

## Comments from the Professional Standards Authority on ‘Shifting the Balance’ from the General Dental Council

April 2017

### 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. More information about our work and the approach we take is available at [www.professionalstandards.org.uk](http://www.professionalstandards.org.uk)
- 1.2 As part of our work we:
- oversee the nine health and care professional regulators and report annually to Parliament on their performance
  - conduct research and advise the four UK governments on improvements in regulation
  - promote right-touch regulation and publish papers on regulatory policy and practice.

### 2. General comments

- 2.1 We welcome the opportunity to comment on the GDC’s discussion document, ‘Shifting the Balance’. The document lays out an ambitious set of proposals to ensure dental regulation is fit for the future by modernising GDC processes and ensuring that the GDC works more effectively with other stakeholders who also play a role in public protection and in supporting registrants.
- 2.2 We support the GDC’s view that the current legislative framework for health and care professional regulation is outdated and does not support an efficient, effective system for protecting the public. As we highlighted in *Rethinking regulation*,<sup>1</sup> the current system needs reform so that it better supports patients, professionals providing health and care and is simpler for other stakeholders, such as employers and the public, to navigate.
- 2.3 Whilst we remain hopeful that the Government will go ahead with reforms to the legislative framework, we recognise the GDC’s desire to proceed with their own programme of changes rather than waiting on wider reforms, for which there is no firm timetable. We welcome the frankness with which the GDC has

---

<sup>1</sup> Professional Standards Authority 2015, *Rethinking Regulation*. [Online] Available at: [www.professionalstandards.org.uk/docs/default-source/publications/thought-paper/rethinking-regulation-2015.pdf](http://www.professionalstandards.org.uk/docs/default-source/publications/thought-paper/rethinking-regulation-2015.pdf) [Accessed: 12/04/17]

addressed the challenges inherent in their current process. In the absence of wider reform, we are supportive of regulators considering ways to improve their processes, however would highlight the need to ensure a clear focus on core objectives and to respect the boundaries set by their current legislation and existing case law.

### **General comments on regulatory innovation**

- 2.4 The Professional Standards Authority supports regulators innovating in fitness to practise and other areas of regulation, and thinking creatively about how to fulfil their statutory duties. We know that the current system is not fit for purpose and are actively calling for it to be comprehensively reformed.
- 2.5 However, there are reasons why we might sometimes express reservations about innovations, even if we agree with them in principle:
- we may have concerns about how they are put into practice (for example when we have supported proposals at the consultation stage but subsequently identify issues with implementation)
  - the proposals or practice may not be in line with the current legislation or established case law (even if we believe the current legislative framework is not fit for purpose)
  - we may not be confident that they will protect the public, or enable transparent and accountable regulation (this is as important for individual changes as it is for comprehensive reforms).
- 2.6 This position stems from our over-arching objective to protect the public. We are empowered by our legislation to carry out a number of statutory functions, including:
- promoting the interests of patients and service users in relation to the performance of professional regulators,
  - promoting best practice in regulation, and
  - formulating principles of good regulation and encouraging regulators to conform to them.

### **General comments on GDC proposals**

- 2.7 We support the direction of travel and a number of proposals within the paper. Whilst we recognise that as a discussion paper this document includes proposals at varying stages of development to encourage engagement we have highlighted a number of areas where further detail is needed to allow a more informed assessment of the implications of such proposals.
- 2.8 Whilst we are supportive in principle of a key proposal in the document – to encourage more local resolution of complaints – we would highlight the risk that the GDC may miss out on gathering valuable information that they would currently gain from such complaints. For example, repeated low-level misconduct by the same individual may allow the regulator to identify a pattern indicating a more serious concern relating to a registrant’s fitness to practise, or inform future preventative work. We would therefore consider it essential

that the GDC identifies ways to gather information about complaints dealt with locally if these proposals are taken forward.

