General Dental Council

Guidance

Fitness to Practise:
Guidance for decision makers at the Initial Assessment stage

For consultation only – guidance not in use

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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 the 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[1].

2. One of the ways in which the GDC pursues its objective is by investigating 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 the allegation (formally delegated to the GDC's Casework Team[2], and in this guidance this role at the Initial Assessment stage of the fitness to practise process is referred to as being carried out by IAT). At Initial Assessment, consideration is given to whether the information received gives rise to a fitness to practise concern. Where the Initial Assessment Test is met, the matter must be referred for further investigation at the Assessment stage of the fitness to practise process. When it is not met, the matter must be closed.

4. The aim of this guidance is to promote consistency, transparency, and proportionality in decision-making by IAT.

5. The Appendix to this guidance sets out considerations of particular categories of cases which IAT should consider when determining whether information meets the Initial Assessment Test.

6. Whilst this guidance is primarily intended for use by IAT, it may also be useful to other audiences, including (but not limited to):

    a. the other members of the Initial Assessment Decision Group (see paragraphs [28] to [39])

    b. registrants about whom information has been received and considered at Initial Assessment

    c. legal representatives of registrants about whom information has been received and considered at Initial Assessment

    d. informants (individuals who raise concerns with the GDC about a registrant).

7. IAT should be mindful that, as a public authority, the GDC is subject to the Public Sector Equality Duty under the Equality Act 2010[3] which sets out the requirement to have due regard to the need to eliminate discrimination, and to advance equality of opportunity and foster good

[1] Sections 1(1ZA) and 1(1ZB) of the Dentists Act 1984 (the Act).
[2] Section 14(5) of the Act.
[3] Section 149(1) of the Equality Act 2010.

relations between persons who share a relevant protected characteristic and those who do not. The protected characteristics are:

a. age

b. disability

c. gender reassignment

d. pregnancy and maternity

e. race

f. religion or belief

g. sex

h. sexual orientation.

8. Under its Public Sector Equality Duty, the GDC must take steps to ensure that it makes fair decisions across all its regulatory functions, including fitness to practise, and that its processes address allegations of discriminatory behaviour.

Initial consideration of the information received

9. Before the Initial Assessment Test is considered (see paragraphs [12] to [43]), IAT must first consider whether the information received meets the threshold for a case to be created. This requires initial consideration of whether there is sufficient information to be assessed against the Initial Assessment Test. For the information to be sufficient, it must:

a. relate to a currently registered dental professional

b. sufficiently identify a specific registrant, for example, it should include the GDC registration number, or a combination of other information to enable identification (such as full name and workplace)

c. be sufficiently detailed to enable assessment against the Initial Assessment Test, including what occurred, when, and where

d. go beyond general comment, opinion, or request for advice, for example not a general comment on NHS dentistry or a request for legal advice.

10. Where the information does not meet these criteria, it will not support the creation of a case. In such circumstances, the information should be recorded as a non-case action and closed with recorded reasons.

11. Where the information does meet these criteria, IAT must create a case and apply the Initial Assessment Test.

The Initial Assessment Test

12. The Initial Assessment Test determines the threshold that must be met for fitness to practise concerns to be referred to Assessment for further investigation. The test is set out at paragraph [13].

13. Does the information give rise to a concern that:

    a. harm has been caused, or may be caused, to a member of the public?

       and/or

    b. public confidence in the professions has been, or may be, undermined?

       If yes to one or both, refer to Assessment for further investigation.

       If no:

    c. could further investigation result in a different answer?

       If yes, refer to Assessment for further investigation.

       If no, close with reasons.

14. At this earliest stage of fitness to practise consideration, information may be incomplete, unclear, or still emerging. The bar in the Initial Assessment Test is set at a deliberately low level to ensure potential risks are not missed by closing cases prematurely.

The meaning of 'information' in the Initial Assessment Test

15. 'Information', in the context of the Initial Assessment Test, refers to any material from an informant which has been received by the GDC.

