
An investigation into concerns raised by the former Chair of the General Dental Council

Advice to the Department of Health

February 2013

About the Professional Standards Authority

The Professional Standards Authority for Health and Social Care¹ oversees statutory bodies that regulate health and social care professionals in the UK. We assess their performance, conduct audits, scrutinise their decisions and report to Parliament. We also set standards for organisations holding voluntary registers for health and social care occupations and accredit those that meet them.

We share good practice and knowledge, conduct research and introduce new ideas to our sector including our concept of right-touch regulation.² We monitor policy developments in the UK and internationally and provide advice on issues relating to professional standards in health and social care.

We do this to promote the health, safety and well-being of users of health and social care services and the public. We are an independent body, accountable to the UK Parliament.

Our values are at the heart of who we are and what we do. We are committed to being independent, impartial, fair, accessible and consistent in the application of our values. More information about our work and the approach we take is available at www.professionalstandards.org.uk.

¹ The Professional Standards Authority for Health and Social Care was previously known as the Council for Healthcare Regulatory Excellence.

² CHRE, 2010. *Right-touch Regulation*. London: CHRE. Available at <http://www.professionalstandards.org.uk/docs/psa-library/right-touch-regulation.pdf?sfvrsn=0>

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1. Introduction

- 1.1 On 3 June 2011 the Department of Health asked CHRE to advise whether:
- Concerns which had been raised by the former Chair of the GDC, Alison Lockyer, about the organisation's governance indicated that the GDC may have been³ failing to fulfil its statutory functions, or
 - There are concerns about the actions of individuals on the Council which ought to be drawn to the attention of the Appointments Commission⁴
- 1.2 In the same letter the Department asked us to pay particular attention to the GDC's performance in respect of its fitness to practise function.
- 1.3 The Department of Health's request followed concerns raised by Alison Lockyer in a letter she sent to the Secretary of State on 5 May 2011 upon her resignation from the GDC.
- 1.4 On 28 July 2011 the Department of Health provided us with a summary of the concerns that had been raised by Alison Lockyer in her letter to the Secretary of State (while waiting for her permission to disclose a copy of that letter to us). We received further details about Alison Lockyer's concerns in a letter from her on 2 September 2011. Following receipt of that information, we were able to commence our investigation. We subsequently met with Alison Lockyer on 16 September 2011 to discuss her concerns in more detail and during the course of that meeting we were given a copy of the letter Alison Lockyer had sent to the Secretary of State setting out her concerns.

The remit of the investigation

- 1.5 Alison Lockyer made a number of serious allegations about the quality of the GDC's governance arrangements, which in her view have impacted on the Council's ability to hold the GDC's Chief Executive and Registrar (CE) (Evelynne Gilvarry) and the executive management team to account, and on the Council's ability to progress matters which are important to public protection. In particular she alleged that those who stood up against the executive's decisions were threatened with complaints being made against them, thereby preventing the executive from being held to account, that the quality and quantity of information shared with her as Chair and the Council as a whole was inadequate to enable the executive to be held to account and that the impact of this was slow progress by the GDC to improve its performance in known areas of weakness.
- 1.6 Alison Lockyer also made a number of specific allegations about the processes adopted by the GDC in relation to two matters that were raised about her and the quality and quantity of information shared with the Council about the two matters. In particular, Alison Lockyer alleges that the process the GDC used to investigate the first matter about her was in breach of the requirement of natural justice and

³ See Appendix 2 for the exact wording of the letter.

⁴ Until October 2012 the Appointments Commission held the power on behalf of the Privy Council to remove or suspend GDC Council members. That power has now reverted to the Privy Council itself. This is set out in more detail at paragraphs 6.15 and 6.16.

unlawful, and that the matter was 'seized upon in an inappropriate and excessive way' by those who sought to discredit her before her peers and to force her to leave her office. She also alleged that the second matter raised about her had no sensible basis as it related to conversations between her and a member of staff which were within the remit of the Chair. She also had concerns about the timing of the second matter as she said that it emerged just after a letter from her which challenged the findings in relation to the first matter.

- 1.7 To explore these issues, our investigation has focused on the following principal themes:
- The concerns raised by Alison Lockyer about the GDC's governance, including the GDC executive's approach to managing internal disputes between itself and others
 - The fairness and proportionality of the processes adopted by the GDC in handling the two matters that were raised about Alison Lockyer while she was Chair of the GDC.
- 1.8 Whilst we have investigated Alison Lockyer's concerns about the GDC's handling of the matters relating to her, where concerns about how the GDC has handled matters about other individuals have been raised with us, we have only investigated them to the extent that they are relevant to Alison Lockyer's allegation about the GDC executive's approach to managing internal disputes and the delivery of the GDC's statutory functions. For example, we have looked at how the GDC has handled matters relating to two former Investigating Committee Chairs insofar as they have a bearing on the allegations made by Alison Lockyer. What we have not done is a stand-alone investigation of the individual experiences of the two former Investigating Committee Chairs, because to do so would have gone beyond what we were tasked to do by the Department of Health.
- 1.9 During the course of this investigation it has been suggested by certain witnesses that we should investigate the GDC's handling of an individual fitness to practise case. We do not consider that it is the purpose of this investigation to review the GDC's handling of the individual fitness to practise case. The remit of this investigation includes paying attention to the GDC's fitness to practise function in addition to advising the Department of Health in respect of the concerns raised by Alison Lockyer. A fitness to practise complaint cannot be said to be an internal complaint, and therefore the GDC's handling of such a case does not fall within our remit of looking at the GDC's management of internal disputes. Having said that, the individual fitness to practise case we have been asked to investigate is connected with the first matter raised about Alison Lockyer and the complaint about the first former Investigating Committee Chair. We therefore looked at how the GDC dealt with the allegations against Alison Lockyer and the first former Investigating Committee Chair concerning their involvement in that case but not at the GDC's handling of, and the decision related to, the individual fitness to practise case itself.

How we carried out the investigation

- 1.10 The first stage of our investigation involved obtaining written information from Alison Lockyer about the allegations that she had raised with the Secretary of State (we wrote to her on 28 June 2011 and we received a substantive response on 2 September 2011), reviewing the documentation considered by the Council and the Audit Committee in relation to the two matters raised about Alison Lockyer, and then meeting with Alison Lockyer on 16 September to understand in greater detail the written information that she had provided to us on 2 September 2011. This process provided us with a clear understanding of the allegations made by Alison Lockyer and the basic process followed by the GDC to consider the matters raised about Alison Lockyer. With this as our basis we then identified other individuals that we wished to speak with/meet and the documentary evidence we wished to review. We have also responded, where appropriate, to certain suggestions made to us by relevant individuals as to what further information might be relevant/which other witnesses we may want to speak to in order to understand the relevant events.
- 1.11 This report has taken account of all the information provided by those we contacted (details of this are outlined below) and it has also been revised following circulation of draft versions to key stakeholders for comments on three occasions.

Who we met with/spoke to or received written information from

- 1.12 To carry out this investigation we have:
- Met with on two occasions (September 2011 and June 2012), and obtained documentary evidence from, Alison Lockyer and her solicitors. The documentary evidence related to the GDC's handling of the two matters raised against Alison Lockyer
 - Written to all 23 individuals who were GDC Council members at the time we initiated our investigation⁵ (excluding the four Associate members who are the Chief Dental Officers for England, Scotland, Wales and Northern Ireland) inviting them to meet with us for the purposes of our investigation. In addition we understand that the Council members were notified about the commencement of our investigation by the GDC's executive management team in September 2011. We met with or spoke to all 15 Council members who responded positively to our invitation (nine of whom are lay members and six of whom are professional members of the Council). One of the remaining eight Council members was willing to meet with us, but said that they did not believe they could add anything to the information that was likely to be provided by others. We received no response from the remaining seven Council members. We also approached those seven Council members again in July 2012 offering them another opportunity to meet/speak with us following their review of the draft investigation report. Six of the seven Council members informed us that they did not feel it necessary to contribute to the report. One Council member contributed to one particular aspect of the investigation

⁵ A 24th Council member was subsequently appointed with effect from 1 February 2012.

relating to an allegation about the cancellation of a Standards Committee meeting

- Met with and spoken to the GDC's CE (Evelynne Gilvarry) the Director of Governance (Frances Low), the Director of Regulation (Neil Marshall) and the Head of Prosecutions on multiple occasions
- Met with the GDC's former Head of Human Resources (once) and with the Head of Quality Assurance (twice). We also received documentary evidence from the Head of Quality Assurance in relation to Alison Lockyer's allegations about 'whistle-blowing' incidents at two separate dental schools
- Met with the GDC's former CE (Duncan Rudkin)
- Met with the GDC's first interim CE (Alison White) and received documentation from her about the actions she took whilst in post
- Invited the two former Chairs of the Investigating Committee⁶ to meet with us to discuss the circumstances leading up to their resignations in 2011⁷ (these will be referred to as the 'first' and 'second former Investigating
- Spoken/met with the six current⁸ Chairs of the GDC's Investigating Committee
- Received written information from the four Investigating Committee members who had provided 'feedback' to the GDC about the performance of the second former Investigating Committee Chair at one particular Investigating Committee meeting
- Received written information in relation to two of the Investigating Committee members who sat with the first former Investigating Committee Chair at the Investigating Committee meeting on 6 October 2010
- Received written information from the GDC's second interim CE (Ian Todd) in relation to his time in post
- Spoken to and received written information from the GDC's former President and interim Chair (Hew Mathewson) in relation to the performance of the GDC at the time of the handover to the first interim CE and the Chair
- Spoken to and received written information from the former Chair of the GDC's Appointments Committee who carried out the investigation into the first matter raised about Alison Lockyer

⁶ We have not included the names of the two former Investigating Committee Chairs that we met with or received information from, as the names of the two former Investigating Committee Chairs are not in the public domain. Similarly we have not included the names of any past or present members of GDC staff who hold/held posts below director level, nor the names of past directors.

⁷ We contacted these two former Investigating Committee Chairs because Alison Lockyer suggested that we should do so in light of the concerns she raised about the reasons for their resignations.

⁸ The 'current' Chairs of the Investigating Committee as described in this report were those who had been in post since 2010, as at June 2012.

- Met with and received written information from the member of the Appointments Committee who carried out the investigation into the complaint about the first former Investigating Committee Chair
- Obtained written information from the Appointments Commission about the appointment process for the Chair of the GDC
- Invited the two individuals who raised the matters relating to Alison Lockyer to speak or meet with us. Neither accepted our invitation although we reviewed the witness statements that they provided to the GDC as part of the investigations into the matters raised about Alison Lockyer
- Invited a second member of the Appointments Committee to speak/meet with us but they did not consent to the GDC sharing their contact details with us.

The documentation we reviewed

1.13 To carry out this investigation we have:

- Obtained written information from the GDC in response to numerous queries that we raised throughout the investigation relating to the allegations made by Alison Lockyer
- Reviewed documentation including:
 - The Dentists Act 1984 as amended in 2005 and the Fitness to Practise Rules 2006
 - Governance policies such as the Code of Conduct for Council Members, the Disciplinary Process for Statutory Committee Members, the Managing Interests policy, the Whistleblowing Policy and the Schedule of Delegated Authorities
 - Documentation relating to the election process for the Chair of the GDC in 2009
 - Documentation relating to the recruitment of the first interim CE, papers drafted by the first interim CE for the Council and legal advice regarding her role/powers as interim CE
 - Publicly available GDC Council papers and minutes (2008 to September 2012)
 - Education Committee minutes (March 2010 to September 2011) and inspection reports relating to two separate dental schools
 - Standards Committee papers and minutes (January to February 2011)
 - Private minutes of the Council and closed sessions of the Audit Committee (January to May 2011) where the issues relating to the matters raised about Alison Lockyer were discussed

- Private minutes of the Appointments Committee (January and February 2011) where the issues relating to the matters raised about the first former Investigating Committee Chair were discussed
- Documentation relating to the first matter raised about Alison Lockyer which was investigated by the Chair of the GDC's Appointments Committee including witness statements, the statement provided by Alison Lockyer and the investigation report
- Documentation relating to the second matter raised about Alison Lockyer which was partially considered by another member of the Appointments Committee and also partially considered by an external individual (a full investigation was not undertaken by either party as Alison Lockyer resigned before the investigation was concluded). This includes the witness statements taken from GDC staff members
- Documentation relating to the complaint about the first former Investigating Committee Chair which was investigated by a member of the Appointments Committee and then considered by the Appointments Committee as a whole
- Documentation relating to the 'feedback' received by the GDC in relation to the second former Investigating Committee Chair including a memo from four of their Investigating Committee panellist colleagues, emails from staff and emails from the Chair of the GDC's Appointments Committee who was initially asked for their advice on how to manage the 'feedback' received
- Documentation relating to Alison Lockyer's allegation about three 'whistle-blowing' incidents at two separate dental schools, including copies of the relevant correspondence and the GDC's policy on how to handle complaints received about education institutions
- Emails obtained which were sent to and from Alison Lockyer, Evlynn Gilvarry, staff members and Council members (and one former Council member) during the relevant period
- Emails obtained which were shared between those members of the Appointments Committee who had some role in investigating matters relating to either Alison Lockyer or the former Investigating Committee Chairs and the GDC during the relevant period
- Emails obtained which were shared between Evlynn Gilvarry/Frances Low and Council members during the relevant period
- Emails obtained which were shared between the two former Investigating Committee Chairs and other Investigating Committee members or GDC staff members during the relevant period
- Emails obtained relating to the work undertaken during Ian Todd's tenure as second interim CE in terms of the recruitment of an executive management team and identifying the key issues in the

underperforming fitness to practise department during the relevant period

- An investigation file in relation to an allegation by a ‘whistle-blower’ that an Investigating Committee decision had been changed unilaterally by a staff member. We considered the witness statements, the investigation report and the report provided to the Audit Committee
- Documentation relating to the proposals for how to improve the Investigating Committee stage of the fitness to practise process, the number of lost/wasted hearing days and the Investigating Committee guidance
- Documentation relating to the appointment of Investigating Committee Chairs in 2011.

1.14 We also took account of our Performance Review 2009/10, 2010/11 and 2011/12 reports and our Fitness to Practise Audit 2009/10, 2010/11, 2011 and 2012 reports which gave our views on the performance of the GDC’s fitness to practise function.

1.15 We have no specific legal powers to compel individuals or organisations to provide us with information or evidence, or to do so within particular timescales. Certain individuals have elected not to meet with us and/or to otherwise assist in our investigation. With this in mind, we have taken the following steps (amongst other things) to ensure that the information we have received is as full as possible:

- The seven Council members – we have spoken with the majority of the Council members, reviewed the documentation that they were provided with as part of the process of considering the matters raised about Alison Lockyer and reviewed Council papers and minutes. We also provided all the Council members with an opportunity to provide written comments on the draft report and to meet/speak with us following their review of the draft report, so that if they disagreed with its content they were able to share their views with us. We consider that we have a good understanding of the information provided to the Council and of the majority view of the Council
- The two individuals who raised the matters relating to Alison Lockyer – we have reviewed the witness statements provided by the two individuals as part of the investigations that were undertaken, as well as the original emails in which the matters were raised. We have also spoken with other GDC staff members who had knowledge of the matters raised. We consider that we have a good understanding of the matters that were raised and the individuals’ reasons for doing so
- The member of the Appointments Committee – we have reviewed the minutes of the Appointments Committee meetings at which the complaint about the first former Investigating Committee Chair was discussed. We consider that we have a good understanding of the collective view of the Appointments Committee.

1.16 The GDC was helpful in the course of the investigation and recognised its duty to co-operate with us. However, there were certain documents which the GDC did not consider it appropriate to provide us with full copies of (for the reasons outlined below). In these circumstances we requested that the GDC provide a full explanation of its reasons for withholding full copies, we suggested that relevant redactions were made (where possible and where appropriate) and we requested sight of the original and full documents at the GDC's premises. We also asked the GDC to provide us with summaries of the relevant documents (with any sections which, for example, raised data privacy issues removed) for our records. Having reviewed versions of the relevant documents at the GDC's premises, we are content that the summaries provided represent accurate and meaningful summaries of the original documents. Specifically:

- The minutes of one of the Appointments Committee meetings (January 2011) at which the first former Investigating Committee's Chair's conduct was discussed. This meeting took place before the first former Investigating Committee's Chair's disciplinary hearing. The GDC told us that it considered that disclosing these minutes would potentially impede the GDC's ability to carry out its statutory functions as disclosure could inhibit the depth and quality of discussion and deliberation on disciplinary matters by the Appointments Committee in the future. We reviewed full copies of all the relevant minutes at the GDC's premises and we have received redacted versions of minutes of the Appointments Committee meetings on 1 and 15 February 2011 at which the first former Investigating Committee Chair's conduct was discussed.
- The investigation file relating to the second matter raised about Alison Lockyer – the GDC considered that it was unable to give us full copies of:
 - The original email in which the person raised the matters relating to Alison Lockyer
 - The memo from Evlynne Gilvarry to the Chair of the Audit Committee in which she reported the matters raised about Alison Lockyer
 - Witness statements from three members of staff gathered as part of the investigation.

The GDC said that it felt unable to redact these documents sufficiently to prevent the identification of the individual involved. It wished to protect the identity of the relevant individual as they were effectively a 'whistle-blower'. Further, the individual concerned did not consent to disclosure of the full information. We did, however, review copies of the relevant information (containing certain redactions which the GDC considered were the minimum necessary for the protection of the individual's identity for the purposes of our investigation) at the GDC's premises. The GDC also provided a summary of these documents, which we are in a position to confirm is an accurate and meaningful reflection of the original documents.

1.17 In order to facilitate the Authority carrying out its statutory functions the GDC is exceptionally prepared to waive legal professional privilege to a limited extent. The partial waiver applies only to the Authority for the purposes of this report and in relation only to the written advice provided to it by Alison Foster QC dated 23

February 2011 and written advice provided by the GDC's corporate legal team in a memo addressed to Gordon Miles, Alison White and Mike Browne dated 3 January 2010. The waiver permits the Authority to quote from Alison Foster QC's written advice dated 23 February 2011 and the advice provided by the GDC's corporate legal team dated 3 January 2010 (up to and including the whole of that advice) in its report into the allegations made by Alison Lockyer against the GDC, insofar as the Authority considers necessary to do so in order to carry out its statutory regulatory function and no further. The waiver of privilege expressly does not extend to any documents referred to in Ms Foster's advice or any other documents in this case nor use by any other person of the contents of the advice.

The evidential test

- 1.18 In providing this advice to the Department of Health, we have weighed up whether or not the available evidence supports the facts alleged by Alison Lockyer, on the 'balance of probabilities' (in other words, we have considered whether or not the facts alleged are more likely than not to have taken place). We have then gone on to consider whether any factual allegations that are established on that basis mean either: that the GDC was at the relevant time or is currently failing to fulfil its statutory functions; or that there are concerns about any Council members that ought to be drawn to the attention of the Appointments Commission.⁹
- 1.19 We are grateful to all those who have assisted with this investigation. We acknowledge and appreciate the time those individuals have taken to provide documentation and to answer our questions over the course of the last 14 months.

Our conclusions

- 1.20 Our conclusions can be found at pages 218-226 of the report.
- 1.21 At pages 221-222 (paragraph 6.22) of the report we set out our overall conclusion that, despite certain areas of concern identified as part of our investigation, we consider that the GDC was not at the relevant time and is not currently failing to fulfil its statutory functions, and that none of the actions of its individual Council members ought to be drawn to the attention of the Appointments Commission.¹⁰

The layout of the report

- 1.22 The layout of this report is as follows:
- Section 2 sets out the factual background against which the relevant events occurred
 - Section 3 details Alison Lockyer's allegations about the quality of the GDC's governance arrangements

9 Until October 2012 the Appointments Commission held the power on behalf of the Privy Council to remove or suspend GDC Council members. That power has now reverted to the Privy Council itself. This is set out in more detail at paragraphs 6.15 and 6.16.

10 See footnote above.

- Section 4 sets out her specific allegations about the processes adopted by the GDC in relation to the matters raised about her
- Section 5 addresses various concerns that have been raised during our investigation about some fundamental aspects of the operation of the Investigating Committee stage of the GDC's fitness to practise function
- Section 6 sets out our conclusions and advice to the Department of Health
- Section 7 details our recommendations for the health and care professions regulators.

2. The context

- 2.1 In order properly to investigate Alison Lockyer's concerns regarding the quality of the GDC's governance arrangements and the processes adopted by the GDC in relation to the matters that were raised about her, we felt it would be helpful to understand what was happening at the GDC during the relevant period. The purpose of this section of the report is therefore to detail the factual background against which the relevant events occurred.

The governance structure of the GDC

The GDC's Council

- 2.2 The role of the GDC's Council is to set the strategy and direction of the GDC in line with its mission and purpose, to ensure that systems are in place to enable it to monitor performance, to hold the executive to account, and to ensure probity. The Council is in place to ensure that all major decisions are in line with the strategy, to take major policy decisions, and to ensure and monitor financial integrity.¹¹
- 2.3 The GDC Council members and the Chair of Council are paid fees as well as being reimbursed for their expenses in attending Council/committee/working group/advisory board meetings. The Chair of the GDC Council is paid an annual fixed fee,¹² is provided with access to administrative support within the GDC's London office and is expected to work two and a half days a week on GDC business.

The GDC's executive management team and staff

- 2.4 The Council sets policy, and determines the outcomes and outputs of the GDC in support of its purpose and values. The means by which those outcomes and outputs are achieved is a matter for the CE and staff.
- 2.5 The GDC's scheme of delegation provides that the CE is responsible for some matters without reference to the Council:
- All staff matters save those reserved to the Remuneration Committee
 - Carrying out the business of the GDC within the budget set by the Council
 - For the avoidance of doubt, other than in an emergency, the CE will consult the Council or the relevant committee whenever the CE's actions have a major impact on matters within the Council's or the committee's remit. In an emergency the CE will seek to consult the Chair of the Council and the chair of any appropriate committee, and will in any event report to the Council and/or the committee as soon as possible.
- 2.6 The CE has separate functions as the Registrar and the Accounting Officer, and in their role of Secretary to the Council.

¹¹ Further information about the GDC's Council is available from its website at: <http://www.gdc-uk.org/Governanceandcorporate/Pages/default.aspx>

¹² The GDC's annual report for 2010 records that the Chair's emolument for that year was £54,000.

- 2.7 The CE is accountable to the Council. The process by which the Council holds the CE accountable is by provision of management reports to the Council (as well as appropriate reports to committees regarding matters within their remits) and by questioning the CE.
- 2.8 The role of the executive management team is to support the Council. The executive management team (headed by the CE) is responsible for: managing and deploying the resources provided by the Council to achieve its objectives; providing leadership to the managers and staff who carry out the Council's business; and providing the senior executive face of the GDC in its relations with stakeholder and partner organisations. The staff team is made up of four directorates: corporate services, governance, policy and communications, and regulation. There are around 20 teams within those directorates and each team carries out a specific role.

The GDC's statutory committees

- 2.9 Six statutory committees, established under the Dentists Act 1984, carry out specific functions on behalf of the GDC (largely relating to the GDC's fitness to practise function). Those statutory committees are: the Investigating Committee; the Interim Orders Committee; the Professional Conduct Committee; the Health Committee; the Professional Performance Committee; and the Registration Appeals Committee. The statutory committees comprise independent panellists who are lay people, dentists and dental care professionals. Council members do not sit on the statutory committees but the statutory committees are accountable to the Council for their performance.

The GDC's standing committees

- 2.10 The GDC has established an [Appointments Committee](#) to recruit and oversee the appointment of members to the GDC's statutory committees. The Appointments Committee is an independent committee of the Council and has delegated powers as set under the [GDC Constitution of Committee Rules 2009](#). It consists of eight non-Council lay members and dental professionals who assist the Council in the exercise of any function relating to the appointment of statutory committee members, including the recruitment, selection, appraisal and disciplining of such members.
- 2.11 The Council is also assisted by four standing non-statutory committees (populated by Council members), which began to operate from September 2011 following completion of a review of the previous committee structure which had been authorised by the Council in October 2009.
- 2.12 The current committee structure consists of:
- The [Audit Committee](#) – the purpose of which is to monitor the integrity of the financial statements, to review the GDC's governance, internal control and risk management systems and review the internal and external audit services. The committee is authorised by the Council to investigate any activity of the General Dental Council. It is authorised to seek any information it requires from any member or employee and all members and employees are directed to co-operate with any request made by the committee

- The [Financial and Business Planning Advisory Committee](#) – the purpose of which is to challenge the executive on financial performance and to provide guidance to the executive on major operational matters such as property strategy, investment and technology development. The committee also assists the executive in developing the business plan (which includes the annual budget), and the corporate plan (the rolling three-year business plan) and assists the Council in reaching its decision on the business plan and the corporate plan
- The [Policy Advisory Committee](#) – which assists the Council in the development of regulatory policy for standards, fitness to practise, education and registration and the Dental Complaints Service by ensuring that policy is developed efficiently and effectively and is evidence based
- The [Remuneration Committee](#) – the purpose of which is to establish a transparent procedure for the remuneration of the Chief Executive, the executive management team, Council members (including the Chair) and other non-executive post holders. It also ensures that there are appropriate incentives to encourage enhanced performance and that rewards are made in a fair and responsible manner, and are linked to the individual's contributions to the success of the GDC and the successful performance of the GDC in general.

2.13 There have been a number of significant changes to the GDC's governance structure since 2009, which are summarised below:

Changes to the GDC's Council

- 2.14 Until October 2009, the GDC's Council consisted of 29 Council members – 10 being lay members who were appointed to the Council, and 19 being dental professionals (15 dentists and four dental hygienists and therapists) who were elected to the Council by dental professionals.
- 2.15 In October 2009 the role and membership of the GDC's Council changed. Similar changes were made to each health professions regulator by the government at the same time, in order to ensure the independence of the regulators from the professions they regulate, to ensure they work effectively, and to maintain public and professional confidence in them. The changes included balancing the professional/non-professional (lay) membership of each regulator's council (ie ensuring that lay (non-professional) members make up an equal proportion of the membership of each regulator's council),¹³ as well as making the regulators' councils smaller and more 'board-like' (including changing from 'Presidents' to 'Chairs' of councils)¹⁴ so that they can focus more effectively on strategy and oversight of their executives.
- 2.16 At the same time in 2009, members of the new Council became ineligible to be members of the GDC's Investigating Committee (other than by virtue of short-term transitional arrangements). This decision to move to an Investigating

¹³ Following proposals in the White Paper, *Trust, Assurance and Safety – The Regulation of Health Professionals in the 21st Century*, 2007. Cm 7013.

¹⁴ In October 2009, the outgoing President of the GDC was appointed by the Privy Council as its interim Chair, pending the election of a permanent Chair by the GDC Council.

Committee that is independent of the Council (appointed by the GDC's Appointments Committee, on the basis of demonstrated competencies) was also initiated as the result of the view expressed in the White Paper *Trust, Assurance and Safety – the regulation of health professionals in the 21st Century* that the investigation, prosecution and adjudication functions of the UK health professions regulators should be separated, and members of the regulators' councils should act as strategic board members and not be engaged in operational matters where impartiality and independence are paramount.¹⁵

- 2.17 As a result of the changes in 2009, the GDC's current Council now contains an equal balance of lay (non-professional) and professional members, all of whom were appointed by the Appointments Commission, and as a result of this move to an appointment process, those Council members who are dental professionals can no longer be seen as representing any particular constituency, as they are no longer elected. Similarly the GDC's Investigating Committee no longer includes any current Council members.
- 2.18 The current GDC Council has 24 members (so it is considerably larger than the 8-12 member board-like council structure we recommended in 2011).¹⁶ We also note that, in line with its current statutory framework, the GDC Council's Chair is elected from amongst the 24 Council members, rather than being appointed against specific competencies, in line with best practice. However, further changes are planned to address both these issues – in 2012 the Department of Health announced further changes (which are due to take place in October 2013) to reduce the Council size to 12 members and to appoint rather than elect the Chair.
- 2.19 The focus of the GDC's current Council is on strategic oversight and monitoring of the executive's performance, as set out above in paragraph 2.2. In contrast, the GDC's former CE, Duncan Rudkin, told us that the Council that was in office prior to October 2009 had been more involved in operational delivery, as part of a more closely integrated structure in which the Council, committees and staff were all involved in the day-to-day work (and indeed several Council members were also Investigating Committee members at that time). One consequence of that approach was that Council members at that time were more familiar with the day-to-day work of the organisation, and therefore there was not the demand for regular reporting of performance data that would be expected from a more modern, 'board-like' council that operates at a purely strategic level.

Changes to the GDC's standing committees

- 2.20 Prior to September 2011, the GDC's standing committees consisted of:
- The Fitness to Practise Policy Committee – the role of this committee was to develop policy on fitness to practise issues, distinct from the operational responsibilities of the [Investigating Committee](#) and the other

¹⁵ Department of Health, 2007. *Trust, Assurance and Safety – the Regulation of Health Professionals in the 21st Century*. London: DH. Page 66 paragraph 4.34

¹⁶ CHRE, 2011. *Board Size and Effectiveness: advice to Department of Health regarding health professional regulators*. London: CHRE. Available from: <http://www.professionalstandards.org.uk/docs/psa-library/september-2011---board-size-and-effectiveness.pdf?sfvrsn=0>

statutory committees responsible for determining allegations about registrants' fitness to practise

- The Standards Committee – this committee was responsible for advising the Council on the framework of standards which the Council should set for dental professionals. The committee would draft and review the professional and ethical guidance which the Council published. The committee was also responsible for monitoring the impact which the Council's guidance had on the Council's work, dental professionals, the public and educational providers
- The Education Committee (until December 2011) – this committee was responsible for the maintenance of the quality of the registers and specialist lists by ensuring that those who join the GDC registers are fit to practise at the point of registration and remain so throughout their time as registrants. The way it did this was by agreeing the defined outcomes of the education process and specialist training and being responsible for the quality assurance of new and existing education programmes and qualifications which lead to first registration
- The Registration Committee – this committee was responsible for advising the Council on the proposals for changes to the framework for the registration of dental professionals. The committee developed, reviewed and ensured the implementation of policies and procedures to facilitate the efficient and effective registration, erasure, and restoration of dental professionals and policies and procedures for temporary registration
- The Finance and Human Resources Committee – which was responsible for monitoring and reporting on matters that will affect the financial viability of the Council. The committee ensured effective financial stewardship of the Council's resources, developed the annual budget for the Council's approval and monitored performance against each budget. The committee was also responsible for ensuring good employment practices and compliance by the Council with current employment law
- The Audit Committee (which is still in existence, and the purpose of which is set out above at paragraph 2.12).

2.21 A review of the GDC's standing committee structure was initiated (on the instruction of the Council) in October 2009 by a committee structure working group which was established with the remit of identifying options for a decision-making framework to assist the Council in carrying out its statutory functions. The working group was specifically asked to propose the roles of committees in a new structure, specifying the terms of reference, delegated authority and reporting mechanisms including the method of appointment of members and how, overall, the performance of the new structure should be evaluated. It presented outline recommendations to the Council on two occasions: in November 2010 and a more detailed presentation in February 2011 prior to the Council's decisions about the new committee structure, taken at its meeting in September 2011.

2.22 In its final report to the Council in September 2011 the working group stated that it had been mindful of the need to ensure that the Council sets the strategic direction for the organisation and has the systems to enable it to monitor performance and to hold the executive to account, including creating a clear and transparent scheme of delegation for the Council and the CE and improving the level of reporting of the committees and sub-groups into the Council. It also stated that it had taken account of a number of key, perceived failings of the current committee structure such as:

- Lack of clarity about delegated authority of committees, the executive and the Council
- Lack of clarity about the remit of committees – both internally and externally
- Lack of visibility of the work of the committees and sub-groups
- Committees being too focused on operational detail, rather than strategic oversight
- Committee sizes being too small
- Evidence of duplication and silo-working, with some committees feeling disempowered by referral of their decisions to other committees for approval before they are submitted to the Council
- Elections not being the most effective method to appoint members to committees which require specific expertise and knowledge
- Sub-committees and working groups without set defined periods for their work
- Lack of transparency about the costs associated with committee/sub-committee work.

2.23 Set out in the table below is a timeline showing changes in key GDC personnel during the relevant period.

Timeline of GDC appointments during the relevant period

2009	GDC's former Council finishes (1 Apr '03- Sep '09)
	GDC's current Council starts (1 Oct '09 - present)
	Alison White starts (30 Nov '09 - 31 May '10) <i>First interim Chief Executive and Registrar</i>
	Duncan Rudkin finishes (Jun '06 - 15 Dec '09) <i>Former Chief Executive - was promoted from a position within the GDC</i>
	Hew Mathewson finishes (10 Apr '03 - 31 Dec '09) <i>President and Interim Chair</i>
2010	Alison Lockyer becomes Chair of GDC (1 Jan '10 - 4 May '11) <i>Former Chair</i>
	Former Director of Operations finishes (15 Jun '07 - 19 Feb '10) <i>Included responsibility for the fitness to practise function</i>
	Former Director of Governance finishes (24 Nov '08 - 19 Feb '10)
	Alison White finishes (May '10)
	Ian Todd starts (10 May '10) <i>Second Interim Chief Executive and Registrar</i>
	Former Director of External Relations finishes (1 Aug '08 - 8 Sep '10) <i>Promoted from a position within the GDC</i>
	Former Director of Corporate Services finishes (26 Jul '04 - 22 Sep '10)
	Evlynne Gilvarry starts (20 Oct '10 - present) <i>Current Chief Executive and Registrar</i>
	Ian Todd finishes (31 Oct '10)
Former Director of Policy and Communications starts (1 Dec '10 - 1 May '12)	
2011	Frances Low starts (Jan '11 - present) <i>Director of Governance</i>
	Neil Marshall starts (Feb '11 - present) <i>Director of Regulation - with responsibility for the fitness to practise function</i>
	Graham Masters starts (Mar '11 - present) <i>Director of Finance and Corporate Services</i>
2012	Tim Whitaker starts (1 May '12 - present) <i>Director of Policy and Communications</i>

Election and induction of the Chair in 2009

- 2.24 In 2009 the Appointments Commission assessed the candidates for membership of the current Council against the competencies required for Council members. The Commission was not asked to assess any of the candidates against additional competencies/other criteria that would be relevant to the role of Chair of Council. Nor did the Appointments Commission make any recommendation as to the suitability of any of the candidates for the role of Chair.
- 2.25 We have been informed by the current Director of Governance, Frances Low, that the Director of Governance, the CE, and the President (and interim Chair) who were in place at the time, contributed to the development of a 'role brief' for the position of Chair. We note from the publicly available Council papers that the role brief was agreed by the Council in October 2009. The GDC also used external consultants to review the remuneration (and benefits), time commitment and tax implications associated with the role of Chair, having undertaken a benchmarking exercise across the other health professions regulators and other comparable organisations.
- 2.26 In November 2009 the then CE, Duncan Rudkin, presented a paper to the Council explaining the process for the election of the new Chair. The paper set out that the starting point for an appointment process would usually be a job description and person specification. However, as the process for selecting a Chair was an election rather than an appointment process, the Council had agreed a role brief rather than a job description and person specification. The paper stated that a person specification had not been prepared and would probably be inappropriate, noting the differences between an appointments and an election process, including suggesting that the hustings process was the critical source of information for the electorate about the candidates, and the nearest equivalent to a job interview.
- 2.27 Alison Lockyer was elected as Chair of the GDC by the new Council in December 2009 and took up office in January 2010. As noted above, the brief for the Chair's role was agreed by the Council in October 2009 (a copy of the draft role brief is at Annex 3) and those standing for election self-certified against that role brief. The role brief sets out that the Chair is to play a key role in the leadership of the Council. It states that amongst other responsibilities, the Chair is responsible for leading the Council in holding the executive to account, for providing strong non-executive leadership of the Council, and for leading the Council in setting the strategic direction for the GDC, as well as for working with the CE to ensure that the complementary roles of the Council and the executive deliver the GDC's objectives. The Chair is also to be responsible for accounting for the GDC's performance when called upon to do so by House of Commons Committees or public inquiries. The former President and interim Chair, Hew Mathewson, told us that in his view Alison Lockyer fulfilled the requirements of the role brief.
- 2.28 Duncan Rudkin told us that the role of inducting the new Chair fell to Hew Mathewson. Alison Lockyer told us that she did not receive any Chair-specific induction over and above the general induction that was provided for all Council members, although she said that she attended a half-day meeting with Hew Mathewson about the practical and administrative aspects of working at the GDC. Alison Lockyer also told us that at the time she already had significant

experience of the GDC's work, having been a member of the previous Council and various committees. She told us that when she was elected as Chair she already understood how the GDC worked and what the role of Chair entailed. Hew Mathewson told us that he had planned a more extensive induction, but in the event that could not be delivered due to other commitments. Both Hew Mathewson and Alison Lockyer told us that after Hew Mathewson left the GDC he remained available to provide support to Alison Lockyer by telephone (or email).

Induction of the Council in 2009

- 2.29 The current GDC Council underwent a group induction shortly after appointment in October 2009, in order to help Council members carry out their functions. Hew Mathewson told us that this induction was led by the executive team, under the oversight of Duncan Rudkin, and that it had included a session in which he, Hew Mathewson, had spoken, followed by a question and answer session on the role and work of the Chair. He told us that in his view the induction had been of good quality and thorough overall, although he was aware of some Council members' concerns about his lack of involvement in it. Duncan Rudkin told us that he had been heavily involved in planning the three-day induction, alongside the then Director of Governance. It was Duncan Rudkin's view that it would be inappropriate for members of the old Council to play a special part in the induction of the new Council, although Hew Mathewson was involved in some discussions about the induction. Duncan Rudkin told us that the induction programme included a presentation about the roles and responsibilities of Council members (led by an experienced regulatory body chair) and that the current Council had discussed the role of the CE in leading the organisation (and concluded that leadership was not a role the Council expected from the CE).

Frequent changes to the GCD's executive team

- 2.30 Duncan Rudkin left the GDC in December 2009 to take up the role of Registrar at the General Pharmaceutical Council.¹⁷ For the following 10 months the GDC was led by interim CEs who were appointed for fixed periods – for the first five months of 2010 the interim CE was Alison White, followed by Ian Todd from May to October 2010. During this period the GDC lost a number of its senior managers, which meant that it did not have a permanent and complete executive management team until early 2011 (as detailed in the table above). At the same time the GDC also lost a considerable proportion of its permanent staff (staff turnover in 2010 was 33 per cent, following turnover in 2009 of 21 per cent). It is also relevant to note that this period of instability in staffing followed directly on from a period of considerable change within the fitness to practise staff team, following restructuring that took place between April and December 2009. It would be surprising if the instability within the executive and staff teams during late 2009 and the first 10 months of 2010 had not had an effect on the GDC's performance during 2010.

¹⁷ This appointment was made by the Appointments Commission.

- 2.31 Some of the Council members we spoke to during our investigation told us that the Council, as the only constant during that period, had to become involved in some operational matters that would usually have fallen outside of its strategic role. It seems to us that this blurring of the responsibility for operational matters during the first 10 months of 2010 (which was due to a combination of simultaneous changes) may have led to some individuals becoming confused as to the appropriate boundaries of the roles to be played by the Council, the Chair of the Council and the CE respectively, particularly as this took place at a time when the new Council was still 'finding its feet'.

Lack of clarity surrounding the role of Alison White – first interim CE

- 2.32 Alison White took up post as the first interim CE on 30 November 2009, having been appointed by Hew Mathewson (following an interview with him and others) for a fixed term, due to expire on 30 June 2010. She told us that she was not given any job description either at her interview or on taking up the post, although she said that she was told that she was being brought in to effect change and to deal with the problems in the fitness to practise department during the six-month period it would take the GDC to appoint a new permanent CE. She also told us that Hew Mathewson had told her about a problem with the incumbent Director of Governance.
- 2.33 We note that as at the date of Alison White's appointment, there was some information in the public domain indicating that the GDC needed to make improvements to its fitness to practise function. The Fitness to Practise Policy Committee's annual report, presented to the Council meeting on 10 September 2009, referred to concerns about the efficiency of the fitness to practise process. The data appended to the report (appendix B) also indicated that, whilst there had been a significant increase in the number of complaints/ allegations received compared to the previous year, the Investigating Committee had considered fewer cases. Similarly, the data showed that the number of cases considered by the Professional Conduct Committee that year amounted to less than half the number that had been referred for a hearing the previous year. Both these factors indicated that a backlog of cases was building up. Duncan Rudkin's annual report to the Council in June 2009 also highlighted issues with management information in relation to fitness to practise, the ongoing increase in the number of allegations received, the fact that the age profile of cases was worsening rather than improving, as well as highlighting the restructuring within the fitness to practise department that was at that time a matter of consultation.
- 2.34 Hew Mathewson's account of what he said to Alison White about her role is not consistent with Alison White's account. Hew Mathewson told us that Alison White was given a job description, and that she was not recruited to effect change but instead to maintain a 'steady state at the GDC'. He said that she was appointed on the strict basis that she would 'keep the show on the road very much as it was' and it was made clear she was not to make significant changes to processes, systems or personnel. He also told us that he briefed both Alison Lockyer and Alison White about a number of outstanding problems the GDC was facing in its fitness to practise function, and the actions that were being taken to address them. For example, Hew Mathewson told us that there had been a sharp rise in the number of complaints received, which increased the number of fitness

- to practise cases, and one measure that had been put in place to deal with this was arranging fixed fee agreements with law firms to outsource some of the GDC's workload. Alison White agrees that a meeting took place on her first day in post, but refutes Hew Mathewson's account of the subject-matter of that meeting.
- 2.35 Duncan Rudkin told us that he was sure that Alison White would have been provided with a job description, although he had no recollection of seeing such a document, and had not had any involvement in the recruitment process. He told us that he thought that the job description for the permanent CE role would have been used as a reference. Duncan Rudkin said that he was not aware that any particular brief had been given to Alison White (whether about problems in the performance of the fitness to practise function or otherwise), nor that any limitations had been placed upon her. His understanding was that Alison White was expected to carry out the same role as he had as CE, but on an interim basis. He told us that his understanding was that an external interim CE was being appointed simply because it was the Council's view that none of the then-current executive management team were in a position to take on the role of CE on an interim basis, pending a permanent appointment.
- 2.36 The GDC confirmed that Alison White's human resources file did not contain a brief for her role or a job description. The GDC also contacted the recruitment consultants who managed the recruitment process for Alison White and they were only able to provide a job description that had been used to recruit Alison White.
- 2.37 Alison White told us that no induction was organised for her, and that she had only been able to spend around an hour with Duncan Rudkin on her first day in the job. Duncan Rudkin told us that he and the relevant director would have briefed Alison White about the development of performance monitoring mechanisms throughout the GDC, including in relation to fitness to practise. He also told us that he believed he had had a number of brief handover meetings with Alison White, and that he believed she would have attended induction sessions with Hew Mathewson as well as with senior staff. Duncan Rudkin's account is supported by what Hew Mathewson told us. Hew Mathewson said that he is certain that Alison White had a series of meetings with Duncan Rudkin, with himself, and with senior staff. Alison White told us that she had one meeting with Hew Mathewson and Alison Lockyer on her first day in post.
- 2.38 Alison White told us that her contract of employment contained no limitations on her remit as interim CE and that she was not told of any restrictions. She also told us that she had obtained written advice from the GDC's in-house legal team confirming that was the position. We have seen copies of those documents, and they corroborate Alison White's account. We note that the summary at the end of the written advice from the in-house legal team states that 'the CE is given responsibility for the Council's budget and the management of staff and directors, subject to an overriding duty to comply with Council's instructions, strategy, policies and procedures. This wide remit is limited by the requirement for the CE to be managed by and to report regularly to Council. It is arguable that there may be a requirement to consult Council (or the Finance and Human Resources Committee) before a major restructuring takes place. It is of course a matter for

the CE's discretion as to when such a point is reached'. We also note that Duncan Rudkin told us that he was not aware that any limitations were placed on Alison White's remit, and that his understanding was that she was to operate as an interim CE, based on the job description for the permanent post-holder. By contrast, as explained above, Hew Mathewson, told us that Alison White had been appointed on the strict basis that she was to 'keep the show on the road' and that she had been instructed during her induction not to make changes to processes, systems or personnel and that Alison Lockyer had also been told during her induction that Alison White was just to 'keep things as they were'. Hew Mathewson told us that he thought that this had been recorded in writing in a letter of appointment that he had co-signed. When we asked the GDC for a copy of any letter of appointment given to Alison White, they were not able to locate any such letter. The only documents that the GDC was able to locate in relation to Alison White's employment were the contract of employment and a confidentiality agreement.

- 2.39 Alison White told us that whilst she interacted frequently with Alison Lockyer, no regular one-to-one meetings were set up, nor was she set any objectives. In her view, Alison Lockyer was not able to hold her to account, due to her inexperience in the role of Chair. She said that she felt that it fell to her to coach Alison Lockyer about how to be a Chair. She told us that in her view Alison Lockyer's 'inexperience' meant that she was not competent to hold the role of Chair, and that Chairs should be appointed based on competencies. In her view, it was not Alison Lockyer's role to manage her, but rather to check that she was doing what had been agreed. Alison White and Alison Lockyer's accounts are not entirely consistent. Whilst both agree that the two of them interacted frequently (Alison Lockyer says that meetings took place virtually every day when she was in the GDC office), Alison Lockyer disputes Alison White's statement that she was not held to account by Alison Lockyer. Alison Lockyer states that she did hold Alison White to account (and refers to examples concerning various staffing and resourcing issues). Alison Lockyer also disputes Alison White's assertion that she was not set any objectives. Alison Lockyer states that she set objectives for Alison White which were related to the objectives Alison Lockyer had set herself as Chair. Alison Lockyer described these objectives as 'including revalidation, speeding up the Fitness to Practise process, and improved communication with registrants'. Alison White has told us that she refutes the contention that any objectives were set and notes that no documentary evidence has been produced by Alison Lockyer.
- 2.40 Alison White told us that her first action was to take soundings from the staff, and in the course of doing so, she established that there was a crisis in the fitness to practise department, as a result of a significant increase in fitness to practise referrals combined with a high turnover of experienced staff during 2009, following the restructure earlier in the year. Alison White also said that she found that there had been a significant increase in the workload of the registration and customer services departments, and that appropriate plans had not been put in place to address these increases. Hew Mathewson disputes Alison White's account. He told us that at the time of his departure, the GDC was 'in very good order'. He said that action had been taken to address the issues in the fitness to practise department prior to Alison White commencing her role as interim CE,

and that she had been briefed on the challenges within fitness to practise and the actions that had already been taken both at her interview and during her induction.

- 2.41 Alison White said that when she arrived at the GDC over 20 per cent of its staff were employed on temporary contracts, and that this was the solution that had been devised to deal with the increase in workload. Neither Duncan Rudkin nor Hew Mathewson disputed that there may have been a large number of staff employed on temporary contracts at this time. Hew Mathewson told us that this was in part due to additional staff being recruited to address peaks in workflow and some posts being filled temporarily to allow the permanent CE, once they were in place, to make organisational changes. Duncan Rudkin said that while he had no specific recollection of there being a large number of staff employed on temporary contracts at the time, it would not necessarily surprise him.
- 2.42 Alison White also told us that in addition to the high rate of staff turnover (21 per cent in 2009) there were other indicators of poor staff morale, including high rates of sickness absence and grievances. We note that Hew Mathewson did not appear to agree with Alison White's assessment of the significance of these factors. He told us that the GDC's Finance and Human Resources Committee had reviewed the rates of staff turnover, use of temporary staff and sickness absence in 2008/09, and had decided that these were not significantly different to comparable organisations. The committee meeting minutes that we have seen indicate that in 2009, the committee was concerned about its staff sickness absence rate and was taking steps to address this, such as ill-health referrals to the occupational health provider where a pattern of frequent short-term episodes of sickness absence was identified. The minutes also indicate that staff turnover and use of temporary staff had begun to decline in comparison to figures in 2008.
- 2.43 Alison White produced a report with proposals for change based on her analysis of the challenges facing the organisation, which she initially presented to Alison Lockyer, and then to Alan MacDonald (the Chair of the Audit Committee) and the Chair of the Finance and Human Resources Committee. The report was subsequently presented to Council. Alison White told us that, in her view, she acted in accordance with the advice she had received from the in-house legal team referred to in paragraph 2.38 above, as well as in accordance with the views of Alison Lockyer. Alan MacDonald told us that whilst he was informed of Alison White's proposals, he did not have the authority to approve them on behalf of the Council.
- 2.44 We note that the Head of Prosecutions confirmed that at the time when he joined the GDC (September 2009) there was only one experienced senior member of staff remaining in the fitness to practise department (and that individual left the GDC in November 2009). It also appeared to them at that time that the two managers of the casework staff had not had the benefit of any legal guidance, as a result of which various practices had developed that were not in accordance with the relevant rules and principles.
- 2.45 Alison White told us that in addition, there was no reliable data about the fitness to practise caseload at the time she joined the GDC, and in order to find out about the situation with regard to the fitness to practise caseload, she had to instigate a manual check of all the case files. We note that the issue of

inadequate management information about the fitness to practise function is a matter that was raised in the annual report presented to the Council in June 2009 by Duncan Rudkin. That report highlighted the need to improve the quality, accessibility and analysis of the GDC's operational data, both in order to identify areas for improvement, and to enable the Council and committees to hold the executive effectively to account. It also referred to management challenges within the fitness to practise function, including the increase in the fitness to practise caseload, the need to continue to improve management information, the upward trend in the age profile of the caseload, the ongoing work by the Fitness to Practise Policy Committee in relation to key performance indicators, the proposed restructure within the fitness to practise department and its anticipated impact on the GDC's control of its external legal suppliers' costs and delivery. We note that Hew Mathewson's account of the extent of the data available to the Council in 2009 about the GDC's performance within its fitness to practise concurs with the comments made in Duncan Rudkin's annual report presented to the Council in June 2009.

- 2.46 Alison White told us that the budget for financial year 2010 had been approved by the Finance and Human Resources Committee (and the Council) on the basis of little background information and no associated business plan. Individual committees were being serviced by individual departments within the GDC, without any apparent central oversight, with the result that they were developing workplans that could not be resourced. Alison White's understanding was that the budget for 2010 took no account of the current and projected increases in workload – which would have been dealt with by means of the ongoing employment of a large number of temporary staff and thereby led to an overspend of around £500,000 during 2010. We note that Alison White's comments about the deficiencies of the budget that had been set for 2010 were strongly disputed by Hew Mathewson.
- 2.47 Alison White told us that she discussed her concerns about the situation shortly before Christmas 2009 at a meeting with Alison Lockyer. She also briefed Alan MacDonald. We note that Hew Mathewson told us that Alison White had never expressed any of her concerns to him. Alison White told us that as a result of the discussion with Alison Lockyer and briefing of Alan MacDonald it was agreed that she would present a written report to Alison Lockyer, Alan MacDonald and the Chair of the Finance and Human Resources Committee at a meeting on 19 January 2010. Alison White told us that at that meeting the Chair of the Finance and Human Resources Committee rejected her recommendations for an increase to the fitness to practise budget for 2010, and said that detailed business cases would be required. Alison White told us that the difficulty with that approach was that the GDC simply did not have the information systems in place that would allow the type of management data that was required to produce such a business case. Following that meeting, Alison White presented her findings to the various GDC committees (including presenting it to the Chair of the Fitness to Practise Policy Committee) before presenting her report to the Council at its meeting on 10 February 2010.
- 2.48 Alison White told us that she had consulted Alison Lockyer and Alan MacDonald about her proposals, which she regarded as good practice even though according to the legal advice she had received (referred to in paragraph 2.38)

their approval was not required. We note that Alan MacDonald has informed us that he had no authority to approve Alison White's actions on behalf of the Council. He told us that he was informed about Alison White's proposals and said that if he had had any concerns about them, he would have raised them either with Alison Lockyer or with the Council, as appropriate.

