

Guidance

**Fitness to Practise
Guidance for the case examiners**

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 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 professions¹.
2. One of the ways the GDC pursues its objective is through the investigation of 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 and determine whether the concern amounts to an allegation of impaired fitness to practise. Where it does, the Registrar must refer the allegation of impaired fitness to practise to the case examiners for consideration².
4. Case examiners work in pairs (one registered dental professional and one lay person). They sit in private to consider an allegation of impaired fitness to practise based on the documentary evidence which has been gathered by the GDC³.
5. The case examiners consider allegations that registrants' fitness to practise may be impaired on one or more of the following grounds:
 - a. Misconduct.
 - b. Deficient professional performance.
 - 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 bodies⁴.
6. Case examiners consider and determine whether allegations of impaired fitness to practise which have been referred to them ought to be considered by a practice committee. They have a range of outcomes depending on the conclusion of that consideration.
7. The aim of this guidance is to promote consistency of approach, transparency, and proportionality in decision making by the case examiners when they are considering allegations

¹ Sections 1(1ZA) and 1(1ZB) of the Dentists Act 1984 (the Act).

² Rule 3 of the General Dental Council (Fitness to Practise) Rules 2006 (as amended) (the Rules).

³ Rule 2 of the Rules.

⁴ Sections 27(2) and 36N(2) of the Act.

of impaired fitness to practise which have been referred to them. It does not seek to restrict their discretion.

8. This guidance is intended for use by the case examiners. However, it may also be helpful to others including (but not limited to):
 - a. registrants whose cases are referred to the case examiners
 - b. legal representatives of registrants whose cases are referred to the case examiners
 - c. informants (individuals who raise a concern with the GDC about a registrant).
9. As a public authority, the GDC is subject to the Public Sector Equality Duty under the Equality Act 2010⁵. As such, case examiners must have due regard to this.
10. Appendix 1 follows this main guidance and sets out considerations in particular categories of cases.

Preliminary and general considerations

Bias and conflict of interest

11. The concepts of bias and conflict of interest, while related and potentially overlapping, are separate and distinct. In applying these principles, all the relevant circumstances should be considered.

Bias

12. Bias refers to a predisposition or prejudice which affects a decision-maker's ability to consider an allegation fairly.
13. Bias can be actual or apparent. There will be actual bias where, for example, there is evidence that a decision-maker consciously or unconsciously favours one party. The test for apparent bias is whether a fair-minded and informed observer, considering all relevant facts, would conclude that there is a real possibility that the decision-maker was biased⁶.
14. Before considering an allegation, the case examiners must consider not only whether bias exists but also whether the circumstances create the appearance of bias. Where bias, or a real possibility of the appearance of bias, arises, the relevant case examiner should withdraw from considering the case.

⁵ Section 149(1) of the Equality Act 2010.

⁶ Magill v. Porter [2001] UKHL 67, Suleman v General Optical Council [2023] EWHC 2110 (Admin).

Conflict of interest

15. A conflict of interest arises when a decision-maker's personal interests influence, or are capable of influencing, their ability to make decisions impartially.
16. An actual conflict of interest will exist where a decision-maker's view is actually influenced, or capable of being influenced, by their personal interests, whereas a potential conflict of interest will arise where the facts are reasonably suggestive of a conflict⁷. For example, a conflict of interest would arise where the decision maker has a financial or other personal interest in the outcome of the matter.
17. The case examiners must, before considering an allegation, consider not only whether an actual conflict of interests exists but also whether a potential conflict of interest arises.
18. Where a conflict of interest exists, or a potential conflict of interest arises, the relevant case examiner should withdraw from the case.

Involvement in previous cases

19. Where a case examiner has previously considered a case against the registrant, this does not, necessarily, give rise to bias (actual or an appearance of) or a conflict of interest (actual or potential). However, each case must be considered on a case-by-case basis, with the case examiner taking into account all the relevant circumstances of the case.

Reasonable opportunity to comment on the allegation of impaired fitness to practise and evidence

20. Where the Registrar has determined that a complaint or information amounts to an allegation of impaired fitness to practise, and has referred this to the case examiners for consideration, the Registrar must send a notification to the registrant and the informant. The notification must:
 - a. include a summary of the allegation of impaired fitness to practise
 - b. be accompanied by a copy of the documents⁸ in the Registrar's possession which relate to the allegation of impaired fitness to practise, excluding any evidence which the registrant or a third party has provided relating to the health or private and family life of the registrant or a third party
 - c. invite the registrant to respond to the allegation of impaired fitness to practise with written representations addressed to the case examiners within the time specified in the notification
 - d. inform the registrant that their representations may be disclosed to the informant (if any) for comment⁹.

⁷ [Bux v The General Medical Council \[2021\] EWHC 762 \(Admin\)](#).

⁸ In practice, this may include other types of evidence such as video and audio recordings.

⁹ Rule 4 of the Rules.

21. The case examiners must not make a determination about whether or not an allegation of impaired fitness to practise ought to be considered by a practice committee unless they are satisfied that the Registrar has provided the registrant, and the informant (if any), with a reasonable opportunity to submit written representations, commenting on:
 - a. the allegation of impaired fitness to practise, and
 - b. any evidence relating to the allegation of impaired fitness to practise¹⁰.
22. If a reasonable opportunity has not been provided, the case examiners must adjourn their consideration to allow this to happen.
23. What amounts to a reasonable opportunity will depend on the circumstances. For example, in cases with minimal evidence, a reasonable opportunity may be a shorter period of time. In a case where there is significantly more evidence to consider, a longer period of time may be required.
24. While this must be a case-by-case consideration, the following timescales are applied unless the circumstances require otherwise:
 - a. From notification of the allegation of impaired fitness to practise to the registrant submitting their written representations¹¹ – 28 days.
 - b. From the informant receiving the registrant's written representations to submitting their own written representations¹² – 14 days.
 - c. From the registrant receiving the informant's written representations to submitting their final written representations – 7 days.

A reasonable opportunity to comment on all relevant evidence

25. In their consideration of the allegation of impaired fitness to practise, the case examiners must not rely on any evidence that has not been disclosed to the registrant and, where applicable, the informant. Where relevant evidence has not been disclosed, the case examiners must adjourn their consideration to allow disclosure to take place, and for any further written representations to be made on those disclosures.

Registrar refusal of extension of opportunity to comment

26. While discretion over whether to grant an extension must be exercised fairly and should take account of all relevant factors, there is significant public interest in the efficient and expeditious running of fitness to practise proceedings.

¹⁰ Rule 6(3) of the Rules. Rule 6(8) of the Rules prohibits the Registrar from disclosing to the informant any evidence which has been provided by the registrant or a third party which relates to the registrant's health or private and family life.

¹¹ Rule 4(2)(c) of the Rules.

¹² Rule 4(2)(d) of the Rules.

27. To support this efficiency, extensions to the set deadlines for submitting written representations are usually only granted by the Registrar in exceptional circumstances.
28. While what will amount to a reasonable opportunity will depend on the circumstances, a simple oversight by the party seeking an extension is unlikely to qualify. Broadly, exceptional circumstances may be unforeseen situations which the party believes have had a significant impact on their ability to submit their written representations. Such situations may include, but are not limited to:
- a. illness or injury
 - b. personal/family issues or bereavement
 - c. registrant/informant being away, for example on holiday, when the notification or evidence was sent to them, and so significantly reducing the amount of time available to respond.
29. When deciding whether to grant or refuse an extension to submit written representations, the Registrar will consider:
- a. the public interest in the efficient and expeditious running of fitness to practise proceedings
 - b. the fairness to the parties in all the circumstances
 - c. the requested length of extension
 - d. the length of time already provided
 - e. the reasons for the extension
 - f. whether the request was made promptly after the need for an extension was identified.
30. Where the party has been refused an extension by the Registrar, the case examiners should review whether the factors set out in paragraphs [23] to [29] have been appropriately considered. The case examiners are not bound by the Registrar's decision to refuse an extension to submit written representations.
31. The case examiners will consider whether it is fair to a party in all the circumstances that more time should be given to them to submit representations. An example of this may be where the case examiners consider that comments from a party might have a material effect on their decision, such that it would be unfair on the party to proceed without giving them a further opportunity to comment.
32. If a party does not submit any written submissions and they do not seek an extension, where the case examiners consider there has been a reasonable opportunity to comment, an adjournment for further time is unlikely to be necessary.

Adjournments

33. The efficient and expeditious disposal of fitness to practise proceedings is of significant public interest. However, where the case examiners consider it necessary, they may adjourn their consideration and direct the Registrar to carry out further enquiries¹³. These enquiries may include:
- a. Undertaking specific factual enquiries.
 - b. Commissioning medical or other expert reports.
 - c. Obtaining legal advice.
 - d. Commissioning an assessment of the registrant's professional performance – this may be a full assessment or, for example, a more limited record card audit.
 - e. Considering amendments to the allegation of impaired fitness to practise – this may be necessary in circumstances where the case examiners consider that there is a material error in the referral to them (for example, in relation to the statutory ground or alleged facts), or the materials before the case examiners raise concerns about matters which have not been referred but which also do not appear to have been considered as a potential allegation of impaired fitness to practise by the Registrar¹⁴.
34. The case examiners should clearly outline the further enquiries to be undertaken or the further evidence to be obtained. The enquiries should be linked to the allegation, and the case examiners should provide reasons as to why the enquiries are necessary in helping them decide whether the matter ought to be considered by a practice committee.
35. Case examiners should not usually adjourn where, for example, new information is unlikely to make a difference to the outcome of the case, or where there is already sufficient information to refer to a practice committee.
36. Case examiners do not have the power to adjourn consideration of parts of a case. If further enquiries are needed, the whole case must be adjourned.
37. Where the case examiners have adjourned the case, the Registrar will seek the information or evidence requested and, when received, consider whether it is necessary to make any amendments to the allegation of impaired fitness to practise. Where new information or evidence is received, the Registrar will invite the registrant to respond with written representations addressed to the case examiners. The informant (if any) will then be invited to comment, and the case will then be returned to the case examiners. If there is any new evidence or allegation, the case examiners must repeat their consideration of whether a reasonable opportunity to comment has been provided to the registrant, and informant (if any), as set out in paragraphs [20] to [32].

¹³ Rule 5(3) of the Rules.

¹⁴ Rudling, R (On the Application Of) v General Medical Council [2018] EWHC 3582 (Admin).

Reasons

38. The case examiners should give clear reasons for their decisions. Those reasons do not need to be elaborate or lengthy, but the parties should be able to understand the decision which has been reached¹⁵.
39. While the reasons do not need to address every individual piece of information taken into account, there may be circumstances where a more detailed explanation should be provided. These include, for example, where:
 - a. the case examiners have made a value-judgement as to the weight of conflicting evidence (see paragraph [51])
 - b. the case examiners are closing a matter (there is a greater need to give reasons at the final determination point)
 - c. the decision departs from GDC guidance or any legal advice obtained.

Real prospect of the allegation of impaired fitness to practise being proved by a practice committee

40. The case examiners' role is to determine whether an allegation of impaired fitness to practise ought to, or ought not to, be considered by a practice committee. As such, the case examiners essentially conduct a filtering process, closing some cases and referring others to a practice committee.
41. The case examiners will make their determination by considering whether there is a real, as opposed to remote or fanciful, prospect of the allegation of impaired fitness to practise being proved by a practice committee. This consideration takes place in three distinct stages:
 - a. Whether there is a real prospect of the facts, as alleged, being found proved (stage one).
 - b. If so, whether there is a real prospect of the statutory ground of impairment being established (stage two).
 - c. If so, whether there is a real prospect of the registrant's fitness to practise being found to be currently impaired (stage three).

Facts (stage one)

42. It is not the role of the case examiners to determine whether the alleged facts are proved, or whether they are true or untrue. The case examiners' role at this stage is only to determine whether the facts stand a real prospect of being proved by a practice committee.

¹⁵ [Lutton v The General Dental Council \[2011\] ScotCS CSIH 62.](#)

43. When making this determination, the case examiners should keep in mind that practice committees consider whether the facts have been proved by the GDC on the balance of probabilities. Practice committees must be satisfied that it is more likely than not that the matters alleged occurred. What the case examiners are determining, therefore, is whether there is a real prospect of the facts being proved before a practice committee on the balance of probabilities, rather than any higher threshold.
44. When considering the balance of probabilities, a practice committee may take into account the inherent probability of an event and, where an event is inherently improbable, it may take better evidence to persuade it that the event happened. However, it does not necessarily follow that the more serious the alleged fact, the less likely it is to have occurred; there is no logical or necessary connection between seriousness and probability¹⁶.
45. Where the case examiners reach a determination that is inconsistent with that of another public body (for example, an NHS body, a coroner, or an ombudsman) in relation to the same or substantially the same facts, they will need to provide clear reasons for the conclusion they have reached.

Evidence

46. When considering whether there is a real prospect of the alleged facts being proved, the case examiners may, subject only to the requirements of relevance and fairness, consider any documentary evidence (which, in practice, may include evidence in a range of formats such as video and audio recordings), regardless of whether that evidence would be admissible in any proceedings before a court¹⁷.
47. If the evidence is from the Family Court, permission is needed for it to be lawfully considered by the case examiners. If it is not clear that permission has been granted, the case examiners should adjourn their consideration and seek explicit confirmation from the Registrar that permission has been granted.
48. Evidence will be relevant if it has the potential to affect the likelihood of proving the alleged facts.
49. The case examiners should reach their decision solely on the evidence before them. They must not seek any additional information about the registrant or attempt to fill in the gaps themselves where the evidence before them is incomplete. Instead, if the case examiners consider that further information is required (including any further clinical information), they should adjourn their consideration in accordance with the guidance set out at paragraphs [33] to [37].

Conflicts of evidence

50. The case examiners must not attempt to resolve substantial conflicts of evidence.

¹⁶ *O v Secretary of State for Education & Anor* [2014] EWHC 22 (Admin).

¹⁷ Rule 5(2) of the Rules.

51. The case examiners can, however, assess the weight of the conflicting evidence when determining whether there is a real prospect of the facts being proved by a practice committee. For example, where there is a factual dispute, there may be very clear and cogent evidence supporting one side of the dispute, which is confirmed or supported by other evidence, whereas the evidence to the contrary may be wholly implausible or inherently inconsistent. In such circumstances, to act as an effective filter, the case examiners can make a value-judgement as to the conflicting evidence¹⁸.
52. In the context of conflicts, when assessing evidence the case examiners should:
- a. consider all of the evidence before them and determine whether any of it is conflicting
 - b. assess the extent of the conflict and decide whether the conflicts are substantial (i.e. of particular significance or importance)
 - c. assess the weight of the conflicting evidence, determining whether this can be resolved within the limits of the case examiners' filtering role, as set out at paragraph [51].
53. When considering conflicts of evidence, it is important to look for corroborating contemporaneous notes, but it is also important to consider the information provided by the registrant in their representations¹⁹.
54. Should the case examiners determine to close a matter following the weighing of conflicting evidence, clear reasons should be provided for their decision.
55. Where there is a substantial conflict of evidence which is not possible for the case examiners to resolve within the limits of their filtering role, as set out at paragraph [51], the case examiners are likely to find that there is a real prospect of those facts being found proved, and should move on to the next stage of their decision making.

