

Annual review of performance 2017/18

# General Dental Council



## About the Professional Standards Authority

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.

We oversee the work of nine statutory bodies that regulate health professionals in the UK and social workers in England. We review the regulators' performance and audit and scrutinise their decisions about whether people on their registers are fit to practise.

We also set standards for organisations holding voluntary registers for people in unregulated health and care occupations and accredit those organisations that meet our standards.

To encourage improvement we share good practice and knowledge, conduct research and introduce new ideas including our concept of right-touch regulation.<sup>1</sup> We monitor policy developments in the UK and internationally and provide advice to governments and others on matters relating to people working in health and care. We also undertake some international commissions to extend our understanding of regulation and to promote safety in the mobility of the health and care workforce.

We are committed to being independent, impartial, fair, accessible and consistent. More information about our work and the approach we take is available at [www.professionalstandards.org.uk](http://www.professionalstandards.org.uk).

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<sup>1</sup> *Right-touch regulation revised* (October 2015). Available at <http://www.professionalstandards.org.uk/policy-and-research/right-touch-regulation>.

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## About the General Dental Council

The General Dental Council (the GDC) regulates the dental professions (dentists, dental nurses, dental hygienists, dental technicians, dental therapists, orthodontic therapists and clinical dental technicians) in the United Kingdom. Its work includes:

- Setting and maintaining standards of practice and conduct
- Maintaining a register of qualified professionals. Only those appropriately registered with the GDC may practise dentistry in the UK
- Assuring the quality of dental pre-registration education and training
- Requiring dental professionals to keep up their skills up to date through continuing professional development
- Taking action to restrict or remove from practice registrants who are not considered to be fit to practise.

As at 30 June 2018, the GDC was responsible for a register of 111,813 dental professionals. Its annual retention fee is £890 for dentists and £116 for dental care professionals.



# At a glance

Annual review of performance

Regulator reviewed: **General Dental Council**

## Standards of good regulation

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### Core functions

**Met**

Guidance and Standards

**4/4**

Education and Training

**4/4**

Registration

**6/6**

Fitness to Practise

**8/10**

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# 1. The annual performance review

- 1.1 We oversee the nine health and care professional regulatory organisations in the UK, including the GDC.<sup>2</sup> More information about the range of activities we undertake as part of this oversight, as well as more information about these regulators, can be found on our website.
- 1.2 An important part of our oversight of the regulators is our annual performance review, in which we report on the delivery of their key statutory functions. These reviews are part of our legal responsibility. We review each regulator on a rolling 12-month basis and vary the scope of our review depending on how well we see the regulator is performing. We report the outcome of reviews annually to the UK Parliament and the governments in Scotland, Wales and Northern Ireland.
- 1.3 These performance reviews are our check on how well the regulators have met our *Standards of Good Regulation* (the Standards) so that they protect the public and promote confidence in health and care professionals and themselves. Our performance review is important because:
- it tells everyone how well the regulators are doing
  - it helps the regulators improve, as we identify strengths and weaknesses and recommend possible changes.

## The Standards of Good Regulation

- 1.4 We assess the regulators' performance against the Standards. They cover the regulators' four core functions:
- Setting and promoting guidance and standards for the profession
  - Setting standards for and quality assuring the provision of education and training
  - Maintaining a register of professionals
  - Taking action where a professional's fitness to practise may be impaired.
- 1.5 The Standards describe the outcomes we expect regulators to achieve in each of the four functions. Over 12 months, we gather evidence for each regulator to help us see if they have been met.
- 1.6 We gather this evidence from the regulator, from other interested parties, and from the information that we collect about them in other work we do. Once a year, we collate all of this information and analyse it to make a recommendation to our internal panel of decision-makers about how we believe the regulator has performed against the Standards in the previous 12

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<sup>2</sup> These are the General Chiropractic Council, the General Dental Council, the General Medical Council, the General Optical Council, the General Osteopathic Council, the General Pharmaceutical Council, the Health and Care Professions Council, the Nursing and Midwifery Council, and the Pharmaceutical Society of Northern Ireland.

- months. We use this to decide the type of performance review we should carry out.
- 1.7 When considering information relating to the regulator's timeliness, we consider carefully the data we see, and what it tells us about the regulator's performance over time. In addition to taking a judgement on the data itself, we look at:
- any trends that we can identify suggesting whether performance is improving or deteriorating
  - how the performance compares with other regulators, bearing in mind the different environments and caseloads affecting the work of those regulators
  - the regulator's own key performance indicators or service standards which they set for themselves.
- 1.8 We will recommend that additional review of their performance is unnecessary if:
- we identify no significant changes to the regulator's practices, processes or policies during the performance review period; and
  - none of the information available to us indicates any concerns about the regulator's performance that we wish to explore in more detail.
- 1.9 We will recommend that we ask the regulator for more information if:
- there have been one or more significant changes to a regulator's practices, processes or policies during the performance review period (but none of the information we have indicates any concerns or raises any queries about the regulator's performance that we wish to explore in more detail) or;
  - we consider that the information we have indicates a concern about the regulator's performance in relation to one or more Standards.
- 1.10 This targeted review will allow us to assess the reasons for the change(s) or concern(s) and the expected or actual impact of the change(s) or concern(s) before we finalise our performance review report.
- 1.11 We have written a guide to our performance review process, which can be found on our website [www.professionalstandards.org.uk](http://www.professionalstandards.org.uk)

## 2. What we found – our judgement

2.1 During July 2018, we carried out an initial review of the GDC’s performance from 1 July 2017 to 30 June 2018. Our review included an analysis of the following:

- Council papers, including performance reports and updates, committee reports and meeting minutes
- Policy, guidance and consultation documents
- Statistical performance dataset
- Third party feedback
- A check of the GDC register
- Information available to us through our review of final fitness to practise decisions under the Section 29 process.<sup>3</sup>

2.2 As a result of this assessment, we decided to carry out a targeted review of Standards 3, 6, 8 and 10 of the *Standards of Good Regulation* for Fitness to Practise.

2.3 We obtained further information from the GDC relating to these Standards. We also carried out a targeted audit of a sample of fitness to practise cases closed during the period 1 April 2017 to 30 March 2018. As a result of a detailed consideration of this further information, we decided that the GDC had met all of the Standards except for Standards 6 and 10 for Fitness to Practise. The reasons for this are set out in the following sections of the report.

### Summary of the GDC’s performance

2.4 For 2017/18 we have concluded that the GDC:

- Met all of the *Standards of Good Regulation* for Guidance and Standards
- Met all of the *Standards of Good Regulation* for Education and Training
- Met all of the *Standards of Good Regulation* for Registration
- Met eight of the 10 *Standards of Good Regulation* for Fitness to Practise. The GDC did not meet Standards 6 and 10.

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<sup>3</sup> Each regulator we oversee has a ‘fitness to practise’ process for handling complaints about health and care professionals. The most serious cases are referred to formal hearings in front of fitness to practise panels. We review every final decision made by the regulators’ fitness to practise panels. If we consider that a decision is insufficient to protect the public properly we can refer it to Court to be considered by a judge. Our power to do this comes from Section 29 of the [NHS Reform and Health Care Professions Act 2002 \(as amended\)](#).

## 3. Guidance and Standards

- 3.1 The GDC has met all of the *Standards of Good Regulation* for Guidance and Standards during 2017/18. Examples of how it has demonstrated this are indicated below each individual Standard.

**Standard 1: Standards of competence and conduct reflect up-to-date practice and legislation. They prioritise patient and service user safety and patient and service user centred care**

- 3.2 There have been no significant changes to the GDC's standards for registrants in this review period. We have seen nothing to suggest that the standards have become out of date.
- 3.3 We are satisfied that this Standard is met.