- 2.9 Alongside the proposed review of case examiners which we comment on later in our response, there are some proposals within the GDC's 2017 business plan<sup>2</sup> which do not appear to be referenced in this discussion paper which it would be useful to have further clarity on. These include:
- a reference to developing the business case for the next phase of Section 60 orders
  - a planned review of the registration team's systems and processes
  - a proposed target for organisation efficiency savings.
- 2.10 It would be helpful to understand how these proposals may interact with/impact on the proposals contained in the discussion paper or further detail or any wider implications envisaged. In relation to the Section 60 orders, as the discussion paper does not appear to reflect where the GDC consider legislative change is needed to pursue its proposals, it would be useful to understand what changes the GDC would wish to make to its legislation.
- 2.11 We welcome the reference in the business plan to improved customer service in the fitness to practise process, targeting witness support services. It is positive that the GDC is reviewing the support that they offer to those navigating the process and may have been useful to include this proposal in the discussion paper to ensure a comprehensive view of the range of proposals to improve the experience of the system for all of those going through it.

### 3. Moving Upstream

#### Improving engagement with professionals and embedding the standards

- 3.1 We are supportive of the GDC's stated intentions to improve engagement with professionals to allow better and more effective communication about the standards expected of them. Whilst the GDC's focus is and should remain firmly on public protection, other regulators have demonstrated that work to improve engagement with registrants can improve the perception of the regulator by those it regulates. This can in turn make the regulators' job of highlighting the importance of professional standards easier.
- 3.2 As Professor Gerry McGivern's work for the General Osteopathic Council highlighted, there is a growing body of research demonstrating that professionals are more likely to comply with standards when they align with what they already see as good professional behaviour and when they view such standards as legitimate and effective in improving practice.<sup>3</sup>

---

<sup>2</sup> General Dental Council, *Business Plan 2017 - The second year of Patients, Professionals, Partners, Performance: Our three-year roadmap for 2016-2019*. [Online] Available at: [www.gdc-uk.org/api/files/GDC%20business%20plan%202017.pdf](http://www.gdc-uk.org/api/files/GDC%20business%20plan%202017.pdf) [Accessed: 13/04/17]

<sup>3</sup> Professor Gerry McGivern (Warwick Business School), Dr Michael Fischer (University of Melbourne and Saïd Business School, University of Oxford), Dr Tomas Palaima (University of Warwick), Ms Zoey Spendlove (University of Nottingham), Dr Oliver Thomson (British School of Osteopathy), Professor

- 3.3 We are very supportive of the reference to developing common standards of professionalism across the regulators and this aligns strongly with our proposal in *Regulation rethought*<sup>4</sup> of a common ‘statement of professional practice’ with consistent standards for conduct, behaviour and ethics which all health and care practitioners would sign up to. It would be extremely positive if this paper could be a catalyst for discussion between the regulators on this issue.
- 3.4 We welcome the GDC’s stated intention to work with the sector to embed the standards in a variety of different ways. As we noted in *Rethinking regulation*,<sup>5</sup> regulators’ standards are only one of many potential influences on registrant behaviour and therefore it seems sensible to ensure that they are reinforced through other channels where possible. The GDC’s requirements and interests will not however be identical to those of employers who will have their own objectives in engaging with registrants. It will also be important for the GDC to ensure that activity of this nature remains focused on risk across different groups of dental professionals rather than the specific interventions available to it in relation to professionals working in a particular context or environment. For example, it may be easier for the GDC to engage with corporate providers of dental services rather than those working independently.
- 3.5 In relation to the proposed work on developing and embedding the standards it would be useful to understand better the proposed sequencing of the work outlined in the discussion paper. Whilst work to embed the standards in the different ways outlined (e.g. through performance management and appraisal) is important, it may be better to prioritise the review of the standards themselves. This should help to ensure that they resonate with the dental profession by making use of feedback from patients, professionals and partners as the discussion paper outlines.
- 3.6 Ensuring that strategies for upstream interventions are data-led is important and we are therefore supportive of the work the GDC is doing to facilitate data sharing between themselves, system regulators and other stakeholders. The GDC will need to be clear on what kinds of intervention this type of intelligence is intended to support, and to define how proposals such as an annual ‘state of the nation’ report might add to this, to ensure that activity is targeted and justified.

