

REFERRAL TO THE GENERAL DENTAL COUNCIL

UK

Short guide to appearing before the GDC and how you can make the most of the professional advice from Dental Protection



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1.0 ABOUT THIS GUIDE

This guide is specifically written for Dental Protection members who have been notified that the General Dental Council (GDC) is investigating an issue in relation to their fitness to practise. Any registrant can be investigated by the GDC, so although this guide refers to a dentist, exactly the same advice applies to dental care professionals.

If you do receive such a notification, Dental Protection can only start to assist you if you pick up the telephone and give us a call. Don't hesitate to contact us; time is of the essence in preparing a response.

The receipt of a complaint, particularly one involving the General Dental Council, is one of the most distressing events that can occur during the course of a dental practitioner's career. However, such occurrences have recently become increasingly common and can properly be regarded as one of the occupational hazards of dental practise. In the event of a referral to the GDC, Dental Protection is ideally placed to assist and this guide is intended to help you understand the workings of the General Dental Council.

It will explain how you can make the most of the assistance that Dental Protection can provide as well as describing what is required of you by the dentolegal adviser and the legal team that will be handling the case.

From the outset it is important for members to realise that the potency of the assistance provided by Dental Protection is largely dependent upon the candour and co-operation of the member from the very earliest stage.

2.0 HOW DOES A GDC INVESTIGATION WORK AND HOW WE CAN ASSIST?

UNDER ITS CURRENT RULES, THE GDC APPLIES A THREE-STAGE INVESTIGATION PROCESS:

(i) Initial Assessment

Upon receipt of a complaint from any source, officials of the GDC (caseworkers) consider whether the information received “raises a question as to whether the registrant’s fitness to practise is impaired” – essentially whether there is a case to answer. Observations from the registrant are not invited at this stage.

What you will have received from the GDC is a notification of a Fitness to Practise Investigation letter and a bundle of papers which will normally include the following:

- Covering letter from GDC which will include a request for information and the date by which the request for information should be received by the GDC.
- Complaint letter to the GDC from the informant who may be a patient.
- A list of documentation to be sent to the GDC – normally these are the original patient records, original radiographs, employment and indemnity details form and indemnity certificate.

It is important that you take the opportunity to discuss the case with one of the large team of experienced dentolegal advisers at Dental Protection before responding to the GDC.

You should not contact the GDC, the complainant or any potential witnesses – such as members of staff.

We will send your documentation to the GDC on your behalf. The GDC will review and decide whether to:

Close the case at this stage

or

Refer the case to be considered by the Case Examiners.

Sadly, it is a fact that each year the GDC’s Case Examiners and Fitness to Practise Committees consider a significant number of cases which could have been avoided altogether had the initial complaint, or the preliminary correspondence from the GDC been handled appropriately. A single telephone call to Dental Protection, before any other response is made, should remove any such risk.

The importance of objective advice at this stage cannot be overstated. Patient complaints to the GDC are often expressed in highly emotive terms, and may contain hurtful and distressing comments about the practitioner which have no direct relevance to the subject matter of the complaint. Without the benefit of professional advice, and the inevitable cooling off period that this produces, it is all too easy for the practitioner to “shoot from the hip” and do irreparable damage to his case. In such circumstances in the past the practitioners have:

- irreversibly altered the relevant dental records in a way that will inevitably be discovered
- failed to respond to the complaint at all, thereby rendering the GDC case far more serious
- written to the GDC and/or the complainant, berating the patient for having had the temerity to complain in the first place, or making unsustainable allegations of malice or dishonesty; or
- made inappropriate financial offers to the patient conditional upon the withdrawal of the complaint.

Correspondence sent by you to the GDC or to the complainant can (and usually will) become evidence in the proceedings. Once sent, the damage done cannot be reversed. Moreover, if such correspondence differs materially from the oral evidence that you subsequently give at a Fitness to Practise hearing, then the inconsistencies can be used to undermine your credibility. A considered, professional, and objective response is therefore imperative. Such a response is guaranteed if you take appropriate professional advice from Dental Protection at the outset.