16. Information can include the informant's account which is provided to the GDC, for example via webform, email, post, or telephone. It may also include any images, audio or video recordings, or other documents related to the informant's concerns.

17. Given the low threshold of the Initial Assessment Test (see paragraph [14], the information may be incomplete or untested and is likely to be one-sided.

18. Whilst this may be the case, the information provided must be sufficiently credible, specific, and relevant to meet the Initial Assessment Test and to enable further investigation at the Assessment stage. Examples of information that may not be sufficient include (but are not limited to):

a. General statements of concern without factual detail.

b. Observations or opinions not supported by examples or corroboration.

c. Speculation about behaviour, health, or competence with no detail to substantiate.

d. Unfounded assertions of risk.

19. While such information should not be automatically dismissed, careful consideration should be given to whether the information supports a determination that the Initial Assessment Test has been met.

The meaning of ‘harm’ in the Initial Assessment Test

20. 'Harm' refers to any negative impact resulting from a registrant's actions or omissions. It may affect patients, colleagues, other members of the public, or organisations.

21. Harm may arise from the least to the most serious (for example, those listed at paragraph [24]) of concerns, and may take different forms, including (but not limited to):

a. physical harm or injury

b. psychological/emotional harm or injury

c. financial harm

d. damage to property

e. harm or damage to the reputation of an individual.

22. When considering whether harm has been caused, IAT should also consider whether the registrant's actions have put patient safety at risk. For example, where there is no evidence of actual harm, but the circumstances are such that there has been a clear risk to patient safety (such as using unsafe equipment or working whilst unfit) such a scenario would meet this part of the Initial Assessment Test.

23. At this stage, IAT does not need to consider the veracity of the allegations, only whether the information gives rise to a concern that harm has been caused or may be caused.

The meaning of ‘public confidence in the professions’ in the Initial Assessment Test

24. There is public interest in maintaining public confidence in the professions and upholding proper professional standards and conduct. This is 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. Examples of such failures to meet the required standards include (but are not limited to):

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.

i. Breach of restrictions imposed by the GDC.

j. Failure to hold adequate and appropriate indemnity insurance.

k. Practising outside of scope of practice.

The meaning of ‘further investigation’ in the Initial Assessment Test

25. ‘Further investigation' in part C of the Initial Assessment Test refers to the investigation carried out at Assessment, where Assessment caseworkers are able to make appropriate enquiries and gather additional information to determine whether the concerns suggest that the registrant's fitness to practise may be impaired.

26. IAT have limited information on which to base their decision as to whether the Initial Assessment Test has been met. Part C recognises that a negative answer to parts A and B may simply reflect a lack of information at this stage of the process, rather than the absence of a concern. Part C is intended to ensure that concerns are not closed prematurely where the information available is incomplete or unclear, but where targeted enquiries at Assessment could realistically clarify whether a fitness to practise concern exists. Part C should not be used to progress matters that are speculative, nor to compensate for information that is inherently incapable of meeting the threshold for referral (see paragraphs [9] to [11]).

27. Where further investigation at Assessment would be unlikely to change the response to parts A and B, the matter should be closed with recorded reasons.

The Initial Assessment Decision Group

28. The purpose of the Initial Assessment Decision Group (IADG) is to support consistent and proportionate decision making at Initial Assessment. IADG provides multidisciplinary scrutiny to support consistent and appropriate identification and consideration of potential risks.

The role of IADG

29. IADG brings together clinical, legal, policy and operational expertise to consider cases at Initial Assessment. Through collective consideration, the group supports IAT in assessing whether the information meets the Initial Assessment Test and considering the appropriate Initial Assessment outcome. IADG members contribute insight from their respective areas of expertise, providing informed challenge and perspective to support proportionality and consistency in decision-making. Insight gained from the group's input and discussions will be used to draft the decision.