Statutory ground (stage two)

56. If the case examiners consider that there is a real prospect of some or all of the facts being found proved (at stage one), they must go on to consider whether there is a real prospect of the statutory ground being established (at stage two).
57. At practice committee, impairment can only be found on the basis of one or more of the statutory grounds, which are:
- a. Misconduct.
 - b. Deficient professional performance.
 - c. Adverse physical or mental health.

¹⁸ [Henshall v General Medical Council & Ors \[2005\] EWCA Civ 1520.](#)

¹⁹ [Miller & Anor v The Health Service Commissioner for England \[2018\] EWCA Civ 144.](#)

- d. Conviction or caution for a criminal offence.
 - e. Certain other outcomes for criminal offences.
 - f. Determinations by certain other regulatory bodies²⁰.
58. 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 register²¹.
59. Evidence of mitigation or remediation is unlikely to be relevant for consideration at this stage. These factors are instead relevant in the consideration of whether there is a real prospect of finding current impairment at stage three.

Misconduct

60. Misconduct denotes serious acts or omissions, suggesting a significant departure from what would be proper in the circumstances. There are two principal types of misconduct²². 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 skills are directly engaged.

²⁰ Sections 27(2) and 36N(2) of the Act.

²¹ Sections 27(3) and 36N(3) of the Act.

²² 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.
61. The second type of misconduct involves conduct of a disreputable, morally culpable, or otherwise disgraceful kind which may, and often will, occur outside the course of professional practice but which brings disgrace upon the registrant and thereby undermines confidence in the profession. The following factors should be considered in those circumstances:
- a. It does not matter whether such conduct is directly related to the exercise of professional skills.
 - b. Action taken in good faith and for legitimate reasons, however inefficient or ill-judged, is not capable of constituting misconduct merely because it might damage the reputation of the profession.
62. Misconduct can also be assessed against guidance for registrants produced by the GDC, including the [Standards for the Dental Team](#) (the Standards).
63. The GDC publishes [supplementary guidance](#) on a range of other specific issues which may assist the case examiners in assessing whether a registrant's conduct has fallen far short of what would be expected in the circumstances.

Deficient professional performance

64. 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 performance²³. 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 seriously deficient 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 professional²⁴.
65. 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

66. When the case examiners are considering an allegation of impaired fitness to practise on the ground of adverse physical or mental health, they will usually be provided with a health assessment report commissioned by the Registrar (or, on occasion from the registrant's

²³ [Calhaem, R \(on the application of\) v General Medical Council \[2007\] EWHC 2606 \(Admin\)](#).

²⁴ [Remedy UK Ltd, R \(on the application of\) v The General Medical Council \[2010\] EWHC 1245 \(Admin\)](#).

employer or treating clinician) which will detail the adverse physical or mental health condition(s) which the registrant is alleged to have.

67. The report will usually express a view as to whether the specified condition impairs the registrant's fitness to practise. However, at stage two, the case examiners' only task is to determine whether, on the information before them, there is a real prospect of the registrant being found to have the alleged adverse physical or mental health condition(s). For this statutory ground, the case examiners' decision that there is a real prospect of facts being found at stage one will effectively satisfy their consideration at stage two.

Conviction or caution for a criminal offence

68. A registrant's fitness to practise may be regarded as impaired as a result of a criminal conviction or caution in the United Kingdom for a criminal offence, or a conviction elsewhere for an offence which, if committed in England and Wales, would constitute a criminal offence.
69. Further factors of consideration in relation to this statutory ground are set out at paragraphs [154] to [176] of Appendix 1.

Declaring criminal convictions and cautions

70. With the exception of protected criminal convictions and cautions (see paragraphs [73] to [77]), dental professionals are required to declare past criminal convictions and cautions when they apply for registration or restoration to the register²⁵. 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.
71. 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.
72. 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

73. There are some criminal convictions and cautions which are "protected"²⁶, 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.

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

²⁶ The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amendment).

74. A criminal conviction can never be protected where it is received for a "specified offence"²⁷. A criminal conviction is also never protected where there was a custodial sentence, including when that sentence was suspended.
75. A criminal conviction is not protected unless:
- 11 years have passed since the date of conviction, and the registrant was 18 or over at the date of conviction, or
 - five and a half years have passed, and the registrant was under 18 at the date of conviction.
76. 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:
- it was not given for a specified offence, and
 - more than six years have passed since the caution was given.
77. The timelines set out in paragraphs [75] and [76] apply at the point the consideration or decision is being made. As such, case examiners should be mindful that a criminal conviction or caution may have become protected in the time between when the allegation of impaired fitness to practise was referred to them and their consideration concluding.

Certain other outcomes for criminal offences

78. A registrant's fitness to practise may also be regarded as impaired by reason of:
- having accepted a conditional offer under section 302 of the Criminal Procedure (Scotland) Act 1995 (fixed penalty: conditional offer by procurator fiscal)²⁸
 - having agreed to pay a penalty under section 115A of the Social Security Administration Act 1992 (penalty as alternative to prosecution)²⁹
 - 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 absolutely³⁰.

Determinations by certain other regulatory bodies

79. A registrant's fitness to practise may also be found to be impaired on the basis of a determination of impaired fitness to practise made by a body in the United Kingdom

²⁷ 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](#).

²⁸ Sections 27(2)(e)(i) and 36N(2)(e)(i) of the Act.

²⁹ Sections 27(2)(e)(ii) and 36N(2)(e)(ii) of the Act.

³⁰ Sections 27(2)(f) and 36N(2)(f) of the Act.

responsible for the regulation of a health or social care profession, or by a regulatory body elsewhere to the same effect³¹.

80. This includes only determinations made by a panel of another health or social care regulator in the United Kingdom (for example, the General Medical Council, the Nursing and Midwifery Council, or Social Work England), or by a regulatory body abroad which has the function of authorising persons to practise as health or social care professionals.
81. The case examiners should keep in mind that it is the finding of impairment made by that body which the practice committee must consider. Other than in exceptional circumstances, the practice committee will not revisit the truth of the facts underlying that body's determination³².
82. At stage two, the case examiners' only task is to determine whether, on the information before them, there is a real prospect of it being established that there has been a determination of impaired fitness to practise made by a body in the United Kingdom responsible for the regulation of a health or social care profession, or by a regulatory body elsewhere to the same effect. For this statutory ground, the case examiners' decision that there is a real prospect of facts being found at stage one will effectively satisfy their consideration at stage two in relation to the statutory ground.
83. Determinations made by the Care Quality Commission, Health Inspectorate Wales, Healthcare Improvement Scotland, the Regulation and Quality Improvement Authority, or other systems regulators, do not fall 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.

Current impairment (stage three)

84. If the case examiners consider that there is a real prospect of the statutory ground being established (at stage two), they should go on to consider whether there is a real prospect of the registrant's fitness to practise being found to be currently impaired (at stage three).
85. There is no statutory definition of impairment, but the test for impairment is a current test. However, factors for consideration include:
 - a. Whether the registrant in the past acted, and/or is liable in the future to act, so as to put a patient or patients at unwarranted risk of harm.
 - b. Whether the registrant in the past brought, and/or is liable in the future to bring, the dental professions into disrepute.

³¹ Sections 27(2)(g), 27(7)(b) 36N(2)(g), and 36N(7)(b) of the Act.

³² [Peckitt v General Dental Council \[2016\] EWHC 1803 \(Admin\)](#).

- c. Whether the registrant in the past breached, and/or is liable to breach, one of the fundamental tenets of the profession, with reference to the principles of practice in the Standards.
 - d. Whether the registrant, in the past acted dishonestly, and/or is liable to act dishonestly in the future³³.
86. In determining whether there is a real prospect of current impairment being found by a practice committee, the case examiners should be aware that a practice committee must consider whether the registrant's fitness to practise is currently impaired by the alleged matters.

Impairment on the grounds of health, safety and well-being of the public³⁴

87. An assessment of current impairment on the grounds of health, safety, and well-being of the public, will involve consideration of whether the reason by which fitness to practise is said to be impaired is easily remediable, whether it has been remedied, and whether it is highly unlikely to be repeated in the future³⁵.
88. Factors which may be relevant to the assessment of whether a registrant's fitness to practise is currently impaired include:
- a. Demonstration of insight and remorse (i.e. recognition of the issue by the registrant, and whether the registrant recognises that they should have behaved differently in the circumstances).
 - b. Any remedial action taken by the registrant (i.e. measures put in place to prevent a recurrence such as evidence of learning undertaken which addresses impairment, reflective writing, formulating a personal development plan).
 - c. The risk of recurrence.

Insight

89. Insight on the part of a dental professional is an important factor. It is relevant to the case examiners' consideration of whether there is a real prospect that a practice committee will find current impairment. This is because it will be highly relevant to the practice committee's assessment of the risk of repetition.
90. Insight involves developing a degree of empathy with the perspective of other parties, including victims, professional colleagues, and the public. Insight is a necessary precondition of remorse, or genuine regret for the impact on others. It is distinguishable from willingness to offer an apology and from the regret about the personal consequences of misconduct being revealed and as a result the regulatory action that follows.

³³ [Council for Healthcare Regulatory Excellence v Nursing and Midwifery Council & Anor \[2011\] EWHC 927 \(Admin\)](#).

³⁴ Section 1(1ZB)(a) of the Act.

³⁵ [Cohen v General Medical Council \[2008\] EWHC 581 \(Admin\)](#).

91. Examples of how a registrant may demonstrate insight include:
- Reviewing their own performance or conduct.
 - Recognising that they should have acted differently in the circumstances being considered.
 - Identifying and putting in place measures that will prevent a recurrence of such circumstances.
 - Reflecting on the magnitude and consequences of their conduct for others.
92. In considering the registrant's insight, the case examiners should weigh all the relevant evidence, including:
- Any objective evidence, such as specific work the registrant has done, or training attended, in an effort to address the failings identified.
 - The registrant's written submissions, including any reflective accounts.
 - Comments from the registrant's employer(s) or colleague(s) if these contain relevant information about a registrant's insight.
93. When considering insight, the case examiners should be aware that individuals may have different ways of expressing insight, and the way it is expressed may be impacted by an individual's circumstances as well as cultural background and language. As such, the registrant's recognition that corrective actions need to be undertaken is more important than the way in which their insight is expressed.
94. The stage at which insight is developed may also be a relevant factor for the case examiners to consider. As a matter of principle, the way in which a healthcare professional reacts to the discovery of their misconduct is an important part of the assessment of their attitude and their insight into the alleged wrongdoing and its effects³⁶.

Denial

95. A registrant is entitled to deny the alleged facts and put forward a defence. Denial of the facts is not the same thing as a lack of insight nor is it a bar to demonstrating insight.
96. For example, a registrant may deny the alleged facts but may demonstrate insight by providing evidence which reflects upon the issues, recognises that they should have acted differently, and demonstrates they have put into place measures that will prevent recurrence.

Remediation

97. Case examiners should examine the type of remediation undertaken, evaluate its relevance to the alleged facts before them, and satisfy themselves that it addresses the concerns raised.

³⁶ Professional Standards Authority for Health And Social Care v Health And Care Professions Council & Anor [2019] EWHC 2819 (Admin).

98. With regards to any training completed, case examiners should, as well as evaluating the relevance of the training, look at its duration and whether there were any practical elements, assessment, or reflection undertaken at the end of the course through which the registrant might demonstrate their understanding of the topics covered.

Fitness to practise history

99. A registrant's fitness to practise history is an important factor in the case examiners' consideration of whether there is a real prospect of current impairment being found, because it may be relevant to the risk of recurrence.
100. In reviewing a registrant's fitness to practise history, the case examiners should consider whether it is adverse. In terms of what amounts to adverse fitness to practise history, the following may be used as a guide:

Case stage	Outcome	Adverse / no adverse
Initial assessment	Closure	Not adverse
Assessment	Closure	Not adverse
Case examiners / Investigating Committee	Closure, no further action	Not adverse
Case examiners / Investigating Committee	Closure with advice	Adverse
Case examiners / Investigating Committee	Closure with a warning (published or unpublished)	Adverse
Case examiners / Investigating Committee	Undertakings	Adverse
Practice committee	Facts not found proved	Not adverse
Practice committee	Facts found proved, statutory ground not established	Not ordinarily adverse, but will be assessed on a case-by-case basis
Practice committee	Statutory ground established, no current impairment found	Adverse
Practice committee	Current impairment found, no action	Adverse

Practice committee	Current impairment found, reprimand, conditions, suspension, or erasure	Adverse
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101. The case examiners should then examine the relevance of the previous history to the current allegation of impaired fitness to practise. For example, the history may reveal a pattern of similar behaviour. However, even if there are no common themes, a registrant who has significant previous fitness to practise history may have demonstrated a persistent lack of regard for professional standards.
102. Where the fitness to practise history relates to a warning or advice issued by the Investigating Committee or the case examiners, no findings of fact or judgement on impairment will have been made and, as such, the case examiners should proceed with caution when taking such history into account.

Impairment on the grounds of public interest³⁷

103. Factors such as demonstration of insight and remorse, remedial action taken, and the risk of recurrence (i.e. those set out at paragraph [88] as being of potential relevance in the consideration of current impairment on public safety grounds), should be weighed against the public interest in maintaining public confidence in the professions and upholding proper professional standards, which are 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. For example, where the case examiners consider there is a real prospect of facts relating to the following alleged matters being found proved:
- 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.

³⁷ Sections 1(1ZB)(b) and (c) of the Act.

- j. Failure to hold adequate and appropriate indemnity insurance.
 - k. Practising outside scope of practice.
104. In such circumstances, where the case examiners consider there to be a real prospect that a practice committee will make a finding of current impairment in the interests of maintaining public confidence and promoting proper professional standards, remedial efforts made by the registrant may be of far less significance than in other cases, such as those involving clinical errors or incompetence³⁸.
105. It may be the case that the case examiners find a real prospect of the registrant's fitness to practise being found to be impaired on the grounds of both public protection and on public interest. However, even when public protection is no longer an issue, they may (and in appropriate cases, such as those set out at paragraph [103] should) conclude that there is a real prospect of current impairment being found solely on the grounds of public interest.
106. Further guidance for considering the matters listed in paragraph [103] is provided in Appendix 1.

Conclusion of the real prospect consideration

107. Where the case examiners consider there is a real prospect of the facts, statutory ground, and current impairment being found by a practice committee, they must determine that the allegation ought to be considered by a practice committee³⁹.
108. Where the case examiners consider there is not a real prospect of the facts being found proved, or of the statutory ground being established, or of current impairment being found by a practice committee, they must determine that the allegation ought not to be considered by a practice committee⁴⁰.
109. Where the case examiners are in doubt about whether to refer the case to a practice committee, this should be resolved in favour of referral.
110. Determinations by the case examiners about whether an allegation ought to, or ought not to, be referred to a practice committee must be unanimous. If agreement cannot be reached, the case examiners must refer the allegation to the Investigating Committee⁴¹.

³⁸ Yeong v The General Medical Council [2009] EWHC 1923 (Admin).

³⁹ Rule 6(1)(b) of the Rules.

⁴⁰ Rule 6(1)(a) of the Rules.

⁴¹ Rules 6(1) and 6(2) of the Rules.

Allegation of impaired fitness to practise ought to be considered by a practice committee

111. Where the case examiners determine that the allegation of impaired fitness to practise ought to be considered by a practice committee, the case examiners must either:
- refer the allegation of impaired fitness to practise to the appropriate practice committee⁴², or
 - invite the registrant to comply with such undertakings as the case examiners consider appropriate⁴³.