- 2.49 Alison White told us that between the 19 January 2010 and the 10 February 2010 Council meetings she had tried to build consensus amongst the Council by explaining her proposals for the future to individual Council members, to committees, to the Council, to staff (both individually and in groups) and also to former Council members (some of whom she felt were still influential). Nevertheless her report received a hostile reception at the February 2010 Council meeting. Alison White believes this was due to two factors: a defensive reaction by some returning members of the former Council, who felt they were being implicitly criticised by the report's highlighting of the deficiencies of the budgeting process; and an attempt at undermining Alison Lockyer as Chair. She also suggested that her findings would have come as a shock to many Council members, who would not have been aware previously of any problem. Alison White told us that the February 2010 Council meeting was one of the worst experiences of her career, that she considered that her personal and professional integrity were impugned by some Council members, and that Alison Lockyer was too inexperienced to chair the meeting effectively. In contrast, Alison Lockyer told us that she was able to chair the meeting effectively, and that she managed to restore order to the meeting amidst extremely difficult circumstances following an 'uproar' that occurred when Alison White stated that she did not think she would be given a fair hearing if she went to the Finance and Human Resources Committee. Alison White told us that following that meeting she undertook a lot of formal and informal communications with past and present Council members about her proposals, as well as presenting them to the Finance and Human Resources Committee, and speaking to Alison Lockyer and to Alan MacDonald on a weekly basis to obtain their approval of her actions. Ultimately she said that her recommendations were accepted at the next Council meeting in March 2010 (all of the members of the committee voted against the proposals but the remainder of the Council voted in favour). Alison White then briefed the staff about her plans.
- 2.50 In our performance review of the GDC for 2009/10¹⁸ (published in July 2010) we noted that 2009/10 had been a challenging year for the GDC, involving the restructuring of its fitness to practise and registration departments, as well as the introduction of a new Council and an interim CE, and a 40 per cent increase in its fitness to practise caseload. We highlighted the weaknesses in the GDC's performance at that time, including urgent concerns about the quality of the fitness to practise case management system and the time taken to consider cases. However we did not conclude that the GDC had failed either to deliver its statutory functions, or to meet our Standards of Good Regulation in the delivery of any of its regulatory functions.

¹⁸ CHRE, 2010. *Performance Review Report 2009/10: enhancing public protection through improved regulation*. London: CHRE. Available from: <http://www.professionalstandards.org.uk/docs/scrutiny-quality/performance-review-report-2009-10.pdf?sfvrsn=0>

- 2.51 Our July 2010 report made it clear that all decisions taken to achieve improvement should be made through the proper processes and with the support of the GDC's Council. We noted the importance in terms of good governance of the Council having access to well thought-out and costed proposals, and the time to review, consider and agree them. We were assured at that time by Alison White and Alison Lockyer that proper processes were being followed. However, during this investigation we have been told by several Council members that Alison White's approach appeared to be to provide more information to Alison Lockyer as the Chair of the Council, but to present the Council as a group with inadequate information, and/or mere notification of decisions that had already been taken. However, Alison Lockyer told us that she was not given any information by Alison White that was not also available to other Council members. We were told that this differing approach to sharing information resulted in the Chair of the Finance and Human Resources Committee resigning from their position on the committee, and on the Council. We note that this concern does appear to be reflected in the minutes of the Council meeting on 23 March 2010, during which budget proposals for a range of changes resulting from Alison White's restructure were discussed.
- 2.52 It is recorded in the minutes of the Council meeting on 23 March 2010 that the Finance and Human Resources Committee believed that 'the lack of information was of great concern and made decision making difficult', some members of the Council were concerned that fully detailed business plans had not been presented to the Finance and Human Resources Committee to support the budget requests, and two members of the Fitness to Practise Policy Committee were concerned about their decision retrospectively to approve changes to the fitness to practise function as it was taken in isolation of the other funding requests. Alison White also explained to us the background to the discussion of this matter at the March 2010 Council meeting, as set out in paragraphs 2.46-2.49 above, including the deficiencies in the data systems within the GDC at the time, which meant it was not possible to produce the types of management data required to support her proposals, the lack of a robust budget and business planning process prior to her arrival (including the lack of any involvement of the relevant committee in planning the relevant work and budgets), as well as the steps she had taken to communicate the rationale for her proposals and to build a consensus.
- 2.53 Duncan Rudkin told us that the budgeting process that took place in 2009 in relation to the budget for 2010 would have involved senior staff liaising with the finance team, prior to detailed consideration by the Finance and Human Resources Committee, which then made a recommendation to the Council. He confirmed that other committees (eg the Fitness to Practise Policy Committee (the committee that played a part in monitoring progress of the fitness to practise function and for overseeing plans for future changes) would have had no involvement in that process. He confirmed that at that time, the business planning process was conducted separately to the budgeting process. We note that Hew Mathewson agreed with Duncan Rudkin's account of the budgeting process.
- 2.54 There appears to have been a lack of a shared understanding about the role and remit of Alison White, which contributed to at least some of the Council members to whom we spoke having concerns about her approach to that role, and

ultimately to a loss of confidence by some Council members in the leadership of the GDC during the first half of 2010. The Council members told us that they believed that Alison White's remit was that of someone who was effectively in a 'caretaker' position. That description accords with the account given to us by Hew Mathewson, but not with the accounts given to us by Alison White or Duncan Rudkin. Alison White told us that there were no limitations placed on her role, other than those imposed by the budget and her legal powers as CE as referred to above in paragraph 2.38. Her account is supported by Duncan Rudkin's recollection, and by the only available documentary evidence relevant to the extent of Alison White's remit as interim CE – her contract of employment, and written advice that Alison White received from the GDC's in-house legal team.

- 2.55 Alison White left the GDC in May 2010 following the end of her contract and the appointment of another interim CE.

Changes to the GDC's management following Alison White's departure

- 2.56 In May 2010, a second interim CE (Ian Todd) was appointed for a period of five months until the permanent CE, Evlynne Gilvarry, could take up her substantive appointment on 20 October 2010. Ian Todd has told us that his role was to manage the organisation and deal with day-to-day Registrar's decisions. Ian Todd told us that it had been agreed that he would not take any long-term strategic decisions which would have an impact beyond his tenure as interim CE without consulting Evlynne Gilvarry.
- 2.57 At the time that Ian Todd became interim CE there was only one substantive director left in post (who was working out their notice) and one interim director. Ian Todd began the process of recruiting a new executive management team, which was completed once Evlynne Gilvarry took up her post.
- 2.58 We understand that Evlynne Gilvarry subsequently arranged to spend one day a week at the GDC starting from 20 August 2010, until she took up her post as permanent CE on 20 October 2010.
- 2.59 In October 2010 we undertook an audit of the initial stages of the GDC's fitness to practise process, as a result of which we identified weaknesses evident from a small number of the cases that we audited in relation to the GDC's case management, investigation, decision-making and communication processes. We informed the GDC about the outcome of our audit in December 2010 and published our audit report in March 2011.¹⁹ In our report we noted the improvement plans that the GDC already had in place and made recommendations about other areas for improvement.
- 2.60 Once in post full-time from October 2010, Evlynne Gilvarry completed the recruitment of a new executive management team (which has been in place since March 2011). We note that the new Director of Regulation, Neil Marshall, started work at the GDC in mid-February 2011, having been recruited in December 2010. Evlynne Gilvarry also initiated an ongoing programme of improvement and modernisation across each of the GDC's regulatory functions

¹⁹ CHRE, 2011. *Fitness to Practise Audit Report 2010/11: audit of the health professional regulatory bodies initial decisions*. London: CHRE. Available from: <http://www.professionalstandards.org.uk/docs/audit-reports/ftp-audit-report-2010-11.pdf?sfvrsn=0>

(standard setting, education and training, registration and fitness to practise) shortly after her arrival. She also initiated improvements in the quality and quantity of the information that is routinely provided to the GDC's Council, to improve the tools available to enable the Council to monitor the organisation's activities and to hold the executive management team to account. For example, quarterly performance reports as well as a Chief Executive's report have been provided at each Council meeting from February 2011 onwards.

Resignation of Alison Lockyer

- 2.61 On 5 May 2011 Alison Lockyer resigned from her role as Chair of the GDC. On the same day she raised concerns with the Secretary of State for Health about the governance of the GDC. Alison Lockyer's resignation took place following various events:
- The conclusion of an investigation by the Appointments Committee into one matter raised about Alison Lockyer, relating to her involvement in a case considered by the Investigating Committee
 - The initiation of an investigation into a second matter about Alison Lockyer and her behaviour towards a GDC staff member in relation to the finalisation of a paper for the Council
 - The lodging of a vote of no confidence (signed by the required number of Council members) in Alison Lockyer as the Chair of the Council
 - The calling of an extraordinary general meeting (scheduled for 6 May 2011) at which the vote of no confidence was due to be considered.
- 2.62 These events are central to the concerns that Alison Lockyer has raised about the fairness and proportionality of the processes adopted by the GDC in relation to the two concerns that were raised about her, and we therefore consider them in detail in section 4 of this report.

Key events subsequent to Alison Lockyer's resignation as Chair

- 2.63 Whilst we acknowledged the work that was underway to improve the GDC's performance particularly in respect of its fitness to practise function in our performance review of the GDC for 2010/11 (published in June 2011),²⁰ and in our 2011 audit of the initial stages of the GDC's fitness to practise process (published in September 2011, relating to cases that were closed between January and June 2011),²¹ our reports highlighted the continued concerns we had about the weaknesses we had identified in the GDC's performance. In particular we noted that we had concerns that the performance of the GDC's fitness to practise function had implications for the organisation's ability to maintain the confidence of the professions and the public in its role as an effective regulator. In our performance review of the GDC for 2011/12 (published

²⁰ CHRE, 2011. *Performance Review Report 2010/11: changing regulation in changing times*. London: CHRE. Available from: <http://www.professionalstandards.org.uk/docs/scrutiny-quality/chre-performance-review-report-2010-11.pdf?sfvrsn=0>

²¹ CHRE, 2011. *Audit of the GDC's Initial Stages Fitness to Practise Process*. London: CHRE. Available from: <http://www.professionalstandards.org.uk/docs/audit-reports/2011-gdc-audit-report.pdf?sfvrsn=0>

in June 2012)²² we noted the programme of modernisation that the GDC had been engaged in across all its regulatory functions and particularly the improvements underway in its fitness to practise function. We noted that the only two standards of good regulation that the GDC had failed to meet related to fitness to practise, and commented on the ongoing work to improve performance.

- 2.64 Our investigation has revealed that, at the time of Alison Lockyer's tenure as Chair (from January 2010 to May 2011), there were a number of challenges at the GDC. These challenges included:
- The transition from a partly-elected Council to a new, fully appointed Council
 - The transition to new working relationships between the Council, its Chair and the standing committees
 - Frequent changes to the GDC's management and personnel throughout the period (including the changes that had taken place earlier in 2009, as well as the changes that took place subsequently)
 - A lack of clarity surrounding the role of Alison White and the apparent tensions between her style of management and some Council members' expectations.
- 2.65 We consider that it is important to note this background of a challenging period of uncertainty, expectations and constant flux for both the Council, the executive and staff during this period. In addition, it is apparent that as at mid-2009 there was an emerging issue around the capacity of the GDC's fitness to practise department to progress fitness to practise cases with sufficient speed, given an ever-increasing caseload, and that a lack of adequate management data was making it difficult to monitor performance and address any issues effectively.
- 2.66 Following Alison Lockyer's resignation, a Deputy Chair (Derek Prentice) was elected on 20 May 2011 to serve until such time as a new Chair was elected. A new Chair of the GDC, Kevin O'Brien, was elected in September 2011.

²² CHRE, 2012. *Performance Review Report 2011/12* London: CHRE. Available from: <http://www.professionalstandards.org.uk/docs/scrutiny-quality/chre-performance-review-report-2011-12.pdf?sfvrsn=0>

3. Concerns about the GDC's governance

- 3.1 The former Chair of the GDC, Alison Lockyer, made a number of serious allegations about the quality of the GDC's governance arrangements within the letter that she sent to the Secretary of State for Health on 5 May 2011, in the letter she sent to us on 2 September 2011, and during her meeting with us on 16 September 2011. She outlined her concerns about how the failings she perceived within the GDC's governance arrangements had, in her view, impacted on the Council's ability to hold the current CE, Evlynne Gilvarry, and the executive management team to account, and on the Council's ability to progress matters which were important to public protection.
- 3.2 We set out below each of Alison Lockyer's allegations, relevant evidence that we have obtained during our investigation, our views on whether that evidence supports each allegation and our conclusions in respect of the same. At the end of this section we also outline our overall conclusions about the governance arrangements of the GDC.

The first allegation

- 3.3 Alison Lockyer said in her letter to the Secretary of State that she had '...wider and increasing concerns about the working of the GDC executive generally, and about who is now responsible for formulating and driving forward GDC policy and activity – the Council or the executive... The GDC's current management style can at times be arrogant and high-handed.' and referred to 'the increasing power and influence of the executive'. In her letter to us dated 2 September 2011 Alison Lockyer alleged that Evlynne Gilvarry did not wish to work in partnership with the Council. In her view, Evlynne Gilvarry was determined to exert control over her staff, the Council and Investigating Committee members and chairs. She alleged that this desire for control manifested itself in three particular ways, as addressed in the sections below.

Allegation 1(a)

- 3.4 In her letter to the Secretary of State dated 5 May 2011 Alison Lockyer stated 'There are perhaps signs of a pattern emerging where a challenge to executive decisions is countered by complaints directed at the challenging person'. On 2 September 2011 she said in a letter to CHRE's Chief Executive that 'For those who stood up against the executive ... there was the constant threat of complaints'. In her response to the draft investigation report on 27 March 2012, Alison Lockyer said that 'there was a pattern...emerging whereby anyone who stood up to and/or disagreed with Evlynne Gilvarry became subject to complaints...myself and the two Investigating Committee chairs...That was enough for others to decide that it would be better not to challenge the executive'. According to Alison Lockyer, this issue and/or the GDC's approach to handling complaints was the cause of two Investigating Committee Chairs resigning during 2011. She also alleged that this issue led to one Investigating Committee member concluding that they had not been appointed as an Investigating Committee Chair as a result of their having previously raised concerns about the Investigating Committee processes and support.

- 3.5 Of the two matters raised about Alison Lockyer (which we deal with in more detail in section 4 of the report) the first arose only two weeks after Evlynne Gilvarry came into post as CE, although we recognise that Evlynne Gilvarry had some involvement with the GDC prior to coming into post (ie while Ian Todd was in post as interim CE) and in particular that she was paid to work one day a week at the GDC from 20 August 2010 (she was not paid by the GDC in relation to any involvement prior to that date). Evlynne Gilvarry sent her complaint about the first matter raised about Alison Lockyer to the investigator on 22 November 2010, 19 working days after she had come into post. We have not been given any information by Alison Lockyer to suggest that at that time she had challenged Evlynne Gilvarry/the executive management team. The investigation into the second matter raised about Alison Lockyer was discontinued (by decision of the Council) once Alison Lockyer resigned. We have therefore been unable to assess the validity of that matter as it was never investigated.

Evidence

The evidence of the GDC's Council members

- 3.6 We spoke to 15 of the GDC's Council members during the course of our investigation and specifically asked them whether or not they had any direct or indirect experience of Council or committee members who disagreed with the executive being threatened with complaints (or other adverse consequences). We also asked each of them whether they felt able to challenge the executive without fear of adverse consequences.
- 3.7 None of the 15 Council members to whom we spoke told us that they had had any direct experience of being threatened with complaints or other adverse consequences as a result of challenging the executive management team. They all said that they felt able to (and some told us that they regularly do) challenge or feedback issues to Evlynne Gilvarry. One Council member (hereinafter referred to as 'Council member Z') told us that they were aware of another Council member having been in a position where it was implied that a complaint might be made about them. They told us that this had occurred during the period from April 2010 to October 2011. However, Council member Z was not willing to disclose any further details about this alleged incident, on the basis that the information had been given to them informally and in confidence. One other Council member ('Council member Y') said that they had no experience of Council members being threatened with complaints or other adverse consequences if they challenged the executive management team, but that they had been 'told off' by Evlynne Gilvarry on one occasion, for what was seen to be criticising a member of staff. Council member Y also said that they were aware of one other Council member who had had a similar experience – but Council member Y did not know enough about that incident to comment about it. Council member Y told us that their experience had not prevented them from challenging the executive management team. When we asked Evlynne Gilvarry about the incident outlined to us by Council member Y, she said that she had spoken to one Council member in private on a colleague-to-colleague basis because the Council member concerned had sent an email which was highly critical of a paper that a staff member had prepared, and had copied that email to various other members of the relevant working

group. She said that she had asked the Council member to address any such criticisms to her in future, so that she could deal with them.

- 3.8 As set out above, Alison Lockyer has alleged that two former GDC Investigating Committee Chairs resigned during 2011 as a result of challenging the executive management team and/or as a result of the GDC's approach to handling complaints. We therefore asked the two former Investigating Committee Chairs who resigned during 2011 about any experience they had which was relevant to our investigation. We deal with this below.

The first former Investigating Committee Chair

- 3.9 The first of the two Investigating Committee Chairs to resign from the GDC during 2011 ('the first former Investigating Committee Chair') said that they did so for personal reasons. When we asked that individual for their view about whether they had experienced being threatened with a complaint by the GDC (and the context in which that had occurred) they said to us that they were 'convinced' that the complaint process that was conducted into their conduct prior to their resignation was a result of their pointing out that the GDC staff had opportunities to prevent the situation that ultimately led to that complaint being made, but did not do so.
- 3.10 The complaint about the first former Investigating Committee Chair related to their handling of an Investigating Committee case which was considered at a committee meeting they chaired in October 2010. The allegation against the registrant in the case was based on a criminal conviction. When the relevant case materials were compiled, one of the documents included was a character reference from Alison Lockyer dated August 2010 and written on GDC headed notepaper. The complaint against the first former Investigating Committee Chair related to their role in connection with the preparation and consideration of the case and into events thereafter, and in particular the approach taken in connection with the Alison Lockyer reference and communications between the first former Investigating Committee Chair and Alison Lockyer, the first former Investigating Committee Chair's separate communications with the registrant in the case, as well as a communication from the first former Investigating Committee Chair to the Chair of the Health Committee.
- 3.11 The first former Investigating Committee Chair said to us that when the issue regarding their conduct was first looked at, a decision was made to take no further action other than for them to make an apology. The first former Investigating Committee Chair said to us that this decision was changed at a later date as a result of their 'repeated observations that the GDC had ample prior opportunity to prevent [their] actions but singularly failed to take any steps to do so and due to the input of the newly appointed CEO [ie Evlynn Gilvarry]'.
- 3.12 The first former Investigating Committee Chair also said in their evidence to us that:
- The 'GDC's failure to take account of my observations that staff and the executive had innumerable opportunities to prevent actions of which it subsequently complained and for which it disciplined me alone amounts to a failure of governance'

- ‘...it seems to me that the GDC requires that I and only I should be blameworthy for events that they clearly had repeated opportunities to prevent and sees any ‘defence’ as a simple lack of “insight”’
 - ‘...it appears to me that if concerns are raised by Members about aspects of its dysfunctionality that the leadership and culture of the GDC inappropriately deals with such concerns by misusing informal and formal disciplinary processes to manipulate the Member into a position where there is no real alternative to resignation’.
- 3.13 We have therefore considered the factual background to the referral of the complaint about the first former Investigating Committee Chair to the Appointments Committee. We set out the evidence relating to this below. We note that the first former Investigating Committee Chair also raised a number of issues concerning the adequacy of the support in place for the Investigating Committee at the time – these are considered in section 5 of the report.
- 3.14 During the course of our investigation, the first former Investigating Committee Chair has suggested that CHRE should look at the specific facts of this particular Investigating Committee case. As stated in paragraph 1.7 above, we do not consider that this is necessary or appropriate for the purposes of our investigation. An analysis of the relevant facts of this case insofar as they relate to the matters raised in connection with Alison Lockyer are considered in section 4 of the report.
- 3.15 The complaint about the first former Investigating Committee Chair was made by Evlynne Gilvarry on 22 November 2010 in the form of a note (attaching various documents) addressed to the Chair of the Appointments Committee and another member of the Appointments Committee.
- 3.16 During our investigation we spoke to both the Appointments Committee Chair and the other Appointments Committee member to whom that note was addressed in order to obtain information about their involvement. The Appointments Committee Chair told us that the process used when a complaint is received by the Appointments Committee is that the Appointments Committee Chair would ask one of the committee members to investigate it. As the complaint about the first former Investigating Committee Chair was closely linked with the first matter raised about Alison Lockyer (which the Appointments Committee Chair was investigating and which is considered in more detail in section 4) it would have been inappropriate for the Appointments Committee Chair to investigate this at the same time, so the Appointments Committee Chair asked another member of the committee (‘the investigator’) to do so. This account is consistent with what the investigator told us – they also confirmed that before agreeing to investigate the complaint about the first former Investigating Committee Chair they had checked with the GDC’s corporate legal team that it was acceptable for them (rather than the Appointments Committee Chair) to undertake this role.
- 3.17 In her note of 22 November 2010, Evlynne Gilvarry set out her summary of the information which had been received relating to the case that had been considered by the Investigating Committee on 6 October 2010 which gave rise to a concern ‘that there had been a breach of the separation of function between

the governance arm of the GDC and its Fitness to Practise processes'. The note set out Evlynn Gilvarry's summary of the facts as she understood them, including:²³

- The bundle of papers submitted by the registrant for consideration by the Investigating Committee included a letter of reference from Alison Lockyer printed on GDC headed note paper, which referred to the registrant's pre-existing personal relationship with Alison Lockyer
- On receipt of the bundle of papers concerning the case about the registrant in advance of the Investigating Committee meeting, the first former Investigating Committee Chair had raised questions as to the factual basis of the registrant's conviction (which formed the basis for their referral to the Investigating Committee) based on the underlying evidence. The first former Investigating Committee Chair therefore requested further information relating to the underlying evidence including information from the police
- In considering the case on 6 October 2010, the Investigating Committee had disregarded Alison Lockyer's reference – it also referred the Health Committee to the possible conflict of evidence...in the bundle.
- Two days after the Investigating Committee meeting, the first former Investigating Committee Chair emailed the rest of the Investigating Committee saying that they had written to Alison Lockyer
- On 19 October 2010 the first former Investigating Committee Chair wrote to a GDC staff member informing them about the letter to Alison Lockyer about the case, and stating that it had been agreed with Alison Lockyer that the first former Investigating Committee Chair would also write to the registrant and to the Chair of the Health Committee (copying Alison Lockyer in to that correspondence) and then Alison Lockyer would speak to the registrant
- On 20 October 2010 the first former Investigating Committee Chair sent an email to the same GDC staff member referred to directly above headed 'for the urgent attention of the Chair of the Health Committee', highlighting a 'possible conflict in the evidence'. The email states 'Having now discussed the issue with Alison Lockyer, I believe that further action is required in order to prevent a possible miscarriage of justice...'. The email also refers to both the first Investigating Committee Chair's own experience and Alison Lockyer's pre-existing personal relationship with the registrant as potentially indicating how such a miscarriage of justice might have occurred, and refers to an agreement with Alison Lockyer that the first former Investigating Committee Chair should write to the registrant and suggest that they involve a defence organisation
- On 21 October 2010 the first former Investigating Committee Chair emailed a member of GDC staff a letter addressed to the registrant advising them to seek advice in order to appeal their conviction – and

²³ We have closely based our summary on the wording of the relevant document although some changes have been made in order to protect the identity of certain individuals referred to therein.

asked the relevant staff member if they would like to 'pass the attached letter' onto their legal colleagues.

3.18 On 22 October 2010 the first former Investigating Committee Chair emailed the other Investigating Committee members recording that they had spoken to Alison Lockyer 'a couple of times and she is most grateful for our letter to her...Hence with Alison's strong support, I have written to [the registrant]...I have copied the HC in on the correspondence...'. The first former Investigating Committee Chair's evidence is that Evlynne Gilvarry's summary is an incomplete and inaccurate picture of all the relevant events particularly because it did not refer to all the relevant correspondence between the first former Investigating Committee Chair and GDC staff or between the GDC staff. We have reviewed all of the correspondence supplied by the first former Investigating Committee Chair and the GDC in connection with this and we would summarise the key correspondence as follows:

1. The first former Investigating Committee Chair sent an email to a GDC staff member on 30 September 2010 requesting the removal from the bundle of the reference from Alison Lockyer.
2. On 1 October 2010 the first former Investigating Committee Chair emailed a GDC staff member asking for additional documents to be obtained including medical notes and information relating to the registrant's conviction. That email referred to a 'duty of care to our registrants'.
3. Emails were exchanged between two GDC staff members on 5 October 2010 concerning the request for additional information made by the first former Investigating Committee Chair on 1 October, agreeing that it was too late to obtain this information prior to the meeting and that the committee could adjourn the case if they considered the absence of the documents would impede their decision-making.
4. The first former Investigating Committee Chair sent a letter dated 8 October 2010 to Alison Lockyer (two days after the Investigating Committee meeting). The letter informed Alison Lockyer about the decision the committee had made about the case. It also referred to the potential conflict in the evidence regarding the facts relating to the registrant's conviction. The letter referred to Alison Lockyer's pre-existing personal relationship with the registrant and suggested that she might '...wish to see what the real facts are and what can be done to correct any errors'. In the final paragraph of that letter the first former Investigating Committee Chair addressed the issue of the provision of a letter of reference by Alison Lockyer, stating 'Lastly, having seen your kind letter...in support of [the registrant]...I instructed my colleagues to disregard it formally in considering the case and we noted that action...'.
5. Also on 8 October 2010, the first former Investigating Committee Chair emailed the other Investigating Committee panellists who had considered the case at the meeting on 6 October 2010, informing them that the first former Investigating Committee Chair had 'as discussed' written to Alison Lockyer 're the letter of commendation...and I have inserted a comment noting that action and our disregard of the letter in the decision sheet'.

6. On 19 October 2010 the first former Investigating Committee Chair sent an email to a GDC staff member saying 'As you know, I wrote privately to Alison L...We have agreed that I should write to [the registrant] and to the Chair of the Health Committee, copying Alison in on the correspondence. Thereafter she will speak with [the registrant]. Hence, could you please let me have [the registrant]'s address and that of the Health Committee chair?'
7. On 20 October 2010 the first former Investigating Committee Chair forwarded a copy of the email referred to directly above to another member of GDC staff. That member of staff replied saying 'Thank you for keeping me informed about this action. If you require any further advice on this issue from our Corporate Legal team please do not hesitate to ask'. In response, the first former Investigating Committee Chair said 'You beg a question as to what advice our corporate legal colleagues might properly give to our Registrant, but perhaps we should see what response I get from the health Committee and from our Registrant to start with'. The member of staff replied saying 'Forgive me, but I did not mean for them to advise the Registrant, moreover to advise you or the HC [Health Committee]'. The first former Investigating Committee Chair's response was 'My fault – but it does beg a question for slow debate about where our duty of care to Registrants falls and how far we might properly go in fulfilling that duty...'
8. On 20 October 2010 the first former Investigating Committee Chair sent an email to the 'hearings' email address, meant for the Chair of the Health Committee. The email referred to the Investigating Committee's decision in the case and said 'Having now discussed the issue with Alison Lockyer, I believe that further action is required in order to prevent a possible miscarriage of justice and disadvantage to our Registrant. I shall therefore be writing one letter to [the registrant] to advise [them] to seek legal advice and determine whether or not it is proportionate to appeal...My experience (and Alison's knowledge of [the registrant] suggests that [the registrant] may not have appeared before the Justices and may simply have accepted the outcome without challenge and without any thought as to what the possible results might be to [their] standing in the GDC. I believe this is [a case] where our duty of care to Registrants balances our prime protective duty to the public. That first duty, of course, is properly entirely your domain but given the apparent lack of involvement of a defence organisation, Alison and I have agreed that it would be appropriate for me to write to [the registrant] and advise [them] to contact one as soon as possible. I shall have no further involvement and very much hope that you find this satisfactory. If however you disagree and consider that such action might conflict with your responsibilities, or the matter has been overtaken by events, do please let me know'.
9. On 21 October 2010 the first former Investigating Committee Chair emailed a GDC staff member stating 'As you very kindly suggested taking the advice of our legal colleagues, I wonder if you would like to pass the attached letter to them? I can see no hostages to fortune but it is always wise to seek others' opinions'.

10. The letter sent by the first former Investigating Committee Chair to the registrant on 22 October 2010 stated 'I write as the Chair of the IC [Investigating Committee] on 6th October and with the knowledge of the Chair of the GDC...[referring to their pre-existing personal relationship with Alison Lockyer]'. It referred to the Investigating Committee's decision to refer the case to the Health Committee and then went on to say '...my Committee and I were concerned at a possible conflict of evidence' and then set out a theory about how the registrant's conviction might have arisen as a result of their possible lack of engagement with the court process. The letter went on to state 'If our inference [regarding the analysis of the registrant's position] is anywhere near correct, I thought it appropriate to write personally to you to offer the suggestion that you seek the advice and representation of your defence organisation in order to appeal against the conviction...and the sentence'. The letter also recorded that Alison Lockyer would 'be in touch on an entirely personal basis' and that the first former Investigating Committee Chair would take no further action.
11. On the same date the first former Investigating Committee Chair emailed Alison Lockyer and the 'hearings' address at the GDC (ie the relevant address for the Health Committee) attaching a copy of the letter sent to the registrant, and noted that they would take no further action unless specifically invited to do so by the GDC.
12. Also on 22 October 2010, the first former Investigating Committee Chair emailed the other members of the Investigating Committee who had considered the case, saying 'Alison Lockyer and I have spoken a couple of times and she is most grateful for our letter to her...Hence with Alison's strong support, I have written to [the registrant]...I have copied the HC in on the correspondence...'.
 - 3.19 Evlynn Gilvarry's note of 22 November 2010 stated that she was raising the complaint, having received 'a referral of the concern from a member of staff'. It appears that the staff member was not involved in the correspondence relating to the first former Investigating Committee Chair's request for the reference to be removed from the case bundle. The staff member was first alerted to the irregularities in the handling of the case by the GDC's external solicitors, to whom the case had been referred to prepare it for the Health Committee hearing. The note highlighted Evlynn Gilvarry's concerns that in this case the involvement of Alison Lockyer had given rise to a 'serious conflict of interests' on the part of the first former Investigating Committee Chair. The note also stated that 'it appears that there is a real risk that this involvement may have compromised the independence of the FTP [fitness to practise] process, breached the principles of fairness and created the appearance of bias'. The note also highlighted concerns about whether or not the first former Investigating Committee Chair's actions had been within their legal powers and stated that corresponding privately with registrants or discussing cases with Council members appeared to be a breach of the Code of Conduct for statutory committee members. It stated that the matter was being referred to the Appointments Committee under the Disciplinary Procedure for Statutory Committee Members ('the Disciplinary Procedure') and requested that the Appointments Committee advise Evlynn Gilvarry of the proposed timetable for the investigation.

- 3.20 The investigator told us that, having received the note from Evlynn Gilvarry dated 22 November 2010, they decided that it would be necessary to undertake some investigation. The investigator said that they were not given any specific 'brief' other than the note and confirmation from the GDC corporate legal team that they should apply the Disciplinary Procedure. They were aware of the identity of the GDC staff member who had brought the issue to Evlynn Gilvarry's attention, and arranged to meet with that individual at an early stage of the investigation. The investigator told us that at that meeting with the individual who had first brought the matter to Evlynn Gilvarry's attention, that individual had told the investigator about the case and about the fact that the issue had only come to their attention when the case was being prepared for external solicitors for a hearing (at which point they had immediately referred it to Evlynn Gilvarry).
- 3.21 We have seen the written notification about the complaint that was sent to the first former Investigating Committee Chair by the Acting Secretary to the Appointments Committee on 24 November 2010 setting out the process and enclosing the complaint and bundle of documents that had been sent to the investigator.
- 3.22 The investigator told us that they had met with Evlynn Gilvarry on 26 November 2010 and that during that meeting she had appeared concerned about the potential damage that the handling of the registrant's case might do to the GDC's reputation. The investigator told us that they had at that meeting noted some concerns about how the GDC staff involved in the handling of the registrant's case had acted, and that their concerns were noted by Evlynn Gilvarry. On the same day, the investigator met with one of the GDC staff who had been closely involved with the handling of the case at the Investigating Committee meeting. The investigator told us that they had asked that individual to supply copies of the relevant emails with the first former Investigating Committee Chair.
- 3.23 The investigator told us that an initial response to the complaint from the first former Investigating Committee Chair was received by email on 2 December 2010, the evening before the two of them were scheduled to meet. We have seen that email. It stated that the complaint against the first former Investigating Committee Chair should be 'struck out' because there was no case to answer as: there had been a breach of natural justice in that the person making the complaint was not named; no similar action had been taken against others who were involved (the first former Investigating Committee Chair said they were not referring to their fellow committee panellists in that regard); and because 'the whole affair is a breach of process' in that:
- the first former Investigating Committee Chair's request that the letter of reference from Alison Lockyer should be removed from the bundle of papers to be considered by the Investigating Committee had not been actioned, which left the first former Investigating Committee Chair with no option but to formally instruct the committee to disregard it, and they had written to Alison Lockyer subsequently 'in order to be seen to be protecting' 'the Committee's impartiality and the GDC's reputation as a Regulator'; and

- the first former Investigating Committee Chair had received no response from the GDC after sending the draft letter and asking for legal advice, and had assumed that the absence of a response constituted agreement to the sending of the letter, especially in light of Alison Lockyer's 'strong support' for the proposed action.
- 3.24 The first former Investigating Committee Chair's response claimed that the allegations against them were an attempt by someone in the GDC to avoid responsibility. It also stated that they had not taken any action without seeking advice, and that no advice to the contrary had been provided.
- 3.25 The investigator told us that they met with the first former Investigating Committee Chair on 3 December 2010. At that meeting they went through Eylvynne Gilvarry's note of 22 November. The investigator told us that their recollection was that the first former Investigating Committee Chair was initially quite defensive, but that by the end of the meeting, once the first former Investigating Committee Chair had been asked to comment on various errors pointed out by the investigator, they admitted that they had made some errors of judgment and had acted unwisely, and that they appeared to be demonstrating some understanding (in hindsight) of the issues. The investigator told us that they had told the first former Investigating Committee Chair that if they were willing to put that in writing and to indicate the areas in which they accepted they had made mistakes (in relation to the three areas highlighted in the note of 22 November – see paragraph 3.19 above) and offer an apology, then the investigator was minded to recommend that the matter should not be considered by the Appointments Committee. The investigator told us that the first former Investigating Committee Chair had agreed to send a letter of that nature within a day or two.
- 3.26 The investigator also told us that they felt that the first former Investigating Committee Chair had raised a reasonable point that their errors should not have been allowed to progress so far, ie that GDC staff should have intervened or provided the first former Investigating Committee Chair with advice. The investigator also expressed the view that, had the reference from Alison Lockyer not been received, the first former Investigating Committee Chair might not have engaged in the 'extraordinary' correspondence that was exchanged with Alison Lockyer about the case. The investigator then drafted a decision letter on the assumption that the first former Investigating Committee Chair would provide the type of letter that had been discussed.
- 3.27 On 7 December 2010 the investigator read an email that had been sent by the first former Investigating Committee Chair the previous day (the investigator had been away the previous day and unable to access emails). The email attached the first former Investigating Committee Chair's 'formal response' to the complaint. The investigator told us that on reading that email and the response document, their reaction was one of 'disappointment', and that they were 'amazed and struck by the fact that most of the things that the first former Investigating Committee Chair had said at the meeting on 3 December had evaporated'. The investigator told us that the first former Investigating Committee Chair had made an apology that the investigator thought was 'very hollow', and

that the response indicated that the first former Investigating Committee Chair 'did not fully understand their errors or have insight into them'. The investigator told us that, at that point, they changed their initial view that the matter did not need to go any further, and that as a result on the same day they re-wrote the draft decision letter they had prepared following the meeting on 3 December 2010 – referring the matter to the Appointments Committee. The decision letter was finalised over the course of the next few days and sent to the first former Investigating Committee Chair on 10 December 2010. The investigator told us that one of the GDC corporate legal team (who provided administrative support and legal advice to the Appointments Committee) had provided some comments on the structure of the decision letter, although not on its contents.

- 3.28 We have seen the email sent by the first former Investigating Committee Chair on 6 December 2010 and note that it queried the existence of any prohibition on contacting Council members and asked the investigator to provide the appropriate reference. We note that the email also stated that the first former Investigating Committee Chair 'had apologised sincerely and fully and clearly stated what [they] should better have done and would do in future'. It referred to the first former Investigating Committee Chair's position with regard to the complaint 'reduced to its essentials' being that: the first former Investigating Committee Chair could not be 'punished' for actions "that are not prohibited by any law, rule, handbook or guidance document" applicable to the role of chair of the Investigating Committee, particularly where: 'the root cause of the problem was the failure of the GDC to abide by its own rules' and the first former Investigating Committee Chair had 'deliberately given the GDC repeated opportunities to advise [them] not to do that which [they] intended'.
- 3.29 We have also seen the response document that was attached to that email of 6 December 2010, setting out in detail the first former Investigating Committee Chair's explanation for their actions. The document inter alia:
- Referred to the 'opportunities the GDC had to take action before the IC's decision and the many more it was given by [the first former Investigating Committee Chair] following the IC' and claimed that the GDC had ignored such opportunities. The document also noted the omission of the relevant details from Evlynne Gilvarry's note dated 22 November 2010
 - Asserted that the first former Investigating Committee Chair's actions could not be described as biased, principally relying upon the fact that the Investigating Committee's decision about disposal of the registrant's case had been taken without reference to Alison Lockyer's letter of reference and prior to any contact about the case between the first former Investigating Committee Chair and Alison Lockyer or between the first former Investigating Committee Chair and the registrant. The document described the letter that the first former Investigating Committee Chair sent to Alison Lockyer as essentially a 'rebuke', says that it was marked 'private' simply as a result of a 'courtesy to a very senior colleague'
 - Asserted that the first former Investigating Committee Chair's actions outside of the Investigating Committee meeting did not fall outside of their powers, on the basis that there is no provision in the statutory framework or in relevant guidance prohibiting such action

- Rejected the allegation of a lack of openness, noting that all the first former Investigating Committee Chair's correspondence about the registrant's case had been open (and copied to others) with the exception of the 'private' letter to Alison Lockyer
- Considered the possible alternative actions the Investigating Committee could have taken, recording that the option of adjourning the case was rejected in order to avoid delay in the referral to the Health Committee
- Asserted that the complaint was an abuse of process, accusing Evlynn Gilvarry of 'obvious predetermination' and 'bias', and referring to 'the clear interest of staff in now complaining about actions by [the first former Investigating Committee Chair] to which they were party in advance'
- Asserted that if similar action was not to be taken against others, that the first former Investigating Committee Chair was being 'disadvantaged and discriminated against'
- Described the 'root cause' of the problem as being the failure by GDC staff to remove Alison Lockyer's letter from the bundle and to investigate the apparent conflict of evidence
- Included (in the final section) counter-allegations against Evlynn Gilvarry, and proposed that such counter-allegations might be struck out in a compromise between the parties if the first former Investigating Committee Chair would apologise for any breach of the rules
- Disputed the account that the first former Investigating Committee Chair believes the investigator gave at the meeting on 3 December 2010 of the relevant statutory/rule breaches, including:
 - Commenting that the statutory provisions referred to in relation to criminal convictions are only relevant to hearings before one of the GDC's practice committees
 - Referring to a specific paragraph of the Investigating Committee 'handbook' which apparently envisaged committee panellists contacting staff in advance of a meeting in relation to missing documents
 - Commenting that the first former Investigating Committee Chair has not identified any provision preventing them from contacting Council members, and then stating that in any event the first former Investigating Committee Chair only contacted the GDC Chair because the reference had not been removed.
- Accepted that it might have been preferable to adjourn for the reference to be removed and for further investigation to be carried out
- Stated that the first former Investigating Committee Chair apologised unreservedly for 'such actions or lack of them' while referring to the 'root cause', but accepting that that was no excuse for someone of their expertise and experience

- Confirmed that in future the first former Investigating Committee Chair would act differently – adjourning if there was a legal/procedural issue
 - Contained an offer to facilitate a shared learning exercise
 - Raised issues about the staffing of the support for the Investigating Committee, referring to ‘undermanning and overranking’ within the governance team, and the lack of legal advice available to the Investigating Committee.
- 3.30 We have considered the decision letter that the investigator sent to the first former Investigating Committee Chair on 10 December 2010. That letter is consistent with the account given to us by the investigator described above. It stated that after ‘a great deal of consideration’ the investigator had decided to refer the matter to the Appointments Committee. The letter stated the investigator’s view that ‘during [the 3 December] meeting, [the first former Investigating Committee Chair] gave me to understand that [they] recognised where, with the benefit of hindsight, [they] had made errors of judgement [and]...said you apologise for your unwise and inappropriate decisions and actions’. The investigator stated that they had at that time been ‘somewhat comforted by [the first former Investigating Committee chair] appearing to have some insight’. The letter went on to state that after reading the first former Investigating Committee Chair’s response to the allegations of 6 December 2010 they formed the view that the first former Investigating Committee Chair did ‘not fully appreciate the seriousness and implications of the decisions and actions [taken]’. The letter expressed the investigator’s concern about the first former Investigating Committee Chair’s ‘continuing lack of insight’ and the provision of an apology which the investigator regarded as ‘hollow’.
- 3.31 The letter then set out the investigator’s conclusion that the matter should be referred to the Appointments Committee, and the reasons for that decision. These included the first former Investigating Committee Chair:
- Breaching confidentiality and the ‘separation of functions’ in contacting and discussing the case with Alison Lockyer, noting that the investigator had found the first former Investigating Committee Chair’s apparent lack of appreciation of the unacceptability of this at the meeting on 3 December 2010 ‘alarming’. The investigator referred to the fact that the first former Investigating Committee Chair said they said that they could ‘find no specific rule forbidding discussion with a Council member’ and went on to state that ‘There is no need for a specific rule forbidding [such a] discussion. There is no need for a specific rule (and I doubt if one exists) because an individual case or a hearing should not be discussed with anyone...’
 - Contacting the registrant after the Investigating Committee meeting to offer them advice, as that could have given rise to a ‘perception of bias’
 - Writing to the Chair of the Health Committee about the case, amounting to a conflict with ‘the need to separate the functions of the Practice Committees’

- Asking a GDC staff member to obtain additional information (in relation to the circumstances of the registrant's conviction) and doing so in advance of the Investigating Committee meeting.
- 3.32 The investigator noted that they considered the above factors were 'serious errors of judgment', that they 'should not have occurred' and that they 'may damage the reputation of the GDC'. The letter also noted various mitigating factors which had been taken into account by the investigator in reaching their decision, including:
- The letter from the Chair of the GDC should not have been sent or included in the bundle of papers, and the first former Investigating Committee Chair had requested it be removed. Had the first former Investigating Committee Chair not seen it, they would not have contacted Alison Lockyer
 - The first former Investigating Committee Chair had a 'heartfelt and genuine' concern for the registrant and felt that their duty of care to the registrant extended as far as advising the registrant about 'a potential miscarriage of justice'
 - The first former Investigating Committee Chair had notified GDC staff of their intended actions. They did not receive a response, although the investigator noted 'I did point out to you that you should have waited longer to receive a positive response before sending the letters'.
- 3.33 The letter noted that although those mitigating factors had been taken into account the matter was 'so serious' that it could not be dismissed, and stated that 'Your apparent lack of insight and understanding leads me to believe that the giving of advice and/or an apology or undertaking would not be appropriate'. The investigator stated that they did not consider that there was any reason for further investigation and so the matter was referred to the Appointments Committee.
- 3.34 The investigator told us that, having sent the decision letter to the first former Investigating Committee Chair, they then telephoned the Appointments Committee Chair to notify them of their decision, and that was the end of their involvement in the matter. They told us that the investigation into the complaint about the first former Investigating Committee Chair had been conducted entirely separately from the Appointments Committee Chair's investigation of the related concern about Alison Lockyer (we note that the investigator did tell us that, at one point, the Appointments Committee Chair said to them that they may want to get back to the investigator when they had made a decision, because it may be useful to the investigation regarding the associated facts connected to Alison Lockyer – but in the event this did not happen).
- 3.35 The investigator denied (and told us they 'resented') any suggestion that there had been any attempt by GDC staff to influence their decision-making, either initially following the meeting with the first former Investigating Committee Chair on 3 December 2010, or subsequently. The investigator told us that they 'had not communicated [their] initial view that an apology might be sufficient remedy to anyone other than [the first former Investigating Committee Chair] and [the corporate legal adviser referred to above]', they were the 'sole decision-maker',

and when they asked the corporate legal adviser if Evlynn Gilvarry was 'happy with their investigation' their 'only response had been to say that it was [the investigator's] decision'.

- 3.36 We note that we have also seen an email sent by the first former Investigating Committee Chair on 13 December 2010 to the member of the GDC corporate legal team who was responsible for assisting the investigator by providing legal advice and administrative support. In that email the first former Investigating Committee Chair disagreed with the investigator's conclusion that no further investigation was required. They suggested that the investigator's conclusions that their apology was 'hollow' and that they showed a continuing lack of real insight was due to the investigator's 'difficulty in understanding that the nature of the allegations and...the application of the formal disciplinary process gives [the first former Investigating Committee Chair] the right...to defend [themselves]'. The email stated that the investigator had misinterpreted the Investigating Committee's guidance in respect of the handling of criminal convictions. The first former Investigating Committee Chair also stated that they offered to 'own up to my errors in internal public fora and to facilitate a discussion by which we might all learn' and explained that their suggestion that the complaint should be 'struck out' for abuse of process arose from their opinion that the matter would have been more appropriately dealt with under a performance management framework.
- 3.37 We have also seen an email sent by the first former Investigating Committee Chair to Alison Lockyer on 15 January 2011 in which the first former Investigating Committee Chair explained that a complaint against them was due to be heard by the Appointments Committee and that they expected to be removed from office. That email referred to Alison Lockyer's pre-existing personal relationship with the registrant and asked if she had 'had any feedback from [redacted] in response to my letter [sic] of 22 October to [redacted]? Such may help my case but at this stage I do not wish to trouble [redacted] direct (and indeed cannot find [redacted] in the GDC register.)'.
- 3.38 We have seen extracts from the notes of the Appointments Committee meetings on 1 and 15 February 2011 at which the complaint about the first former Investigating Committee Chair was considered. We have also considered the notes of the Appointments Committee meeting on 21 January 2011 when the committee discussed the approach they intended to take to the hearing.
- 3.39 The notes of the meeting on 21 January 2011 record the Appointments Committee's discussion of issues to be addressed with the first former Investigating Committee Chair at the hearing (which had been scheduled for 21 January but was postponed at the first former Investigating Committee Chair's request) including the purpose of the questions to be asked to assist the committee in understanding the first former Investigating Committee Chair's thought process at the time of their actions, as well as their current insight. The committee also discussed the wider implications of the case, in terms of issues with the Investigating Committee support, and the actions to be taken in respect of the other Investigating Committee panellists who attended the meeting on 6 October 2010, and in terms of sharing learning more widely across the Investigating Committee.

- 3.40 We understand that the first former Investigating Committee Chair sent written representations to the Appointments Committee on 31 January 2011 in advance of the rescheduled meeting on 1 February 2011. The notes of the Appointments Committee meeting on 1 February 2011 record the responses the first former Investigating Committee Chair gave to questions asked by the Appointments Committee at that meeting (the first former Investigating Committee Chair participated in the meeting by telephone). The minutes record that the first former Investigating Committee Chair said that ‘with the benefit of hindsight [they] would do things differently’; however, ‘the volume of paperwork presented to the Investigating Committee is sometimes found confusing’. They said that, in hindsight, they would not have written to Alison Lockyer, that they had done so to prevent a miscarriage of justice and for the benefit of Alison Lockyer, and they accepted that they had not allowed sufficient time for the GDC staff to respond to their request for legal advice before sending the letter to the registrant. The first former Investigating Committee Chair also highlighted their learning from the case and how they would approach matters differently in future.
- 3.41 The Appointments Committee then said to the first former Investigating Committee Chair that they would need to deliberate on the issues and revert by the end of that week. However, the first former Investigating Committee Chair said that they would be tendering their resignation once the disciplinary process was over for personal reasons. The Appointments Committee deliberated the issues and agreed that, in light of the first former Investigating Committee Chair’s apology and the documentary evidence, they would be removed as a Chair of the Investigating Committee but permitted to continue as a panellist, subject to conditions requiring training and mentoring. The notes also record that the Appointments Committee was to consider how to treat the other Investigating Committee panellists and how to address training and ensure that a feedback loop was established.
- 3.42 We have seen an email that the first former Investigating Committee Chair sent to the Secretary to the Appointments Committee on 9 February 2011, raising procedural issues about the GDC’s disciplinary process. That email also asked the committee to consider the application of two specific paragraphs of the ‘Investigating Committee Members’ Handbook of October 2009’ relating to the failure to provide the Investigating Committee with advice at the time it reached its decision (as well as failing to advise the first former Investigating Committee Chair at an earlier date that it was not appropriate to seek additional information about the circumstances of the registrant’s conviction), and asserting that this meant that some aspects of the complaint should be struck out as an abuse of process, as well as disputing the suggestion that it is always impermissible to ‘go behind’ the facts relating to a conviction.
- 3.43 The Appointments Committee met again on 15 February 2011. The extracts which we have received from the notes of this meeting record that the committee, having taken into account the representations made by the first former Investigating Committee Chair, concluded that the first former Investigating Committee Chair had:
- Breached confidentiality by contacting and discussing the case with Alison Lockyer in conflict with the separation of functions

- Contacted the registrant by letter to offer them personal advice, also in breach of the separation of functions, and that the advice appeared to concern the circumstances of the registrant's conviction, in contravention of the guidance for the Investigating Committee
 - Written to the Chair of the Health Committee about the case, in breach of the separation of functions and confidentiality
 - On receipt of the case papers, asked a staff member to obtain further information, for the purpose of inquiring into the circumstances of the registrant's conviction – whereas such a request should have been discussed with the entire committee at the meeting and a documented decision reached
 - Sent their letter to the registrant very quickly after sending the draft to GDC staff and asking for legal advice, and without checking if that legal advice had been received.
- 3.44 The notes also record that the committee took a number of mitigating factors into account, namely the lack of bad faith or malice or any intention to behave inappropriately, the first former Investigating Committee Chair's actions being motivated by a genuine concern for the registrant, and the fact that there were no other incidents recorded on their file. In light of the first former Investigating Committee Chair's insight and apology, the committee decided that the appropriate sanction was removal from the position of chair. The first former Investigating Committee Chair would be required to complete relevant training before sitting again as an Investigating Committee panellist.
- 3.45 The Appointments Committee Chair wrote to the first former Investigating Committee Chair on 17 February 2011, in order to confirm the committee's decision in the above terms.
- 3.46 We asked Eylvynne Gilvarry about whether any consideration had been given to taking action in respect of any of the staff who were involved in the preparation for/administration of the Investigating Committee's handling of the registrant's case. She told us that she had decided not to take any action against any of the staff involved. She had reached the decision that the whole system of support for the Investigating Committee was so flawed at the time that it would be unfair to blame relatively junior members of staff for things they had done/failed to do.
- 3.47 We have not obtained oral evidence from the first former Investigating Committee Chair regarding the above matters, notwithstanding attempts at making arrangements to meet (on CHRE's and the first former Investigating Committee Chair's part) over the course of the investigation. We are, however, content that we have received the requisite information from them for the purposes of the analysis in this report by way of written submissions. Although such evidence would generally be of less weight than 'live' evidence, we are also content that we have the relevant contemporaneous documents in order to assist our consideration of the issues and the formulation of our conclusions.
- 3.48 The first former Investigating Committee Chair did not, in the course of our exchanges in writing, cite any further examples of any other way in which they had 'challenged' the executive at that time. However, the second Investigating Committee Chair to resign during 2011 ('the second former Investigating

Committee Chair' – see the subsection directly below) has suggested to us that the first former Investigating Committee Chair's involvement in the raising of concerns about the Investigating Committee support processes from mid-2010 onwards may also have constituted a 'challenge' to the executive that may have led to the complaint being made/proceeded with formally. It is not clear to us whether or not that view is shared by the first former Investigating Committee Chair. Whilst we note that the first former Investigating Committee Chair has said that the GDC has '...sought to use threats of complaints and informal and formal disciplinary proceedings against Members who brought to its attention concerns or inadequacies about the Secretarial support, legal advice information or training for the Investigating Committee', they have also told us that they frequently provided feedback on staff performance (as did other Investigating Committee Chairs) and that this was 'invariably welcomed' and that 'much such frequent feedback was appreciated' (and provided us with examples of emails about such feedback).

- 3.49 As referred to above, the first former Investigating Committee Chair told us during the initial stages of our investigation that they believed that the investigation into their conduct had been escalated for consideration at a formal Appointments Committee meeting as a result both of their raising concerns, and because of the intervention of Evlynne Gilvarry. During the course of one set of written submissions dated 8 June 2012, the first former Investigating Committee Chair presented a different view. They said that, having considered an earlier iteration of this report (which has been shared with certain stakeholders for comment prior to publication), 'I am far more inclined to consider that the cause of the problems lies not with any deliberate attempt by anyone or any group to blame others but with the culture of the organization and its systemic failings. Hence, while I continue to hold [Evlynne Gilvarry] responsible for several breaches of confidentiality [in the course of her note of 22 November 2010] and for the apparent lack of action to prevent the occurrences arising from the [Investigating Committee case which ultimately led to the matter raised in relation to them], I no longer suggest that she sought any untoward influence over the action taken against me...'. More recently, in September 2012, the first former Investigating Committee Chair informed us that the reason for their initial change of view was that they considered that it might have been the 'innate culture of the GDC' that was the cause rather than Evlynne Gilvarry directly.