30. Where there is disagreement within IADG as to whether a matter should be referred to Assessment or closed, the case will ordinarily be referred to Assessment for further investigation.

31. IADG's role is, however, advisory and the ultimate decision-making responsibility remains with the assigned IAT caseworker, who should take account of the group's discussion and advice when making their determination. Where the decision is contrary to the advice provided by another member of IADG, clear reasons for the decision should be recorded (in line with paragraph [41]).

Deciding whether to propose a referral to the Interim Orders Committee

32. When a fitness to practise concern about a dental professional is raised, depending on the nature of the allegations, it may be necessary for the registrant's practice to be restricted while the investigation is underway. This may be necessary for the purposes of public protection, where it is otherwise in the public interest, or where it is in the interests of the registrant concerned[4].

33. In these instances, the Registrar will make a referral to the Interim Orders Committee (IOC) which considers the available information and assesses the risk to the public, the public interest, and/or the registrant's own interests, should they continue to practise on an unrestricted basis while the matter is investigated. Based on that risk assessment, the IOC may impose an interim order to suspend, or place conditions on, a dental professional's registration.

34. As part of the initial consideration of the information, IAT will consider whether a high level of risk is indicated. Where such risk is identified, the assigned legal colleague will review the information, as part of IADG, assess the potential risk posed to public safety and public confidence, and decide whether the question of referral to the IOC should be considered. However, the final decision to refer a case to the IOC is the Registrar's (or their delegate's[5]), who will take a decision informed by legal advice. Where the threshold for proposing a referral is not yet met, the assigned legal colleague may also suggest specific information or investigative steps that may support a potential future proposal to refer from Assessment.

[4] Section 32(4) of the Act.
[5] Section 14(5) of the Act.

Considerations for proposing a referral to the IOC

35. The test for the Registrar when deciding whether to refer a case to the IOC is whether it is appropriate to do so[6].

36. In this consideration, IADG's role is to advise and support the assigned legal colleague in their decision on whether the question of referral to the IOC should be considered by the Registrar. In considering whether a case should be proposed for IOC referral, the assigned legal colleague should consider:

    a. whether an interim order is already in place (in relation to a different case) and, if so, whether the nature and duration of that order appropriately manages risk in relation to the current allegation

    b. the nature and seriousness of the concern or behaviour, and whether it raises an immediate risk to patient safety

    c. the cogency and credibility of the available information

    d. whether the information available provides any indication as to the likelihood of repetition.

37. While all cases will need to be considered individually, examples of issues which may require interim order referral include, but are not limited to:

    a. Where the registrant is/was on an NHS Performer List, they have been removed from that list or had restrictions placed on their entry in that list. In these circumstances, consideration should be given to the reasons for the Performer List action.

    b. Clinical allegations involving numerous patients or a very serious single clinical incident (and particularly if the allegations relate to recent conduct and there is evidence to indicate the risk to patients is ongoing).

    c. Alleged sexual misconduct.

    d. Alleged physical assault or violence relating to patients, colleagues, or other members of the public.

    e. Alleged serious cross infection control issues.

    f. Investigations, charges, and convictions for criminal offences (with particular consideration given to the seriousness of the offence and whether, if the registrant is later convicted, it may damage public confidence should they have been able to continue working unrestricted in the meantime. In relation to the latter, such cases may include (but are not limited to) allegations of:

[6] Section 27(5)(b) of the Act.

i. child sexual abuse (including, but not limited to, possession or distribution of images of child sexual abuse, physical contact, or online contact)

ii. rape or sexual assault

iii. serious violence

iv. serious dishonesty or other fraud (particularly on patients or the public purse).

g. A decision by a third party (e.g. the Disclosure and Barring Service) to bar the registrant from working with children or vulnerable adults.

h. An allegation relating to the registrant's health which impacts their ability to practise safely.

i. No indemnity/no evidence of indemnity.