Considering whether undertakings are appropriate

112. Undertakings are a useful and proportionate tool to support the resolution of concerns about the fitness to practise of a registrant. They are an agreement between the GDC and a registrant about the registrant's future conduct or practice, and should always be considered where there is no real prospect of erasure.
113. Undertakings may be agreed to limit a registrant's practice, for example by preventing or restricting them from practising in certain circumstances, carrying out certain treatments, or treating particular categories of patient, without supervision. Registrants may also be required, for example, to undergo particular training, or to provide reports, logs, and/or audits to the GDC.
114. In considering whether undertakings are appropriate, the case examiners will have regard to the GDC's overarching objective and aims (as set out at paragraph [1])
115. Undertakings may be appropriate when the following factors are present:
- There are discrete aspects of the registrant's practice where shortcomings have been identified.
 - The registrant has shown evidence of insight (please refer to section on insight, as set out at paragraphs [89] to [94] above).
 - The registrant has indicated a willingness to respond positively to undertakings or proactively offered to accept undertakings.
 - It is possible to formulate undertakings that will protect the public during the period they are in force.
 - It is possible to formulate undertakings that uphold the wider public interest.

⁴² Rule 6(6)(a) of the Rules.

⁴³ Rule 6(6)(b) of the Rules.

- f. It is possible to formulate workable undertakings that do not in effect amount to a suspension.
116. Insight on the part of the registrant is likely to be an important factor in considering whether undertakings are appropriate. A registrant who demonstrates insight, recognises that steps need to be taken to protect the public, for example by limiting their practice, and undertaking remediation may be more likely to accept and comply with undertakings.
117. Undertakings will only be appropriate when there is reasonable confidence in the registrant's ability to comply with them. That judgement may be informed by circumstances and practicalities which prevent the registrant from complying with undertakings, or where there is evidence of previous issues with compliance on the part of the registrant.
118. If the case examiners cannot be reasonably confident in the registrant's ability to comply with undertakings, they should not offer undertakings to the registrant and should instead refer the allegation of impaired fitness to practise to the appropriate practice committee.
119. When offering undertakings, the case examiners will have regard to the Case Examiners Undertakings Bank [insert date of publication]. In general terms, however, undertakings should be:
- a. necessary to protect the public, maintain the public confidence in the professions, or maintain proper professional standards
 - b. workable
 - c. enforceable, including (where applicable) having clear and appropriate timeframes for compliance
 - d. clear
 - e. relevant
 - f. addressed only to the registrant (not to third parties)
 - g. proportionate to the issues identified
 - h. written in such a way that compliance can be monitored.
120. Undertakings should be offered for a specific period, which should be the minimum time that the case examiners consider necessary. Unlike conditions imposed by practice committees which have a maximum duration of three years⁴⁴, there is no maximum period for which undertakings may be agreed. However, undertakings will not typically be agreed for periods exceeding three years, as this will ordinarily be sufficient to enable any necessary remedial action to be taken.

⁴⁴ Section 27B(6)(c) of the Act.

121. The proposed duration of the undertakings should be proportionate to the specific shortcoming(s) identified and should allow sufficient time for the registrant to demonstrate they have addressed the area(s) of concern through sufficient remediation.

A real prospect of erasure at practice committee

122. Undertakings must not be offered where there is a real prospect that, if the allegation of impaired fitness to practise were referred to a practice committee, the registrant would be erased from the register⁴⁵.
123. Practice committees are unable to direct that a registrant's name be erased from the register following a determination that the registrant's fitness to practise is impaired solely on the ground of impaired physical or mental health⁴⁶. As such, there is no prospect of erasure where the only ground of impairment is adverse physical or mental health.
124. The sanction of erasure is the most severe a practice committee can impose and is reserved for conduct so damaging to a registrant's fitness to practise and to public confidence in the dental professions that removal from the register is the only appropriate outcome. Practice committees should only impose an order of erasure where there is no other means of protecting the public and/or maintaining confidence in the profession.
125. Practice committees will consider erasure appropriate when the registrant's behaviour is fundamentally incompatible with continued registration, and when all, or some, of the following factors are present:
- a. The findings include serious departure(s) from the relevant professional standards.
 - b. Serious harm in relation to patients, colleagues, or other persons has occurred, either deliberately or through incompetence.
 - c. A continuing risk of serious harm to patients, colleagues, or other persons is identified.
 - d. The findings include the abuse of a position of trust or violation of the rights of patients, colleagues, or other persons, and particularly if involving vulnerable persons.
 - e. There are convictions or findings of a sexual nature in relation to patients, colleagues, or other persons, including involvement in any form of child sexual exploitation and abuse.
 - f. The findings include serious dishonesty, particularly where persistent or covered up.
 - g. There is a persistent lack of insight into the seriousness of actions or their consequences.
 - h. A lesser sanction would be insufficient to meet the public interest.

⁴⁵ Rule 6(7) of the Rules.

⁴⁶ Sections 27B(7) and 36P(8) of the Act.

Offering undertakings to the registrant

126. Where the case examiners consider it appropriate to offer undertakings, they must write to the registrant inviting them to comply with the specified undertakings. That letter should:
- specify the proposed undertakings, including the duration, clearly explaining the specific shortcomings which have led to undertakings being offered
 - explain the aim of the undertakings being offered, so it is clear to the dental professional why the undertakings are relevant and proportionate, and what is expected of the registrant in terms of addressing the shortcomings identified
 - specify the intended form in which the undertakings are to be published, making clear which, if any, undertakings (or information contained within them) are not to be published
 - include a copy of the proposed public-facing summary of the issues as referred to in paragraph [131(c)] below
 - invite the registrant to respond within 28 days of the date of the letter (or such further period as the case examiners may allow) to confirm whether they are prepared to comply with the specified undertakings⁴⁷.
127. As set out at paragraph [119(b)], undertakings should be workable. Should the registrant respond to the offer of undertakings indicating a willingness to comply but explaining, for example, why the proposed undertakings may not be appropriate or workable, the case examiners may consider whether it is appropriate to offer amended undertakings, repeating their consideration as set out at paragraphs [112] to [121]. If the case examiners do consider it appropriate to offer amended undertakings, they will write to the registrant again, and that letter should include the information set out at paragraph [126].
128. Where the registrant is not willing to accept the undertakings offered, or does not respond within the specified timeframe, the case examiners must refer the allegation of impaired fitness to practise to a practice committee⁴⁸.
129. Where undertakings are agreed, the case examiners must cease consideration of the allegation of impaired fitness to practise and revoke with immediate effect any interim order which has been made in respect of the allegation of impaired fitness to practise⁴⁹.

Publishing details of the undertakings

130. Where undertakings have been agreed with the registrant, the case examiners may, if they consider it appropriate to do so, direct the Registrar to publish details of the undertakings on the dental professional's register entry⁵⁰. In light of the GDC's overarching objective and aims

⁴⁷ Rule 6A(1) of the Rules.

⁴⁸ Rule 6A(2) of the Rules.

⁴⁹ Rule 6A(3) of the Rules.

⁵⁰ Rule 6A(4) of the Rules.

(as set out at paragraph [1]), details of the undertakings should ordinarily be published on the dental professional's register entry, and for the period the undertakings are in force.

131. The details of the undertakings which should ordinarily be published are:
- a. The undertakings that have been agreed, and the period of time for which they have been set and will remain in force should no new information be received which requires early review.
 - b. That the undertakings will be subject to a review prior to their expiry.
 - c. A summary of the issues, prepared by the case examiners, which provides:
 - i. a brief background to the case.
 - ii. details of those matters which have been admitted or have a real prospect of being found proved and reference to the supporting evidence, as well as brief reasons as to why there is a real prospect of a finding of current impairment being made.
 - iii. a reflection that the case examiners consider that undertakings are an effective, proportionate, and adequate measure to protect patient safety and maintain public confidence in the dental professions.
 - iv. a reflection that, at this stage, no facts have been found proved as this would require the referral to, and hearing of, a practice committee.
132. No details which relate to the health or private and family life of either the registrant or a third party will be published.
133. Publishing details of the undertakings:
- a. supports public safety because it enables members of the public to make informed decisions when selecting a dental professional, in the context of any restrictions on a dental professional's registration
 - b. promotes public confidence in the dental professions because it provides a rationale for why undertakings, in the particular circumstances, are an appropriate regulatory response
 - c. promotes proper professional standards because it provides a public indication of the specific shortcomings which led to the undertakings, and so sends a clear message to the wider profession of the required standards.
134. There may be circumstances where the case examiners consider that it is not appropriate to publish some, or all, of these details, because there are factors which outweigh the factors set out at paragraph [133]. For example, this may arise where there is cogent evidence which suggests publication is likely to cause significant harm to the registrant or a third party. In such circumstances, the case examiners should balance the public interest with the interests of the registrant in reaching their decision in relation to publication.

135. Other than in exceptional circumstances, at a minimum it should be a matter of public record that undertakings have been agreed, even if the undertakings themselves, or reasons for them, are not published.

Monitoring

136. Where undertakings are in place, the Registrar may carry out any investigations that are appropriate to the consideration of:
- whether the registrant has complied with all their undertakings, or
 - the registrant's fitness to practise⁵¹.
137. Once agreed, the registrant's compliance with the undertakings is monitored by the Registrar.
138. This may include, but is not limited to:
- obtaining information from the registrant (including any information which the registrant is required to provide by his or her undertakings)
 - contacting the registrant's employer, medical supervisor, workplace supervisor, development advisor, educational supervisor or mentor, where appropriate, to request further information⁵²
 - requesting that the registrant undergoes medical testing.
139. Where it appears that the registrant has failed to comply with any undertaking or varied undertaking, the matter should be addressed as an issue of non-compliance.

Undertakings becoming unworkable

140. Undertakings may become unworkable, for example, where a registrant changes job or moves to another area.
141. In such circumstances, the registrant is likely to be in a position to assess whether their undertakings will become unworkable, or whether there is any additional information that ought to be taken into account by the GDC. As such, an application for variation or termination of undertakings should be made by the registrant before they have reached the point of breaching an undertaking. The matter should then be referred promptly by the Registrar to the case examiners.
142. If, in all the circumstances, the case examiners consider that any undertaking should be varied, they must direct the Registrar to write to the registrant inviting them to comply with such varied undertakings as the case examiners consider appropriate.

⁵¹ Rule 6B(1) of the Rules.

⁵² [Fitness to Practise Glossary of Terms](#).

143. The letter to the registrant should:
- a. specify the proposed varied undertakings, including the duration, clearly explaining the specific shortcomings which have led to varied undertakings being offered
 - b. explain the aim of the varied undertakings being offered, so it is clear to the dental professional why the varied undertakings are relevant and proportionate, and what is expected of the registrant in terms of addressing the shortcomings identified
 - c. specify the intended form in which the varied undertakings are to be published, making clear which, if any, varied undertakings (or information contained within them) are not to be published
 - d. confirm whether there are any proposed changes to the public summary and, if so, include a copy of the updated proposed public summary.
 - e. invite the registrant to respond within 28 days of the letter to confirm whether they are prepared to comply with the specified varied undertakings⁵³.
144. Agreement of varied undertakings may be appropriate where workable alternative undertakings are possible. However, there may be a need for further scrutiny of the case at a hearing before a practice committee in circumstances where:
- a. there are no workable alternative undertakings
 - b. the registrant's undertakings have already been varied on one or more previous occasions
 - c. an undertaking has become unworkable, but has been breached without the registrant making any prior attempt to contact the GDC
 - d. the registrant has not accepted the invitation to agree to all of the varied undertakings either in the initial 28-day period⁵⁴, or within the further discretionary 28-day period⁵⁵.
145. In such circumstances, referral of the original allegation of impaired fitness to practise to a practice committee is likely to be appropriate⁵⁶.

Breach of undertakings

146. Failure to comply with undertakings or varied undertakings may be the result of the registrant's own choices or actions.
147. In those circumstances, the matter should be referred promptly by the Registrar to the case examiners. Where it appears that a registrant has failed to comply with undertakings or varied undertakings, the case examiners may:

⁵³ Rule 6B(2)(a) of the Rules.

⁵⁴ Rule 6B(3)(c) of the Rules.

⁵⁵ Rules 6B(4)(b) and 6B(5).

⁵⁶ Rule 6B(4)(a) of the Rules.

- a. refer the original allegation of impaired fitness to practise to a practice committee, or
 - b. direct the Registrar to write to the registrant inviting them to confirm in writing, within 28 days, that they will comply with the undertaking⁵⁷.
148. Immediate referral of the original allegation of impaired fitness to practise to a practice committee is likely to be appropriate where there is a significant breach of one or more undertaking, or where the undertakings concerned have been breached on one or more previous occasions, because such circumstances are likely to undermine the case examiners' reasonable confidence in the registrant's ability to comply with undertakings.
149. Alternatively, the case examiners may wish to give the registrant concerned an opportunity to confirm that they will comply with the undertakings. This may be appropriate where the breach is more minor, it arose due to factors outside the registrant's control, or where the registrant is suffering from a health condition which contributed to the breach, for example, where the breach of undertaking is related to a lapse in abstinence. In respect of the latter, it may be appropriate for the case examiners to seek to work with the registrant rather than make an immediate referral of the original allegation of impaired fitness to practise to a practice committee. This will require the registrant to provide information to support the case examiners' reasonable confidence in the registrant's ability to comply with the undertakings in future.
150. Where the Registrar has not received written agreement to comply with all of the case examiner undertakings or varied undertakings from the registrant within 28 days, the case examiners must refer the original allegation of impaired fitness to practise to a practice committee⁵⁸.
151. Where the Registrar considers that failure to comply with undertakings or varied undertakings amounts to an allegation of impaired fitness to practise in its own right, they must refer this new allegation of impaired fitness to practise to the case examiners for consideration⁵⁹. In such circumstances, the case examiners should approach their consideration in line with paragraphs [11] to [110].

Variation

152. There may be circumstances where a registrant has not breached their undertakings, but where it may be appropriate for the terms of the undertakings to be varied. This may include circumstances where, for example, the registrant's health or performance has deteriorated to the extent that varied undertakings are necessary in order to protect patients or the wider public, or, conversely, that the registrant's health or performance has improved such that the previous undertakings can safely be relaxed.
153. In those circumstances, the matter and any new information available will be considered by the case examiners with a view to the undertakings being varied. This may be as a result of

⁵⁷ Rule 6B(4) of the Rules.

⁵⁸ Rule 6B(5) of the Rules.

⁵⁹ Rule 6B(6) of the Rules.

information provided to the case examiners by the Registrar, or the registrant themselves having made an application.

154. If, in all the circumstances, the case examiners consider that any undertaking should be varied, they must direct the Registrar to write to the registrant inviting them to comply with the varied undertakings as the case examiners consider appropriate.
155. The letter sent to the registrant should:
- a. specify the proposed varied undertakings, including the duration, clearly explaining the specific shortcomings which have led to varied undertakings being offered
 - b. explain the aim of the varied undertakings being offered, so it is clear to the dental professional why the varied undertakings are relevant and proportionate, and what is expected of the registrant in terms of addressing the shortcomings identified
 - c. specify the intended form the varied undertakings are to be published, making clear which, if any, varied undertakings (or information contained within them) are not to be published
 - d. confirm whether there are any proposed changes to the public summary and, if so, include a copy of the updated proposed public summary.
 - e. invite the registrant to respond within 28 days of the letter to confirm whether they are prepared to comply with the specified varied undertakings⁶⁰.
156. If the registrant does not accept the invitation to agree to all of the varied undertakings within 28 days, the case examiners may:
- a. refer the allegation of impaired fitness to practise to a practice committee, or
 - b. direct the Registrar to write again to the registrant, inviting them to agree, within 28 days, to comply with the varied undertakings⁶¹.
157. Where the Registrar has not received written agreement from the registrant within 28 days to comply with all of the case examiner undertakings or varied undertakings, after the further invitation set out at paragraph [156(b)], the case examiners must refer the original allegation of impaired fitness to practise to a practice committee⁶².

