter.
- iii. Engage with the subject of the investigation by any other appropriate means including the carrying out of a compliance visit;
- iv. Refer the matter to another agency (including the GDC's Fitness to Practise department, another regulator or body, the Police or the Crown Office and Procurator Fiscal Service in Scotland, or the Public Prosecution Service in Northern Ireland).
- v. Instigate a criminal prosecution.

## **RECORDING DECISIONS**

The reviewing lawyer will ensure that there is a detailed record of the reasons for their decision in relation to a proposed prosecution, at the time it is made. This record will be held on the case file.

## **APPLICATIONS FOR COMPENSATION ORDERS, CONFISCATION ORDERS AND COSTS**

Where a prosecution results in a conviction, the reviewing lawyer may seek one or more of the following orders if they are satisfied that it is appropriate to do so:

- a) a compensation order;
- b) a confiscation order;
- c) a costs order.

In determining whether or not it is appropriate to apply for a compensation order, the following should be considered:

- a) whether the loss can be quantified;
- b) the impact of the quantified loss on both the victim and the convicted offender;
- c) whether there is evidence to support the quantified loss;
- d) whether the quantified loss can be shown to be wholly attributable to the conduct of the defendant.

In determining whether or not it is appropriate to apply for a confiscation order, the following should be considered:

- a) whether the convicted person has profited from the criminal activity;
- b) whether the profit can be quantified;
- c) whether there is evidence to support the quantified profit.

In determining whether or not it is appropriate to apply for a costs order, the following should be considered:

- a) the extent to which the prosecution has been funded by the GDC and therefore indirectly, by registrants;
- b) compliance with this protocol in the bringing of the prosecution.

## **FAILURE TO PAY COSTS ORDERS IMPOSED**

In order to offset the impact of bringing a prosecution on the annual retention fee of the GDC's registrants, the GDC will pursue the payment of costs ordered to be paid to it by a convicted individual or body corporate if satisfied that:

- a) it is reasonable to do so, taking into account the amount of the costs awarded; and
- b) the convicted individual or body corporate has sufficient means to pay the amount ordered (or such other amount as is agreed subsequently).

If the person against whom the order was made has since become registered, or is no longer subject to a suspension order from the GDC's dentist or dental care professionals register, the Fitness to Practise department at the GDC will be notified of the non-payment of costs and the Fitness to Practise department shall consider and assess whether the matter ought to be referred to the Case Examiners.

## **PUBLICITY**

In furtherance of its statutory function and overarching objective, the GDC will consider whether it is appropriate to issue a press release to the media drawing attention to any conviction that results from a successful prosecution.

## **APPENDIX A**

Codes referred to in this policy document:

- **England and Wales**

Crown Prosecution Service Code for Crown Prosecutors

[http://www.cps.gov.uk/publications/code\\_for\\_crown\\_prosecutors/index.html](http://www.cps.gov.uk/publications/code_for_crown_prosecutors/index.html)

- **Scotland**

Crown Office and Procurator Fiscal Service Prosecution Code

<http://www.procuratorfiscal.gov.uk/publications/prosecution-policy-and-guidance>

- **Northern Ireland**

Public Prosecution Service Code for Prosecutors

<http://www.ppsni.gov.uk/Code-for-Prosecutors-5017.html>

## **ANNEX B: OPERATIONAL GUIDANCE FOR THE IN-HOUSE LEGAL ADVISORY SERVICE (ILAS)**

This annex sets out further operational guidance and general principles to be adopted by ILAS when processing illegal practice cases. In addition to an annual review, the GDC also reserves the right to review and amend this document at any other time.

When considering whether to investigate a complaint or information, in addition to the principles set out above, ILAS shall also have regard to the resources available to both the team and the GDC. Owing to resources, ILAS cannot investigate all complaints received by the GDC.

Prior to commencing any investigation, ILAS will consider other methods of disposal in each case. For example, and wherever possible, the team will utilise the assistance of other bodies or organisations where such bodies or organisations may be better placed to ensure the successful resolution or disposal of the complaint.

The team will also consider whether it is appropriate and proportionate, in the circumstances of each particular case, to write to or call or visit the individual or company complained of warning them about potential breaches of the Dentists Act in order to seek to ensure compliance with it.

### **Illegal Practice complaints (suspended or former registrants):**

Cases concerning a suspended or former GDC registrant will be given high priority by ILAS. Owing to the GDC's statutory responsibilities, to ensure patient safety and also to maintain public confidence in the GDC's Committee's orders, ensuring compliance with orders imposed by one of the GDC Committees is a key priority for ILAS.

Accordingly, should the team receive a complaint regarding a registrant who is suspended, or temporarily or permanently removed from the register by the Professional Conduct Committee for example, this matter would result in a case being opened and the matter being investigated fully.

### **Illegal Practice complaints concerning tooth whitening:**

ILAS will, where appropriate, prioritise non-tooth whitening related illegal practice cases over cases concerning tooth whitening where there is no complaint of patient harm.

Where a complaint concerning tooth whitening is received, ILAS shall consider the following criteria prior to opening a case:

- Does this complaint contain patient harm?
- If so, a case shall be opened and investigated.
- If not, then the team will consider whether it is appropriate to issue a warning letter to the individual or company complained.

When considering whether to issue a warning letter the team will:

- Establish if the individual or company has been contacted by the GDC previously.
- Identify whether any previous contact was made prior to the *GDC v Jamous* judgment. If contact was made prior to the 10 May 2013, then a further warning letter shall be sent to the individual or company highlighting the High Court's judgment.
- Consider whether it is more appropriate to conduct a compliance visit or call.
- Consider whether it is more appropriate to open a case for investigation.

The GDC reserves the right to carry out a compliance visit or call, where appropriate, in relation to any type of illegal practice allegation.

The GDC also reserves the right to investigate and prosecute (subject to the application of the two-stage test described above) any case where it believes that investigating and prosecuting that case may have such a significant impact on the public's confidence in the profession, or in reducing the number of complaints received by the GDC, that it would be beneficial for it to do so.

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