38. An interim order is an urgent measure and, as such, a referral should be made promptly after information is received that a registrant may pose an immediate risk. The longer it takes the Registrar to make an application for an interim order (without good reason) from when the information was received, the less likely it will be that the IOC will make an order based on the need to protect the public. As such, where a case needs to be proposed for referral to the IOC, the assigned legal colleague will need to do this promptly.

39. Where a proposal is made to refer a case to the IOC, clear reasons for this decision should be recorded.

Initial Assessment outcomes

40. There are several outcomes at Initial Assessment:

a. Refer for Assessment: the Initial Assessment Test is met, and the case is referred to Assessment for further investigation.

b. Refer for Assessment and IOC: The Initial Assessment Test is met, and the case is referred to Assessment for further investigation. The case also meets the criteria to propose referral to the IOC (see paragraphs [32] to [39].

c. Closure: The Initial Assessment Test is not met, and the case is closed.

d. Refer to NHS: Where the case meets the NHS Concerns Handling Process criteria, the case is closed and referred to the relevant NHS body (see paragraph [42]).

e. Cancel: The case has been created in error.

f. Adjourn to gather additional information: This is to support a future consideration of the Initial Assessment Test (see paragraph [43]).

41. Regardless of the outcome, IAT should record clear reasons for the decision. Whilst the reasons do not need to be elaborate, lengthy, or address each individual piece of information, they need to be sufficient so that all parties understand the decision that has been reached. The reasons should demonstrate that the Initial Assessment Test has been properly considered. Clear reasoning is important to ensure decisions are capable of withstanding scrutiny, to support effective quality assurance and audit, and to promote transparency and consistency in decision-making.

42. In the interests of promoting the local handling and resolution of concerns wherever possible, where a concern raises issues which would be more appropriately handled by the NHS, IAT may close the case and refer it to the appropriate health service body for consideration. A concern may be referred under the Concerns Handling Process if the information suggests it meets one or more of the following criteria:

    a. The registrant has failed to adequately explain charges for treatment.

    b. The primary concern is poor communication.

    c. There is evidence of inadequate complaints handling.

    d. The case involves low level behavioural or attitudinal concerns, and there is no indication of other potentially aggravating considerations such as involving vulnerable adults or children.

    e. There is evidence of minor issues in relation to record keeping.

    f. There is an issue accessing NHS dental care due to contractual capacity.

    g. The case involves a single clinical incident where there is no evidence of repetition, or an ongoing pattern of behaviour and the case is not so serious that it raises a fitness to practise concern.

    h. The case involves multiple low level clinical concerns over several appointments, or which may involve a number of individual complaints on similar issues which do not raise a fitness to practise concern.

43. Where the information available at Initial Assessment is insufficient to reach a clear decision on whether the Initial Assessment Test is met, IAT can adjourn the case to request further information, or clarity of information, from the informant. In such instances, IAT should consider what further information would be required from the informant to enable assessment against the Initial Assessment Test.

Appendix 1: Considerations in particular categories of cases

Criminal cases

A1. The GDC provides guidance[7] which sets out registrants' obligations to report to the GDC where they are subject to criminal proceedings. The Guidance includes the list of criminal proceedings which must be reported to the GDC.

A2. Any criminal proceeding that a registrant is required to report to the GDC is likely to meet the Initial Assessment Test due to the likely public protection and/or public confidence implications.

Protected criminal convictions and cautions

A3. There are some criminal convictions and cautions which are 'protected'[8], 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.

A4. A criminal conviction can never be protected where it is received for a 'specified offence'[9]. A criminal conviction is also never protected where there was a custodial sentence, including when that sentence was suspended.

A5. A criminal conviction is protected where:

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

b. five and a half years have passed, and the registrant was under 18 at the date of conviction.

A6. 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:

a. it was not given for a specified offence, and

b. more than six years have passed since the caution was given.