**Standard 2: Additional guidance helps registrants apply the regulator's standards of competence and conduct to specialist or specific issues including addressing diverse needs arising from patient and service user centred care**

- 3.4 The GDC has not published any additional guidance documents for registrants this year.
- 3.5 The GDC continues to publish guidance on issues including:
- medical emergencies
  - advice for dental professionals on raising concerns
  - industrial action
  - reporting female genital mutilation
  - personal behaviour on social media
  - the professional duty of candour.
- 3.6 The GDC, along with other statutory bodies that regulate health professionals in the UK and social workers in England, issued a joint statement on conflicts of interest in 2018. The statement sets the regulators' expectations of health and care professionals in relation to avoiding, declaring and managing conflicts of interest across all healthcare settings. It is intended to support the standards or code for each profession and any additional guidance they may have.
- 3.7 The GDC keeps its guidance under review and we have not identified a need for further guidance. We are therefore satisfied that this Standard is met.

**Standard 3: In development and revision of guidance and standards, the regulator takes account of stakeholders' views and experiences, external events, developments in the four UK countries, European and**

### **international regulation and learning from other areas of the regulator's work**

- 3.8 As it has not published any updated guidance this year, the GDC has had limited opportunity to demonstrate how it takes stakeholders' views into account in revising guidance. However, the GDC's *Shifting the Balance* discussion paper emphasises the importance of working effectively in partnership, and we have seen that the GDC engaged with a range of relevant organisations as part of developing those proposals. We have also received positive feedback from third-party organisations about the quality of the GDC's engagement with them. We are satisfied that this Standard is met.

### **Standard 4: The standards and guidance are published in accessible formats. Registrants, potential registrants, employers, patients, service users and members of the public are able to find the standards and guidance published by the regulator and can find out about the action that can be taken if the standards and guidance are not followed**

- 3.9 There have been no significant changes to how the GDC publishes its guidance and standards. The GDC continues to run a dedicated website, 'Focus on Standards'. This site is written in plain English and is accessible on mobile devices. It also includes FAQs and case studies to illustrate to users the requirements of the standards. The website also clearly signposts where to find further information on how to raise a complaint against dental professionals who do not meet or follow the published guidance and/or standards.
- 3.10 We have received positive feedback stating that the GDC's *Standards for the Dental Team* were clear, concise, and easy for the public and profession to understand.
- 3.11 We have also seen evidence that the GDC provides a range of material to newly qualified dental professionals which sets out the GDC's role and information about its guidance and standards, as well as signposting registrants to sources of useful information and assistance. We are therefore satisfied that this Standard is met.

## **4. Education and Training**

- 4.1 The GDC has met all of the *Standards of Good Regulation* for Education and Training during 2017/18. Examples of how it has demonstrated this are indicated below each individual Standard.

### **Standard 1: Standards for education and training are linked to standards for registrants. They prioritise patient and service user safety and patient and service user centred care. The process for reviewing or developing standards for education and training should incorporate the**

## views and experiences of key stakeholders, external events and the learning from the quality assurance process

### Standards for education and training

- 4.2 We previously reported that in 2015/16, the GDC published updated standards for education providers and outcomes for students entitled *Standards for Education and Preparing for Practice*. There is nothing to suggest that these standards have become outdated in the last year.

### Specialty training curricula

- 4.3 Last year we reported that the GDC was updating its specialty training curricula, which set out the additional training a dentist must complete to be eligible to join one of the GDC's 13 specialist lists.<sup>4</sup> Between 28 April 2018 and 16 July 2018, the GDC opened a consultation on its Standards for Specialty Education.<sup>5</sup> The standards are to be used when quality assuring specialty education in the United Kingdom.
- 4.4 Changes proposed in the consultation included:
- Separating the standards for education providers from those for examination providers
  - Adding an overarching requirement that a provider must make documentary evidence available with its self-assessment against the standards for each requirement
  - Amending the requirement relating to patients giving consent to being treated by specialty trainees. Specifically, it was proposed that the requirement to actively seek consent in every treatment situation be removed, as this had been interpreted as requiring patients to sign dedicated consent forms when treated by specialty trainees. It was asserted that such trainees are GDC registrants and that normal consent protocols can, and should, apply.
- 4.5 In our response to the consultation, we noted that the GDC will need to assure itself that any alternative mechanisms for obtaining consent are effective and can demonstrate that patients have genuinely understood that they are being treated by a specialty trainee.
- 4.6 At the time of writing, the GDC had not published its response to the consultation. We will continue to monitor this work in our next performance review. We are satisfied that this Standard is met.

**Standard 2: The process for quality assuring education programmes is proportionate and takes account of the views of patients, service users, students and trainees. It is also focused on ensuring the education**

<sup>4</sup> More information about the GDC's specialist lists is available on its website: [www.gdc-uk.org/professionals/specialist-lists](http://www.gdc-uk.org/professionals/specialist-lists).

<sup>5</sup> The Consultation paper is available on the GDC website: [www.gdc-uk.org/about/what-we-do/consultations](http://www.gdc-uk.org/about/what-we-do/consultations)

## providers can develop students and trainees so that they meet the regulator's standards for registration

### A new approach to quality assurance in education

- 4.7 Last year we reported that the GDC was working on a new risk-based approach to quality assurance in education. The GDC had undertaken research and discussion with a range of internal and external stakeholders to further develop the education proposals which were outlined in *Shifting the Balance*. A draft consultation on this approach was held from 28 February 2018 to 23 May 2018.<sup>6</sup>
- 4.8 The consultation outlined proposals that the process for considering submissions for new education programmes should include greater flexibility, as not all new programmes carry the same level of risk. New proposed programmes would be risk-assessed, based on factors such as the size of the cohort (initial and projected), and the profession being trained. The GDC would ask the quality assurance inspectors to provide a view on appropriate quality assurance methods for the proposed programmes for these to be considered by the GDC's Registrar on behalf of Council. It also proposed to make changes to its quality assurance monitoring process through the use of self-assessments, monitoring every two years and the introduction of annual declarations confirming that the institutes' programmes continue to meet the GDC's *Standards for Education*.
- 4.9 It was noted in the consultation document that the GDC's quality assurance activity was currently limited in scope to the assessment of an individual programme's performance, but that some issues would be best explored without using a process focused on individual programmes. The GDC therefore proposed to undertake thematic reviews of issues running across more than one programme, or more than one profession, and which relate to the GDC's statutory duty 'to promote high standards of education at all its stages in all aspects of dentistry'.
- 4.10 We responded to the consultation, noting our broad support for the proposed changes.
- 4.11 In November 2018, the GDC published its *Education processes: Consultation outcome report*.<sup>7</sup> Following an analysis of the responses to the consultation, the GDC confirmed that it intends to undertake a programme of inspections of Bachelor of Dental Surgery programmes in the 2018/19 academic year. The duration of the inspections will be determined by reviewing annual monitoring returns, previous inspection reports and other information that the GDC holds, in consultation with a group of experienced education associates. The GDC will also undertake a thematic review of new dentists' preparedness for practice within this period. We will monitor this as part of our next performance review.

<sup>6</sup> The Consultation paper is available on the GDC website: [www.gdc-uk.org/about/what-we-do/consultations](http://www.gdc-uk.org/about/what-we-do/consultations).

<sup>7</sup> The Consultation outcome paper, published outside of the performance review period, is available on the GDC website: [www.gdc-uk.org/about/what-we-do/consultations](http://www.gdc-uk.org/about/what-we-do/consultations).