(ii) Referral to the Case Examiners

If the GDC decide to refer your case to be considered by the Case Examiners (CE) then you will be notified by letter along with a bundle of documents:

- Covering letter from GDC which will include the dates by which any observations should be sent and the date when the CE will consider the case.
- A sheet containing the allegations and the paragraphs of 'Standards for the Dental Team' and (for allegations prior to 2013 'Standards for Dental Professionals') which it is alleged have been breached.
- A bundle of documents including all the evidence considered by the GDC caseworker.

Upon receipt of this letter a meeting will be arranged for you with a solicitor. You will then be assisted in drafting a response to the GDC which, subject to your approval, will be sent on your behalf by Dental Protection or its solicitors.

In preparation for this meeting you will need to bring with you:

- Your thoughts and comments about the allegations.
- An up to date but concise CV.
- A list of your CPD activity for the past 12-18 months.

A review by Case Examiners will be carried out once the documents have been collated by the Case Worker. These cases are determined on the documents alone, including the complaint and any written observations submitted by or on behalf of the dentist. Neither the complainant, nor the dentist, or their legal representatives are entitled to attend. The CE can determine the case in a number of ways:

- Refer the case for a public hearing before a Fitness to Practise Committee.
- Offer and/or agree Undertakings (see below)
- issue a public (published) warning.
- Issue an unpublished warning.
- Issue a letter of advice.
- Take no further action.

The CE determine whether there is "a realistic prospect" that the matters alleged will be found proved, and will amount to impairment of the practitioner's fitness to practise.

The results of the CE consideration are disclosed within a few weeks following receipt of the documents by CE. Whilst most complaints received by the GDC are sent for consideration by the CE, only a few, approximately 10%, are then referred forward for a public hearing before a Fitness to Practise Committee. Most complaints are disposed of by way of warnings, advices or simple closure.

Undertakings

Case Examiners will be able to offer and/or agree with the practitioner that, instead of a referral to a Practice Committee, a case can be concluded with Undertakings that are designed to protect the public and in a health case, to protect the practitioner. Undertakings are serious and will be monitored by the GDC. A breach of Undertakings will result in both the original allegations being referred to a Practice Committee and the fact of the breach being investigated. Dental Protection's team will discuss the approach to Undertakings when preparing observations for the CE.

Warnings

Since April 2016 it has been open to the practitioner to seek a review of a case closed with a warning by IC or CE. This request needs to have been accepted within two years of the day the decision was made. Dental Protection does not expect to have many successful challenges, however when a warning is contemplated by CE your Dental Protection team will discuss with you the merits of the GDC's arguments and whether or not there is a reasonable chance of success in issuing a request for review. If a request for review is granted, the case will be reconsidered either by Investigating Committee or different CE.

In the same way, a patient who believes that a case should not have been closed by CE or at the earlier triage/assessment stages can seek a review of that decision. The practitioner will be asked for additional comments in the event of a request for review being granted.

(iii) The Fitness to Practise Committee

If a case is referred to the Fitness to Practise Committees (there are three: Professional Conduct Committee, Professional Performance Committee and Health Committee), the hearing is unlikely to occur for many months after the CE decision.

In preparation for this important hearing the practitioner will be invited to attend a series of meetings with his dentolegal adviser, the solicitor, the barrister and dentolegal assistant. In some cases an independent expert will be retained to advise the team and give evidence at the hearing.

The Fitness to Practise hearing is in public, unless it concerns the practitioner's health, and the practitioner will be represented by an experienced barrister.

The hearing proceeds very much like a trial in the ordinary courts. There are two stages to a hearing:

- (1) Finding of fact – does the evidence prove the allegations made?
- (2) Finding of impairment – if the facts are found then is the registrant currently impaired?

At the end of the hearing the committee delivers a verdict in relation to the allegations, and whether they amount to impairment of the dentist's fitness to practise. If impairment is found, the committee then decides whether it is necessary to take action on the dentist's registration by way of erasure, suspension or the imposition of conditions.