Conditional and absolute discharges

A7. Where a registrant has been found guilty of a criminal offence, in sentencing the registrant the court may make an order for a conditional discharge (no penalty or punishment unless a further offence is committed during the discharge period) or absolute discharge (no penalty or punishment at all). Conditional or absolute discharges are used by the criminal courts to mark the least serious offending.

[7] Guidance on reporting matters to the General Dental Council.
[8] The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended).
[9] 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.

A8. A conditional or absolute discharge, however, is not deemed to be a conviction for any purpose other than the proceedings in which the order was made[10].

A9. In such circumstances, IAT will need to consider the underlying behaviour or actions which gave rise to the criminal proceedings. When considering the Initial Assessment Test, IAT should keep in mind the nature of the sentence, as this will provide insight into the court's assessment of harm and seriousness.

Failure to disclose criminal proceedings, cautions, convictions, or regulatory findings

Failure to disclose at the point of registration or restoration

A10. Where criminal proceedings, cautions, convictions, or regulator findings have been appropriately declared at the point of registration or restoration, the GDC will not reconsider these should they subsequently be reported as a fitness to practise concern.

A11. However, a failure to inform the GDC of these matters at the point of application for registration or restoration is inherently serious. This is because not only does it deprive the Registrar of the opportunity for assessing the implications for registration of the behaviour which resulted in the caution or conviction, but the failure to inform is itself a clear breach of a regulatory requirement and a potential indicator of dishonesty

A12. Where the information gives rise to such a concern it is highly likely to meet the Initial Assessment Test.

Failure to disclose while registered

A13. Registrants are required to inform the GDC immediately if they are subject to criminal proceedings, cautions, convictions, or a regulatory finding is made against them anywhere in the world. GDC guidance sets outs the circumstances where registrants must inform the GDC of criminal proceedings or regulatory findings[11].

A14. Failure to inform the GDC immediately of criminal proceedings or a regulatory finding is inherently serious. That is because not only does it deprive the Registrar of the opportunity for assessing the implications 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, but the failure to inform is itself a clear breach of a regulatory requirement and a potential indicator of dishonesty.

A15. Where the information gives rise to such a concern it is highly likely to meet the Initial Assessment Test.

[10] Section 82(2) of the Sentencing Act 2020 in England, Wales and Scotland, and Section 6 of the Criminal Justice (Northern Ireland) Order 1996 in Northern Ireland.
[11] Guidance on reporting matters to the General Dental Council.

A16. Where information is received which relates to matters which the registrant is not required to report (for example a fixed penalty notice for a minor traffic offence) the information is unlikely to meet the Initial Assessment Test unless there is additional information which gives rise to a concern which may impact on the protection of the public, or which may undermine public confidence

Health cases

A17. Concerns which have been raised in relation to a health matter should be approached carefully, and with compassion. The Standards for the Dental Team (the Standards) require registrants to practise safely, to reflect on their own mental and physical health, and to consider how risks relating to their health might appropriately be mitigated. As such, the focus should be on risk, management, and impact on practice in the particular circumstances of the case, rather than the existence of the health condition itself.

A18. The decision for IAT when considering health related cases is whether the registrant's health concerns are impacting their practice to such an extent that the Initial Assessment Test is met.

A19. When considering whether the Initial Assessment Test has been met, IAT considerations may include (but not be limited to) whether:

a. the registrant's health condition has already impacted patient safety and/or has created a risk to patients, or may create a risk in the future

b. the information provides reassurance that the registrant's health condition is being effectively proactively managed (for example, where the registrant has self-referred and provided detail of relevant treatment, therapy, and/or medication)

c. the information provides reassurance that sufficient steps have been taken to mitigate any risks to patient safety (for example, where the registrant has self-referred and provided detail of relevant steps taken, such as workplace adjustments, supervision arrangements, and/or amended duties)

d. the registrant's health condition is likely to get worse, is unpredictable and/or is likely to recur in the future, or whether it is likely to improve with time.

e. the information suggests a failure to seek treatment, or compliance with medical advice which can result in unmanaged or high-risk symptoms.

f. the registrant's health condition has led to involvement in criminal activity (e.g. in relation to possession of drugs, or driving while under the influence of alcohol)

g. the registrant is still practising

Social media

A20. The GDC provides guidance on responsible use of social media[12]. The guidance highlights that the same standards apply when using social media as to other interactions. The guidance focusses on patient confidentiality, the posting of offensive or disrespectful comments and the importance of maintaining appropriate boundaries.

