General Dental Council

Guidance

Fitness to Practise
Guidance for decision makers at the 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 Assessment stage of the fitness to practise process is referred to as being carried out by Casework). The purpose of this investigation at Assessment is to determine whether the concern amounts to an allegation of impaired fitness to practise[3]. Where it does, Casework must refer the allegation to case examiners for consideration. Where it does not, Casework must close the case.

4. The aim of this guidance is to promote consistency of approach, transparency, and proportionality in decision-making at Casework during the investigation of cases referred to them from Initial Assessment. At the Assessment stage, considerations and recommendations are made by caseworkers, and decisions are made by casework managers when they are considering caseworkers' recommended outcomes.

5. The Appendix to this guidance sets out considerations of particular categories of cases which caseworkers should consider when recommending the outcome, and which casework managers should consider when determining whether a concern amounts to an allegation of impaired fitness to practise.

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

    a. registrants who have cases opened which are referred to Assessment

    b. legal representatives of registrants whose cases have been referred to Assessment

    c. informants (individuals who raise a concern with the GDC about a registrant).

[1] Sections 1(1ZA) and 1(1ZB) of the Dentists Act 1984 (the Act).
[2] Section 14(5) of the Act.
[3] Rule 3 of the General Dental Council (Fitness to Practise) Rules 2006 (as amended) (the Rules).

7. Casework should be mindful that as a public authority, the GDC is subject to the Public Sector Equality Duty under the Equality Act 2010[4] which sets out the requirement to have due regard to the need to eliminate discrimination, and to advance equality of opportunity and foster good relations between persons who share a relevant protected characteristic and persons 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.

Determining whether a concern amounts to an allegation of impaired fitness to practise

9. The central task for Casework at the Assessment stage of the fitness to practise process is to determine whether the concern raised amounts to an allegation of impaired fitness to practise[5].

The statutory grounds of impairment

10. A concern must fall within one or more of the statutory grounds of impairment[6] for the GDC to consider whether a dental professional's fitness to practise may be impaired. Identifying the relevant ground helps Casework to understand the type of conduct involved and how it may fall within the GDC's remit. The statutory grounds are:

    a. Misconduct.

    b. Deficient professional performance.

[4] Section 149(1) of the Equality Act 2010.
[5] Rule 3 of the Rules.
[6] Sections 27(2) and/ 36N(2) of the Act.

c. Adverse physical or mental health.

d. Conviction or caution for a criminal offence.

e. Certain other outcomes for criminal offences.

f. Determinations by certain other regulatory bodies.

11. It does not matter whether the allegation of impaired fitness to practise is based on a matter alleged to have occurred:

a. outside the United Kingdom

b. at time when the registrant was not on the register[7].

Misconduct

12. Misconduct denotes serious acts or omissions, suggesting a significant departure from what would be proper in the circumstances. There are two principal types of misconduct[8].

13. The first type of misconduct is that which arises in the registrant's professional practice, and which is sufficiently serious to call their fitness to practise into question. The following factors should be considered in those circumstances:

a. In respect of clinical matters, mere negligence does not constitute misconduct. Nevertheless, and depending upon the circumstances, negligent acts or omissions which are particularly serious may amount to misconduct.

b. A single negligent act or omission is less likely to cross the threshold of misconduct than multiple acts or omissions. Nevertheless, and depending upon the circumstances, a single negligent act or omission, if particularly grave, could be characterised as misconduct.

c. Misconduct need not arise in the context of clinical practice but must be in the exercise of a registrant's calling as a dental professional. Such misconduct may properly be described as linked to the practice of dentistry, even though it involves the exercise of administrative or managerial functions, where they are part of the day-to-day practice of a registrant, and where, depending on the nature of the duties, a continuing obligation to focus on patient care may exist.

d. Misconduct may also fall within the scope of a registrant's calling as a dental professional where there is no direct link with clinical practice at all e.g. acting as an expert witness or being involved in education or research where the registrant's professional skills are directly engaged.

[7] Sections 27(3) and 36N(3) of the Act.
[8] Remedy UK Ltd, R (on the application of) v The General Medical Council [2010] EWHC 1245 (Admin).

e. There is no specific ground of impairment with regards to insufficient command of the English language giving rise to a direct risk of harm to a patient. Such rare instances however would be considered as impairment on the grounds of misconduct.

14. The second type of misconduct involves conduct that is disreputable, morally culpable, or otherwise disgraceful. This type of misconduct may, and often will, occur outside the course of professional practice, but it brings disgrace upon the registrant and thereby undermines confidence in the professions. It does not matter whether such conduct is directly related to the exercise of professional skills.

15. Misconduct can also be assessed against guidance for registrants produced by the GDC, including the Standards for the Dental Team (the Standards) and the supplementary guidance which the GDC publishes on a range of other specific issues. Both the Standards and supplementary guidance may assist Casework in assessing whether a registrant's conduct has fallen far short of what would be expected in the circumstances.

Deficient professional performance

16. Deficient professional performance suggests a standard of professional performance that is unacceptably low, which (save in exceptional circumstances) has been demonstrated by reference to a fair sample of the registrant's work. A single instance of negligent treatment, unless very serious, would be unlikely to constitute deficient professional performance[9].

