

## **General Dental Council consultation<sup>1</sup> – s.60 – Case examiners**

### **NMC response – January 2015**

#### **Q1. Do you think that the GDC should introduce the role of Case Examiners?**

Yes.

We agree that the GDC should introduce case examiners (we are introducing case examiners in March 2015). We consider that case examiners can provide a unique level of experience and expertise, and help achieve consistent, high quality decision making. We consider that the introduction of case examiners is likely to bring about a more proportionate approach to the GDC's investigation of fitness to practise allegations and efficiencies in their case handling.

#### **Q2. Do you think that we should introduce a power for the GDC to agree undertakings with dental professionals as part of our fitness to practise process?**

Yes.

See response to question 3.

#### **Q3. Do you agree that the Case Examiners should, in certain circumstances, be able to invite a dental professional to comply with undertakings instead of referring the case to a Practice Committee for a hearing?**

Yes.

We consider that undertakings provide a swift and effective response to situations where clinical concerns have been raised about a dental professional's practice and the dental professional accepts that some form of restriction is necessary in order to address these concerns. In such scenarios there is unlikely to be any public interest in pursuing the matter through to a substantive hearing provided the process is fair and transparent and the outcome is published. Indeed, such a course of action is more likely to be contrary to the public interest given the inevitable delay in arranging a substantive hearing and the high level of expenses involved.

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<sup>1</sup> <http://www.gdc-uk.org/GDCcalendar/Consultations/Pages/Consultation-on-changes-to-the-GDCs-Fitness-to-Practise-Rules-2006.aspx>

**Q4. Do you have any comments about how rules 6A and 8A are drafted?  
[Warnings and undertakings]**

We have no comment to make.

**Q5. Do you have any comments on the circumstances where you think undertakings may or not be appropriate?**

We agree that it will not be appropriate to agree undertakings where there is a real prospect that a fitness to practise panel would erase the dental professional from the register if the case was referred to a final hearing.

**Q6. Do you agree with the intended process for agreeing undertakings with a dental professional and what should happen if the dental professional does not agree?**

We agree with the proposed process.

**Q7. What are your views on the information that should be made publicly available about undertakings? For how long do you think that undertakings should be published?**

We consider that information about undertakings should be made publicly available in the same way as conditions and other restrictions on the dental professional's practice. As for length of publication, we consider that it is only necessary to publish the existence of undertakings whilst these are in force.

**Q8. Do you have any comments on how rules 6A(3) and 8A(3), or 6A(4) and 8A(4) are drafted?**

We have no comment to make.

**Q9. Do you agree with how we intend to deal with dental professionals who do not comply with undertakings?**

Yes.

We consider that clear criteria should be published on when a dental professional is deemed to have actually breached the undertakings in a way that requires further action as otherwise there could be situations whereby disproportionate actions are taken in respect of minor technical breaches.

**Q10. Do you have any comments on how rules 6AB and 8AB are drafted?**

We have no comment to make.

**Q11. Do you have any suggestions about how we might ensure the openness and transparency of the process for agreeing undertakings with dental professionals?**

See answer to question 7.

**Q12. Do you agree that if the Case Examiners are minded to issue a dental professional with a warning, that we should notify the dental professional of this and seek their representations before the warning is confirmed?**

Yes.

Given that warnings are published alongside a dental professional's entry on the GDC Register, we consider that fairness dictates that a dental professional should have the opportunity to make representations on this course of action.

**Q13. Do you have any suggestions about how we might ensure that the issuing of warnings by the GDC is open and transparent?**

Yes.

We consider that there is a need for clear criteria in this area, and that a warning should be published, and disclosed to prospective employers to ensure openness and transparency. In addition, we consider that in appropriate cases a regulator should be able to take a previous warning into account when considering a more recent allegation.

**Q14. Do you have any suggestions about the approach we should take to the publication of warnings?**

We have no further comment to make.

**Q15. Do you think that the Registrar should be able to refer a matter to the Interim Orders Committee at any point between referring the allegation to the Case Examiners, and it being considered by the Case Examiners?**

Yes.

We consider that any change which means that a matter can be more easily referred for an interim order at any stage is a positive development as it ensures that a regulator can quickly take action to protect the public if it considers that one of its registrants poses a sufficiently high level of risk to the public.

**Q16. Do you think that the Case Examiners should be able to refer an allegation to the Interim Orders Committee at any point before it is considered by a Practice Committee?**

Yes.

See answer to previous question.

**Q17. Do you have any comments about how rules 3(2)(b), 5(5) and 7(1)(5) are drafted?**

Yes.

We note that Rule 5(5) gives the power for Case Examiners to refer a matter directly to the Interim Orders Committee in the event that one or both Case Examiners consider it appropriate.

We consider that it may be wiser to confine the power to make an interim order referral solely to the Registrar (or Council) and instead give the Case Examiners a power to notify the Registrar of the possible need for an interim order where appropriate. We say this as otherwise there is a danger of Case Examiners making a referral in ignorance of other factors which may be relevant to this question (eg a previous unsuccessful interim order application where the position has not changed, the dental professional already being subject to an interim / substantive order in respect of another matter).

**Q18. Do you think that it should be possible to a review a decision by the Registrar that a complaint or information does not amount to an allegation of impaired fitness to practise?**

No.

We do not think that a review power is necessary in relation to registrar non-referral decisions as we do not consider these decisions to be closure decisions. We consider that the registrar can consider further information relating to a fitness to practise referral without having to call into question the previous decision not to refer the matters onwards.

**Q19. Do you think that it should be possible to review a decision by the Case Examiners / Investigating Committee that a case ought not to be considered by a Practice Committee, including a decision to close the case with a warning or to issue advice?**

Yes.

We agree with the proposal to introduce a power to review no case to answer decisions made by the Investigating Committee or case examiners. We believe that such a power is necessary to ensure that appropriate action can be taken in situations where new information comes to light or the closure decision is found to be materially flawed. We are introducing such a review power later this year.

**Q20. Do you think that the review process, as set out in the draft rules, is appropriate?**

We have no comment to make.

**Q21. Do you have any comments on how rule 9 has been drafted? [Review by the registrar of previous determinations]**

We have no comment to make.

**Q22. Do you think that it should be possible to a review a decision by the Case Examiners and the Investigating Committee to issue a warning?**

Yes.

We accept that if there is a system where warnings are imposed on the registration of a dental professional without their consent, there should be some way in which the dental professional is able to challenge that decision.

**Q23. Do you think that the review process, as set out in the draft rules, is appropriate?**

We have no comment to make.

**Q24. Do you have any comments on how rules 10 and 10A have been drafted?  
[Review of warnings by Case Examiners]**

We have no comment to make.

**Q25. Do you think that the changes described are likely to cause disadvantage to any dental professionals or members of the public as a result of one or any of the above characteristics?**

We have no comment to make.