A21. Where information suggests a breach of the guidance on using social media, but does not meet the Initial Assessment Test, a case can be closed with the guidance being sent to the registrant as a reminder of professional expectations. Closure in this way may be appropriate in cases where the alleged matter is an isolated incident (and therefore less likely to undermine public confidence) and where no wider concerns are identified.

A22. When considering whether the information received meets the Initial Assessment Test, IAT considerations should include (but not be limited to):

a. Whether harm has been caused to patients, colleagues, or members of the public.

b. Whether the content is discriminatory, hateful or offensive, and the seriousness of the language used (see paragraphs [A24] to [A33] below).

c. Whether public confidence in the dental professions may have been undermined.

d. Context and intent, such as whether the content was targeted, persistent or provocative.

e. Reach and visibility of the content (e.g. public profile, large following, repeated sharing

A23. Should a subsequent concern be received in relation to a further breach of the Guidance (i.e. following IAT previously sending the Guidance to the registrant as a reminder of professional expectations), IAT should refer that case to Assessment for further investigation, as this will likely indicate a concern on the grounds of public protection and/or public confidence.

Discrimination, harassment, and victimisation

A24. 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, IAT must have due regard in their decision making to the definitions as set out in that Act[13].

A25. Discrimination is behaviour which treats one individual less favourably than another because of a characteristic that is protected under the Equality Act 2010[14]. The protected characteristics are

[12] Guidance on using social media.
[13] Professional Standards Authority for Health And Social Care v Health And Care Professions Council & Anor [2021] EWHC 52.
[14] Section 13(1) of the Equality Act 2010.

a. age

b. disability

c. gender reassignment

d. marriage and civil partnership

e. pregnancy and maternity

f. race

g. religion or belief

h. sex

i. sexual orientation[15].

A26. Patients, colleagues, and other members of the public can all be victims of discrimination which can take various forms, including:

a. aggressive or violent behaviour

b. verbal remarks

c. assumptions and judgements

d. differential treatment

e. failure to listen to a patient or colleague or take them seriously

f. failure to meet an individual patient's needs.

A27. To be able to consistently identify and address discrimination, decision makers need first to be able to understand how discrimination might manifest. To support this understanding, Casework should consider relevant definitions of particular categories of discrimination when considering and deciding upon cases, including existing definitions of antisemitism[16] and anti-Muslim hostility[17].

A28. 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[18]. Harassment can be directed towards an individual or towards property (for example defacing a common space or individual property).

[15] Section 4 of the Equality Act 2010.
[16] International Holocaust Remembrance Alliance Working definition of antisemitism.
[17] UK government's non-statutory definition of anti-Muslim hostility.
[18] Section 26 of the Equality Act 2010.

A29. Victimisation, in this context, occurs when an individual is subjected to some form of detriment because they have done, or it is believed they have done or may do, a protected act (for example bringing proceedings or being otherwise involved in proceedings which have been brought under the Equality Act, or making an allegation that another person has contravened the Equality Act)[19].

A30. 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 is likely to have a detrimental effect on that person's health, well-being, and/or sense of safety.

A31. 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.

A32. Discriminatory, harassing, or victimising 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.

Applying the Initial Assessment Test

A33. Discrimination, harassment, and/or victimisation cannot be excused, condoned, or tolerated within the dental professions. Where the information suggests discrimination, harassment, and/or victimisation this will meet the Initial Assessment Test. This is because, regardless of any public protection considerations which may remain and which are serious in themselves, for such inherently serious matters the public interest in the promotion and maintenance of public confidence in the professions, and of proper professional standards and conduct, will require this determination.