THE IMPORTANCE OF OPENNESS AND TRUTHFULNESS

Although your dentolegal team (which includes the Dental Protection dentolegal adviser, solicitor, barrister and dentolegal assistant) will do everything possible to assist you, and to ensure that your case is fully prepared for whatever stage of the process it is reached, that team is dependent on you for instructions that are full, accurate and truthful.

The team can only work with the resources that are provided by you. Some practitioners facing investigation by the GDC still erroneously believe that it is the function of their legal advisers to “formulate” the best defence available. This is not, and never has been the case.

It is professional misconduct for a lawyer to devise a factual explanation or defence on behalf of his client. It is therefore the practitioner who must provide his dentolegal adviser with a factual response to the allegations. The team will then test the strengths and weaknesses of that account and use it as a basis for written submissions on the practitioner’s behalf, or in order to prepare for a hearing before the Fitness to Practise Committee.

It is therefore vital that you are open and truthful with your dentolegal team. Attempts to mislead professional advisers and thereby present false evidence to the GDC almost always come to light, and end in varying degrees of disaster, depending on how quickly the untruth is exposed. Here are some examples from previous cases:

(1) A practitioner re-wrote the dental records, and did not alert his advisers to the fact that he had done so. The amendments were subsequently exposed because the dates of the entries pre-dated the printing date of the record cards upon which they appeared. The GDC produced evidence from the dental stationery suppliers demonstrating this to be the case, and thereby establishing that the practitioner had deliberately altered the records in order to defeat the complaint. As a result, the practitioner was erased even though the clinical complaint was relatively trivial, and would not have led to action on his registration.

(2) A practitioner exhibited falsified laboratory requisitions during the course of a hearing in relation to allegedly inappropriate NHS claims. As GDC proceedings are “sworn”, that is to say witnesses give evidence on oath, the presentation of false evidence or documents in the course of those proceedings can amount to the criminal offences of perjury and perverting the course of public justice. The dentist concerned was erased, and subsequently arrested and interviewed by the police.

(3) A practitioner provided a detailed written account of the consultation in issue, which was then included within the written submissions sent to the Investigating Committee. Under cross examination at a subsequent Fitness to Practise Committee hearing, the practitioner confirmed that, in fact, he had no recollection at all of the consultation in question. He was therefore forced to accept that a false account had been presented to the Investigating Committee, and the patient’s account of events was inevitably accepted in its entirety. This case well illustrates that where the practitioner has no recollection of a particular consultation, he should say just that, and base the response upon his notes and standard clinical practice, rather than tempting to fit his response to the allegations contained within the complaint.

These are extreme examples, where the misleading information provided by the practitioner had not surfaced until the hearing itself, by which time it was too late for the dentolegal team to do anything about it.

However, usually it will come to light in advance of the hearing. If you have provided your advisers with an account which is exposed as untrue, and is wholly incompatible with the defence that you then wish to run, this is likely to result in the wholesale replacement of your legal team. This is because their dual duty to the client and to the tribunal leaves them professionally embarrassed. It could also lead to a withdrawal of assistance by Dental Protection, if it is clear that the member has deliberately misled the team.

4.0 THE IMPORTANCE OF CO-OPERATION

Your dentolegal team cannot take any steps on your behalf without your agreement. However, assistance is dependent upon your continued co-operation and your acceptance of appropriate advice. Where documents or instructions are needed, or meetings required, your input is clearly essential, otherwise your legal team is left without instructions and is unable to act on your behalf.

In all GDC proceedings a point is inevitably reached when a decision must be taken as to which elements of the complaint are to be admitted, and which are to be contested. This is equally the case whether formulating written responses for the CE, or preparing for hearing at the Fitness to Practise Committee.

It is very much in the practitioner's interest to make admissions to any allegations which, if contested, would nevertheless be found proved – for example, where the evidence is overwhelming, or there is an expert opinion which cannot be contradicted.