Revocation

158. Where the case examiners receive new information outside of the regular review cycle, such that they consider that the undertakings should cease to apply, they must direct the Registrar that the undertakings should no longer apply, and that the matter should not be considered further⁶³. This may happen, for example, where the case examiners are satisfied that the

⁶⁰ Rule 6B(2)(a) of the Rules.

⁶¹ Rule 6B(4) of the Rules.

⁶² Rule 6B(5) of the Rules.

⁶³ Rule 6B(2)(b) of the Rules.

registrant has carried out remediation of the alleged matters to the extent that there is no longer a real prospect of their fitness to practise being found to be currently impaired by a practice committee.

159. Alternatively, in the absence of new information, and before the end of the period which the undertakings or varied undertakings are in force, the registrant's case will be reviewed by the case examiners. Where the case examiners are satisfied that there is no longer a real prospect of the registrant's fitness to practise being found to be impaired by a practice committee, the case examiners may direct that the undertakings should no longer apply, and that the matter should not be considered further.
160. Where the case examiners consider that there remains a real prospect of a practice committee finding that the registrant's fitness to practise is impaired, the case examiners may agree varied undertakings.

Considering to which practice committee to refer

161. Where the case examiners determine that the allegation of impaired fitness to practise ought to be considered by a practice committee, they must refer the allegation of impaired fitness to practise to a practice committee where:
- a. they have determined that undertakings or varied undertakings are not appropriate
 - b. undertakings or varied undertakings have not been agreed by the registrant.
162. The case examiners must select the correct practice committee to refer the allegation of impaired fitness to practise to, and this is determined by reference to the ground(s) of impairment alleged, as follows:
- a. An allegation of impaired fitness to practise on the ground of deficient professional performance must be referred to the Professional Performance Committee.
 - b. An allegation of impaired fitness to practise on the ground of adverse physical or mental health must be referred to the Health Committee.
 - c. An allegation of impaired fitness to practise on any other ground (misconduct, conviction or caution for a criminal offence, certain other outcomes for criminal offences, or determinations by certain other regulatory bodies) must be referred to the Professional Conduct Committee⁶⁴.
163. Where the case examiners determine that two or more allegations of impaired fitness to practise ought to be considered by a practice committee, and those allegations of impaired fitness to practise are based on either the ground of deficient professional performance or the ground of adverse physical or mental health, in addition to any of the other grounds of

⁶⁴ Rule 6(6)(a) (i – iii) of the Rules.

impairment, the case examiners must refer those allegations of impaired fitness to practise to whichever of the practice committees they consider most appropriate⁶⁵.

164. All the practice committees have the same functions and powers. As such, in practice there may be little difference between a case heard by the Professional Conduct Committee, and one heard by the Professional Performance Committee. However, factors which the case examiners may take into account when considering which practice committee to refer two or more allegations of impaired fitness to practise include:

- a. whether another case concerning the same registrant has already been referred to a particular practice committee, such that it may be possible for both cases to be heard before the same practice committee at the same time
- b. what the dominant element of the case is.

Considering whether to refer to the Interim Orders Committee

165. Where one or both case examiners consider it appropriate to do so, they may refer the allegation of impaired fitness to practise to the Interim Orders Committee (IOC)⁶⁶. This power begins when the case examiners begin their consideration of the allegation and ends when:

- a. a practise committee begins its consideration of the allegation of impaired fitness to practise⁶⁷, or
- b. the case examiners determine that an allegation of impaired fitness to practise ought not to be considered by a practice committee⁶⁸, or
- c. where undertakings have been agreed⁶⁹.

166. In practice, IOC referrals are most likely to arise where the case examiners:

- a. have determined that an allegation of impaired fitness to practise ought to be considered by a practice committee, and have referred the allegation of impaired fitness to practise to a practice committee (see paragraph [161])
- b. have adjourned their consideration of an allegation of impaired fitness to practise (see paragraphs [33] to [37])
- c. have reviewed a previous determination that an allegation of impaired fitness to practise ought to be referred to a practice committee and determined this allegation still ought to be considered by a practice committee (see paragraph [219]).

⁶⁵ Rule 6(6)(a)(iv) of the Rules.

⁶⁶ Rule 5(4) of the Rules.

⁶⁷ Section 27A(6B)(b) of the Act.

⁶⁸ Rules 6(5) and 6E(3) of the Rules.

⁶⁹ Rule 6A(3)(b) of the Rules.

167. The IOC may impose an interim order to suspend, or place conditions on, a dental professional's registration where it is:
- necessary for the protection of the public
 - otherwise in the public interest
 - in the interests of the registrant⁷⁰.
168. In considering whether it is appropriate to refer an allegation to the IOC, the case examiners should consider the Registrar's power to make a referral to the IOC before the case examiners' consideration. They should therefore consider:
- 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
 - whether the IOC has previously considered the matter and declined to impose an interim order - if so, and in the absence of any new information, it would be highly unusual for the allegation to be referred to the IOC for a second time.
169. The test for the case examiners when determining whether to refer an allegation to the IOC is whether it is appropriate to do so. The case examiners should also have regard to the test the IOC will apply when determining whether to impose an interim order, as set out at paragraph [167].
170. As such, the case examiners should consult the GDC's Guidance for the Interim Orders Committee⁷¹ to support their understanding of how the IOC will determine whether an interim order is necessary for the protection of the public, is otherwise in the public interest, or is in the interests of the registrant.
171. The IOC's role is to carry out, based on the information provided, an assessment of risk to the public, public interest, and/or the registrant's own interests, should the registrant continue to practise on an unrestricted basis while the matter is investigated.
172. 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 case examiners to make an application for an interim order (without good reason) from the information being received, the less likely it will be that the IOC will make an order based on the need to protect the public⁷².
173. Where one or both of the case examiners consider it appropriate to refer the allegation to the IOC, they should record the reasons for their decision. This information will be used in the Registrar's notification of the IOC to the registrant⁷³.

⁷⁰ Sections 32(4) and 36V(4) of the Act.

⁷¹ [GDC Fitness to Practise: Guidance for the Interim Orders Committee](#), paragraphs 55 – 98.

⁷² [Bradshaw v General Social Care Council \[2010\] UKFTT 3 \(HESC\)](#).

⁷³ Rule 35(1)(c) of the Rules.

Allegation of impaired fitness to practise ought not to be considered by a practice committee

174. Where the case examiners determine that the allegation of impaired fitness to practise ought not to be considered by a practice committee, they may:
- take no further action
 - give advice to the registrant regarding their future conduct, performance and/or practice
 - issue a warning to the registrant regarding their future conduct, performance and/or practice⁷⁴.
175. The case examiners may also issue advice on any issue arising in the course of the investigation to any other person involved in that investigation ('third party advice')⁷⁵.
176. Once the case examiners determine that the allegation of impaired fitness to practise ought not to be considered by a practice committee, they should consider the appropriate disposal option, with proportionality being an important factor in this consideration.

Take no further action

177. Where the case examiners determine that an allegation of impaired fitness to practise ought not to be considered by a practice committee, they may conclude that it is appropriate to close the case without a warning or advice.
178. Examples of matters that may be appropriate to close with no further action include cases where the case examiners have determined that there is no real prospect of any of the facts being found proved, or that the alleged failing was so minor as to justify no further action being taken. Where the case examiners have determined that there is a real prospect that the statutory ground will be established, no further action may be appropriate where the case examiners are satisfied that the evidence of insight and remediation addresses all concerns, and that there is minimal risk of repetition due to the steps taken by the registrant.

Give advice to the registrant

179. Where the case examiners determine that an allegation of impaired fitness to practise ought not to be considered by a practice committee, they may issue advice to the registrant regarding their future conduct, performance and/or practice.
180. Advice does not affect a registrant's registration status, but it is considered adverse fitness to practise history and may be considered by decision makers should further fitness to practise

⁷⁴ Rule 6(4)(a) of the Rules.

⁷⁵ Rule 6(4)(b) of the Rules.

concerns be raised in the future. Advice should usually only be issued where there is some evidence in support of the alleged facts.

181. If the alleged facts are disputed, this does not necessarily prevent the case examiners from issuing advice. Where the alleged facts are disputed, the case examiners will have considered this conflict of evidence at stage one of their real prospect consideration, as set out at paragraphs [50] to [55]. In such cases, the case examiners should give clear reasons for why they consider there to be sufficient evidence, in addition to both how and why they have reached their conclusion on the conflicting evidence⁷⁶.
182. Advice should be designed to support future compliance with the Standards and supplementary guidance, and should clearly identify where the registrant needs to reflect on their future conduct, performance and practice.
183. Advice may be appropriate where low-level issues are identified with the registrant's practice which do not of themselves create a risk to the public, or to the wider public interest, but where the case examiners consider it appropriate to remind the registrant of their responsibilities as a registered dental professional. Alternatively, advice may be appropriate where the case examiners have determined that there is a real prospect that the statutory ground will be established but are satisfied that the evidence of insight and remediation addresses all but the low-level issues.
184. However, because advice is not published, where the case examiners have identified the need to maintain public confidence and/or proper professional standards, it is unlikely that giving advice will be appropriate.

Issue a warning to the registrant

185. Where the case examiners determine that an allegation of impaired fitness to practise ought not to be considered by a practice committee, they may issue a warning to the registrant regarding their future conduct, performance and/or practice.
186. The issuing of a warning enables the case examiners to indicate to a registrant that, whilst not requiring referral to a practice committee, the alleged conduct, performance, and/or practice fell below the required standards and must not happen in the future.
187. A warning may be appropriate where one of the case examiners consider there:
 - a. is a real prospect of the facts, as alleged, being found proved
 - b. is a real prospect of the statutory ground of impairment being established
 - c. is not a real prospect of a finding of current impairment being made (for example, where there is sufficient evidence of remediation)

⁷⁶ Lutton v The General Dental Council [2011] ScotCS CSIH 62.

- d. is evidence to suggest the registrant's conduct, practice, and/or behaviour has fallen below the standards required, to the extent that a formal response from the GDC is warranted and/or, in the case of published warnings, a public response is appropriate in order to maintain public safety, public confidence in the professions and/or proper professional standards.
188. If the alleged facts are disputed, this does not necessarily prevent the case examiners from issuing a warning. Where the alleged facts are disputed, the case examiners will have considered this conflict of evidence at stage one of their real prospect consideration, as set out at paragraphs [50] to [55]. In such cases, the case examiners should give clear reasons for why they consider there to be sufficient evidence, in addition to both how and why they have reached their conclusion on the conflicting evidence⁷⁷.

Proposing a warning and the registrant's representations

189. Where one or both of the case examiners are minded to issue a warning, they must direct the Registrar to write to the registrant to notify them of this, and of the registrant's right to make written representations, within 28 days of the notice, about the proposed warning⁷⁸. That letter should (if appropriate by including a copy of the case examiners' decision):
- a. include the reasons the case examiners consider a warning to be appropriate in the circumstances of the case
 - b. include details of the warning the case examiners are minded to issue, clearly explaining the specific shortcomings identified
 - c. address whether the case examiners consider that the warning, if issued, should be published
 - d. include a summary of the facts of any particular concerns which led the case examiners to be minded to issue a warning, and indicate whether the case examiners consider the summary should also be published.
190. Where the registrant makes written representations within 28 days of the notice, these must be considered by the case examiners before they decide whether or not to issue a warning⁷⁹. Where the case examiners decide to issue a warning, this does not require the consent or agreement of the registrant. The only options available to the case examiners at this stage of consideration are to:
- a. issue a warning to the registrant, either published or not published
 - b. give advice to the registrant
 - c. take no further action.

⁷⁷ [Lutton v The General Dental Council \[2011\] ScotCS CSIH 62](#).

⁷⁸ Rule 6C(1) of the Rules.

⁷⁹ Rule 6C(2) of the Rules.

Publishing details of the warning

191. Where a warning has been issued, the case examiners may, if they consider it appropriate to do so, direct the Registrar to publish details of the warning on the registrant's register entry⁸⁰. The principle of open justice applies, and the GDC's regulatory proceedings should be conducted in an open and transparent manner. In light of the GDC's overarching objective and aims (as set out in paragraph [1]), and of the application of the open justice principle, details of the warning should ordinarily be published.
192. Where the case examiners have directed the Registrar to publish details of the warning on the dental professional's register entry, the details will remain published for 12 months from the date that the warning is issued⁸¹.
193. The details of the warning which should ordinarily be published are:
- a. The warning which has been issued and how long it will be published for.
 - b. A summary of the issues, prepared by the case examiners, which provides:
 - i. a brief background to the case
 - ii. details of those matters which have been admitted or have a real prospect of being found proved and reference to the supporting evidence, a brief reference to why this stands a real prospect of meeting the statutory ground, and reasons as to why there is no real prospect of a finding of current impairment being made
 - iii. a reflection that the case examiners consider that a warning is appropriate to protect patient safety and maintain public confidence in the dental professions
 - iv. a reflection that, at this stage, no facts have been found proved as this would require the referral to, and hearing of, a practice committee.
194. No details which relate to the health or private and family life of either the registrant or a third party will be published.
195. Publishing details of the warning:
- a. supports public safety because it enables members of the public to make informed decisions when selecting a dental professional
 - b. promotes public confidence in the dental professions because it provides a rationale for why a warning, in the particular circumstances, is an appropriate regulatory response

⁸⁰ Rule 6C(3) of the Rules.

⁸¹ In line with the GDC's [Disclosure and Publication Policy](#).

- c. promotes proper professional standards because it provides a public indication of the specific shortcomings which led to the warning, and so sends a clear message to the wider profession of the required standards.
196. There may be circumstances where the case examiners consider that it is not appropriate to publish some, or all, of these details, because there are factors which outweigh the factors set out at paragraph [195]. For example, this may arise where there is cogent evidence which suggests publication is likely to cause significant harm to the registrant or a third party. In such circumstances, the case examiners should balance the public interest with the interests of the registrant in reaching their decision about publication.

Issue third party advice

197. Where the case examiners determine that an allegation of impaired fitness to practise ought not to be considered by a practice committee, they may issue advice on any issue arising in the course of the investigation, to any other person involved in that investigation⁸².
198. The word 'person' includes a body of persons corporate or unincorporate⁸³. This means that, as well as giving advice to an individual (whether registered with the GDC or otherwise), the case examiners can give advice to a company or unincorporated association.
199. The case examiners should, however, proceed with caution bearing in mind that the third party concerned is unlikely to have had the opportunity to comment on any issues that have arisen during the investigation.