---

Justin Waring (University of Nottingham), 2015, *Exploring and explaining the dynamics of osteopathic regulation, professionalism and compliance with standards in practice – Report to the General Osteopathic Council*. [Online] Available at: [www.osteopathy.org.uk/news-and-resources/document-library/research-and-surveys/dynamics-of-effective-regulation-final-report/](http://www.osteopathy.org.uk/news-and-resources/document-library/research-and-surveys/dynamics-of-effective-regulation-final-report/) [Accessed: 18/04/17]

<sup>4</sup> Professional Standards Authority 2016, *Regulation rethought*. [Online] Available at: [www.professionalstandards.org.uk/publications/detail/regulation-rethought](http://www.professionalstandards.org.uk/publications/detail/regulation-rethought) [Accessed: 18/04/17]

<sup>5</sup> Professional Standards Authority 2015, *Rethinking Regulation*. [Online] Available at: [www.professionalstandards.org.uk/docs/default-source/publications/thought-paper/rethinking-regulation-2015.pdf](http://www.professionalstandards.org.uk/docs/default-source/publications/thought-paper/rethinking-regulation-2015.pdf) [Accessed: 12/04/17]

## **Education: a risk-based approach to quality assurance and ensuring learning outcomes are agile and responsive**

- 3.7 We welcome the GDC's move towards adopting a risk-based quality assurance process for dental education and training (including assessment); this adheres to the principles of Right-touch regulation. We note that the GDC intends to work with other regulators to develop its risk-based approach. It may also be useful for the GDC to consider the potential for accepting other regulators' accreditation of certain aspects of education and training, as well as carrying out joint inspections, where appropriate. There may be merit in exploring how Health Education England's Quality Framework might apply to dental education and training.
- 3.8 It is positive to see that the GDC are implementing the first formal quality assurance process for education and training in the dental specialties in addition to its quality assurance process for pre-registration education and training.
- 3.9 We note that the GDC will update the learning outcomes for the dental team, in due course. We support the intention to produce learning outcomes that enable innovation; this will help develop dental professionals who can adapt to future patient, public and workforce needs. We recognise, however, the challenge in producing learning outcomes that define sufficiently clearly the profile of a dental professional on qualification, while allowing flexibility in what individual education and training programmes cover.
- 3.10 It will be important to ensure that these learning outcomes are informed by evidence of the needs of patients and the public, as well as linking to the professional standards that the GDC are to review in due course. These two pieces of work could provide an opportunity to explore with other regulators the development of a set of common standards of professionalism for students, trainees and registrants across the health and care sector.

## **A new approach to Continuing Professional Development**

- 3.11 From the document, it appears that there will be considerable change in the CPD requirements for registrants over the coming years. The GDC already anticipates that the system of 'Enhanced CPD' - which has been piloted but not yet introduced - will be succeeded by a new system outlined in broad terms in this discussion paper.
- 3.12 'Enhanced CPD' seeks to combine the current hours-based CPD requirements with a greater emphasis on reflective practice and a more even spread of CPD throughout the registration cycle. The new system proposed is in the early stages of development but the GDC suggests it may include increased professional ownership of CPD, greater emphasis on a quality-based approach, more interactive learning and a significant peer review element. They also propose the GDC taking a supportive rather than coordinating role with CPD requirements in the future. We have in the past sought to distinguish between CPD and the broader function of assuring continuing fitness to practise. CPD is one of a number of possible means available to a regulator to assure itself that registrants keep their practice up-to-date and remain fit to be

on the register. While we do not wish to get bogged down in discussions about terminology, it seems to us that the GDC is in fact considering something broader than just CPD, for example with proposals relating to peer review and support. It may be helpful for the GDC to reflect further and seek to clarify the purpose of its proposals in this area, and how it wishes to describe them to stakeholders.

- 3.13 We would suggest that this programme of change will require careful management to ensure clarity for registrants and transparency for employers and the public on what the CPD requirements are and how they are intended to contribute to public protection.
- 3.14 Although we recognise that the GDC's proposals in this paper are in the early stages, we would welcome further clarity on the proposed new approach, particularly on the balance between registrant control over their own CPD and the need to target interventions at areas of practice or conduct that are higher risk. As alluded to in 3.2 above, we can see some benefits to dental professionals having increased involvement in the focus of their CPD activity; however, the GDC will need to be reassured, that the individual development interests of registrants are balanced against the need to ensure that all dental professionals remain safe practitioners.
- 3.15 In addition, we would have welcomed a more structured and explicit narrative in this section about the risks presented by the dental professions and how a continuing fitness to practise model might look to address these risks. This is the approach we advocate in our paper *An approach to assuring continuing fitness to practise based on right-touch regulation principles*.<sup>6</sup> It is surprising that the GDC's discussion paper makes no reference to the GDC-commissioned research into risks in these professions.<sup>7</sup> The GDC's own summary of this research outlines the following:
- “the main competency risk factors in dentistry are perceived to be: poor communication, inadequate record keeping, and poor treatment, the main conduct factors were: health issues, and lack of professionalism, and the main context factors were – work overload, isolated practice, financial incentives and pressures, and gender”<sup>8</sup>*
- 3.16 As it is, the GDC discussion document presents a number of possible solutions, such as interactive CPD and peer review, without having clearly identified the problems and risks they would be mitigating. The references to the General Optical Council's model seem to overlook the fact that it was developed to address risks and hazards specific to the optical professions, as