The second former Investigating Committee Chair

- 3.50 Another Investigating Committee Chair also resigned in 2011 ('the second former Investigating Committee Chair'). Alison Lockyer has also identified the events leading up to their resignation as evidence of her arguments under allegation 1(a). We have not interviewed the second former Investigating Committee Chair as part of this investigation. The second former Investigating Committee Chair declined our invitation for an interview, but agreed to provide written evidence for our consideration. We note that, whilst it is preferable to obtain the relevant witnesses' evidence in a live environment, we consider that we have sufficient information based on the live evidence of other relevant witnesses, contemporaneous documentation and the second former Investigating Committee Chair's written evidence, on which to base our conclusions on this

matter. We also note that whilst we have seen the emails and other correspondence referred to below, given that the matters concerning the second former Investigating Committee Chair were never investigated, we are not including in this report details of their contents save to the extent we consider that it is necessary and appropriate to do so for the purposes of this report.

- 3.51 We have seen evidence that the second former Investigating Committee Chair had raised concerns about the Investigating Committee processes and support mechanisms with an appropriate member of GDC staff on several occasions between May and December 2010. (The relevant staff member has since left the GDC and we were not able to obtain their evidence on this issue). This includes the second former Investigating Committee Chair writing to the relevant GDC staff member in August 2010 providing feedback on the support available to the Investigating Committee. The second former Investigating Committee Chair was also a signatory to a memorandum from all the Investigating Committee Chairs following a training session that took place in November 2010. They also sent a further email on 31 January 2011 seeking an update on progress in summarising the issues raised by the memorandum in which they said 'So far the IC members and Chairs have not received any information on how their views are being dealt with or how they will be incorporated into training'. The second former Investigating Committee Chair also raised concerns about specific aspects of the processes with members of the executive management team and senior staff during March 2011, for example with Neil Marshall by way of an email on 20 March 2011 and with the Deputy Head of Prosecutions by way of an email on 23 March 2011.
- 3.52 On 16 February 2011 the GDC received an email containing 'feedback' from a GDC staff member about the second former Investigating Committee Chair's communication style towards GDC staff and Investigating Committee panellists at an Investigating Committee meeting which had taken place a day earlier, detailing specific instances of the second former Investigating Committee Chair's conduct that gave them cause for concern. The staff member also referred to an incident where they considered that the second former Investigating Committee Chair's 'criticism showed a complete misunderstanding of procedure'. The relevant staff member also raised other apparent concerns including the management of the committee's agenda for that meeting, the 'contactability' of the second former Investigating Committee Chair, and the 'tone' of emails that had been sent to staff by the second former Investigating Committee Chair. This email was forwarded on by a GDC staff member to Frances Low. The individual who forwarded it on queried whether the issues 'need to be raised with the Appointments Committee. Either way [the second former Investigating Committee Chair] needs to be notified about the feedback received...'.
- 3.53 Evlynne Gilvarry told us that she discussed the matter with Frances Low and decided that this matter should be dealt with informally at a 'feedback meeting' (which she and Frances Low would attend) so that the GDC could hear and understand the second former Investigating Committee Chair's viewpoint. She told us that her view was that as she had not previously met the second former Investigating Committee Chair, it seemed appropriate to try to deal with the situation at an informal 'feedback meeting'. The second former Investigating

Committee Chair has said that their view was that this was 'an unnecessary escalation of a routine feedback meeting'.

- 3.54 On 4 March 2011, the relevant staff member emailed the second former Investigating Committee Chair to ask them to attend a 'feedback meeting' with Evlynn Gilvarry and Frances Low which was to take place following the Investigating Committee meeting on 8 March 2011. The second former Investigating Committee Chair subsequently informed the Investigating Committee panellists who were due to attend the meeting on 8 March 2011 by email about the 'feedback meeting' and asked them if they would like to contribute some feedback. As a result of that email, the second former Investigating Committee Chair was sent a further email on 7 March 2011 which clarified that the requested meeting was for the purpose of providing individual 'feedback' to the second former Investigating Committee Chair. It is clear from the second former Investigating Committee Chair's response to that email that they had previously thought that the 'feedback meeting' was for the purpose of 'general feedback'. In their email in reply (also sent on 7 March 2012), the second former Investigating Committee Chair commented on the apparent importance of the meeting, given that it was to involve Evlynn Gilvarry and Frances Low. In that email the second former Investigating Committee Chair also noted that they were unaware of the purpose of the meeting and therefore would be unable to respond and stated therefore that 'it is likely at best I can listen to what is said at the proposed meeting tomorrow, but will have to reply at a later date, requiring a second meeting. In my opinion such an important meeting is not advisable to be informed by email alone and held after a substantive whole day IC panel, which as Chair is additionally stressful and tiring'.
- 3.55 By an email dated 8 March 2011, the second former Investigating Committee Chair was informed that Frances Low had been consulted about the possibility of having a telephone discussion about the purpose of the 'feedback meeting' beforehand, but that she had said that she would prefer just to meet with the second former Investigating Committee Chair 'so that the issues can be discussed face to face'. The second former Investigating Committee Chair was also informed that 'the meeting will be to communicate some feedback received from staff members who are involved in the work of the Investigating Committee'.
- 3.56 We note that it appears on the evidence that the second former Investigating Committee Chair was aware of the broad purpose of the 'feedback meeting' on 8 March 2011. A letter dated 25 March 2011 written by a fellow Investigating Committee panellist expressed to be an 'open letter of support' for the second former Investigating Committee Chair referred to an email that the second former Investigating Committee Chair had sent on 8 March 2011 referring to the 'feedback meeting' concerning '...one or two members of staff being upset by [the second former Investigating Committee Chair] at an earlier IC meeting on the 8th February'.
- 3.57 The meeting between the second former Investigating Committee Chair, Evlynn Gilvarry and Frances Low took place on 18 March 2011. The accounts given to us by the second former Investigating Committee Chair, Evlynn Gilvarry and Frances Low as to what happened at this meeting are not inconsistent for the most part, although they vary in the level of detail provided. The most significant

inconsistency in our view concerns whether or not it was agreed that the second former Investigating Committee Chair would apologise to staff prior to their next Investigating Committee panel meeting. This is particularly significant because it appears that the absence of such an apology may have been one of the triggers for staff providing further 'feedback' about the second former Investigating Committee Chair's behaviour, on 24 and 25 March 2011 (as outlined further below).

- 3.58 Evlynne Gilvarry's account of the 'feedback meeting' on 18 March 2011 is that she explained to the second former Investigating Committee Chair the concern that had been raised by staff, and said that she wanted to hear the second former Investigating Committee Chair's 'side of the story'. Evlynne Gilvarry told us that she had said that 'all staff should be able to work in an environment where they can expect to have any failings pointed out in a way that maintains their dignity' and that she had acknowledged the challenges involved in being an Investigating Committee Chair, and that there were additional pressures on them at the time because the support structure for the Investigating Committee was inadequate in a number of respects. Evlynne Gilvarry told us that she had explained that the GDC was taking action to deal with the problems, and that she had said that 'she was relying on the Investigating Committee Chairs to be patient while the changes were made'. Evlynne Gilvarry told us that the second former Investigating Committee Chair's initial reaction on being told of the concern that had been raised had been 'one of amazement that such an allegation had been made about [them] by staff'.
- 3.59 Evlynne Gilvarry told us that during the course of the 'feedback meeting' on 18 March 2011 the second former Investigating Committee Chair 'offered to apologise to the staff, and [the second former Investigating Committee Chair] appeared to accept that there was something to the allegation'. Evlynne Gilvarry told us that while the meeting felt 'strained' initially, it improved by the end and her understanding was that the matter had been resolved satisfactorily. This understanding appears to have been shared by the second former Investigating Committee Chair at the time – as they told us that 'as at 18 March 2011 the CEO confirmed there was no complaint (formal or informal) made against me and that the...concern raised...was now resolved through this informal feedback meeting'. When we asked Evlynne Gilvarry what she meant by saying that the matter had been 'resolved satisfactorily' she told us that during the meeting they had had a frank discussion about the concerns expressed about the second former Investigating Committee Chair's behaviour as well as about the plans to improve the Investigating Committee processes and support, and that they had made progress. Evlynne Gilvarry said that she had hoped that the willingness the GDC had demonstrated to make improvements, as well as the discussion about the plans that were already underway, would assist in bringing about a better climate overall between the GDC and the second former Investigating Committee Chair.
- 3.60 Frances Low told us that following the 'feedback meeting' on 18 March 2011 the relevant staff member had been informed that the second former Investigating Committee Chair would be apologising to them at the next Investigating Committee meeting. Frances Low told us that a few days after the meeting she had informed another GDC staff member that the second former Investigating

Committee Chair would be speaking to the caseworkers and that there was no need to involve the Appointments Committee.

- 3.61 Evlynn Gilvarry told us that in any event what she had been hoping to see was not just a one-off apology but a change in behaviour leading to a better climate all round. She commented that the GDC staff would not have been impressed by a one-off apology without a general change in behaviour. She had hoped that with more awareness and insight on the second former Investigating Committee Chair's part of how their behaviour affected the staff, and with the knowledge of the work the GDC already had underway to improve the Investigating Committee processes and support, the climate would be improved.
- 3.62 The second former Investigating Committee Chair has provided a note which was attached to other papers dated 25 March 2011 titled 'Notes on Feedback Meeting Friday 18 March 2011'. This note contains the second former Investigating Chair's recollections of the 'feedback meeting', which was apparently compiled shortly after the meeting. We understand that this was sent to Evlynn Gilvarry and Frances Low on 25 March 2011 (but which they have told us was received on 27 March 2011) but they did not provide a formal response. In this note, the second former Investigating Committee Chair states: 'Shortly after the beginning of our meeting, I made clear that if I had upset anyone I would apologise directly to the [individual] involved. Evlynn you thanked me for showing "such good grace" and it appeared to be agreed that I would have an informal low key chat with the relevant [individuals], once I knew their names, before my next Panel on 22 March 2011. You later stated that this may not be advisable, as it may appear that I have been asked to apologise as part of a formal complaints process, which is not the case. I responded that I was content to apologise if people brought up the issues at the time and later, as this is my approach to any concerns with team working'. The second former Investigating Committee Chair told us that their ultimate understanding was that they had been advised not to issue an apology. It is not disputed that no apology was made by the second former Investigating Committee Chair to the relevant staff.
- 3.63 The second former Investigating Committee Chair has also pointed out that they were unaware of the identity of the staff member(s) concerned at the time, so would have been unable to apologise without further information being provided by the GDC at that stage. We note that the second former Investigating Committee Chair, according to their own notes of the meeting on 18 March 2011, had been told the name of one member of staff who had 'raised concerns about [their] style of chairing'. It appears that the second former Investigating Committee Chair when saying they would have been unable to apologise in any event because they were unaware of the identity of the relevant staff member(s) may have been referring to their lack of knowledge about who had provided the 'feedback' about their concerns to Evlynn Gilvarry/Frances Low.
- 3.64 Given that the note provided by the second former Investigating Committee Chair appears to have been written on a date close to that of the meeting itself (and that it does not appear to have been challenged by Evlynn Gilvarry and/or Frances Low and is the only contemporaneous record of the meeting), we consider this evidence to be of good weight in assessing the relevant events to this point. We asked Evlynn Gilvarry and Frances Low about the form of any

response to the various documents dated 25 March 2011 which were sent to them by the second former Investigating Committee Chair (including the note of the 18 March meeting). They told us that the response had been to suggest a meeting between Neil Marshall and the second former Investigating Committee Chair, and that any formal response to the email was eventually 'overtaken by events' when further concerns about the second former Investigating Committee Chair's behaviour were raised following an Investigating Committee meeting on 22 March 2011. When we asked why the GDC had not challenged the accuracy of the second former Investigating Committee Chair's note at the time it was sent (ie if Evlynn Gilvarry and Frances Low did not entirely agree with it, as they told us was the case) Evlynn Gilvarry told us that the view she had taken at the time was that it would not be helpful to engage in going to and fro on specific points, and that her aim during and after the meeting on 18 March 2011 was to try to resolve the situation as sensibly and amicably as possible.

3.65 The second former Investigating Committee Chair's note also stated the following inter alia:

- The second former Investigating Committee Chair had not been given any information prior to the 'feedback meeting' on 18 March 2011 but had in any event approached some fellow panellists for feedback about their performance as Chair (which was positive). It also referred to the second former Investigating Committee Chair's experience that no concerns or problems had been raised directly with them by GDC staff, although there are opportunities to raise such issues at the end of each case and each meeting, and referred to the positive praise they had given to some of the staff during the relevant Investigating Committee meeting
- The second former Investigating Committee Chair had found it difficult to address the issues during the 'feedback meeting' on 18 March 2011 due to the lack of detail about what they were alleged to have said or done, and without knowing the identity of the staff involved. The second former Investigating Committee Chair said they were shocked on learning of the identity of one of the staff who had raised concerns about their style of chairing, as that individual was someone they had praised during the meeting. The second former Investigating Committee Chair apparently also registered a concern about the possibility of concerns being raised by a third party who was presenting a view of matters which might not be the view of the staff directly concerned
- The second former Investigating Committee Chair mentioned a number of concerns about the behaviour of caseworkers, and their intention to address such matters directly. The note also referred positively to the 'inclusive and co-operative dialogue' that took place on the 'very helpful' training day (also held on 18 March 2011) at which various systemic issues relating to the Investigating Committee had been discussed.

3.66 The GDC has informed us that on 23 March 2011 further 'feedback' was received about the second former Investigating Committee Chair's behaviour during an Investigating Committee meeting that had taken place the previous day (22 March 2011). The GDC has told us that the 'feedback' concerned the second former Investigating Committee Chair's communication style and the fact that the

second former Investigating Committee Chair had not apologised to staff for their previous behaviour. The form that the 'feedback' took was a document entitled 'Reflections on IC 22.3.2011' which was endorsed by the four Investigating Committee panellists who attended the committee meeting chaired by the second former Investigating Committee Chair on 22 March 2011.

- 3.67 The document describes a situation in which the second former Investigating Committee Chair began 'a lengthy dictation' of the committee's decision in relation to three complaints against the same registrant, and there was 'a lengthy exchange of views' between the second former Investigating Committee Chair and a member of GDC staff as to what had been said at the recent Chairs' training day concerning the timeframe for implementation of the draft guidance for the Investigating Committee that had been discussed at the training day, and the extent to which reasons needed to be detailed. The document states that, in order to ensure that the committee could complete its agenda for the day, the panellists and the second former Investigating Committee Chair agreed to revert to the way of doing business previously practised, albeit 'with some misgivings as to the potential legal consequences' on the part of the second former Investigating Committee Chair. The document states that 'It was clear to members that the relationship between the Chair and the [staff member] was not good', refers to an 'impasse' that was reached in relation to one particular case, and whilst noting that the second former Investigating Committee Chair was 'calm and polite at all times' also suggested that their behaviour towards the relevant staff member 'needs investigating by others'. We note that this document was compiled shortly after the relevant Investigating Committee meeting and, as such, we consider it to be of good weight as evidence of the panellists' apparent concerns at the time.
- 3.68 The second former Investigating Committee Chair disagrees with various parts of the accounts of others in relation to the meeting on 22 March 2011. The second former Investigating Committee Chair told us that they had had to 'stop' the meeting three times to attempt 'to remedy the procedural illegalities' but that doing so had been 'to no avail', and that they had sought the help of the Head of Prosecutions and also the Head of Human Resources (HR). In a memorandum which the second former Investigating Committee Chair sent to Evlynn Gilvarry and Frances Low dated 25 March 2011 (but which the GDC has told us was received on 27 March 2011) they referred to the 'dysfunctionality of the process and the unpleasant atmosphere' at the Investigating Committee meeting on 22 March 2011, and set out their concerns about the behaviour of GDC staff during that meeting.²⁴ The second former Investigating Committee Chair said that when they sought the advice of the Head of Prosecutions, the Head of Prosecutions suggested that a legally qualified person should immediately attend to see the committee in operation and the concerns that had been aired at the training day (on 18 March 2011) but that unfortunately, due to heavy workloads that day, that was not possible. They further stated that 'At the end of the Committee meeting I spoke to the GDC Head of HR about my concerns...'

²⁴ The concerns about the adequacy of the support for the Investigating Committee that the second former Investigating Committee Chair highlighted in that memorandum have been considered in section 5 of our report.

- 3.69 The Head of Prosecutions told us that both the second former Investigating Committee Chair and the member of GDC staff concerned complained to the Head of Prosecutions about each other's behaviour on 22 March 2011. The Head of Prosecutions had told the second former Investigating Committee Chair that the Head of Prosecutions would speak to the staff member and remind them of their remit, ie to act only as an observer, drawing the committee's attention to the case papers where appropriate. The approach taken by the Head of Prosecutions with both of them was to encourage them to 'move on' if possible and accept that changes were coming which should bring more consistency to the Investigating Committee function. We note that this account does not accord with the second former Investigating Committee Chair's account – which is that the Head of Prosecutions 'confirmed that the behaviour of both the staff...and the members were seriously concerning and unlawful' with the result that the Head of Prosecutions sought to contact a legally qualified individual to attend the remainder of the meeting. When we put that account to the Head of Prosecutions, their response was that they had not made the statements alleged by the second former Investigating Committee Chair, and that at that time there would not have been any legally qualified individual within the GDC who would have been in a position to attend the Investigating Committee meeting to provide independent advice/support to the committee in any event, as all legally qualified staff were either within the corporate legal team or involved in the 'prosecution' of fitness to practise cases.
- 3.70 The second former Investigating Committee Chair also told us that they not only complained to the Head of Prosecutions, but that they also complained to the Head of HR later that day. We asked the Head of HR for their recollection of the events on 22 March 2011. They told us that on 22 March 2011 the second former Investigating Committee Chair had come into their office because they were trying to locate the Head of Prosecutions, whose office was next door to the office of the Head of HR, but the Head of Prosecutions was not in their office at the time. The second former Investigating Committee Chair explained that they had not been able to follow guidance that had been given recently by Neil Marshall in an Investigating Committee meeting that had taken place that morning. The Head of HR recalls empathising with the second former Investigating Committee Chair, and agreeing to pass on a message to the Head of Prosecutions that the second former Investigating Committee Chair had been to see them. The Head of HR told us that she did not consider that the second former Investigating Committee Chair was making a formal complaint about any particular member of staff or committee panellist, but was 'venting' general concerns following a bad meeting. The Head of HR told us that if the second former Investigating Committee Chair had wished the Head of HR to take any action, they had not been clear about that.
- 3.71 We note below that the second former Investigating Committee Chair wrote a complaint about what happened at the meeting on 22 March 2011 which was dated 25 March 2011, ie after the date of some of the events set out in paragraphs 3.74-3.78 below (of which the second former Investigating Committee Chair would not necessarily have been aware at the time). The acknowledgment that was sent by Evlynn Gilvarry on 28 March 2011 indicates

that the second former Investigating Committee Chair's written complaint was in fact received (by email) on 27 March 2011.

- 3.72 We note the content of an email sent on 23 March 2011 by the second former Investigating Committee Chair to the other Investigating Committee panellists who had been present at the Investigating Committee meeting the previous day. That email described the meeting as the 'most unpleasant' the second former Investigating Committee Chair had participated in, and informed the panellists that the second former Investigating Committee Chair was considering withdrawing from chairing. The email stated that the second former Investigating Committee Chair had felt 'undermined and unsupported' at the meeting. They noted what they considered to be a number of errors in the decisions that had been recorded, which had necessitated the second former Investigating Committee Chair correcting the draft letters for two and a half hours after the close of the meeting. The second former Investigating Committee Chair also raised concerns about the legal advice that had been provided, interventions by the casework staff, and the difficulties with amendments to the meeting agenda, as well as other systemic issues. The second former Investigating Committee Chair said that they 'took responsibility for the role' which they had played in the meeting and they referred to the work underway by Neil Marshall to improve the support for the Investigating Committee and invited the panellists to contribute to feedback. They also stated that 'I am sure that the panel was an unpleasant event for all concerned'.
- 3.73 The second former Investigating Committee Chair sent another email on the same day to the Deputy Head of Prosecutions, requesting clarification of the role and remit of the individuals attending Investigating Committee meetings and further training for both staff and Investigating Committee panellists, by reference to 'issues' that had arisen at the Investigating Committee meeting on 22 March 2011. That email described the meeting as 'the most dysfunctional panel I have had to chair to date' and stated that the second former Investigating Committee Chair was seeking feedback on their part in it, but felt 'unsupported by the apparatus of the IC and the lack of clarity of role and remit leading to an unseemingly [sic] tussle for de facto control of proceedings' which they stated they believed had 'compromised the quality of decision making'.
- 3.74 On 23 March 2011 the GDC received a memorandum from the other Investigating Committee panellists who attended the meeting on 22 March 2011, raising concerns about the second former Investigating Committee Chair's communication with staff, similar to the issues raised by the staff member previously. The second former Investigating Committee Chair has alleged that that memorandum was generated as the result of Evlynne Gilvarry making a request (via a staff member) to the panellists attending the Investigating Committee on 22 March 2011 to provide specific feedback about the second former Investigating Committee Chair (and not about any other aspect of the meeting). We have not seen any contemporaneous documentary evidence in support of this. The statement was also denied by Evlynne Gilvarry and Frances Low when we put it to them. We also contacted the Investigating Committee panellists who endorsed the memorandum sent on 23 March 2011 to ask them about any involvement by the executive in the submission of the memorandum. Three of the panellists said that they had not been influenced by the executive or

any GDC staff in connection with this matter. The panellist who we understand started the process of the memorandum said that they understood that none of the panellists concerned (including themselves) had had any contact with anyone at the GDC prior to its submission, and that the first contact from the GDC about it was an administrative contact once it had been submitted. They also said that no pressure was put on the panellists by the GDC after the memorandum was submitted. The second former Investigating Committee Chair also claimed in their evidence that the panellists who provided the 'feedback' had previously received a warning in relation to their participation in the events that led to the complaint about the first former Investigating Committee Chair. The GDC has told us (and we have confirmed from the contemporaneous documents we have seen, including emails between the panellists relating to the submission of the memorandum) that only one of the Investigating Committee panellists who was present at the meeting on 22 March 2011 was also involved in the Investigating Committee meeting on 6 October 2010 that led to the complaint about the first former Investigating Committee Chair. This panellist confirmed that they were not influenced by the executive in connection with the 22 March memorandum.

- 3.75 On 24 March 2011 Frances Low received an email from the same GDC staff member who had provided the initial 'feedback' about the second former Investigating Committee Chair, raising concerns about the second former Investigating Committee Chair's behaviour at the Investigating Committee meetings on both 16 February and 22 March 2011, referring to the 'feedback meeting' that had taken place on 18 March 2011, and noting that it was the staff member's understanding that the second former Investigating Committee Chair had undertaken to apologise to the relevant members of staff, but had not in fact done so. The GDC staff member highlighted their concerns about the second former Investigating Committee Chair's behaviour and in particular their communication style towards GDC staff. On 25 March 2011 Frances Low received an email from a different member of staff also raising concerns about the second former Investigating Committee Chair's conduct at the Investigating Committee meeting on 22 March 2011. The individual set out a number of criticisms of the second former Investigating Committee Chair's communication style towards GDC staff and Investigating Committee panellists and of their management of cases. The email referred to concerns relating to these issues which they said had happened in a number of recent meetings.
- 3.76 The Appointments Committee Chair was asked to look into the matters that had been raised by the Investigating Committee panellists, and was not asked separately to look into the matters that had been raised by the two GDC staff members in their emails. This is evident from an email sent by the Appointments Committee Chair to Evlynne Gilvarry on 18 April 2011 which refers to 'the original "complaint"...made by members of the IC'. When we asked Evlynne Gilvarry and Frances Low about this, they explained that they had seen no need to refer the two emails from staff to the Appointments Committee, as the committee already had the memorandum from the Investigating Committee panellists.
- 3.77 We have also seen an earlier email sent by the Appointments Committee Chair to Evlynne Gilvarry (on 12 April 2011) in which the author highlighted the relevant provision of the Code of Conduct concerning staff complaints.

- 3.78 On 25 March 2011 Evlynn Gilvarry wrote to the second former Investigating Committee Chair to inform them that, following the Investigating Committee meeting that had been held on 22 March 2011, she had been made aware of some further concerns about the second former Investigating Committee Chair's behaviour towards staff, and that the matter was being referred to the Appointments Committee for investigation. The letter also informed the second former Investigating Committee Chair that they would receive a letter from the secretary to the Appointments Committee in due course, 'outlining the substance of the complaint' as well as the process to be followed. The letter also explained that 'In light of the circumstances, I do not think it would be appropriate for you to sit on the [IC] with the staff members concerned whilst the investigation is ongoing. Therefore, at the next IC meeting you are due to Chair, a legally qualified GDC employee or secondee will act as Committee Secretary and the caseworkers will not be present...'
- 3.79 As explained above, the second former Investigating Committee Chair also produced a memorandum which was dated 25 March 2011 regarding the events of the Investigating Committee meeting on 22 March 2011, attaching their note of that meeting as well as a complaint about the GDC staff involved. The second former Investigating Committee Chair raised issues about the behaviour of certain GDC staff and concerns about the adequacy of the support provided for the Investigating Committee. They also referred to a 'positive meeting' on 18 March 2011 with the executive at which these issues had been discussed. The second former Investigating Committee Chair stated that they would be content if 'matters are dealt with at informal resolution level' and that until that took place they withdrew from chairing any future Investigating Committee meetings for professional reasons. They also asked for 'clarity of the concerns raised' about them, and asked for 'outcome and tangible learning points', noting that they needed to 'feel more supported' in the role of Chair. They commented on the absence of previous concerns about them, noted that the panellists had raised no concerns, commented that concerns about staff were 'routinely' raised, and highlighted the large volume of case papers and the short notice at which they had agreed to chair the relevant meetings.
- 3.80 On 28 March 2011 Evlynn Gilvarry replied to the second former Investigating Committee Chair to suggest that 'as a first step' they should meet with Neil Marshall to discuss their memorandum. That meeting took place on 30 March 2011.
- 3.81 The second former Investigating Committee Chair's account of the meeting on 30 March 2011 differs from the accounts given to us by Neil Marshall and the Head of Prosecutions, both of whom attended the meeting. The second former Investigating Committee Chair's evidence is that:
- Neil Marshall said to the second former Investigating Committee Chair that the matter concerning the second former Investigating Committee Chair's behaviour at the meeting on 22 March 2011 'was not a complaint but part of their systems review'; 'no complaints or concerns remained outstanding' against [them] (the previous complaints having been 'withdrawn'); and Neil Marshall had 'already received authority from the CEO prior to the meeting on 30 March 2011 to...apologise to [them] and

to persuade [them] not to proceed with [their] complaint in light of the numerous systemic changes to be made'

- They had been informed by Neil Marshall and the Head of Prosecutions that they had investigated the second former Investigating Committee Chair's complaint and had concluded that it was well-founded, and that a number of systemic changes were being made as a result, including the withdrawal of casework staff from Investigating Committee meetings.

3.82 The accounts given to us by Neil Marshall and the Head of Prosecutions are that they were not involved in investigating the complaint that had been lodged by the second former Investigating Committee Chair. Therefore they would not have made the comment referred to by the second former Investigating Committee Chair, although they accept that they did indicate that they understood the reasons for the second former Investigating Committee Chair's concerns. They also said that they did not say that the matter concerning the second former Investigating Committee Chair had been withdrawn (and that it had not been withdrawn). The Head of Prosecutions said that Neil Marshall had to explain to the second former Investigating Committee Chair that, as the issue was being looked at by the Appointments Committee, they could not say what would happen with it. They did, however, say that there was a discussion at the meeting about whether, hypothetically, the second former Investigating Committee Chair might be willing to withdraw the complaint they had lodged if the matter relating to them was also withdrawn.

3.83 Neil Marshall told us that the changes that the GDC made to the Investigating Committee processes and support around this time were not stated to be (and were not) the direct result of the concerns raised by the second former Investigating Committee Chair following the Investigating Committee meeting on 22 March 2011, but were changes that were already being considered/planned for at the time (although the concerns that had been raised by the second former Investigating Committee Chair previously, as well as concerns raised by other Investigating Committee Chairs, did inform those planned changes). Neil Marshall told us that the conclusion at the end of the meeting was that they could all work together in the future, provided that the matters raised could be resolved informally. Neil Marshall told us that the second former Investigating Committee Chair reserved their position about resigning and that any apology given (and he accepted that he probably had apologised) was because he appreciated that the second former Investigating Committee Chair had been put in a difficult position as a result of the failings in the systems for supporting the Investigating Committee. The Head of Prosecutions and Neil Marshall did not recall the second former Investigating Committee Chair refusing to agree to chair further meetings on the basis alleged (ie until 'the significant changes put in place as a result of [the second former Investigating Committee Chair's] complaint had been embedded in the culture and training of the members had taken place...'), although they accept that it was clear that the second former Investigating Committee Chair was concerned that all the planned changes should be made as soon as possible and that they did not wish to continue chairing until the support available to the Investigating Committee had been improved. Neither the Head of

Prosecutions nor Neil Marshall referred in their account to any discussion about the nature of any concerns raised by the casework staff following the meeting on 22 March 2011.

- 3.84 The second former Investigating Committee Chair also claims that the Head of Prosecutions told them that, following the meeting on 30 March 2011, Neil Marshall reported to Evlynne Gilvarry that the second former Investigating Committee Chair would not continue working for the GDC unless the changes were embedded (as referred to in the paragraph above). The second former Investigating Committee Chair alleges that Evlynne Gilvarry decided to 'unilaterally alter' the 'informal resolution of all matters on 30 March 2011'. Evlynne Gilvarry, Neil Marshall and the Head of Prosecutions deny making any such statements or taking any such actions. We have not seen any documentary evidence in support of the second former Investigating Committee Chair's allegations. Neil Marshall said that the feedback he gave to Evlynne Gilvarry after the meeting with the second former Investigating Committee Chair on 30 March 2011 was that he thought that it would be possible to resolve the situation amicably and move forwards, retaining the second former Investigating Committee Chair as a chair of the Investigating Committee, in the event that both the matters concerning the behaviour of the second former Investigating Committee Chair and the complaint that they had made about GDC staff could be addressed without formal action.
- 3.85 On 2 April 2011 the second former Investigating Committee Chair wrote to Evlynne Gilvarry commenting on the value of the meeting on 30 March. On 5 April 2011 Evlynne Gilvarry wrote to the second former Investigating Committee Chair, saying 'I have been considering the issues raised by your fellow panellists arising from the meeting of the [IC]...I am anxious to ensure that the issues are properly considered at the same time that the circumstances outside of your control, which may have contributed to the difficulties, are addressed. I have decided in the circumstances that an informal route is the most appropriate first step. I propose therefore to ask the Chair of the Appointments Committee to take an objective look at all the circumstances and to provide me with a view on the most appropriate action. Accordingly, [the Chair of the Appointments Committee] will be in contact with you to arrange a meeting very shortly'.
- 3.86 Eight days later, on 13 April 2011, Evlynne Gilvarry emailed the second former Investigating Committee Chair to say that the Appointments Committee Chair had advised her that, if the matter were referred to them, they would have to deal with it under the formal 'Disciplinary Procedure for Statutory Committee Members'. That email went on to state that whilst Evlynne Gilvarry had '...not yet referred the matter to [the Appointments Committee Chair] formally, but I am taking this opportunity to inform you that I intend to do so on Thursday 21 April 2011'.
- 3.87 The second former Investigating Committee Chair told us that they saw the 13 April 2011 letter as a 'threat and a warning, made in good time, as a strategy to lever [them] out of the GDC'. Upon receipt of the letter (on 17 April 2011), the second former Investigating Committee Chair decided to resign from their post, referring in their email of resignation to the 'long term dysfunctionality of the GDC' and to the GDC 'seeking to divert responsibility to individuals' and stating that

they lacked confidence in Evlynn Gilvarry's judgement. Therefore, the second former Investigating Committee Chair was never subject to any formal GDC disciplinary process. The Head of Prosecutions said to us that they felt that the second former Investigating Committee Chair's resignation was an inevitable consequence of the concerns raised about them being dealt with as a formal disciplinary matter and this would have been known to Evlynn Gilvarry and Neil Marshall. They considered that the second former Investigating Committee Chair's resignation could have been avoided, as the concerns which they had raised were in the process of being addressed.

- 3.88 The Appointments Committee Chair told us that Evlynn Gilvarry had asked them to look at the issues raised about the second former Investigating Committee Chair in order to assess whether there was a way to resolve them without resorting to the formal disciplinary process. The Appointments Committee Chair said that it was recognised by the GDC at the time that the operating environment for the Investigating Committee was not ideal. Nevertheless the concerns that had been raised about the second former Investigating Committee Chair's behaviour needed to be addressed. The Appointments Committee Chair told us that they had agreed with Evlynn Gilvarry initially that they would look into the matter and consider what was possible, and said that they were willing to hold an initial meeting with the second former Investigating Committee Chair. At that stage the Appointments Committee Chair hoped to meet with the second former Investigating Committee Chair to discuss the issues, to acknowledge the problems on all sides, and to try to find a way to move forwards. The Appointments Committee Chair said that within 48 hours of Evlynn Gilvarry's 5 April 2011 letter, the second former Investigating Committee Chair sent a long email to the Appointments Committee Chair. The Appointments Committee Chair told us that the second former Investigating Committee Chair's email was written in a 'quasi-legal' way that was the opposite of the spirit in which the proposal to resolve the situation outside of the formal disciplinary process had been made, and that, having read that email, the Appointments Committee Chair had reached the view that an informal resolution of the issues was not going to be possible. The Appointments Committee Chair then telephoned Evlynn Gilvarry and said that informal resolution was not going to be possible and that Evlynn Gilvarry would need to refer the matter formally as a complaint to the Appointments Committee Chair.
- 3.89 We have seen a copy of an email sent by the Appointments Committee Chair to Evlynn Gilvarry on 10 April 2011 which stated that '...I have received a rather lengthy email from [the second former Investigating Committee Chair] which I think renders the handling of this case initially 'informally' extremely difficult if not impossible. I was, prior to this, struggling a little to find the best way of managing your request within my remit, but with some flexibility – it is indeed a complex matter. However I have been halted in my tracks by this email'. The email went on to suggest that Evlynn Gilvarry and the Appointments Committee Chair should talk, and there was a subsequent email from Evlynn Gilvarry indicating that a telephone call was scheduled for the following day (11 April 2011), followed by a further email from the Appointments Committee Chair to Evlynn Gilvarry on 12 April 2011 in relation to the Code of Conduct's provisions with regard to staff complaints. The Appointments Committee Chair told us that the

decision that the matter would have to be dealt with formally was a decision which they made without any involvement from any member of the GDC executive (including Evlynn Gilvarry).

The Chief Executive and other issues raised in connection with this allegation during the course of our investigation

- 3.90 When we spoke to her, Evlynn Gilvarry denied the allegation that anyone who disagrees with the executive management team is threatened with a complaint or use of the disciplinary procedure. She told us that 'There is no evidence of any Council Member or committee member being threatened with complaints or the disciplinary process while [Evlynn Gilvarry] has been in office'. She said that Council members frequently raise issues with her, which suggests that they have no concerns about the consequences of challenging the executive management team. Evlynn Gilvarry said that she values any justified criticisms, and uses them to drive improvements. She told us that her approach is that if someone 'gets the wrong end of the stick' she would seek to discuss the issue with them – her style is to listen, respond, and work out any problems, rather than to instigate a complaint/use the disciplinary procedure.
- 3.91 Evlynn Gilvarry told us that she had no involvement in the decision made by the investigator (an Appointments Committee member) to refer the matter involving the conduct of the first former Investigating Committee Chair for an Appointments Committee meeting. Evlynn Gilvarry and Frances Low told us that they knew nothing about the investigation of that matter until its outcome had been decided.
- 3.92 In relation to the matters concerning the second former Investigating Committee Chair, Evlynn Gilvarry told us that she was very conscious that the role of an Investigating Committee Chair was a challenging one that comes with the stresses and strains of a heavy workload. This view was reflected in her letter to the second former Investigating Committee Chair on 5 April 2011 in which she stated 'I am anxious to ensure that the issues [those raised by fellow panel members] are properly considered and at the same time that the circumstances outside of your control, which may have contributed to the difficulties are addressed'. Evlynn Gilvarry's view was that behaviour that is damaging or undermining to the staff could not be tolerated, and that it was therefore necessary to deal properly with complaints about such behaviour by a committee chair. She commented to us that it was notable that the other Investigating Committee Chairs had not been accused of behaving in a similar manner, although they had been subject to the same stresses and strains. We note that the second former Investigating Committee Chair objected to the implication from Evlynn Gilvarry's statement above that the 'feedback' received about them concerned behaviour that was 'damaging or undermining of the staff'.
- 3.93 Evlynn Gilvarry told us that there was no significance to the fact that her email to the second former Investigating Committee Chair on 13 April 2011 stated that the matter would be formally referred to the Appointments Committee on a future date. Evlynn Gilvarry said that the likelihood was that the period of time between the date of that letter and the anticipated date for formal referral to the Appointments Committee simply reflected the fact that the GDC would have to compile all the relevant papers in a suitable format prior to the formal referral. We note that an email between the Appointments Committee Chair and Evlynn

Gilvarry dated 18 April 2011 refers to Evlynne Gilvarry having advised the second former Investigating Committee Chair that the Appointments Committee Chair would be investigating the matter formally, and to Evlynne Gilvarry waiting for a response from the second former Investigating Committee Chair. We asked Evlynne Gilvarry whether or not that email assisted her in recalling the reasons for stating in her email to the second former Investigating Committee Chair that the matter would be formally referred eight days later. We anticipated that Evlynne Gilvarry might have told us that she had allowed for a period of several days to elapse before the formal referral was due, in order to give the second former Investigating Committee Chair time to respond. However Evlynne Gilvarry told us that sight of the email did not aid with her recollection of these matters.

- 3.94 Evlynne Gilvarry told us that the concerns that the second former Investigating Committee Chair had raised about the Investigating Committee processes and support prior to Evlynne Gilvarry taking up her post were not specifically brought to her attention or to the attention of Frances Low on their arrival. If that is correct (and we have not seen evidence to the contrary) it suggests that the fact that the second former Investigating Committee Chair had raised those concerns cannot have contributed to the decision that was taken by Evlynne Gilvarry to refer the 'feedback' that was received in February/March 2011 to the Appointments Committee.
- 3.95 Evlynne Gilvarry also confirmed that none of the concerns that the second former Investigating Committee Chair had raised had been the specific trigger for the actions the GDC has subsequently taken to improve the infrastructure for Investigating Committee meetings. She said that by early 2011 (these concerns were first brought to Evlynne Gilvarry's attention in March 2011) the executive management team had already identified that there were deficiencies in the Investigating Committee processes and in the support provided to the committee, and were taking steps to achieve improvements. Her account is confirmed by Neil Marshall, who told us that when he met with the second former Investigating Committee Chair on 30 March 2011 he described the developments that were already underway following his review of the fitness to practise process on coming into the role in mid-February 2011. He told us that he could understand why the second former Investigating Committee Chair might have thought that the changes being made resulted directly from the concerns they had raised, but in fact that was not the case (and he had not even seen the concerns raised by the Investigating Committee Chairs prior to coming into post). We note that a paper was presented to the Council in February 2011 setting out the changes that the executive proposed at that time to make to the investigation stage of the fitness to practise process, following the findings of an audit that had been conducted in October 2010 and that this supports the account given to us by Neil Marshall and Evlynne Gilvarry in terms of the timing of the initiation of the programme of improvements. Further details about this are provided in paragraphs 5.78-5.84 below.
- 3.96 The GDC also told us that Investigating Committee Chairs and panellists (other than the two former Investigating Committee Chairs who resigned during 2011) had also made comments and given feedback about the quality of the Investigating Committee processes and support mechanisms, and that those comments had been taken into account when considering the improvements to

- be made. We also note the statement made to us by the first former Investigating Committee Chair in September 2012 that they had frequently provided feedback on staff performance (as did other Investigating Committee Chairs) and that this was 'invariably welcomed' and that 'much such frequent feedback was appreciated'.
- 3.97 We have seen an email dated 15 November 2010 from the GDC to the Investigating Committee Chairs in post at the time asking them to identify areas for input at the next training day (scheduled for 26 November 2010). We have seen an email response to that invitation from the first former Investigating Committee Chair sent on the same day (together with the response from the GDC) and an email response from another of the Investigating Committee Chairs, sent on 16 November 2010. We have also seen an email dated 16 November 2010 sent by the second former Investigating Committee Chair to the first former Investigating Committee Chair, copied to some staff and other Investigating Committee Chairs, which highlighted three areas for action. We have also seen the feedback provided jointly by the Investigating Committee Chairs following the training meeting on 26 November 2010. These are the only documents supplied to us by the GDC in response to our request for documentation evidencing feedback provided by Investigating Committee Chairs on the support for the Investigating Committee process, other than that provided by either the first or the second former Investigating Committee Chairs. It appears therefore that only one other Investigating Committee Chair provided such feedback in writing.
- 3.98 Evlynne Gilvarry told us (in 2011) that 'she is not someone who reacts to criticisms of the GDC's processes defensively – she has spent the past year identifying with the assistance of the new management team all the areas that need to be improved within the GDC, so that they can identify these and put them right. The deficiencies have very transparently been laid bare as has the full spectrum of improvement that needs to happen at this point in time' and that she 'regards it as part of her job to put right things that are wrong within the GDC's processes'.
- 3.99 There is also evidence that Neil Marshall acknowledged and agreed with the concerns raised by the second former Investigating Committee Chair. For example, in one email of 20 March 2011 he said 'I agree with almost everything that you [the second former Investigating Committee Chair] say, if not all of it. These issues clearly need speedy resolution. I will be working hard to improve things over the next few months'. As discussed in section 5, we consider that the concerns raised by the second former Investigating Committee Chair about the Investigating Committee support and processes generally were valid and were also raised by other Investigating Committee Chairs and panellists.
- 3.100 A further email from Neil Marshall sent on 23 March 2011 to the second former Investigating Committee Chair noted that he was seeking additional resources in order to ensure improved support for the committee. Neil Marshall and the Head of Prosecutions met with the second former Investigating Committee Chair on 30 March 2011 and explained the actions that the executive management team already had in hand to effect improvements in the Investigating Committee

processes and support and asked them to work with the GDC to make those improvements happen.

- 3.101 The Head of Prosecutions told us that on 22 March 2011 he spoke to both the staff member who had given the 'feedback' about the second former Investigating Committee Chair, and the second former Investigating Committee Chair separately about their experiences of the Investigating Committee meeting held during that day. He said that he told the second former Investigating Committee Chair that he would speak to the staff member about their behaviour and remind them of the appropriate boundaries.
- 3.102 The second former Investigating Committee Chair told us during the course of our investigation that an Investigating Committee panellist who had applied for appointment as an Investigating Committee Chair had told them that they had been criticised by the Appointments Committee for applying the correct legal test during their interview. The second former Investigating Committee Chair also told us that one of the individuals who was appointed as Chair had displayed a lack of basic knowledge, which meant that they required urgent refresher training.
- 3.103 Frances Low told us that the appointments process was managed entirely by the GDC's Appointments Committee, and that the executive management team played no part in the appointments process for Investigating Committee Chairs. We spoke to one of the two Appointments Committee members who was responsible for managing the process of making recommendations for the appointment of Investigating Committee Chairs in 2011. They refuted that anyone within the executive had sought to or in fact had any influence over the Appointments Committee's selection process. They told us that each of the existing Investigating Committee panellists had been asked to consider if they wished to apply for the role of Chair, and if they did apply, were assessed (by the two Appointments Committee members responsible for the recruitment exercise) on the basis of their letter of application, an interview, their handling of a case study, and on their answers to questions about giving and receiving feedback. The two Appointments Committee members scored applicants in relation to their current competencies, as well as their potential for future development, before making written recommendations to the Appointments Committee. Three of the applicants had not been recommended for appointment due to their lack of relevant experience/failure to meet the competencies and in one case, their confusion about the 'realistic prospect' test. Telephone feedback had been provided to each applicant about the reasons for the Appointments Committee's decision in relation to their application. The two Appointments Committee members had sought Neil Marshall's views about the appointment process, but no-one had ever sought to make suggestions to the Appointments Committee about which individuals should be appointed.
- 3.104 During the course of our investigation we also spoke to the six current Investigating Committee Chairs.²⁵ We asked each of them whether or not they had any direct or indirect experience of Council or committee members who disagree with the executive being threatened with complaints. All of them said they had no experience of this, either direct or indirect.

²⁵ The 'current' Chairs of the Investigating Committee as described in this report were those who had been in post since 2010, as at June 2012.

- 3.105 At a late stage of our investigation two current members of GDC staff approached us with specific concerns about the executive management team's handling of particular issues affecting them during recent months. The first member of staff referred us in September 2012 to an issue which had occurred in July 2012 regarding how they were treated at meetings involving Evlynn Gilvarry and Frances Low. We carried out some preliminary investigation into this matter and concluded that it was not directly relevant to the specific allegation in 1(a).
- 3.106 The second staff member raised an allegation in September 2012. We do not consider that the matter they raised is directly relevant to the allegations in 1(a). Further, this allegation relates to an ongoing GDC matter which has not yet been determined and this would make it very difficult for us to draw firm and reliable conclusions as to the issue it raises. Also, given the time at which it was raised (and the fact that we concluded that, based on the relevant evidence in connection with allegation 1(a) there was no discernible pattern of conduct by the executive as alleged in 1(a)) we consider that it would be disproportionate to expand our investigation to this matter at such a late stage.

Our view

The GDC Council members

- 3.107 The Council members to whom we spoke reported no direct experience either of being threatened with complaints or of being complained about following any challenge to Evlynn Gilvarry or the executive management team. They were able to provide examples of occasions when they had challenged the executive management team without any adverse consequences resulting from doing so.

The first former Investigating Committee Chair

- 3.108 We have considered contemporaneous documents relating to the complaint received in respect of the first former Investigating Committee Chair. We also interviewed a number of GDC staff and the two Appointments Committee members who were involved in investigating this matter, as well as obtaining the former Investigating Committee Chairs' written evidence. We have set out above the evidence that we consider to be relevant to the allegation made by Alison Lockyer.
- 3.109 We consider that, given the seriousness of the matter, the clear documentary evidence supporting the complaint, and the first former Investigating Committee Chair's apparent failure to acknowledge that their actions were in the circumstances not appropriate (regardless of whether or not GDC staff had opportunities to intervene to prevent the first former Investigating Committee Chair taking various actions), the decision made by the investigator to refer the complaint against the first former Investigating Committee Chair to the Appointments Committee for formal investigation was justified in the circumstances.

- 3.110 Based on the evidence, we do not consider that the complaint about the first former Investigating Committee Chair was initiated as a result of either the concerns that the committee chairs as a group had been raising since mid-2010, or as a result of pointing out that the various actions that the GDC staff could have taken both before, during and after the committee meeting on 6 October 2010 which would have prevented the problems that then arose. With regard to the latter, we note that the staff member who initiated the concerns about the first former Investigating Committee Chair's conduct (which apparently prompted Evlynne Gilvarry to bring the complaint) was not involved in the correspondence relating to the first former Investigating Committee Chair's request for the reference to be removed from the case bundle. The staff member was first alerted to the irregularities in the handling of the case by the GDC's external solicitors, to whom the case had been referred in order to prepare it for the Health Committee hearing.
- 3.111 We consider that the GDC staff members who were contacted by the first former Investigating Committee Chair about the relevant case considered at the meeting on 6 October 2010 did have opportunities to intervene to alert the first former Investigating Committee Chair to the fact that their intended actions were not appropriate. We also consider that it is possible that, had there been sufficient resources and a greater depth of knowledge and experience within the relevant team at the time, the potential risks might have been identified and mitigating action taken. We comment on the extent of the support arrangements for the Investigating Committee at the time in section 5 of this report.
- 3.112 Notwithstanding this, we consider that the first former Investigating Committee Chair should have recognised that their actions were not appropriate and they presented real issues including *inter alia* breaching the 'separation of functions' and the confidentiality of the Investigating Committee process in their contact with Alison Lockyer, the registrant and the Health Committee Chair. Alison Lockyer was not a party to the case – nevertheless the first former Investigating Committee Chair contacted her and informed her of the Investigating Committee outcome (and we note that that occurred shortly after the Investigating Committee meeting, at a time when the registrant themselves may not have been notified of the outcome) in circumstances where the only issue that it might have been appropriate to contact her about (the fact that a letter of reference from Alison Lockyer on GDC headed note paper was included in the bundle of papers relating to the case) had already been addressed by the committee's disregard of that document. We understand how this could be seen as potentially damaging to the GDC. We also accept the investigator's evidence that they were not influenced by the executive in their decision to escalate the complaint to the Appointments Committee (having previously considered that would not be necessary following their meeting on 3 December and in anticipation of a letter being received from the first former Investigating Committee Chair as discussed at the meeting); and that this decision was arrived at because of the issues raised by the first former Investigating Committee Chair's 6 December 2010 correspondence including what the investigator considered to be a 'lack of insight' into the events which were the subject of the complaint.

The second former Investigating Committee Chair

- 3.113 There is various evidence to demonstrate that the second former Investigating Committee Chair raised a number of concerns about the Investigating Committee processes and support mechanisms (individually and together with other committee chairs) during 2010 and also in 2011. However, on balance, we do not consider that this was the reason for the events (including the provision of 'feedback' by GDC staff and other Investigating Committee panellists and/or the decisions which were taken with regard to the mechanism for handling this) which culminated in the second former Investigating Committee Chair's resignation in 2011. Our reasons for this are as follows.
- 3.114 'Feedback' had been received on two separate occasions from staff about the second former Investigating Committee Chair's communication with others at Investigating Committee meetings, which we consider the GDC had a duty to address in order to fulfil its duty of care to GDC staff, as well as to facilitate the smooth running of the Investigating Committee process. On the second occasion the Investigating Committee panellists also provided 'feedback' about the second former Investigating Committee Chair's behaviour. The second occasion on which such 'feedback' was provided occurred only a few days after Evlynne Gilvarry and Frances Low had met with the second former Investigating Committee Chair to discuss with them the 'feedback' received on the first occasion.
- 3.115 Following the first set of 'feedback', Evlynne Gilvarry decided that the matter should be dealt with at an informal meeting involving her and Frances Low. We note that it does not appear that the second former Investigating Committee Chair was provided with much information in advance of the meeting, although it is clear that they were aware of the broad issues. The key issue which is in dispute in connection with that meeting is whether or not it was agreed that the second former Investigating Committee Chair should apologise to the staff who had raised the 'feedback'. Our view, based on the evidence we have seen, is that there was a misunderstanding about this and Frances Low and Evlynne Gilvarry and the second former Investigating Committee Chair appear to have left the meeting with different views. The second former Investigating Committee did record their understanding in a note written shortly after the meeting and this was sent to Evlynne Gilvarry and Frances Low. Evlynne Gilvarry and Frances Low did not respond to this note, although having considered the evidence we accept their explanation that the note was effectively 'overtaken by events' when the second set of 'feedback' was received following the Investigating Committee meeting on 22 March 2011. We also note that all parties appeared to consider that the matter had been resolved satisfactorily and that Frances Low had informed a staff member that there was no need to involve the Appointments Committee.
- 3.116 With regard to the second set of 'feedback' about the second former Investigating Committee Chair, the memorandum from the Investigating Committee panellists was received on 23 March 2011, some time before the second former Investigating Committee Chair submitted their written complaint about the behaviour of certain GDC staff following the 22 March 2011 meeting (the memorandum was dated 25 March 2011 and apparently received on 27 March

2011). The 'feedback' from the GDC staff was also sent prior to the second former Investigating Committee Chair's memorandum (on 24 and 25 March respectively). We note that the second former Investigating Committee Chair had raised concerns orally with the Head of Prosecutions and the Head of HR on 22 March 2011. However, neither of them understood the second former Investigating Committee Chair to be making a formal complaint at that time (see paragraphs 3.69-3.70 above). We also note that the second former Investigating Committee Chair's note of the 18 March 2011 meeting referred to a discussion about the second former Investigating Committee Chair's concerns about the behaviour of certain GDC staff (and their intention to address such matters directly). However, the evidence does not suggest that a formal complaint was being made by the second former Investigating Committee Chair at that stage. On balance therefore we do not accept the suggestion that these comments were the reason for either the Investigating Committee panellists' or certain GDC staff members' 'feedback' which was sent following the 22 March 2011 Investigating Committee meeting.