Revocation of interim orders

200. Where the case examiners determine that an allegation of impaired fitness to practise ought not to be considered by a practice committee, at the same time as making that determination, they must revoke, with immediate effect, any interim order imposed linked to that allegation⁸⁴.
201. Difficulties may arise where a registrant has an interim order in place owing to a number of different issues, some of which may still be under investigation or awaiting a practice committee hearing. In those circumstances, the case examiners should indicate in their determination that the interim order remains in effect in relation to any outstanding matters, but not in relation to the allegation of impaired fitness to practise they are closing.
202. In such circumstances, the registrant and/or the GDC should consider whether they wish to make representations that there is new evidence relevant to the interim order, and that an early review of the interim order by the IOC is appropriate⁸⁵.

⁸² Rule 6(4)(b) of the Rules.

⁸³ Schedule 1 of the Interpretation Act 1978.

⁸⁴ Rule 6(5) of the Rules.

⁸⁵ Sections 32(5)(b) and 36V(5)(b) of the Act.

Review of a determination that an allegation of impaired fitness to practise ought to be considered by a practice committee

203. There are two scenarios in which the case examiners may review and, if they consider it appropriate, revise a previous determination made by the case examiners that an allegation of impaired fitness to practise ought to be considered by a practice committee. Those scenarios are:
- When a practice committee considers that an allegation of impaired fitness to practise should not have been referred to it by the case examiners, it may refer that allegation of impaired fitness to practise back to the case examiners⁸⁶.
 - When an application to review the determination is made by the Council, the Registrar, the registrant, the informant (if any)⁸⁷.

Preliminary Issues

Jurisdiction

204. Before considering an application made by the Council, the Registrar, the registrant or the informant for the review of a determination that an allegation of impaired fitness to practise ought to be considered by a practice committee, the case examiners must be satisfied that the determination is one which they have the power to review. Where there is to be a hearing before a practice committee, the case examiners may only review a determination before that hearing has begun.

Reasonable opportunity to comment on the application to review

205. Where a practice committee refers an allegation of impaired fitness to practise back to the case examiners, there is no requirement to provide any party with a reasonable opportunity to comment.
206. Where, however, the review arises as a result of an application submitted by one of the parties listed at paragraph [203(b)], before considering the application the case examiners must be satisfied that any other person who is entitled to make such an application has been provided with a reasonable opportunity to submit written representations in response to the application made⁸⁸.
207. What amounts to a reasonable opportunity will depend on the circumstances. For example, where the application for review is short and uncomplicated, a reasonable opportunity may be a shorter period of time. Furthermore, where, for example, the practice committee hearing is due to take place imminently, the case examiners may determine a shorter period of time to be appropriate. Conversely, where the application relates to multiple and more complex particulars

⁸⁶ Rule 6E(1)(a) of the Rules.

⁸⁷ Rule 6E(1)(b) of the Rules.

⁸⁸ Rule 6E(5) of the Rules.

within the allegation of impaired fitness to practise, with significantly more evidence to consider, a reasonable opportunity may require a longer period of time.

208. While this must be a case-by-case consideration, ordinarily 14 days will be considered to be a reasonable opportunity for those who are entitled to submit a written response to do so.
209. Any written representations received will, with limited exceptions, be circulated for information purposes to those other persons entitled to make an application for review. On occasion, this will result in further comments being received. Any such comments upon representations received will be circulated and then provided to the case examiners, who will decide whether to take them into account, giving reasons for that decision.
210. The case examiners are only required to satisfy themselves that those entitled to comment must have had a reasonable opportunity to submit written representations in response to the application for review. Any comments upon representations are not within this definition and therefore the case examiners are not strictly required to consider them.
211. If, however, such comments upon representations are received before the application is allocated to the case examiners, and those comments would likely have an impact on the outcome of the application, the case examiners should consider them.

Adjournment

212. When considering an application for the review of a previous determination that an allegation of impaired fitness to practise ought to be considered by a practice committee, the case examiners do not have their usual powers of adjournment. They are, therefore, unable to adjourn the case for further enquiries to be conducted. However, the case examiners may adjourn for legal or administrative reasons, for example where they wish to seek legal advice or require clarification on particular evidence or submissions.

Substantive consideration

213. Once the case examiners are satisfied in relation to the preliminary issues of jurisdiction and reasonable opportunity to comment, they should go on to consider whether it is appropriate to revise the previous determination that an allegation of impaired fitness to practise ought to be considered by a practice committee.
214. The case examiners will approach their determination by considering whether there is a real, as opposed to remote or fanciful, prospect of the allegation of impaired fitness to practise being proved by a practice committee. This consideration, as set out at paragraph [41], takes place in three distinct stages:
 - a. Whether there is a real prospect of the facts, as alleged, being found proved (stage one).
 - b. If so, whether there is a real prospect of the statutory ground of impairment being established (stage two).

- c. If so, whether there is a real prospect of the registrant's fitness to practice being found to be currently impaired (stage three).
215. In the course of their real prospect consideration, the case examiners should not reopen any particulars of the allegation of impaired fitness to practise which the case examiners (who made the initial determination) considered did not stand a real prospect of being proved by a practice committee.
216. When considering real prospect, the case examiners should consider the current state of the case. Where applicable, this should include consideration of any information arising from the application to review, and any written submissions received in response to the application. Where the allegation of impaired fitness to practise was referred to a practice committee, the case examiners should consider the draft charges (if available), and any evidence collated since the referral to the practice committee was made.
217. The proximity of a practice committee hearing may prevent an application for the review of a determination being put before the case examiners. However, once an application for review is put before the case examiners, the proximity of a practice committee hearing should not be a relevant consideration in determining whether to revise the original determination.

Maintaining the determination: allegation of impaired fitness to practise ought to be considered by a practice committee

218. Where the case examiners determine, following review, that the allegation of impaired fitness to practise still ought to be considered by a practice committee, they do not have the power to refer the allegation of impaired fitness to practise to a different practice committee, nor do they have the power to invite the registrant to comply with undertakings.
219. Where one or both of the case examiners consider it appropriate, they may refer the allegation to the IOC⁸⁹. The case examiners should approach their consideration of whether it is appropriate to refer an allegation to the IOC in line with paragraphs [165] to [173] of this guidance.

Revising the determination: allegation of impaired fitness to practise ought not to be considered by a practice committee

220. Where the case examiners determine, following review, that the allegation of impaired fitness to practise ought not to be considered by a practice committee, the case examiners may:
- a. take no further action
 - b. give advice to the registrant regarding their future conduct, performance and/or practice
 - c. issue a warning to the registrant regarding their future conduct, performance and/or practice

⁸⁹ Rule 6E(4) of the Rules.

- d. issue advice on any issue arising in the course of the investigation to any other person involved in that investigation ('third party advice').
221. The case examiners should approach their consideration of these options in line with paragraphs [174] to [199] of this guidance.
222. Where the case examiners determine, following review, that an allegation of impaired fitness to practise ought not to be considered by a practice committee, at the same time as making that determination, they must revoke, with immediate effect, any interim order imposed linked to that allegation⁹⁰.
223. Difficulties may arise where a registrant has an interim order in place owing to a number of different issues, some of which may still be under investigation or awaiting a practice committee hearing. In those circumstances, the case examiners should indicate in their determination that the interim order remains in effect in relation to any outstanding matters, but not in relation to the allegation of impaired fitness to practise they are closing.
224. In such circumstances, the registrant and/or the GDC should consider whether they wish to make representations to that there is new evidence relevant to the interim order, and that an early review of the interim order by the IOC is appropriate⁹¹.

Review of an issued warning

225. The case examiners may review a previous determination made by the case examiners to issue a warning where the application for review is made:
- by either the registrant or the Registrar, and
 - within two years of the date of the original determination⁹².
226. There are no specific requirements in relation to the format for an application for review of a warning. However, applications should be made in writing to the case examiners, and should set out the basis on which the review is requested as this will be needed to inform at least the case examiners' initial consideration.
227. Where an application for review of a warning is received from the registrant, provided it meets the requirements set out in paragraph [225], it will be put before the case examiners for their initial consideration (see paragraphs [238] to [243]).
228. Where an application for review of a warning is received from the Registrar, the registrant should be notified, and invited to comment on the application, before it is put before the case examiners for their initial consideration.

⁹⁰ Rule 6E(3) of the Rules.

⁹¹ Sections 32(5)(b) and 36V(5)(b) of the Act.

⁹² Sections 27A(11) and 36O(11) of the Act.

Grounds on which a warning may be reviewed and revoked

229. A warning may only be reviewed and revoked where the case examiners conclude that:
- the original decision by the case examiners to issue a warning was materially flawed (for any reason), and/or
 - there is new information which now indicates it was not appropriate to issue a warning⁹³.

Materially flawed

230. When assessing whether the decision was materially flawed, the case examiners should first consider whether there are any identifiable flaws or defects in the decision making, or in the approach taken, by the original case examiners.
231. If any such flaws can be identified, the case examiners should then consider whether those flaws are material. The case examiners should not conclude that there was a material flaw in the original decision simply because they would have made a different decision. Instead, the case examiners should consider whether the flaw or flaws identified may have had an impact on the case examiners' judgement in their original decision to issue a warning.
232. Some examples of what may amount to a material flaw are set out in paragraph [237].

New information

233. There is no single definition of what constitutes new information. However, in order for the information to be considered new, it must not have been in the possession of the GDC at the time the original decision was made.
234. If the information was in the possession of the GDC at that time, but was not provided to the case examiners, the failure to provide the information to the case examiners may instead be considered under the 'material flaw' ground, as referenced in paragraph [237(e)].
235. New information may be information of a factual nature, or further expert evidence. The new information should, however, be relevant to the specific allegation of impaired fitness to practise which formed the basis of the case examiners' original decision.

Overlap with judicial review

236. Decisions made by the case examiners, including a decision to issue a warning, may be subject to challenge through judicial review. However, judicial review is a remedy of last resort and, therefore, a claimant in such proceedings must generally demonstrate that they have exhausted all alternative remedies. As such, the applicant should ordinarily use the warning review process prior to making a claim for judicial review.

⁹³ Rule 6D(4) of the Rules.

237. In practice, however, many of the grounds for judicial review can also be said to be grounds for considering whether the decision to issue a warning was materially flawed. For example, that:
- a. the original case examiners misinterpreted the law governing the decision
 - b. the original case examiners took into account irrelevant considerations, or failed to take into account relevant considerations
 - c. the original case examiners' decision was so unreasonable that no reasonable case examiners could have come to it (i.e. it was outside a reasonable range of decisions)
 - d. the GDC did not comply with its legislative framework, for example, the registrant was not afforded a reasonable opportunity to comment on the allegation of impaired fitness to practise
 - e. there was a failure to provide all relevant evidence to the case examiners, for example, observations provided by the registrant/informant, or patient records
 - f. inaccurate information was provided to the case examiners, for example, in relation to the registrant's fitness to practise history
 - g. there are allegations of actual bias, or the appearance of bias
 - h. there was a failure to give adequate reasons
 - i. the case proceeded on an erroneous basis, for example, on the assumption that the registrant has been convicted of a criminal offence, or has an adverse finding from another regulator, when this is not the case.

Initial consideration: whether to conduct a review of an issued warning

238. At the initial consideration stage, it is not the role of the case examiners to consider whether or not the original decision to issue a warning should be revoked. Rather, the case examiners are concerned with the preliminary question of whether to conduct a review of the decision to issue a warning.
239. The case examiners will consider the application, any supporting documents provided by the applicant, any comments made by the registrant (where the application was made by the Registrar), the original determination, and the bundle of documents available to the original case examiners.
240. At this early stage, the case examiners will be considering relatively limited information. As such, the threshold for considering whether to conduct a review is relatively low.
241. The case examiners should, at the initial consideration stage, consider whether the application has any merit, by assessing whether:
- a. there is any evidence that there may have been a material flaw in the original decision to issue a warning, and/or

- b. there is any new information, either immediately available or potentially available to the GDC upon enquiry, which now indicates it may not have been appropriate to issue a warning.
242. Where the case examiners consider there is no merit in the application, and so decide not to review the original decision to issue a warning, the applicant (and, if the Registrar is the applicant, the registrant) will be informed of that decision, and no further action will be taken by the case examiners.
243. Where the case examiners consider there is any merit in the application for review, they should go on to conduct a review of the original decision.

Substantive consideration: undertaking a review of an issued warning

244. Where the case examiners have decided to undertake a review of a previous determination made by the case examiners to issue a warning, they must notify the Registrar of that decision. The Registrar must then notify, in writing, the following parties of the decision to review, and the case examiners' reasons for it:
- a. The registrant.
 - b. The informant (if any).
 - c. Any other person who, in the opinion of the case examiners, has an interest in the decision to issue a warning⁹⁴.
245. The Registrar must also notify the parties listed at paragraph [244] of any new information and where appropriate provide them with that information, and seek those parties' representations regarding the review of the decision to issue a warning⁹⁵.
246. The parties listed at paragraph [244] should be provided with a reasonable opportunity to submit representations about the review of the decision to issue a warning. What amounts to a reasonable opportunity will depend on the circumstances. For example, in cases with minimal new information, a reasonable opportunity may be a shorter period of time. For cases where there is significantly more new information to consider, a reasonable opportunity may require a longer period of time.
247. While this must be a case-by-case consideration, ordinarily 14 days is considered to be a reasonable opportunity for those who are entitled to submit representations to do so.
248. The Registrar may carry out any investigations which they consider appropriate to assist the case examiners' review⁹⁶. This may include gathering further factual or expert evidence, or seeking legal advice on any of the issues raised.

⁹⁴ Rule 6D(2)(a) of the Rules.

⁹⁵ Rules 6D(2)(b) and (c) of the Rules. Any evidence which the registrant has provided relating to the health or private and family life of the registrant or a third party will not be disclosed by the Registrar.

⁹⁶ Rule 6D(3) of the Rules.

249. Once written representations have been received, or a reasonable opportunity to submit representations has been afforded to the parties listed at paragraph [244], and any appropriate investigations have been carried out by the Registrar, the matter will be returned to the case examiners for their consideration.
250. Whether the original decision by the case examiners to issue a warning was materially flawed, and/or whether there is new information which now indicates it was not appropriate to issue a warning, is ultimately a question of judgement for the reviewing case examiners. The case examiners will make their decision, considering all relevant information, including representations provided by those with an interest in the original decision, and new material obtained during the course of any investigations carried out by the Registrar.
251. Where the reviewing case examiners conclude that the original decision by the case examiners to issue a warning was, for any reason, materially flawed, and/or there is new information which now indicates it was not appropriate to issue a warning, they must:
- a. revoke the decision to issue a warning
 - b. if details of the warning have been published, direct the Registrar to remove those details from the dental professional's register entry⁹⁷.
252. Where the reviewing case examiners conclude that the original decision by the case examiners to issue a warning was not, for any reason, materially flawed, and/or there is no new information which now indicates it was not appropriate to issue a warning, they must decide that the original decision to issue a warning should stand⁹⁸.
253. The reviewing case examiners' power of review is limited to revoking the warning, or determining that it should stand. The reviewing case examiners do not have the power to amend the warning that was issued, or to substitute it with advice.
254. A situation may therefore arise where, following the review, one or more of the areas of concern have fallen away. Such a situation is more likely to arise where there is new information about one or more area of concern in the original case.
255. In such circumstances, as the warning cannot be amended to reflect this, the reviewing case examiners should consider whether or not the warning should be revoked. The consideration for the reviewing case examiners is whether it was appropriate to issue a warning.
256. In considering the question of appropriateness, the reviewing case examiners will consider all the facts and circumstances of the case, using as a starting point the reasons given by the original case examiners for imposing a warning.
257. Where the case examiners have completed their review of a decision to issue a warning, they must notify in writing as soon as is reasonably practicable, the registrant, the informant (if any),

⁹⁷ Rule 6D(4) of the Rules.