---

<sup>6</sup> Professional Standards Authority, 2012. *An approach to assuring continuing fitness to practise based on right-touch regulation principles*. Available at: <http://www.professionalstandards.org.uk/docs/default-source/publications/policy-advice/continuing-fitness-to-practise-based-on-right-touch-regulation-2012.pdf?sfvrsn=4>.

<sup>7</sup> Europe Economics, October 2014. *Risk in Dentistry – Report for the General Dental Council*. Available at: <https://www.gdc-uk.org/api/files/Risk%20in%20Dentistry.pdf>

<sup>8</sup> Taken from the GDC website at: <https://www.gdc-uk.org/about/what-we-do/research>

identified in the GOC's commissioned risk research.<sup>9</sup> There may well be benefits to dental patients and dental professionals in including such interactive elements in a CPD framework – the summary of the GDC risk research suggests this. But without reference to any risk analysis, it is hard to assess whether this would indeed be the case. Furthermore, with this approach, it is possible that key risk factors will be overlooked.

- 3.17 Finally, for this section, we found the terminology of quantitative/qualitative a little unclear – in talking about a qualitative approach, is the GDC referring to inputs, outputs or outcomes? In our paper on continuing fitness to practise we contrast input-based models (based often on required number of hours of CPD), with outcome-based models that demonstrate continuing fitness to practise. This may be a clearer, more helpful distinction in this context than quantitative and qualitative.

#### 4. Working with partners

**Exploring with commissioners and the profession how effective clinical governance could contribute more to learning and quality improvement, including development of 'shared indicators of public protection'**

- 4.1 We welcome and encourage the GDC's desire to work with a range of partners across the dental sector. In *Right-touch regulation* we said, 'The quality of care received by individual patients and service users is the end result of a wide range of decisions made by a number of different agents.'<sup>10</sup> It is therefore positive to see a regulator recognising the limits of its own statutory powers and responsibilities. We support the focus on the needs of the patient and the desire to build a comprehensive network to ensure that issues are dealt with by the most appropriate body rather than simply falling outside their remit.
- 4.2 The reference to the development of 'indicators of patient protection' is promising, however it would be useful to understand in more detail how the GDC intends to develop the indicators and which organisations in the dental sector will take ownership of the indicators and results. Whilst the goal of bringing together different organisations from across the dental spectrum is admirable, we would suggest that the very different goals and remits of organisations as varied as commissioners and regulators may make creation of shared indicators challenging. The GDC will need to ensure that such an exercise does not lead to confusion of their current regulatory focus.
- 4.3 We welcome the GDC's recognition that improved leadership from dental professionals may lead to better public protection and the value of strong clinical governance on improving patient care. We note the point made in the discussion paper that the unique nature of dentistry brings specific challenges

---

<sup>9</sup> Europe Economics, March 2010. *Risks in the Optical Profession – Final Report, A report for the General Optical Council*. Available at: [www.optical.org/download.cfm?docid=EC910476-E205-4FDC-888CD1783B9D8FC2](http://www.optical.org/download.cfm?docid=EC910476-E205-4FDC-888CD1783B9D8FC2)

<sup>10</sup> Professional Standards Authority, *Right-touch regulation*

to improving clinical governance in comparison to other fields such as medicine.