- 3.117 In our view, the issue which is more likely to have affected events is the fact that the second former Investigating Committee Chair did not apologise to the relevant GDC staff following the first 'feedback meeting' (which, it appears, was the result of a misunderstanding between Evlynn Gilvarry and Frances Low and the second former Investigating Committee Chair). The relevant staff had, it seems, been informed that an apology would be forthcoming and the fact it was not may well have been a contributory factor to the events that followed, which resulted in the second former Investigating Committee Chair, two staff members, and the other Investigating Committee panellists raising concerns with the GDC. This misunderstanding about whether or not an agreed outcome from the meeting on 18 March 2011 was that the second former Investigating Committee Chair would apologise to staff was clearly very unfortunate and indicates that it would have been preferable for a note of the meeting (or at least of the action points arising from it) to have been taken at the time and then agreed by all the attendees.
- 3.118 We do not consider, based on the evidence, that the other Investigating Committee panellists would have contacted the GDC on 23 March 2011 raising concerns about the second former Investigating Committee Chair's behaviour unless they had genuine reasons for doing so. We accept the evidence of those individuals (see paragraph 3.74 above) that the decision they took to submit a memorandum setting out their concerns about the second former Investigating Committee Chair's behaviour following the Investigating Committee meeting on 22 March 2011 was not influenced in any way by the GDC executive or staff. We do however accept the positive testimonials which the second former Investigating Committee Chair submitted to the GDC at the time of the relevant events and also the comment in the Investigating Committee panellists' memorandum that the second former Investigating Committee Chair was calm and polite at this meeting.
- 3.119 Following the receipt of the second round of 'feedback' on 25 March 2011 Evlynn Gilvarry wrote to the second former Investigating Committee Chair to inform them that the matter had been referred to the Appointments Committee for investigation. As explained above, the second former Investigating Committee

Chair produced a note of the 18 March 2011 meeting on 25 March 2011 and this appears to have been received by Evlynn Gilvarry and Frances Low on 27 March 2011. At the same time the second former Investigating Committee Chair raised several issues including: their own issues with GDC staff present during the 15 February 2011 meeting; the discussion regarding the potential apology; and the second former Investigating Committee Chair's thoughts about the fact that both Evlynn Gilvarry and Frances Low had attended the 'feedback meeting'. On 28 March 2011 Evlynn Gilvarry suggested to the second former Investigating Committee Chair that a 'first step' would be for them to meet Neil Marshall – this meeting took place on 30 March 2011. There is considerable disagreement between the attendees of this meeting as to what was discussed and agreed. We have explained the detail of this at paragraphs 3.81-3.83 above. The second former Investigating Committee Chair said that Neil Marshall said *inter alia* that there were no outstanding complaints against them (and the previous complaint had been withdrawn). Neil Marshall denies that he said this and the Head of Prosecutions said that Neil Marshall had to explain to the second former Investigating Committee Chair that, as the issue was being looked at by the Appointments Committee, they could not say what would happen with it. In our view, this evidence, together with Evlynn Gilvarry's 25 March 2011 letter, demonstrate that, as at the 30 March 2011, the second set of 'feedback' was still being looked at by the Appointments Committee (and had not been 'withdrawn').

- 3.120 Evlynn Gilvarry wrote again to the second former Investigating Committee Chair on 5 April 2011, saying that, having considered the issues raised by the other Investigating Committee panellists, she had decided to ask the Appointments Committee Chair to take an 'objective look' at the matter. Eight days later, on 13 April 2011, Evlynn Gilvarry emailed the second former Investigating Committee Chair to say that the Appointments Committee Chair had advised her that, if the matter were referred to them, they would deal with it under the formal procedure. The letter said that this step had not yet been taken but Evlynn Gilvarry intended to do this just over a week later on 21 April 2011. The second former Investigating Committee Chair said that they saw this letter (particularly in view of the apparent delay between it and the intention to refer the matter formally) as a 'threat and a warning, made in good time, as a strategy to lever [them] out of the GDC'. The Appointments Committee Chair said to us that, following Evlynn Gilvarry's 5 April letter, they received a long email from the second former Investigating Committee Chair (which they say was written in a 'quasi-legal' way which was the opposite of the spirit in which the proposal to resolve the situation informally had been made) and so they informed Evlynn Gilvarry that the matter would need to be taken down the formal route. We understand how the suggestion that a course of action would be taken eight days after a letter is sent (without any explanation as to the reason for the delay) could be interpreted negatively. However, we also accept Evlynn Gilvarry's evidence that the gap probably arose because of the time that would be needed to prepare the necessary paperwork and the Appointments Committee Chair's evidence that this timeframe was to allow the second former Investigating Committee Chair the opportunity to respond. Therefore, on balance, we do not consider that the 5 April letter was intended as a 'threat' or that the reason the matter was escalated was because of any undue influence by the executive on the Appointments Committee.

3.121 On balance therefore we do not consider that the examples of the two Investigating Committee Chairs support the allegation in 1(a). The individual who investigated the complaint about the first former Investigating Committee Chair denied any suggestion that their decision-making had been influenced by the GDC executive or staff. Similarly the Appointments Committee Chair confirmed to us that the executive had no involvement in their decision that a formal referral to the Appointments Committee of the matter concerning the second former Investigating Committee Chair was required.

The CE and other issues raised in connection with this allegation during the course of our investigation

3.122 None of the current Investigating Committee Chairs told us that they had any experience of being threatened with complaints by the executive.

3.123 We also found the evidence of Evlynne Gilvarry that she does not respond to criticism about the GDC's performance defensively to be compelling. We consider that she has been frank and open in her evidence to us about the extent of the problems within the governance and fitness to practise functions that she encountered upon her arrival at the GDC, and about her experience of the events to which the allegations examined in this report relate. We have seen evidence that the GDC has worked hard to identify where it needs to improve and to address areas of weakness, and that this work started prior to the events that occurred in February/March 2011 involving the second former Investigating Committee Chair (for example the commissioning of the external audit of the investigating stage of the fitness to practise process that was conducted in October 2010, and presented to the Council in February 2011). This open approach to identifying problems and their solutions is also evident from the papers presented to the GDC's Council during 2011 as detailed at paragraphs 3.167 and 5.85-5.89. In relation to the events that led to the resignation of the second former Investigating Committee Chair, we have seen evidence (in the form of email correspondence between the second former Investigating Committee Chair and Neil Marshall, as well as the evidence given to us by Neil Marshall, Evlynne Gilvarry and the Head of Prosecutions during the course of our investigation) that the GDC acknowledged and agreed with many of the concerns that the second former Investigating Committee Chair had raised during 2010/11. In that context, it seems unlikely to us that the second former Investigating Committee Chair's identification of such concerns would have led the GDC to seek their departure from the GDC, whether by means of removal following a disciplinary procedure, or as a result of their resignation. The concerns that the second former Investigating Committee Chair had raised were largely shared by Neil Marshall (who had come into post in mid-February 2011) and the executive management team were already planning to address those concerns. We note that the evidence given to us by Evlynne Gilvarry, Neil Marshall and the Head of Prosecutions was consistent in stating that one of the objectives of the meetings with the second former Investigating Committee Chair that were held on both 18 and 30 March 2011 was to assure the second former Investigating Committee Chair about the improvements that were being made or planned, and to retain them in their role, and that the GDC was conscious at the time that they could not

afford to lose a second Investigating Committee Chair following the recent resignation of the first former Investigating Committee Chair.

- 3.124 We note that, according to the second former Investigating Committee Chair's account, on 30 March 2011 Neil Marshall and the Head of Prosecutions asked the second former Investigating Committee Chair to chair additional future Investigating Committee meetings. In our view it is unlikely that this would have happened if the GDC's executive management team felt threatened by the concerns the second former Investigating Committee Chair had already raised about the problems in the support structure for the Investigating Committee.
- 3.125 Our review of the evidence (relating to the key matters identified) has led us to conclude that allegation 1(a) is not made out on the balance of probabilities. For the reasons explained above (including the seriousness of the matters involved), we have concluded that the decisions that were made by the executive that those complaints/concerns should be investigated under the Disciplinary Procedure (and that the complaint about the first former Investigating Committee Chair should be referred to the Appointments Committee) were appropriate in the circumstances.

Allegation 1(b)

- 3.126 Alison Lockyer alleged that Evlynn Gilvarry concealed key information from her and the Council including, but not limited to, the following:
- i. Information about two 'whistle-blowing' incidents
 - ii. Information about a meeting between Alison Lockyer and the Chief Dental Officer (England)
 - iii. Information on CHRE's fitness to practise audits
 - iv. Information relating to actions taken to address problems in the fitness to practise function
 - v. The signing of a memorandum of understanding (MoU) with the Care Quality Commission
 - vi. The reasons for the cancellation of a Standards Committee meeting.

Evidence

(i) Information about 'whistle-blowing' incidents at two dental schools

- 3.127 In her letter to CHRE dated 2 September 2011 Alison Lockyer referred to 'two separate 'whistle-blowing' incidents, one in respect of [Dental School A] and one in respect of [Dental School B] which were not reported to me' as being examples of 'a clear pattern (on Evlynn Gilvarry's part) of concealing key information from the Chair'.
- 3.128 Alison Lockyer provided further detail about this aspect of her allegations during a meeting with CHRE on 16 September 2011. At that meeting Alison Lockyer told us that she had not been informed when letters (which raised concerns about the cover-up of inadequate training at two dental schools) initially arrived at the GDC. She only became aware (via a member of staff in the Education department) of the situation a week or two later. Alison Lockyer told us that in her view it was important for her as Chair to be made aware of these incidents as soon as that information came into the GDC, as she was frequently out meeting people on

GDC business and it was important for her to know such background. She told us that she had said that to Evlynn Gilvarry, who had accepted she was right.

The 'whistle-blowing' incident in respect of Dental School A

- 3.129 When we asked her about the 'whistle-blowing' incident in respect of Dental School A, Evlynn Gilvarry told us that she would be surprised if she had not discussed it with Alison Lockyer at the time (February 2011) although she did not remember doing so. She also said that if she had not shared that information with Alison Lockyer that would not have been intentional. The issue concerned was very serious and the GDC had taken prompt action.

The background to the 'whistle-blowing' incident in respect of Dental School B

- 3.130 During our investigation we initially encountered some difficulty in establishing the nature and circumstances of the 'whistle-blowing' incident in 2011 concerning Dental School B as referred to by Alison Lockyer. This difficulty arose because while Alison Lockyer had referred to the incident as a 'whistle-blowing' matter, the GDC had not dealt with it as a 'whistle-blowing' incident, for the reasons explained in paragraph 3.136 below.
- 3.131 Evlynn Gilvarry told us that she was not aware of any 'whistle-blowing' incident in relation to Dental School B that had occurred since she was appointed, although she was aware that there had been such an incident previously (and she was not aware of what information about that incident had been shared with Alison Lockyer, or when it had been shared).
- 3.132 In June 2012 Alison Lockyer told us that she recalled being told about the 'whistle-blowing' incident concerning Dental School B on a date after an Education Committee meeting that took place on 16 March 2011, and that she believed that the person who told her about it was the GDC's Head of Quality Assurance (either in an email or during a conversation). Alison Lockyer also told us that she had discussed the 'whistle-blowing' incidents concerning both Dental School A and Dental School B with Evlynn Gilvarry at a meeting in her office which took place on an unknown date. Alison Lockyer also provided us with a copy of a manuscript note that she told us she wrote in preparation for that meeting (the note is undated). The note refers to the receipt of two 'complaints'- a 'new one for [abbreviation relating to Dental School B] (2nd)' and one relating to Dental School A and states '(See ed.com minutes). When did they come in? Why not told, what action chair of Ed to be told?' Alison Lockyer told us that Evlynn Gilvarry had 'simply looked at her blankly' when she raised these issues with her at that meeting, and that Alison Lockyer had left the matter with her, assuming that it would be dealt with, and that next time something similar occurred Evlynn Gilvarry would inform Alison about it. Alison Lockyer told us that Evlynn Gilvarry had also apologised to her 'up to a point' but had not expressly confirmed that she would in future alert Alison to such matters.

The evidence relating to the incident concerning Dental School B

- 3.133 As noted above, Evlynn Gilvarry told us that she was not aware of any 'whistle-blowing' incident in relation to Dental School B that had occurred in the period since she was appointed. Her account was corroborated by that of the GDC's

Head of Quality Assurance, who told us that there had been only one ‘whistle-blowing’ incident concerning Dental School B that occurred during 2010 or 2011, which occurred in February 2010 (ie before the time when Evlynnne Gilvarry was appointed). The Head of Quality Assurance told us that the February 2010 ‘whistle-blowing’ incident was discussed with Alison White at the time, and a paper was then sent to the Education Committee – which then authorised follow-up action (that action was undertaken during 2010, 2011 and 2012).

- 3.134 The Head of Quality Assurance also informed us that an anonymous letter of complaint about Dental School B had been received by the GDC in September 2010 (ie before Evlynnne Gilvarry formally took up her position) and that a further two anonymous letters of complaint about Dental School B had been received by the GDC in March 2011. The Head of Quality Assurance told us that one of those letters received in March 2011 purported to be from a member of staff at Dental School B. That letter was treated as an anonymous letter as it was not clear who had written it (although a signature was included, the identity of the signatory is not apparent to us). We set out further details of that letter in paragraph 3.145 below.
- 3.135 In light of Alison Lockyer’s statement that her concern about the failure to alert her to the existence of a ‘whistle-blowing’ matter in relation to Dental School B relates to a letter about Dental School B that was received by the GDC in February/March 2011, we have concluded that this must be a reference to one of the two anonymous letters of complaint that were received by the GDC at that time.
- 3.136 We were informed by the GDC’s Head of Quality Assurance that these letters were handled in accordance with the GDC’s established procedure at the time for handling complaints about education providers, and were not treated as ‘whistle-blowing’ incidents. The Head of Quality Assurance told us that his understanding of a ‘whistle-blower’ is someone who is an identifiable individual who raises concerns, whereas an anonymous complaint means there is no identifiable person whose identity needs to be protected.

The GDC’s process for handling complaints about education institutions

- 3.137 Alison Lockyer has asserted to us that ‘there must have been processes in place at the GDC for the incident to be brought to the attention of the Chief Executive promptly once the first notification was made’ and told us that in her view the Chair of the Council and the Chair of the Education Committee should have been notified about any such incident, although there was not necessarily any need for any wider notification at that stage. She also rejected any suggestion that the GDC might not have classified letters of complaint as ‘whistle-blowing’ notifications.
- 3.138 We were told by the Head of Quality Assurance that at the time that the two anonymous letters complaining about Dental School B were received in March 2011, the GDC had an established procedure (that had been in place for some time, and which was known about by Duncan Rudkin, Alison White and Ian Todd) for dealing with anonymous information about education institutions – to distil the information provided and pass it back to the institution, explaining that it had been provided in the form of an anonymous letter, and asking the head of the

institution to comment. The Head of Quality Assurance told us that the GDC's view has always been that it is appropriate to share such concerns with the institution, if the GDC is aware of them, as a matter of fairness. We agree with this. We note that the account that was given to us by Evlynne Gilvarry is consistent with the Head of Quality Assurance's description of the procedure that was in place at the time.

3.139 The Head of Quality Assurance explained that all anonymous letters of complaint about education institutions are handled by the Quality Assurance staff – the usual course of events would be for the Head of Quality Assurance to see the letter, and for a member of the team to deal with it in accordance with the policy. In the usual course of events the Chair of the GDC would not see a copy of an anonymous letter (unless it was originally received by them), nor would the Education Committee. The Head of Quality Assurance also told us that that they would not report anonymous letters of complaint to senior management unless they contain serious allegations, or if the enquiries conducted by the Quality Assurance team as part of their investigation gave reason to believe that there might be serious problems at the education provider.

3.140 The Head of Quality Assurance told us that the GDC's procedure for handling complaints about education institutions was formalised into a written document later in 2011. This was also confirmed to us by Evlynne Gilvarry. We have seen a copy of that written policy (entitled *Handling Complaints or Concerns about an Education or Training Provider*) and note that it:

- States that complaints will be handled by the Quality Assurance team
- Sets out the procedure that the GDC follows in relation to anonymous complaints: 'When an anonymous complaint is received, it may not be possible for any further action to be taken if insufficient information is provided. In such cases, it is likely that the education or training provider would be contacted as a matter of courtesy and given the opportunity to answer the complaint'
- Sets out key information and makes it clear that without such information, the complaint/concern may not be considered
- States that the initial investigation will be conducted by the Quality Assurance team
- Sets out the possible outcomes of such an investigation once a response has been received from the provider – including referral to the GDC's CE (and Registrar) for consideration of a targeted inspection in circumstances where there are serious concerns about educational failure which has not been remedied (after any response has been received from the provider).

The first letter of complaint about Dental School B in March 2011

3.141 The first of the two letters of complaint about Dental School B which were received in March 2011 was addressed to the 'Department of Education' at the GDC and was purportedly sent by a fourth-year student at Dental School B. It was undated, but a manuscript note records that it was saved onto the GDC's system on 29 March 2011. The letter contained a number of complaints about the structure and delivery of the course at Dental School B, unfair treatment of

different groups of students, and about the unwillingness of the management of Dental School B to accept criticism/negative feedback.

- 3.142 The Head of Quality Assurance told us that the GDC planned to follow its usual procedure, ie to distil the concerns outlined in the letter and ask Dental School B to comment on them, but before it could do so, the second letter was received.

The second letter of complaint about Dental School B in March 2011

- 3.143 The second of the two letters of complaint about Dental School B received in March 2011 was addressed directly to Alison Lockyer. It was signed and dated 29 March 2011 and date-stamped 30 March 2011. The Head of Quality Assurance told us that at that time letters were only date-stamped if they were received by either Evlynn Gilvarry or Alison Lockyer's office.
- 3.144 The GDC provided a hard copy of an email from Alison Lockyer's Personal Assistant (PA) to Alison Lockyer dated 30 March 2011 which stated 'Sorry meant Frances! Hi Alison, Please find attached post for today. I will run it past Evlynn and pass to relevant person'. The GDC has informed us that 'according to the 2011 post log, the letter was forwarded to [a member of the Quality Assurance team] on 30 March 2011' and we have seen an email from Alison's PA forwarding a scanned document to a member of the Quality Assurance team dated 31 March 2011. The GDC has confirmed to us, having checked with the relevant staff member in the Quality Assurance team, that the document which that individual received on 30 March 2011 by email from Alison Lockyer's PA is the letter of complaint about Dental School B referred to in paragraph 3.143 above.
- 3.145 The letter was apparently sent by a clinical teacher at Dental School B (although it was signed, the identity of the signatory is not apparent to us). It complained about the management of Dental School B being unwilling to listen and engage, and in particular the exclusion of certain individuals from participation in the GDC's visit to Dental School B. The letter stated that it was likely that the signatory and others would withdraw their teaching support from Dental School B unless changes were made.
- 3.146 The Chair of the Education Committee (who is also the current GDC Chair) informed us that this second letter was received by Alison Lockyer's PA, who notified Alison by email, and then passed the letter on to the Quality Assurance team to be dealt with. This account is consistent with the account we were given by the Head of Quality Assurance and appears consistent with the emails we have seen which are referred to above.
- 3.147 The Chair of the Education Committee also told us that they had been shown the second letter by the Head of Quality Assurance at the time, and that they had decided that, in view of the actions that were already underway to address the concerns that had previously been raised about Dental School B, it was unnecessary to refer this letter to the Education Committee. The Head of Quality Assurance confirmed the Chair of the Education Committee's account, and told us that in their view the two letters of complaint that were received by the GDC in March 2011 did not raise any concerns about Dental School B that were new/different to those that had already been identified and which were already the target of follow-up action by the GDC.

- 3.148 We have considered an extract from the confidential minutes of the Education Committee's meeting on 16 March 2011 relating to Dental School B. The minutes demonstrate that the Education Committee was at that time already taking action in respect of concerns about Dental School B and that Alison Lockyer had attended the relevant Education Committee meeting.
- 3.149 We were told by Evlynn Gilvarry that she was not aware of the existence of the two letters of complaint about Dental School B that were received in March 2011 until July 2012, when their existence was brought to her attention as a result of our investigation. We have not seen any evidence to the contrary. The Head of Quality Assurance told us that they had no reason to conceal the existence of the two letters of complaint about Dental School B that were received in March 2011 from anyone, but that they would not have reported such letters to senior management unless the letter contained serious allegations, or if the investigation conducted by the Quality Assurance team gave reason to believe that there might be serious problems (as noted above).

(ii) Information about a meeting between Alison Lockyer and the Chief Dental Officer (England)

- 3.150 Alison Lockyer told us that a further example of Evlynn Gilvarry not sharing information with her occurred in relation to a meeting that the Chief Dental Officer (England) requested. Alison Lockyer told us that the Chief Dental Officer had requested a meeting with her, but she was not aware what it was to be about. Alison Lockyer told us that she had insisted that Evlynn Gilvarry should also attend the meeting and that Evlynn Gilvarry was clearly uncomfortable and admitted afterwards that she had known what it was about (although beforehand she had said that she did not). Alison Lockyer alleged that Evlynn Gilvarry knew the purpose of that meeting, but denied this until after the meeting had taken place. We note that Alison Lockyer has provided us with a copy of her contemporaneous note of that meeting. It appears to be dated 4 February and to refer to the attendees being Alison Lockyer, Evlynn Gilvarry and the Chief Dental Officer (England) as well as someone by the name of 'David L'.
- 3.151 Evlynn Gilvarry told us that she did have some idea of the reason why the Chief Dental Officer (England) had asked to meet with Alison Lockyer, but that she did not consider it appropriate for her to share her thoughts about that with Alison Lockyer. Evlynn Gilvarry believed that it was for the Chief Dental Officer (England) to communicate directly with Alison Lockyer about the purpose of the meeting he had requested.

(iii) Information on CHRE's fitness to practise audits

- 3.152 When we met with her in September 2011 Alison Lockyer alleged that she and the Council were unaware that CHRE would be conducting a second audit of the initial stages of the GDC's fitness to practise process. Our second audit report was published in March 2011.²⁶ We conducted the relevant on-site audit visit to the GDC in October 2010. That audit would therefore already have been

²⁶ CHRE 2011. *Fitness to Practise Audit Report – Audit of health professional regulatory bodies' initial decisions*. London: CHRE. Available from: <http://www.professionalstandards.org.uk/docs/audit-reports/ftp-audit-report-2010-11.pdf?sfvrsn=0>

completed by the time Evlynne Gilvarry took up her appointment and, therefore in our view, she cannot be responsible for any failure to communicate with Council members before her coming into post that the audit would be taking place. We note that the Council minutes from the meeting in December 2010 (the first Council meeting that Evlynne Gilvarry attended after taking up her post full time) record that she reported to the Council that two audits of the GDC's fitness to practise work had recently been conducted (one by CHRE and the other by the GDC's internal auditors) and that both audit reports and the management response and action plan would be presented to the Council at its next meeting in February 2011 (and we note that the reports, response and action plans were presented to the Council at that meeting at which a review of the fitness to practise function was proposed). We would also comment that, as at 2010,²⁷ our audit procedure (as set out in the documents that were then available on our website) envisaged us auditing each of the nine regulators we oversee each year. There should therefore have been no lack of clarity that we would be auditing the GDC during this period.

3.153 Evlynne Gilvarry was in post by the time of our third initial stages fitness to practise audit of the GDC (in June 2011 – the report of the audit was published in September 2011).²⁸ From our records, we can see that we informally advised Neil Marshall at a meeting on 14 March 2011 that we would be auditing the GDC during the summer of 2011, and on 5 May 2011 we formally informed him that the audit would take place in June 2011. We note that Alison Lockyer resigned from the GDC on 4 May 2011, before that formal notification of the date of the audit had been sent. We asked all Council members to whom we spoke during the course of this investigation whether or not they had been aware that CHRE would be undertaking a follow-up initial stages fitness to practise audit of the GDC in the summer of 2011, and if so, when they had found out about it, and from whom, as well as for their views on what information the Council should have been given about it. Members of the Council to whom we spoke who were also members of either the Fitness to Practise Policy Committee or the Audit Committee (the two committees with a role in overseeing the GDC's work in fitness to practise at that time) during 2011 said that they *had* been informed of CHRE's intention to carry out the audit in the summer of 2011.²⁹ Other Council members could not confirm whether or not they were aware of the 2011 audit, but were not surprised about another audit being undertaken, in light of the weaknesses that had been identified during the previous audit. All Council members to whom we spoke were certain that they had seen all the CHRE audit reports, and some of them also referred to the management action plans that were put in place in response to our findings in 2011. No Council member raised any concern about lack of information relating to either the audit conducted in 2010 or the audit conducted in 2011 in response to the question we asked them

²⁷ Our audit process has subsequently changed.

²⁸ CHRE, 2011. *Audit of the General Dental Council's Initial Stages Fitness to Practise Process*. London: CHRE: London. Available from <http://www.professionalstandards.org.uk/docs/audit-reports/2011-gdc-audit-report.pdf?sfvrsn=0>

²⁹ One Council member who sat on the Fitness to Practise Policy Committee was absent due to illness during the period in which this information was shared so we could not be sure if it was shared with them.

about their knowledge of the audits or in response to our question about the level of communication of information by the executive management team.

(iv) Information relating to actions taken to address problems in the fitness to practise function

- 3.154 When we met with Alison Lockyer in September 2011 she alleged that she did not know what was happening in the GDC's fitness to practise department and that therefore neither did the Council. She said that whilst quantitative data was provided to the Council about the work being done to improve the fitness to practise function, no qualitative data was provided.
- 3.155 When we asked Alison Lockyer to clarify the period of time during which she felt that inadequate information was provided to her/the Council, she told us that she did not recall the context in which she had commented on this (implicitly querying whether or not she had ever done so) and stated that whilst she personally had a very good knowledge of fitness to practise, her concern was that Evlynne Gilvarry did not keep either the Chair or the Council informed of the extent of the ongoing problems, particularly in relation to the Investigating Committee, from the time of her taking up her post in October 2010 until the time when Alison Lockyer resigned in May 2011. In relation to the latter issue, we note that we have seen emails between Evlynne Gilvarry, Ian Todd and Alison Lockyer (including an email dated 15 July 2010 and one dated 11 November 2010) about the recruitment for the executive management team and in particular for the Director of Regulation position – which indicate that Alison Lockyer was aware of the work that was underway to recruit the executive management team on those dates. We also note that Evlynne Gilvarry emailed the entire Council on 22 December 2010 confirming that the recruitment exercise had been completed.
- 3.156 Alison Lockyer told us that she had an excellent understanding of the work of the fitness to practise department, having served for many years on a number of fitness to practise committees, and that she was aware of the problems within the fitness to practise function, but that she was not fully aware of all the detail of the problems and she says that they were not being addressed by the executive, because she was not involved with the day-to-day case work. Alison Lockyer told us that neither she nor the Council were kept informed by the executive about these problems and/or the extent of them, and that they were given little more than 'some bare statistics' about the fitness to practise workload.
- 3.157 We asked all the Council members that we spoke to during our investigation a number of questions about: the Council's oversight of the executive and monitoring of progress of agreed actions; the quality and quantity of information provided to the Council/committees by the executive management team since October 2010; and Evlynne Gilvarry's approach to sharing information with the Council. The Council members to whom we spoke who referred to the fitness to practise function (with the exception of Council member Z) all said that they considered that they had received sufficient information to understand the weaknesses in the GDC's fitness to practise function since Evlynne Gilvarry became CE, and five Council members commented that they had been given information as to the activities being undertaken to address those weaknesses. The Council members to whom we spoke told us that they currently receive regular performance reports, reports on areas for improvements, and proposals

for how those improvements should be made. We comment further below in paragraphs 3.160 and 3.167 on the provision of such reports to the Council during the period from October 2010 to May 2011. The only Council member we spoke to who disagreed was Council member Z, who considered that the information the Council received was too narrow and too heavily focused on CHRE's findings.

- 3.158 Evlynne Gilvarry told us that it was apparent when she joined the GDC that its Council had not (at least in the recent past) been aware of the evidence that had been submitted by the GDC for CHRE's annual performance review, nor had it had sight of the initial draft performance review report. Evlynne Gilvarry understood that this was a matter of concern to Council members, and has changed the process so that whenever a CHRE report is received, it is passed to the Audit Committee (assuming it is a report that identifies significant risks for the GDC) before being provided to the Council. When we spoke to Duncan Rudkin he confirmed that it had not been the practice in the past for the Council to see the GDC's submission for the performance review.
- 3.159 Alan MacDonald (the Chair of the Audit Committee) said that it is now 'part of the GDC's DNA' that the Audit Committee receives reports about fitness to practise performance. The information is then passed on to the Council. He also told us that the Council was informed about the CHRE audit in the summer of 2011, as well as being informed of the executive management team's concerns about the likely negative outcome.
- 3.160 It is evident from the publicly available Council papers that the performance of the GDC's fitness to practise function was discussed at both Council meetings which took place while Evlynne Gilvarry was CE and Alison Lockyer was Chair.
- At the Council meeting in December 2010 Evlynne Gilvarry advised that two audits of the GDC's fitness to practise procedures had recently been conducted – one by the Council's internal auditors, and the other by CHRE. Both reports, together with the management's response and action plan, would be presented to the Council for consideration in February 2011. Evlynne Gilvarry also reported that, further to a discussion about key aims at the Council's 'away day' in November 2010, a report including information on key performance indicators across all the GDC's main functions would be presented to the Council on 24 February 2011 and at every Council meeting thereafter
 - At the same meeting the Fitness to Practise Policy Committee (the Committee) also presented its annual report to the Council. The Council meeting minutes record that the Committee Chair commented on the lack of significant improvement in performance compared to the previous year, highlighting the increase in caseload. The Committee's report stated that the Committee had been actively involved in operational monitoring of fitness to practise (despite the fact that Alison White had decided against changing the Committee's remit to include such a monitoring role, pending the outcome of the work by the Committee Structure Working Group that was ongoing at the time). The Committee's report set out the four key performance indicators that had been put in place, as well as

providing data that demonstrated overall failure to perform to the indicated targets during 2010

- At the Council meeting in February 2011, Evlynne Gilvarry presented the first quarterly report of performance data (as referred to at the December 2010 Council meeting) including data about fitness to practise, as well as reporting on a planned review of the fitness to practise function. In addition Neil Marshall (who had only come into post that month) presented a report from the GDC's internal auditors about the fitness to practise function and informed the Council that a management action plan was to be implemented immediately to address the weaknesses that had been identified and that progress would be monitored by the Audit Committee
- At the Council meeting in May 2011 Neil Marshall updated the Council about the progress in reviewing the fitness to practise function and the actions being undertaken to address the identified deficiencies. The second quarterly report of performance data (including data on fitness to practise) was also presented.

3.161 We have also seen evidence that Evlynne Gilvarry sought to update Council members with important information in between Council meetings – for example an email dated 22 December 2010 in which she informed the Council of the outcome of a recent prosecution, that the recruitment of the new executive management team was complete and that the GDC's evidence for the CHRE 2010 performance review had been submitted.

3.162 In addition we note that, as Alison Lockyer has acknowledged, the fact that the GDC's fitness to practise function was encountering problems was a matter of public record when she was elected Chair in December 2009, and indeed before that time, whilst she was a member of the Council. We refer in particular to the annual report of the Fitness to Practise Policy Committee and Duncan Rudkin's annual report to the Council in 2009, both of which highlighted issues about the ability to progress an ever-increasing caseload through the fitness to practise process efficiently, in addition to difficulties with obtaining the necessary management data.

3.163 We have also reviewed emails from Evlynne Gilvarry to Alison Lockyer which highlight the concerns about the GDC's fitness to practise performance, including:

- An email dated 15 February 2011 in which Evlynne Gilvarry summarised a meeting she had had with CHRE in which CHRE had highlighted concerns about the backlog in fitness to practise cases, the lack of performance data and the quality of the GDC's response to complaints. Evlynne Gilvarry noted that she would be flagging up these concerns to the Council in order to avoid any 'unpleasant surprises' when CHRE's performance review was published
- An email from Evlynne Gilvarry dated 14 December 2010 forwarding to Alison Lockyer the draft CHRE audit report (which Evlynne Gilvarry had been sent earlier that day)

- An email from Evlynn Gilvarry dated 31 March 2011 forwarding to Alison Lockyer the finalised CHRE audit report, attaching a detailed paper that had been prepared for consideration by the Council setting out the areas of risk for the GDC in relation to current performance within fitness to practise and proposing a boosting of resources within the fitness to practise function to address the risks. We note that in the email Evlynn Gilvarry described the problems with fitness to practise as 'very serious' and 'endemic'. In a later email the same day Evlynn Gilvarry noted that her intention was to bring a full paper setting out all the proposals to the Council meeting in May 2011, seeking approval to increase resources to fund an increase in the number of concurrent fitness to practise hearings to five (instead of four) per day.

3.164 We asked Alison Lockyer why she considered that the information provided to the GDC's Council during Evlynn Gilvarry's tenure about fitness to practise was inadequate. Her response was that 'merely giving figures...about volume of work, and days taken to process a complaint, no way [sic] near paint the picture of the kind of things that can go on in Fitness to Practise, and the problems that can occur; and indeed were found to be happening by CHRE on several occasions when they did audits, such as files going missing/being duplicated/ adequate reasons not being recorded for closing a case, documented procedures being ignored. The GDC/CHRE audits identify a host of criticisms that, for instance, will not be found in the CHRE/GMC report; and also problems that are highlighted in successive audits, indicating no effective action has been taken. These matters were not reported adequately or at all as on-going concerns to myself or the Council.'

3.165 We note that one of the key aims of the Council 'away days' on 1 and 2 November 2010 (attended by Alison Lockyer) was to identify information on operational performance that the Council required on a regular basis to inform its decision-making, and it was agreed that a report to include information on key performance indicators across all the GDC's main functions would be presented to the Council on 24 February 2011 and at every Council meeting thereafter. The first such report was presented to the Council at its meeting on 24 February 2011 alongside further data about fitness to practise, and the minutes of that meeting record that the Council 'commended the paper as marking an excellent start in ensuring the visibility of the performance of the organisation and requested that future reports should contain some opinion from the Chief Executive on how the organisation is performing'. We note that the paper contained data about the performance in fitness to practise for the final quarter of 2009 against key performance indicators and compared past and current performance. It clearly demonstrated that there had been a continuing failure to achieve the key performance indicators throughout 2009 and 2010. At the same Council meeting Neil Marshall presented the findings from the GDC's internal auditors, who had identified various weaknesses, together with the management response and action plan.

3.166 At the same Council meeting the Committee Structure Working Group presented its work to date to review the GDC's committee structure. The final report from that work was presented to the Council at its meeting on 20 May 2011, including reference to the provision of regular statistical reports about the fitness to

practise function to the Council by Evlynn Gilvarry, as well as setting out the detail of data to be included in an annual report on the fitness to practise function.

- 3.167 We note that the Council has regularly been provided with detailed information about performance in fitness to practise and the actions being taken to address any performance issues since early 2011:
- Quarterly performance reports (including data about the performance against the key performance indicators for the fitness to practise function) have been presented to the Council at every quarterly meeting since February 2011
 - Information about progress of the work underway to deliver improvements in the fitness to practise function (which was initiated in March 2011 in the form of a complete review of fitness to practise processes and operations) was provided to Council at its meetings on 24 May 2011 and 20 September 2011
 - Information about proposed legislative changes was provided to the Council at its meetings in December 2011, February 2012, and 17 May 2012 (at that meeting the Council also received a report on measures being taken to reduce 'lost' hearing days)
 - Information about implementation of the new case management system was set out in Evlynn Gilvarry's report for the 2 August 2012 Council meeting
 - Information about the CHRE initial stages audit that took place in 2012 was presented to the Council at its meeting in September 2012 alongside the management response to the audit findings, and a second paper reporting on progress in relation to changes to the fitness to practise function which appended the 'close out' report following completion of phase 1 of the fitness to practise review, detailing all the improvements that had been implemented since April 2011 and evaluating their impact.
- 3.168 It is evident from our annual review of the GDC's overall performance in 2008/09 (published in July 2009) that the GDC was at that time aware that it needed to put in place mechanisms for measuring and monitoring its performance. That work was undertaken during 2010, with the agreed key performance indicators for fitness to practise being established in late 2010 (shortly after Evlynn Gilvarry took up her post), as reported to the Council by the Fitness to Practise Policy Committee in its annual report (which was presented at the December 2010 Council meeting).
- 3.169 We also note that the Fitness to Practise Policy Committee's annual report (presented to the Council at its meeting in December 2010) recorded that the Committee had proposed in 2009 that it should have a role in monitoring operational delivery in fitness to practise, but that proposal had not been taken forwards, on the instructions of Alison White, pending the completion of the work of the Committee Structure Working Group. Nevertheless, the Committee reported to the Council in December 2010 that it had 'been actively involved in operational monitoring' during 2010, including scrutinising the impact of the changes that had been made during 2009.

3.170 From our review of the publicly available Council papers it appears that prior to Evlynn Gilvarry taking up her post, information about fitness to practise performance was relatively infrequently provided to the Council, with the main source of such data being the annual report of the Fitness to Practise Policy Committee. We comment below on the data which it appears was considered by the Council in 2008 and 2009, as evidenced from the GDC's website:

- The Fitness to Practise Policy Committee's annual report which was presented to the Council in September 2008 stated that the committee had 'continued to monitor closely...the throughput of work' in the fitness to practise team, the 'workload' of the Investigating Committee, the performance of the in-house legal team, and the progress of cases referred for final hearings, amongst other things and as well as conducting work relating to various policy issues. The only performance data/statistics contained in the report set out the number of final hearings, the time taken for cases to be considered by the Investigating Committee, and the number of cases considered by a committee that were referred for a hearing. That report was the only occasion on which it appears fitness to practise performance was considered by the Council during 2008 (other than references to the introduction of a casework manual, and the capturing of fitness to practise data, which were contained in Duncan Rudkin's annual report presented to the Council in June 2008)
- In 2009 it appears that the Council received data about fitness to practise performance on two occasions – in the Fitness to Practise Policy Committee's annual report (which was presented to the Council at its meeting on 10 September 2009) and in an appendix to Duncan Rudkin's annual report (which was presented to the Council on 11 June 2009). The data appended to the Fitness to Practise Policy Committee's annual report (appendix B) demonstrated that whilst there had been a significant increase in the number of complaints/allegations received compared to the previous year, the Investigating Committee had considered fewer cases. Similarly the data showed that the number of cases considered by the Professional Conduct Committee that year amounted to less than half the number that had been referred for a hearing the previous year. Both these factors indicated that a backlog of cases was building up. Duncan Rudkin's annual report to the Council in June 2009 also highlighted issues with management information in relation to fitness to practise, the ongoing increase in the number of allegations received, the fact that the age profile of cases was worsening rather than improving, as well as highlighting the restructuring within the fitness to practise department that was at that time a matter of consultation.

3.171 There were two further issues in relation to the fitness to practise function which Alison Lockyer told us were wrongly concealed by the executive management team. First, she alleges that a change in the GDC's policy of appointing only lay (non-professional) panellists of the Investigating Committee to the role of Chair was made by the executive, and that such a change of policy should have been formally considered by the Fitness to Practise Policy Committee and/or by the Council. Alison Lockyer told us that there was 'a panic' when two Investigating Committee Chairs resigned at a time when the GDC was trying to hold

significantly more Investigating Committee meetings (one or two a week instead of one a month) in order to speed up case progression. She told us that a decision was taken to invite existing Investigating Committee panellists to become chairs (rather than going through the separate process to appoint chairs against various chairing competencies that had been used in the past) and that she had not been informed about this decision by Evlynne Gilvarry but found out about it informally. Alison Lockyer told us that in her opinion this matter should have gone to the Fitness to Practise Policy Committee and/or the Council for formal consideration as it represented a change of Council policy.

- 3.172 We asked each of the Council members to whom we spoke whether they were aware of any particular policy in relation to the appointment of registrant chairs of the Investigating Committee, whether they had been made aware of any change of such a policy, and whether they would expect to be informed about the appointment of individual Investigating Committee chairs. The Council members told us that they were not aware of there being any Council policy about who could act as chair of Investigating Committee meetings. Council members generally took the view that, given the Council's strategic role, they did not need to know about the appointment of Investigating Committee chairs/panellists, and that they only needed to be assured that the Appointments Committee was managing a robust system of appointments and that individuals with the correct skills and knowledge were appointed. Some of the Council members to whom we spoke felt that if there had been a move away from an agreed Council decision about who was eligible to be an Investigating Committee chair, they would have expected to have been informed about that change. However, two Council members to whom we spoke did take the view that Council members should be informed about individual Investigating Committee appointments – on the basis that the Council is ultimately responsible for the actions of the Investigating Committee. Those Council members did not express any view about whether or not dental professionals should be permitted to chair Investigating Committee meetings. We note that the Appointments Committee's annual report for 2011 (presented to the Council at its meeting on 17 May 2012) did not name individuals appointed as Investigating Committee Chairs during 2011, nor did it identify the proportion of registrant rather than lay chairs appointed. This does not appear to have triggered any queries or concerns on the part of Council members, as the minutes of the Council meeting do not record any discussion of this issue.
- 3.173 Frances Low confirmed to us that there is no legal reason why dental professionals cannot chair Investigating Committee meetings. Dental professionals currently chair all of the other statutory committees. We were told by Frances Low (and we have confirmed from reading the relevant paper presented to the Council at its meeting on 3 December 2008) that the decision to restrict the status of Chair of Investigating Committee meetings to lay panellists was taken by the Fitness to Practise Policy Committee in 2008. When the Constitution Order 2009 came into force, the responsibility for appointing committee chairs passed to the Appointments Committee (by virtue of Rule 5(1) of the GDC's (Constitution of Committees Rules) 2009) which was not bound by the decision previously taken by the Fitness to Practise Policy Committee. We note therefore that any decision to depart from previous policy (following the

decision taken by the Fitness to Practise Policy Committee) was not taken by the 'executive', but by the Appointments Committee. We were told by Frances Low that there were sound practical reasons for permitting dental professionals to chair Investigating Committee meetings – the increase in the number of such meetings (which was initiated in order to improve throughput of cases) as well as the resignation of two Chairs in early 2011 meant that there was an increased demand for committee chairs (as Alison Lockyer noted). We were told by Frances Low that if dental professionals had not been regarded as eligible to chair Investigating Committee meetings, only three of the Investigating Committee panellists would have been eligible to be appointed as chair (had they wished to become chairs). We note that the annual report from the Appointments Committee to the Council which was presented at the 17 May 2012 Council meeting is consistent with the account we were given by the GDC. The report states that there was an urgent need to appoint Investigating Committee chairs in early 2011 to ensure continuity of the scheduled meetings, taking into account the resignation of two Investigating Committee Chairs. There was a limited number of lay panellists available to take up these roles and the Appointments Committee took a policy decision (with the support of legal advice) to allow registrant panellists to apply (previously only lay panellists had been allowed to chair the Investigating Committee). The report noted that this policy is consistent with that adopted in relation to the chairs of Professional Conduct Committee hearings – who are drawn from both lay and registrant panellists. The report also noted that the Appointments Committee had developed a new, competency based approach for the selection of the Investigating Committee chairs.

- 3.174 The second issue raised by Alison Lockyer was that the Finance and Human Resources Committee should have been informed about the decision to use some of the 'underspend' from the 2009/10 budget (which had been allocated for improvements within the fitness to practise department) on the appointment of an external solicitor to improve the support for Investigating Committee meetings. Alison Lockyer told us that a large amount of funding had been set aside in 2010/11 (we note that this would have been during the period when Alison White was the first interim CE) to improve the fitness to practise procedures and there was going to be a significant underspend (of several million pounds) against that budget because it proved impossible to implement all the proposed initiatives within the year. Alison Lockyer told us that Evlynne Gilvarry had previously told her that the underspend would go back into reserves. In Alison Lockyer's view the Finance and Human Resources Committee should have been informed about the decision to spend part of it on appointing an external solicitor to improve the support for the Investigating Committee meetings, given the potential impact of that decision. Alison Lockyer told us that she accepted that it was part of Evlynne Gilvarry's role to take action to address the issues in fitness to practise but that she nevertheless considered that the Finance and Human Resources Committee should have been asked to approve this particular use of the funds, particularly since there had been 'a big row' in the Council prior to her appointment about how much should be spent on solicitors in the fitness to practise function. Alison Lockyer also told us that the fitness to practise staff were 'horrified' about the expenditure on the external lawyer for these purposes, and described it as 'using a sledgehammer to crack a nut'.

3.175 We asked each of the Council members to whom we spoke during the investigation whether they had been aware that the costs of using a senior external solicitor to improve the Investigating Committee's procedures had been paid for from some of the 'underspend' earmarked for improvements in the fitness to practise function, and we asked them whether they would have expected the Council or any particular committee of the Council to be informed of that. They told us that they would not expect to be told about this level of operational detail – they would only expect to be informed if it meant that additional funding was required, or if it involved significant expenditure (in which event they would expect the Finance and Business Advisory Committee³⁰ to consider the request, and for the Council to be notified of it). Evlynn Gilvarry told us that information about the appointment of an external solicitor was not shared with the Council/its Chair as it was an operational matter that was within her remit. It was directly related to the agreed additional operational support that was to be provided to the Investigating Committee, as part of the programme of improvements in fitness to practise that the Council had already approved (and agreed the budget for).

(v) The signing of a memorandum of understanding (MOU) with the Care Quality Commission

3.176 Alison Lockyer alleged that neither she nor the Council were informed about a Memorandum of Understanding ('MoU') which was agreed between the GDC and the Care Quality Commission ('the CQC') until after it had been signed by Ian Todd. She said to us that 'anything that Ian did, Evlynn knew about and he was effectively taking orders from her,' ie that Evlynn Gilvarry is responsible for the failure to inform the Council about the MoU.

3.177 We have seen an email dated 23 September 2010 from Alison Lockyer which demonstrates that she was aware of the existence of the MoU on that date. In that email Alison stated 'this is the first time I have seen it, Council have not to my knowledge. I don't think it is something that they should have been directly involved with in its formation, but there may be a row that no draft has been seen before signing, even though there is probably nothing contentious...I have no record that this was ever "negotiable" or put out for consultation, but my memory is not infallible'.

3.178 We have seen Evlynn Gilvarry's response to that email in which she stated that she had spoken to an individual who thought that the Council had not been asked to consider CQC regulation as a policy issue, but who believed that a paper about the issue which had been prepared for the Council earlier in the summer (of 2010) had then been withdrawn by Alison White. In response to that email Alison Lockyer said she had not seen the paper referred to. We note that Alison Lockyer's email also stated 'The MOU itself is fairly bland and subject to review as a let out'.

3.179 We have seen a further email dated 30 October 2010 from Alison Lockyer to the former Director of Policy and Communications, copied to Evlynn Gilvarry, forwarding an invitation from a journal to write an article about the Care Quality Commission. Alison Lockyer's email said 'What an opportunity! Any takers?'. In

³⁰ Formerly the Finance and Human Resources Committee.

response Evlynne Gilvarry emailed 'Dear Alison I have still not tracked down the GDC's response to [sic] the DOH. Not knowing what the response was then makes us potentially exposed in making public statements now. I gathered from [redacted name] however that we offered no particular resistance. That said, I think we can take up this opportunity but with a very carefully written piece. Would welcome a further chat about this on Mon. Have a good weekend. E'.

- 3.180 We have seen a further email dated 31 October 2010 from Alison Lockyer to Evlynne Gilvarry, in which she referred to having met with an individual (whose name has been redacted from the email) who she said was '...very happy to work with us in all respects and ask questions in the house, starting off with one to try and track down the GDC response (if there ever was one!) to the CQC consultation, but in a way so that we don't look daft...In return he wants us to compile a list of what the CQC says it will be doing and how we already cover those, or will with revalidation, so I'll ask [name redacted] to prepare that...has also asked for GDC views re CQC to use in his part of the debate at the Westminster forum sometime soon which I have done but not yet checked and sent)...'
- 3.181 We have seen the response that Evlynne Gilvarry sent to Alison Lockyer, a few minutes after the email referred to above. In that email Evlynne Gilvarry noted that they needed to know the 'history' before making a 'public stance', and noting that the negotiation of the MoU suggested an approach of compliance. In that email Evlynne Gilvarry suggested arranging a meeting with the Chair or the Chief Executive of the CQC without delay. Alison Lockyer's email response agreed with the suggestion that a meeting with the CQC should be arranged. We note that these emails bear out the account that Evlynne Gilvarry provided to us when we asked her about this issue of the apparent non-disclosure to the Council of the signing of the MoU with the CQC. Evlynne Gilvarry told us that a few weeks after she started in post at the GDC, Alison Lockyer became 'agitated' about the CQC's registration process and about the level of concern amongst dentists about it, and she had suggested that the GDC should 'take on' the CQC. Alison Lockyer had met with an MP who was running a campaign to highlight the CQC's deficiencies. Following that meeting Alison Lockyer had instructed a GDC staff member to compile data aimed at showing that the CQC was an unnecessary development on the regulatory landscape, that the GDC was doing the job anyway, and that the introduction of revalidation would close any loophole that remained open. Evlynne Gilvarry told us that she was alarmed at Alison Lockyer directly instructing the member of staff to do this, and the potential impact on the staff member's workload. Evlynne Gilvarry's view was that Alison Lockyer clearly felt that it was right to make 'a big issue' of the CQC's approach and its fundamental role. Evlynne Gilvarry told us that she had asked the Chief Dental Officer whether or not the GDC had expressed a view at the relevant time – the Chief Dental Officer had located the GDC's response to the consultation via Google – and that response (some two years before) had noted some cautions about potential duplication of role, but had given it a broad welcome. It appeared that that response had not been shared with the GDC's Council at the time. Evlynne Gilvarry told us that her view is that the Council should have seen it, and should also have been informed about the MoU with the CQC (this should have at least been drawn to the Council's attention for noting). She told us that she

had said to Alison Lockyer that the GDC had not objected to the proposals about the CQC at the relevant time, and it would therefore be difficult to object at this stage, when the CQC's role had already been established under the legislation – and that Alison Lockyer had 'backed off' as a result.

- 3.182 From our review of the Council papers, we have not seen any evidence that the Council was advised of the existence of the MoU until May 2011, when it was brought to the Council's attention by Evlynnne Gilvarry. The Council meeting minutes record that Evlynnne Gilvarry's report advised the Council that the GDC had entered a co-regulatory role with the CQC on 1 April 2011 and that a MoU had been drawn up and both organisations would work together to ensure that the co-regulatory role would be effective in practice.
- 3.183 Ian Todd told us that his only involvement with the MoU with the CQC was to sign it on behalf of the GDC. He told us that upon his appointment he was presented with a high level document by the GDC staff member who had led on its production, and he was told that it had been agreed between both parties some time previously but, for diary reasons, had never been formally signed. Ian Todd told us that from the manner in which this work was presented to him it did not seem necessary to check that the previous process had included Council sign-off. Ian Todd did not say that he had discussed the signing of the MoU with Evlynnne Gilvarry at the time.
- 3.184 When we asked Alison White for her recollections of the development of the MoU with the CQC she told us that she did not know anything about it. Duncan Rudkin told us that he could not remember when the MoU was developed.
- 3.185 We asked all the Council members to whom we spoke whether or not they had been aware of the signing of the MoU with the CQC, when they had found out about it and from whom, and what information they consider the Council should have been given and when the Council should have been given it. The Council members expressed mixed views about whether or not they would have expected to have been (and whether they had in fact been) informed about the existence of the MoU at an earlier date. The majority said that due to the importance of the CQC's role with regard to dentistry regulation, they would have expected to have been notified during the development of, and on signing of the MoU. Others felt that the signing of a MoU was an operational matter, and that they would not expect to be informed about individual MoUs that the GDC enters into.
- 3.186 When we asked Evlynnne Gilvarry and Frances Low about any concerns that Alison Lockyer had raised about the performance of the GDC prior to her resignation, one of the matters referred to was Alison Lockyer's concern about the role of the CQC. Evlynnne Gilvarry told us that Alison Lockyer had discussed her concerns about the role of the CQC with a dentist MP and as a consequence had asked a member of GDC staff to compile information to be used to support the MP's campaign that there was no need for the CQC's involvement in dentistry. Evlynnne Gilvarry had become aware of this when the member of GDC staff informed her of the request that Alison Lockyer had made for that information to be compiled. Evlynnne Gilvarry reiterated what she had told us when we met with her initially, as set out above. She said that she had felt it was important to establish what the GDC had said in response to the original proposal

about the CQC's role. She had searched for evidence that the GDC's Council had considered this, and had not found any. Ultimately she had had to ask the Chief Dental Officer if they knew whether or not the GDC had formally responded to the original proposal, and they had been able to provide a copy of the GDC's response. Evlynne Gilvarry told us that in that response the GDC had acknowledged that there was a role for the CQC, and had given it a broad welcome. Evlynne Gilvarry told us that there was no evidence that the response from the GDC had been considered by the GDC's Council at the time. She said that she had therefore explained to Alison Lockyer that it would be difficult for the GDC to support any 'anti-CQC' campaign as it had previously supported the role suggested for the CQC and had subsequently agreed a MoU with the CQC. Evlynne Gilvarry told us that she had shown Alison Lockyer the response that had been made by the GDC at the time, as well as the MoU that had subsequently been entered into (and signed by Ian Todd). Evlynne Gilvarry had told the GDC staff member that they need not compile the information Alison Lockyer had requested. Evlynne Gilvarry told us that whilst she sensed that Alison Lockyer was not completely happy with this at the time, there had been no real argument about it, and they had had a long discussion about the concerns that Alison had raised.