17. Poor judgment cannot of itself constitute negligence so serious that it amounts to misconduct, but it may in an appropriate case, and particularly if exercised over a period of time, constitute deficient professional performance. In addition, deficient performance may arise from the inadequate performance of any function which is part of a registrant's calling as a dental professional[10].

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

Adverse physical or mental health

19. When Casework is considering an allegation of impaired fitness to practise on the grounds of adverse physical or mental health, a health assessment report or a report from the registrant's General Practitioner should be obtained. If this report is not provided by the registrant's employer or treating clinician, it will need to be commissioned by Casework. The report should detail the adverse physical or mental health condition(s) which the registrant may have.

20. The report should provide a view as to whether the specified condition impairs the registrant's fitness to practise.

[9] Calhaem, R (on the application of) v General Medical Council [2007] EWHC 2606 (Admin).
[10] Remedy UK Ltd, R (on the application of) v The General Medical Council [2010] EWHC 1245 (Admin).

Conviction or caution for a criminal offence

21. A registrant's fitness to practise may be regarded as impaired by reason of a conviction or caution in the United Kingdom for a criminal offence, or by a conviction elsewhere for an offence which, if committed in England and Wales, would constitute a criminal offence.

22. Further factors of consideration in relation to this statutory ground are set out at paragraphs [A1] to [A11] of the Appendix, and in the Guidance on Reporting Matters to the GDC which sets out the requirements for registrants on which matters must be reported.

Declaring criminal convictions and cautions

23. With the exception of protected criminal convictions and cautions (see paragraphs [26] to [30]), dental professionals are required to declare past criminal convictions and cautions when they apply for registration or restoration to the register. Where any such past criminal convictions and/or cautions have been appropriately declared, the GDC will not reconsider these should they be reported as a fitness to practise concern.

24. Once on the register, registrants are also required to inform the GDC immediately if they are convicted of a criminal offence or receive a caution for a criminal offence.

25. Where a registrant does not immediately declare a new criminal conviction or caution, or where past criminal convictions and/or cautions have not been declared at the point of registration or restoration, then in addition to considering the conviction and/or caution itself, the failure to disclose may itself lead to an allegation of misleading or dishonest conduct.

Protected criminal convictions and cautions

26. There are some criminal convictions and cautions which are 'protected'[11], 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.

27. A criminal conviction can never be protected where it is received for a 'specified offence'[12]. A criminal conviction is also never protected where there was a custodial sentence, including when that sentence was suspended.

28. 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.

[11] The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended).
[12] I.e. those which are set out in the Disclosure and Barring Service List of offences that will never be filtered from a DBS certificate.

29. 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.

30. Casework should be mindful that the timelines apply at the point the consideration or decision is being made, and therefore the conviction or caution may have become protected in the time between when the case was referred to them and the decision being made.

Certain other outcomes for criminal offences

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

    a. having accepted a conditional offer under section 302 of the Criminal Procedure (Scotland) Act 1995 (fixed penalty: conditional offer by procurator fiscal)[13]

    b. having agreed to pay a penalty under section 115A of the Social Security Administration Act 1992 (penalty as alternative to prosecution)[14]

    c. in proceedings in Scotland for an offence, having been the subject of an order under section 246(2) or (3) of the Criminal Procedure (Scotland) Act 1995 discharging him absolutely[15].

Determinations by certain other regulatory bodies

32. A registrant's fitness to practise may be found to be impaired on the basis of a determination of impairment made by another professional health or social care regulator in the UK, or by a regulatory body elsewhere to the same effect[16].

33. Unless in the unlikely event that there is reason to believe the findings are incomplete or unreliable, or where a registrant has been found impaired in another country for an offence that is not an offence in the UK, the GDC does not need to revisit or re-investigate the underlying facts as they have already been explored and tested through the other regulator's fitness to practise process.

34. This includes only determinations made by a panel of another health or social care regulator in the UK (for example, the General Medical Council, the Nursing and Midwifery Council, or Social Work England), or by an equivalent regulatory body abroad.

35. Determinations made by the UK system regulators (such as the Care Quality Commission, Health Inspectorate Wales, Healthcare Improvement Scotland, or the Regulation and Quality Improvement Authority) and the National Health Service bodies across the UK, do not fall

[13] Sections 27(2)(e)(i) and 36N(2)(e)(i) of the Act.
[14] Sections 27(2)(e)(ii) and 36N(2)(e)(ii) of the Act.
[15] Sections 27(2)(f) and 36N(2)(f) of the Act.
[16] Sections 27(2)(g), 27(7)(b) 36N(2)(g), and 36N(7)(b) of the Act.

within the scope of this statutory ground. As such, where it is considered that the conduct which led to a determination by one of these bodies may impair the registrant's fitness to practise, the case must proceed as an allegation of impaired fitness to practise on the ground of misconduct.