### Quality assurance of specialty education

- 4.12 As noted under Education and Training Standard 1 above, the GDC has recently consulted on its Standards for Specialty Education. One of the changes proposed in the consultation was the addition of an overarching requirement that a provider must make documentary evidence available with its self-assessment against the standards for each requirement.
- 4.13 In our response to the consultation, we noted that training providers were positive in their feedback to the GDC that they can provide documentary evidence in support of their self-assessment questionnaire. We considered that this may provide a proportionate approach to the quality assurance of education and training in the dental specialities. We also considered that the approach followed our right-touch regulation principles. However, we did note that it was not clear from the consultation documents how an assessment of risk would be used to inform the decision to limit the quality assurance process to a paper-based exercise, and that there are no apparent mechanisms in place to take forward any significant concerns raised by the documentary evidence. We noted that the process appears to preclude all additional quality assurance activity, even if required in terms of patient safety.
- 4.14 At the time of writing, the GDC had not published its response to the consultation. We will continue to monitor this work in our next performance review. Based upon the above, we are satisfied that this Standard is met.

### Standard 3: Action is taken if the quality assurance process identifies concerns about education and training establishments

- 4.15 In October 2016, the GDC accepted a University's submission to offer a Bachelor (with honours) in Dental and Oral Sciences (BDOS) qualification. Due to the risks it identified when considering the submission, the GDC decided that its quality assurance team should undertake an inspection visit toward the end of the first year to assess the progress made and whether the assurances provided by the University had been realised.
- 4.16 Following an inspection of the BDOS qualification, which took place in July 2017, the inspection team prepared preliminary findings setting out the need for urgent action, which were shared with the University. On 1 September 2017, the University informed the GDC of its intention to inform students that the BDOS programme was closing with immediate effect. In February 2018, the GDC reported that the BDOS qualification was closing following the identification of serious concerns on inspection. The GDC had worked with the University and other UK training providers to assist the students of this programme to transfer to other courses to complete their training to become dental hygienists and dental therapists.
- 4.17 In July 2017, it was reported to Council that a BSc course in oral health science was approved only for the current cohort of students to apply for registration as a dental hygienist or therapist. An inspection found serious issues with the clinical experience of the students undertaking the programme as well as with the recording and monitoring of this experience. A

re-inspection was required to assess progress against recommendations and decide on sufficiency for future cohorts.

- 4.18 We consider that the above provides some assurance that effective action is being taken when the GDC's quality assurance activity identifies concerns with the approved education and training establishments and we are therefore satisfied that this Standard is met.

#### **Standard 4: Information on approved programmes and the approval process is publicly available**

- 4.19 The GDC continues to publish information about approved training programmes for dentists and dental care professionals. Its website includes details of the institutions offering approved training programmes, as well as information about the programme approval process. We are satisfied that this Standard is met.

## **5. Registration**

- 5.1 The GDC has met all of the *Standards of Good Regulation* for Registration during 2017/18. Examples of how it has demonstrated this are indicated below each individual Standard.

#### **Standard 1: Only those who meet the regulator's requirements are registered**

- 5.2 We have not seen any evidence to suggest that the GDC has added to its register anyone who has not met the registration requirements.
- 5.3 The GDC continues to prevent those attempting to renew their registration where they are unable to demonstrate that they have, or will have in place, appropriate indemnity insurance. There were 175 instances of rejected renewals on this ground during the 2017/18 financial year.
- 5.4 In March 2018, the GDC reported to its Council the results of an internal registration audit. The GDC aims for 90 per cent of applications reviewed to pass the audit inspection, meaning that they are processed fully in line with the Standard Operating Procedures and adhere to process and quality control standards. The proportion of registration applications which passed audit inspection in 2017/18 was 91 per cent for quarters 1 and 2 and 89 per cent for quarter 3. It was reported that the applications reviewed under quarter 3 were for restoration to the register. This internal performance measure demonstrates that the GDC continues to monitor the quality of its registration processes and compliance with its procedures. Audit pass rates are high, and there is no indication that those cases not meeting the audit pass mark have resulted in any individual being added to the register who did not meet the GDC's requirements. We are therefore satisfied that this Standard is met.

**Standard 2: The registration process, including the management of appeals, is fair, based on the regulator’s standards, efficient, transparent, secure, and continuously improving**

5.5 In our 2016/17 performance review, we conducted a targeted review of this Standard as there had been an increase in the number of registration appeals received by the GDC. The GDC explained that it had reviewed and changed its internal processes for dealing with registration appeals and after the targeted review we were satisfied that the Standard was met.

5.6 In this performance review period, the number of registration appeals received has decreased from 48 in 2016/17 to 29. The GDC has concluded 29 appeals in the same period, meaning that the number of appeals awaiting resolution remains stable. We have seen no evidence to indicate any concerns in this area of the GDC’s work.

5.7 In 2016/17, we noted a slight improvement in the registration processing performance. Processing times for UK and non-EEA international applications had reduced, despite an increase in the number of applications received through these routes. In the case of non-EEA international applicants, the number of registration applications increased significantly. Conversely, although fewer applications from EEA graduates were received, there was a modest increase in the processing times through the year.

5.8 The dataset for 2017/18 shows a further improvement in registration processing performance. There has been a slight reduction in processing times for UK and EEA applications; processing times for non-EEA international applications have remained stable.

<b>Median time (working days) to process registration applications for:</b>	<b>2015/16</b>	<b>2016/17</b>	<b>2017/18</b>
UK graduates	15	11	10
EEA (non-UK) graduates	16	18	14
International (non-EEA) graduates	70	55	55

5.9 The developments above are in the context of a decrease of 45 per cent in the number of EEA applications received this year and a smaller decrease of 9.7 per cent in the number of non-EEA applications received. The number of UK applications received has remained stable.

<b>Number of new registration applications from:</b>	<b>2015/16</b>	<b>2016/17</b>	<b>2017/18</b>	<b>% change 2017/18</b>
UK graduates	6,145	6,784	6,748	-0.5%
EEA (non-UK) graduates	1,396	1,249	686	-45%
International (non-EEA) graduates	223	327	295	-9.7%
<b>Total</b>	<b>7,764</b>	<b>8,360</b>	<b>7,729</b>	<b>-7.5%</b>

- 5.10 The dataset for 2017/18 shows that the number of registration appeals received by the GDC has reduced, and the resolution of registration appeals received has remained stable. The GDC has also improved performance in processing applications for registration and there is no evidence of any concern regarding the efficiency and transparency of the processes. Therefore, we are satisfied that this Standard is met.

**Standard 3: Through the regulator's registers, everyone can easily access information about registrants, except in relation to their health, including whether there are restrictions of their practice**

- 5.11 We carried out a check of the GDC's register, to see whether it correctly displayed restrictions on registrants' practice where appropriate. We did not identify any concerns about the information available on the GDC's register.
- 5.12 In the sample we checked, there were no instances of register entries where sanctions were erroneously omitted, nor have we been made aware of any other issues during the review period where information about sanctions has not been appropriately displayed on the register. We are therefore satisfied that this Standard is met.

**Standard 4: Employers are aware of the importance of checking a health professional's registration. Patients, service users and members of the public can find and check a health professional's registration**

- 5.13 The register search function is prominently displayed on the GDC's website and enables users to search using the registrant's name, registration number, town, postcode, or profession. There is also an option to include erased registrants in a search. We have not seen anything to suggest that employers or the public are unable to find and check the registration of dentists or dental care professionals. We are therefore satisfied that this Standard is met.

**Standard 5: Risk of harm to the public and of damage to public confidence in the profession related to non-registrants using a protected title or undertaking a protected act is managed in a proportionate and risk-based manner**

- 5.14 The GDC continues to prosecute individuals who practise dentistry while unregistered. Information about illegal practice can be found on the GDC's website, including a definition and examples of practices which may constitute illegal practice, advice about how to report concerns in this area to the GDC, and details of past prosecutions. The page also provides links to the GDC's policy statement on the enforcement of Dentists Act offences (which includes the practice of dentistry by individuals not registered) and its position statement on tooth whitening. We are satisfied that this Standard is met.