- 3.187 We have not been able to establish when the MoU was first developed by the GDC/the CQC. However it is clear that the MoU had been signed by Ian Todd before Evlynne Gilvarry came into post, given that she and Alison Lockyer were discussing its existence by email on 23 September 2010. Evlynne Gilvarry told us that she had not had any discussions with Ian Todd about the MoU before she joined the GDC (and we note that her account is not disputed by Ian Todd) and that its existence only came to her attention at a later date. She told us that her view is that the Council should have been informed about the MoU with the CQC.

(vi) The reasons for the cancellation of a Standards Committee meeting

- 3.188 Alison Lockyer alleged that a Standards Committee meeting (in April 2011) was cancelled without her being informed about it, and that Evlynne Gilvarry told the Chair of the committee that the meeting was being cancelled because staff had not done the work required in preparation for that meeting. Alison Lockyer also told us that the Chair of the committee was too inexperienced either to argue with Evlynne Gilvarry or to tell Alison Lockyer. She claims that the cancellation of this meeting impacted on the committee's entire work agenda for the year. In her view, any decision to cancel the meeting should have been discussed with the Standards Committee's Chair and with her as Chair of the Council, and the meeting should only have been cancelled if there was no other option. Alison Lockyer says that the Chair of the Standards Committee at the time told her that they had not been consulted about the cancellation of the meeting.
- 3.189 We asked Frances Low about the cancellation of this particular Standards Committee meeting. She informed us that the meeting had been cancelled because it was considered that there was insufficient business to justify the cost. Items which were expected to be on the agenda but which were coming from external sources were not available, and the internal item of business (approval of the Scope of Practice Working Group terms of reference) could be done electronically (which it was). Frances Low told us that the suggestion to cancel

the meeting came from the Head of Standards and was approved by the Director of Policy and Communications, and that an email notifying members of the committee of the cancellation was sent on 31 March 2011 (and that that email was also sent to Alison Lockyer, as an ex-officio member of the committee at the time). Frances Low told us that both the Head of Standards and the Standards Manager had discussions with the Chair of the committee by telephone or email about the cancellation and the agenda for the next meeting, which was scheduled for June 2011. Frances Low also told us that the main agenda items for the meeting were no longer to be the responsibility of the Standards Committee following a decision by the Council to set up working groups for the Standards Review and Scope of Practice Review. This resulted in there being a limited amount of business to be conducted, and the decision to conduct this business electronically.

- 3.190 We have seen a copy of the email about the cancellation of the meeting which was sent by the Standards Manager to the committee members on 31 March 2011. It states 'The Standards Committee and Standards Working Group meetings that were scheduled for next week have both been cancelled. The principal outstanding item on the Standards Committee agenda, Principles of Ethical Advertising, will be reconsidered by the Council in September and the majority of the other work being undertaken by the team is in relation to the reviews of Standards and Scope of Practice will be overseen by the Working Groups. Evlynne has sent a further email to ask for expressions of interest for the Standards Working Group and responses are due by 8 April so there seems little value in holding a meeting next week as the constitution of that group may change. If you would still like to be part of that working group then please email [name of staff member] by 8 April. I am sorry for any inconvenience this may cause and please do not hesitate to contact me if you have any queries'.
- 3.191 We asked the Council member who was the Chair of the Standards Committee at the time for their recollection of the events surrounding the cancellation of the committee meeting. That Council member told us that they had not been consulted about the decision to cancel the meeting beforehand, and confirmed that they had expressed their unhappiness about this to Alison Lockyer at the time. The Council member told us that they did not object to the cancellation of the meeting or the reasons for it, but felt that it should have been their decision, as Chair of the Committee, to cancel the meeting.
- 3.192 We asked Evlynne Gilvarry about the cancellation of this particular committee meeting. Her view was that a senior member of staff would not have cancelled a committee meeting without reference to the relevant committee chair. Evlynne Gilvarry told us that she recalled being made aware of the cancellation of the meeting at the time, as another member of the committee had raised a concern about the late notice of cancellation and the implications for remuneration. Evlynne Gilvarry told us that her concern at the time was that meetings should not be cancelled at short notice as it is discourteous to those involved, and it also demonstrates poor planning. Both Evlynne Gilvarry and Frances Low told us that the Chair of the Standards Committee had never raised a concern about the cancellation of this meeting either with them or with GDC staff (to their knowledge).

- 3.193 We note that Alison Lockyer does not accept the GDC's rationale for the cancellation of the meeting, however she has not specified any difficulties resulting from the decision to conduct the remaining business by electronic means.
- 3.194 The GDC has confirmed that it was not usual practice to inform Council members who do not sit on a particular committee of the cancellation of a committee meeting. We asked the Council members to whom we spoke for their comments on the cancellation of the relevant committee meeting. The majority agreed that they would not expect to be informed of the cancellation of an individual committee meeting, unless that cancellation had particular implications for the Council's decision-making or raised reputational risks or was symptomatic of a particular problem.

Information sharing by the executive with the Council

- 3.195 Evlynne Gilvarry told us that her approach is to provide information as quickly as possible to the Council, and to keep the Council informed of issues that collectively it needs to deal with, in order to avoid any unwanted 'surprises'. She told us that she appreciates that it can be 'maddening' for Council members to find out at a late stage about something that is happening. Whilst the Chair of the Council may acquire more knowledge than other Council members as a result of their role (not least because the Chair is also Evlynne Gilvarry's line manager), Evlynne Gilvarry assured us that she understands that both the Chair and other Council members need to be confident that they have enough information to govern the organisation effectively.
- 3.196 We have described above (see paragraph 3.167) the introduction of quarterly performance data reports to the Council, which commenced in February 2011, following agreement on this at the Council 'away days' held in November 2010, shortly after Evlynne Gilvarry took up her post. We have also referred below (in paragraphs 5.85-5.89) to the evidence of the communication of information by the executive management team to the Council specifically about the problems within the fitness to practise function and the plans to resolve those problems in the period since Evlynne Gilvarry and Neil Marshall came into post.
- 3.197 We asked all the Council members to whom we spoke whether they were satisfied with the communication from the current executive team, and about whether they had noticed any difference in the quantity or quality of the information shared with the Council or the committees by the executive team since Evlynne Gilvarry took up her post. The view that Council members expressed to us about Evlynne Gilvarry's general approach to information sharing is that her natural tendency is to be transparent and to share information both within and outside of Council meetings. Council members feel that Evlynne Gilvarry listens to their concerns and queries and that she responds promptly to them. Generally they told us that they were happy with the executive management team's information-sharing, which has improved since mid-2010. Only one Council member (Council member Z) told us that they find Evlynne Gilvarry's approach to information-sharing to be less involving and interactive than previous CEs. They said that Evlynne Gilvarry 'only tells Council Members what they need to know' as opposed to involving them in decision-making as the interim CEs did.

3.198 Generally, Evlynne Gilvarry's approach is considered by Council members to be an improvement on the standard of communication of the interim CEs. However, several of the Council members to whom we spoke said that it is an 'unknown unknown' whether the Council is receiving sufficient information and one Council member made a general comment that the extent to which the Council is given information is inevitably rather ad hoc, depending upon the individual assessment of the need to share information by the relevant decision-maker (whoever that may be). That Council member suggested that it would be preferable for the Council to formulate agreed criteria that establish when a matter should be brought to the Council's attention.

Our view

3.199 We consider that, in relation to each incident which Alison Lockyer alleged demonstrated a pattern of the wrongful concealing of information from her by Evlynne Gilvarry, either:

- Sufficient information was shared by Evlynne Gilvarry
- Evlynne Gilvarry was not responsible for the sharing/non-sharing of the information
- There was a reasonable explanation for non-sharing of the information
- The non-sharing of information was insignificant/does not provide evidence of a pattern of concealing of information.

We set out our views on each of these matters below.

(i) Information about the two 'whistle-blowing' incidents

3.200 In relation to the incident concerning 'whistle-blowing' to the GDC about Dental School A, Evlynne Gilvarry told us that she did not deliberately conceal this information from Alison Lockyer (and that she would in fact be surprised to learn that she had not shared it) but that she was focused at the time on trying to address the situation. We consider that this is a reasonable explanation. We note that it is good practice for there to be open and continuous communication between the Chair and the CE of health professions regulators.

3.201 In relation to the incident concerning Dental School B, the letters that were received by the GDC about Dental School B during March 2011 were not dealt with as 'whistle-blowing' notifications and Evlynne Gilvarry was not made aware of their existence at the time, although the Chair of the Education Committee was informed about the second letter (which was addressed to the GDC Chair). This was in accordance with the GDC's established procedure for handling anonymous letters at the time. We note that Alison Lockyer states that she was told about a 'complaint' about Dental School B on an unknown date after the March 2011 Education Committee meeting had taken place, and that this was then discussed with Evlynne Gilvarry, who 'simply looked at her blankly' when she raised the issue. On the basis that we accept Evlynne Gilvarry's evidence that she was unaware of the existence of the relevant letter at the time and the Head of Quality Assurance's evidence that such a letter would not have been brought to the attention of the management team, such a reaction is unsurprising.

We have seen no evidence that the existence of the letters was wrongly concealed from Alison Lockyer or the Council by Evlynn Gilvarry or any other staff member.

(ii) Information about a meeting between Alison Lockyer and the Chief Dental Officer (England)

3.202 We consider on the evidence that Evlynn Gilvarry probably did have some knowledge as to the purpose of the meeting prior to attending it. However, having considered the relevant evidence, our view is that it was reasonable for her not to share what she knew about the purpose of the meeting with Alison Lockyer, particularly given that Evlynn Gilvarry had not been invited to attend that meeting by the Chief Dental Officer (England), and that it related to a professional matter. In our view, it was for the Chief Dental Officer to set the agenda for the meeting in advance, if they wished to do so, and/or for Alison Lockyer to seek appropriate clarification about it from the Chief Dental Officer directly if she considered that to be necessary.

(iii) Information on CHRE's fitness to practise audits

3.203 Alison Lockyer alleged that she and the Council were unaware that CHRE would be conducting a second audit of the initial stages of the GDC's fitness to practise process. That audit was conducted prior to Evlynn Gilvarry coming into post, and therefore any failure to inform the Council about it would not have been her responsibility. We also note that Evlynn Gilvarry reported on the completion of that audit at the first Council meeting after she came into post (in December 2010).

3.204 Whilst not all of the Council members whom we spoke to were certain that they had been aware of the next CHRE audit (conducted in the summer of 2011) those who could not confirm that they were aware of it said that they were not surprised about a follow up audit being undertaken, given the findings of the previous audit. We also note that conducting an annual audit was an established part of our (published) audit process at that time.

3.205 In any event in our view it is not essential for Council members to be informed in advance that an audit is due to take place in order for them to effectively monitor performance and hold the executive to account. What is important is that they are aware of the outcomes of such audits, and we note that the Council members to whom we spoke were certain that they had seen all CHRE's audit reports (and the management action plans that were put in place following the 2011 audit).

3.206 We have therefore concluded that there is no basis for criticising Evlynn Gilvarry's actions in relation to the sharing of information about the relevant CHRE audits.

(iv) Information relating to actions taken to address problems in the fitness to practise function

3.207 The evidence indicates that the Council (including Alison Lockyer) was informed at every Council meeting from February 2011 about the issues that had been identified by internal and external auditors concerning the GDC's performance in

fitness to practise, and of the actions that the GDC proposed to take to address the areas of weakness. The data provided was both quantitative and qualitative.

- 3.208 We consider that sufficient information was shared with the Council to enable it to be confident that it understood the weaknesses in the GDC's performance in this area, as well as the actions being initiated to address them. We do not consider that it would have been appropriate or necessary for a greater degree of operational detail to have been provided to the Council (for example, about the use of external solicitors to provide support for the Investigating Committee process) as in our view, the Council simply needed enough information to satisfy itself that the problems had been identified and that appropriate measures were underway to address them. We note that whereas some of the previous Council members (including Alison Lockyer) may have been accustomed to having access to a greater degree of operational knowledge about the fitness to practise function in the past, by virtue of their previous dual role as Investigating Committee panellists, that dual role ceased in the autumn of 2009 as the result of a deliberate separation of functions.
- 3.209 Whilst we agree that the GDC's lack of data about its own performance may have hampered the organisation's ability to identify and address the weaknesses in its fitness to practise function in the period up to and including 2010, we note that this issue pre-dated Evlynn Gilvarry's arrival at the GDC. The GDC was aware of the need to introduce performance monitoring measures (including in relation to fitness to practise) as far back as 2008/09, as evidenced in the performance review report we published in July 2009. The framework for such performance reporting was developed during 2010 and implemented from the start of 2011. It therefore appears to us that there is no reason to hold Evlynn Gilvarry accountable for any deficiencies in the performance monitoring data available as at October 2010 when she came into post, as those deficiencies were already being addressed. Similarly we note that at that time the current members of the executive management team had not been recruited to work for the GDC, and therefore that they similarly cannot be held accountable for these deficiencies. We would also note that whilst the performance data prior to 2011 was limited, a developing backlog in the fitness to practise function had been highlighted to the previous Council over a year prior to Evlynn Gilvarry coming into post as CE, by both Duncan Rudkin in his annual report in June 2009, and in the data appended to the Fitness to Practise Policy Committee's annual report (presented to the previous Council in September 2009).
- 3.210 Alison Lockyer's allegation that information about the temporary appointment of an external solicitor to a role within the fitness to practise department was not shared with the Council is factually correct. However, we do not consider that it was necessary for that information to be shared with the Council. The Council had previously agreed the budget for improvements within the fitness to practise function, of which this appointment was part. We consider that expenditure within that budget was an operational matter and one that did not need to be reported to the Council. Similarly we regard it as a reasonable and pragmatic decision to allow the appointment of professional (rather than lay) panellist chairs of the Investigating Committee, given the circumstances. In any event, as the responsibility for such appointments rests with the GDC's Appointments

Committee rather than with the Council, it was not unreasonable that the Council was not informed about these appointments at the time.

(v) The signing of a memorandum of understanding (MOU) with the Care Quality Commission

- 3.211 As Evlynne Gilvarry was not in post at the time that the MoU was signed with the Care Quality Commission, we consider that she cannot be held responsible for any non-sharing of information about the MoU with the Council. We note that Evlynne Gilvarry's view is that this information should have been shared with the Chair and the Council at the time the MoU was developed/signed, and her statement that this would have occurred had she been in post. We have seen no evidence to indicate otherwise.
- 3.212 It appears to us that if the MoU was a matter that should have been brought to the Council's attention, the primary responsibility for doing so rested with the person who was CE at the time the MoU was under development. We do not consider that any failure to disclose this to the Council at this time can be said to demonstrate a pattern of wrongful concealment of information by Evlynne Gilvarry.
- 3.213 Alison Lockyer told us (in May 2012) that, having discussed the matter with Evlynne Gilvarry, she expected it to be added to the agenda for the February 2011 Council meeting. We note that the evidence indicates that Alison Lockyer was aware of the existence of the signed MoU as at 23 September 2010, before Evlynne Gilvarry formally took up her post as CE. At that time, Alison Lockyer described the MoU as 'bland' and probably non-contentious. We note that when the agenda for the February 2011 Council meeting was shared with Alison Lockyer, although she highlighted other issues relating to the agenda, she did not raise any concern about its lack of reference to the MoU. We also note that this matter could have been brought to the Council's attention by Alison Lockyer before Evlynne Gilvarry took up her post – either informally or at the Council meeting held on 30 September 2010. We conclude therefore that Alison Lockyer cannot have considered that this was a serious matter at that time.

(vi) The reasons for the cancellation of a Standards Committee meeting

- 3.214 We do not consider it unreasonable to cancel a scheduled committee meeting in circumstances where the main agenda items are no longer relevant. We agree that the chair of the relevant committee should have been consulted about the proposed cancellation in advance, and note that Evlynne Gilvarry agrees with that approach.
- 3.215 Whilst the Chair of the Standards Committee maintains that he was not consulted about the decision to cancel the April 2011 Standards Committee meeting, he states that he did not disagree with the decision itself. The cancellation of the meeting did not appear to have any implications for the progress of the work of the Council or the Standards Committee, as that work was taken forward either by the committee via electronic means or by the two standards working groups. It also does not appear that there were any reputational risks associated with the meeting's cancellation. We also note the emails which show that Alison Lockyer was informed about the meeting's cancellation and the reason for it at the time.

3.216 We do not consider that there is any evidence that information was wrongly concealed from Alison Lockyer by Evlynn Gilvarry. However, we consider that the GDC might wish to reflect upon the suggestion made to us by one Council member that criteria should be developed and agreed by the Council to establish which matters should be brought to its attention by the CE/executive management team, in order to avoid any potential future misunderstanding about where the boundaries of responsibility for operational matters lie.

Allegation 1(c)

- 3.217 Alison Lockyer alleged that Evlynn Gilvarry's 'desire for control' has manifested itself in her approach to the drafting of Council meeting papers and agendas. In particular, Alison Lockyer claimed that Evlynn Gilvarry did not inform/consult her about the agenda for the February 2011 Council meeting. She said that this was in contravention of the agreement they had reached that Evlynn Gilvarry would share the draft Council meeting agendas six weeks before each meeting. Alison Lockyer acknowledged that the agenda for the December Council meeting (the only other Council meeting held while both Evlynn Gilvarry was in post as CE and Alison Lockyer was Chair) was shared and agreed.
- 3.218 Alison Lockyer also asserted that she might have been able to avert the problems which arose in relation to two particular papers that were presented to the Council at its February 2011 meeting had they been shared with her in advance. She claimed that the paper on 'ethical advertising' had to be 'sent back' for further work because the Council was dissatisfied with its quality (we note that Alison Lockyer acknowledged that the quality of the paper was the responsibility of the Standards Committee, rather than being the responsibility of the executive management team). She claimed that had the paper been shown to her in advance, she would have been able to suggest improvements to it that would have resulted in its not needing to be reconsidered by the Council. Secondly, Alison Lockyer claims that the standards review paper presented to the Council at that meeting was unclear and that this issue led to confusion about the membership of the scope of practice review working group. Alison Lockyer told us that once Evlynn Gilvarry took up her post, Alison Lockyer was no longer provided with copies of Council papers prior to their being sent out to all Council members, and that she was 'embarrassed' about various papers that had to be sent back for further work by the Council.
- 3.219 Alison Lockyer commented to us that the Council only meets four times each year, and said that Council members tend to focus on the items listed on the agenda for each meeting, rather than following up on previous action points. She told us that Council members are busy individuals, some of whom have multiple appointments, and who may not look beyond the papers presented to them. She said to us that if the agenda for Council meetings is set by Evlynn Gilvarry without anyone else's input, the matters discussed by the Council at the meeting are completely under Evlynn Gilvarry's control. Alison Lockyer believes that this affects the Council's ability to control the executive management team.

Evidence

- 3.220 The standing orders that were in place governing the GDC's conduct of business during the period of Alison Lockyer's tenure provide that the Chair of the Council is to determine the content of Council meeting agendas, taking into account competing priorities, and having consulted with the CE.³¹ Evlynn Gilvarry told us that it was agreed with Alison Lockyer that six weeks before each Council meeting they would meet to plan the Council meeting agenda. It was also agreed that Alison Lockyer would see any papers that she wished to see, before they were sent out to Council members. Evlynn Gilvarry does not recall (and we have not seen any evidence of) any meeting between herself and Alison Lockyer to plan the agenda for the February 2011 Council meeting. However there is evidence to show that papers for that Council meeting (relating to the first complaint against Alison Lockyer, and to one particular debate, referred to in paragraphs 3.225 and 3.226 below) were shared with Alison Lockyer in advance of the meeting via her solicitors. We have also seen emails which the Acting Head of Secretariat and Alison Lockyer shared concerning the agenda for the Council meeting on 15 February 2011. It is not clear to us therefore whether the real concern on Alison Lockyer's part is that she was not provided with these documents at an earlier stage, or that it was not Evlynn Gilvarry herself who shared them with her.
- 3.221 We have seen an email that Alison Lockyer sent to the Chair of the Standards Committee on 11 March 2011, in relation (it appears) to an email that the Chair of the committee had sent to all Council members and Evlynn Gilvarry the previous day (criticising a revised proposal for the constitution of working groups to lead the reviews on Standards and Scope of Practice that Evlynn Gilvarry had circulated for approval earlier on 10 March 2011). In her email to the Standards Committee Chair, Alison Lockyer stated that she had not had sight of the relevant papers prior to them being circulated to the Council, and queried whether the committee Chair had seen them. Alison Lockyer closed that email by stating 'will feed back to Evlynn again the need for timely production of papers to avoid any misunderstanding or sending back of papers'. This evidences that the quality of papers was a concern that Alison Lockyer had at this time. We have seen an email from Evlynn Gilvarry to Alison Lockyer dated 30 March 2011, attaching a note that she intended to circulate to all Council members explaining the measures that were being taken in order to improve the quality and timeliness of papers (also referred to at paragraph 3.233 below). We also note the evidence of the Council members that we spoke to during the course of our investigation concerning the improvements to the quality of papers that have been implemented since mid-2010 (see paragraph 3.231 below).
- 3.222 Evlynn Gilvarry told us that whilst she had tried to maintain a normal working relationship between herself and Alison Lockyer for as long as possible following receipt of the first complaint about Alison Lockyer, once the outcome of the investigation into that complaint was known a strained atmosphere developed. We have however seen examples of emails that Evlynn Gilvarry and Alison Lockyer sent to each other during the relevant period which demonstrate that,

³¹ Standing order 1.6.

despite the difficult situation, they continued to communicate about matters of importance in some areas.

- 3.223 Evlynne Gilvarry commented that Council members are aware when particular items are scheduled for discussion at Council meetings, as well as when particular reports are due, as this information is shown on the Council's action list.
- 3.224 We were told by Frances Low that the planning process for the next Council meeting now begins as soon as the previous meeting ends. A draft agenda is drawn up, based on the annual agenda programme³² and the action list arising from the previous Council meeting, which also includes any additional items for decision or noting by the Council. The agenda is considered by the executive management team approximately six weeks before the Council meeting is due to take place, and is discussed with the Chair at around the same time. A briefing meeting is held with the Chair of the Council and the directors during the week leading up to the Council meeting.
- 3.225 We asked each of the Council members we spoke to during the course of our investigation for their comments on the referral back of the 'ethical advertising' paper at the Council meeting in February 2011. They expressed a variety of views about the reasons for the 'referral back' of that paper. Some Council members felt that this was the result of:
- Deficiencies in the quality of the evidence used to support the GDC's proposal to prevent dentists from using the courtesy title 'doctor'
 - The paper's failure to address one particular argument concerning European dentists' use of the title 'doctor' and the potential for confusion if UK graduates were prevented from using that title
 - The number, complexity and contentiousness of the issues – which meant that it would always have needed further consideration by the Council
 - The lack of specific proposals in the paper and or leadership on the issue
 - Council members being indecisive or risk-averse.
- 3.226 Evlynne Gilvarry told us that she recalled the issues around the Council's consideration of the 'ethical advertising' paper at its February 2011 Council meeting very clearly. She commented that the paper itself was lengthy, and that it was the product of considerable work by the Standards Committee. She said that, with the benefit of hindsight, it would have been better to plan for the paper to be considered by the Council twice – the first time to obtain a 'steer', and the second time for full consideration. Evlynne Gilvarry said that the debate about the use of the courtesy title 'doctor' eclipsed all the other issues covered within the paper. In her view, the paper was sent back by the Council because it was too long, too complex and dominated by the 'doctor' issue. She noted that the Council as a whole, as well as individual members, had been lobbied by outside interests about that particular issue.

³² The annual agenda programme draws on the committees' annual business cycles and standing items of business.

- 3.227 Evlynn Gilvarry told us that she had a very clear recollection of what had been agreed by the Council about the membership of the scope of practice working group. She said that it had been decided that the scope of practice working group should have a lay chair, and that the members of that group should be representative of the professional bodies (ie a 'big tent' approach). This reflected the approach that had been taken during the development of the first scope of practice guidance, which was thought to have worked well. Evlynn Gilvarry acknowledged that there had been a misunderstanding about this at a later stage by one Council member, who had raised concerns that not all dental care professionals would be represented within the group.
- 3.228 We note that we have seen an email dated 10 March 2011 from Evlynn Gilvarry to Alison Lockyer confirming the constitution of the working groups. That email states 'Regarding the Scope of Practice working group, the intention is that this would be composed by inviting nominations from the various representative groups. This follows the 'big tent' model used for the original review and which served a very useful purpose. This was clearly stated in the paper that went to the Council. The only adjustment the Council wished to be made to its constitution was the addition of a patient representative'.
- 3.229 We spoke to the Council member who had raised concerns about the membership of the scope of practice working group. They confirmed that they had raised a query about the membership, following some confusion on their part about what the Council had agreed. That Council member did not recall that the Council had originally decided that the scope of working practice working group should include only one Council member (the chair of the group). We reviewed the minutes of the May 2011 Council meeting relating to the membership of the scope of practice working group, which record that a query was raised in relation to the composition of the group. The minutes record that Evlynn Gilvarry advised the Council that the membership of the group was based on the decision made at the Council's February 2011 meeting, and that she explained that it had been considered more important to involve a greater number of external stakeholders (seven members of the group, each representing individual registrant groups, plus the lay Council member chairing the group) than Council members because of the nature of the guidance. This was reflected in the 'decisions made' document from the February 2011 Council meeting, and was set out in the scope of practice review paper that was presented to the Council.
- 3.230 We asked the Council members to whom we spoke if they were generally satisfied with the standard of papers produced by the executive team for the Council or committee meetings, and whether there had been any specific problems. Most of them told us that they were generally satisfied with the current standard of papers (as at autumn 2011). Some Council members told us that they had had concerns about the quality of the papers that were presented to the Council and committees during the period when Alison White was interim CE. They said that during that period (December 2009 to May 2010) papers were presented in a rushed fashion and did not include proper business cases. They said that as a result, Council members were not sure that they had been given all the information necessary to reach an informed decision. As noted above, Alison White's evidence is that the GDC simply did not have the data systems in place to allow for the provision of the types of performance data that Council members

began to demand at this time. She said that the quality of papers presented to the Council during her tenure was the best possible at the time, and was better than they had previously received, although she accepts that they were not of a high quality. She also told us that Council members had never previously required detailed business cases in order to approve budget proposals (but that was the previous Council and not this Council), and that in fact she had provided them with more information in support of her proposals than they had previously received.

- 3.231 The Council members to whom we spoke generally agreed that the quality of papers presented to the Council has been improving since June 2010, and that improvements had been progressively more evident since Evlynn Gilvarry came into post in late 2010. They told us that there has been an improvement in the clarity of the documents, in their structure, and in the inclusion within each paper of the relevant 'decision trail'. However, some Council members also acknowledged that (as at autumn 2011, when we interviewed them) there remained room for further improvement, particularly in relation to the clarity of the documents and to the quality of the evidence used to support arguments, and one Council member told us that in their view this remained a cause for concern. Another Council member's view was that difficulties with Council papers occurred in the period before Evlynn Gilvarry took up office as a result of frequent and rapid changes in staff, inadequate staff training and confused lines of responsibility. Aside from the quality of the papers, another Council member commented to us that whilst the most important items on the agenda are now appropriately placed at the start of the agenda, they still had concerns about whether sufficient time is allocated for some items on the agenda and what impression this might give of the Council's priorities.
- 3.232 We also asked the Council members to whom we spoke about how they (and how they perceive others) prepare for Council meetings, and about how the Council/its committees monitor the executive's progress of agreed aims in order to achieve the Council's objectives. They all told us that they prepare carefully for Council meetings, reading the papers and if necessary clarifying any queries with the relevant committee chair or staff member. Most of them also told us that they believe their Council colleagues prepare for meetings well, although some of them acknowledged that the standard of preparedness varies (and would be expected to vary) between Council members, and one Council member told us that in their view some colleagues 'wing it' by reading the papers and/or formulating their views on the day during the debate. The Council members also described to us the mechanisms that are in place for monitoring progress against objectives, including the action points log, the role of individual committees, the role of the Chair, and the role of the Audit Committee. Generally the Council members to whom we spoke raised no concerns about their current ability to monitor progress by the executive in completing agreed actions, although one Council member expressed a view that because the committees are now less autonomous and have less devolved authority they are therefore less effective at monitoring the executive than previously.

- 3.233 We have seen an email that Evlynn Gilvarry sent to Alison Lockyer on 30 March 2011 attaching a note that she hoped to circulate to all Council members as soon as possible, setting out potential improvements that could be made to Council meetings. The email referred to a discussion about this topic that had taken place at a meeting on 17 March 2011, and asked for Alison Lockyer's comments.
- 3.234 We understand that the attached note, addressed to all Council members, was sent out on 31 March. The note explained that the executive had been considering how to improve Council meeting arrangements (and that the proposals had been discussed with the Chair) and sought Council members' views on the planned programme of improvements. The note explained the nature of the improvements that were planned to the format and quality of Council papers. It also set out new arrangements that had been put in place to ensure Council members receive Council papers in sufficient time to prepare for meetings, and a proposal for a more secure approach to providing public access to Council meetings and about seating in the Council chamber.
- 3.235 The note stated that the improvements that were planned for Council papers consisted of: redesigning the cover sheet; including an executive summary; including a 'decision trail'; identifying any relevant Freedom of Information Act exemption; ensuring a strategic focus; clearly setting out the decisions required; clearly setting out the reasoning behind each option and identifying and evaluating the consequences for cost and other implications. In addition, the note recorded that guidance for report writers was being updated, and that training in report writing would be designed and procured, and that the directors would be discussing with their teams how to ensure continuous improvement in the quality of papers. The note also recorded that the timetabling for production of papers had been reviewed, and that the need for sufficient time between committee and Council meetings would be taken into account in planning the following year's meeting schedule.
- 3.236 Evlynn Gilvarry told us that she hopes that the quality of papers has improved in the period since she came into office. Her view is that the quality of papers was poor as at October 2010 – papers were poorly-structured, based on an inadequate template, poorly-argued, and contained inadequate reasoning. Her view is that it appears that in the past insufficient account was taken of the impact on the timescales for completion of work if poorly-prepared papers had to be sent back by the Council for further work. She told us that she and the executive management team had worked hard to address these problems in the period since October 2010. They had developed a new template for Council papers and had provided staff training on drafting papers for the Council. Evlynn Gilvarry said that she reviews every paper to be considered by the Council before it is finalised. She also told us that the impact of these improvements was noted at the September 2011 Council meeting. We note from reviewing the minutes of that meeting that the paper setting out the proposed business plan and budget for 2012 was commended as 'excellent' by the Council, which stated that it was 'clear and straightforward to read...provided the right level of information to allow [Council] to make an informed decision'.

Our view

- 3.237 Only two Council meetings took place during the period when both Alison Lockyer and Evlynn Gilvarry were in post (in December 2010 and February 2011). Only the agenda for the February meeting appears not to have been discussed in advance directly between Evlynn Gilvarry and Alison Lockyer. We note that the preparations for the February Council meeting occurred during a period when the working relationship between Evlynn Gilvarry and Alison Lockyer may have become strained as a result of the investigation of the first matter that was raised about Alison Lockyer as well as notification of a second matter to be investigated. It would not be surprising if the meeting preparations were not discussed directly between Alison Lockyer and Evlynn Gilvarry, given those circumstances. However, there is evidence that Alison Lockyer had the opportunity to provide comments about that meeting agenda to a senior member of GDC staff. It was a requirement of the GDC's standing orders which were in place at the time (standing order 1.6) for the Chair to be involved in finalising the meeting agenda and we also regard it as good practice for the Chair and CE of any health professions regulator to discuss and agree the agenda for Council meetings. We consider that more should have been done by both parties to ensure that this discussion took place in relation to the February 2011 Council meeting, despite the difficult background circumstances.
- 3.238 The evidence suggests that there were already problems with the quality of the papers presented to the Council at the time when Evlynn Gilvarry joined the GDC. These problems appear to have been identified when the current Council first took up office in October 2009. Whilst dissatisfaction on the part of some Council members with the quality of the papers presented to them at this time could have resulted from a number of factors not directly related to the actual quality of the papers (eg the newer Council members having different expectations to previous Council members, or a failure on the part of some of the Council members who had been on the Council prior to October 2009 to adjust to the increased focus on the strategic role of Council) we note that some of the Council members who had sat on the previous Council do appear to have observed an actual deterioration in the quality of papers during this period. Three of the Council members to whom we spoke were members of the previous Council. Two of them suggested that the loss of key staff during 2009/10 contributed to the problems that occurred with the quality of Council papers during this period. We note that Alison White accepted that the quality of Council papers was not ideal during the period while she was interim CE (and that she believed this was connected with the absence of adequate management data at that time); and that similarly Evlynn Gilvarry told us that she considered the quality of papers to be poor when she first came into post.
- 3.239 It appears that improvements in the quality of papers have been noticed since mid-2010, and have become progressively more evident in the period since Evlynn Gilvarry came into post in October 2010. In our view, Evlynn Gilvarry and the new executive management team are addressing these concerns effectively. The Council Members to whom we spoke in the autumn of 2011 agreed that the quality of Council papers had been improving.

- 3.240 In relation to the two specific papers that were highlighted in the allegations made by Alison Lockyer, we consider that the scope of practice review paper and the 'decisions made' document both clearly set out the proposals made and the decisions reached by the Council. Whilst there appears to have been confusion on the part of one Council member about the composition of the scope of practice working group, and whilst there is no clear consensus amongst Council members about the principal reason why the 'ethical advertising' paper was referred back for further work, we have not seen any evidence to suggest that these issues would have necessarily been avoided had Alison Lockyer been more involved in the content of the agenda or the papers to be presented.
- 3.241 We expect the GDC to continue its programme of continuous improvement of the quality of papers presented to Council and committee meetings, as well as continuing to improve the recording and communication of decisions made during Council meetings in light of the views that Council members have expressed to us during this investigation.
- 3.242 We consider that ensuring effective communication across a large Council of 24 members is likely to be a challenge. We are pleased that the Department of Health concluded its consultation on changes to the GDC's constitution to enable the GDC to move to a smaller Council, and that the GDC will be making those changes to its Council in 2013.³³ We note that the GDC has scheduled seven Council meetings (plus one away day) for 2013, in contrast to the four Council meetings (plus one away day and one special meeting) that were held in 2011. Given the changes that are being made to the size of the GDC's Council, it seems to us based on what we have learned from this investigation that it would be appropriate for the GDC's Council to keep under review the number of meetings it schedules each year and the length of meeting agendas and to assess whether the increased number of Council meetings it has scheduled for 2013 are sufficient to facilitate the effective governance of the organisation.
- 3.243 We note for completeness that, in March 2012, Alison Lockyer provided further examples of potential points in connection with this allegation. Having carefully considered this, we formed the view that it would not be proportionate to extend this part of our investigation in order to address these further examples. The examples did not to us appear to be sufficiently serious to warrant such further investigation or to raise themes other than those we have addressed above.

The second allegation

- 3.244 Alison Lockyer alleges that the GDC's Council has been 'failing to get on with important patient protection issues', instead 'consult[ing] on important, but not urgent work'. In particular, Alison Lockyer told us that there is possible abuse of the 'in training' provision³⁴ in practices where 'there are no qualified dental nurses...and all of them are 'in training' although possibly with no intention/ability ever to qualify. The GDC's current Council asked the Registration Committee to look urgently at this issue to establish what should fall within 'in training'. This

³³ Further information about these changes is available from the GDC's website – <http://www.gdc-uk.org/Governanceandcorporate/Pages/Our-responses-to-consultations.aspx>

³⁴ The 'in training' provision allows those undergoing training as dental nurses to undertake certain tasks that are otherwise restricted to qualified GDC registrants.

work has not yet been completed because GDC staff were unable to get the Council members to agree a date for the initial working group meeting'. Alison Lockyer also said 'I believe...that the Chief Executive has failed to identify and act on the most urgent issue facing her which is the process of a regulating Fitness to Practice [sic] and the backlog of cases. Various actions are now being taken which do not, I believe, have support from the profession'.

- 3.245 In Alison Lockyer's view this problem exists partly because the more recently appointed Council members (ie those who were appointed to the Council for the first time in 2009) 'do not understand what is going on. Most of them do not have any understanding of the GDC's FTP work. They have never sat in on an Investigating Committee/FTP hearing. They are making policies about issues they have no experience of. The lay members have no experience of dentistry, and no understanding of the types of complaints that they should be protecting the public from. There is a disconnect from the reality of the GDC's work'. In March 2012 Alison Lockyer told us that the failure resulted from the exclusion of the former President from that induction process. In March 2012 Alison Lockyer suggested that questions asked by Council members during Council meetings demonstrated a lack of understanding as to the GDC's work – one example of this was their understanding as to which GDC committees are statutory committees.

Evidence

- 3.246 We note that at the December 2010 Council meeting it was agreed that a 'task and finish' group would undertake a review of the 'in training' provision, and that the group would report its findings and conclusions to the Council at its September 2011 meeting. The action list presented to the Council at its February 2011 Council meeting indicates that the 'task and finish' group had been established, and although it had been unable to meet, it had considered a paper with the aim of starting policy work in this area. Within its evidence submission for the 2011/12 CHRE performance review process, the GDC informed us about its ongoing review of the risks to public protection arising from the current application of the 'in training' provision. We were told that the 'task and finish' group had met on two occasions in 2011 and that its meetings focused on the risk of allowing dental nurses and technicians to work in practices and laboratories whilst either waiting to enrol on or to begin a course. The GDC stated that in the interim any risks arising were limited, as a result of its procedures to prosecute individuals for illegal practice, as well as the responsibility of GDC registrants who supervise those 'in training' to ensure that the provision is applied correctly. The 'task and finish' group recognised that the current 'in training' guidance needed to be revised, in order to make the duties of employers more explicit. We note that the Council considered the finalised guidance at its meeting in September 2012, following a consultation that had taken place during the summer of 2012 with specific stakeholders on a draft version of the guidance, and re-consideration of the draft guidance in light of the consultation by the Policy Advisory Committee in August 2012.

- 3.247 We comment on the problems the GDC experienced in the arrangements for the investigation of fitness to practise allegations in section 5 below. We have set out above (see paragraph 3.160 and 3.167) the information that the executive management team has communicated to the Council since the date when Evlynn Gilvarry came into post about the improvements being made to the fitness to practise function generally.
- 3.248 When we asked the Council members to whom we spoke about their experiences of their induction, they expressed mixed views. Some Council members felt that there had been too much of a focus on governance and an insufficient focus on the core business of the GDC and the current challenges facing the GDC; some felt that the training had not been tailored to their individual needs. Whilst some Council members described the induction as good or well-organised/well-designed, several Council members did not express any overall view about the quality of the induction. Whilst Council members expressed a mixture of views to us about the quality of the 2009 induction process, no one raised any concern that any deficiencies had left them unable to perform their role adequately and all but two of them told us (as at autumn 2011) that their view was that there were no significant current problems with the governance of the GDC (the two Council members who did express concerns about current governance in the autumn of 2011 told us either that their concerns related to the risk-averse approach being taken – see further paragraph 3.225 above and paragraph 3.253 below – or that the GDC’s governance was good ‘in parts’ and that there were mitigating factors in relation to the other parts).
- 3.249 When we spoke to Duncan Rudkin he confirmed that the planning for induction (which took place in 2009) was done by him and the Director of Governance at the time, involving other individuals as required in the discussions (including Hew Mathewson). He also told us that his view was that the new Council should all be on an equal footing and that therefore it would not be appropriate to give the ‘old’ Council members a special role in the induction. The former President and interim Chair, Hew Mathewson, told us that the view of the GDC’s Governance Manager at the time was that he and the ‘old Council’ should not be involved in the induction process, to avoid it being tainted by past prejudices or anything else. Hew Mathewson told us that the planning of the induction was therefore carried out by Duncan Rudkin and the Governance Manager. He told us that, several days into the induction, he was challenged as to why he had been absent and uninvolved, and when he explained to Council members that GDC staff felt he should be excluded (and that he was only meeting them that day because he was about to chair the first meeting) that ‘went down very badly’ and that ‘lots of Council members were very angry’ about it. Hew Mathewson told us that although he was not directly involved in the induction process, his view was that the induction had been very good, very thorough and given by the right members of staff (although he also thought it would have been helpful to have a session on effective teamwork).
- 3.250 It would have been the responsibility of the previous Council (of which Alison Lockyer was a member) to assure itself that appropriate arrangements had been put in place by the executive.

- 3.251 The views that Council members expressed to us largely reflected the outcome of the review of the induction process that the Council itself completed. The main learning from the review was that the next induction process should focus on creating a sense of corporacy and shared experience amongst a newly formed group of people and should ensure it is designed to meet the different information and learning needs of a mixed group of people. We understand that this learning will be used to inform the induction for the next group of Council members (in 2013).
- 3.252 We specifically asked the Council members to whom we spoke during the investigation whether they considered that there were any current significant problems with governance at the GDC. Most of them told us that there were not, although most of them also said that they would not say the same of the time before Evlynn Gilvarry came into post. However one Council member told us that the GDC's governance was good in parts, and another Council member told us that the GDC is 'governanced to death' and that this has made the Council ineffective in decision-making. As we noted in section 2 of this report, the GDC experienced difficulties in late 2009/early 2010 due to losing its permanent CE, Duncan Rudkin³⁵ at the same time as its Council changed, Hew Mathewson handed over responsibility for leading the Council to Alison Lockyer in the new role of Chair, and many members of the executive management team and other staff left the organisation. All of this contributed to a challenging period, and the Council members to whom we spoke felt that there were problems with the governance of the GDC at that time. In particular, a number of them expressed concerns about the extent to which the Council had exercised proper scrutiny over the actions of the executive in early 2010.
- 3.253 One Council member to whom we spoke expressed a view that the approach that the GDC currently takes to governance is overly risk-averse, rather than being focused on enabling the Council to take lawful action. That Council member was not able to tell us of any particular occasions on which the GDC's approach to governance had prevented the Council from taking appropriate action, other than the referral back by the Council of the 'ethical advertising' paper, which they attributed to the Council's being indecisive. We note that Council Member Z also expressed the view that the GDC had become 'hung up' on minor issues, at the expense of the bigger picture.
- 3.254 Some of the Council members we spoke to also identified concerns about the level of scrutiny that the previous GDC Council appeared to have applied to the work of the executive during its time in office (ie up to October 2009). Those Council members considered that a lack of appropriate scrutiny by the previous Council meant that the current Council members were not clear about the standard of the GDC's performance as a regulator when they took office in 2009, and they were therefore faced with unexpected challenges.
- 3.255 In that context, we note the comments made to us by Duncan Rudkin about the different context in which the Council operated up until October 2009. Duncan Rudkin explained to us that until October 2009 the Council operated with a less clear delineation of its oversight role vis à vis the delivery role of the executive

³⁵ When Duncan Rudkin left the GDC to take up the post of Registrar at the General Pharmaceutical Council in January 2010.

than would be expected now. He told us that the Council was involved in operational delivery throughout the time that he was CE and that at that time it was difficult to distinguish the work done by the Council from the work done by the committees and the work done by the executive. Duncan Rudkin's comments are consistent with comments made to us by the current Chair of the GDC (Kevin O'Brien) who told us that in his view it appeared that the previous committees were overly involved in operational matters, that a lot of operational matters were addressed at Council meetings and that the Council was 'bogged down' with operational issues. He told us that the challenge for the new Council had been to elevate its role to a strategic one.

- 3.256 From our review of the publicly available Council papers for 2008, 2009, 2010 and 2011 we note that the Council did not start to receive quarterly performance reports until February 2011, and until that time any performance data was generally only available on an annual cycle from committees' annual reports, from Duncan Rudkin's annual reports as CE or from the GDC's annual reports. In addition it appears that a report from the Chief Executive did not become a standing item on each Council meeting agenda until Evlynne Gilvarry's arrival in late 2010.
- 3.257 Duncan Rudkin drew our attention to the annual reports that he provided to the Council in his role as CE. In the annual report that was presented to the outgoing Council in June 2009 (of which Alison Lockyer was a member) (as referred to in paragraph 3.170 above) he referred to current challenges in fitness to practise including the lack of adequate management data, the increasing fitness to practise caseload and the increasing case age profile, with an increase in cases taking longer than 12 months to conclude. He also referred to the aims of the major management restructure within the fitness to practise department that was currently being consulted on. We also note that at the Council meeting on 10 November 2009 Duncan Rudkin presented a paper to the Council highlighting key outstanding policy issues, and that the Council agreed to undertake/continue work in a number of areas (including a strategic review of standards and fitness to practise processes to be carried out by a time-limited working group). It is not clear from the subsequent Council papers when/how the strategic review of fitness to practise was progressed (if indeed it was) in the first half of 2010. We have however seen an email between Ian Todd, the second interim CE, Evlynne Gilvarry and Gordon Miles (the Director of Corporate Services) in July 2010 referring to a review of the fitness to practise function that was underway at that time, as well as subsequent email correspondence between Ian Todd and Evlynne Gilvarry concerning fitness to practise statistical data.
- 3.258 The Council members we spoke to who raised the issue of the level of scrutiny applied by the previous Council also told us that the problems in the GDC's performance came to light during the initial phase immediately after they came into office and while Alison White was in post as interim CE. Some Council members told us that they felt uncertain about whether or not Alison White provided the Council with sufficient information about the problems at that time – they felt that her approach was to present the Council with solutions that had already been implemented, before the Council had had an opportunity to fully understand the issues. They told us that they were not sure that the Council had held the executive management team to account effectively during that period (ie

January to May 2010). Council members also told us that, from January 2010 until Evlynn Gilvarry came into post, the Council had to become overly involved in operational matters (due to the fact that the Council was the only constant amidst the changes in the executive management and staff teams) which affected the Council's availability to focus on its strategic role. In contrast, we note that Alison Lockyer asserted that she (rather than the Council collectively) held the executive to account from January to May 2010. We also note that Alison White's view was that she provided Council members with adequate information about her planned changes, that she did not take any action without the approval of Alison Lockyer and without informing Alan MacDonald, and indeed that she pro-actively communicated with individual Council members both within and outside scheduled Council meetings to a far greater extent than they had been accustomed to at that time.

- 3.259 Generally, we were told by Council members (in autumn 2011) that they consider that they are now receiving sufficient information from the executive management team (for example quarterly financial reports and performance data) which enables them to monitor performance more easily. We were told that this information was not available when the current Council took up office in October 2009. Council members also told us that they now receive more information about risks (via the Audit Committee) and they said that since it was instituted in 2009 the Audit Committee has developed into a very effective mechanism for holding the executive management team to account and in particular for monitoring progress of agreed actions. We were told that Council members now have greater confidence in the GDC's business planning process and in the business plan that has been set for 2012 as a result of the improvements that Evlynn Gilvarry has made to the process (including involving operational and finance staff to a greater extent which has resulted in clearer objectives and milestones being set). Alan MacDonald also commented that a Council extranet has been active since May 2011, and that this is another useful tool that is used to ensure that the Council is fully informed about matters arising. However we note that a small number of Council members told us that (as at autumn 2011) they remained uncertain about whether or not action lists are maintained and regularly updated. We have not sought further comments from them as to whether they now feel that communication about this issue has resolved their concerns.
- 3.260 When we asked Evlynn Gilvarry about the Council's ability to hold the executive management team to account she commented that when she joined the GDC in October 2010 she perceived that it lacked an appropriate governance structure, and that she had concerns about how the GDC had operated as an effective regulator in the absence of both a number of key staff and a number of key policies (which were either not in place at all or had not been kept up to date). Her impression was that the GDC had operated an 'ad hoc' and undocumented approach towards governance. She told us that at the time she joined the GDC she considered that there was an 'anti-governance bias in the organisation, more pronounced amongst Council members than amongst the staff'. She also identified a lack of clarity about the boundaries between the roles of the executive management team and the non-executives (ie Council members), which she considered was unhelpful to the GDC as an organisation. Evlynn Gilvarry told

us that she has implemented various improvements to the GDC's governance arrangements, including a complete review of all the governance policies and the introduction of a strategic risk register that is underpinned by operational risk registers. Frances Low told us that the new committee structure that was introduced in 2011 will also ensure clarity about the processes that are in place to monitor progress in achieving the GDC's business plan, as well as the resources that are required.

- 3.261 Evlynne Gilvarry raised a broader question (when we met with her in 2011) about whether the Council's structure assists it in holding the executive management team to account effectively, given the size of the Council and the fact that it meets four times a year (plus an annual 'away day' at which strategic planning is done).³⁶ However, given the significant restrictions imposed by the current structure, Evlynne Gilvarry's view is that the Council does hold the executive management team to account, and that this is something that has improved to her knowledge since she first arrived at the GDC. Evlynne Gilvarry told us that Council members do challenge and ask questions of the executive management team. She said that she hoped that the Council now has more confidence in the executive management team, and that the improved quality of the papers being presented to the Council is having a positive effect on the Council's confidence in the team. Evlynne Gilvarry also noted that the Council now receives a fuller set of performance data than was the case prior to her coming into office, including complete statistical data. She told us that the need to improve the quality of the performance data being presented to the Council was something that she identified when she came into post, and implemented as soon as possible.
- 3.262 Despite these improvements, some Council members told us of concerns about two particular issues which could impact on their ability to hold the executive management team to account. First, as highlighted by Evlynne Gilvarry, some Council members feel that the size of the Council is not ideal in terms of effectiveness, because of the difficulties that can arise in communicating with such a large number of members, in reaching collective decisions and in holding the executive management team to account. One Council member (Council member Z) told us of their view that the Council has become fragmented and divisive, although they did not provide any further information or examples of what they meant. Second (and in contrast to Evlynne Gilvarry's views about the lack of appropriate governance arrangements that were in place when she came into post) some Council members told us that they believe that the GDC is now 'over-governanced' and that this stifles the Council's ability to make decisions and to take action. However, the Council members who expressed those views to us did not refer to any examples of occasions on which they considered that the governance arrangements that are now in place have impacted negatively on the Council's ability to perform its role, other than the view expressed by one Council member that the referral back of the 'ethical advertising' paper resulted from the Council's indecisiveness.

³⁶ While the GDC Council scheduled four regular Council meetings in 2011, we note that seven Council meetings have been scheduled for 2013.

Our view

- 3.263 In our view it is not surprising in light of the lack of consistent leadership and the high rate of staff turnover in 2009/10, as well as the challenges it faced within fitness to practise, that the GDC has encountered difficulties in progressing all of the legacy issues that the previous Council handed over to the new Council (such as the work on the 'in training' provision) as quickly as might have been expected. This could potentially be a cause for concern, depending on the urgency of the legacy issues, as it might indicate an inadequate business planning process from late 2009/10 (and/or that the former Council had handed over an unmanageable number of legacy issues because it hadn't operated effectively). However, we have not assessed whether either of those factors contributed to any delay in progressing all of the legacy issues. We consider that the critical question in relation to the allegation made by Alison Lockyer is whether or not the GDC has correctly focused its activities on the highest priority issues. In that regard we note that Alison Lockyer acknowledged that the fitness to practise function of the GDC represented the most urgent issue for the GDC to address at the time when Evlynne Gilvarry took up her post. We also consider, from the information we have gathered during this investigation, that improving the GDC's own governance was a high priority issue in late 2010 when Evlynne Gilvarry took up her post – in particular the improvement of the quality of performance data being routinely provided to the Council, to enable it to hold the executive effectively to account. We have seen evidence of improvements being made across the GDC's regulatory functions in the period since the new executive management team came into post. In particular, a significant raft of changes has been initiated within the fitness to practise function in 2011. The impact of this on the quality of the GDC's delivery of its fitness to practise function should become gradually more evident during 2012/13. We have also seen evidence of appropriate improvements being made within the GDC's governance function, and in particular the introduction of quarterly performance reports and chief executive's reports at each Council meeting, the updating of various policies and procedures, as well as the completion of its review of its committee structure.
- 3.264 As the GDC has now achieved stability in its strategic and operational leadership, we expect such matters to continue to be progressed efficiently and effectively going forwards. We consider that the GDC's new approach to business planning and reporting, its approach to reporting and follow-up of Council meetings, and the new project documentation being used to support the new committee structure should enable it to progress both recent and older projects efficiently and effectively in future.
- 3.265 We note that the current Council members were appointed by the Appointments Commission, which assessed their skills and knowledge against a set of competencies. Whilst it seems there is a consensus amongst the Council members that the induction process could have been improved in terms of its content, we have not seen any evidence to support the contention that the quality of the Council's induction was so poor that it left the Council members unable to undertake their role effectively, or to ensure that the GDC carried out its statutory duties.