The Assessment Test

36. Once Casework has collected all relevant information about a concern and the context in which events occurred, the next step is to determine whether the concern amounts to an allegation of impaired fitness to practise. To do this, Casework must apply the Assessment Test:

    Does the information received from the informant and over the life of the case:

    a. give rise to a concern that harm has been caused to a member of the public?

       or

    b. give rise to a concern that public confidence in the dental profession has been or may be undermined?

       and

    c. present issues which are serious enough that, if proved, would suggest that the registrant's fitness to practise might be impaired.

The meaning of 'harm' in the Assessment Test

37. 'Harm' refers to any negative impact which may affect patients, colleagues, other members of the public, or organisations.

38. Harm may arise from the least to the most serious (for example, those listed at paragraph [41]) 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.

39. When considering whether harm has been caused, Casework 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 Test.

The meaning of 'caused' in the Assessment Test

40. For a concern to amount to an allegation of impaired fitness to practise, there must be a clear causal link between the registrant's actions and the resulting alleged harm, or risk of harm, or undermining of public confidence.

The meaning of 'public confidence in the professions' in the Assessment Test

41. 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 'serious enough' in the Assessment Test

42. At the Assessment stage, Casework is asked to consider whether the information gathered gives rise to concerns that are serious enough that, if proved, would suggest that the fitness to practise of the registrant might be impaired.

43. Casework should consider all the circumstances of an individual case and whether, taken together, those circumstances indicate a level of seriousness that requires referral to case examiners.

44. There is a strong relationship between seriousness and the categories of allegation which may undermine public confidence, as set out at paragraph [41]. As such, where Casework

considers the alleged conduct has undermined public confidence in the dental professions, or risks doing so, it is highly likely that this will satisfy its consideration of seriousness.

45. Other factors which may indicate the issues are serious enough to suggest the registrant's fitness to practise may be impaired include, but are not limited to, where there is evidence of:

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

    b. premeditated misconduct

    c. financial gain by the registrant

    d. abuse of trust/abuse of professional position

    e. the involvement of a vulnerable patient or other vulnerable individual

    f. an imbalance of power between the registrant and the victim

    g. misconduct sustained or repeated over a period of time

    h. blatant or wilful disregard of the role of the GDC and the systems regulating the professions

    i. attempts to cover up wrongdoing

    j. adverse fitness to practise history with the GDC.

46. It should be noted that in cases where, for example, the registrant has engaged with the GDC's investigation or immediately disclosed a criminal conviction or caution, these are not factors which should diminish Casework's assessment of seriousness. Rather, these should be considered as neutral factors because these are requirements of all registrants.

47. While the individual circumstances of each case must be considered, there is also a degree of benchmarking against previous cases which supports consistent decision making by Casework in relation to their assessment of seriousness. Casework will draw on their experience, and upon Appendix 1 of this guidance which sets out considerations in particular categories of cases.

48. The GDC's quality assurance mechanisms also support consistent consideration of seriousness. The holistic, cross-organisational review of cases can provide useful benchmarking on the organisational view of seriousness. These quality assurance mechanisms include:

    a. Internal audit (which reviews closure decisions at every stage of the process for potential further review by the Quality Assurance Group), Quality Assurance Group, Decision Scrutiny Group, and annual independent review, which quality assure cases to highlight areas for further consideration and support continuous organisational improvement.

    b. The GDC's Rule 9 review process which, in relation to this stage of the fitness to practise process, can review decisions to close cases.

49. In the case of clinical allegations, the report from the Clinical Dental Adviser (CDA) will indicate whether, in the CDA's opinion, the standard of treatment and/or care fell below or far below the level of professional practice reasonably expected. Casework remains the decision maker and, while the CDA report is likely to be a major factor in the determination of clinical cases, the case must be considered in the context of all the circumstances.

Evidential requirements at the Assessment Test

50. Casework will need to consider whether there is sufficient evidence to support an allegation of impaired fitness to practise. With regards to evidential sufficiency, while Casework must stop short of the case examiners' consideration of whether there is a real prospect that the facts would be found proved based on the available evidence, they do need to consider the cogency of the evidence (i.e. the quality of the evidence, including its strength, reliability, and coherency) when deciding whether it is sufficient to support an allegation. If there is insufficient evidence to support the allegation, and all proportionate avenues of enquiry have been exhausted (i.e. that the lengths of the investigatory steps taken are commensurate with the risks posed in the particular case), Casework will need to close the case.

Where an informant does not wish to be involved with, or disengages from, the process

51. As set out at paragraph [50], the Assessment Test requires Casework to consider whether there is sufficient evidence to support an allegation of impaired fitness to practise.

52. Fitness to practise investigations rely on information being provided to us by various parties and, in the first instance at least, it is typically the informant on whom we rely for that information.

53. For both clinical and non-clinical cases (except for health and criminal cases), the informant's continued engagement and cooperation over the life of the case will help the allegation stand up to case examiner and practice committee scrutiny. Maintaining the informant's engagement and cooperation is therefore highly important to the GDC's ability to progress a fitness to practise matter.

54. However, there are occasions where an informant does not, or no longer wishes to, engage with the GDC's investigation. In those circumstances, Casework must decide whether it is appropriate and proportionate to proceed with the investigation.