**Standard 6: Through the regulator's continuing professional development/revalidation systems, registrants maintain the standards required to stay fit to practise**

- 5.15 Last year we reported that in June 2017, the GDC sealed new rules for its Enhanced Continuing Professional Development (ECPD) scheme. It was noted that the GDC had planned to implement the scheme in 2017 but decided to defer the implementation to reduce the risk of delays arising out of the legislative changes needed to change its CPD rules, and to engage with registrants prior to the implementation of the scheme.
- 5.16 In this performance review period, the GDC finalised guidance documents on the new ECPD scheme including *ECPD Guidance for Dental Professionals*, *Guidance for CPD Providers*, a Personal Development Plan template, and an Activity Log template. The *ECPD Guidance for Dental Professionals* contains clear information on the requirements which dental professionals must fulfil under the new scheme. The guidance encourages dental professionals to proactively think about their professional needs, fields of practice and the GDC's *Standards for the Dental Team* before embarking on CPD activity so that this is more meaningful and applicable to areas the professional has identified to maintain or build on. Each CPD activity must have at least one of the GDC's four development outcomes, which are linked to its standards:
- Effective communication with patients, the dental team and others across dentistry, including when obtaining consent, dealing with complaints, and raising concerns when patients are at risk
  - Effective management of self and effective management of others or effective work with others in the dental team, in the interests of patients; providing constructive leadership where appropriate
  - Maintenance and development of knowledge and skill within the registrant's field of practice
  - Maintenance of skills, behaviours and attitudes which maintain patient confidence in the registrant and the dental profession and put patients' interests first.
- 5.17 On 2 October 2017, the Privy Council approved the new CPD rules and the new scheme came into effect for dentists on 1 January 2018. The scheme commenced on 1 August 2018 for dental care professionals.
- 5.18 We have received positive feedback from several third-party organisations regarding the GDC's engagement with stakeholders in developing and implementing the new ECPD scheme. New guidance was described as 'comprehensive and useful' and an increased emphasis on reflective learning was welcomed. Concerns were expressed around the privacy of personal development plans completed as part of the scheme and there was a view that personal development plans were most effective when used in conjunction with annual appraisals, as this allows a registrant to reflect on learning needs identified in the review period, agree on learning targets and review progress at the next review period. It was noted, however, that the development of an annual appraisal system is an expensive undertaking.

- 5.19 The final stages of the ECPD implementation have run throughout 2018 and have involved ongoing work to raise awareness about ECPD with the aim to embed the scheme. The GDC has reported that, as further CPD developments are realised through the *Shifting the Balance* programme, further guidance and support will be provided to registrants to support them in undertaking their CPD.
- 5.20 The GDC has progressed its new CPD scheme over the review period as planned. The guidance produced to assist registrants to fulfil the requirements of the scheme is clear and registrants are encouraged to demonstrate how their CPD activity links to the GDC's *Standards of Practice and Conduct*. The GDC has not yet published any detailed feedback on how it intends to evaluate the scheme post-implementation. The scheme will be monitored and considered in future performance reviews. Based upon the above, we are satisfied that this Standard is met.

## 6. Fitness to Practise

- 6.1 We carried out a targeted review of the GDC's performance against Standards 3, 6, 8 and 10 of the *Standards of Good Regulation* for Fitness to Practise. The reasons for this, and what we found as a result, are set out under the relevant Standards below. Following the review, we concluded that Standards 3 and 8 were met, but Standards 6 and 10 were not met.

### **Standard 1: Anybody can raise a concern, including the regulator, about the fitness to practise of a registrant**

- 6.2 The GDC continues to open fitness to practise cases based on concerns from a wide range of sources. Patients remained the most common source of fitness to practise concerns
- 6.3 In September 2017, the GDC introduced an online triage tool or 'self-triage process' to its website. Visitors to the website's 'Making a complaint about a dental professional' page are provided with information about the types of concern that the GDC can investigate and the matters it cannot investigate. The website provides clear signposting throughout the self-triage tool to other organisations, such as the NHS complaints scheme for complaints about NHS treatment and the Dental Complaints Service (DCS) for complaints about private treatment. If the complainant opts to progress the matter with the GDC then they are advised of the information which the GDC will require to progress the matter and how the GDC will use any personal data before being directed to the online complaint form.
- 6.4 The GDC discussed its approach to the development of this tool with us prior to its implementation. We were broadly supportive of the overarching principle and approach the GDC had taken but emphasised the need for the mechanism to be transparent and not to inhibit individuals from raising concerns.
- 6.5 We received feedback from two third-party organisations who provided positive comments on the self-triage tool. It was noted by GDC's Council that

the self-triage tool had resulted in fewer enquiries being received by the fitness to practise department, which was welcomed as patients could find out in a more effective way where they should take their enquiry if the GDC is not the appropriate body to investigate it.

- 6.6 We will continue to monitor the impact this tool has on fitness to practise referrals.
- 6.7 During the performance review period, the Council was informed that the GDC's review of the DCS had resulted in the introduction of updated referral criteria between the DCS and the GDC's fitness to practise department to ensure that only sufficiently serious cases are referred to the GDC. The GDC proposed changes to the referral criteria including introducing referral principles illustrated by case studies, instead of fixed referral criteria, which were felt not to offer enough flexibility. We will continue to monitor this development in the next performance review period. Based upon the above information, we are satisfied that this Standard is met.

**Standard 2: Information about fitness to practise concerns is shared by the regulator with employers/local arbitrators, system and other professional regulators within the relevant legal frameworks**

- 6.8 The available information indicates that the GDC continues to share information about fitness to practise cases with other regulators where appropriate. The dataset for this review period shows that the GDC referred 438 cases onto other regulatory bodies. Guidance is provided to staff on the management of cases involving registrants who hold dual registration with another regulator.
- 6.9 The GDC continues to participate in the Regulation of Dental Services Programme Board (RDSPB)<sup>8</sup> and operates the NHS concerns scheme to refer 'low-level concerns' about NHS dental care to the NHS for resolution. We are satisfied that this Standard is met.

**Standard 3: Where necessary, the regulator will determine if there is a case to answer and if so, whether the registrant's fitness to practise is impaired or, where appropriate, direct the person to another relevant organisation**

- 6.10 We carried out a targeted review against this Standard. The GDC's process for deciding whether there is a case to answer in fitness to practise complaints changed in November 2016. It introduced Case Examiners, who work in pairs (one lay, one registrant) to consider cases and decide whether there is a case to answer. Previously, this decision was made by the Investigating Committee (IC).<sup>9</sup> This was a significant change to the GDC's fitness to practise process.

<sup>8</sup> The RDSPB is formed of the Care Quality Commission, GDC and NHS England. The board's role and is to set, manage, regulate and review the approach to dental regulation across England and assess the effectiveness of current arrangements.

<sup>9</sup> The IC will still consider cases where the two examiners cannot reach a unanimous decision.

6.11 As part of our targeted review, we examined a number of processes relevant to Case Examiners.

### **Undertakings**

6.12 The GDC provided us with further information in relation to the number of cases involving undertakings considered and agreed by Case Examiners. The data demonstrated that since the introduction of Case Examiners, 72 undertakings had been offered as of the end of August 2018. This amounts to 15 per cent of the total cases which met the threshold for referral to a Practice Committee.

6.13 The GDC informed us that compliance with undertakings is monitored by its Case Review Team. If it appears that an undertaking is not being complied with or is unworkable, the GDC is able to call for an early review whereby the case is remitted to the Case Examiners, who decide whether to vary the undertaking or refer the matter to a Practice Committee. Registrants may also seek an early review of the undertaking.