- 3.266 From the evidence that we have seen, it appears that the Council's ability to hold the executive management team to account was hampered for most of 2010, when there appears to have been a lack of consistent leadership, a lack of fully comprehensive governance arrangements (including a lack of shared understanding about the remit of Alison White), a lack of systems for ensuring feedback was shared appropriately, and a lack of robust systems in place for business planning (including the lack of a process linking the business plan to the budget) and for monitoring the GDC's performance. We recognise that work was underway during that period to address some of the systems deficiencies, including the development of the performance monitoring framework that was discussed at the Council 'away day' in November 2010 shortly after Evlynne Gilvarry came into post, and which was then implemented at the start of 2011.
- 3.267 It also appears that during that period some Council members felt that communication between the executive management team and the Council was inadequate. Responsibility for any deficiencies in the mechanisms for holding the executive management team to account during that period cannot lie with Evlynne Gilvarry as she did not come into post until October 2010. We also note that Evlynne Gilvarry has made significant improvements to those processes since her arrival (for example, the introduction of regular reports from Evlynne Gilvarry at each Council meeting), with the result that the majority of Council members to whom we spoke in 2011 expressed an increased level of confidence both in the executive management team and in the Council's ability to effectively oversee the work of the GDC since Evlynne Gilvarry came into post.
- 3.268 We asked Alison Lockyer to provide evidence of the steps she took to raise the concerns that she raised about the GDC's performance upon her resignation while she was in office as the GDC Chair. In response, Alison Lockyer told us that she was not in a position to provide such evidence because she no longer had access to her GDC email/other paperwork as the GDC had not permitted her to retain such materials after her resignation. In response to a suggestion from Alison Lockyer that we should require the GDC to provide her with access to her former GDC email account so that she could search it for evidence of her raising her concerns before her resignation, we asked the GDC to conduct a search of Alison Lockyer's GDC email account and the email accounts of various Council and staff members suggested by Alison Lockyer (using search parameters that we agreed with Alison Lockyer) in order to identify any relevant emails in which such concerns had been raised/discussed by Alison Lockyer with others. Frances Low informed us that Alison Lockyer's email inbox was empty (as at the date of her leaving the organisation) but that there were some emails in the 'deleted items' folder, which the GDC then searched using the agreed search parameters. We were provided with access to the emails identified as a result of that search of Alison Lockyer's 'deleted items' folder, and those emails identified by the relevant Council and staff members as containing reference to the search parameters agreed, as well as all the emails exchanged between Evlynne Gilvarry and Alison Lockyer during the relevant period contained in Evlynne Gilvarry's GDC email account. We have referred to any emails that relate to the allegations that were subsequently made by Alison Lockyer in our discussion of the relevant allegation(s) within this report.

3.269 We asked Evlynne Gilvarry and Frances Low about any concerns about the GDC's performance that Alison Lockyer had, to their knowledge, raised before she resigned. Frances Low told us that Alison Lockyer had not raised any such concerns with her. Evlynne Gilvarry told us that she had had informal meetings/discussions with Alison Lockyer throughout the period from her appointment in April 2010. Their meetings were not formal ones with set agendas. Evlynne Gilvarry told us that the only issues which she recalled that Alison Lockyer had discussed with her up until the time of her resignation concerned:

- The role of the CQC (we note that we have set out Evlynne Gilvarry's account of her discussions with Alison Lockyer about this in paragraphs 3.178-3.181 and 3.186 above)
- The use of the title 'doctor' by dentists and how this would 'play' with the wider audience, by whom Evlynne Gilvarry assumed Alison Lockyer meant registrants³⁷
- The course of the governance work being done by the Committee Structure Working Group – the potentially disruptive impact on the work of the Council and 'the signals it might send to the profession' of a reduction in the number of committees/the role of the new Policy Advisory Committee
- The potential impact on registration fees of the work to re-develop the GDC's premises
- The need to continue with the plans Alison White had developed with regard to the in-house legal team in the fitness to practise department.

3.270 We consider that Alison Lockyer should have raised any concerns about Evlynne Gilvarry's approach prior to her resignation. In our view, the evidence we have seen demonstrates that Alison Lockyer discussed with Evlynne Gilvarry during her tenure as Chair issues relating to two of the concerns that are examined in our report: her concern about the non-sharing of information about the signing of the MoU with the CQC and about the letter of complaint received about Dental School B; and the poor performance of the fitness to practise function as demonstrated in CHRE's fitness to practise audit report. With regard to the latter, it appears to us that a backlog of cases was building up before Evlynne Gilvarry's arrival, and this should have been evident to the Council (and appropriate action taken) from mid-2009, when relevant information was presented to the Council by both the Fitness to Practise Policy Committee and Duncan Rudkin. We also note that specific issues with the adequacy of support for the Investigating Committee (which are examined in more detail in section 5 of this report) had been raised with GDC staff (who have since left the organisation) in 2010, but that neither Evlynne Gilvarry nor Neil Marshall were in post at that time, and have told us that they were unaware of those matters until early 2011 (Neil Marshall only came into post in mid-February 2011). We have not seen any contemporaneous

³⁷ Alison Lockyer informed us in December 2012 that Evlynne Gilvarry's assumption was incorrect and that Alison Lockyer's concern in fact extended to the views of the general public about the GDC's focus on this issue rather than on other issues.

evidence to support Alison Lockyer's evidence that she raised other concerns that are dealt with in our report with Evlynn Gilvarry while she was in office.

- 3.271 As set out above, we consider that there is evidence to demonstrate that in the period since Evlynn Gilvarry became CE in late 2010 the GDC has prioritised the work to improve its regulatory functions generally and its fitness to practise function in particular, as well as updating its governance procedures and completing its review of its committee structure, and introducing more robust business planning and performance monitoring mechanisms thereby enabling its Council to hold the executive to account more effectively. Whilst ideally some of the issues might have been identified by the executive earlier in 2010, and the necessary improvement work might therefore have begun (and been completed) at an earlier date, we recognise that by mid-2010 there was very limited capacity within the executive management team and that that situation was only rectified in early 2011 once the recruitment of the new executive management team was complete and in particular that the new Director of Regulation, Neil Marshall, came into post in mid-February 2011.

The third allegation

- 3.272 Alison Lockyer alleged that Evlynn Gilvarry has failed to identify and act upon the most urgent issues facing the GDC, in particular in relation to the required areas for improvement within the GDC's fitness to practise function. Alison Lockyer alleged that Evlynn Gilvarry became responsible for addressing those issues from the date she accepted the position in April 2010,³⁸ even though she did not formally start in post until October 2010 and notwithstanding the fact that there was an interim CE in post throughout that period. Alison Lockyer also claimed that Evlynn Gilvarry's focus on taking forward the matters against her and against the two Investigating Committee Chairs who resigned during 2011 was one of the reasons why she failed to identify and act on such urgent issues.

Evidence

- 3.273 We have set out (see paragraphs 3.160 and 3.167 above and 5.78-5.84 below) the events relating to the identification of problems within the fitness to practise function, and the actions that were taken to address them, as well as the communications from the executive management team to the Council about these issues.
- 3.274 The Council members to whom we spoke were unclear about the extent of Evlynn Gilvarry's involvement with the work of the GDC prior to her coming into post in October 2010. The most commonly expressed view was that Ian Todd would have run any major initiatives past Evlynn Gilvarry and that he would not have made any important decisions without her knowledge. Ian Todd told us that he and Evlynn Gilvarry agreed that a review of performance in fitness to practise should be undertaken, and that review was initiated by Ian Todd during his tenure as second interim CE with a view to help inform future decision-making.

³⁸ We note that Alison Lockyer's letter states that Evlynn Gilvarry accepted the position in May, but it was in fact in April 2010.

- 3.275 Evlynne Gilvarry told us that she had to become more involved in the GDC's work than she had anticipated in the run up to her becoming CE in October 2010, while continuing to work as CE of the General Osteopathic Council. Evlynne Gilvarry said that she found this period frustrating, as she was unable to obtain from the GDC sufficient data about its performance (including financial data and quantitative data on performance across the four regulatory functions). Evlynne Gilvarry said that it was clear to her during this period that the GDC was a fragile organisation, suffering from low staff morale following the previous restructuring. She began to work one day a week at the GDC from 20 August 2010, and prior to that date, it was understood that Ian Todd would not take any major structural, staffing or policy decisions without consulting her (we note that Evlynne Gilvarry was not paid by the GDC for her involvement in the run up to her becoming CE, until she began to work one day a week at the GDC from 20 August 2010). We note that Evlynne Gilvarry's account of this is consistent with Ian Todd's view. However, Evlynne Gilvarry's view is that the boundaries between Ian Todd's role and her role were not made particularly clear.
- 3.276 Evlynne Gilvarry told us that her focus initially was on recruiting an executive management team and developing an improvement plan. Planning for the recruitment of the executive management team was commenced by Ian Todd on behalf of Evlynne Gilvarry, and completed (with appointments being made) once she took up her post.
- 3.277 We have seen a number of emails between Evlynne Gilvarry and Ian Todd sent during the period before Evlynne Gilvarry came into post in October 2010. Those emails are consistent with the accounts provided to us by Evlynne Gilvarry and Ian Todd about their interaction during that period, ie that Ian Todd would consult Evlynne Gilvarry about issues which he thought would have an impact beyond the end of his term as interim CE. Similarly we have seen an email that Ian Todd sent to all Council members on 27 July 2010 which stated that he had been 'working closely with Evlynne Gilvarry over the past few weeks' in particular in relation to the recruitment of a new executive team.
- 3.278 The GDC provided information to us on an ad hoc basis throughout 2011 (as well as within its submission for the performance reviews for 2010/11 and 2011/12) about the actions that have been taken to address what we consider was the most urgent issue facing the GDC at that time – the improvement of the GDC's fitness to practise function. We were told in early 2011 that the GDC was about to undertake a fundamental review of its fitness to practise processes. We have also seen the addendum to Evlynne Gilvarry's report to the Council at its meeting on 24 February 2011 in which Evlynne Gilvarry set out plans to conduct over the following three months a specifically targeted review of the fitness to practise function, in light of the findings of recent audit reports (including the CHRE initial stages audit report) as well as the White Paper published in February 2011 concerning healthcare regulation. We note that the paper stated 'The Performance Report (item 8 on the Council agenda) shows that there are significant backlogs of work at investigation stage and in cases awaiting a hearing. The main cause of the backlogs is the sharp increase in new cases in 2009, which has been sustained through 2010. In addition recent audits of the investigation stages of fitness to practise cases by the CHRE and the GDC's external auditors (PKF) (Item 4 and Item 12 on the Council agenda) identify

failings in our fitness to practise processes and make recommendations for improvement. It is also expected that the CHRE Annual Performance Review for 2010 will contain criticisms of our performance in some areas of our fitness to practise work'. The paper also recognised that it was '...imperative that the Council has assurance that effective measures are being taken to resolve the problems in our fitness to practise function'. The stated aim of the review was to maximise efficiency and effectiveness of the fitness to practise procedures, produce agreed operational guidance etc for staff and decision makers and appropriate training, and establish compliance mechanisms.

- 3.279 In mid-2011 Neil Marshall updated us about the progress of that review. The Council was provided with an update at its meeting on 20 May 2011. In December 2011 the GDC informed us (as part of its submission for the 2011/12 performance review) that the anticipated review had been completed during 2011. The aim of the review of the fitness to practise processes was to identify:
- Operational changes which could be implemented in the short term to improve the quality of casework and decision-making and/or the speed and efficiency of the GDC's investigations
 - Policy changes which would bring about further improvements in the fitness to practise processes without the need for changes to the relevant rules
 - Fundamental process changes, aimed at quality improvements and greater cost effectiveness, but which would require changes to be made to the statutory framework.
- 3.280 We have been told by Neil Marshall that as a result of the review a number of changes have been implemented or are currently being progressed. These changes and their impact are set out in section 5 of this report, from paragraph 5.78 onwards.
- 3.281 We have been told that improvement work has also been progressed across the other three statutory functions of the GDC, including:
- Issuing a statement of guidance on the remote prescribing of cosmetic injectables, in response to a concern that was raised about inappropriate practices in this area. The GDC also issued a statement on the use by registrants of discount sites, eg to market dental services
 - Responding swiftly to concerns about the quality of dental training in a number of institutions
 - Developing a more rigorous validation process for Overseas Registration Examination applicants and European/International Registration applicants. The GDC says that this improved validation process, together with its routine auditing of its registration functions, has increased its understanding of registrants' common mistakes and misunderstandings about its processes. It has used this information to develop 'plain English' guidance as well as revised forms for use by dental care professional applicants. In addition the GDC has rebuilt its online registers so that they provide users with more detailed information in a more accessible way.

Our view

- 3.282 Our view based on the evidence that we have seen is that the GDC has undertaken a considerable amount of work since Evlynne Gilvarry took up her post in October 2010. An executive management team has been appointed to provide consistent senior leadership within the organisation. A full review of the fitness to practise function has been completed, which has identified improvements that have been implemented, will shortly be implemented, or that are long term initiatives. As set out below, we have reviewed the GDC's performance in our performance review process and in our fitness to practise audit for 2012 and we are satisfied that the work the GDC has already undertaken or is currently undertaking to improve its performance (as outlined above) is leading to some improvement. We have also seen evidence that improvements have been made within the GDC's other statutory functions, and that the GDC has continued to respond to emerging and unanticipated events.
- 3.283 Whilst Evlynne Gilvarry had some involvement in the work of the GDC in the five month period before she took up her post, we do not consider that it is reasonable to suggest that she is responsible for any failure to progress the improvement work more swiftly during that period. Evlynne Gilvarry was at that time still in post as the full-time CE of the General Osteopathic Council. Furthermore there was an interim CE, Ian Todd, in post at the GDC who was line managed by and reported to Alison Lockyer. In addition, the GDC was at the time without a full and permanent executive management team, and therefore lacked senior capacity to identify and progress all the necessary improvement work. On the basis of the evidence, we do not consider therefore that there is any support for the allegation that Evlynne Gilvarry has failed to identify and progress the most urgent issues facing the GDC.

The fourth allegation

- 3.284 Alison Lockyer claims that the GDC's Appointments Committee acted outside of its terms of reference, in that:
- The Appointments Committee's remit has been inappropriately extended to include appointing chairs of the GDC's statutory committees, training committee members, and investigating complaints about the Council and committee members
 - The Appointments Committee's accountability to the Council is unclear
 - The Appointments Committee breached the confidentiality of one former Investigating Committee chair during a training session attended by Investigating Committee chairs/panellists.

Evidence

3.285 We reviewed the terms of reference of the Appointments Committee, as agreed by the GDC's Council on 11 June 2009.³⁹ The terms of reference of the Appointments Committee set out that the committee is responsible inter alia for:

- Appointing panellists of the Investigating Committee, the Health Committee, the Interim Orders Committee, the Professional Conduct Committee, the Professional Performance Committee and the Registrations Appeal Committee (paragraph 3.1 of the terms of reference)⁴⁰
- Establishing a plan for the development of training programmes and appraisal procedures, and ensuring that the executive implements that training plan (paragraph 3.3 of the terms of reference)
- Dealing with all issues relating to the conduct and performance of those committee panellists and office holders, in accordance with the disciplinary procedure (paragraph 3.4 of the terms of reference)
- Carrying out such other roles as may be specified by the Council in accordance with the Act, any rules and regulations made under the Act and the standing orders of Council (paragraph 3.6 of the terms of reference).

3.286 The Appointments Committee reports to the Council annually on the activities it has undertaken. An example of this is the report that was considered by the Council in May 2011 (concerning the committee's activity from January to December 2010)⁴¹ which set out the resource implications of the committee's work (see paragraphs 59-61 of the Appointments Committee's annual report). Changes are being made to the Appointments Committee's reporting arrangements from 2012 (as reported in the paper to the Council in September 2011) in order to improve on the current arrangements in terms of the committee's accountability to, and communication with, the GDC's Council.

3.287 The GDC Constitution of Committees Rules (2009) ('the Rules') came into force on 1 October 2009. Rule 3(6) provides that the Appointments Committee shall have the general function of 'assisting the Council in connection with the exercise of any function relating to the appointment of members, including the recruitment, selection, appraisal and disciplining of members or particular members (for example the chair)' and Rule 2 provides that a 'member' includes a member of any of the GDC's fitness to practise committees (including the Investigating Committee) including the chair of that committee. Rule 5 specifically provides for

³⁹ This document is accessible from the GDC's website at: <http://www.gdc-uk.org/Governanceandcorporate/Thecouncil/Meetings%202009/Item%207%20Apt%20Cttee%20and%20Annexes.pdf>. Also on 30 October 2009, following the enactment of the GDC (Constitution of Committees) Rules 2009.

⁴⁰ We note that the Appointments Committee's remit only extended to include appointing Investigating Committee panellists and appointing panel chairs from 1 October 2009.

⁴¹ This document is accessible from the GDC's website at: [http://www.gdc-uk.org/Governanceandcorporate/Thecouncil/Meetings%202011/Item%2010%202010AppointmentsCommitteeAnnualReporttoCouncil%20\(1\).pdf](http://www.gdc-uk.org/Governanceandcorporate/Thecouncil/Meetings%202011/Item%2010%202010AppointmentsCommitteeAnnualReporttoCouncil%20(1).pdf)

the Appointments Committee to appoint the chairs of the committees, and for their ability to terminate a chair's appointment by vote.

- 3.288 On 18 March 2011, following the conclusion of its investigation into a complaint about the conduct of the first former Investigating Committee Chair, the Appointments Committee provided training to the remaining Investigating Committee panellists and Chairs that included learning arising from the scenario that had led to the complaint being made. During the course of our investigation, both the former Investigating Committee Chairs who resigned during 2011 and the Head of Prosecutions told us that, in their view, the details of the complaint had not been adequately anonymised for the purposes of the training and that whilst no names were mentioned, it had been described as a 'recent incident', and that, as a result, the identity of the Investigating Committee Chair who had been involved became apparent. Similarly the first current Investigating Committee Chair to whom we spoke told us that the context in which the scenario was presented made the identity of the individual Investigating Committee Chair concerned apparent (although we note that they reassured the first former Investigating Committee Chair in an email sent nearer the time that the presentation of the matter by the Appointments Committee had been anonymous). Frances Low told us that members of the Appointments Committee at that training session merely outlined the circumstances of the complaint for training purposes, and did not reveal the identity of the individual concerned. However she recognised that, given the circumstances (ie the relatively small group of individuals on the Investigating Committee) the identity of the individual concerned may have been obvious to the attendees.

Our view

- 3.289 We have considered the terms of reference and the Rules and we have not seen any evidence to support the contention that the Appointments Committee has acted outside of its remit. The Appointments Committee's powers are quite clearly delineated and from 1 October 2009 they included appointment of committee members, training and dealing with issues relating to the conduct and performance of committee members in accordance with the disciplinary procedure as well as the appointment (and if necessary the suspension and removal) of committee members/chairs.
- 3.290 The issue as to how the Appointments Committee dealt with the investigation to matters involving Alison Lockyer specifically is addressed in section 4 of this report. We have considered evidence which demonstrates that the Appointments Committee is accountable to the Council and that it reports annually on its activities and its costs. We note that, following the Council's consideration of the reporting mechanisms that are in place (during May 2011 and September 2011) the Council was informed by means of the Appointments Committee's annual report for 2011 (which was presented to the Council at its meeting on 17 May 2012) that arrangements to enhance the accountability of the Appointments Committee had been factored into its 2012 business plan and would be reported in the committee's annual report for 2012. It was reported that the Chair of the committee had met with the Chair of the Council to discuss the committee's objectives and they had agreed to meet on a biannual basis to review the committee's performance against its objectives.

3.291 With regard to the learning arising from the complaint about the first former Investigating Committee Chair, we of course agree in principle that it is important to learn from these sorts of errors in order to minimise the risk of any repetition in the future and we also accept that the Appointments Committee is the appropriate body to provide such learning. However, whilst we acknowledge that there was no obvious intention on the part of the GDC to disclose the identity of the first former Investigating Committee Chair, we are concerned that anonymity may not have been achieved in this case even though the name of the individual concerned was not disclosed, due to the relatively small number of individuals involved. We therefore recommend that any such training is carefully planned in order to minimise the risk that the identity of any individual involved is inadvertently revealed. We would also encourage the GDC to review the measures that were taken in this particular instance.

Our overall conclusions

- 3.292 The GDC has undoubtedly experienced a difficult period since the changeover of its Council. During that time there appear to have been particular problems with the GDC's governance. Some Council members expressed particular concern about the CE's role in the first half of 2010 and what they considered to be a lack of information being provided to the Council by Alison White. These concerns appear to have caused a loss of confidence in the executive management team on the part of some Council members. It is also notable that during 2009 and 2010 a number of staff across the various functions left the GDC (the majority of them leaving as a result of the restructuring that took place in 2009) which meant that the organisation suffered a loss of corporate memory. It is Evlynne Gilvarry's view that this had contributed to low staff morale by mid-2010. We understand that Ian Todd's remit as interim CE was to maintain the GDC's performance until Evlynne Gilvarry came into post, while commencing the recruitment of the new executive management team. This meant that the decisions that were necessary to effect the significant changes that were required to make the GDC a more effective regulator were not taken (or finalised) until Evlynne Gilvarry and the new executive management team came into post. Therefore there was some delay in achieving improvement in the GDC's overall performance during 2010.
- 3.293 It also appears that there were deficiencies in the governance arrangements of the GDC which had been inherited from the previous Council and which became evident in 2010. Notably, some policies were not in place, or had not been updated (including the process for handling complaints about the Chair of the Council). In addition, it appears that basic business processes such as systematic gathering and use of performance and financial data did not routinely take place, and the business planning and monitoring process was in need of improvement. This meant that there was little quantitative data which could be used by the Council to regularly monitor the GDC's performance, or to track which actions had/had not been progressed. The outgoing Council in 2009 did identify the need to review the GDC's governance arrangements. It is not clear why this was not prioritised by the current Council, under the leadership of Alison Lockyer.

- 3.294 The GDC's loss of its experienced CE, Duncan Rudkin, very shortly after the changes in the roles of both the Council and the Chair had been implemented⁴² (as well as the handover to new holders of these offices) may have contributed to the GDC's failure to address the gaps in its governance and business processes at the start of 2010. Similarly, in our view the loss of the GDC's Director of Governance in February 2010 is likely to have contributed to the failure to progress these issues. We note that Alison White was not informed upon her appointment of any need for changes in the GDC's governance arrangements. The lack of a permanent CE also meant that the GDC and its staff lacked consistent senior operational leadership, and that role was to some extent taken over by the Council until the time that Evlynne Gilvarry came into post. This meant that the Council became overly involved in non-strategic matters during this period.
- 3.295 Notwithstanding this, we are generally satisfied that the GDC was able to manage those areas of its work that are relevant to public protection during that period, as we reported in our performance review for 2010/11. Our review of the evidence does not suggest that, despite the deficiencies in its governance at the time, the Council failed to ensure that the GDC delivered its statutory responsibilities during this time, although there were clearly concerns about aspects of the delivery of its fitness to practise function, which we highlighted in our performance review reports for 2009/10 and 2010/11.
- 3.296 We would have expected Alison Lockyer to have highlighted the concerns that she raised upon or following her resignation while she was in office (to the extent that she was aware of them at that time). As set out in paragraph 3.269 above, there is evidence (in the form of documents or evidence from Evlynne Gilvarry) to support Alison Lockyer's assertion that she took steps while she was in post to discuss with Evlynne Gilvarry some of the matters about which she has raised concerns following her resignation. It is unfortunate that the only emails that remained in Alison Lockyer's GDC email inbox and sent box at the date of her resignation date from or after 4 May 2011, as that has limited the extent to which we can assess the existence of such documentary evidence.
- 3.297 Under Evlynne Gilvarry's management, and with a complete executive management team in place, we have seen a commitment to ensuring that the weaknesses in the GDC's performance are identified and addressed. This has been undertaken in a transparent manner, with both the Council and the GDC's stakeholders. The GDC is undertaking an improvement programme across its regulatory functions and is taking action to improve its governance arrangements.
- 3.298 We have also obtained evidence from the interviews we conducted during our investigation of a good working relationship between the Council, Evlynne Gilvarry, and the new Chair, Kevin O'Brien (elected in September 2011). We were told by the current Chair, Kevin O'Brien, that the role of Chair is key for holding the executive to account and that he meets with Evlynne Gilvarry weekly to discuss 'where the GDC is going'. We were told by the Council members to whom we spoke during our investigation that they feel able to communicate any concerns to Evlynne Gilvarry and that they feel that she listens to those concerns and acts upon them where possible. The current Chair described Evlynne

⁴² When he left to take up the role of Registrar of the General Pharmaceutical Council.

Gilvarry's approach as 'open and transparent'. We consider that the Council, its Chair, and Evlynne Gilvarry are now working together to improve the governance and the performance of the GDC.

- 3.299 We are confident that the GDC has taken steps to improve its governance arrangements and that it is in a good position to move forward and improve its performance. We look forward to seeing evidence of the effects of the improvements that the GDC has made, as well as those that are currently in progress, in the GDC's performance review for 2012. We recognise that the impact of some of the improvements may take some time to become evident in the GDC's performance.
- 3.300 The GDC's experiences in 2010 suggest that any succession planning that was undertaken in the run up to the changeover of the GDC's Council and Chair in 2009 was inadequate. In particular, there appears to be a general consensus amongst the current Council members to whom we spoke that the induction they received was not as effective or detailed as it should have been, and it also appears that Alison Lockyer and Evlynne Gilvarry received little, if any, separate formal induction. We also note that some issues that were outstanding as at the time of the changeover of the Council (including concerns about a developing backlog in the fitness to practise function and the deficiencies in the GDC's governance procedures) do not appear to have been progressed with the appropriate urgency in late 2009/early 2010. We recommend that the GDC uses the experience that it has gained over the past three years to plan for the future. In particular, we recommend that the GDC ensures that in future its succession planning is thorough and effective, both in relation to changes of Council members (and the Chair) and the CE. We also agree with one Council member's suggestion that the GDC should seek (so far as possible) to avoid a situation where the entire membership of the Council changes at the same time, and instead employ a rolling programme of Council appointments to provide some ongoing continuity and stability. We recognise that moving to such a programme might require legislative change to effect. We note that the GDC has revised the number of regular Council meetings it schedules each year, and that seven such meetings are planned for 2013. We would suggest that the GDC keeps this under review in order to ensure that the Council has sufficient time available at those meetings to focus on matters that are key to its strategic role.

4. Concerns about the fairness and proportionality of the processes adopted by the GDC in handling two matters raised about the former Chair

Summary of the two matters raised about Alison Lockyer

- 4.1 Alison Lockyer made a number of specific allegations about the processes adopted by the GDC in relation to two matters that were raised about her and the quality and quantity of information shared with the Council about the two matters. In particular, Alison Lockyer alleged that the process the GDC used to investigate the first matter about her was in breach of the requirement of natural justice and unlawful, and that the matter was 'seized upon in an inappropriate and excessive way' by those who sought to discredit her before her peers and to force her to leave her office. She also alleged that the second matter raised about her had no sensible basis as it related to conversations between her and a member of staff which were within the remit of the Chair. She also had concerns about the timing of the second matter as she said that it emerged just after a letter from her which challenged the findings in relation to the first matter.
- 4.2 To explore these issues, one of the principal themes of our investigation was focused on the fairness and proportionality of the processes adopted by the GDC in handling the two matters that were raised about Alison Lockyer while she was Chair of the GDC. We consider this in this section of the report.

The first matter

- 4.3 The first matter raised about Alison Lockyer was a claim that she failed to take the appropriate action when an Investigating Committee Chair approached her to discuss an individual fitness to practise case, in relation to which she knew the registrant concerned and had provided a reference for them on GDC headed paper.
- 4.4 In August 2010 Alison Lockyer provided a reference for a registrant. This reference was provided on GDC headed notepaper and it was signed from Alison Lockyer in her position as Chair of the GDC. The context in which the reference is provided was not mentioned. The reference was provided for employment purposes, and at the time it was provided Alison Lockyer was unaware of the fitness to practise investigation concerning the registrant – which was subsequently considered by an Investigating Committee panel in October 2010. Within the registrant's submission, they had provided a copy of the reference that Alison Lockyer had written for them. The Investigating Committee chose to disregard the reference from Alison Lockyer during their consideration of the case. The committee decided to refer the registrant to the Health Committee.
- 4.5 Following the committee meeting, the Chair of the Investigating Committee wrote to Alison Lockyer to inform her that a referral had been made in relation to the registrant with whom she had a pre-existing personal relationship, that the committee had disregarded the reference provided by Alison Lockyer 'in order to

be seen to be protecting our impartiality' and noting that there was a possible conflict of evidence in the bundle provided by the registrant which they wanted to bring to Alison Lockyer's attention as 'you may wish to see what the real facts are and what can be done to correct the errors'.

- 4.6 On receipt of this letter, Alison Lockyer called the Chair of the Investigating Committee to discuss the matters raised in the letter. Alison Lockyer has told us that this was because she was concerned about the possible public protection risks associated with the issues identified in the letter. Following this call, the Chair of the Investigating Committee (who said that they took the following actions with the knowledge of Alison Lockyer) wrote a letter to the registrant to advise them to seek legal advice in relation to a possible conflict of evidence and also wrote to the Health Committee Chair to make them aware of the possible conflict of evidence.
- 4.7 Following this matter being brought to the attention of the corporate legal team by a member of staff, and then subsequently Evlynn Gilvarry, Alison Lockyer was told in a written memo that the matters would be investigated. This is because Evlynn Gilvarry was concerned that:
- Alison Lockyer had allowed herself to be involved in an ongoing fitness to practise case and that there was a real risk that this involvement may have compromised the independence of the process, breached the principles of fairness and created the appearance of bias
 - There were potential conflicts of interest in Alison Lockyer's actions as Chair of the GDC and her concern for a registrant with whom she had a pre-existing personal relationship
 - Alison Lockyer's behaviour appeared to be inconsistent with the obligation to act in the best interests of the GDC.
- 4.8 We note that during the course of the investigation, Alison Lockyer explained that she had not intended for the reference for the registrant to be provided on GDC headed paper or for it to be signed from her in her position as Chair of the GDC. She also explained the circumstances in which the request for the reference arose (as referred to in paragraph 4.4 above) and said she acted on the information provided by the Chair of the Investigating Committee in order to ensure that the public and patients remained protected. We detail further information about the investigation in this section of the report.

The second matter

- 4.9 The second matter related to an interaction between Alison Lockyer and a member of staff at the GDC. The matter did not relate to fitness to practise.
- 4.10 The interaction related to the compilation of a Council paper in January 2011 and a member of staff's claim that Alison Lockyer had suggested altering the relevant paper inappropriately.
- 4.11 The Chair of the Audit Committee wrote to Alison Lockyer on 7 February 2011 informing her of the concerns which had been raised and saying that the matter would be investigated. Alison Lockyer denied any impropriety in connection with this matter. In the event, the matter was not fully investigated.

- 4.12 Alison Lockyer made a number of specific allegations about the processes adopted by the GDC to investigate the two matters raised about her. We set out below each of the allegations that she made to CHRE about this, the evidence we have obtained during our investigation, and our conclusions based on the same. We also address, in the 'Our view' section, Alison Lockyer's overall allegation that that the process used to investigate the first matter about her was in breach of the requirements of natural justice and unlawful and that the complaint was 'seized upon in an inappropriate and excessive way' by those who 'sought to discredit her before her peers and to force her to leave her office'.

The fifth allegation

Allegation 5(a)

- 4.13 Alison Lockyer has alleged that the GDC did not have an up-to-date procedure in place for the investigation of 'complaints' against the Chair of the Council.

Evidence

- 4.14 We have seen that the written procedure in place at the time that the first matter was raised about Alison Lockyer had been in place since March 2004 and had not been updated in light of the GDC Constitution Order 2009. This meant that the procedure incorrectly referred to the Chair of the Council as the 'President', and to previous powers held by the Council to suspend/terminate membership of Council (since 2009 these powers have been held by the Privy Council).
- 4.15 We note that in the GDC's submission for CHRE's performance review 2009/10 (as provided by Duncan Rudkin prior to his resignation in 2009 and later updated by the first interim CE, Alison White, in 2010), and in the action plan produced by Alison White in March 2010 for the GDC Council, it was identified that the Code of Conduct for Council members should be reviewed in light of the changes to the Council's composition. However, we note that no reference was made to any such review of the procedure for investigating complaints about Council members. It appears therefore that this particular gap in the GDC's policies was not identified during 2009 by the outgoing Council (of which Alison Lockyer was a member), the outgoing President (Hew Mathewson) or the outgoing CE (Duncan Rudkin); or in 2010 by Alison White, the current Council or Alison Lockyer as its Chair. Alison White has told us that she was not briefed about the need for this procedure to be updated.
- 4.16 As part of the GDC's consideration of how to approach the first matter raised about Alison Lockyer, the GDC obtained legal advice. We have seen that the legal advice indicated that although the matters raised about Alison Lockyer raised serious issues they were not at the highest end of concerns that might arise in a regulatory context. The GDC was advised that because of the nature and relative gravity of the matter it appeared more suitable to be dealt with, at least initially, under an internal procedure (rather than referring it to the Privy Council, which would be the appropriate body to consider any formal disciplinary action against any Council member/Chair).

- 4.17 In a memo from Evlynne Gilvarry to Alison Lockyer dated 17 November 2010 which we have reviewed, it was drawn to Alison Lockyer's attention that there was no up-to-date procedure for dealing with the matters raised about her. The memo indicated the alternative process that the GDC had been advised to use. Evlynne Gilvarry wrote 'in the absence of an up to date Code of Complaints Procedure for Council Members it is proposed that a process that achieves a reasonable parity with the Disciplinary Procedure for Statutory Committee members is an appropriate independent and fair way to take this matter forward'.
- 4.18 From reviewing the publicly available Council papers we have seen that in December 2011 a new procedure (which was developed by the governance team at the request of the Audit Committee) for investigating complaints about Council members was agreed by the Council. We note that we have also been told that a full review of the GDC's governance policies and procedures has been undertaken.

Our view

- 4.19 There is no dispute that there was no up-to-date procedure in place at the time when the first matter was raised. The procedure had not been updated in light of constitutional changes that had been made to the GDC's Council in October 2009. This may have resulted, at least in part, from a lack of senior management within the GDC's governance function at the time, as well as the failure throughout 2009 and most of 2010 to identify the need for the procedure to be updated. We consider that it was unacceptable that there was no up-to-date procedure in place for investigating complaints about Council members. Whilst this may have been partly the result of a lack of appropriate resourcing within the governance function at the time, the responsibility for ensuring that appropriate arrangements were in place fell to the GDC Council as a whole and the various CEs.
- 4.20 We note that the GDC has now agreed a revised procedure for dealing with complaints about Council members, and that it has completed a review of its governance policies and procedures, with the involvement of its Audit Committee. We would recommend that the GDC puts in place arrangements for both formal periodic reviews of its governance policies and procedures and for reviews to take place shortly after any constitutional changes are made, to ensure that these documents are regularly checked and brought up to date. This recommendation may also be relevant to other regulators who do not already have such arrangements in place.

Allegation 5(b)

- 4.21 Alison Lockyer alleges that the procedure used by the GDC to investigate the first matter about her was incomplete and inadequate. Alison Lockyer told us of a number of concerns she had about the procedure. She said that:
- i. She did not believe that the person who originally raised the matter wanted it to be dealt with as a 'complaint' about her
 - ii. She was not given a copy of the original documentation in which the matters were raised about her at the time of the investigation, only a memo about it from Evlynne Gilvarry

- iii. The procedure was not comprehensive or clear, with the result that the GDC investigator (the former Appointments Committee Chair) had to deviate from the procedure where necessary
- iv. The status of the meeting Alison Lockyer had with the investigator was unclear. Alison Lockyer thought that the meeting was to establish the facts, so that the investigator could then go on to consider whether or not there was a 'case to answer', rather than its being a formal meeting with a legal note-taker present
- v. Alison Lockyer was not given the opportunity to comment on the evidence that had been collected by the investigator, such as the comments made by the person who raised the matter or by the Chair of the Investigating Committee.

4.22 We examine below the evidence we have seen in relation to each of these concerns in turn. We then set out our views in respect of each.

Evidence

The procedure

- 4.23 The GDC obtained legal advice from Leading Counsel that its procedure for investigating complaints about Council members was inconsistent with current legislation and that it was inappropriate and arguably unfair to use the procedure because it did not provide for any informal process in respect of the Chair of the Council. The GDC decided that it should use the Disciplinary Process for Statutory Committee Members as this was considered an appropriate, independent and fair framework to be adapted to take this matter forward given the lack of an up-to-date process for investigating complaints about Council members.
- 4.24 Alison Lockyer told us that she was informed on 17 November 2010 (during a meeting with Evlynne Gilvarry and the Chair of the Audit Committee (Alan MacDonald)) of the first matter that had been raised about her, and about the procedure the GDC proposed to use to investigate that complaint. At that meeting Alison Lockyer said that she was also given a written note by Evlynne Gilvarry. We have reviewed this memo and note that it includes the following statement: 'On receipt of the information referred to above [the first matter raised about Alison Lockyer], I considered with legal advice, the most appropriate process for considering the matter. In the absence of an up to date Code of Complaints procedure for Council members, it is proposed that a process that achieves reasonable parity with the Disciplinary Procedure for Statutory Committee members (see Annex 4) is an appropriate independent and fair way to take this matter forward'. The note also said 'I would be grateful if you would respond to me [the Chief Executive] within 7 working days to let me know whether you are content to proceed under the disciplinary process for Statutory Committee members. If you are agreeable I shall refer this matter to the Chair of the Appointments Committee for consideration'. A copy of the Disciplinary Process for Statutory Committee Members was provided and Alison Lockyer was advised to seek independent legal advice (which the GDC financed, up to a capped limit).

- 4.25 We have also reviewed the email sent by Alison Lockyer to Evlynn Gilvarry on 18 November 2010 in which she agreed to the proposed way forward. Alison Lockyer said 'I am entirely content for you to deal with the matter in which you have set out in your note...' and 'can I just confirm that I am entirely willing to co-operate in anyway appropriate with your investigatory process'.
- 4.26 Following Alison Lockyer's agreement, the following took place:
- The GDC investigator met with the person who originally raised the matter about Alison Lockyer on 26 November 2010
 - The GDC investigator met with Alison Lockyer on 29 November 2010
 - On 5 December 2010 the GDC agreed for the process to be stayed so that Alison Lockyer could seek legal advice.
- 4.27 On 7 December 2010 (at a time when the GDC investigator was considering the facts of the case so that an investigation report could be produced) Alison Lockyer's former solicitors raised concerns about the procedure in a letter to Evlynn Gilvarry which we have reviewed. The concerns related to the status of the meeting held with the GDC investigator and what they considered to be a lack of clarity about how the Disciplinary Procedure for Statutory Committee Members was being used by the GDC investigator and a lack of clarity about the matters raised about Alison Lockyer. The letter also said that, although Alison Lockyer had agreed to engage in the procedure proposed by the GDC, all of her rights in this respect were reserved. The GDC responded to each of Alison Lockyer's concerns in a letter dated 10 December 2010 which said inter alia that 'we can only repeat that the GDC is of the view that the allegations against your client are being properly investigated and handled within an agreed process'. In Alison Lockyer's former solicitors' reply dated 21 December 2010 we have seen that they state 'we reiterate those points regarding the process and reserve our client's position in relation to those points'.
- 4.28 On 22 February 2011 Alison Lockyer's current solicitors (there was a change in Alison Lockyer's representation between December 2010 and February 2011) wrote to Frances Low. They said in that letter that Alison Lockyer could not have agreed to the process used to investigate the first matter as she would not have been aware of 'deviations' from the procedure that had not been contemplated at the time of her memo dated 18 November 2010.
- 4.29 All but one of the Council members to whom we spoke told us that they thought that the procedure used by the GDC to investigate the first matter about Alison Lockyer was fair. They considered that there had been a real effort by the GDC to make the procedure as fair as possible to Alison Lockyer. The one Council member who disagreed (Council member Z) said that the procedure had begun with fair intentions, but that it had become unfair at a later date. Council member Z also commented that the two matters raised about Alison Lockyer had been handled in a 'haphazard way' and 'dragged out' for too long. We note that the first matter was brought to Alison Lockyer's attention on 17 November 2010 and that the Council was asked to note the outcome of the investigation at a private session of its meeting on 24 February 2011. This timeframe also included a period when Alison Lockyer was on leave (mid-December to early January) and a short period when she sought legal advice in December 2010.

- 4.30 When we spoke to Evlynn Gilvarry in November 2011, she said that she was conscious of the extreme sensitivity involved with the matters brought to her attention as Alison Lockyer was her line manager and she was new in post. She therefore proposed seeking legal advice about the actions that the GDC should take and this was authorised by Alan MacDonald, the Chair of the Audit Committee. Evlynn Gilvarry said she was advised that the complaints process for Council members was out of date and that instead the GDC should adapt the Disciplinary Procedure for Statutory Committee Members to investigate the matters raised. She told us that the GDC had been careful to ensure that the procedure used to investigate the first matter against Alison Lockyer was fair and proportionate (including advising her to seek independent legal advice at the start of the process, which the GDC funded up to a capped limit). Evlynn Gilvarry also noted that Alison Lockyer had given her specific consent to the proposed procedure on 18 November 2010.
- 4.31 We note that the GDC investigator invited a member of the Appointments Committee to act as an independent observer to the process undertaken to investigate matters. The independent observer wrote a report at the end of the process setting out that they had had access to all the relevant material and stating that they considered their comments had been considered by the investigator although the decision on whether to accept them was the investigator's alone.
- 4.32 We address each of Alison Lockyer's specific concerns about the investigation procedure in turn below.

Concern (i) – whether the matter was intended to be a complaint

- 4.33 In a letter dated 22 February 2011 from Alison Lockyer's current solicitors a concern was raised that Alison Lockyer had not been provided with a copy of the documentation in which the matters were raised by the original member of staff, and that that was not in accordance with the procedure for investigating complaints about statutory committee members. We note that the GDC did not respond to this point in its two following replies to this letter dated 23 and 28 February 2011.
- 4.34 Evlynn Gilvarry told us in December 2011 that the original emails in which the matter was raised by a member of staff were not shared with Alison Lockyer because the member of staff involved had effectively been 'whistle-blowing' and the GDC's legal advice was that it was appropriate to protect the 'whistle-blower's' identity by routing the complaint through her. We have seen the advice the GDC received from Leading Counsel on 23 February 2011 in relation to the actions taken by the GDC in considering the first matter raised about Alison Lockyer, and note that it records that 'it was agreed that the complaint would be made nominally through the Chief Executive [ie Evlynn Gilvarry] in order to protect the identity of the complainant' and that this was 'under the GDC's usual processes and in accordance with legal advice provided...'.⁴³ Evlynn Gilvarry confirmed that she did not consider asking this member of staff to write and sign

⁴³ We note in paragraph 4.40 of our report that in fact the individual concerned told the investigator that they were unconcerned about their identity being revealed to Alison Lockyer.

a statement of complaint in place of relying on the emails that member of staff had written.

- 4.35 Following a Data Protection Act request made during our investigation, Alison Lockyer was provided with a redacted version of the original emails in which the first matter was raised about her. Our understanding is that this was the first time that Alison Lockyer had been provided with that documentation.
- 4.36 In our meeting with Alison Lockyer in June 2012 she told us that it was her view that a complaint was not made against her by the member of staff but instead an issue that had been raised by a staff member was then escalated to the status of a complaint by Evlynn Gilvarry. To support this assertion she referred to the note of the meeting she had with the GDC investigator, in which she said that the investigator only referred to speaking to the person who had 'raised the issue' and when Alison Lockyer questioned whether concerns or a complaint had been raised the investigator said 'it's a bit of a curious situation, there is a trigger and Evlynn's note is effectively what I am investigating'. Alison Lockyer also says that nowhere in the note does the investigator refer to the member of staff making a complaint, wanting the matter to be taken seriously or threatening a referral to the Privy Council. Alison Lockyer also says that she had a conversation with a third party (whom she did not have permission to name) who told her that they had spoken with the member of staff who raised the matter who said that they did not consider their email to be a complaint.
- 4.37 Alison Lockyer's current solicitors also commented in the meeting we had with Alison Lockyer in June 2012 that, having reviewed the original emails sent by the member of staff, it did not appear from the content and tone that the member of staff was distressed. They believed that this cast doubt on the accuracy of the account provided by the GDC that the member of staff wanted the matter taken very seriously and threatened to refer the matter to the Privy Council if the GDC did not deal with it properly.
- 4.38 When we asked Evlynn Gilvarry about the point raised by Alison Lockyer's former solicitors we were told that the member of staff had not specifically said to Evlynn Gilvarry that they would escalate the matter if the GDC did not take action, but that a member of the corporate legal team had told Evlynn Gilvarry that they were aware that it was the member of staff's intention to escalate the matter if the GDC failed to take action. Evlynn Gilvarry told us that in any event that information did not factor into her decision about how the GDC should respond.
- 4.39 We invited the member of staff who raised the first matter about Alison Lockyer to contribute to the investigation but they did not respond to our invitation. Therefore we were unable to question them directly about whether they intended to make a complaint and whether they considered the matter to be serious. However, we were able to review the original emails sent by the member of staff and notes of their meeting with the GDC investigator which they had approved. In the original email sent on 3 November 2010, we can see that the member of staff initially queried whether Alison Lockyer had sought the advice of the corporate legal team in relation to the appropriateness of providing a reference to a registrant on GDC headed paper. In a second email sent that day, they also asked for advice about a further issue which they wanted to bring to the corporate legal team's

attention. This issue related to the fact that the Chair of the Investigating Committee had copied Alison Lockyer and others into an email to the Health Committee Chair highlighting a possible conflict in the evidence presented by the registrant. In an email sent by the member of staff on 15 November 2010 they said that the 'procedural improprieties' which they said had occurred in this case were of 'serious concern' to them and that it was their responsibility to take appropriate steps in relation to the fitness to practise case. They noted that the governance issues were outside of their domain but that they were aware that the corporate legal team had brought them to Evlynn Gilvarry's attention.

- 4.40 In the agreed note of the meeting with the member of staff and the GDC investigator which took place on 26 November, amongst the points discussed it is recorded that:
- The member of staff raised the issue because the submission of the reference by Alison Lockyer could be seen as an attempt to influence the Investigating Committee process. Also the member of staff thought it important to note that there are emails of at least one conversation between the Chair of the Investigating Committee and Alison Lockyer and the reference should be read in the context of that additional information
 - The member of staff said that they did not make a complaint as such but passed the matter onto the appropriate person within the GDC as was their duty to protect the interests of the GDC
 - The investigator asked what the member of staff wanted from this process. The member of staff asked that the issue be investigated fully and fairly and that whatever the conclusion that the reasons were rational
 - The member of staff said that they wanted to feel that they were working for a professional organisation and that if this was not evident in this investigation then they would think about other steps they make take eg via CHRE or a professional body
 - The member of staff was unconcerned about their identity being revealed to Alison Lockyer.
- 4.41 When we spoke with the GDC investigator they confirmed that their impression was that the member of staff was 'affronted' by what they believed had happened and that they wanted the matter to be taken seriously.
- 4.42 We also reviewed the note of the meeting between the GDC investigator and Alison Lockyer. Alison Lockyer's description of the content of the note of her meeting with the GDC investigator at paragraph 4.36 is accurate. However, the note also includes that the investigator explained that whilst the member of staff raising the issue about the reference was the first trigger for the investigation, the Chair's communication with the Investigating Committee Chair was also a reason for the investigation taking place.
- 4.43 We also spoke with the member of the Appointments Committee who investigated the conduct of the first former Investigating Committee Chair in relation to the first matter raised about Alison Lockyer. They said that they had met with the person who raised the first matter about Alison Lockyer (although they had not taken notes of the meeting) and that they recalled the person had

been concerned that the issue of the reference from Alison Lockyer had not come to their attention until the case had been referred to external solicitors for investigation, and after a referral had been made to a final fitness to practise committee.

Concern (ii) – whether copies of the original documentation should have been provided to Alison Lockyer

- 4.44 Alison Lockyer raised a concern in our meeting with her in September 2011 that the memo given to her by Evlynn Gilvarry on 17 November 2010 set out general statements about the matter that had been raised, but did not specify the allegations. In our meeting with Alison Lockyer in June 2012, she added that the factual allegations were not set out fully in a coherent way – indicating that she was therefore unable to either accept or challenge them. For example, whilst Alison Lockyer accepts that the investigation focused on the points in Evlynn Gilvarry's notes, in her view the GDC never specified what it considered she had done wrong (or what she should have done differently), particularly given her concerns about possible patient protection risks associated with the registrant.
- 4.45 Alison Lockyer first raised her concerns about not being provided with specific allegations with the GDC on 7 December 2010 in a letter from her former solicitors in which they said that she did not know the specific allegations against her and therefore was not able to present her defence in full. The GDC responded to Alison Lockyer's concerns on 10 December 2010, stating that the allegations were clearly set out in the note she had been given on 17 November 2010. The GDC said that it did not agree that Alison Lockyer had not been given an opportunity to present her case, but did offer her another opportunity to make further representations.
- 4.46 Alison Lockyer's current solicitors raised the same concern with the GDC in two letters sent on 22 February 2011. The advice that Alison Lockyer's solicitors received from Leading Counsel stated that 'it is absolutely basic to any disciplinary procedure that the respondent be told in clear and precise terms what allegations he or she is being called upon to answer. It is not sufficient for the Chief Executive to produce a lengthy note which does not identify exactly what it is Ms Lockyer is alleged to have done or not done, and then leave it to Ms Lockyer and indeed the investigator to try to work out from this what the allegations are. [The investigator] did at the meeting on 29 November, put to Ms Lockyer three points taken from the Chief Executive's note but none of these points was precise enough to constitute an allegation in a disciplinary context'.
- 4.47 We have reviewed the memo given to Alison Lockyer by Evlynn Gilvarry on 17 November 2010 and note that it includes:
- A short chronology of the events that led to the decision that an investigation was necessary – ie that Alison Lockyer had provided a reference to a registrant which had been used by the registrant in their submission to the Investigating Committee, that she had communicated with the Chair of the Investigating Committee and had been aware of that Chair's subsequent correspondence with the registrant and the final fitness to practise committee

- The reasons why Evlynn Gilvarry considered the investigation was necessary:
 - Alison Lockyer had allowed herself to become involved in an ongoing fitness to practise case and that there was a real risk that this involvement may have compromised the independence of the process, breached the principles of fairness and created the appearance of bias
 - There were potential conflicts of interest in Alison Lockyer's actions as Chair of the GDC and her pre-existing personal relationship with the registrant
 - Alison Lockyer's behaviour appeared to be inconsistent with the obligation to act in the best interests of the GDC.
- 4.48 This information is repeated in the briefing provided to the GDC investigator on 15 November 2010 on the matters raised about Alison Lockyer by Evlynn Gilvarry.
- 4.49 During our meeting with Alison Lockyer in September 2011 she told us that the investigator had defined the scope of their investigation by reference to the matters set out in the memo given to her by Evlynn Gilvarry on 17 November 2010, and acknowledged that no other issues had been raised by the investigator during their investigation. Alison Lockyer said again that she received no response when she asked for an actual copy of the individual staff member's 'complaint'.
- 4.50 We have reviewed the note of the meeting between the investigator and Alison Lockyer and confirm that it focused on the issues that had been recorded in the memo from Evlynn Gilvarry dated 17 November 2010, namely the reference that she provided, her telephone call with the Chair of the Investigating Committee and the subsequent actions taken by the Chair of the Investigating Committee after the telephone call. The investigator also told Alison Lockyer that they were investigating three issues: 'the compromising of the process, the conflict of interest and professional conduct'.
- 4.51 We note that the investigator's report (dated 4 January 2011) set out the two matters that had been investigated, which related only to the matters described in Evlynn Gilvarry's note of 17 November 2010. The report states: 'There were two matters before me: a) the reference provided by you for a registrant whose case was before the Investigating Committee b) your response to an approach by the Chair of the Investigating Committee.'