55. Where the information from the informant is, or is highly likely to be, the sole and decisive evidence, their non-cooperation would significantly undermine the later stages of the fitness to practise process. In such circumstances it is likely that to continue with a full investigation would be disproportionate, and so consideration of the Assessment Test should be undertaken once it is clear the investigation does not have the informant's cooperation.

56. Given the importance of ongoing informant cooperation, Casework should be careful to manage expectations and, where cooperation is in question, to communicate the likely impact on the GDC's ability to progress the investigation.

57. Where there is, or is likely to be, sufficient evidence to support the allegation from other sources, the fact that the informant has withdrawn is not a reason to discontinue the investigation.

Where an informant requests anonymity

58. An informant may express a wish to remain anonymous. This may be due, for example, to concerns about safety, retaliation, workplace harm, or personal wellbeing.

59. As set out at paragraph [50], the Assessment Test requires Casework to consider whether there is sufficient evidence to support an allegation of impaired fitness to practise.

60. Where the information from the informant is not, or is unlikely to be, the sole and decisive evidence, it may be possible to preserve an informant's anonymity without undermining the sustainability of the investigation and, where that is possible, Casework will seek to do so. In such circumstances, Casework should be careful to manage expectations and communicate the potential impact that maintaining anonymity could have on the GDC's ability to progress the investigation.

61. However, for some concerns – particularly single clinical incidents or concerns relating to specific events – it may be impossible to preserve anonymity. Furthermore, Casework will be guided by the GDC's overarching statutory objective, which is protection of the public. This may require Casework to progress with an investigation and/or refer an allegation to the case examiners which identifies an informant, even where that informant has requested anonymity. It is possible that such a scenario may undermine their ongoing cooperation and, if so, Casework should consider the factors set out at paragraphs [51] to [57].

Evidence from the Family Court

62. Proceedings of the Family Court are heard in private and there are strict rules in relation to maintaining confidentiality.

63. Before considering information or evidence which may have originated from, or which relates to, Family Court proceedings, Casework must ensure permission to do so has been granted by that court. Casework should refer to internal procedures for handling this type of material and seek input and advice from wider colleagues, as appropriate, including from legal colleagues (without sharing the material further).

Joinder

64. Practice committees are able to consider, at the same hearing, two or more allegations which relate to the same registrant (i.e. allegations about the same registrant that were received and investigated separately by Casework). This is referred to as 'joinder'[17].

[17] Rule 25(2) of the Rules.

65. Practice committees may also consider, at the same hearing, allegations relating to two or more registrants where the allegations against each registrant relate to the same circumstances[18]. This is also referred to as a joinder, however no decisions regarding this aspect of joinder are made at Casework.

66. If an allegation has been referred to the practice committee but has not yet been heard, and a new allegation against the registrant which is of a similar nature or is founded on the same alleged facts, is received by the GDC, a practice committee may consider the new allegation at the same time as the original allegation, even if it has not been considered by the case examiners or included in the notification of hearing.

67. In addition to considering whether the Assessment Test has been met in relation to the new allegation (as set out at paragraphs [9] to [63], Casework's task in relation to two or more allegations which relate to the same registrant (see paragraph [64] is to determine whether the Joinder Test has been met.

68. Where Casework determine both the Assessment Test and Joinder Test are met, the new allegation will be referred to the practice committee as a joinder.

The Joinder Test

69. For a new allegation to be considered as a joinder, it must be:

    a. of a similar nature, or

    b. founded on the same alleged facts.

70. To meet the Joinder Test, Casework should first consider whether the new allegation is of a similar nature or founded on the same alleged facts. Concerns of a similar nature may include, for example, where the original allegation is clinical, and further clinical concerns are raised post-referral. These may be similar concerns relating to additional patients, or wider concerns relating to the same patient (including other areas of treatment or an extension of timeframe).

71. Where the two allegations are raised on different statutory grounds or, for example, the original allegation relates to clinical practice and the new concern relates to personal conduct, these are unlikely to meet the Joinder Test.

72. If the Assessment Test is met, but the allegation does not meet the Joinder Test, the allegation should be referred to the case examiners.

[18] Rule 25(1) of the Rules.

Deciding whether to propose a referral to the Interim Orders Committee

73. 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[19].

74. 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.

75. From the start of an investigation through to the point a case is either closed, or the case examiners begin their consideration, Casework may propose that the case is referred to the IOC. Casework must 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[20]), who will take a decision informed by legal advice.

76. This risk is assessed both at regular intervals and on the receipt of new information. Where they consider the risk meets the threshold for an IOC referral based on the information currently available, Casework will propose that the case is referred to the IOC.

Casework considerations for proposing a referral to the IOC

77. The test for the Registrar when deciding whether to refer a case to the IOC is whether it is appropriate to do so[21].

78. In considering whether it is appropriate for a case to be referred to the IOC, Casework will know whether an IOC referral has previously been made at an earlier stage of consideration. They should therefore consider:

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

    b. whether the IOC has previously considered the matter and declined to impose an interim order - if so, and in the absence of new any new information, it would be highly unusual for the allegation to be referred to the IOC for a second time

[19] Section 32(4) of the Act.
[20] Section 14(5) of the Act,
[21] Section 27(5)(b) of the Act.