6.14 By the end of August 2018, 12 cases with undertakings had been reviewed: four early reviews and eight planned reviews. Out of the eight planned reviews, seven undertakings were revoked after the expiration of the undertaking period. In one case, the period of the undertaking was extended. Four cases with undertakings had been referred by the GDC for early reviews due to concerns with workability or compliance.

6.15 The GDC has no statutory power to review a decision by the Case Examiners to agree undertakings with a registrant, as undertakings are agreed by way of consent between the Case Examiners and the registrant. However, the GDC does monitor undertakings and can refer a case back to Case Examiners who can undertake an early review where there is an issue with compliance or workability. This allows for cases to be referred to a Practice Committee if necessary.

6.16 During our audit of GDC cases, we did not find any significant concerns with the Case Examiners' use of undertakings and we are of the view that it is positive that Case Examiners continue to offer undertakings where appropriate. We noted a concern in one case where an undertaking was offered where there was an allegation of dishonesty, which would normally require a more serious sanction. However, we noted that the Case Examiners had considered whether undertakings would adequately address the alleged behaviour and had satisfied themselves that it would.

### **Rule 9 reviews**

6.17 The Rule 9 review process allows the informant, registrant, Registrar or any other person who, in the opinion of the Registrar, has an interest in the decision to challenge the way a decision by the Case Examiners has been made and looks at whether the decision-maker followed the correct process. Rule 9 gives the Registrar the power to review a decision that a case should be closed at triage, assessment or should not be referred to a Practice Committee.

- 6.18 Our targeted review did not find any significant concerns about cases referred under Rule 9. The data provided by the GDC indicated that the number of Rule 9 applications which result in a different determination was low compared to the overall cases closed by Case Examiners.
- 6.19 Through our audit, we identified no concerns with the GDC's decisions to send the cases examined back to Case Examiners via Rule 9 and noted that it scrutinises the decision-making and makes relevant applications where there has been an error in process. It is positive that the GDC is using this process effectively and taking action when required.
- 6.20 However, we did find a number of issues in the Rule 9 cases examined through audit which raised concerns about the information available to the Case Examiners to assist them in making a case to answer determination. We found that allegations were not always particularised and/or did not cover the breadth of the informants' concerns which, in some cases, led to a delay in case progression. We note that this may have an effect on the Case Examiners' ability to make an accurate determination. However, we are of the view that the concerns are not so significant that they impact upon the overall performance of this Standard and we note the GDC's response to our audit findings that it is remedying the concerns through further training. We will continue to monitor the GDC's decision-making through our next performance review.

### Rule 6E

- 6.21 Under Rule 6E, on application by a registrant, informant, the Council or Registrar, Case Examiners may, if they consider it appropriate, revise a determination made by them that an allegation ought to be considered by a Practice Committee.
- 6.22 From April 2017 to July 2018, Case Examiners considered 48 Rule 6E requests.
- 6.23 From the dataset we obtained, we established that approximately 15 per cent of the total number of cases referred by the Case Examiners to a Practice Committee were referred back to the Case Examiners under Rule 6E.
- 6.24 Out of the 48 cases referred under Rule 6E, the Case Examiners made a different determination in 35 of those cases; 72 per cent of cases referred under the Rule. This indicates that there appears to be a high proportion of revised decisions made by the GDC's Case Examiners. The GDC told us that most of these Rule 6E applications were made because new information had come to light which was not available at the time of the Case Examiners' original decision.
- 6.25 It is also important to note that in our audit we found that the GDC was appropriately referring cases back to the Case Examiners under the Rule 6E provisions.
- 6.26 Although we have some concerns about the high proportion of changed determinations by Case Examiners, our audit and the information provided by the GDC does not suggest that the concerns are so significant that the

overall process is unsafe or that the Standard is not met. However, we will continue to monitor the quality of Case Examiners' decision-making.

### **Initial assessment process**

- 6.27 The GDC provided us with a copy of a standard operating procedure (effective from 1 March 2018) to support the introduction of a new initial assessment process. The procedure sets out that the Initial Assessment Team (IAT) receives and processes new information regarding fitness to practise concerns about GDC registrants. All new information is reviewed by the IAT to decide whether a new case should be created on the case management system to be considered by the Initial Assessment Decision Group (IADG), which meets daily to consider cases using a risk framework and is made up of Clinical Dental Advisers, Senior Caseworkers, Policy Managers, and In-House Lawyers.
- 6.28 Possible outcomes of consideration by the IADG are that:
- the case progresses to casework/assessment
  - the case is referred to the Registrar with a recommendation for an interim order
  - the case is closed with no further action or referred to an appropriate organisation
  - the case is closed with a referral to the NHS under the NHS Concerns Handling Process
  - more information is required, on receipt of which the case is reviewed by the IADG to decide what further action is appropriate.
- 6.29 We did not assess the impact of this change to the GDC's fitness to practise initial assessment process as it was too early in the implementation of this process to do so. The process involves prompt consideration of concerns raised and is intended to allow decisions to be reached more quickly than was the expectation under the previous triage process, when a triage decision was to be reached within 10 working days of receipt.
- 6.30 We received positive feedback from the British Dental Association, which welcomed the involvement of clinically-trained staff at this stage of the process.

### **Conclusion**

- 6.31 We have seen evidence that Case Examiners have been adhering to the Case Examiner Guidance Manual, and although we had some concerns about the decisions in a number of cases, these concerns were not so significant to determine that this Standard is not met. We will examine the impact the IAT has had on the GDC's decision-making and timeliness measures during the next performance review period.

**Standard 4: All fitness to practise complaints are reviewed on receipt and serious cases are prioritised and where appropriate referred to an interim orders panel**

- 6.32 This Standard was found to be met last year based on sustained improvement in the time taken from the GDC receiving a complaint to making a decision about an interim order. The annual median time taken from receipt of a complaint to an interim order decision in 2016/17 was 19 weeks, in comparison to 35.5 weeks in 2015/16. This year, the annual median figure remained stable at 19 weeks. As in the past two years, the annual median time taken from a decision that there is information indicating the need for an interim order to an Interim Order Committee decision was three weeks.
- 6.33 Our audit did raise some concerns about the regularity of risk assessments and the comprehensiveness of these. While we saw evidence that the GDC regularly monitored risk in each case through file reviews, which were carried out on receipt of the case as well as on receipt of new information, these did not always contain a detailed assessment of risk. We consider that whilst a case may not meet the high threshold for referral for an interim order, it may still present a risk and require prioritisation, and therefore an analysis of risk beyond whether the case requires referral for an interim order is required.
- 6.34 In its response to our feedback, the GDC accepted that risk assessments have not always been recorded, or as often as they should have been. However, the GDC did not agree that a risk assessment should be recorded on receipt of any new information, as it considered that to do so would be disproportionate.
- 6.35 We note the GDC's response and remain of the view that risk assessments should be carried out and recorded regularly, and upon receipt of new information. The GDC's Interim Orders and Monitoring Risks guidance states that at the point of allocation to a Caseworker, the IADG will have carried out a risk assessment and considered whether the registrant poses a risk to the public, public trust in the profession or their own health. If the risk is sufficiently serious the case can be referred for an interim order. The guidance states that the Caseworker must monitor risk on every live case at least every 28 days or when new information is received and that this review should be recorded in the case report with the date and the rationale for the rating. We are concerned that the cases audited indicated that the GDC was not always following its own guidance on recording risk assessments.
- 6.36 Despite our concerns, our audit did not identify any cases where the GDC failed to take action through interim orders where it should have done. We are therefore assured that the GDC does have a process in place which enables it to identify the highest risk cases. Although risk assessments in some of the cases we audited were limited in scope, we only identified one case in the audit where risk was not appropriately managed.
- 6.37 We will continue to monitor the GDC's processes but at this stage do not consider that the concerns identified are sufficiently serious as to result in the GDC failing this Standard. We are therefore satisfied that this Standard is met.