The GDC, like the other regulators, attaches a great deal of importance to the concept of 'insight', almost to the extent that it has become overworked. A more recent concept being considered by the GDC is the idea of "embedded" insight. It will always be regarded as very much to the practitioner's credit, if he has accepted a transgression or shortcoming, and has taken the necessary steps to rectify it, or prevent a recurrence. Contesting an allegation, and then losing, is regarded by the GDC as indicative of a lack of insight, as it demonstrates that, even by the time of the hearing, the practitioner still regarded his conduct or performance as justified.

It is for this reason alone that we will always advise the practitioner against fighting aspects of the case that stand no chance of being won. You may mistake this as expediency, and feel that your defence organisation should be fighting your case relentlessly on every front. Rest assured that whenever there is a realistic prospect that an allegation can be successfully defended, it will be. However, where the allegation is sure to succeed, the best mitigation is acceptance and appropriate remediation.

In the rare cases where members do not co-operate with Dental Protection, assistance may have to be withdrawn.

5.0 EARLY REMEDIATION TEAM

Dental Protection employs a structured approach to offering advice, support and encouragement to members in addressing targeted remediation needs soon after the point where they have received requests for information from the GDC. This is in the form of the Early Remediation Team (ERT).

The dentolegal adviser involved decides whether the member would benefit from assistance from the Early Remediation Team.

The key objectives of this team are:

1. To assist the member to target professional development, achieve demonstrable improvement in standards and genuine insight, for the purposes of making evident that there is no impairment in fitness to practise at a full hearing, if it becomes necessary;
2. To encourage members to make a start on early targeted remediation activities as soon as possible in order to assist with the submission of effective observations to a potential CE consideration;
3. To encourage the member's participation in, and explain the nature of, reflection and the purpose and importance of a Professional Development Plan (PDP);
4. To assist the member's current general appreciation of standards/guidance, continuing professional development (CPD) activities, willingness to cooperate, and presence of abilities in relation to and history of audit; and
5. To actively encourage a member to use all available time effectively to achieve an 'embedded' professional development approach.

6.0 DEVIL'S ADVOCATES AND WELL-MEANING COLLEAGUES

In all but the most trivial of GDC complaints, the dentolegal team works on the basis that there is a risk (which may be small) that the case will progress to a hearing before the Fitness to Practise Committee, and that the practitioner will have to give oral evidence.

For this reason, the dentolegal adviser, the solicitor and the barrister, at the various stages where they become involved in the proceedings, will take on the role of 'devil's advocate' in order to test how well you and your account, stand up to hostile questioning.

This is designed to expose any weaknesses, so that they may be rectified, if possible. It also prepares the practitioner for the otherwise unfamiliar ordeal of giving evidence at a public hearing. The exercise is not intended to be judgemental, but is sometimes perceived by the practitioner to suggest that his advisers are sceptical about his account. The reality however is that this is the single most effective way of ensuring that your account is sustainable under scrutiny, and that you present well if required to give evidence.

Because of the stress that is inevitably caused by receipt of a notice of referral from the GDC, the informal support of patients, friends and professional colleagues is always welcome.

In the event of a Fitness to Practise Committee hearing, references from such people will be particularly valuable. However, input from them in relation to the clinical and factual elements of the case should be treated with caution. Firstly, the anonymity of the patient complainant (if there is one) must always be preserved, and therefore any informal discussion as to clinical aspects of the case is unwise. More fundamentally, however, practitioners should be wary of advice from patients, friends and colleagues, if it conflicts with the advice that has been received from Dental Protection or its lawyers.

Whilst informal advice is usually well intentioned, it may not be objective or based on sufficient information to form a meaningful opinion. Informal advice from practitioners, who have had previous adverse experiences at the GDC, needs to be viewed with particular scepticism as they are unlikely to hold dispassionate views. They may even see your case as an opportunity to re-fight their own grievances by proxy. For advice to be useful, it must also be objective.

Dental Protection and its lawyers have considerable experience in dealing with matters before the GDC and you can be assured that we will always do our very best to support you at what may be some of the most difficult, emotionally challenging and stressful times of your professional career.

How to contact us

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