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

d. the cogency and credibility of the available information

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

f. what has triggered the current escalation of risk, including whether new information, a change in the registrant's circumstances, or emerging patterns of behaviour indicate a more immediate or heightened risk than previously understood.

79. 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, removal from that list or restrictions placed on their entry on 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:

    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.

j. Non-cooperation with the GDC investigation.

80. 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, Casework will need to do this promptly.

81. Where cases are put on hold to await the outcome of an external investigation (for example, a criminal or regulatory investigation), Casework should continue to assess the risk as and when any new information is received and consider whether it would be appropriate to propose an interim order referral.

82. Where Casework proposes referral of the case to the IOC, the reasons for the decision should be recorded.

Assessment Test outcomes

83. There are several outcomes following the application of the Assessment Test:

a. Refer to case examiners: the Assessment Test is met, and the case is referred to the case examiners.

b. Refer to case examiners and propose for IOC referral: The Assessment Test is met, and the case is referred to the case examiners. The case also meets the criteria for proposing a referral to the IOC (see paragraphs 72 to 81).

c. Joinder: The Assessment and the Joinder Tests are met, and the case is referred to the Practice Committee (see paragraphs 63 to 71).

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

84. Where a case is being closed due to the Assessment Test not being met (see paragraph 82.d), in a minority of instances potential issues could remain which may be of relevance to the GDC's other, non-fitness to practise, regulatory functions. In such circumstances, Assessment should consider whether information should be shared internally (following appropriate information governance procedures and advice) with another of the GDC's teams (for example, Education Quality Assurance, Registration, or Policy).

Appendix 1: Considerations in particular categories of cases

Criminal cases

A1. The purpose of fitness to practise proceedings in relation to criminal convictions and cautions is not to punish a registrant for a second time for the offence or offences for which they were convicted or cautioned[22]. Rather, the purpose is to consider whether a registrant's fitness to practise is impaired as a result of the conviction(s) or caution(s).

Convictions

A2. When considering an allegation of conviction for a criminal offence, a copy of the certificate or memorandum of conviction (or, in Scotland, an extract conviction) shall be conclusive proof of the conviction[23]. Casework should not seek to "go behind" (challenge the underlying facts) a conviction by reinvestigating the matters which led to it.

Conditional and absolute discharges

A3. 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.

A4. 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[24]. As such, where it is considered that the conduct which led to the conditional or absolute discharge may impair the registrant's fitness to practise, the case must proceed as an allegation of impaired fitness to practise on the ground of misconduct.

A5. In such circumstances, Casework will need to consider the underlying behaviour or actions which gave rise to the criminal proceedings. Where the relevant facts which led to the conditional or absolute discharge are not admitted by the registrant, as with any other misconduct allegation, Casework will need to consider whether the available evidence supports the allegation.

A6. When considering the Assessment Test, Casework should keep in mind the nature of the sentence, as this will provide insight into the court's assessment of harm and seriousness.

Cautions and conditional cautions

A7. Cautions and conditional cautions are only offered where:

[22] Dey v. General Medical Council (GMC) [2001] UKPC 44.
[23] Rule 57(5)(a) of the Rules.
[24] 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.

a. the offender admits the relevant offence

b. the offender is willing to accept the caution/conditional caution

c. the decision-maker (i.e. the police or Crown Prosecution Service) considers that there is sufficient evidence to provide a real prospect of conviction, if the offender were to be prosecuted

d. the offence is not one where a prosecution is required in the public interest.

Other forms of disposal

A8. The following disposals of criminal proceedings are not classed as criminal convictions:

a. Fixed penalty notices for road traffic offences.

b. Fixed penalty notices issued by local authorities (for example for offences such as dog fouling, or graffiti).

c. Civil orders, for example those to prevent criminal behaviour, or other preventative orders.

d. Convictions or cautions issued outside the United Kingdom which, if committed in England and Wales, would not constitute a criminal offence.

A9. Registrants are not obliged to inform the GDC of these types of disposals[25] but, should a concern relating to such matters arise, this must only proceed as an allegation of impaired fitness to practise on the ground of misconduct.

A10. In such circumstances, Casework will need to consider the underlying behaviour or actions which gave rise to the disposals listed at paragraph [A8]. Where the relevant facts which led to one of those disposals are not admitted by the registrant, as with any other misconduct allegation, Casework will need to consider whether the available evidence supports the allegation.

Applying the Assessment Test

A11. For most cases involving criminal convictions and cautions, Casework will ordinarily determine that there is an allegation of impaired fitness to practise. 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, is highly likely to result in this determination.

[25] Guidance on reporting matters to the General Dental Council.

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

Failure to disclose at point of registration

A12. A failure to inform the GDC of a conviction, caution, criminal proceedings, or a regulatory finding 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.

A13. Where there is evidence to support such an allegation it is highly likely that Casework will determine that there is an allegation of impaired fitness to practise.