- 4.4 We would however highlight the need for the GDC to be vigilant about maintaining a clear focus on its core responsibilities and ensuring that the onus is placed on the organisations with more responsibility in this area. Whilst there is a clear rationale in the GDC seeking to encourage further activity, we would caution against directing too much resource into this area or seeking to play too active a role. In *Rethinking regulation*, we say: 'Too often we have seen examples of regulatory mission creep, where regulators have sought to expand the boundaries of their activity in ways that have resulted in confusion for the public and internal conflict of interest'.<sup>11</sup> The work that the GDC has outlined in this area in relation to clinical governance and quality through the Regulation of Dental Services Programme Board (RDSPB) led by the Chief Dental Officer for England seems like the right forum for such activity. Whilst we note the GDC's comment about the fragmented nature of leadership in the sector, we would be interested to understand better how the Royal Colleges and other professional leadership bodies are involved in the work to develop dental professional leadership.

#### **Developing guidance for employers about their role in ensuring a focus on patient protection and standards**

- 4.5 The development of guidance for employers may well be a useful exercise for the GDC to learn from local performance and to help employers ensure professionals comply with national professional regulatory standards. As noted in the document, there are a wide range of business models in the dental sector. Therefore, making any advice both applicable and usable for all models of dentistry businesses will need to be a key principle when developing guidance.

### **5. Complaints handling**

- 5.1 In this section, we have commented both on the proposals in relation to first tier complaints and the additional proposals relating to complaints filtering and handling covered within the 'refocusing fitness to practise' section of the discussion paper.

#### **First tier complaints**

- 5.2 We are very supportive of the GDC's stated intention to ensure greater local resolution of issues. This is in line with what we have said in *Right-touch regulation* and *Rethinking regulation* where we encourage getting as close to the problem as possible. Problems are better dealt with at a local level wherever possible and may help to avoid the involvement of the regulator where this is unnecessary and the complaint does not relate to an allegation of impaired fitness to practise.

---

<sup>11</sup> Professional Standards Authority 2015, *Rethinking Regulation*, pg.8. [Online] Available at: [www.professionalstandards.org.uk/docs/default-source/publications/thought-paper/rethinking-regulation-2015.pdf](http://www.professionalstandards.org.uk/docs/default-source/publications/thought-paper/rethinking-regulation-2015.pdf) [Accessed: 12/04/17]



- 5.3 It is also positive that the GDC highlights the importance of making use of existing systems, and using more ‘upstream’ regulatory powers (standards, guidance, education, continuing fitness to practise) to prevent issues from arising and/or escalating. This is also in line with a right-touch approach to regulation.
- 5.4 The document makes an important distinction between whether patients are able to and do complain to the right people, and whether those complaints, once received are dealt with properly. The GDC explains that ‘*most complaints received by dental professionals are resolved quickly and effectively*’ but also states that many patients do not know where or how to complain, and that the GDC receives many complaints that could/should have been addressed locally.
- 5.5 Whilst we are very supportive of the intention of these proposals we would highlight a potential risk of loss of intelligence if more complaints are dealt with elsewhere. This could be a dual loss:
- aggregated data showing trends in complaints that point towards areas of risk
  - information relating to the conduct and competence of an individual that may indicate a concern of interest to the regulator.
- 5.6 As we highlighted in our general comments, the latter points towards perhaps the biggest challenge - and risk - for the regulator in pushing complaints back to third parties: that information which may be an indicator of serious concerns is not shared with the regulator. This might be the case, for example, where repeated low-level misconduct by the same individual indicates a more serious concern, particularly where the regulator is the only body in a position to identify the pattern. We would therefore consider it essential that the GDC identifies ways to gather information about complaints dealt with locally if these proposals are taken forward. We would also suggest that with an increased focus on greater upstream activity, data from a wider range of complaints may become valuable in helping to target such interventions. It may be necessary to ensure ongoing review of the kind of data being captured to ensure it meets all organisational priorities.
- 5.7 In addition, it will be crucial for the GDC to issue clear guidance on when a concern can be dealt with locally and when it should be referred to them, and ensure that their internal guidance prevents complaints being closed down too early.
- 5.8 In relation to the proposals around a review of the Dental Complaints Service (DCS), we recognise that the funding of the DCS from registrants’ fees has been a source of contention with certain elements of the profession and therefore recognise the GDC’s caution in extending or promoting the service further under the current funding model. However, the GDC’s ownership of the DCS puts it in a good position to capture data which may relate to a registrant’s fitness to practise<sup>12</sup> (see our points above) and therefore if the

---

<sup>12</sup> Although we have had some concerns in the past about whether and how this is done in practice.