Concern (iii) – whether the procedure was comprehensive and clear

- 4.52 In our meeting with Alison Lockyer in September 2011 concerns were raised by her current solicitors about the clarity and adequacy of the process used to investigate the first matter raised about her.
- 4.53 Alison Lockyer's former solicitors first raised a concern about the process in their letter of 7 December 2010 when they complained that Alison Lockyer had never been informed about which specific parts of the Disciplinary Procedure for Statutory Committee Members were being used in the investigation. They also

said that, if it was the case the investigator was being guided by parts two and three of that procedure, Alison Lockyer's written observations should have been obtained before part three of the procedure was initiated (as stated in paragraph 10 of the relevant procedure).

- 4.54 We have seen that the GDC responded to that letter on 10 December 2010, advising that it was part two of the procedure that was being used, and that Alison Lockyer's note of 18 November in response to Evlynne Gilvarry's memo meant that it considered that it was not necessary to obtain further written representations from her.
- 4.55 Alison Lockyer's current solicitors also raised concerns about the ad hoc nature of the process used to investigate the first matter in their first letter of 22 February 2011 stating that 'although the procedure to be followed was outlined in broad terms at the outset this procedure was to some extent made up as it went along'.
- 4.56 In the advice that Alison Lockyer's solicitors obtained from Leading Counsel it is noted that 'the Council's decision to use the Disciplinary Procedure for Statutory Committee Members, whilst understandable given the legal advice that had been received, appears to have led to considerable confusion and a muddled process'. In support of this, the advice notes that at paragraph 10 of the Disciplinary Procedure it states that the person against whom a complaint has been made will be provided with a copy of the complaint; it is again mentioned that Alison Lockyer was not provided with a copy of the complaint. It also refers to the different accounts provided to Alison Lockyer by the GDC and the investigator in relation to the process being followed:
- 'This is a unique process as the process itself does not exist' and 'I am following the Appointments Committee process [the Disciplinary Procedure for Statutory Committee Members] up to the first point.' (From the note of the meeting between the GDC investigator and Alison Lockyer)
 - 'It was therefore decided to use an adapted version of the Disciplinary Procedure for Statutory Committee, which, in part 2 is similar to the informal stage of the process in the outdated Code of Conduct.' (From a letter sent to Alison Lockyer's former solicitors by the GDC corporate legal team on 10 December 2010)
 - Part of the content of the investigation report dated 4 January 2011 produced by the GDC investigator includes recommendations for the Chair and some of these were within the scope of powers conferred by part 3 of the Disciplinary Procedure for Statutory Committee Members rather than part 2.
- 4.57 The GDC has also provided a legal opinion, obtained from Leading Counsel, which argues that there were no grounds to support Alison Lockyer's assertion that 'none of the participants had a clear understanding of the process being followed'. The opinion noted that, even if that criticism were justified, it was not clear what impact it had had on Alison Lockyer's response, and her apparent acceptance of both the factual allegations and the outcome. We note that Alison Lockyer states that, while she did accept some of the facts alleged against her, there were other aspects that she challenged in her letter of response dated 25

January 2011. Alison Lockyer further states that she never accepted that there had been any impropriety on her part.

- 4.58 The evidence we have received from the GDC investigator when we asked them about whether they understood the process used was that they were advised at each stage of the process by the GDC's corporate legal team.
- 4.59 We have reviewed the process used by the GDC investigator to carry out the investigation into the first matter raised about Alison Lockyer and compared it against the Disciplinary Procedure for Statutory Committee Members (see Annex 4). We can see that:
- Paragraph 10 of part 2 the Procedure sets out that the person against whom the complaint has been made should receive a copy of the complaint with any documentation. We note above that Alison Lockyer was not provided with a copy of the emails in which the matters were raised about her but she was provided with a memo from Evlynne Gilvarry which included information about the matters raised
 - Paragraph 10 of part 2 of the Procedure also sets out that observations from the person complained about should be sought. We note that the GDC said that the observations had been obtained following receipt of Alison Lockyer's email of 18 November 2010. Alison Lockyer did not agree that this was sufficient to satisfy the procedure
 - Paragraph 15 of part 3 of the Procedure sets out that the investigator will invite the complainant and the person against whom the complaint has been made to attend a preliminary meeting to ascertain the substance of the complaint; ask whether any previous complaints have been upheld against the person complained about in the last two years; and ask for details that have been raised by the appraisal system which directly relate to the complaint made. We have seen evidence that the investigator did carry out each of these actions (ie meeting notes and emails that were shared with us). The investigator met with Alison Lockyer and the member of staff to discuss the matter raised and reviewed Alison Lockyer's HR file to consider whether there had been any upheld complaints against her and any issues raised in an appraisal which might be relevant to the investigation
 - We note that Alison Lockyer considers that a further meeting should have been arranged
 - Paragraph 16 of part 3 of the Procedure sets out the possible outcomes of an investigation into a complaint that is conducted under that procedure. As set out below in paragraphs 4.99-4.100 and 4.111 we note that some of these outcomes were used by the GDC investigator, although other outcomes were also used that were not provided for
 - Paragraph 18(b) of part 3 of the Procedure sets out that the GDC investigator in reaching a decision must take into account any documentary evidence and any representations made by the complainant or the person complained about. They must also give reasons for their decision in writing. The investigation report produced by the investigator states that the investigator took account of the documentary evidence and

all representations made by Alison Lockyer and her solicitors including their notes on the note of the meeting held in November 2010. We note that the investigator included a recommendation that Alison Lockyer should apologise to the person who raised the matter. The investigator told us that this was because the person who had raised the matter wished to receive an apology. This indicates that the representations from the person who raised the matter were taken into account. However we can see from the note of the meeting between the GDC investigator and the member of staff that there is no record of an apology being requested. We have been unable to confirm the GDC investigator's recollection with the member of staff who raised the matter. The investigator recorded their reasons for the decision in their report of 4 January 2011. We comment on the adequacy of the reasons below at paragraph 4.110

- Paragraph 20 of part 3 of the Procedure states that if advice is offered to the person complained about this should be given as soon as reasonably practicable and then confirmed in writing. Paragraph 21 of part 3 of the Procedure also states that if an apology is recommended this should be confirmed in writing to the person complained about. We note that Alison Lockyer met with the investigator on 12 January 2011 to discuss the investigation report and the recommendations, at this meeting she was given a written copy of the investigation report dated 4 January 2011
- The Procedure does not include reference to any investigations being reported to the Audit Committee or the Council.

Concern (iv) – whether the status of the meeting between Alison Lockyer and the investigator was inappropriate

- 4.60 At our meeting with Alison Lockyer in September 2011, she raised her concern that the status of the meeting that was to be held between herself and the GDC investigator was not made clear to her at the time (ie whether the meeting was informal or disciplinary in nature). She told us that she understood the investigator's role was to establish the facts and then see if there was a case to answer, and so she thought that the first meeting would be for that purpose, to establish the facts, not a formal meeting with a legal note-taker present. Alison Lockyer said to us that she was told that she could not be accompanied by a lawyer to that meeting. However, she said it was never made clear to her that the meeting with the investigator would be to address the allegations, rather than just to investigate them.
- 4.61 In Alison Lockyer's written evidence of August 2012 to CHRE she noted that she had been informed that the process to look into the matters raised by the member of staff would be informal by Evlynne Gilvarry at her meeting with her on 17 November 2010 but by the time the investigator was involved with the process it had been elevated so that meeting was referred to as a disciplinary meeting. She said that if she had known about the formality of the procedure and the intended disciplinary nature of this, 'I would (a) probably not have agreed to it; and (b) certainly not agreed to being interviewed alone and without an adviser present'.

- 4.62 In a letter from Alison Lockyer's former solicitors to the GDC dated 7 December 2010, they queried why the meeting note was entitled 'Disciplinary meeting' when Alison Lockyer believed that the meeting was informal with the purpose of assisting the investigator in reaching a decision on how best to deal with the matter. The GDC responded to Alison Lockyer's concern about the status of the meeting on 10 December 2010, stating that the meeting's purpose was disciplinary, as the investigation was being undertaken under a disciplinary procedure.
- 4.63 The GDC's legal advice on this matter states that given that the Disciplinary Procedure for Statutory Committee Members was used as a framework to investigate the matter it should have been obvious that the process was disciplinary in nature.
- 4.64 Leading Counsel's advice obtained by Alison Lockyer stated that 'From an apparently informal beginning the process moved rapidly to what the [investigator] described at the conclusion of the meeting on 29 November as a disciplinary hearing and then to conclusions and recommendations, which included a final warning, without any right of appeal or challenge'.
- 4.65 Having reviewed the memo provided to Alison Lockyer by Evlynn Gilvarry dated 17 November 2010 we note that there are several references to the matter being dealt with under the Disciplinary Procedure for Statutory Committee Members.
- 4.66 Having reviewed the note of the meeting between the investigator and Alison Lockyer we note that the note is entitled 'Disciplinary meeting on Monday 29 November 2010' and includes a statement by the investigator that 'I haven't treated this any differently to an ordinary disciplinary hearing'.
- 4.67 The investigator's report (dated 4 January 2011) also stated that 'I have now concluded the initial stage of the disciplinary investigation' and 'The first stage of the Disciplinary Procedure is essentially a preliminary investigation to determine whether the issues raised can be resolved by applying any of the allowed resolutions or whether the case should be referred to another body, in this case the Privy Council to investigate further'.

Concern (v) – whether Alison Lockyer should have had the opportunity to comment on the evidence collected by the investigator

- 4.68 Alison Lockyer told us at our meeting in September 2011 that the process used to investigate the first matter did not provide her with an opportunity to comment on the evidence gathered as part of the investigation.
- 4.69 Leading Counsel's advice obtained by Alison Lockyer stated that fairness requires that the substance of any concerns or information provided by the complainant should be communicated to the person complained about so that they are able to address them. It goes on to say that Alison Lockyer should have been informed about any aspect of the further investigations which were carried out by the GDC investigator.

- 4.70 The legal advice received by the GDC set out that any further discussion with the member of staff had taken place solely for the purpose of ascertaining whether, in fairness, any further matters ought to be put to Alison Lockyer in the course of the investigation. The legal advice set out that the purpose of such discussions would not have been to obtain their views about the matters raised.
- 4.71 We note that the GDC investigator did meet with the member of staff who raised the matters before the investigator met with Alison Lockyer (26 November and then with Alison Lockyer on 29 November) and therefore had the opportunity to take account of their comments before formulating the questions for Alison Lockyer. The GDC investigator did not meet with the Chair of the Investigating Committee who was involved in the same chain of events as Alison Lockyer. The investigator said that they had spoken to the person who had investigated the matters relating to that Investigating Committee Chair and understood that there was nothing raised in that investigation which was of significance to matters involving Alison Lockyer.
- 4.72 Within the note of the meeting between Alison Lockyer and the GDC investigator it is recorded that the investigator said 'I have already spoken to the person who raised the issue' and that they may wish to cross refer to the investigation being undertaken into the Chair of the Investigating Committee's conduct but that they would reflect on this.
- 4.73 We note that the Disciplinary Procedure for Statutory Committee Members did not expressly require that the GDC investigator provide the full body of evidence gathered.

Our view

- 4.74 The GDC obtained and accepted legal advice about the procedure to be used to investigate the first matter raised about Alison Lockyer. The GDC ultimately decided that the Disciplinary Procedure for Statutory Committee Members should be used as a guideline for the investigation, in the absence of an up-to-date procedure for investigating complaints about Council members. We consider it reasonable that the GDC followed the legal advice obtained and used this Procedure as a framework for carrying out the investigation. We set out below our views on the specific concerns raised by Alison Lockyer and then go on to comment on our general views about the process.

Concern (i) – whether the matter was intended to be a complaint

- 4.75 From the evidence that we have seen, we consider that it is correct to say that the member of staff who first raised the matters about Alison Lockyer did not make a complaint but instead was raising issues that had come to their attention with the appropriate personnel at the GDC. However, it is also clear that this member of staff felt strongly about the issues and considered them to have serious implications for both the individual fitness to practise case and the GDC as a whole. They did want the GDC to take action and for the matters to be investigated.
- 4.76 The legal advice received by the GDC from Leading Counsel stated that the matters raised by the member of staff should properly form the subject matter of a complaint. We accept this position and we do not therefore consider it

inappropriate that the GDC escalated this matter into a complaint that was presented by the CE (even though the individual staff member concerned had stated that they were unconcerned about their identity being revealed to Alison Lockyer). We consider that the matters raised about Alison Lockyer – the provision of a reference on headed GDC notepaper and signed as Chair of the GDC which was subsequently used by a registrant in a fitness to practise case, and Alison Lockyer’s subsequent contact and awareness of actions taken by the Chair of the Investigating Committee – were sufficiently serious to warrant an investigation being undertaken. We consider that a failure to deal with such actions seriously could have resulted in a loss of public confidence in the GDC as a regulator should it have become known publicly.

Concern (ii) – whether copies of the original documentation should have been provided to Alison Lockyer

- 4.77 It is not disputed that Alison Lockyer was not given a copy of the original emails in which the member of staff raised the matters about her during the investigation and that the note given to her on 17 November did not particularise the individual allegations against her. We consider that it would have been preferable for the GDC to have provided redacted copies (if, all things considered, it was appropriate to protect the member of staff’s identity) of these emails to Alison Lockyer as part of the investigation so that she felt confident that she had the best available evidence to hand when responding to the investigation. Whilst we consider that the GDC did not act in bad faith in withholding this documentation (rather the objective was the protection of the member of staff’s identity, whom the GDC considered to be a ‘whistle-blower’), the relevant documents could have been redacted, or the GDC could have asked the member of staff whether they had any concerns about this documentation being released (we note that they did tell the investigator that they did not mind if their name was released). We also consider that it would have been preferable if the GDC had considered whether other steps could be taken to provide Alison Lockyer with assurance that the substance of the issues raised by the member of staff had been fully captured.
- 4.78 Notwithstanding this, having reviewed the original emails from the member of staff, we consider that the note that was given to Alison Lockyer on 17 November 2010 set out all the information the GDC held about the matter. Furthermore, we consider, based on the evidence, that the matters raised by the member of staff were accurately discussed in the meeting between the investigator and Alison Lockyer and reflected in the investigator’s report. We do not consider that the GDC’s failure to provide redacted copies of the emails or to provide particularised allegations adversely impacted on Alison Lockyer or prevented her from responding in full to the matters raised. We consider that the nature of the matters raised about Alison Lockyer was sufficiently clear from the information that was provided to her on 17 November 2010 and from then onwards, to enable her to respond to the investigation in full.

Concern (iii) – whether the procedure was comprehensive and clear

- 4.79 We consider that the procedure used by the GDC to investigate the matters raised about Alison Lockyer achieved reasonable parity with the Disciplinary Procedure for Statutory Committee Members in that:
- Alison Lockyer’s observations on the matters raised about her were obtained, albeit not specifically in line with the Procedure
 - The investigator met with Alison Lockyer and the member of staff to discuss the matter raised and did review Alison Lockyer’s HR file to consider whether there had been any upheld complaints against her and any issues raised in an appraisal which might be relevant to the investigation
 - The investigator wrote a report in which they confirmed that they had taken account of documentary evidence and the representations made by Alison Lockyer and her solicitors.
- 4.80 Notwithstanding this, we consider that the lack of a formal written procedure for investigating complaints against Council members left the GDC open to criticism that the procedure used to investigate the first matters raised about Alison Lockyer was unclear. We consider that it might have been preferable for the GDC to have delayed the investigation into the first matter to allow time for the procedure for dealing with complaints about Council members to be updated, or to allow for an interim procedure to be developed. Following a written procedure that was more directly applicable to the circumstances might have reduced the risk of later challenges to the procedure that was used. However, we do not consider that the failure to do so renders the entire procedure that was used by the GDC unfair or disproportionate.

Concern (iv) – whether the status of the meeting between Alison Lockyer and the investigator was inappropriate

- 4.81 It is clear from Alison Lockyer’s evidence that she had not understood from the start of the investigation that these matters were being dealt with as disciplinary issues. The use of the term ‘informal’ to describe the first stage of the procedure appears to have given Alison Lockyer the impression that the matter was not being investigated under a disciplinary process at all; whereas we understand from reviewing the evidence that it was only intended to communicate the fact that the matter was not being immediately referred to the Privy Council.
- 4.82 Whilst the term ‘informal’ clearly led to some confusion on Alison Lockyer’s part, we consider that it should have been understood by both Alison Lockyer and her former solicitors that the matters raised about Alison Lockyer were being dealt with under the Disciplinary Procedure for Statutory Committee Members. This Procedure was referred to several times in Evlynne Gilvarry’s note to Alison Lockyer of 17 November 2010. Furthermore, it was clear from Evlynne Gilvarry’s note that the matters raised about Alison Lockyer were deemed to be serious and had the potential to call both Alison Lockyer’s reputation and the GDC’s reputation into disrepute. On this basis we consider that it should have been sufficiently clear that the meeting she was asked to attend in late November 2010 was a disciplinary matter.

Concern (v) – whether Alison Lockyer should have had the opportunity to comment on the evidence collected by the investigator

- 4.83 We do not consider that the Disciplinary Procedure for Statutory Committee Members required that the full evidence gathered as part of the investigation be shared with Alison Lockyer and we accept that this was the procedure that was followed. At the meeting between Alison Lockyer and the investigator, it is clear that Alison Lockyer was not told that she would have sight of any additional information obtained although she was told that the investigator had met with the member of staff who raised the matters and may gather evidence from the Chair of the Investigating Committee. Therefore we do not accept that the GDC did not follow its own procedure when the evidence was not shared with Alison Lockyer.
- 4.84 Nonetheless, we consider that it would have been preferable for Alison Lockyer to have had an opportunity to comment on the evidence gathered. This could then have been taken into consideration by the investigator before they made any findings as to fact, reached conclusions or made any recommendations.

Overall conclusions in respect of allegation 5(b)

- 4.85 Taking into account all of the above, we consider that the GDC took steps to seek to ensure that it used a fair procedure to investigate the first matter raised about Alison Lockyer and that it did use a procedure that achieved reasonable parity with the written Disciplinary Procedure for Statutory Committee Members (which was in accordance with the legal advice it had obtained). We consider that it was reasonable for the GDC to escalate the matters raised by a GDC staff member into a complaint about Alison Lockyer, as they did raise serious concerns about her conduct which had the potential to impact on a fitness to practise case and the reputation of the GDC as a whole. We also consider that the GDC gave Alison Lockyer sufficient information about the matter to enable her to respond to it fully, despite not providing her with the original emails in which the matter was raised. Overall, we consider that the procedure the GDC adopted was fair to Alison Lockyer.
- 4.86 Notwithstanding this conclusion, we consider that improvements could have been made to the process. The GDC could have communicated more clearly with Alison Lockyer regarding the relevant stages of the process (and how they would work in practice) and provided her with further evidence during the course of the process.
- 4.87 We note that the GDC has already implemented a new procedure for investigating complaints against Council members. This was agreed by the Council in December 2011. This procedure sets out:
- That the person complained about will receive a copy of the complaint, together with any supporting documentation
 - That the complainant will be given an opportunity to comment on the representations made by the subject of the complaint
 - The steps to be taken at the informal stage of investigation

- The steps to be taken at the formal stage of investigation and when this stage will occur
 - What sanctions are available to resolve the complaint.
- 4.88 In accordance with the above, we consider that it would also be helpful for the procedure to be clear about whether the person complained about will have the opportunity to comment on any representations made by the complainant about the matter at any point after their initial complaint was made. We also consider that the procedure should make clear what is meant by providing the person who is the subject of the complaint with ‘any supporting documentation regarding the complaint’.

Allegation 5(c)

- 4.89 In Alison Lockyer’s letter to CHRE dated 2 September 2011 she alleged that the investigator’s report failed to:
- i. Include all the evidence that had been relied upon by the investigator. For example, the report did not mention the investigator having spoken to the member of staff who raised the matter, or having sought comments from the Chair of the Investigating Committee
 - ii. Make findings of fact
 - iii. Reach clear conclusions – in that the report does not clearly set out what Alison Lockyer was alleged to have done improperly, and the reasons for reaching that view. Alison Lockyer alleged in our meeting with her in September 2011 that Alan MacDonald agreed with her at the time that the conclusions of the investigation report were ‘outrageous’
 - iv. Make appropriate recommendations. Alison Lockyer informed the GDC in her letter of 25 January 2011 that she did not accept that some of the recommendations made fell within the investigator’s remit, but that she was prepared to accept the recommendations regarding training and mentoring.
- 4.90 Alison Lockyer states that despite the deficiencies of the investigation report, it was nevertheless accepted by the executive management team and by the Audit Committee, and was then passed to the Council for consideration.

Evidence

Concern (i) – Report did not include all evidence relied upon

- 4.91 The investigation report dated 4 January 2011 sets out the two aspects of the matter that was investigated (the reference provided by Alison Lockyer for a registrant whose case was before the Investigating Committee and Alison Lockyer’s response to an approach by the Chair of the Investigating Committee) and states that the investigator took account of all the documentary evidence, all of the representations made on behalf of Alison Lockyer, as well as the investigator’s note of their meeting with Alison Lockyer (including Alison’s subsequent comments on that note).

4.92 We note that the report does not set out in detail the documentary evidence that was considered by the investigator. Nor does it include any information relating to their meeting with the member of staff who first raised the matter or whether they had considered any information in relation to the associated investigation undertaken into the Chair of the Investigating Committee's conduct.

Concern (ii) – No findings of fact

4.93 The investigation report states the investigator's conclusions and the mitigation that they took into account when reaching their decision. It does not include findings of fact.

Concern (iii) – Report did not reach clear conclusions

4.94 The report sets out the investigator's conclusions as follows:

- Alison Lockyer failed to exercise the required level of care in providing a reference under her name. It was said that whilst it was accepted how this occurred, Alison Lockyer should always approve the contents of any letter that is sent out under her name (unless it is a simple acknowledgement of safe receipt or similar). It was thought that a failure to do this indicated a failure to understand the consequences
- Alison Lockyer failed to disclose her pre-existing personal relationship with the registrant, which she should have done under the Managing Conflicts of Interest policy
- Alison Lockyer behaved with a degree of naivety that is not commensurate with the position of GDC Chair because: she allowed herself to be drawn into a fitness to practise matter breaching the requirement for separation of function and that this was compounded by her pre-existing personal relationship with the registrant; she failed to recognise the conflict of interest that arose because of her behaviour; she failed to recognise the need to address these conflicts and, whilst she was put in a difficult position by the Chair of the Investigating Committee, she should have recognised that it was inappropriate for her to become involved or intervene in any way
- Alison Lockyer failed to recognise the necessity to take advice on patient protection issues which were concerning her or the conflict of interest issues that arose
- As a result of the above, Alison Lockyer failed to distinguish sufficiently between the need to exercise the highest degree of probity in all her dealings and with her innate sense of caring.

4.95 In Alison Lockyer's letter of response to this report sent on 25 January 2011 to Elynn Gilvray she said that she:

- Accepted that any reference provided by her other than on specific GDC business should not be provided on GDC headed notepaper and should not have been signed in her capacity as Chair. She is grateful that it is understood that this was not deliberate but instead an oversight by her

and her then PA. However, she does not accept that this suggests a general failing to understand consequences

- Did disclose to the Chair of the Investigating Committee at the first opportunity her pre-existing personal relationship with the registrant
- Does not accept that she behaved with a degree of naivety. She said that she accepts that sending out a reference on headed paper was a mistake, that she did not talk to the Chair of the Investigating Committee until after the Investigating Committee had already reached its decision, that she did not agree that she could disregard a patient protection issue that had been brought to her attention and that with hindsight she could see that the proposal of the Chair of the Investigating Committee to write to the Chair of the Health Committee could give rise to potentially difficult issues
- Accepted it is sensible to seek advice on patient protection issues and conflict of interest issues and would be keen to know who to take such advice from
- Intended to maintain the highest level of probity at all times.

4.96 We note that Alison Lockyer did not receive a response to this letter from the GDC.

4.97 Alan MacDonald informed us that he did not remember agreeing with Alison Lockyer that the conclusions of the investigator's report were 'outrageous'. He told us that he considered that the investigator's report was fair, and that the mitigating circumstances were given sufficient prominence within it. He acknowledged that the report did not set out the detail of the investigator's findings on the facts, but believed that this was not necessary, as Alison Lockyer had never denied the alleged facts.

4.98 The legal advice received by Alison Lockyer from Leading Counsel on the conclusions of the report includes that the first conclusion was self-explanatory although it was unfortunate that the report did not make clear that in providing the reference Alison Lockyer did not know that the registrant was under investigation by the GDC and that the reference had been provided for an entirely different reason (Alison Lockyer also says that she did not know that it was issued on headed paper). It then goes on to say that the following four conclusions are less comprehensible. The concerns in relation to these conclusions are:

- That it was not clear to whom, why and when Alison Lockyer should have disclosed her pre-existing personal relationship with the registrant, especially when she did not know that the individual was being investigated
- That it was not clear what, apart from the provision of a reference on headed paper, it is said that Alison Lockyer had done wrong or should have done differently following receipt of the letter from the Chair of the Investigating Committee.

Concern (iv) - Report did not make appropriate recommendations

4.99 We note that, under the Disciplinary Procedure for Statutory Committee Members, it would have been open to the investigator to make any of the following recommendations:

- 16 (a) that the complaint should be dismissed
- 16 (b) that advice should be offered to the committee member about how he/she behaves in the future
- 16 (c) that the committee member should be invited to apologise and/or give an undertaking about how he/she behaves in the future
- 16 (d) that the matter requires further investigation

- 16 (e) that the member should be suspended until a decision can be taken about the matter
- 16 (f) that the matter should be referred to the Appointments Committee.

4.100 The GDC investigator made the following recommendations in their investigation report:

- That the investigator's letter should be held on Alison Lockyer's file as a final written warning until the end of her term of office as Chair of the Council, and that it should be taken into account in any future disciplinary proceedings against her
- That a full explanation of what had happened and an apology should be given to the original complainant
- That a report should be made to the Audit Committee, for the Audit Committee to consider whether or not a report should be made to the Council
- That Alison Lockyer should attend training to familiarise herself with the statutory framework, policy and guidance concerning the separation of the fitness to practise function from the other work of the GDC; as well as attending training with an independent mentor who is a specialist in governance and ethics; and undertaking ongoing training and support to assist her in the role of the Chair of the Council
- That advice should be given to Alison Lockyer about conflicts of interests and the separation of the role of Chair of the Council from that of an employer, friend, colleague, or acquaintance etc of a fellow dental professional.

4.101 The GDC investigator told us that, when they met with the member of staff who had raised the matter, they asked them what they thought an appropriate outcome to the matter would be. The GDC investigator told us that the member of staff said that they wanted the matter to be taken seriously and for something to be done about it – and that they said that, if that did not happen, they would report it to their professional body. The member of staff went on to say that they

wanted someone to apologise because of the impact the incident had had. The GDC investigator said that at that meeting they acknowledged the member of staff's wishes, but did not guarantee that they would receive an apology. We note that the written notes of the investigator's meeting with the member of staff that we have seen do not record all of the statements referred to above. As the member of staff who raised the matter has not taken up our invitation to assist with our investigation we have been unable to check the completeness of the GDC investigator's account with them.

- 4.102 The GDC investigator also told us that they discussed the proposed recommendations with Alison Lockyer, and that she did not object to making an apology. In Alison Lockyer's letter of 25 January 2011 to Evlynn Gilvarry she notes that she is happy to accept the invitation to make such an apology once it has been clarified to whom she would be apologising and what specifically she was apologising to that person for.
- 4.103 In relation to the other recommendations, Alison Lockyer commented in her letter to Evlynn Gilvarry dated 25 January 2011 that:
- She could not accept that the investigation report should be treated as a final warning as this was not an allowed resolution to the matter, although she said that she accepted that a record of the matter could be kept on file and referred to in the future in appropriate circumstances
 - She did not think that the Audit Committee or the Council should debate the outcome of the investigation in relation to her personal position although she accepted that there were organisational matters that could be discussed such as the lack of an up-to-date complaints process for Council members
 - She was happy to accept the offer of further advice and training although she noted that those recommendations did imply she knew nothing of these matters already and she highlighted that she was familiar with fitness to practise matters having sat on the Professional Conduct Committee and the Investigating Committee.
- 4.104 Alan MacDonald told us that his only criticism of the report is its reference to a 'final warning' – as in his view that type of wording is more appropriate in an employment situation.
- 4.105 The GDC provided us with a copy of the advice obtained from Leading Counsel which stated that it was in the public interest that a record was kept of the outcome of the investigation although it was arguably inappropriate that the term 'final warning' was used. The advice also noted that the requirement for training was fair, proportionate and the least onerous given the GDC's obligations to safeguard the public interest in fair regulation of the dental profession.
- 4.106 Following consideration of the investigation report by the Audit Committee at its meeting on 26 January 2011, the Audit Committee decided to refer the investigation report to the Council. The minutes from the meeting record that the committee considered the matter and decided that the matter was one which should be considered by the Council as no other person or group in the organisation had authority in this matter and in light of the risks arising.

- 4.107 Alison Lockyer was informed in a letter dated 7 February 2011 from Alan MacDonald, the Chair of the Audit Committee, that the matters relating to her would be referred to the Council for their consideration at their 24 February 2011 meeting. In a letter from Alison Lockyer's current solicitors dated 7 February 2011, they raised a concern that Alison Lockyer had never been informed that the matter would be referred to the Council and they questioned who had made this decision and under what powers. In the reply sent by the GDC on 11 February 2011, it was said that the Council was 'accountable for the actions taken on its behalf' and therefore would receive a report 'in the normal course'. It is also noted that Alison Lockyer was informed that this might happen at her meeting with Evlynne Gilvarry and Alan MacDonald on 17 November 2010 at which the aforementioned memo was provided to her. The GDC confirmed that the Council would not be 'invited to make any decision in respect of your client other than to note the report'. In the reply from Alison Lockyer's current solicitors dated 22 February 2011 it was said that 'Ms Lockyer does not think that she was informed of this [a possible referral to the Council]; she was informed that this matter might be referred to the Privy Council'.
- 4.108 Alan MacDonald told us that he considered that it was appropriate for the matter to be referred to the Audit Committee and then on to the Council because neither the CE nor the Chair of the Audit Committee have power to dispose of a complaint made against the Chair of the Council. Alan MacDonald said that whilst it was not for the Council to re-open the investigation, it was for the Council to decide what the consequences of the outcome of the investigation should be. He also said that he had informed Alison Lockyer of the likelihood that the matter would ultimately be referred to the Council in November 2010, at the time when the complaint was first brought to her attention. A contemporaneous note of the meeting on 17 November 2010 made by Alan MacDonald included that he 'explained that the next steps was a referral [to the investigator] and only once a decision had been made could it be decided how to proceed and who to inform (Council, Privy Council, CHRE etc)'.
- 4.109 The GDC's actions in referring the investigation of the matters to the Audit Committee and its Council were supported by the advice received from their Leading Counsel. The advice stated that 'Referral to the Audit Committee as manager of risks is necessary and appropriate; likewise the reference to Council for noting this matter. Good governance requires these steps...'

Our view

- 4.110 We consider that the quality of the investigation report could have been improved. The investigation report should have provided greater detail about the evidence that the investigator had taken into account, which allegations they had found proved, and the reasons for those findings. Improving these aspects of the report would, in our view, have enabled the reader to have a clearer understanding of how the investigation had been undertaken and its findings, and it might also have led to clearer conclusions. It appears that the quality of the report may have been one of the factors that undermined the confidence that Alison Lockyer had in the entire process.

- 4.111 We note that some of the recommendations made in the report fall outside those which would have been available at the conclusion of an investigation into a complaint about a statutory committee member, including the recommendations made regarding a 'final written warning' and reporting the matter to the Audit Committee to consider whether the Council should be made aware of it. However, the GDC had notified Alison Lockyer that the procedure that applied to statutory committee members would be used as a guideline by the investigator and would be deviated from where necessary. In the context we do not generally consider it inappropriate that the recommendations made went wider than those which would have been permitted under the procedure applied to statutory committee members. We note that we consider that other than the issue of a 'final written warning' and the reporting of the matter to the Audit Committee, the investigator's recommendations fell within the scope of the procedure.
- 4.112 We do however have concerns about the appropriateness of one of the recommendations. We consider that it was not appropriate for a recommendation to be made about the investigation report being used as a 'final written warning'. This type of warning is more commonly used in an employment disciplinary situation. We also have concerns about the lack of explanation provided to Alison Lockyer about who she should apologise to, given that she was not told of the member of staff who had raised the matters. We consider that it would have been helpful if the report included a statement referring to the member of staff being willing to be identified.
- 4.113 Whilst the investigator's recommendation that the outcome of the investigation should be reported to the Audit Committee does not fall within the possible outcomes under the procedure relevant to statutory committee members, we consider that it was reasonable in the circumstances. We consider that it was good governance to recommend that the matter was reported to the Audit Committee and for that committee to consider onward notification to the Council. We would have been concerned if the GDC had *not* reported the outcome of a complaint of this nature to its Audit Committee, so that the committee could assess the risks arising to the GDC as a result.
- 4.114 We also consider that if a formal response had been prepared following receipt of Alison Lockyer's letter of 25 January 2011 addressing the various questions that she had raised, it may have led to a greater understanding by Alison Lockyer of the reasons for the conclusions reached and the recommendations made.
- 4.115 Overall we consider that the quality of the investigation report could have been improved. Notwithstanding this, we consider that the outcome reached was a reasonable one in the circumstances.

Allegation 5(d)

- 4.116 At our meeting in September 2011 Alison Lockyer alleged that the procedure that the Council followed at its private meeting on 24 February 2011 when debating the outcome of the investigation into the first matter raised about her was 'grossly unfair'. Her objection is that she was excluded from the Council's debate whereas Evlynne Gilvarry was permitted to remain present. Alison Lockyer said at our meeting that her complete exclusion from the debate was in breach of the GDC's

standing orders, which provided only for a person with a conflict of interests not to take part in the debate – not for their complete exclusion from the room.

- 4.117 Alison Lockyer considers that, by virtue of being excluded from the debate, she was denied the opportunity to respond to any negative or unfair comments that may have been made about her by Evlynne Gilvarry during that debate.

Evidence

- 4.118 The procedure that the Audit Committee proposed should be used for the Council debate was shared with Alison Lockyer's solicitors on 23 February 2011, the day before the Council meeting. The procedure set out that a temporary chair would be nominated/voted to lead on the Council's debate of the first matter relating to Alison Lockyer. The temporary chair would then invite the Council to agree the following process:

- The temporary chair would set out the parameters of the debate
- The temporary chair would present the paper
- Alison Lockyer would be invited to make any representations she wished
- Alison Lockyer would leave the meeting
- The Council would debate in Alison Lockyer's absence
- Alison Lockyer would return and be informed of the outcome of the debate.

The temporary chair would also explain to the Council what the parameters of the debate would be, ie that they would not be invited to pass any judgement on Alison Lockyer's conduct.

- 4.119 In correspondence that Alison Lockyer's current solicitors exchanged with the GDC on the day of the Council meeting (24 February 2011) concerns were raised about Evlynne Gilvarry's presence during the Council debate about the matters involving Alison Lockyer. It was asserted that Alison Lockyer viewed Evlynne Gilvarry as the complainant because of her role in formulating the wording of the complaint and the process and, as such, she had a conflict of interests and should be excluded from the Council's debate as Alison Lockyer would be.
- 4.120 In response to this correspondence we have seen that the GDC said that the provisions in the GDC's standing orders about conflicts of interest did not apply to the CE and that Evlynne Gilvarry needed to be present in order to answer the Council's questions on the process that was used to investigate the matters. They therefore rejected all the points Alison Lockyer's current solicitors had made regarding Evlynne Gilvarry.
- 4.121 We note that the relevant standing order (6.11) at the time said that the Chair will rule whether an interest is such as to prevent the relevant member participating in the discussion or determination of the matter. The standing orders did not provide for the situation where the person with a potential conflict of interests is also the Chair of the Council or the CE.
- 4.122 As the Council's debate was not transcribed, there is no complete and independent record of what was said. The usual arrangements under the GDC's standing orders for a transcript of the meeting to be produced were suspended

for this debate. When we asked Frances Low why the debate was not transcribed she told us that a transcript was not required as the meeting was not a formal Council meeting, that the process used had been discussed by the Audit Committee, and that it was for the Council member chairing the debate to put forward the suggestion that the shorthand writer should be absent and for the rest of the Council to agree or disagree with that suggestion (and that a vote could have been taken in the event of any concerns being raised). We note that we have not seen any evidence to suggest that a formal motion was moved as is required under the standing orders.⁴⁴ According to the confirmed closed Council meeting minutes from 24 February 2011, the Council member who chaired the debate proposed the process (outlined above) should be followed by the Council and the minutes record that 'this process was aimed at being fair to the Chair of the Council and also ensuring the GDC acted lawfully in every respect'. It is recorded that this proposal was accepted by the Council.

- 4.123 The minutes also indicate that Alison Lockyer raised the matter of Evlynne Gilvarry's presence during the debate when she was invited to make representations. It is also recorded that the temporary chair advised the Council that excluding Evlynne Gilvarry was not in accordance with the procedure already agreed by them earlier in the meeting. The minutes state that Alison Lockyer was given another opportunity to make any representations but declined and left the meeting. These minutes are supported by the recollection of the Council members we met or spoke with.
- 4.124 Both Evlynne Gilvarry and the members of Council that we spoke to during our investigation told us that the debate about the matters relating to Alison Lockyer was introduced by the Chair of the Audit Committee, not by Evlynne Gilvarry, and that Evlynne Gilvarry and Frances Low only spoke in response to specific questions asked of them by Council members. It is also recorded in the confirmed closed Council meeting minutes from 24 February 2011 that the Chair of the Audit Committee presented the Audit Committee paper outlining when the matters had been raised and how they had been dealt with.
- 4.125 The Council members to whom we spoke had mixed views about whether or not there had been adequate consideration of the exclusion of Alison Lockyer and Evlynne Gilvarry from the debate:
- One of the Council members to whom we spoke felt that the Council had not sufficiently debated whether or not Alison Lockyer and Evlynne Gilvarry should be excluded from the debate
 - One other Council member could not recall whether or not there had been a debate about whether Alison Lockyer should be excluded
 - One Council member could not recall whether or not there had been a discussion about Evlynne Gilvarry being present for the debate
 - One Council member felt that Alison Lockyer's request that Evlynne Gilvarry should leave had been ignored

⁴⁴ Previous GDC standing orders 7.1: At any meeting of the Council and for the purposes of that meeting only, any of these standing orders may be suspended by means of a motion duly moved and carried without debate by not less than two-thirds of the members present.

- Seven of the Council members commented that no-one had disagreed with the proposal that Alison Lockyer should be excluded
 - Three Council members (including one who had commented as above) explained that, from their perspective, it would not have been possible for the Council to have had a full and frank discussion about the matter had Alison Lockyer been present, and that Evlynne Gilvarry had to be present because she had been involved in the process from the start
 - Two of the Council members told us that they did feel uncomfortable about the decisions the Council reached about the procedure for the debate – not because they did not agree with the procedure, but because there was no option that would have been entirely satisfactory
 - One Council member (Council member Z) said that they did not know whether they had the right to say they thought Alison Lockyer should be present and that in their view, either both Evlynne Gilvarry and Alison Lockyer should have stayed or neither of them should.
- 4.126 One of the above Council members offered a different view – that GDC Council members should be able to take tough decisions when necessary, and therefore the Council should have felt able to hold the debate in front of Alison Lockyer. That Council member also told us that they felt that it would have been fairer for Alison Lockyer to have had an opportunity to hear what was being said, even if she could not participate in the discussion.
- 4.127 We did not ask the Council members to recall whether or not they were aware at the time that the matter had been raised by a member of staff (who was unconcerned about their identity being revealed to Alison Lockyer) but that it was being taken forwards by Evlynne Gilvarry as the CE. However, we note that the minutes of the Council meeting record that Alison Lockyer in her oral representations to the Council at the meeting stated that Evlynne Gilvarry had ‘made the complaint’ and therefore that she was conflicted and should not remain present; and that the paper presented to the Council by the Audit Committee in relation to this matter stated that it had originally been identified by a member of staff.
- 4.128 We note that the GDC has drafted new standing orders which detail the process to be used by the GDC in similar circumstances in future.⁴⁵ The new provisions set out that the CE shall be entitled to attend and speak at all meetings of the Council unless they have a prejudicial interest in a matter under consideration (see Standing Order 14.5). If they do appear to have such a prejudicial interest, then the Chair of the Audit Committee shall decide whether or not their interest is prejudicial (if it is, the CE will be asked to withdraw and to leave the room for the duration of the discussion). The same provisions also apply to the Chair (by virtue of standing order 7.8).

⁴⁵ The GDC Standing Orders for the Conduct of Business 2011.

Our view

- 4.129 The Council had to deal with unusual circumstances in relation to the debate about the outcome of the investigation into the first matter raised about Alison Lockyer. It was important to ensure that the debate it held was lawful and that it focused on the strategic risks associated with the matter. We consider that the GDC sought to use a fair process which was appropriate in the circumstances, having taken legal advice on the relevant issues. In devising the process, the GDC took account of its standing orders (which did not specifically state whether or not a person with a conflict of interests should be completely excluded from the relevant debate) as well as taking into account the circumstances and considering how best to facilitate a free and frank debate on the matter by the Council. The GDC included provision within the process for Alison Lockyer to make any representations that she wished to before the debate commenced. The GDC also shared the process with Alison Lockyer's solicitors and gave them an opportunity to raise any concerns about it (albeit that opportunity was very limited). Finally, whilst we note that it was the Audit Committee that proposed the process that was presented at the Council meeting, it was not recorded in the minutes that any Council members raised any concerns at the meeting about its appropriateness – and it is recorded at paragraph 5.6 of the Council meeting minutes that the Council approved the process.
- 4.130 The purpose of the debate at the Council meeting on 24 February 2011 was to notify the Council about the outcome of the investigation into the first matter about Alison Lockyer and to allow the Council to discuss how best to manage the associated risks. The purpose was not to allow the Council an opportunity to discuss the circumstances of the matters raised about Alison Lockyer. As such, we consider that it was not necessary for Alison Lockyer to be present during the debate. Alongside this, we note that the GDC did provide Alison Lockyer with an opportunity to make any representations that she wished to before the debate commenced, and therefore she was not denied an opportunity to comment on the issues involved in the matters raised, or to share her views about the investigator's report, had she wished to do so.
- 4.131 We also consider that it was appropriate for Evlynn Gilvarry to be present during the Council's debate and we do not agree that there was any conflict of interests that meant she should have been excluded. In response to the specific points raised by Alison Lockyer, we consider that: Evlynn Gilvarry took forward the matter raised on behalf of the organisation rather than on a personal basis; the process that was used to investigate the matter, regardless of who had 'devised' it, complied with the legal advice the GDC had received and we consider that it was appropriate to follow this advice in the circumstances; and whilst the investigator had been nominated by Evlynn Gilvarry, Alison Lockyer had raised no objection to that individual's appointment, and we consider that the GDC acted reasonably in the circumstances.
- 4.132 We note the concerns expressed to us by some Council members about the extent of the Council's discussions as to the exclusion/inclusion of Alison Lockyer and/or Evlynn Gilvarry from the debate. Those concerns were not shared by the majority of the Council members we spoke to and in any event, we accept that, given the unusual and difficult circumstances, there was likely to be some

divergence of views amongst a group of 15 people as to the extent of the discussion that was required before decisions could be reached.

- 4.133 We are unclear from the evidence that we have seen whether or not the Council was given a real opportunity to object to the proposed removal of the shorthand writer from the debate. In our view, in order to avoid any suspicion on the part of Alison Lockyer about improper remarks being made about her in her absence, it might have been preferable if the debate had been transcribed in the usual way. Another alternative might have been to allow Alison Lockyer's solicitor to remain present in the room during the debate. That said, we have not seen any evidence to substantiate Alison Lockyer's concern that either Evlynne Gilvarry, or any other staff member for that matter, made negative or unfair comments about Alison Lockyer while she was excluded from the debate.
- 4.134 Given the responsibilities of Council members, and in particular the requirement for compliance with the Nolan principles, we consider that it would have been preferable to use a process that would have provided Alison Lockyer with more assurance that unfair comments would not be made about her in her absence. However we do not consider that the decision not to have the debate transcribed necessarily rendered the process unfair.

Allegation 5(e)

- 4.135 At our meeting in September 2011, Alison Lockyer alleged that the temporary Chair for the Council's debate on 24 February 2011 about the first matter raised about her was inappropriately pre-selected by Evlynne Gilvarry, in advance of the Council meeting.
- 4.136 She went on to say at our meeting in September that it was clear that in advance of the Council meeting on 24 February 2011 Evlynne Gilvarry had asked a particular Council member if they would chair the debate about the outcome of the investigation into the first complaint against her. Alison Lockyer said that Evlynne Gilvarry couriered the relevant documents to that Council member the night before the Council meeting. She claims that Evlynne Gilvarry's actions were in breach of the proper process (as set out in the GDC's standing orders) which requires a temporary chair to be elected at the Council meeting.

Evidence

- 4.137 Section 6.1 and 6.2 of the standing orders in place at the date of the February 2011 Council meeting set out the process to be followed when the Chair of the Council is absent from a meeting and a different chair must be selected for the meeting (or part of it). It sets out the voting system (the CE asks for nominations, members nominate themselves or others and then there is a vote). The standing order also provides that if it is known to the CE before the date of the meeting that the Chair will not attend the whole of the meeting, the CE may invite advance nominations for chair from members of the Council.
- 4.138 Three of the Council members to whom we spoke told us that they had suspected that a particular Council member had been selected and briefed about chairing the debate in advance or had a concern that the nomination and voting process all occurred very quickly. One other Council member told us that they had nominated a second Council member to chair the debate because of their

suspicious about the pre-briefing of another candidate. Five of the Council members felt that any advanced briefing was unimportant, their reasons for this included that they considered that the Council member concerned had the relevant skills and did not have any vested interests in the matter, and that the advance preparation contributed to smoother running of the debate on the day. The remaining six Council members made no comments about the possible advanced briefing of one Council member when they were asked about the process used to nominate and elect a temporary chair.

- 4.139 One of the Council members who sits on the Audit Committee told us that at the end of the Audit Committee on 11 February 2011 the four Council members on the committee had a brief discussion about possible chairs for the discussion of the Audit Committee's paper relating to the investigation of the matters raised about Alison Lockyer. This was with the sole purpose of removing any risk from the process at the Council meeting. This Council member was happy to participate in this discussion, because they thought it might help expedite the procedure at the Council meeting. Furthermore, the four Council members were privy to information that others may not have been, ie the nature of the second matter raised about Alison Lockyer. In this way it would not have been appropriate for members of the Standards Committee to chair the discussion, but some of the other Council members may not have known why. This would have left the GDC open to grave risk. This Council member did not think it would have been appropriate for a member of either the Audit Committee or Standards Committee to act as chair. After a filtering out process, there were a few names that the Council members felt were appropriate candidates. There was no discussion about approaching any of these individuals. There was no intention/agreement for any member of the committee to take any further action about this before the Council meeting.
- 4.140 Evlynne Gilvarry told us that the standing orders envisage nominations for the temporary chair of the meeting being sought on the day, followed by a vote. She said that she, Frances Low and Alan MacDonald had been concerned to minimise the risks of whoever was elected to chair the debate being unprepared to do so, given the unusual context of the debate and the complexities involved. She told us that they were also anxious to avoid the possibility that *no* Council member would be nominated to chair the debate on the day. They therefore agreed that it would be appropriate to approach a Council member who had no particular connection with the Audit Committee to ask if they would be willing to self-nominate to chair the debate on the day of the meeting.
- 4.141 Evlynne Gilvarry and Alan MacDonald have confirmed that they spoke to a Council member prior to the Council meeting on 24 February 2011, to ask whether they would be willing to nominate themselves to chair the debate about the outcome of the investigation of the first matter raised about Alison Lockyer. Once that member had agreed to do so, Evlynne Gilvarry and Frances Low briefed that Council member about the procedural issues, including the process for chairing the debate. Having reviewed the briefing paper, we consider that it was reasonable for this document to have been produced by the GDC and shared with the relevant Council member. The briefing paper set out the process for each stage of the debate, as well as offering guidance on what to do if certain things occurred (eg if Council members proposed amendments or motions which

might be ultra vires). It effectively guided the Council member through the process for the debate, to ensure that it remained lawful.

- 4.142 Alan MacDonald confirmed Evlynne Gilvarry's account that that the reason for doing so was their concern that there should be an appropriate candidate to chair the debate, given that Audit Committee members would not have been able to chair the debate (as the paper under consideration was the Audit Committee's paper). Alan MacDonald told us that on the day of the Council meeting another Council member also put their name forward, and the election followed the due process set down in the GDC's standing orders.
- 4.143 The Council member who ultimately chaired the debate confirmed the account that was given to us by Alan MacDonald, ie that they had been approached and asked to nominate themselves as chair for the debate in advance of the Council meeting. They also told us that they sought advice from Evlynne Gilvarry and Frances Low in advance of the Council meeting about 'handling the meeting and the process to be used', because they were concerned to ensure both that the appointment of the temporary chair was handled properly, and that the debate was managed in accordance with the GDC's standing orders, the relevant rules and legislation. The Council member said that they had discussed the Audit Committee's paper and the process to be used with regards to the debate, but they had not discussed the substance of either of the complaints against Alison Lockyer.
- 4.144 Frances Low said that she had prepared a briefing paper for whoever chaired the debate, outlining the relevant procedural issues, and that briefing was supplied in advance of the Council meeting to the Council member whom Alan MacDonald had approached.
- 4.145 The GDC has since redrafted its standing orders to take account of the learning from these experiences, and as part of the review of its governance policies and processes. The standing orders now provide for the situation where the Chair of the Council will be absent for part of a Council meeting – and allows for nominations for chair to be made in advance of the meeting.

Our view

- 4.146 Having considered all of the evidence, we are satisfied that these actions were taken in order to mitigate against a risk that no Council member would be nominated to chair the debate, or that any chair so nominated would be unprepared for doing so. However, in our view it would have been better if the GDC had followed the process set out in its standing orders (standing order 6.2(h)) in order to avoid any risk of perceived impropriety. That process allows the executive management team to ask for nominations prior to the Council meeting if it is known that the Chair will not be available for the meeting (we note that it was known that Alison Lockyer would not be available for the private Council meeting). Had that process been followed in this case, the executive management team could then have taken a decision about whether or not it was appropriate to brief all nominees about the procedural issues in advance of the meeting, or to build into the timetable for the Council meeting an opportunity for the Chair (once elected) to seek advice on procedural issues before the debate commenced.

4.147 In the event, we do not consider that the actions of Evlynn Gilvarry, Alan MacDonald and Frances Low had any negative impact on the propriety of the debate at the Council meeting on 24 February 2011. Their actions did not prevent other Council members from nominating themselves or others nor would it have prevented another Council member being voted into the position of Chair. The evidence we have seen shows that the matters that were discussed in advance of the Council meeting by the Council member who chaired the debate and the GDC executive management team/the Chair of the Audit Committee concerned procedural issues rather than the substance of the complaint.

Allegation 5(f)

4.148 In Alison Lockyer's letter of 2 September 2011 to CHRE she raised a concern about the timing of the second matter which was raised about her. She noted that this emerged just after she challenged the decision reached in relation to the first matter (ie her letter of 25 January 2011). In our meeting in September 2011, Alison Lockyer also said that she was notified of the matter on 8 February 2011, although the event it related to occurred on 24 January 2011. Alison Lockyer also made the point that the date on which she was notified of the matter was close to the date of the February Council meeting.

4.149 In Alison Lockyer's letter to the Secretary of State dated May 2011 she also noted that she thought the second matter raised about her had no sensible basis and related to a conversation she had had with a member of staff about a matter which she considered was within her remit as Chair.