Failure to disclose while registered

A14. 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 out the circumstances where registrants must inform the GDC of criminal proceedings or regulatory findings[26].

A15. Failure to inform the GDC immediately of criminal proceedings or a regulatory finding is inherently serious. This 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.

A16. Where there is evidence to support such an allegation it is highly likely that Casework will determine that there is an allegation of impaired fitness to practise.

Health cases

A17. Concerns which have been raised in relation to a health matter should be approached carefully, and with compassion. 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 Casework when considering health related cases is whether the registrant's health concerns are impacting their practice to the extent that the Assessment Test is met.

[26] Guidance on reporting matters to the General Dental Council.

Applying the Assessment Test

A19. When considering whether a health case supports an allegation of impaired fitness to practise on health grounds, Casework considerations may include (but are not 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 to patients in the future

b. the registrant's health condition is being effectively proactively managed, for example through treatment, therapy, or medication

c. sufficient steps have been taken to mitigate any risks to patient safety, such as putting in place workplace adjustments, supervision arrangements 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. there is evidence which indicates 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.

Poor standard of treatment or care

A20. Not all treatments are successful, and patients sometimes suffer harm. This does not necessarily indicate that the registrant did not provide an acceptable standard of care. Issues of misconduct, deficient professional performance and fitness to practise cannot be judged in hindsight solely on the outcome of treatment. However, dental professionals must act in the patient's best interests and provide an acceptable level of care.

A21. A concern may indicate that the standard of treatment and/or care provided fell below or far below the level of professional practise reasonably expected. As set out at paragraph [49] of the main guidance, Casework remains the decision maker and, while the CDA report is likely to be a major factor in the determination of clinical cases, the case must be considered in the context of all the circumstances.

A22. Allegations of poor standard of treatment or care in relation to a single incident are less likely to meet the threshold for misconduct than multiple acts or omissions. However, depending on the circumstances, a single act or omission could amount to misconduct where particularly serious.

A23. With regards to deficient professional performance, Casework should consider the factors set out at paragraphs [16] to [18] of the main guidance.

Applying the Assessment Test

A24. When considering the seriousness of an allegation of poor standard of treatment, in addition to the factors set out at paragraph [45] of the main guidance, Casework considerations should include, but not be limited to, whether:

a. patients have been harmed or put at risk of harm

b. there is evidence of a disregard for patient safety.

Record keeping

A25. Registrants are required to keep accurate patient dental records. They should be sufficiently detailed so that, if viewed by another dental professional, the actions of the registrant and any clinical judgement applied, will be clear.

A26. Clinical records should be made contemporaneously (i.e. at the time of, or immediately after, the consultation/clinical contact). Where patient records are made or altered at a later date without this being made clear in the record (e.g. date, initial, potentially a reason for amendment), this will likely lead to concerns about the registrant's honesty.

Applying the Assessment Test

A27. When considering the seriousness of an allegation of poor or absent record keeping, in addition to the factors set out at paragraph [45] of the main guidance, Casework considerations should include, but not be limited to, whether:

a. the alleged failures in record keeping may have risked over or under treatment

b. patients have been harmed or may have been put at risk of harm as a result of the alleged failures in record keeping - for example misleading subsequent treating clinicians

c. there is any information to suggest the poor or absent record keeping may have been more than a straightforward deficiency (for example, whether it suggests a potential issue of honesty/integrity).

A28. Poor or absent record keeping, on a limited or small number of occasions, in relation to relatively minor record keeping matters, is unlikely, in itself and in isolation, to meet the Assessment Test.

A29. With regards to deficient professional performance, Casework should consider the factors set out at paragraphs [16] to [18] of the main guidance.

Indemnity

A30. All practising dental professionals must have appropriate indemnity arrangements in place. This is so that, where patients are entitled to receive compensation, registrants can meet this liability. Dental professionals who rely on cover provided by their employer have a personal

responsibility to check that such cover is in place (i.e. it is acceptable for a registrant to be covered by their employer's policy, but it is the registrant's, not the employer's, responsibility to ensure that this cover is appropriate and is maintained).

A31. The only circumstances in which it would be acceptable for a dental professional not to have any cover would be if there is no risk of a patient making a claim against them. An example is if the dental professional works exclusively in roles which do not involve the practice of dentistry and who have no patient interactions within these roles. To justify a decision not to have cover, a dental professional must be able to demonstrate why there is no risk of a claim being made against them.

A32. A dental professional who practises without having appropriate indemnity arrangements in place breaches a mandatory and fundamental requirement of professional regulation. Such conduct puts patients at risk of financial harm and is likely to undermine public confidence in the dental professions.

Applying the Assessment Test

A33. When considering an allegation of practising without indemnity, Casework should consider carefully whether there is an ongoing risk to the public. They will need to consider whether the registrant (if currently practising in the UK) has an appropriate level of cover and this should include checking whether the registrant has acquired retrospective cover - if not, there may be a gap and a risk to patients treated by the registrant in the past, for whom there is no indemnity cover in place to meet any claim.

A34. Where there is evidence to support an allegation of practising without indemnity it is likely that Casework will determine that there is an allegation of impaired fitness to practise. 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, is highly likely to result in this determination.