Offensive behaviour and freedom of expression

A34. 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 profession. Offensive behaviour may be 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.

A35. However, in the UK, people have the right to hold and express their opinions, beliefs, and views without interference from public authorities, including the GDC. This is the right to freedom of expression which is protected by law[20]. As such, individuals are entitled to speak openly, debate ideas, and share religious, political, and philosophical beliefs - even if those

[19] Section 27 of the Equality Act 2010.
[20] Article 10 of the European Convention on Human Rights which is incorporated into UK law by the Human Rights Act 1998.

views are unpopular or challenging - in any medium. People also have the right to campaign, protest or demonstrate, and receive information from other people free from censorship. This expression and exchanges of views can take place in action, words and pictures but also increasingly takes place online, including through social media platforms and forums.

A36. There is an inherent tension between these two important principles that must be carefully considered. On the one hand, the GDC's overarching purpose is the protection of the public, which includes promotion and maintenance of public confidence in the professions. On the other, the GDC respects dental professionals' rights to freedom of expression, and the fitness to practise process must not inadvertently become an inappropriate constraint on freedom of expression.

A37. Freedom of expression is not, however, an absolute right. A person's freedom of expression can be lawfully restricted where it is necessary and proportionate in order to protect the rights of others. As such, the right to freedom of expression does not cover speech that is, for example, threatening, or that encourages violence.

Applying the Initial Assessment Test

A38. Where it is alleged, for example, 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[21]. Whether or not the registrant intended the words used to be offensive is irrelevant to whether they were, in fact, so. IAT should consider how an ordinary reasonable person would respond to the words or conduct in question.

A39. Not all complaints of offensive behaviour will result in a determination that the Initial Assessment Test is met.

A40. Sometimes it will be more obvious that the Initial Assessment Test has been met. For example, when a concern is raised that a patient has been the subject of intentionally cruel comment relating to their health (causing patient harm and potentially undermining public confidence in the profession).

A41. Sometimes the issues involved will be more complex. For example, where the conduct complained of involves the making of political or controversial statements that may be perceived by some to be offensive but, nevertheless, appear to be no more than a legitimate exercise of the registrant's freedom of expression. For example, whether someone's gender critical views could be considered as strongly conveyed opinions on a matter of reasonable, current public debate and interest and do not stray into hate speech or transphobia.

A42. When considering whether the case meets the Initial Assessment Test, IAT considerations should include, but not be limited to whether:

[21] Loveless v Earl [1999] EMLR 530 CA, as referenced in The Professional Standards Authority for Health And Social Care v The General Pharmaceutical Council & Anor [2021] EWHC 1692 (Admin).

a. the expression/behaviour occurred in a professional, clinical or workplace setting - for example comments made towards or in front of patients, colleagues, or students or in a professional forum

b. the available information suggests that the expression falls within the scope of lawful opinion, and is more aligned with personal or political commentary than discriminatory conduct, even if controversial

c. the potential impact of the expression is such that it is highly likely to undermine public trust in the professions.

A43. These may be complex considerations, requiring careful consideration on the individual circumstances of the case. IAT should seek input and advice from wider colleagues as appropriate, including from legal colleagues.

Where concerns relate to conduct on social media content

A44. It is common for dental professionals to express their opinions and beliefs, share information and raise particular issues through social media, networking websites, and other online communications.

A45. However, it is important to remember that it is the content of the post or online communication and the conduct of the individual that is most relevant, not the means by which it was conveyed. As set out in the GDC guidance on using social media[22], the standards expected of dental professionals do not change because they are communicating using social media.

A46. This means that whilst the guidance may be relevant to some aspects of a case, it will not be relevant in all cases. For example, it is the content of the alleged offensive communication that should be considered to determine whether the Initial Assessment Test has been met. In such cases, the social media guidance itself will not be the most relevant consideration, as the alleged concern is about the offensiveness of the communication, rather than a misuse of social media.