## **Standard 5: The fitness to practise process is transparent, fair, and proportionate and focused on public protection**

6.38 Last year we conducted a targeted review of this Standard as we considered that the introduction of Case Examiners, and the GDC's new power to agree undertakings to resolve cases which would otherwise go to a final hearing, had implications for the fairness and transparency of the fitness to practise process. However, our targeted review found no evidence that a risk to the public had arisen in any individual case because of the decision to resolve it by undertakings.

### **Case observations process**

- 6.39 The GDC's new case observation process came into effect on 1 May 2018. Under the previous process, in all cases where the GDC determined that a complaint or other information received about a registrant amounted to an allegation of impaired fitness to practise, it would contact the registrant for their observations on the allegation. The observations would be sent to the complainant and a response to the observations would be requested. After a review of comments received, the GDC considered that comments provided by informants at this stage were often not useful. Under the new process, the GDC will continue to ask registrants to respond to the allegations made against them in all cases, but the complainant is asked to comment on the registrant's response only if the GDC caseworker determines it to be necessary.
- 6.40 The GDC expects that this change will shorten the process to 29 working days – from an average of 9.2 weeks to 5.8 weeks – without any corresponding decrease in the quality of investigation and will be of benefit to both the registrant and informant, by streamlining a process which is considered lengthy and stressful by both parties.
- 6.41 The GDC developed new guidance in relation to the process which has been published on the GDC's website.
- 6.42 The published guidance states that the informant should be invited to comment only if the content of the registrant's observations calls for a response, and that this will primarily be in circumstances where the informant should be given the opportunity to correct matters of fact.
- 6.43 Examples provided in the guidance include where:
- new evidence is provided by the registrant as part of his or her observations;
  - the registrant's observations provide a substantially different version of events to those alleged by the informant;
  - the registrant's observations make assertions which have the potential to undermine the credibility of the informant, which the informant should be allowed the opportunity to refute; and/or
  - fairness otherwise dictates that the informant should have the opportunity to respond.

6.44 Our 'Lessons learned' review of the NMC's handling of the concerns about the midwifery unit at Furness General Hospital noted that the fact that patients and families were not asked for their views on registrants' responses may have led to serious evidential problems and suggested that patients and families who raised significant and legitimate concerns were being ignored. While we note that the GDC's guidance identifies key areas where informants' views should be sought, in our response to the GDC's consultation in November 2017 we outlined that we believe it is important for regulators to share the registrant's response to an allegation with the complainant unless there is a compelling reason not to.

6.45 The process was introduced towards the end of the period under review and it will take some time before we see evidence of the impact. We will continue to monitor this new process.

#### **Defining seriousness in fitness to practise**

6.46 The GDC published its report on the *Shifting the Balance* consultation on 12 December 2017. One of the measures the GDC undertook to examine was the concept of 'seriousness' and how it is used across professional regulation. The GDC stated that it would use learning from this to inform a review of its guidance material for fitness to practise decision-makers to ensure that seriousness is properly and fully embedded within it. We will monitor information about the outcome of this work as it becomes available.

#### **Analysis of General Dental Council fitness to practise case data**

6.47 In December 2017, the GDC published a report detailing the analysis of its fitness to practise case data undertaken by Plymouth University Peninsula Schools of Medicine and Dentistry. The GDC commissioned the statistical analysis to develop a comprehensive picture of its fitness to practise complaints received in order to gain a better understanding of the characteristics and key trends, including those who bring cases to the GDC, the dental professionals subject to a complaint and the subject matter of the complaint. The GDC published a policy response to the analysis, setting out how the findings would feed into the development of proposals for action outlined under *Shifting the Balance* and how they would be used to ensure that the GDC's processes were fair and consistent.

#### **Conclusion**

6.48 The GDC has pursued initiatives to ensure the fairness, proportionality and transparency of its fitness to practise process this year, including revising its process for seeking the views of complainants on registrants' responses to allegations, work to define seriousness in fitness to practise matters and analysis of fitness to practise data to assess whether particular groups are disproportionately impacted by the process. We are satisfied that this Standard is met.

**Standard 6: Fitness to practise cases are dealt with as quickly as possible taking into account the complexity and type of case and the conduct of both sides. Delays do not result in harm or potential harm to**

**patients and service users. Where necessary the regulator protects the public by means of interim orders**

6.49 The GDC met this Standard last year. We carried out a targeted review against this Standard this year because we wanted to understand the available performance data in more detail, and to seek further information about the GDC’s plans to improve how quickly it deals with fitness to practise cases.

**The dataset**

6.50 We collect a set of annual and quarterly performance data from each regulator. The following table compares the GDC’s performance against the dataset for the last three years and indicates that performance has declined since last year.

<b>Median time in weeks:</b>	<b>2015/16</b>	<b>2016/17</b>	<b>2017/18</b>
From receipt to Case Examiner decision	40	41	45
From Case Examiner decision to final panel or other disposal	41	42	44
From receipt to final panel or other disposal	94	90	99

6.51 The table above shows that the annual median time from receipt to Case Examiner decision in 2017/18 has increased to 45 weeks, up from 41 weeks in 2016/17.

6.52 The dataset also shows that the median time from IC/CE decision to final fitness to practise hearing has increased each year, from 39 weeks in 2014/15 to 41 weeks in 2015/16 and 42 weeks in 2016/17. In 2017/18, this median was 44 weeks.

6.53 It is of concern that the GDC’s median timeframe from receipt of concern to final hearing has increased by nine weeks since 2016/17, to 99 weeks in 2017/18. It is at its highest since 2014/15.

6.54 Further to the data, our audit findings identified delays in about a third of the cases we reviewed, with several concerns noted as avoidable if the GDC had been more proactive in its case progression decisions. Because our audit looked at cases which were closed during our review period, some of the instances of delay we found took place some time ago. As outlined at paragraphs 6.58 to 6.61 below, the GDC has told us that it has taken action since then to improve timeliness in its fitness to practise casework. We note the GDC’s ongoing efforts to improve its performance, and we will consider the impact of these measures in future reviews. In relation to this year’s review, though, we consider that the delays we found on audit were consistent with the increase in the dataset medians, which are also largely based on cases closed in the review period.

6.55 The GDC told us that the downturn in its performance against the dataset was because it had been working to reduce the number of old cases it has open. Our dataset captures the number of old cases each regulator has open

at the end of each quarter and the business year. As the following table demonstrates, the GDC has made some further progress this year in reducing the number of old cases it has open. However, the rate of progress slowed during this review period: this year, there was a net reduction of 25 old cases, compared with a net reduction of 46 last year. We also noted that the total number of open cases more than two years old has not reduced: there were 125 such cases at the end of 2016/17, and 126 at the end of 2017/18.

Number of open cases:	2015/16	2016/17	2017/18
52-103 weeks old	288	252	226
104-155 weeks old	95	79	90
More than 156 weeks old	40	46	36
Total more than 52 weeks old	423	377	352

- 6.56 Although we recognise that closing older cases can affect the median timeliness figures in our dataset, this is not the only factor which can lead to an increase. As noted above, the net reduction this year in the total number of cases more than a year old compared to 2016/17 is 25. In relation to the GDC's overall caseload, that is a relatively small reduction. In our view, it is unlikely that a reduction of this size would on its own be responsible for the increases to all three annual median measures in our dataset over the same period.
- 6.57 We are aware that the GDC has made some significant further progress in reducing the number of open old cases since the end of our review period. It told us that by the end of December 2018, it had a total of 312 open cases more than a year old, a net reduction of 40 since the end of the 2017/18 financial year. We are pleased to note this progress, but it does not alter our view of the GDC's performance during the period under review. We will continue to monitor the GDC's progress in closing old cases.