Working outside of scope of practice

A35. The Standards state that dental professionals must work within their knowledge, skills, professional competence, and abilities. This principle is reiterated in the GDC's Scope of Practice Guidance which, establishing the boundaries within which each title must work, states that dental professionals must only carry out a task or a type of treatment if they are appropriately trained, competent and indemnified.

A36. A registrant's scope may change over time in light of new skills, training, setting, or experience. Casework should consider whether the registrant's actions fell within what they were trained, registered and competent to do at that time, and whether they fully understood their personal scope of practice.

A37. Undertaking work outside a registrant's scope of practice breaches a fundamental requirement of professional registration, puts patients at risk, and may undermine public confidence in the professions.

Applying the Assessment Test

A38. Where there is evidence to support an allegation of practising outside of scope of practise it is likely that Casework will determine that there is an allegation of impaired fitness to practise. 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, is highly likely to result in this determination.

Dishonesty

A39. It is a fundamental requirement under the Standards that registrants are honest. Honesty is of key importance in protecting the public and promoting and maintaining public confidence in the professions.

A40. As a result, allegations of dishonesty against a registrant are at the higher end of the scale of seriousness, even where it has not involved harm to patients, and even if it is unlikely to be repeated.

Applying the Assessment Test

A41. When considering allegations of dishonesty Casework should first consider whether there is evidence to support that alleged conduct took place. If so, Casework should consider whether the alleged actions were, objectively, dishonest (i.e. dishonest according to the objective standards of ordinary decent people). Dishonesty does not have any subjective element and, as such, it is not necessary for the registrant to have appreciated that what they were doing was dishonest[27]. For example, if an ordinary, reasonable person knew that a registrant had stolen money from their practice, it would not matter, from a dishonesty perspective, that the registrant did not consider their actions to be dishonest because, for example, it was their intention to return the money when their financial circumstances improved.

A42. It is not the role of Casework to resolve substantial conflicts of evidence. Where the evidence available at this stage indicates the alleged conduct was either dishonest or misleading, this is likely to indicate that Casework should consider whether raising an allegation in the alternative is appropriate (i.e. the alleged conduct was dishonest and/or misleading).

A43. Where there is evidence to support an allegation of dishonesty it is likely that Casework will determine that there is an allegation of impaired fitness to practise. 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

[27] Ivey v Genting Casinos (UK) Ltd. t/a Crockfords [2017] UKSC 67.

public confidence in the professions, and of proper professional standards and conduct, is highly likely to result in this determination.

Misleading behaviour

A44. Circumstances do arise in which patients, colleagues and/or other members of the public may have been misled, without the alleged behaviour of the registrant which led to that outcome being dishonest. This may include where there was an honest and genuine mistake, an innocent explanation for the actions in question, and/or no intention to mislead.

Applying the Assessment Test

A45. When considering the seriousness of an allegation of misleading conduct, in addition to the factors set out at paragraph [45] of the main guidance, Casework should consider whether the alleged conduct was reckless.

Discrimination, harassment, and victimisation

A46. 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, Casework must have due regard in their decision making to the definitions as set out in that Act[28].

A47. Discrimination is behaviour which treats one individual less favourably than another because of a characteristic that is protected under the Equality Act 2010[29]. The protected characteristics are:

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[30].

[28] Professional Standards Authority for Health And Social Care v Health And Care Professions Council & Anor [2021] EWHC 52.
[29] Section 13(1) of the Equality Act 2010.
[30] Section 4 of the Equality Act 2010.

A48. 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.

A49. 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[31] and anti-Muslim hostility[32].

A50. 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[33]. Harassment can be directed towards an individual or towards property (for example defacing a common space or individual property).

A51. 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)[34].

A52. 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.

A53. 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.

[31] International Holocaust Remembrance Alliance Working definition of antisemitism.
[32] UK government's non-statutory definition of anti-Muslim hostility.
[33] Section 26 of the Equality Act 2010.
[34] Section 27 of the Equality Act 2010.

A54. Discriminatory, harassing, and/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 Assessment Test

A55. Discrimination, harassment, and/or victimisation cannot be excused, condoned, or tolerated within the dental professions. Where there is evidence to support an allegation of discrimination, harassment, and/or victimisation it is likely that Casework will determine that there is an allegation of impaired fitness to practise. 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, is highly likely to result in this determination.

Considerations relating to discriminatory language

A56. Where it is alleged, for example, that a registrant's language was discriminatory, the meaning of the words used is an objective test, entirely independent of the registrant's state of mind or intention[35]. Whether or not the registrant intended the words used to be discriminatory is irrelevant to whether they were, in fact, so. The reaction of an audience in another context is irrelevant. Casework should consider how an ordinary reasonable person would respond to the words or conduct in question.

Considerations relating to harassment

A57. Conduct can amount to harassment if the behaviour violated the alleged victim's dignity or created an intimidating, hostile, degrading or offensive environment, even if it was not intended to do so[36]. Conduct can also amount to harassment if it was intended to have one of those effects, even if it did not do so.

Offensive behaviour and freedom of expression

A58. 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.