A47. Where IAT closes a case the content of the communication and/or the conduct of the registrant has not been found to meet the Initial Assessment Test, it would not be necessary to send a copy of the social media guidance to the dental professional unless there is a suggestion that the guidance had not been followed.

Advertising

A48. Advertising is a public representation of a registrant's professional services and can directly influence patient decision-making, the care they receive, and public confidence in the professions.

[22] Guidance on using social media.

A49. The GDC provides guidance on advertising[23] which makes clear that promotional material must be legal, honest, accurate and not misleading. Misleading claims, deliberate misuse of titles or qualifications, deliberate omission of key information, or pressure-based marketing may indicate probity concerns, and place patients at risk of harm and undermine trust in the professions.

A50. Where information received by IAT indicates a minor and isolated breach of the guidance, which is likely to be an error rather than a deliberate attempt to mislead, this will unlikely meet the Initial Assessment Test. In such cases IAT can close the case, provide advice to the registrant, and send a copy of the Guidance as a reminder of professional expectations.

A51. Should a subsequent concern be received in relation to a breach of the Guidance (i.e. following IAT previously sending the Guidance to the registrant as a reminder of professional expectations), IAT should refer that case to Assessment for further investigation, as this will likely indicate a concern on the grounds of public protection and/or public confidence. Should a second concern be received in relation to the same instance of an advertising guidance breach, IAT should consider whether the registrant could reasonably be expected to have addressed the matter in the time which has passed since the Guidance was issued. Where this would be a reasonable expectation, IAT should refer that case to Assessment for further investigation.

Cross-infection control/health and safety

A52. Concerns relating to safety, governance, and management of a dental service, for example cross-infection control concerns, will normally fall into the remit of the four systems regulators across the UK[24]. However, in some cases, the Initial Assessment Test may be met.

A53. The Initial Assessment Test is likely to be met if the information received relates to the actions of an individual registrant. For example, this may be where a practice principal fails to implement and enforce appropriate standards, or where an individual registrant does not meet recognised cross-infection control clinical standards.

A54. If the information received does not relate to the actions of an individual registrant, it is likely it will not support the creation of a case, and IAT may wish to signpost the informant to the appropriate regulatory body with which to raise the concern.

Medical devices

A55. When information is received that concerns the use or operation of medical devices, IAT should consider whether this fall within the scope of the Medicines and Healthcare Products Regulatory Agency (MHRA).

A56. The MHRA regulates medicines, medical devices, and blood components for transfusion in the UK. Where information relates to a bad reaction to a medicine or serious issues with a medical

[23] Guidance on advertising.
[24] England: Care Quality Commission. Scotland: Healthcare Improvement Scotland. Wales: Healthcare Inspectorate Wales. Northern Ireland: Regulation and Quality Improvements Authority.

device including custom-made dental appliances such as a denture or dental bridge (where there is no suggestion that the fault lies with the individual dental professional), cases should not be opened (see paragraphs [9] to [11] of the main guidance) and informants should be signposted to the MHRA.

A57. Cases that may fall within the GDC's remit, and which should therefore be considered against the Initial Assessment Test include (but are not limited to) where the information suggests that a registrant:

a. used or prescribed a device outside of their competence or scope of practice

b. failed to obtain informed consent

c. used unapproved, inappropriate, or modified devices without justification

d. failed to act on safety concerns or adverse incidents

e. misrepresented devices in advertising or patient information.

A58. Where a case is closed by IAT and the informant referred to MHRA, the caseworker should record this as a non-case action.

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While this guidance is primarily intended for use by the GDC's Initial Assessment Team, in its development we have aimed to make it clear for all audiences. If assistance is needed in understanding any aspect of this guidance, please visit gdc-uk.org/contact-us to submit an enquiry.

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