⁹⁸ Rule 6D(5) of the Rules.

and any other person who, in the opinion of the case examiners, has an interest in receiving the notification. The notification must include the decision made and the reasons for it⁹⁹.

Review by the Registrar of previous decisions (Rule 9 review)

258. The Registrar has the power to review all or part of a determination made by the case examiners that an allegation of impaired fitness to practise referred to them ought not to be considered by a practice committee¹⁰⁰.
259. This process is commonly known as 'Rule 9 review'. Further information about the Rule 9 review process is set out in guidance issued by the GDC¹⁰¹.
260. Where the Registrar has decided to conduct a review of a determination that an allegation of impaired fitness to practise ought not to be considered by a practice committee, the matter will be referred back to the case examiners for reconsideration¹⁰².
261. The case examiners will be provided with the original bundle supplied to the case examiners, a copy of the original determination, the application for review, any new information gathered as part of the review process, any comments on the application, and the Registrar's Rule 9 review determination.
262. At this stage, the registrant and informant (if any) will not be routinely provided with a further opportunity to comment, but if any further observations are received which are likely to have an impact on the matter under reconsideration, the case examiners should consider them.
263. The case examiners should consider the matter afresh, based on the information provided to them. The case examiners will limit their reconsideration of the determination to the matter(s) identified by the Rule 9 review.
264. When reconsidering the matter, the case examiners will have open to them all of the options which were available originally.

⁹⁹ Rule 6D(6) of the Rules.

¹⁰⁰ Rules 9(1) and 9(2)(a) of the Rules.

¹⁰¹ [Guidance on the Registrar's Rule 9 power of review](#).

¹⁰² Rule 9(8)(b) of the Rules.

Appendix 1: Considerations in particular categories of cases

Introduction

- A1. Broad decision-making factors for each stage of the case examiners' consideration are set out in the main body of this guidance. While the case examiners will consider each case on the individual circumstance, this appendix provides further relevant considerations in relation to particular categories of allegation.
- A2. Case examiners will approach their task by considering whether there is a real (as opposed to fanciful) prospect of the allegation being proved by a practice committee. As set out at paragraph [41] of the main guidance, this consideration takes place in the three distinct stages of whether there is a real prospect that a practice committee will:
 - a. find the alleged facts proved (stage one)
 - b. establish the statutory ground (stage two)
 - c. find current impairment (stage three).
- A3. As a result of their consideration, the case examiners will determine that either:
 - a. the allegation ought to be considered by a practice committee, which will result in either undertakings being agreed with the registrant, or a referral to a practice committee, as set out in paragraphs [111] to [165] of the main guidance, or
 - b. the allegation ought not to be considered by a practice committee, which will result in an outcome of either no further action, giving advice to the registrant, issuing a warning to the registrant, or issuing advice to a third party, as set out in paragraphs [174] to [202] of the main guidance.
- A4. Where the case examiners determine that the allegation ought not to be considered by a practice committee, they should consider the appropriate disposal option, with proportionality being an important factor in this consideration.

Particular categories of case

Sexual misconduct

- A5. 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.

- A6. 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 serious¹⁰³.
- A7. Where the alleged sexual misconduct is related to sex or another protected characteristic under the Equality Act 2010, the case examiners may also be asked to consider a linked allegation of harassment related to a protected characteristic. Relevant considerations for the case examiners in relation to allegations of harassment are set out in paragraphs [19] to [32] below.

Considerations at stage one (facts)

- A8. When considering allegations of sexual misconduct at stage one, the case examiners should first consider whether there is a real prospect that the practice committee will find the facts proved in relation to the alleged conduct.
- A9. In respect of allegations that the conduct was sexual, the case examiners should examine the facts and circumstances surrounding the conduct and consider whether there is a real prospect that an inference that the conduct was sexual will be drawn by the practice committee.
- A10. Where the allegations concern touching, the best evidence as to whether the touching was sexual may be the registrant's behaviour. A practice committee may infer that the conduct was sexual by reference to factors such as 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.
- A11. Where it is alleged that the registrant's conduct was sexually motivated, the case examiners should consider whether there is evidence to suggest that the conduct was done either in pursuit of sexual gratification or in pursuit of a future sexual relationship¹⁰⁴.
- A12. Where there is a significant conflict as to whether conduct is sexual or sexually motivated, it is unlikely that the case examiners will be able to resolve this within the limits of their filtering role. In those circumstances referral of the allegation to a practice committee is likely to be required.

Considerations at stage two (statutory ground) and stage three (current impairment)

- A13. Given the inherent seriousness of sexual misconduct, where the case examiners consider there to be a real prospect that a practice committee will find the alleged facts proved, it is highly likely that the case examiners will also consider there to be a realistic prospect that the statutory ground will be established at stage two. The case examiners will then go on to consider whether there is a real prospect that a practice committee will find current impairment.
- A14. When sexual misconduct is being considered at stage three, the case examiners will ordinarily find there is a real prospect of current impairment. This is because, regardless of any public

¹⁰³ [Arunachalam v The General Medical Council \[2018\] EWHC 758 \(Admin\)](#).

¹⁰⁴ [Basson v General Medical Council \[2018\] EWHC 505 \(Admin\)](#).

protection considerations which may be remaining, 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 (see paragraphs [103] to [106] of the main guidance).

- A15. It is also generally accepted that conduct which undermines probity, such as sexual misconduct, is not easily remediable.
- A16. Where the case examiners do not consider there to be a real prospect of the registrant's fitness to practise being found to be currently impaired, this should be clearly justified with reference to the factors of consideration set out at paragraphs [84] to [106] of the main guidance.

Outcome considerations

- A17. Given the inherent seriousness of cases relating to sexual misconduct, where allegations are found proved the appropriate sanction at practice committee will often be erasure, and erasure will usually be considered.
- A18. As such, where the case examiners determine that the allegation of sexual misconduct ought to be considered by a practice committee, undertakings is not an available outcome option, as is set out at paragraph [112] of the main guidance. The case examiners will, therefore, need to refer the allegation to a practice committee.

Discrimination and harassment

- A19. 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, the case examiners must have due regard in their decision making to the definitions as set out in that Act¹⁰⁵.
- A20. Discrimination is behaviour which treats one individual less favourably than another because of a characteristic that is protected under the Equality Act 2010¹⁰⁶ (a protected characteristic). Patients, colleagues, and other members of the public can all be victims of discrimination which can take various forms, including verbal remarks, assumptions and judgements, aggressive or violent behaviour, and differential treatment. It may also include, for example, a failure to listen to a patient or colleague or take them seriously, or a failure to meet an individual patient's needs, based on one or more protected characteristic.
- A21. 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 them¹⁰⁷.

¹⁰⁵ [Professional Standards Authority for Health And Social Care v Health And Care Professions Council & Anor \[2021\] EWHC 52 \(Admin\)](#).

¹⁰⁶ Section 13(1) of the Equality Act 2010.

¹⁰⁷ Section 26 of the Equality Act 2010.

- A22. 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. 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.
- A23. 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.
- A24. Discriminatory or harassing 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 profession.

Considerations relating to discriminatory language at stage one (facts)

- A25. Where it is alleged 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 intention¹⁰⁸. 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. When assessing whether there is a real prospect that the facts would be found proved by a practice committee, the case examiners should consider how an ordinary reasonable person would respond to the words or conduct in question.
- A26. Where it is alleged that the use of discriminatory language was intentional, e.g. that the alleged action(s) were racially motivated, then the registrant's state of mind at the time is relevant. A practice committee will consider the two elements to this:
- Whether the act in question had a purpose behind it which was, at least in significant part, related to a protected characteristic.
 - Whether the act in question was done in a way that showed hostility, or a discriminatory attitude, to persons with the relevant protected characteristic¹⁰⁹.
- A27. In practice, it may be difficult at case examiner stage to be confident about a registrant's knowledge or belief, as the only evidence about this may come from the registrant themselves. In those circumstances, referral of the allegation to a practice committee is likely to be required in order for the evidence to be tested and the matter determined.

Considerations at stage two (statutory ground) and stage three (current impairment)

- A28. Discrimination and harassment cannot be excused, condoned or tolerated within the dental professions. Given the inherent seriousness of discrimination and harassment, where the case

¹⁰⁸ *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).

¹⁰⁹ *Lambert-Simpson v Health and Care Professions Council* [2023] EWHC 481 (Admin).

examiners consider there to be a real prospect that a practice committee will find the alleged facts proved, it is highly likely that the case examiners will also consider there to be a real prospect that the statutory ground will be established at stage two. The case examiners will then go on to consider whether there is a real prospect that a practice committee will find current impairment.

- A29. When discrimination and harassment is being considered at stage three, the case examiners will ordinarily find there is a real prospect of current impairment. This is because, regardless of any public protection considerations which may be remaining, 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 (see paragraphs [103] to [106] of the main guidance).
- A30. It is also generally accepted that conduct which undermines probity, such as discrimination and harassment, is not easily remediable.
- A31. Where the case examiners do not consider there to be a real prospect of the registrant's fitness to practise being found to be currently impaired, this should be clearly justified with reference to the factors of consideration set out at paragraphs [84] to [106] of the main guidance.

Outcome considerations

- A32. When the case examiners consider that there is real prospect of a practice committee finding current impairment, it is highly likely they will consider it necessary to refer the case to a practice committee due to the likelihood that undertakings will be unsuitable.
- A33. Where the case examiners consider there is a real prospect of the statutory ground of impairment being established, but no real prospect of a finding of current impairment being made, it is likely that a warning will be required given the public interest considerations with this category of allegation, and the risk that such conduct poses to public confidence in the professions.

Offensive behaviour

- 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. Behaviour which is not discriminatory or harassing may still be offensive, 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.

Considerations relating to use of offensive language at stage one (facts)

- A35. Where it is alleged 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 intention¹¹⁰. Whether

¹¹⁰ *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).

or not the registrant intended the words used to be offensive is irrelevant to whether they were, in fact, so. The reaction of an audience in another context is irrelevant. When assessing whether there is a real prospect that the facts would be found proved by a practice committee, the case examiners should consider how an ordinary reasonable person would respond to the words or conduct in question.

Outcome considerations

- A36. Where the case examiners consider that there is real prospect of a practice committee finding current impairment, it is highly likely they will consider it necessary to refer the case to a practice committee due to the likelihood that undertakings will be unsuitable.
- A37. Where the case examiners consider there is a real prospect of the statutory ground of impairment being established, but no real prospect of a finding of current impairment being made, it is likely that a warning will be required given the public interest considerations with this category of allegation, and the risk that such conduct poses to public confidence in the professions.

Dishonesty

- A38. 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.
- A39. 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.

Considerations at stage one (facts)

- A40. When considering allegations of dishonesty at stage one, the case examiners will first consider whether there is a real prospect that a practice committee would find the alleged conduct took place.
- A41. If so, the case examiners should consider whether there is a real prospect that a practice committee would find that conduct to be dishonest. As part of this consideration, the case examiners should have regard to the approach the practice committee will take to this question, which takes place in two stages:
- a. What was the registrant's state of mind at the time (i.e. what the registrant's knowledge or belief was as to the facts).
 - b. Whether the registrant's 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 dishonest¹¹¹. For example, if an ordinary, reasonable person knew

¹¹¹ Ivey v Genting Casinos (UK) Ltd. t/a Crockfords [2017] UKSC 67.

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. In such a scenario, a practice committee would be likely to conclude that this was, objectively, dishonest.

- A42. In practice, unless the registrant has provided some evidence of a dishonest state of mind at the time, or admitted as part of their submissions that they acted dishonestly, it is unlikely the case examiners will be able to form a view on the registrant's state of mind. As such, in the absence of this information, the case examiners' approach will focus on the objective part of the consideration, as set out at paragraph [40(b)].
- A43. It is not the case examiners' role to resolve substantial conflicts of evidence. If they are presented with evidence of alternative, innocent explanations for the registrant's apparently dishonest conduct, they should consider carefully whether this is a conflict they are able to resolve. This will require consideration of the weight of the evidence relating to each explanation, as set out at paragraphs [50] to [55] of the main guidance.
- A44. The case examiners will also be aware that in regulatory proceedings, the registrant is entitled to a fair process which maintains their right to pursue any line of defence they see fit, including the denial of some or all of the alleged facts. Adding allegations of dishonesty where the registrant has denied any of the factual allegations is unnecessary and oppressive. As such, no allegation of dishonesty should arise in such circumstance¹¹².

Considerations at stage two (statutory ground) and stage three (current impairment)

- A45. Given the inherent seriousness of dishonesty, where the case examiners consider there to be a real prospect that a practice committee will find the alleged facts proved, it is highly likely that the case examiners will also consider there to be a real prospect that the statutory ground will be established at stage two. The case examiners will then go on to consider whether there is a real prospect that a practice committee will find current impairment.
- A46. When dishonesty is being considered at stage three, the case examiners will ordinarily find there is a real prospect of current impairment. This is because, regardless of any public protection considerations which may be remaining, 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 (see paragraphs [103] to [106] of the main guidance). An exception to this general principle is where the allegation of dishonesty relates to matters that are so minor that taking action on registration may be considered disproportionate. Such cases might include an isolated incident of failing to pay for a ticket covering all or part of a journey.
- A47. However, where minor dishonesty is concerned, aggravating issues such as repetition and attempts to cover up or disguise dishonest behaviour should be kept in mind by the case examiners. There is a presumption that repeated dishonesty, no matter how minor, should be

¹¹² Misra v. General Medical Council (GMC) [2003] UKPC 7.

referred to a practice committee for consideration bearing in mind the need to protect the public.

- A48. It is also generally accepted that conduct which undermines probity, such as dishonesty, is not easily remediable.
- A49. However, where the case examiners do not consider there to be a real prospect of the registrant's fitness to practise being found to be currently impaired, this should be clearly justified with reference to the factors of consideration set out at paragraphs [84] to [106] of the main guidance.

Outcome considerations

- A50. When the case examiners consider that there is real prospect of a practice committee finding current impairment, it is highly likely they will consider it necessary to refer the case to a practice committee due to:
- a. the likely unsuitability of undertakings
 - b. the public interest in public ventilation of serious concerns such as dishonesty.
- A51. Where the case examiners consider there is a real prospect of the statutory ground of impairment being established, but no real prospect of a finding of current impairment being made, it is likely that a warning will be required given the public interest considerations with this category of allegation, and the risk that such conduct poses to public confidence in the professions.

Misleading behaviour

- A52. 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.

Considerations at stage two (statutory ground)

- A53. When considering whether the alleged misleading conduct is sufficiently serious to determine a real prospect that misconduct will be established, in addition to the factors set out in paragraphs [60] to [63] of the main guidance, the case examiners should consider whether the alleged conduct was reckless.

Outcome considerations

- A54. Where the case examiners consider there is real prospect of a finding of current impairment being made, depending on the workability of undertakings in the circumstances of the case, either undertakings or a referral to a practice committee may be appropriate.

A55. Where the case examiners consider there is no real prospect of a finding of current impairment being made, either no further action, advice, or a warning may be appropriate, with the considerations set out at paragraphs [52] of the appendix and [177] to [188] of the main guidance supporting the case examiners' decision.