A59. 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

[35] 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).
[36] Professional Standards Authority for Health And Social Care v Health And Care Professions Council & Anor [2021] EWHC 52 (Admin).

freedom of expression which is protected by law[37]. As such, individuals are entitled to speak openly, debate ideas, and share religious, political, and philosophical beliefs - even if those 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.

A60. There is an inherent tension between these two important principles that must be carefully considered when such allegations arise. 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.

A61. 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 Assessment Test

A62. 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[38]. Whether or not the registrant intended the words used to be offensive is irrelevant to whether they were, in fact, so. Casework should consider how an ordinary reasonable person would respond to the words or conduct in question.

A63. Not all complaints of offensive behaviour will result in a determination that the Assessment Test is met.

A64. Sometimes it will be more obvious that the 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 professions).

A65. 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.

[37] Article 10 of the European Convention on Human Rights which is incorporated into UK law by the Human Rights Act 1998.
[38] 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).

A66. When considering the seriousness of an allegation of offensive behaviour, in addition to the factors set out at paragraph [45] of the main guidance, Casework considerations should include, but not be limited to, whether:

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 indicates the expression falls within the scope of lawful opinion, and is more aligned with personal or political commentary, even if controversial

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

A67. These may be complex considerations, requiring careful consideration on the individual circumstances of the case. Casework should seek input and advice from wider colleagues as appropriate, including from legal colleagues.

Where concerns relate to conduct on social media

A68. 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.

A69. However, it is important to remember that it is the content of the post or online communication and/or the conduct of the individual that is most relevant, not the means by which it was conveyed. As set out in the GDC's Guidance on Using Social Media, the standards expected of dental professionals do not change because they are communicating using social media.

A70. This means that whilst the guidance on using social media 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 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.

Sexual misconduct

A71. Sexual misconduct includes a wide range of conduct, both verbal and physical, from criminal convictions for sexual offences (e.g. sexual assault, sexual harassment, child sexual abuse including possession or distribution of images of child sexual abuse, physical contact, or online contact) to other sexual misconduct with patients, colleagues or the wider public, whether or not this takes place in the context of the registrant's professional life. It can occur in person or remotely, including via social media and/or messaging services.

A72. As well as raising public protection considerations, sexual misconduct by dental professionals has the potential to seriously undermine public confidence in the dental professions. As a result, cases relating to sexual misconduct are inherently serious[39].

Applying the Assessment Test

A73. Because sexual misconduct is likely to be related to sex (and possibly other protected characteristics under the Equality Act 2010), Casework should consider whether a linked allegation of harassment related to a protected characteristic should be made. Sexual harassment involves unwanted conduct of a sexual nature which has the purpose or effect of:

a. violating someone's dignity, or

b. creating an intimidating, hostile, degrading, humiliating, or offensive environment for them[40].

A74. Where the allegations concern touching, the best evidence as to whether the touching was sexual may be the registrant's behaviour. When considering whether the conduct was sexual, relevant factors may include the location of the touching on the alleged victim's body, whether it was accidental or intentional, whether (in a clinical setting) there was any clinical justification for the touching, or whether there was any other plausible reason for the touching to take place.

A75. When considering whether to make an allegation of sexual motivation, Casework should consider whether there is evidence to suggest that the alleged conduct was done either in pursuit of sexual gratification or in pursuit of a future sexual relationship[41].

A76. Where there is evidence to support an allegation of sexual misconduct it is likely that Casework will determine that there is an allegation of impaired fitness to practise. 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, is highly likely to result in this determination.

Bullying

A77. Bullying may be verbal, written, physical, or digital, and may occur as a single incident or as a repeated pattern.

Applying the Assessment Test

A78. When considering the seriousness of an allegations of poor standard of treatment of bullying, in addition to the factors set out at paragraph [45] of the main guidance, Casework considerations should include, but not be limited to:

[39] Arunachalam v The General Medical Council [2018] EWHC 758 (Admin).
[40] Section 26 of the Equality Act 2010.
[41] Basson v General Medical Council [2018] EWHC 505 (Admin).

a. the nature and severity of the behaviour

b. the alleged behaviour occurred in a professional or clinical setting, and/or posed a risk to safe and effective team working, willingness of employees/colleagues to speak up, and ultimately compromising patient care.

Professional boundaries

A79. Registrants are required to maintain appropriate professional boundaries. When a registrant's behaviour appears to blur or breach appropriate professional boundaries, this may lead to an allegation of misconduct.

Applying the Assessment Test

A80. When considering the seriousness of an allegation of misconduct in relation to professional boundaries, in addition to the factors set out at paragraph [45], Casework considerations should include, but not be limited to:

a. the nature and seriousness of the allegation - for example, the alleged behaviour involved crossing a significant boundary such as, for example, inappropriate physical contact, sexualised behaviour, or financial involvement

b. whether the information indicates a minor or inadvertent lapse, such as an over-familial tone which lacked a sexual element.

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While this guidance is primarily intended for use by GDC Casework, 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 contact your assigned caseworker where applicable, or visit gdc-uk.org/contact-us to submit an enquiry.

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