DCS funding model or governance was to change then it will be important to ensure that access to this information is maintained.

### **Informing the public about the GDC's role and complaints management**

- 5.9 In relation to the proposals around complaints management, we are fully in agreement with the GDC that the regulators' focus should be on whether a registrant is fit to practise rather than becoming a complaints handling service for broader grievances and issues raised by patients. However, as the paper itself acknowledges it is important to ensure that any measures implemented to try and reduce the number of non-regulatory issues coming through, such as self-filtering, shouldn't create a barrier to individual patients being able to raise a concern. Framing this section as 'strong "front door" mechanisms' may create the impression that the GDC is trying to make it more difficult for people to complain. It may be more appropriate to describe helping people find the 'right front door'?
- 5.10 The GDC highlights that over 70% of cases are closed either at triage or assessment stage, indicating that there is a lack of clarity from those making complaints about the kind of issues that may be relevant for the GDC to deal with. It would be useful to understand, where the complaints that are closed at this point primarily come from, e.g. patients, employers, to ensure that the measures proposed are the best way of reducing the number of non regulatory issues that are brought to the GDC.
- 5.11 It would also be useful to understand in more detail the proposed sequencing of some of the proposals in this section. We would suggest that the review of public facing information about the GDC and its role should be prioritised over introduction of the complaints filtering mechanism as this may be effective in reducing the number of non fitness to practise cases without the need for further measures. We would also suggest the need to pilot any introduction of self-filtering mechanisms and seek feedback from members of the public on whether they see this as creating additional barriers to raising legitimate concerns.
- 5.12 In relation to the GDC's proposals to develop a more comprehensive framework for referral of complaints, we would already expect the GDC to be sharing relevant information with other bodies and therefore embedding this by ensuring there is a formal mechanism in place seems sensible. As we previously commented, it is important for complaints to be dealt with by the correct organisation where the issue is not a question of fitness to practise. It will be important to be very clear on the different roles of other bodies and for the GDC to ensure that communication with complainants is clear so that they understand why their complaint may need to be addressed elsewhere.

## **6. Refocusing fitness to practise**

### **Linking fitness to practise to patient protection and public confidence**

- 6.1 We understand and support the GDC's rationale for linking the fitness to practise process more clearly to the GDC's statutory objectives. However, as

we would assume that the GDC processes already take into account the three limbs of public protection, it would be useful to understand in more detail what would change as a result of these proposals and a consideration of any unintended consequences which may arise as a result.

- 6.2 We would highlight the need to reflect the full range of statutory objectives as some of these, e.g. risk to patients, may be easier to articulate and identify than others. Our research on dishonest behaviour by health and care professionals<sup>13</sup> identified an apparent lack of understanding by members of the public in particular of the concept of public confidence and how it was applied in fitness to practise. There would therefore appear to be some benefit in articulating more clearly how public confidence is and should be taken into account at the different decision-making stages of the fitness to practise process.
- 6.3 We would also welcome further clarity on the suggestion that there should be a difference between matters that relate to the reputation of the profession, and matters that relate to public confidence. It is not clear to us what the GDC are suggesting is the problem here. It would be useful to understand how the GDC suggest differentiating between a case that erodes public confidence in dentistry as opposed to one that affects the reputation of the profession and why and how they should be dealt with differently. It is also not clear what the material changes proposed are and what the effect would be.
- 6.4 We have published a statement on the purpose of fitness to practise, that may be of use here.<sup>14</sup>

#### **Embedding an understanding of seriousness in guidance for decision-makers**

- 6.5 We would support the proposal to review how impairment is described and the tests that are applied at the various stages, to help embed in the process the over-arching duty and limbs of public protection. This could help to make the fitness to practise decision-making processes clearer to professionals, patients and staff.
- 6.6 However, we would welcome further clarity on the references to an assessment of seriousness and how this will be defined within the process. It will be important to ensure that any definition can capture cases that span the full range of the different limbs of public protection (risk to patient or public safety, confidence in the profession, and failure to meet the standards). For example, it may be much easier to assess seriousness in relation to a case where there is a direct risk to public safety as opposed to a case relating to confidence in the profession. Our query around the proposed distinction

