

Response to the General Dental Council consultation on Guidance on the considerations for voluntary removal applications

November 2015

1. Introduction

- 1.1 The Professional Standards Authority for Health and Social Care promotes the health, safety and wellbeing of patients, service users and the public by raising standards of regulation and voluntary registration of people working in health and care. We are an independent body, accountable to the UK Parliament.
- 1.2 As part of our work we oversee nine health and care professional regulators (including the General Dental Council or GDC) and report annually to Parliament on their performance. More information about our work and the approach we take is available at www.professionalstandards.org.uk
- 1.3 We welcome the introduction of guidance on voluntary removal that will be publicly available, however we have some reservations about the content of the guidance. This response restates points that we have made about voluntary removal (VR) in our Performance Review¹ and our audits of the GDC.²

2. Detailed comments

- 2.1 We welcome the introduction of guidance on VR which is to be made available to the public. We stress however that it is equally, if not more, important that the GDC puts into the public domain sufficient reasoning about the voluntary removal decisions it makes, so that the public can understand those decisions, see that the guidance is being followed, and have confidence that fitness to practise cases are not being shut down 'behind closed doors'.³
- 2.2 It was not clear to us whether the draft document was intended to be guidance for the Registrar in making decisions, or guidance for registrants on how those decisions would be reached, or both. We have assumed from the questions that the purpose of the consultation was to seek views on the principles of decision-making by the Registrar.

¹ See our 2013-14 Performance Review report, available at:

<https://www.professionalstandards.org.uk/library/document-detail?id=d716599e-2ce2-6f4b-9ceb-ff0000b2236b>

² See our 2013 and 2014 audits of the GDC's early fitness to practice decisions, available at:

<http://www.professionalstandards.org.uk/regulators/overseeing-regulators/early-fitness-to-practise-decisions>

³ Research published by the Authority in 2013 shows that the public may have concerns about consensual fitness to practise decisions that appear to lack transparency. Research Works, 2013. *Public Response to Alternatives to Final Panel Hearings in Fitness to Practise Complaints Research Report*. Available at: <http://www.professionalstandards.org.uk/docs/default-source/psa-library/psa-ftp-alternatives-report-final.pdf?sfvrsn=0>

- 2.3 We note that the guidance does not propose any significant changes to the GDC's voluntary removal process but seeks to publish the factors the Registrar will take into account in order to '*balance the interest of the public and the interests of the registrant*'. Whilst the interests of the registrant are relevant, we do not agree that the decision by a regulator to allow voluntary removal (in circumstances where there is an unresolved fitness to practise concern) is about balancing these two interests; we consider that it should be a balancing of the various purposes of fitness to practise (namely public protection, declaring and upholding standards and maintaining public confidence in the profession and its regulation).
- 2.4 We have previously expressed concern⁴ that the GDC has allowed voluntary removal before completion of investigations, as the GDC's ability to investigate is likely to be diminished due to passage of time in the event that a registrant applies for restoration. We remain of the view that the investigation stage should be concluded in all cases before an application for voluntary removal is considered. Where a case to answer as to impairment has been established, voluntary removal should only be granted where the registrant agrees to the facts and admits impairment. We would have expected to see both of these elements included in the statutory declaration, or at least an agreed statement of fact and admission of impairment being appended. Not only would this enable the GDC to take account of the fitness to practise concerns in the event of an application for restoration, it could also enable the Registrar to reach a more informed view as to the genuineness of the registrant's insight and the timing of their application for voluntary removal.
- 2.5 The above would allow the Registrar to make an informed decision about the need to contact other regulatory bodies about the voluntary removal, the concerns which resulted in the investigation and the outcome of the investigation. On this point, we note that the proposed statutory declaration does not set out that the Registrar may make such referrals in the public interest, regardless of whether there is a request made by another body for such disclosure.⁵ We would also wish to see included in the statutory declaration confirmation that the registrant has no intention of returning to practice.
- 2.6 Finally, we would have expected the guidance to identify the factors that the Registrar will take into account (para 16) when determining whether VR should be considered at an earlier stage in the investigation process. It would also have been helpful if the guidance had identified the types of cases in which VR would not be granted pending resolution of fitness to practise matters.

⁴ See our 2013 and 2014 audits of the GDC's early fitness to practice decisions, available at: <http://www.professionalstandards.org.uk/regulators/overseeing-regulators/early-fitness-to-practise-decisions>

⁵ We expressed concerns about failures to make such disclosures in our 2013 and 2014 audits. Available at: <http://www.professionalstandards.org.uk/regulators/overseeing-regulators/early-fitness-to-practise-decisions>.

3. Further information

- 3.1 Please get in touch if you would like to discuss any aspect of this response in further detail. You can contact us at:

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