### Structure and process changes

- 6.58 In response to our targeted review, the GDC stated that it had restructured its team to improve the timeliness and quality of case progression. As outlined within Fitness to Practise Standard 3, in March 2018 the GDC changed the triage decision-making process, implementing the IAT (see paragraphs 6.27 to 6.30). We will continue to monitor its performance to see whether changes to how the GDC progresses cases at the initial stage have an impact on timeliness at other stages of the process.
- 6.59 The GDC informed us that one of the main reasons for the decline in its performance was due to staffing shortages, with a high degree of staff turnover during the performance review period. The GDC stated that it had been unable to recruit quickly enough under its standard recruitment processes and therefore suffered capacity issues. It told us that it put in place a plan to manage the effect of these capacity issues, and that they have not reoccurred since.

- 6.60 The GDC stated that in 2018 it piloted and subsequently introduced a system where cases are assigned to a specific stream depending on the main issue, and where appropriate, the stream will include a standard set of tasks which caseworkers complete to progress a case. The tasks will be owned by a team rather than individuals, which will give the GDC greater resilience against staff turnover and sickness. We note that the GDC is putting processes in place to ensure cases continue to be progressed if staffing levels temporarily drop. Further information on this process, and its impact, will be sought in the 2018/19 performance review.
- 6.61 The GDC also told us that in January 2018 it completed a review of its fitness to practise process. It identified that the volume of cases at each stage of the process presented a barrier to making significant improvements in timeliness. Since then, it has been working to clear significant numbers of cases from each stage of the process, while taking steps to address the underlying causes of high case volumes. The GDC told us that it now has a much better understanding of the factors that affect the timeliness of its fitness to practise caseload, and it expects to be able to implement sustained improvements in how quickly it can progress cases. While we have noted the GDC's explanations about this, we did not see evidence of improvements in timeliness during the period under review. We will continue to monitor the progress and outcomes of this work in future performance reviews.

### Interim orders

- 6.62 In our last performance review, we were satisfied that there was no additional risk to the public which arose from the need to apply for interim order extensions. This year there has been an increase in the number of High Court extensions to interim orders. In the 2016/17 performance review period, 43 interim order extensions were applied for. Fifty-six extensions have been applied for in this performance review period with one application being rejected. We recognise that interim order extensions can be required for reasons outside of the regulator's control but are concerned by the sharp increase in interim order extensions required during the period of this review. The GDC has stated that the number of extension applications is a result of the volume of cases with interim orders increasing in 2017/18, a trend which has begun to reverse in 2018/19.
- 6.63 Last year, the GDC told us that it continued to emphasise to its case presenters the importance of seeking interim orders for the 18-month maximum. We noted that it will take some time before changes to the way interim orders are imposed start to have an effect on the number of extensions required. The GDC also stated that it had decided to prioritise cases with interim orders by allocating them to one small team, ensuring that all internal parties involved in interim order cases have frequent contact with the same caseworkers, improving relationships and reducing the opportunities for the case to be overlooked. The GDC expected this to result in an improved performance in the number of applications for interim order extensions being made.
- 6.64 The GDC said that that it expected the 2018/19 dataset to demonstrate a positive impact on the measures it has taken. The first quarter for 2018/19 is

covered by this performance review period and shows a decrease on the previous two quarters. The second quarter for 2018/19 is outside of this performance review period but would appear to support a continuing decrease. We will review this as part of the next performance review.

Number of High Court extensions to interim orders	2017/18 performance review period					
	Q1 17/18	Q2 17/18	Q3 17/18	Q4 17/18	Q1 18/19	Q2 18/19
	14	12	17	15	12	7

### Conclusion on performance against the Standard

- 6.65 In last year's review, we noted that the GDC's timescales for dealing with complaints were broadly similar to those of previous years and that there were signs that performance might improve. This year, for the reasons explained above, the GDC's performance has deteriorated significantly in this performance review period across most timeliness measures. There was a significant increase in the number of cases where the GDC had to seek an extension to an interim order. Our audit findings also identified delays in around a third of the cases we reviewed.
- 6.66 We make it clear that this decision is based on the performance in the timeframe of this performance review. As discussed above, the GDC has taken significant action to address these issues, such as realigning its casework structure. The impact of this has not been seen in this performance review year. We have seen evidence which suggests that it may have had a strong and positive effect based on the early figures that we have seen for 2018/19 but we are not at this stage able to determine whether this is the case or whether the improvement will be sustained. We will report on this in our next performance review.
- 6.67 While we note the efforts made by the GDC to address the concerns about timeliness in this year, we have to base our judgements on the actual performance in 2017/18. As we have indicated, there was a significant deterioration in timeliness in that year which we determined was not explained simply by the GDC dealing with older cases. We have therefore concluded that this Standard is not met.

### Standard 7: All parties to a fitness to practise case are kept updated on the progress of their case and supported to participate effectively in the process

- 6.68 In the 2016/17 performance review, the GDC met this Standard. We noted the results of the GDC's fitness to practise customer survey (published June 2017) which showed slight decreases in the percentage of respondents expressing dissatisfaction with the service received. We also noted that the GDC had published updated versions of guidance for unrepresented registrants and witnesses.
- 6.69 The most recent fitness to practise customer service survey, published in May 2018, noted a slight decline of 4 per cent in the proportion of registrants

who reported that they were satisfied with the customer service they received from the GDC, and an increase of 17.7 per cent in the proportion of informants and witnesses reporting satisfaction with the service received.

- 6.70 In May 2018 the GDC updated its guidance on managing service users who may require additional support, which is for use by both fitness to practise and DCS staff. The updated document included additional guidance for employees on identifying risk, with supporting case studies.
- 6.71 Although this Standard was not subject to a targeted review this year, one significant and some minor customer service concerns arose from our audit of fitness to practise cases. We are satisfied that the GDC has taken appropriate action in relation to the serious concern raised. The GDC accepted the majority of the minor concerns we raised and has put in place changes where appropriate.
- 6.72 We also received feedback from the Bar Pro Bono Unit stating that they were approached by the GDC to establish a relationship with the Unit for the provisions of legal advice and representation to practitioners who were facing disciplinary proceedings. The Unit delivered training to GDC caseworkers, who are reportedly now able to indirectly refer practitioners to the Unit via organisations such as Citizens Advice. The Unit advised us that when it launches an online platform, GDC caseworkers will be able to directly signpost practitioners to the Unit. The Unit reported that this will mean that practitioners who would have otherwise gone through disciplinary proceedings alone will have available to them a way to obtain advice and representation for the proceedings.
- 6.73 It is positive that the GDC's customer service survey indicates that satisfaction of informants and witnesses has increased significantly in this performance review period. It is also positive that the GDC continues to update its guidance on customer service processes. Although we identified a small number of minor customer service issues during the audit, and one significant concern, the GDC has provided assurances about its customer service processes. We are therefore satisfied that this Standard is met.