---

<sup>13</sup> Policis 2016, *Dishonest behaviour by health and care professionals: Exploring the views of the general public and professionals - A report for the Professional Standards Authority for Health and Social Care*. [Online] Available at: [www.professionalstandards.org.uk/publications/detail/research-dishonest-behaviour-by-professionals](http://www.professionalstandards.org.uk/publications/detail/research-dishonest-behaviour-by-professionals) [Accessed: 19/04/17]

<sup>14</sup> Professional Standards Authority 2014, *A statement explaining the purpose of the fitness to practise Process*. [Online] Available at: [www.professionalstandards.org.uk/docs/default-source/publications/policy-advice/purpose-of-the-fitness-to-practise-process-2014.pdf](http://www.professionalstandards.org.uk/docs/default-source/publications/policy-advice/purpose-of-the-fitness-to-practise-process-2014.pdf) [Accessed: 19/04/17]

between damage to the reputation of the profession and impact on public confidence in dentistry is important in this context as it may affect which cases are deemed serious enough to be taken forward at triage and assessment stage and also what action is taken by Case Examiners and what sanctions are considered appropriate at hearings.

- 6.7 We note that the paper references the intention to develop the concept of seriousness through use of information and decisions from the GDC's Practice Committees and also recognises the need to consider the implications of any changes and how they would work in practice. However, as we have found through our Section 29 work, assessment of seriousness can be inconsistent. Cases that may appear straightforward and less serious e.g. low level fraud or financial misconduct may involve additional causes for concern such as dishonesty, which may signal the need for a more serious sanction. Our research with professionals and members of the public on dishonest behaviour also shines a light on the subjectivity of assessments of 'seriousness' of cases.
- 6.8 In addition, whilst we are supportive of a proportionate approach to regulation generally, and we recognise that decision-makers on fitness to practise panels will consider proportionality when applying sanctions, we would welcome further clarity about whether the GDC intends to extend the use of a proportionality test to earlier stages in the process e.g. triage and assessment stage. Taking a proportionate approach suggests that the public can be adequately protected through alternative means, however this may not be the case when the decision is simply whether or not to refer a case on to the next stage.
- 6.9 Case examiners introduced by the GDC last year now have powers to issue warnings to registrants, and to agree undertakings and where the view is taken that this is an appropriate way to resolve a case that would otherwise need to go to a public hearing. It would have been helpful to make some reference in this section to these options for disposal at the end of the investigation, as this is an important new stage in the process. We would have liked to know how it fits into the GDC's thinking on the seriousness of cases and how they should be disposed of proportionately.
- 6.10 At triage and assessment such options do not exist – the decision is binary – and therefore it would be useful to understand if the GDC intends to also introduce such a consideration at this stage, and if they do, how consideration of proportionality would be balanced against the wider public interest. The wider public interest may include referring a case on from triage or assessment, for further investigation and an assessment of whether there is a real prospect of the registrant's fitness to practise being found impaired.

#### **Use of case examiners to dispose of cases where there is a realistic prospect of a panel finding impairment**

- 6.11 The GDC last year introduced case examiners who now have the powers to agree undertakings with registrants and issue warnings.

- 6.12 We note the commitment in the GDC 2017 business plan to review the performance of case examiners. We would be very supportive of this but would welcome further clarity on what this would involve and whether it would look at whether appropriate cases are being referred on for consideration by a panel. We have in the past expressed concerns that not all cases with a realistic prospect of a finding of impairment were being disposed of in a public forum by a panel that was independent of the investigation process, in part because it meant they would no longer fall under our statutory Section 29 scrutiny. We would welcome the GDC's own assessment of the risks and benefits of this approach.
- 6.13 As highlighted in the section above, assessing seriousness is difficult, however this is part of the decision that case examiners have to make when deciding how to dispose of a case. It will be important to review how this is working in practice to ensure that decisions being made at this stage are sufficient to fulfil the GDC's statutory objectives.

## **7. Further information**

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

**Professional Standards Authority for Health and Social Care**  
157-197 Buckingham Palace Road  
London SW1W 9SP

Email: [daisy.blench@professionalstandards.org.uk](mailto:daisy.blench@professionalstandards.org.uk)

Website: [www.professionalstandards.org.uk](http://www.professionalstandards.org.uk)

Telephone: 020 7389 8013