

# Referral to the General Dental Council

GENERAL DENTAL COUNCIL



PLEASE RING FOR ATTENTION

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

# Referral to the General Dental Council

## ABOUT THIS GUIDE

This leaflet is specifically written for DPL members who have been notified that the GDC is investigating an issue in relation to their fitness to practise. Any registrant can be investigated by the GDC, so although the text 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 leaflet 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 dento-legal 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 DPL is largely dependent upon the candour and co-operation of the member from the very earliest stage.

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## How the disciplinary processes work and how Dental Protection Limited can assist you

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 neither invited nor considered at this stage. Indeed the dentist will be unaware that there is a GDC investigation, unless the referring person or body has told him that the GDC has been informed. Most complaints survive this initial screening and progress to the next stage.

What you will have received from the GDC is a bundle of papers which will normally include the following:

- Covering letter from GDC which will include the dates by which any observations should be sent and the date when the Investigating will consider the matter.
- Sheet containing the allegations and the paragraphs of 'Standards for Dentists' which it is alleged have been breached.
- Complaint letter to the GDC from the patients if a patient is involved.

It is important that you take the opportunity to discuss the case with one of the large team of experienced dento-legal advisers at Dental Protection.

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

Sadly, it is a fact that, each year the GDC's Investigating 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 DPL, 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
- 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.

Where necessary (eg. there is a real possibility of a referral to a Fitness to Practise Committee), 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 DPL or its solicitors.

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

- An up to date but concise CV
- A list of you CPD activity for the past 12-18 months.

### **(ii) The Investigating Committee**

The GDC's Investigating Committee meets on a twice monthly basis, and at each session it considers up to 30 referrals. These are determined on the documents alone, including the complainant 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 Investigating Committee can determine the case in a number of ways:

- refer the case for a public hearing before a Fitness to Practise Committee
- issue a public (published) warning
- issue an unpublished warning
- issue a letter of advice
- take no further action.

The Investigating Committee determines 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 Investigating Committee meeting are disclosed within a few days. Whilst most complaints received by the GDC are sent for consideration by the Investigating Committee, 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.

### **(iii) The Fitness to Practise Committee**

If a case is referred to the Fitness to Practise Committee, the hearing is unlikely to occur for many months after the Investigating Committee decision. The Fitness to Practise hearing is in public, unless it concerns the dentist's health, and the practitioner will be represented by an experienced barrister. The hearing proceeds very much like a trial in the ordinary courts, and 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.

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

## The importance of openness and truthfulness with the dento-legal team

Although your dento-legal team (which includes the Dental Protection dento-legal advisor, solicitor and barrister) 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 dento-legal advisers 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 advisers. 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 of itself 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. Because 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 dento-legal team to do anything about it.

More usually however, 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, 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 DPL, if it is clear that the member has deliberately misled the team.

## The importance of co-operation

Your dento-legal 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 Investigating Committee, 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. 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, insofar that it demonstrates that, even by the time of the hearing, that 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.

## Devil's advocates and well-meaning colleagues

In all but the most trivial of GDC complaints, the dento-legal 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 dento-legal adviser, the solicitor and the barrister at the various stages at which 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 presents 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 DPL 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, and may 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.