Integrity

A56. It is a fundamental requirement under the GDC's Standards that registrants act with integrity.

A57. In professional codes of conduct, the term "integrity" is a useful shorthand to express the higher ethical standards which society expects from regulated professionals, and which the professions expect from their own members. The underlying rationale is that the professions have a privileged and trusted role in society and, as such, professionals are expected to adhere to high professional and ethical standards.

A58. That does not mean professionals must be paragons of virtue or be judged by unrealistically high standards. In every instance, professional integrity is linked to the manner in which the profession serves the public¹¹³.

A59. The Standards provide some examples of integrity, but this is by no means an exhaustive list. Further examples of matters which might undermine integrity include, but are not limited to:

- a. practising without appropriate indemnity insurance in place
- b. practising outside of scope of practice
- c. failure to comply with the duty of candour.

A60. Where the case examiners consider there is a real prospect that a practice committee will find the alleged facts relating to lack of integrity proved, given the public protection and/or public interest implications, it is likely that a referral to a practice committee will be required.

Abuse of the privileged position enjoyed by registered professionals

A61. Society bestows on dental professionals certain privileges which arise from their registered status. These range from the right to practise and use protected titles, to less tangible privileges, such as respect for their professional opinion.

A62. Every patient is vulnerable when receiving treatment, and patients have the right to protection from registrants who seriously abuse the trust placed in them. Examples of such abuse may include, but are not limited to:

- a. over treatment for personal or practice financial gain
- b. breaches of professional boundaries, which might also indicate sexual misconduct

¹¹³ Wingate & Anor v The Solicitors Regulation Authority [2018] EWCA Civ 366.

- c. receipt of excessive or expensive gifts
- d. self-prescribing medication, or prescribing to family members.

A63. Abuse of the privileged position of registered dental professionals also risks undermining public confidence in the professions.

Considerations at stage two (statutory ground) and stage three (current impairment)

- A64. Given the inherent seriousness of abuse of the privileged position enjoyed by registered dental professionals, where the case examiners consider there to be a real prospect that a practice committee will find the alleged facts proved, it is highly likely that the case examiners will also consider there to be a real prospect that the statutory ground will be established at stage two. The case examiners will then go on to consider whether there is a real prospect that a practice committee will find current impairment.
- A65. When abuse of the privileged position is being considered at stage three, the case examiners will ordinarily find there is a real prospect of current impairment. This is because, regardless of any public protection considerations which may be remaining, 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 (see paragraphs [103] to [106] of the main guidance.
- A66. It is also generally accepted that conduct which undermines probity, such as abuse of privileged position, is not easily remediable.
- A67. However, where the case examiners do not consider there to be a real prospect of the registrant's fitness to practise being found to be currently impaired, this should be clearly justified with reference to the factors of consideration set out at paragraphs [84] to [106] of the main guidance.

Outcome considerations

- A68. When the case examiners consider that there is real prospect of a practice committee finding current impairment, it is highly likely they will consider it necessary to refer the case to a practice committee due to:
- a. the likely unsuitability of undertakings
 - b. the public interest in public ventilation of serious concerns such as abuse of privileged position.
- A69. Where the case examiners consider there is a real prospect of the statutory ground of impairment being established, but no real prospect of a finding of current impairment being made, it is likely that a warning will be required given the public interest considerations with this category of allegation, and the risk that such conduct poses to public confidence in the professions.

Candour

- A70. Candour means being open and honest with a patient when something goes wrong with their treatment or care which causes, or has the potential to cause, harm or distress.
- A71. GDC guidance emphasises the importance of the professional duty of candour and sets out what is expected of registrants¹¹⁴.

Considerations at stage two (statutory ground) and stage three (current impairment)

- A72. Given the inherent seriousness of breaches of duty of candour, where the case examiners consider there to be a real prospect that a practice committee will find the alleged facts proved, it is highly likely that the case examiners will also consider there to be a real prospect that the statutory ground will be established at stage two. The case examiners will then go on to consider whether there is a real prospect that a practice committee will find current impairment.
- A73. When breach of the duty of candour is being considered at stage three, the case examiners will ordinarily find there is a real prospect of current impairment. This is because, regardless of any public protection considerations which may be remaining, 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 (see paragraphs [103] to [106] of the main guidance).
- A74. It is also generally accepted that conduct which undermines probity, such as breach of the duty of candour, is not easily remediable.
- A75. However, where the case examiners do not consider there to be a real prospect of the registrant's fitness to practise being found to be currently impaired, this should be clearly justified with reference to the factors of consideration set out at paragraphs [84] to [106] of the main guidance.

Outcome considerations

- A76. When the case examiners consider that there is real prospect of a practice committee finding current impairment, it is highly likely they will consider it necessary to refer the case to a practice committee due to:
- the likely unsuitability of undertakings
 - the public interest in public ventilation of serious concerns such as breaches of duty of candour.
- A77. Where the case examiners consider there is a real prospect of the statutory ground of impairment being established, but no real prospect of a finding of current impairment being made, it is likely that a warning will be required given the public interest considerations with this

¹¹⁴ [Being open and honest with patients when something goes wrong.](#)

category of allegation, and the risk that such conduct poses to public confidence in the professions.

Non-cooperation

- A78. The Standards require registrants to cooperate with any relevant formal or informal inquiry and to give full and truthful information when asked.
- A79. The courts have held that all professionals subject to a regulatory regime have a duty to engage with their regulator, both in relation to the investigation and to the ultimate resolution of allegations made against them. This is part of the responsibility they sign up to when being admitted to a profession¹¹⁵.
- A80. Non-cooperation with a GDC investigation may take various forms, including failure to:
- provide employer information
 - provide proof of indemnity when requested
 - provide a GP reference
 - provide consent to the health assessment process
 - cooperate with the health assessment process, including non-attendance of appointment(s) for health assessment or sample collection
 - provide any other information necessary to progress a fitness to practise investigation.

Considerations at stage two (statutory ground)

- A81. Failure to cooperate with the GDC is a serious matter, breaches the Standards and, depending on the facts of the case, is likely to amount to misconduct which impairs the registrant's fitness to practise¹¹⁶. As well as raising public protection considerations, non-cooperation with a GDC investigation by dental professionals has the potential to seriously undermine public confidence in the dental professions.
- A82. When considering whether the alleged non-cooperation is sufficiently serious to determine a real prospect that misconduct will be established, in addition to the factors set out in paragraphs [60] to [63] of the main guidance, the case examiners' considerations should include, but not be limited to:
- the extent of the alleged non-cooperation
 - whether the alleged non-cooperation was an isolated incident, or there is evidence of repetition or a pattern of behaviour.

¹¹⁵ [General Medical Council v Adeogba \[2016\] EWCA Civ 162.](#)

¹¹⁶ [Saha v GMC \[2009\] EWHC 1907 \(Admin\).](#)

- c. whether the alleged non-cooperation has impacted the GDC's ability to investigate the substantive concerns
 - d. patients have been put at risk by the alleged non-cooperation
 - e. there is evidence that the registrant was suffering from adverse physical or mental health at the time of the alleged non-cooperation, and if so whether the non-cooperation was attributable to this
 - f. there is any other reasonable justification for the alleged non-cooperation, including that they did not receive correspondence from the GDC (subject to paragraph A83)
- A83. As part of the requirements for ongoing registration¹¹⁷, registrants must provide a current address. Where a registrant has failed to do so and, as a result, has not received fitness to practise correspondence, this does not provide a reasonable justification.

Outcome considerations

- A84. When the case examiners consider that there is real prospect of a practice committee finding current impairment, it is highly likely they will consider it necessary to refer the case to a practice committee due to the likely unsuitability of undertakings.
- A85. Where the case examiners consider there is no real prospect of a finding of current impairment being made, either no further action, advice, or a warning may be appropriate, with the considerations set out at paragraphs [82] of the appendix and [177] to [188] of the main guidance supporting the case examiners' decision.

Breach of IOC or practice committee conditions, or breach of undertakings

- A86. Conditions imposed by the IOC or a practice committee, or undertakings agreed with case examiners, are restrictions on a registrant's registration that are put in place after a regulatory process examining the circumstances of the case. Patients are entitled to be seen, diagnosed and treated by registrants in line with their registration and any conditions or undertakings attached.
- A87. As a result, where the dental professional is found to have knowingly or deliberately breached conditions or undertakings, their conduct is likely to amount to a serious regulatory breach. Such breaches create a risk to the public, in terms of the registrant practising contrary to their registration status (i.e. in circumstances where their professional regulator has explicitly directed that they must not), and potentially in relation to invalidation of their indemnity cover. This may also undermine public confidence in the dental professions¹¹⁸.

¹¹⁷ Rule 9 The General Dental Council (Dentist Register) Regulations 2014, and Rule 13 The General Dental Council (Dental Care Professionals Register) Rules 2014.

¹¹⁸ [General Medical Council v Donadio \[2021\] EWHC 562 \(Admin\)](#).

- A88. Where appropriate, such misconduct may result in a separate allegation of impaired fitness to practise.

Considerations at stage two (statutory ground)

- A89. When considering whether the alleged breach of conditions or undertakings is sufficiently serious to determine a real prospect that misconduct will be established, in addition to the factors set out in paragraphs [60] to [63] of the main guidance, the case examiners' considerations should include, but not be limited to, whether:
- a. the alleged breach was knowing/deliberate or inadvertent
 - b. the alleged breach was sustained over a period of time or quickly remedied
 - c. the alleged breach was of a more substantial nature or administrative (e.g. the failure to meet a deadline for providing information but subsequently provided the information)
 - d. the alleged breach relates to transparency/anti-avoidance elements of the restrictions (e.g. a requirement to inform employers of the restrictions)
 - e. there was an alleged lack of candour with regulatory authorities when the registrant was challenged (e.g. making a false claim that they were not aware the restrictions were in force).

Outcome considerations

- A90. When the case examiners consider that there is real prospect of a practice committee finding current impairment, it is highly likely they will consider it necessary to refer the case to a practice committee due to:
- a. the likely unsuitability of undertakings
 - b. the public interest in public ventilation of serious concerns such as breach of conditions or undertakings.
- A91. Where the case examiners consider there is no real prospect of a finding of current impairment being made, either no further action, advice, or a warning may be appropriate, with the considerations set out at paragraphs [89] of the appendix and [177] to [188] of the main guidance supporting the case examiners' decision

Indemnity

- A92. All practising dental professionals must have indemnity arrangements in place 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 the 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).

- A93. 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.
- A94. 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 be considered unacceptable by the public and fellow professionals.

Considerations at stage two (statutory ground) and stage three (current impairment)

- A95. Given the inherent seriousness of practising without indemnity, where the case examiners consider there to be a real prospect that a practice committee will find the alleged facts proved, it is highly likely that the case examiners will also consider there to be a real prospect that the statutory ground will be established at stage two. The case examiners will then go on to consider whether there is a real prospect that a practice committee will find current impairment.
- A96. When practising without indemnity is being considered at stage three, the case examiners 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.
- A97. Regardless of any public protection considerations that may be remaining, the case examiners will ordinarily find there is a real prospect of current impairment. This is because, regardless of any public protection considerations which may be remaining, 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 (see paragraphs [103] to [106] of the main guidance).
- A98. It is also generally accepted that conduct which undermines probity, such as practising without indemnity, is not easily remediable.
- A99. Where the case examiners do not consider there to be a real prospect of the registrant's fitness to practise being found to be currently impaired, this should be clearly justified with reference to the factors of consideration set out at paragraphs [84] to [106] of the main guidance.

Outcome considerations

- A100. When the case examiners consider that there is real prospect of a practice committee finding current impairment, it is highly likely they will consider it necessary to refer the case to a practice committee due to:
- a. the likely unsuitability of undertakings

b. the public interest in public ventilation of serious concerns such as practising without indemnity.

A101. Where the case examiners consider there is a real prospect of the statutory ground of impairment being established, but no real prospect of a finding of current impairment being made, it is likely that a warning will be required given the public interest considerations with this category of allegation, and the risk that such conduct poses to public confidence in the professions.

Working outside of scope of practice

A102. 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.

A103. 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.

Considerations at stage two (statutory ground) and stage three (current impairment)

A104. Given the inherent seriousness of working outside of scope of practice, where the case examiners consider there to be a real prospect that a practice committee will find the alleged facts proved, it is highly likely that the case examiners will also consider there to be a real prospect that the statutory ground will be established at stage two. The case examiners will then go on to consider whether there is a real prospect that a practice committee will find current impairment.

A105. When working outside of scope of practice is being considered at stage three, the case examiners will ordinarily find there is a real prospect of current impairment. This is because, regardless of any public protection considerations which may be remaining, 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 (see paragraphs [103] to [106] of the main guidance).

A106. It is also generally accepted that conduct which undermines probity, such as working outside of scope of practice, is not easily remediable.

A107. Where the case examiners do not consider there to be a real prospect of the registrant's fitness to practise being found to be currently impaired, this should be clearly justified with reference to the factors of consideration set out at paragraphs [84] to [106] of the main guidance.

Outcome considerations

- A108. When the case examiners consider that there is real prospect of a practice committee finding current impairment, it is highly likely they will consider it necessary to refer the case to a practice committee due to:
- the likely unsuitability of undertakings
 - the public interest in public ventilation of serious concerns such as working outside of scope of practice.
- A109. Where the case examiners consider there is a real prospect of the statutory ground of impairment being established, but no real prospect of a finding of current impairment being made, it is likely that a warning will be required given the public interest considerations with this category of allegation, and the risk that such conduct poses to public confidence in the professions.

Working beyond training and competence

- A110. The Standards require that dental professionals must work within their knowledge, skills, professional competence and abilities. However, it is recognised that a dental professional may, on occasion, undertake treatment that becomes more challenging or complex than anticipated. Ordinarily, if the situation is handled appropriately, this will not in itself call into question that person's fitness to practise.
- A111. Working beyond training and competence, however, breaches a fundamental requirement of professional registration, puts patients at risk, and may undermine public confidence in the professions.

Considerations at stage two (statutory ground) and stage three (current impairment)

- A112. Given the inherent seriousness of working beyond training or competence, where the case examiners consider there to be a real prospect that a practice committee will find the alleged facts proved, it is highly likely that the case examiners will also consider there to be a real prospect that the statutory ground will be established at stage two. The case examiners will then go on to consider whether there is a real prospect that a practice committee will find current impairment.
- A113. When working beyond training or competence is being considered at stage three, the case examiners will ordinarily find there is a real prospect of current impairment. This is because, regardless of any public protection considerations which may be remaining, 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 (see paragraphs [103] to [106] of the main guidance).
- A114. It is also generally accepted that conduct which undermines probity, such as working beyond training and competence, is not easily remediable.

- A115. Where the case examiners do not consider there to be a real prospect of the registrant's fitness to practise being found to be currently impaired, this should be clearly justified with reference to the factors of consideration set out at paragraphs [84] to [106] of the main guidance.

Outcome considerations

- A116. When the case examiners consider that there is real prospect of a practice committee finding current impairment, it is highly likely they will consider it necessary to refer the case to a practice committee due to:
- a. the likely unsuitability of undertakings
 - b. the public interest in public ventilation of serious concerns such as working beyond training and competence.
- A117. Where the case examiners consider there is a real prospect of the statutory ground of impairment being established, but no real prospect of a finding of current impairment being made, it is likely that a warning will be required given the public interest considerations with this category of allegation, and the risk that such conduct poses to public confidence in the professions.