**Standard 8: All fitness to practise decisions made at the initial and final stages of the process are well reasoned, consistent, protect the public and maintain confidence in the profession**

- 6.74 We carried out a targeted review of this Standard because, as noted above, the introduction of Case Examiners changed how the GDC makes some initial stages fitness to practise decisions, and we wanted to know how it assured the quality of the Case Examiners' decisions.
- 6.75 The GDC confirmed that, since last year, it has fully established a new decision scrutiny process which reviews 10 per cent of fitness to practise decisions per month at all stages of the decision-making process. It has moved away from reviewing 100 per cent of Case Examiners' decisions as this process is now embedded.
- 6.76 The GDC has two quality assurance groups, the Decision Scrutiny Group (DSG) and the Quality Assurance Group (QAG). The DSG scrutinises 10 per

cent of randomly selected decisions across all decision-making points in fitness to practise cases for review to give a statistically reliable picture of decision-making standards. QAG considers cases referred to it on the basis of risk and identifies learning initiatives and/or remedial action. The GDC informed us that both the DSG and QAG rates the cases reviewed as green, amber and red. While we have not reviewed these in detail, the use of two quality assurance processes appears to be an appropriate approach.

### **Independent external audit report**

- 6.77 The GDC shared with us its full 2018 independent external audit report of decision-making across the fitness to practise process. The report looked at a random sample of 40 cases concluded at each stage of the GDC's fitness to practise process between January 2018 and April 2018 (160 cases in all). This makes the report a useful source of information about the quality of decision-making across the GDC's fitness to practise process in our review period.
- 6.78 The audit found that the decisions were on the whole thorough and well-drafted, with consideration having been given to each separate factual allegation, and the correct test being applied. In a few cases, the auditors considered that the Case Examiners had appeared to be making a decision that there was no current impairment, rather than considering whether there was a real prospect of such a finding.

### **Section 29 review of cases**

- 6.79 During this performance review period, 298 final decisions were provided to us by the GDC. We have not appealed any of the GDC's final decisions.
- 6.80 Our Section 29 reviews identified concerns about the adequacy of the reasoning given for panels' decisions in a small number of cases. Where learning points were sent in relation to individual cases, the GDC engaged with these and informed us of action it had taken in response. This included sharing learning points in panel newsletters, discussion of cases at a panel chair review day and during panel training events, and discussion of one case with the panel and legal adviser, leading to an amendment to the determination for clarity.

### **Audit findings**

- 6.81 Although we found concerns in some cases we audited, we did not find significant concerns with the quality of the Case Examiners' decision-making, and the evidence does not suggest that there is a general failure on the part of the GDC's final hearing panels to produce well-reasoned decisions. Nor is there evidence that those panels' decisions are failing to protect the public or maintain public confidence in the dentistry professions. We did not find that the Case Examiners had made incorrect decisions in any of the cases we audited but we were concerned that the Case Examiners may have gone beyond their scope in three out of 60 cases, and that amendments to allegations should have been made prior to decisions being reached in order to ensure that the allegations reflected the evidence. However, it is positive that the GDC continues to monitor Case Examiners' decisions to ensure that

they are robust, and where concerns are identified, learning and training is put in place.

- 6.82 As stated under Fitness to Practise Standard 3, we did not find significant concerns with the use of undertakings and found that the Case Examiners' decisions to issue undertakings were sound and made in accordance with the Case Examiner Guidance Manual. We raised no concerns with the Rule 9 process and note that successful Rule 9 applications do not represent a high level of cases in comparison with the number of cases closed by the Case Examiners. Although we had some concerns with the proportion of cases referred under Rule 6E where a different determination is made, our audit findings did not raise such serious concerns to mean that Fitness to Practise Standards 3 or 8 are not met.
- 6.83 Based upon our audit findings, the information provided by the GDC and our Section 29 review, we did not identify any serious concerns with the fitness to practise decisions made at initial Case Examiner and final stages of the process. We are therefore satisfied that this Standard is met.

**Standard 9: All fitness to practise decisions, apart from matters relating to the health of a professional, are published and communicated to relevant stakeholders**

- 6.84 The GDC continues to publish the outcomes of fitness to practise cases and communicate the decisions to its stakeholders. The GDC failed to notify us of one fitness to practise decision this year. However, due to the decision made by the Panel, the decision could not be considered for a referral to Court in accordance with our legal powers.<sup>10</sup> Therefore, there was no public protection implication arising from the GDC's omission. We are satisfied that this Standard is met.

**Standard 10: Information about fitness to practise cases is securely retained**

- 6.85 The GDC has not met this Standard this year. Last year, the Standard was not met because of a number of serious data breaches. This year, we carried out a targeted review of this Standard because we wanted to understand what progress the GDC had made in relation to information security.
- 6.86 In our last review, we noted that the GDC had said that it intended to work towards compliance with the NHS information governance toolkit, which it said was aligned with ISO 27001.<sup>11</sup> The GDC said that it would start measuring compliance with the NHS toolkit later in 2017, and then use that as a basis to work towards complying with the principles of ISO 27001, though it might not seek full accreditation.
- 6.87 In response to our targeted questions, the GDC informed us that in late 2017, the NHS toolkit was withdrawn from use pending a review and update by the

<sup>10</sup> See footnote 3, above.

<sup>11</sup> ISO 27001 is a specification for an information security management system. The system is a framework of policies and procedures which include all legal, physical and technical controls involved in an organisation's information risk management processes.

NHS to ensure it met the requirements of the General Data Protection Regulation (GDPR). The GDC took the decision to instead use its programme of work relating to GDPR compliance as a means of assessing and driving improvements in the way it manages and protects the data it holds. The GDC stated that it does still intend to use the NHS Toolkit in the way that it has previously described to us, and in September 2018 it started its toolkit assessment. The GDC stated that it was aiming to complete the assessment by the end of 2018 so that it can inform improvement work for 2019. We note that its work on implementing the GDPR should have a positive effect on any external accreditation it aims to achieve in the future.

- 6.88 The GDC confirmed to us that its Data Protection and Freedom of Information Training Policy was implemented in November 2017. It also confirmed that monthly induction training sessions were run for new staff on data protection and on data security at the GDC, which outlined the policy framework and best practice which arose from previous data security incidents. It also stated that it runs quarterly training for information representatives and annual data protection refresher training for all GDC staff.
- 6.89 During the review period, the GDC informed us that it had employed a third party to perform a penetration test of its network and web applications to identify any vulnerabilities. The GDC stated that *'no critical or high-risk issues were identified across the network and web applications'*. Therefore, there is a low risk of outside threats being able to penetrate the GDC's case management systems, ensuring that fitness to practise data is secure from external threats.
- 6.90 Although the GDC has implemented the recommendations of the Information Commissioner's Office (ICO), as noted in our 2016/17 report, and is continuing to work towards the implementation of the NHS information governance toolkit, during this performance review period it reported five serious data breaches to the ICO, which is an increase on the two breaches reported last year.<sup>12</sup>
- 6.91 We also identified 10 concerns relating to data breaches, the recording of data breaches and information security during our audit. Following our audit, the GDC confirmed that the data issues identified had been rectified where required and appropriate action taken.
- 6.92 Notwithstanding the action the GDC has taken in relation to its information security, the fact remains that the GDC has reported five data breaches to the ICO over the 2017/18 performance review period, which is an increase in the previous period when two breaches were reported. It is a concern that in three out of the five data breaches, the GDC did not identify the breaches itself and was instead notified of them by external individuals. However, it is noted that in respect of all five breaches, the ICO deemed that no further action was necessary.
- 6.93 The GDC has not met this Standard for the past four performance reviews. Despite implementing the ICO's recommendations, there has been a decline

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<sup>12</sup> One reported breach was outside of the GDC's control.

in the GDC's performance for this Standard. Furthermore, despite the implementation of annual data protection training for all staff, there have been several serious data security breaches. Although we accept that the ICO has not taken any further action in respect of the breaches and that the GDC has undertaken significant work, these breaches are concerning. We therefore concluded that this Standard is not met.

**Professional Standards Authority for Health and Social Care**

157-197 Buckingham Palace Road  
London SW1W 9SP

Telephone: **020 7389 8030**

Fax: **020 7389 8040**

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

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

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