Poor standard of treatment and care

- A118. Dental professionals are not in breach of their duty of care if they if they act in a manner which is in accordance with practices accepted as proper by a responsible body of other professionals with expertise in that particular area. Where this is established, negligence cannot be established merely because there are others with expertise who would adopt a different approach¹¹⁹.
- A119. It is recognised that different registrants may have different opinions, and so a divergence of professional opinion does not necessarily indicate a fitness to practise issue.
- A120. 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.

Considerations at stage two (statutory ground)

- A121. When considering whether the alleged poor standard of treatment is sufficiently serious to determine a real prospect that misconduct will be established, in addition to the factors set out in paragraphs [60] to [63] of the main guidance, and the clinical dental adviser's assessment of whether the standard of treatment and/or case fell far below the level of professional practise

¹¹⁹ Bolam v Friern Hospital Management Committee [1957] 1 WLR 582.

reasonably expected, the case examiners' considerations should include, but not be limited to, whether:

- a. patients have been put at risk of harm
- b. there is evidence of a disregard for patient safety.

A122. With regards to deficient professional performance, the case examiners should consider the factors set out at paragraphs [64] to [65] of the main guidance.

Outcome considerations

A123. When the case examiners consider that there is real prospect of a practice committee finding current impairment, depending on the workability of undertakings in the circumstances of the case, either undertakings or a referral to a practice committee may be appropriate.

A124. Where the case examiners consider there is no real prospect of a finding of current impairment being made, either no further action, advice, or a warning may be appropriate, with the considerations set out at paragraphs [A121] of the appendix and [177] to [188] of the main guidance supporting the case examiners' decision.

Failure to obtain informed consent

A125. It is a fundamental requirement under the GDC's Standards that registrants must gain informed consent from the patient before beginning any treatment or investigation. The onus is always on a registrant to ensure that the patient is fully informed of the relevant risks, benefits, and costs of treatment.

A126. Informed consent is a crucial aspect of maintaining public confidence in the dental professions and should be paramount in a registrant's mind before carrying out any treatment or investigation.

Outcome considerations

A127. When the case examiners consider that there is real prospect of a practice committee finding current impairment, it is highly likely they will consider it necessary to refer the case to a practice committee due to:

- a. the likely unsuitability of undertakings
- b. the public interest in public ventilation of serious concerns such as failure to obtain informed consent

A128. Where the case examiners consider there is no real prospect of a finding of current impairment being made, either no further action, advice, or a warning may be appropriate, with the considerations set out at paragraphs [177] to [188] of the main guidance supporting the case examiners' decision.

Treatment planning

- A129. The Standards set out a range of requirements for registrants in relation to treatment planning. A well-developed treatment plan aims to ensure patients understand their treatment options and are provided with the information they need, in a way they can understand, so they can make informed decisions. This supports informed consent.

Considerations at stage two (statutory ground)

- A130. When considering whether the alleged failure to plan treatment is sufficiently serious to determine a real prospect that misconduct will be established, in addition to the factors set out in paragraphs [60] to [63] of the main guidance, the case examiners' considerations should include, but not be limited to, whether:
- the alleged failure to plan treatment may have risked over or under treatment
 - patients have been put at risk of harm.
- A131. With regards to deficient professional performance, the case examiners should consider the factors set out at paragraphs [64] to [65] of the main guidance.

Outcome considerations

- A132. When the case examiners consider that there is real prospect of a practice committee finding current impairment, depending on the workability of undertakings in the circumstances of the case, either undertakings or a referral to a practice committee may be appropriate.
- A133. Where the case examiners consider there is no real prospect of a finding of current impairment being made, either no further action, advice, or a warning may be appropriate, with the considerations set out at paragraphs [A130] of the appendix and [177] to [188] of the main guidance supporting the case examiners' decision.

Record keeping

- A134. Registrants are required to keep accurate patient dental records. They should be accurate and sufficiently detailed so that, if viewed by another dental professional, the actions of the registrant and any clinical judgement applied, will be clear.
- A135. 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.
- A136. The case examiners will also take into account informant submissions, and keep in mind that simply because something is documented in a clinical record this is not necessarily conclusive evidence that it happened. The case examiners should exercise caution when closing an allegation based solely on the fact that the clinical records support the registrant's account,

unless the records contain objective and relevant evidence such as, for example, a signed treatment plan.

Considerations at stage two (statutory ground)

- A137. When considering whether the alleged failure(s) in record keeping is sufficiently serious to determine a real prospect that misconduct will be established, in addition to the factors set out in paragraphs [60] to [63] of the main guidance, the case examiners' 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 may have been put at risk of harm.
- A138. 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 amount to misconduct.
- A139. With regards to deficient professional performance, the case examiners should consider the factors set out at paragraphs [64] to [65] of the main guidance.

Outcome considerations

- A140. When the case examiners consider that there is real prospect of a practice committee finding current impairment, depending on the workability of undertakings in the circumstances of the case, either undertakings or a referral to a practice committee may be appropriate.
- A141. Where the case examiners consider there is no real prospect of a finding of current impairment being made, either no further action, advice, or a warning may be appropriate, with the considerations set out at paragraphs [A137] of the appendix and [177] to [188] of the main guidance supporting the case examiners' decision.

Complaint handling

- A142. Patients have a right to complain. Registrants are required to ensure there is an effective patients complaints procedure and to follow that procedure.

Considerations at stage two (statutory ground)

- A143. When considering whether the alleged failure(s) in complaint handling is sufficiently serious to determine a real prospect that misconduct will be established, in addition the factors set out in paragraphs [60] to [63] of the main guidance, the case examiners' considerations should include, but not be limited to:
- a. the extent to which the registrant made sure that there was a system in place to address complaints made
 - b. whether there were other competing procedures or processes in place at the registrant's practice over which the registrant had no influence

c. whether the registrant had responsibility for the issue that was complained about.

A144. Alleged failures in complaint handling, on a limited or small number of occasions, is unlikely, in itself and in isolation, to amount to misconduct.

A145. With regards to deficient professional performance, the case examiners should consider the factors set out at paragraphs [64] to [65] of the main guidance.

Outcome considerations

A146. When the case examiners consider that there is real prospect of a practice committee finding current impairment, depending on the workability of undertakings in the circumstances of the case, either undertakings or a referral to a practice committee may be appropriate.

A147. Where the case examiners consider there is no real prospect of a finding of current impairment being made, either no further action, advice, or a warning may be appropriate, with the considerations set out at paragraphs [A143] of the appendix and [177] to [188] of the main guidance supporting the case examiners' decision.

Failure to raise concerns

A148. Patients are entitled to be protected from dental professionals who fail in their responsibilities, thereby putting them at risk. Dental professionals have a duty to protect patients and put patients' interests first by raising concerns about other professionals when it is appropriate to do so.

Considerations at stage two (statutory ground)

A149. When considering whether the alleged failure(s) to raise concerns is sufficiently serious to determine a real prospect that misconduct will be established, in addition to the factors set out in paragraphs [60] to [63] of the main guidance, the case examiners' considerations should include, but not be limited to:

- a. the risk of harm to patients caused by the alleged failure to raise concerns
- b. the risk to public confidence caused by the alleged failure to raise concerns.

Outcome considerations

A150. When the case examiners consider that there is real prospect of a practice committee finding current impairment, it is highly likely they will consider it necessary to refer the case to a practice committee due to:

- a. the likely unsuitability of undertakings
- b. the public interest in public ventilation of serious concerns such as failure to raise concerns.

A151. Where the case examiners consider there is no real prospect of a finding of current impairment being made, either no further action, advice, or a warning may be appropriate, with the

considerations set out at paragraph [A149] of the appendix and [177] to [188] of the main guidance supporting the case examiners' decision.

Impact of retirement

- A152. The fact that a registrant has retired, or intends to retire from dental practice, is of little relevance to the issue of impairment.
- A153. In particular, where repetition is unlikely simply because the registrant will no longer be practising, the courts have held that this does not support a registrant being fit to practise going forward. If anything, ceasing to practise may lead to the opposite conclusion, since a registrant's skills could deteriorate with lack of use¹²⁰.
- A154. Where the case examiners consider there to be a real prospect of current impairment being found, a referral will likely be required (bearing in mind that undertakings are unlikely to be suitable or workable where a registrant has retired).

Criminal convictions or cautions

- A155. The purpose of fitness to practise proceedings in relation to criminal convictions and cautions is not to punish the registrant a second time for the offence or offences for which they were convicted or cautioned¹²¹. 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) and, if so, what sanction should be imposed.

Convictions

- A156. Where the case examiners are considering whether there is a real prospect of establishing the statutory ground 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 conviction¹²². The only evidence which may be presented by the registrant in rebuttal of a conviction is evidence that they are not the person referred to in the certificate or extract¹²³. The case examiners should not seek to "go behind" (challenge the underlying facts) a conviction by reinvestigating the matters which led to it.
- A157. As a result, submissions by the registrant that they are not in fact guilty of the offence in question should not be given any weight by the case examiners (at stage 2). This does not, however, prevent the case examiners from considering the background facts and circumstances surrounding the conviction, which are likely to be of relevance in considering current impairment (at stage three).

¹²⁰ [The General Optical Council v Clarke \[2018\] EWCA Civ 1463.](#)

¹²¹ [Dey v. General Medical Council \(GMC\) \[2001\] UKPC 44.](#)

¹²² Rule 57(5)(a) of the Rules.

¹²³ Rule 57(6) of the Rules.

Conditional and absolute discharges

- A158. 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 less serious offending.
- A159. 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 made¹²⁴. 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.
- A160. In cases of conditional or absolute discharge, at each of their three stages of real prospect consideration, the case examiners will consider the underlying behaviour or actions which gave rise to the criminal proceedings.
- A161. Where the relevant facts which led to the conditional or absolute discharge are not admitted by the registrant, the registrant would not be prohibited from "going behind" (challenging the underlying facts of) the conviction at a practice committee hearing. In such circumstances, the GDC would be required to prove the factual events that gave rise to the prosecution.
- A162. As such, the case examiners will need to consider whether the available evidence supports a real prospect of the facts being proved (at stage one), before going on to consider whether there is a real prospect that misconduct will be established (at stage two), and then whether there is a real prospect of current impairment being found (at stage three).

Cautions and conditional cautions

- A163. Cautions and conditional cautions are only offered where:
- the offender admits the relevant offence
 - the offender is willing to accept the caution/conditional caution
 - 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
 - the offence is not one where a prosecution is required in the public interest.
- A164. Where a registrant has accepted a caution/conditional caution, submissions by the registrant that they are not in fact guilty of the offence in question should not be given any weight by the case examiners (at stage 2). This does not, however, prevent the case examiners from

¹²⁴ 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.

considering the background facts and circumstances surrounding the caution/conditional caution, which are likely to be of relevance in considering current impairment (at stage three).

Other disposals of criminal proceedings

- A165. 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.
- A166. Registrants are not obliged to inform the GDC of these types of disposals of criminal proceedings¹²⁵ but, should an allegation relating to such matters be referred to the case examiners, this must only proceed as an allegation of impaired fitness to practise on the ground of misconduct.

Considerations at stage two (statutory ground) and stage three (current impairment)

- A167. Where the case examiners consider there to be a real prospect that a practice committee will find the alleged facts proved, given the nature of this statutory ground, it is highly likely that the case examiners will also consider there to be a real prospect that the statutory ground will be established at stage two. The case examiners will then go on to consider whether there is a real prospect that a practice committee will find current impairment.
- A168. The length and type of sentence imposed by the criminal court may be a relevant consideration in determining real prospect of current impairment, as these factors may provide an indication of seriousness of offence and whether the public interest considerations, as set out at paragraphs [103] to [106] of the main guidance, are engaged. However, the case examiners should properly appraise the nature and gravity of the conduct which led to the conviction. They should also take into account that the sentence imposed by the criminal court is not necessarily a definitive guide to the seriousness of the offence, as there may have been mitigating factors or personal circumstances which resulted in a reduced sentence. This may include the assumption by the Court that the GDC would erase the registrant from the register.
- A169. Where the case examiners do not consider there to be a real prospect of the registrant's fitness to practise being found to be currently impaired, this should be clearly justified with reference to the factors of consideration set out at paragraphs [84] to [106] of the main guidance.

¹²⁵ [Guidance on reporting matters to the General Dental Council.](#)

Outcome considerations for convictions

- A170. Where the case examiners consider that there is a real prospect of a practice committee finding current impairment, it is likely that a referral to a practice committee will be required.
- A171. Each case must be considered on its own merits. However, there are categories of conviction where it is highly likely that a referral to a practice committee will be appropriate, regardless of whether a custodial sentence was imposed or of any mitigation put forward. These are cases where the public interest considerations set out at paragraphs [103] to [106] of the main guidance will be engaged such that there is a real prospect of a finding of current impairment. These types of convictions may include, but are not limited to:
- a. cases of murder, manslaughter and other offences against the person (including any cases involving violence in a domestic or non-domestic context, and racially or religiously aggravated offences of a violent nature)
 - b. sexual offences, as set out at paragraph [A5] of this appendix
 - c. burglary, robbery, theft, handling stolen goods and other offences involving an element of dishonesty including fraud and forgery, false or misleading statements.
 - d. arson or criminal damage endangering life
 - e. offences against the state (e.g. terrorist offences, espionage, sabotage) or public order offences (e.g. riot, violent disorder and affray¹²⁶)
 - f. firearms offences
 - g. obscene publications (including the distribution of extreme pornographic images, indecent images or pseudo-images of children, or prohibited images of children)
 - h. other convictions for offences with a racially or religiously aggravated element, or motivated by hostility or prejudice based on sexual orientation, disability or transgender identity.
- A172. When considering a case where the registrant has been convicted and is still subject to a criminal sentence (including a suspended sentence of imprisonment, or a community penalty), the case examiners should bear in mind that a practice committee will take into account the case of Fleischmann¹²⁷. It states, as a general principle, that where a registrant has been convicted of a serious criminal offence, or offences, they should not be permitted to resume practice until they have satisfactorily completed that sentence. Only circumstances that plainly justify a different course should permit otherwise. Such circumstances could arise in connection with a period of disqualification from driving or time allowed by the court for the payment of a fine.
- A173. Where the Fleischmann principle applies, this is likely to require suspension of the registrant's registration until the sentence has been satisfactorily completed or criminal penalty concluded.

¹²⁶ Public Order Act 1986.

¹²⁷ Council for the Regulation of Health Care Professionals v General Dental Council & Anor [2005] EWHC 87 (Admin).

In these circumstances, a referral to the practice committee will be required and also to the IOC, unless previously considered.

- A174. If the case examiners consider there is no real prospect of a finding of current impairment being made, it is likely that a warning will be required given the public interest considerations with this category of allegation, and the risk that such conduct poses to public confidence in the professions. Such categories of convictions may include, but are not limited to:
- a. one-off drink/drug driving offences (i.e. the first offence of this type) where there is no evidence of underlying health concerns
 - b. disorderly behaviour whilst drunk and which does not involve violence
 - c. minor criminal damage.

Outcome considerations for cautions/conditional cautions

- A175. Where the case examiners consider that there is real prospect of a practice committee finding current impairment, it is likely that a referral to a practice committee will be required.
- A176. Where the case examiners consider there is no real prospect of a finding of current impairment being made, it is likely that a warning will be required given the public interest considerations with this category of allegation, and the risk that such conduct poses to public confidence in the professions.

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