Evidence

4.150 We asked the member of staff who raised the second matter to contribute to the investigation but they declined our invitation. However, we have considered the statement that they made for the first aborted investigation into the matters raised. Having reviewed the statement we note that the events that led to the matters being raised surrounded the preparation of a paper that was to be submitted to the Council and was prepared in large part by a staff member of the GDC. We do not refer to the specific contents of the paper to protect the identities of those involved, but we set out below a summary of key events:

- The member of staff received a telephone call from Alison Lockyer about a draft Council paper. The member of staff said that they could not recall the whole conversation but remembered that Alison Lockyer had stated that she was 'worried' about a recommendation that the relevant committee was making to the Council in the document and said that she thought the GDC would look 'silly' if it was accepted. The staff member said that Alison Lockyer made a negative comment about a piece of research that underpinned the recommendation in the document. The staff member alleged that Alison Lockyer said during the call that she didn't 'see how [the research] could be right' and suggested that the research might be 'ignored' or 'discredited' in some way. The staff member said that they were taken aback by these comments and they felt that Alison Lockyer had put them in a difficult position

- After the call ended the member of staff told one of the two colleagues who had been in the room at the time about the conversation they had had with Alison Lockyer
- The member of staff said that they had a further conversation with the same colleague on the following day. The colleague suggested that the member of staff speak to their line manager. The member of staff decided to do so at a planned meeting the following day. The member of staff said that their line manager told them to speak to Evlynne Gilvarry about the issue. The member of staff said that they felt uncomfortable about raising the issue with Evlynne Gilvarry because of the length of their previous working relationship with Alison Lockyer, but they also recognised that it was part of their role as a senior officer, and said that they felt able to stand up to her
- The member of staff said that they met with Evlynne Gilvarry early the next day and explained what had happened. Evlynne Gilvarry asked the member of staff to put their recollections in writing and send them to her, which they did later that day. The member of staff said that Alison Lockyer came to their office that morning and asked if they could pop down for a word when they had a minute. The member of staff did so, shortly before a planned meeting with Evlynne Gilvarry and their line manager later that morning. The member of staff said that Alison Lockyer told them that she had spoken to one of the lay members of Council who had agreed with her concerns that the research finding couldn't be 'right' and who she said was 'on our side'. The member of staff told us that they said to Alison Lockyer that they did not have 'sides' and their job was to be neutral, to which Alison Lockyer said 'yes of course' and the member of staff left. The member of staff said that they then reported this conversation to Evlynne Gilvarry and their line manager, and subsequently sent an email reporting this to Evlynne Gilvarry at her request.

4.151 We have also considered a statement supplied to the GDC by the relevant staff member's line manager in the course of the same investigation and we consider that it is consistent with the account of the member of staff who raised the concern (to the extent that the relevant events extend to them). We also spoke to a member of staff ('member of staff A') who was present in the office during the telephone call from Alison Lockyer. Their evidence was consistent with the above account. Member of staff A also said that they had had two conversations with the member of staff who raised the matter about whether it should be reported to the person's line manager.

4.152 We reviewed the statement provided by Evlynne Gilvarry as part of the first aborted investigation into the second matter raised about Alison Lockyer. We note that Evlynne Gilvarry's recollections were as follows:

- Evlynne Gilvarry recalled that Alison Lockyer made few contributions to the committee's discussion of the relevant draft paper at the committee meeting and none which suggested she had any significant misgivings about the recommendation going to the Council. After the committee meeting Evlynne Gilvarry said that she had discussed the paper with the

member of staff who had raised the matter, in order to stress that the paper for the Council must be entirely even-handed and resolutely neutral

- Evlynne Gilvarry said that her secretary had informed her that the member of staff who raised the matter wished to meet with her urgently to discuss a paper that was to be presented to the Council. At that meeting Evlynne Gilvarry said that the member of staff told her that they had received a call from Alison Lockyer, which they had discussed with their line manager, who had advised them to speak directly to Evlynne Gilvarry about it. Evlynne Gilvarry said that the member of staff had understood that Alison Lockyer had asked them to either subdue or remove evidence in relation to the issue. The member of staff said to Evlynne Gilvarry that they felt that Alison Lockyer had asked them to do something improper, and that they felt discomfited. The member of staff told Evlynne Gilvarry that they had not made a note of their call from Alison Lockyer, and Evlynne asked them to do so and to send it to her. Evlynne Gilvarry's account of what the member of staff told her is consistent with that individual's own account
- Evlynne Gilvarry said that her understanding was that while waiting to meet with her and their line manager, the member of staff had been called into Alison Lockyer's office. The member of staff had reported the conversation that had then occurred to Evlynne Gilvarry and their line manager directly afterwards. Evlynne Gilvarry said that the member of staff had said that Alison Lockyer had referred to her conversation with the lay Council member about the same issue
- Evlynne Gilvarry told the investigator that some of the language that the member of staff had used contained the 'exact phrases' that Alison Lockyer had used in an earlier telephone conversation with her
- Evlynne Gilvarry said that she had found the member of staff's account convincing because of her own recent conversations and contact with Alison Lockyer which reflected the same content and phraseology the member of staff said the Chair had used. Evlynne Gilvarry said that she had had a telephone conversation with Alison Lockyer shortly after the relevant committee meeting in which Alison Lockyer said that she thought that the GDC would look 'silly' if the committee's recommendation was approved. Evlynne Gilvarry's understanding was that the Chair was concerned about registrants criticising the GDC for addressing this issue. Evlynne Gilvarry had said to Alison Lockyer that it was the regulator's job to tackle the tough issues, and that any PR implications had to be managed. Evlynne Gilvarry stressed to the investigator that Alison Lockyer had made no suggestion to her that she should take any action in relation to her concerns and had not suggested anything improper in her conversations with her
- Evlynne Gilvarry said Alison Lockyer's comments as reported by the member of staff suggested that Alison Lockyer was seeking to influence the Council debate. Evlynne Gilvarry considered that Alison Lockyer had completely misunderstood her role, had ignored the public interest, and

had failed to consider other significant stakeholders, instead taking a 'registrant friendly' view

- Evlynne Gilvarry said that she had considered the Nolan principles, the GDC's Code of Conduct and Managing Interests policy and that she had identified a number of potential breaches of specific standards relating to transparency, accountability to the committee and to the Council, and objectivity, as well as breach of practice in terms of good governance in making a direct and inappropriate approach to a staff member, and failing to set a good example to the Council in terms of managing her own interests
- Following the meeting with the member of staff and their line manager, she wrote a note setting out the member of staff's allegation and sent it to Alan MacDonald, the Chair of the Audit Committee, as the Audit Committee was the first port of call for major risks and because she was concerned about what she as CE should do. Evlynne Gilvarry said that she also asked the line manager to stress to the member of staff the confidentiality of the issue and that they should not discuss it with their colleagues.

- 4.153 We have seen the memo provided to Alan MacDonald by Evlynne Gilvarry on 2 February 2011. In the memo Evlynne Gilvarry includes the member of staff's emailed account of the matters that they had raised (sent on 27 February 2011) and their line manager's note of the conversation that they had had with the member of staff. The emailed account and the note of the telephone conversation accord with the statements as outlined above.
- 4.154 In Alan MacDonald's letter of 7 February 2011 he noted that when he spoke with Alison Lockyer on 3 February 2011 he told her about an allegation that Evlynne Gilvarry had received from a member of staff that she had improperly sought to influence or undermine evidence which was to be put before the Council by the committee. The letter went on to include the account of the matters raised by the member of staff provided to Evlynne Gilvarry in their email of 27 January 2011. Alan MacDonald then informed Alison Lockyer that the Audit Committee would recommend to the GDC how best to deal with the allegation and offered Alison Lockyer an opportunity to provide her observations on the allegation prior to its meeting on 11 February 2011.
- 4.155 On 11 February 2011, Alison Lockyer's current solicitors provided some observations to the GDC. They said that Alison Lockyer denied absolutely any impropriety in the alleged matters.
- 4.156 Frances Low told us that the second matter was raised about Alison Lockyer shortly before the February Council meeting, at a time when very few staff members knew about the first matter or its outcome. She informed us that the member of staff who had raised the second matter about Alison Lockyer would not have known about the outcome of the first matter at the time they had raised their matter.

Our view

- 4.157 From the documentation that we have seen it is apparent that the member of staff who raised the second matter did not use the word 'complaint' in either their original email to Evlynn Gilvarry dated 27 January 2011 or during their meeting with the investigator in March 2011. However, it is clear that they were very concerned about the statement Alison Lockyer had allegedly made about disregarding or discrediting the evidence on which a committee had reached a decision on GDC policy. Their concerns were echoed by member of staff A who said that they felt very strongly about the matter such that they would have raised it with Evlynn Gilvarry had their colleague not done so. The members of staff's concerns were also supported by their line manager and by Evlynn Gilvarry in their witness statements.
- 4.158 We consider that the allegations made in relation to this matter are very serious. Whilst we do not consider it appropriate to comment on the validity and veracity of the allegations (the matter was never fully investigated), having reviewed the partial investigation documentation we do consider that it was legitimate for the GDC to treat it seriously, given the nature of the allegation involved. Based on this exercise, we do not agree with Alison Lockyer's statement that the allegation related to a conversation with a member of staff which was well within the remit of the GDC Chair and therefore do not agree with Alison Lockyer that this matter had no sensible basis.
- 4.159 In relation to the timing of the complaint, we note that the second matter was received by Evlynn Gilvarry on 27 January 2011 (following Alison Lockyer's contact with the member of staff on 24 and 27 January 2011) and Alison Lockyer was told about it on 3 February 2011 (she was then notified in writing on 7 February 2011). This was around a month after the report of the outcome of the investigation into the first complaint had been shared with Alison Lockyer, around a week after the Audit Committee had been notified about the outcome of the first matter, and around two days after the GDC had received Alison Lockyer's response to the outcome of the investigation into the first matter. At this time, the process in relation to the first matter had not concluded, as the Council had not yet considered the matter (it was to be considered by the Council at the meeting on 24 February 2011).
- 4.160 We have seen no evidence to suggest that the progress of the investigation into the first matter was widely known about within the GDC staff or within the Council at this time. Therefore we have no reason to dispute Frances Low's assertion that the staff member who raised the second matter would have been unaware of the outcome of the investigation into the first matter at that time.
- 4.161 We note that we have seen no evidence that suggests that there was any instigation of the second matter or other conspiracy by Evlynn Gilvarry or the executive management team. In fact the evidence that we have seen shows that the member of staff took their time and considered their options before raising the matter with Evlynn Gilvarry, including seeking a peer's and their line manager's viewpoint. Our assessment, based on the evidence, is that the staff member took the time to understand the matter and the possible implications of their reporting of the matter to Evlynn Gilvarry.

Allegation 5(g)

- 4.162 Alison Lockyer alleged that it was the GDC's clear intention to use the same 'defective' process to investigate the second matter raised about her, until the GDC was forced by her solicitors to amend the process. In her evidence in September 2011, Alison Lockyer referred to a 'continued lack of an up to date procedure' for the investigation of complaints against the Chair of the Council.

Evidence

- 4.163 It is recorded in the minutes of the Audit Committee meeting on 11 February 2011 that Evlynn Gilvarry informed the committee that whilst she had initially thought it best that the Council should be invited to decide what procedure should be used to investigate the second complaint against Alison Lockyer, having received legal advice she was proposing that the investigation procedure that had been used in relation to the first complaint should also be used to investigate the second complaint.
- 4.164 On 11 February 2011 the GDC wrote to Alison Lockyer's current solicitors to confirm that the GDC intended to adopt the same procedure for investigating the second matter about Alison Lockyer as that used to investigate the first matter. This initiated a chain of correspondence between the GDC and Alison Lockyer's current solicitors about the investigation procedure that should be used. Alison Lockyer's current solicitors raised concerns with the GDC about the proposal on 22 February 2011. They said that they were concerned that Alison Lockyer would be subject to the same 'defective' procedure as that used for the first and asked that the procedure used would include provision of the full particulars of the complaint and complainant, particularised allegations and an opportunity to consider and respond to all relevant materials/documentation relating to those allegations. On 1 March 2011 the GDC wrote to Alison Lockyer's solicitors detailing a proposed investigation procedure which (it was said) used the Disciplinary Procedure for Statutory Committee Members as a starting point but incorporated the comments that they had made. On 14 March 2011 Alison Lockyer's current solicitors provided further comment on the proposed procedure and said that they did not agree that the GDC should use the same investigator as had considered the first matter raised about Alison Lockyer. In its response (sent on 21 March 2011) the GDC agreed to many of the suggestions made by Alison Lockyer's solicitors, as well as making a number of changes to the procedure that Alison Lockyer's solicitors had proposed, including changing the identity of the investigator, agreeing to Alison Lockyer being accompanied at interview by a legal representative (although they would not be able to participate in the interview), and agreeing to the disclosure to Alison Lockyer of all material gathered during the investigation prior to the interview Alison Lockyer would have with the investigator.
- 4.165 On 22 March 2011 the GDC sent Alison Lockyer a letter which set out the details of the second matter that had been raised about her. The letter stated that if the matter were upheld in full or in part it could lead to a referral to the Council, with a recommendation that the matter be referred to the Privy Council under the Constitution Order 2009. The letter said that Alison Lockyer would be invited to an interview, to which she could be accompanied (although her companion would not be permitted to speak on her behalf).

- 4.166 On 28 March 2011 the GDC informed Alison Lockyer's current solicitors that the investigation procedure had commenced. On 29 March 2011 Alison Lockyer's solicitors wrote to the GDC (copying in the investigator) raising a concern that the investigation had commenced prior to it being agreed with Alison Lockyer and disagreeing with various aspects of the investigation procedure, as well as with the investigator who had been appointed. The basis for objecting to the investigator was that, as a member of the Appointments Committee, they had knowledge of the first matter that had been investigated in relation to Alison Lockyer. The concerns about the procedure related to the inability of Alison Lockyer's legal adviser to speak at any interview held with Alison Lockyer, the lack of clarity regarding what changes had and had not been accepted by the GDC (some paragraphs the GDC had previously agreed to delete had reappeared in the procedure sent on 22 March 2011) and the fact that the second investigation would take account of the outcome of the investigation into the first matter raised about Alison Lockyer. The GDC replied on the same day asking for clarity about why Alison Lockyer had objected to the appointment of the investigator by the GDC.
- 4.167 On 7 April 2011 the GDC wrote again to Alison Lockyer's solicitors, setting out further changes to the proposed investigation procedure, to take account of their comments. The GDC acknowledged that the reinsertion of certain paragraphs was done in error, clarified that Alison Lockyer would have the chance to put forward her representations after the investigation report was produced and confirmed that her legal representative would be able to speak at any interview but not to give evidence on her behalf. The letter also notified Alison Lockyer's solicitors that as a result of their having copied the investigator into their previous correspondence, they could not continue to investigate the matter and a new investigator would have to be identified. The letter gave Alison Lockyer's solicitors until 13 April 2011 to comment on these matters. Alison Lockyer's solicitors responded by a letter dated 15 April 2011, in which they accepted the procedure, as amended.
- 4.168 At Annex 4 we have included the investigation procedure that was used to investigate the first matter raised about Alison Lockyer and at Annex 5 we have included the procedure proposed by the GDC on 1 March 2011 to investigate the second matter raised. By comparing these two procedures we can see that the GDC had included that Alison Lockyer would see a copy of the complaint, be told who had made the complaint and would be given all the materials the GDC had at the start of the investigation as well as those given during the investigation so that she was able to comment on these. We also note that the GDC had drafted a specific procedure which we criticised them for not doing in relation to the investigation of the first matter (see paragraph 4.80).
- 4.169 By comparing the two procedures detailed at Annex 5 (the procedure initially proposed by the GDC for use in investigating the second matter and the procedure finally agreed for use in investigating the second matter) we noted some differences. In the finalised procedure:
- Alison Lockyer was given a choice of two potential individuals who could investigate the second matter

- Alison Lockyer was told that the person who accompanied her to the interview could generally advise her during the meeting but could not provide evidence on her behalf
- Timeframes were given for:
 - When Alison Lockyer would be given the materials gathered as part of the investigation into the second matter
 - Alison Lockyer being sent a copy of the note of the interview between her and the investigator and for providing her observations
 - Alison Lockyer providing any comments on any materials gathered following her interview with the investigator.
- No timeframe was given for the production of the investigation report
- Clear guidance was given on the structure of the investigation report and the approach to be taken on how a decision should be reached including when in the decision-making process the outcome of the investigation into the first matter would be taken into account
- The following recommendations were not allowed: the investigator would not be allowed to reach a view on whether Alison Lockyer's position as Chair/Council member was affected by the outcome of the investigation, nor could they consider referring the matter to the Audit Committee for consideration of referral to the Privy Council. They could make a recommendation for Alison Lockyer to undertake further training or education.

4.170 As mentioned at paragraph 4.87 above the GDC in December 2011 agreed a new procedure (which was developed by the governance team at the request of the Audit Committee) for investigating complaints about Council members was agreed by the Council.

Our view

4.171 As we noted at paragraphs 4.85-4.86 and 4.110, we do not consider that the procedure used by the GDC to investigate the first matter was unfair. However, we consider that improvements could have been made to it, in terms of the GDC's communications with Alison Lockyer about the procedure and in terms of providing Alison Lockyer with an opportunity to see and comment upon the evidence that would be taken into account by the investigator. We also considered that it would have been preferable if the GDC had taken the time to draft a specific procedure based on the Disciplinary Procedure for Statutory Committee Members for use in investigating the first matter raised about Alison Lockyer. Nevertheless, we conclude that the decision to adopt this procedure was proportionate in the circumstances, given the absence of an up-to-date procedure for investigating a concern about the Chair, and given the understandable importance of concluding any investigation relating to the Chair as swiftly as possible.

- 4.172 We note that the GDC took steps to ensure that it used an appropriate procedure to investigate the second matter by seeking and following legal advice. It also took the time to draft a specific procedure for investigating the second matter and sought to ensure that this procedure took account of the concerns that Alison Lockyer's current solicitors had raised in relation to the first investigation.
- 4.173 In our view, it would have been preferable if the GDC had taken more time to understand Alison Lockyer's concerns when the procedure for investigating the second matter was initially proposed and when producing the revised proposals, as that might have avoided or reduced some of the delays that subsequently occurred in negotiating the procedure to be used. For example, it may have prevented the paragraphs the GDC had previously agreed to be deleted being reinserted into the proposed procedure. However, we do not consider that the amendments that were made to the procedure for the purposes of investigating the second matter (as outlined above) as a result of this negotiation with Alison Lockyer's solicitors led to significant changes to the procedure.
- 4.174 We also do not consider that the changes made to the investigation procedure from that used to investigate the first matter were so significant as to indicate that the procedure used to investigate the first matter was 'defective', as alleged by Alison Lockyer. In fact we consider that the GDC had appropriately taken account of the criticisms that Alison Lockyer had made about the procedure used to investigate the first matter when devising the revised procedure which we consider was the correct and responsible thing to do.
- 4.175 As to any criticism about the time taken by the GDC to devise a new formal procedure for investigating complaints about Council members, we agree that it took a significant amount of time for this to be produced (November 2010 to December 2011). Whilst this is clearly not good practice, it is understandable given the context and the other work being undertaken by the GDC during this time.

Allegation 5(h)

- 4.176 In Alison Lockyer's letter to CHRE dated September 2011, she alleged that attempts were made by the GDC executive to impose wholly unrealistic and unfair time limits for responding to the GDC's proposals, and that inappropriate comments were made about this in correspondence.

Evidence

- 4.177 We have reviewed the correspondence between the GDC and Alison Lockyer's current solicitors, in relation to the proposed process for the Council meeting discussing the first matter and the procedure for the investigation into the second matter.
- 4.178 We note that the GDC proposed a process to be used at the Council meeting, on 23 February 2011, the day before the Council meeting took place, seeking a response before the meeting. Alison Lockyer's current solicitors proposed a different process on the day of the Council meeting and there was an exchange of correspondence on this subject. In subsequent correspondence, Alison Lockyer's current solicitors asserted that the timeframe for agreement imposed by the GDC had been unreasonable. In particular, Alison Lockyer's current

solicitors argued that it was unreasonable for the GDC to have disclosed Leading Counsel's opinion so late the day before the Council meeting (18:52 on 23 February).

- 4.179 In relation to the procedure for investigating the second matter, the GDC made its initial proposal around midday on 1 March 2011, asking for Alison Lockyer's response by 3 March 2011. Alison Lockyer's current solicitors responded the same day, identifying that they did not expect they would be able to comply with the proposed timeframe. They went on to point out that the GDC had only disclosed the process to be used at the Council meeting on 24 February 2011 and the GDC's Leading Counsel's opinion at unreasonably short notice. Alison Lockyer's solicitors said that they trusted the 'GDC will not now compound this unfairness by attempting to insist on an unreasonably short timeframe for the provision of our comments on the process now proposed'.
- 4.180 The GDC responded the same day stating that it was sorry if Alison Lockyer's current solicitors and Alison Lockyer did not feel that they had enough time to consider the proposed process. It said that 'the GDC would not want your client to feel disadvantaged in any way and is of course happy to wait until after she has been able to take advice from counsel before you comment on the process'.
- 4.181 Further correspondence was exchanged with delays in responding on both sides. In a letter of 7 April 2011 to Alison Lockyer's current solicitors, the GDC commented that 'it is a matter of regret that your approach might on occasion be thought calculated to delay the process'. Alison Lockyer's current solicitors responded on 15 April 2011 (following a period of annual leave) and noted that the above allegation was 'wholly unreasonable and unfounded'.
- 4.182 Frances Low told us that the GDC could not extend the timeframe on every occasion Alison Lockyer's current solicitors requested an extension, as doing so would have delayed the entire process significantly. Frances Low said that on occasions where there was a reason for the extension being sought, an extension was granted, but the GDC could not countenance permitting delay where there was no reason for it. Evlynne Gilvarry's view was that the GDC had 'bent over backwards' to ensure that Alison Lockyer had sufficient time to deal with both investigations properly. In relation to the process used for the Council meeting on 24 February 2011, Evlynne Gilvarry said that they had received the comments too late and by which time the GDC had to proceed with the process that had been agreed.
- 4.183 Frances Low told us that Alison Lockyer would have been aware that if the investigation procedure became delayed beyond a certain point, it would delay the Council's consideration of the matter.

Our view

- 4.184 The GDC considers that it gave Alison Lockyer sufficient time to consider and respond to correspondence about the investigations into the first and second matters raised about her, throughout the entire process. It is apparent that, as the investigations into the first and second matters progressed, the relationship between Alison Lockyer and Evlynne Gilvarry broke down to some extent. From our review of the evidence, we can understand that frustration was building up for both the GDC and Alison Lockyer and that each may have felt that the other was

being unreasonable in either setting or complying (or indeed failing to comply) with timeframes.

- 4.185 Whilst we can understand the GDC's desire to finalise the process for investigating the second matter as soon as possible, this is not an acceptable reason for imposing very short timeframes for Alison Lockyer's current solicitors to respond to correspondence. We consider that these timeframes were at times unreasonable; this is illustrated by the email from the GDC on 23 February 2011, seeking comments that same day, on the process to be used at the Council meeting the next day to discuss the matters relating to Alison Lockyer. This was not a sufficient amount of time and did lead to a number of emails being shared the next day about the proposed process shortly before the Council meeting began. Similarly we consider that it was unreasonable for the GDC to request comments on the proposed process to be used to investigate the second matter raised about Alison Lockyer from Alison Lockyer's current solicitors within the next one and a half days.
- 4.186 Similarly we appreciate that the GDC may have felt frustrated about the impact that the delay in finalising the investigation procedure was having on the overall conclusion of the matter, particularly as at the Council meeting in February it was anticipated that the investigation into the second matter might have been completed by the time of the additional Council meeting to be held in May. However, we do not consider that to be sufficient reason for the GDC to include comments such as 'it is a matter of regret that your approach might on occasion be thought calculated to delay the process' in their correspondence with Alison Lockyer's current solicitors as it clearly only led to a further deterioration in their relationship which was not beneficial for either the GDC or Alison Lockyer.

Allegation 5(i)

- 4.187 At our meeting in September 2011 Alison Lockyer raised concerns about the accuracy and quality of the information provided to the Council about the two matters raised about her. She said that she was also concerned that Council members might not have read or understood the papers provided by the GDC for the 24 February Council meeting. She also suspected that Elyvynne Gilvarry described the first matter about her to the Council as consisting of Alison Lockyer having 'done a grossly stupid thing' which had brought the GDC into disrepute as a result. Alison Lockyer considered it significant that no transcript was made of the part of the Council meeting on 24 February 2011 when the Council debated the Audit Committee's paper.
- 4.188 Alison Lockyer also said at that meeting that she could not believe that Council members were not aware of the subject matter of the second matter raised about her – and she said that she had been told by some Council members that the second matter had been made to sound 'very serious'.

Evidence

- 4.189 The paper about the outcome of the investigation of the first matter raised about Alison Lockyer that was presented to the Council by the Audit Committee on 24 February 2011 was considered by the Audit Committee on 26 January 2011 and 11 February 2011. The minutes of these meetings indicate that the Audit

Committee discussed the paper's contents, including the issue of the benefits (transparency) against the disadvantages (possible unfairness to Alison Lockyer) of referring to the existence of a second matter that had been raised about Alison Lockyer, as well as the issue of the recommendation to be made to the Council about what action it should take.

- 4.190 We spoke to three of the four members of the Audit Committee during our investigation. One Council member told us that the Audit Committee was divided about whether or not the Council should be informed at its meeting on 24 February 2011 that a second matter had been raised about Alison Lockyer. They said that some members felt that it would be wrong to withhold that information from the Council, and others that mentioning the second matter might imply that there was a pattern of misbehaviour (and therefore that Alison Lockyer might be unfit to continue as Chair) which could be unfair, if the investigation later concluded that the second matter was unfounded. This Council member said that they had been reluctant to mention the second matter and had wished that there had been an alternative. The other two Council members we spoke to were happy with the decision taken to include the reference to the second matter.
- 4.191 The paper presented to the Council by the Audit Committee on 24 February 2011 included information about:
- The circumstances of the first matter raised about Alison Lockyer
 - The reasons that these events were of concern to the GDC
 - The process that the GDC had used in order to agree the procedure for investigating the first matter
 - The outcome of the investigation of the first matter
 - Alison Lockyer's response to the outcome of the investigation
 - The Audit Committee's view about the matter, the reasons for its decision to report the matter to the Council and to CHRE, and its request for a paper identifying the risks and deficiencies identified as a result of these events, to be prepared and presented to the Council in May 2011
 - The existence of a second matter raised about Alison Lockyer, the fact that an investigation process had been proposed, and that the outcome of the investigation would be reported to the Audit Committee and the Council
 - The email that Alison Lockyer had sent to Evlynn Gilvarry on 18 November 2011 and the legal advice Alison Lockyer had obtained from Leading Counsel which did not agree with the advice obtained by the GDC about the fairness of the procedure used (both documents were appended to the Audit Committee's paper at the request of Alison Lockyer's solicitors).
- 4.192 The Council was also provided with a copy of the GDC's advice from Leading Counsel.
- 4.193 The private session of the Council meeting on 24 February 2011 was not transcribed and so we do not have a verbatim record of events. We note that the minutes of this Council meeting do not record that any Council members asked

questions about these issues, or raised concerns about the extent of the information they had been given. The Council members with whom we spoke illustrated to us that they had fully understood the issues at the heart of the first matter raised about Alison Lockyer – the provision of the reference on GDC headed notepaper signed as the GDC Chair and Alison Lockyer's discussions with the Chair of the Investigating Committee. Eleven of the Council members said that Evlynn Gilvarry and other GDC staff present did not comment on the matters that had been raised about Alison Lockyer and only responded to factual queries or points of clarification, four of the Council members said that they had no recollection either way about what had been said by the executive although two of these members did say that they would be surprised if Evlynn Gilvarry and Frances Low had contributed anything other than a response to a factual or clarification question.

- 4.194 Evlynn Gilvarry denied using the phrase Alison Lockyer alleged she used in describing the matter to the Council. She said that her only involvement was to respond to questions she was asked. She did not make any type of presentation. Frances Low said her involvement was to give advice about process when asked to do so – and she did respond to several questions put to her by the chair of the debate.
- 4.195 One of the Council members we spoke to informed us that at the 24 February 2011 Council meeting the existence of a second matter raised about Alison Lockyer had been referred to, and that Alan MacDonald made it clear that that second matter should not be discussed. The Council member who was the temporary chair for this part of the Council meeting also told us that they closed down any speculation about the nature of the second matter. All of the Council members we spoke to (other than members of the Audit Committee) said that at the time of the 24 February 2011 Council meeting they did not know what the second matter was about although one Council member told us they had suspicions about the nature of the matter. Only one Council member raised concerns about how the Council were told about the second matter against Alison Lockyer. That Council member (Council member Z), told us that the existence of the second matter was 'mentioned repeatedly at every meeting and in every conversation/email' by the executive subsequently and said that they had therefore assumed that it must be very serious. Following this interview with the Council member we asked the GDC what meetings took place between 25 February 2011 and 5 May 2011 involving the executive and Council members, who attended these meetings and in which of these meetings were the matters about the former Chair formally discussed. We were told that we had been provided with the papers relating to all formal meetings at which the matters about Alison Lockyer were discussed and that there were no informal meetings involving the executive and Council members in connection with the matters raised about Alison Lockyer. We also asked how many emails were sent to the Council between February 2011 and 6 May 2011 in which the two matters raised about Alison Lockyer were mentioned. We were told that the only emails sent to the Council dealing with those matters about Alison Lockyer were formal emails making meeting arrangements and emails in which Council papers were attached. We have, therefore, not seen evidence to support this statement that

the existence of the second matter against Alison Lockyer was repeatedly referred to by the executive.

- 4.196 The minutes of the meeting of the Council on 6 May 2011 (following Alison Lockyer's resignation) record that some members expressed concern that complete information about both matters raised against Alison Lockyer was not available to all Council members at that time. It is recorded in the minutes that the Audit Committee assured Council members that they had been given all the facts regarding the investigation into the first matter about Alison Lockyer. They were also told that they were not given details about the second matter because the investigation into the matter had not been completed. It is also recorded that the Council were told that the Audit Committee had led on this matter under the delegated authority of the Council as it would not have been practical to have dealt with the matters raised about Alison Lockyer in detail at the level of the Council.

Our view

- 4.197 In our view, the Audit Committee's paper that was presented to the Council on 24 February contained sufficient information about the circumstances of the first matter raised about Alison Lockyer, the GDC's investigation of it, the investigator's findings, and the arrangements in place to manage this matter and the risks arising from it. Furthermore, the GDC had shared with Alison Lockyer on 14 February 2011 an advance copy of the paper, and agreed to append two documents to it at the request of her current solicitors, in addition to the copy of the GDC's legal advice. Our conclusion is that the Council received sufficient information about the first matter and its investigation in order to carry out its role, which was not to re-open the investigation but instead to understand the risks associated with the matter for the GDC.
- 4.198 We also consider that the Audit Committee acted reasonably in the process it used to decide whether or not to include reference to the second matter raised about Alison Lockyer in the paper to be considered by the Council at its 24 February 2011 meeting. The Audit Committee debated this issue at length, and in reaching its decision looked to balance the need for transparency against the need to ensure that the rights of Alison Lockyer were maintained. The decision to include information about the existence of a second matter against Alison Lockyer was within the Audit Committee's remit (as the manager of the GDC's risks and the processes for managing those risks) and was not unreasonable.
- 4.199 Whilst it appears that some Council members sought assurance at the meeting of the Council on 6 May 2011 that they had received sufficient information about the two matters raised about Alison Lockyer, we do not consider that their doing so in itself indicates that they had not been provided with sufficient information. Given that these matters had led to Alison Lockyer's resignation and that no information about the nature of the second matter had been shared with Council members (as the matter had not been investigated) it is not surprising that some of them felt it necessary to seek such assurance before they made a decision about whether or not the investigation into the second matter should be discontinued.

4.200 In terms of what Evlynne Gilvarry or any other GDC staff member may have said during the meeting on 24 February 2011, we note that none of the Council members we spoke to raised concerns about what they had been told by Evlynne Gilvarry or her staff members at this meeting. The majority said that Evlynne Gilvarry and her staff only spoke when they were asked to answer a factual question or to address a point of clarification. Furthermore, Evlynne Gilvarry denies saying what Alison Lockyer alleged to us that Evlynne Gilvarry had said. Without a transcript of this part of the meeting (which we have already commented on above at paragraph 4.193), we have no documentary evidence to refer to when considering this element of Alison Lockyer's allegation. However, we do not consider that we have seen sufficient evidence to support the allegation that Evlynne Gilvarry made inappropriate comments during the Council's debate on 24 February 2011. We have also not seen any contemporaneous evidence to support the contention that the GDC's executive referred to the second matter raised about Alison Lockyer an unreasonable or prejudicial amount of times prior to her resignation or the motion of no confidence being proposed.

Allegation 5(j)

- 4.201 Alison Lockyer alleged that the executive (wrongly) facilitated and encouraged a second Council debate to take place concerning the matters raised about her (ie at the meeting of the Council on 6 May) before the investigation into the second matter against Alison Lockyer had begun.
- 4.202 Alison Lockyer raised a number of concerns about this when she spoke to us. She told us that:
- i. She objected that Evlynne Gilvarry had not complied with 'the rules' for calling the meeting on 6 May 2011 – and that she had arranged the date before the required number of Council members had signed the requisition for such a meeting to be held
 - ii. She had concerns about the timing of the meeting in May 2011, as she was sure that the Council members had expected that this extra meeting would be held only once the investigation into the second matter raised about her had concluded. She believed that the Council members did not want the meeting to take place until that investigation was complete, and that Evlynne Gilvarry was aware of this
 - iii. She believed that the executive orchestrated the motion for a vote of no confidence in her. Alison Lockyer considers that, as a result of the 'misinformation' Council members received as noted in the above allegation, they were not in a position to propose a motion of no confidence in her, and the motion that was proposed was premature as the investigation into the second matter raised about her had not concluded at that time.

Evidence

Concern (i)

- 4.203 In relation to the arrangements for the Council meeting on 6 May 2011, the minutes of the Council meeting for 24 February 2011 state that the Council discussed the possibility of a special meeting being held in advance of the next scheduled Council meeting in May 2011. It is recorded that the timing of such a meeting, were it to take place, would depend on completion of the investigation of the second matter raised about Alison Lockyer.
- 4.204 Alan MacDonald told us that following the Council meeting the Audit Committee asked the executive to identify dates for a meeting of the Council to consider the risks as agreed at the Council meeting on 24 February. The committee decided that it was not appropriate to wait until the conclusion of the second matter raised about Alison Lockyer given that there was a disagreement between Alison Lockyer's current solicitors and the GDC as to an appropriate investigation procedure. He said that as only the Chair could call an additional Council meeting, the only alternative was to arrange an extraordinary general meeting which required eight Council members to sign the requisition.
- 4.205 Under the GDC's standing orders the request for an extraordinary general meeting required the signature of eight Council members stating the business to be discussed (1.3), that notice of the meeting must be given at least 15 working days in advance of the meeting (1.4) and that the agenda and papers must be sent to members at least five working days in advance of the meeting (1.5). Frances Low told us that at the instigation of Alan MacDonald, she prepared the request which read 'We request an Extraordinary General meeting pursuant to Standing Order 1.3 to consider the risks and implications from the matter considered at item 5 of the Council's agenda at its meeting of 24 February 2011'. Frances Low told us that the signatures were gathered from Council members attending committee meetings in London in the week prior to the date by which the request was required under standing orders.
- 4.206 All of the Council members that we spoke to considered that signing the requisition for the extraordinary general meeting was an administrative technicality following the Council's discussion on 24 February 2011 about the need for an additional meeting in which the risks to the reputation of the GDC and its effective working could be discussed.
- 4.207 We note that the GDC's standing orders have now been updated. They now include a provision for the Chair, CE, or eight Council members to convene a meeting, where a meeting has been requested in order to enable the Council to make a decision before its next scheduled meeting, in circumstances where the Council will be unable to discharge its statutory functions or be exposed to a significant level of risk if urgent action is not taken.

Concern (ii)

- 4.208 In relation to Alison Lockyer's allegation about the premature timing of the Council meeting on 6 May 2011, we note that the minutes of the 24 February 2011 Council meeting record that 'The overriding concern of members was the need to deal with the issues in a timely and effective manner to ensure that the

Council was not left vulnerable to significant reputational risks and other risks, and questions regarding its leadership, including confidence in the Chair. It was also mindful of the need to ensure that any further risks identified from the issues would be dealt with promptly. The possibility of a special meeting being held in advance of the next scheduled meeting in May was raised. Such a meeting could take place in the evening or on a Saturday if necessary. The timing of such a meeting were it to take place would depend on the completion of the investigation of the second allegation against the chair’.

- 4.209 The minutes of the Audit Committee meeting on 10 March 2011 record that the committee decided that 'it was unsatisfactory for the Council to deal with these matters [the risks identified following complaints in respect of Alison Lockyer] along with its ordinary business in a scheduled meeting. Having considered the advice of Counsel, taken into account the likely progress of the investigation into the second complaint and considered the information available to Council the executive should seek dates for the meeting which the Council on 24 February 2011 requested should be held before the May meeting’.
- 4.210 All bar one of the Council members we spoke to said that the Council at its meeting on 24 February 2011 had requested an additional meeting at which it could consider the risks to the reputation and effective working of the GDC arising from the first matter raised about Alison Lockyer. At the 24 February 2011 Council meeting the Council had discussed the timing of a special meeting (so that this matter could be dealt with separately from the rest of Council business). We were told by one of the Council members to whom we spoke that they had hoped that the investigation into the second matter against Alison Lockyer would have concluded by the time of that Council meeting. One Council member’s contemporaneous note of the decision on 24 February 2011 recorded that the additional Council meeting was to take place ‘within five weeks [of the 24 February 2011 meeting] or at the conclusion of the second complaint, whichever comes first’.
- 4.211 It is clear that at least one Council member regarded Alison Lockyer’s conduct in relation to the matter that formed the subject matter of the first matter as being so serious that they felt a motion of no confidence in her could have been justified based on that matter alone.
- 4.212 The only Council member we spoke to who had a different recollection about the timing of the additional meeting was Council member Z, who said that they did not recall there having been any discussion on 24 February 2011 of the need for a further meeting, and commented that the Council had been scheduled to meet on 20 May 2011 in any event (implying that it was unnecessary to convene the additional meeting on 6 May 2011).

Concern (iii)

- 4.213 Alison Lockyer told us that the Council member who proposed the motion of no confidence had met with Evlynne Gilvarry and had a telephone conference with Evlynne Gilvarry and Frances Low about the matters relating to her. She said that these conversations took place at a time after the February Council meeting and before the motion was proposed (in early May). Alison Lockyer also told us that a few days later that Council member emailed Alison Lockyer referring to the

conflict between her and Evlynn Gilvarry and offering to discuss it. Alison Lockyer said she replied to say she would be happy to discuss it, but that the discussion never took place due to availability issues, and, a few days later, that Council member proposed the motion of no confidence in her. Alison Lockyer appeared to rely upon this chain of events as demonstrating that Evlynn Gilvarry/Frances Low held improper conversations with the Council member, as part of their alleged orchestration of the motion of no confidence in her.

- 4.214 The Council member who proposed the motion of no confidence told us that their actions in making such a proposal was a personal decision. Before proposing the motion they noted that they had contacted Alison Lockyer to discuss their concerns. The Council member provided a copy of the email that they sent to Alison Lockyer on 13 April 2011 in which they raised their concerns. Having reviewed the email, we note that the concerns raised were: the potential strain on the relationship between Alison Lockyer and Evlynn Gilvarry as a result of this situation; the potential for a long and protracted process which ultimately serves no party well; the potential strain on the relationship between Alison Lockyer and the Council; and the potential strain on engagement with stakeholders during a period the Chair was, albeit perhaps only in a technical sense, in dispute with the Council. They also provided a copy of the reply she sent on 14 April 2011. The reply from Alison Lockyer states ‘thanks for making contact, I will get back to you when I have access to a non-phone keyboard! What is the best number to get you on?’. They said that Alison Lockyer also left a message on their voicemail system stating that they wanted to try and talk later today (14 April 2011) or first thing on 15 April 2011 but that they never received a substantive response from Alison Lockyer. The Council member recognised that they had given Alison Lockyer a short timeframe in which to respond as the motion for a vote of no confidence had to be submitted by 17 April 2011.
- 4.215 The Council member said that they had spoken to some of the other Council members to check what their expectations were for the meeting on 6 May 2011. All of those to whom they spoke, as they understood it, felt that the matter would sooner or later have to be resolved by a vote of no confidence which might not be until September. The Council member who proposed the motion of no confidence thought that it would be wrong to allow things to continue in this vein until September 2011. The Council member said that the possibility of a vote of no confidence was not raised by the executive and that they had no idea what the executive’s view on such a vote was.
- 4.216 The Council member said that they had only spoken to Evlynn Gilvarry and Frances Low about the procedural requirements for a motion of no confidence. The Council member also confirmed that they had met with Evlynn Gilvarry during this period, and said that they had asked for her confirmation at that meeting that operational matters were not being affected by the issues arising from the matters raised about Alison Lockyer.
- 4.217 We also spoke to the two Council members who seconded the motion for a vote of no confidence. Both these Council members confirmed that the executive had no involvement in the proposal for the motion for a vote of no confidence. Instead they said that it had emerged from a strongly held view by at least some of the Council members, following the February Council meeting.

- 4.218 Some of the Council members to whom we spoke said that at the meeting on 24 February 2011 one Council member had raised the issue of a motion of no confidence in Alison Lockyer and had enquired about all the options open to the Council going forwards. Two Council members told us that Frances Low, in response to that query, explained the possible scenarios, including setting out the procedural requirements for a motion of no confidence. When we spoke to her, Frances Low recalled that mention of a motion of no confidence had been made at the meeting, and that she had advised the Council not to continue the discussion, because it could lead them to act unlawfully. Only one Council member told us that they thought that the potential for a motion of no confidence had first been raised by Frances Low, rather than by a Council member (although they also said that they did not recall this matter clearly).
- 4.219 All but one of the Council members we spoke to told us they were confident that it was the Council that was driving the motion of no confidence in Alison Lockyer, rather than the executive management team. The one Council member who disagreed (Council member Z) told us that they only had partial information but that their feeling looking back was that the executive had been driving the issue, with assistance of some Council members. They said that this was their 'gut feeling'.
- 4.220 Only a minority (four) of the Council members that we spoke to had concerns about the perceived prematurity of the motion for a vote of no confidence. They did not feel that they had sufficient information to support such a motion and three of them would have preferred that such a motion did not occur until after the investigation into the second matter had been completed.
- 4.221 When we asked Evlynne Gilvarry when she had first become aware of any discussions about a potential motion of no confidence in Alison Lockyer, she said that it was clear to her that Council members were discussing such a motion shortly after the February Council meeting. Evlynne Gilvarry received one query about the process for lodging such a motion from a Council member – which was not followed up. Evlynne Gilvarry was then told by one Council member to expect a telephone call from another Council member, seeking advice about the procedure – and indeed the Council member who subsequently proposed the motion did contact Evlynne Gilvarry seeking advice about the procedure for doing so. Evlynne Gilvarry confirmed that during that telephone call, the Council member said that they had contacted Alison Lockyer and were waiting to hear back from her and that they wished to hold off from submitting the motion until they had heard from her, in case there was a chance of being able to avoid lodging the motion. Evlynne Gilvarry had referred that Council member to Frances Low for procedural advice. Evlynne Gilvarry also confirmed that she had met with that Council member – but told us that at that meeting there had been no discussion of matters relating to Alison Lockyer. Evlynne Gilvarry told us that she was determined that no discussions should take place that might expose the GDC to any additional risks. Frances Low told us that she had exchanged emails with the Council member about the procedural aspects of lodging a motion of no confidence, and that it was possible that they had also had a telephone call about the matter. We have reviewed those emails and confirm that the discussion was limited to procedural aspects of lodging a motion of no confidence and the Council member's intention to provide Alison Lockyer with time to respond to

their concerns so that a motion for a vote of no confidence may not be necessary.

- 4.222 Evlynne Gilvarry told us that from her perspective, the prospect of a motion of no confidence in Alison Lockyer was highly undesirable. She had only come into post in October 2010, and had been looking forward to building a strong working relationship with the Chair, in order to effectively address the areas in which the GDC needed to improve. Evlynne Gilvarry also told us that she had been 'absolutely scrupulous' not to share her own or anyone else's views about the situation with any Council member. Evlynne Gilvarry said that her only role in this situation was to ensure that the Council followed its standing orders.

Our view

- 4.223 Alison Lockyer raised a number of concerns about the executive's approach to holding an extraordinary Council meeting to discuss the risks associated with the first matter, as well as the second matter. She also raised concerns about the motion proposed for a vote of no confidence. We consider each of these concerns in turn.

Concern (i)

- 4.224 From the information we have seen, it is clear that the Council requested at their meeting on 24 February 2011 that an additional meeting be convened, and that this request was formalised via the Audit Committee. It was at the Audit Committee's instruction that Frances Low made arrangements to ensure that the technical requirements within the GDC's standing orders were complied with. We consider that the GDC acted in accordance with its standing orders.

Concern (ii)

- 4.225 We consider that the evidence (including the Council meeting minutes and the evidence of the Council members we spoke with) demonstrates that it was the Council that wanted to hold a meeting earlier than the next scheduled Council meeting to discuss the risks to the reputation of the GDC and its effective working as a regulator. It is also clear that it was the Audit Committee which took the decision that this should be held before the conclusion of the second investigation. All bar one of the Council members we met with/spoke with did not think that this meeting was held prematurely. We therefore do not agree with Alison Lockyer's allegation that this meeting was held prematurely and that Evlynne Gilvarry was aware of this timing concern.

Concern (iii)

- 4.226 We have not seen any evidence that either Evlynne Gilvarry or the executive management team orchestrated the motion for a vote of no confidence in Alison Lockyer. All bar one of the Council members we had contact with were clear that the motion for the vote of no confidence was being driven by the Council and not the executive and this includes the three individuals who proposed and seconded the motion. From the evidence we have seen the only involvement that Evlynne Gilvarry and Frances Low had in relation to the motion for a vote of no confidence was to provide procedural and technical advice to the person who proposed the motion. We consider this to have been appropriate.

4.227 From our contact with Council members, only four raised concerns about the timing of the motion as they felt that they did not have sufficient information on which to make a decision about the matter prior to the conclusion of the second investigation. However, we note that it is open to a council at any time to propose a motion of no confidence in its chair. Once a council loses confidence in its chair, it does not need a substantive reason to remove them by a vote of no confidence. It was for individual GDC Council members to consider whether or not such a motion was appropriate in light of the information they had at the time. We do not consider that there was any requirement on the GDC's Council members to wait until the outcome of the investigation into the second matter raised about Alison Lockyer was known before proposing a motion for a vote of no confidence.

Allegation 5(k)

4.228 In the version of Alison Lockyer's resignation letter (dated 4 May 2011) that was addressed to the Council members, she highlighted concerns about the process the GDC had proposed in relation to the motion of no confidence. She claimed that the proposed process would not provide her with a fair hearing because it envisaged her being excluded from the Council's debate. This allegation was repeated in the letter that Alison Lockyer wrote to the Secretary of State on 5 May 2011.

Evidence

4.229 On 18 April 2011, the GDC notified Alison Lockyer's current solicitors that a motion for a vote of no confidence had been received. At the same time, the GDC shared with Alison Lockyer's current solicitors the associated paper that had been prepared for the meeting on 6 May 2011, as well as details of the procedure the GDC proposed should be used at that meeting.

4.230 Alison Lockyer's current solicitors were told in this letter that the process was a matter for the Council and not a matter for agreement between the GDC and them. However, if they did have any comments, these should be sent by 3 May 2011. They were also told that if Alison Lockyer wished to make any written representations (alongside her opportunity to provide oral representations at the meeting) these should be provided by 26 April 2011 so that they could be circulated to Council members along with the other Council papers. If they were received after this date, Alison Lockyer's current solicitors were told that it would be for the temporary chair at the meeting on 6 May 2011 to decide whether and at what point the representations should be circulated.

4.231 The process that the GDC proposed to use at the meeting on 6 May 2011 was:

- The temporary chair would be nominated/voted into position
- The temporary chair would set out the parameters of the debate
- The Chair of the Audit Committee would present a paper on the risks and implications arising from matters concerning the Chair of the Council
- Alison Lockyer would be invited to make any representations that she wished

- Alison Lockyer would be asked to leave the meeting
- The Council would debate the paper and the motion for a vote of no confidence
- Alison Lockyer would return
- The motion of no confidence would be proposed. Alison Lockyer may respond
- The motion would be put and the vote would be taken. Alison Lockyer would not vote and would leave the room when the vote was taken
- The temporary chair would announce the result.

4.232 This process was similar to that which had been used at the meeting on 24 February 2011. However, there were some differences, which were:

- The temporary chair of the meeting would invite Alison Lockyer to be accompanied by an individual of her choice, who could speak to her but who could not participate in the proceedings. The temporary chair of the meeting would invite the Council to allow that person to be present during any part of the proceedings at which Alison Lockyer was present
- The procedure clearly referred to standing order 6.11 (which permits the temporary chair of the meeting to decide whether an interest is such as to prevent a Council member from participating in the discussion or determination of a matter)
- The temporary chair of the meeting would ask the Council whether it wished the shorthand writer to be present, and if so for what parts of the meeting. The temporary chair of the meeting would propose that the shorthand writer remained present for all parts of the meeting. If the Council wished no note to be taken of any part of the meeting, it would have to use standing order 7.1 to suspend standing order 8.1.

Our view

4.233 We note that according to the process proposed by the GDC, Alison Lockyer would not have been permitted to remain present for the Council debate on the motion of no confidence – however, she would have been permitted to be present to hear details of the motion, and would have been invited to respond at that time. She was also given the opportunity to provide written comments which could be circulated to Council members prior to the meeting and she was given a week to prepare something for circulation. Additionally, the proposed process included a recommendation that the shorthand writer should be present for the entirety of the meeting, with the result that Alison Lockyer would have access (albeit after the event) to a record of the debate.

4.234 Whilst we understand and acknowledge the view expressed by one Council member to whom we spoke (mentioned earlier at paragraph 4.126) that Council members should have the ability to take tough decisions when necessary, and that they should feel able to do this in an open and transparent way, we also understand the viewpoint that Alison Lockyer's presence during the debate on the motion would have been likely to stifle a full and frank debate. Overall, we

consider that the process proposed to be used by the GDC at the Council meeting on 6 May 2011 was reasonable, given the provisions that had been made to enable Alison Lockyer to respond to the motion of no confidence prior to the Council meeting and at the Council meeting, and the arrangements that had been put in place to provide a record of the debate after the meeting. We consider that these provisions would have enabled Alison Lockyer's viewpoint to have been heard by Council members prior to any vote of no confidence taking place.

Allegation 5(I)

- 4.235 In Alison Lockyer's resignation letters (dated 4 May 2011) addressed to Evlynn Gilvarry and to the Council she urged the GDC to continue with its investigation of the second matter raised about her. She said that the GDC should not use her resignation to justify a decision not to proceed with the investigation. In Alison Lockyer's letter to CHRE of September 2011 she questioned why the second investigation was not continued when the matters raised about her had been important enough to launch an investigation. She questioned why the GDC did not wish to learn from the incident. At our meeting with Alison Lockyer in September 2011 her current solicitors commented that the second matter raised an important point of principle about the relationship between the GDC Chair and the staff and in their view it would have been useful for the GDC to have seen an outcome from it.

Evidence

- 4.236 The minutes of the meeting of the Council on 6 May 2011 record that Alison Lockyer had requested the investigation to continue so that she would be given the opportunity to 'clear her name'. They also record that some Council members noted the merits of its continuing, on the grounds of natural justice (in relation to both Alison Lockyer and the member of staff who raised the matter). However, the Council concluded that there would be little benefit in continuing with the investigation, given that Alison Lockyer had resigned (and therefore the GDC could take no further action against her in the event that the matters raised were found to be justified) and that in those circumstances it would be difficult to justify the associated costs of an investigation. The minutes record that a motion was moved that (subject to the approval of the member of staff who raised the matters) the GDC should disengage from the investigation.
- 4.237 When we spoke to the 15 Council members about this, two of them expressed a degree of unease about the decision not to continue the investigation into the second matter raised about Alison Lockyer. They told us that they thought that the investigation should have proceeded, in order to identify any learning that could be gained. Twelve of the Council members to whom we spoke told us that they were comfortable with the decision to discontinue the investigation, in light of Alison Lockyer's resignation and the assurance they had received from Alan MacDonald and Frances Low that there were no wider implications for the GDC arising from the second matter raised and the matters did not indicate a systemic problem for the GDC. Those Council members considered that continuing the investigation in these circumstances would not have been a sensible use of the

GDC's resources (both staff and financial). The remaining Council member did not comment on this issue.

- 4.238 Evlynn Gilvarry and Frances Low told us that the only involvement GDC staff had had in the Council's discussion about this matter was to respond to the query about whether or not the second matter had any wider implications for the GDC.

Our view

- 4.239 We understand that Alison Lockyer would have preferred it if the investigation into the second matter about her had continued, as she believed that 'if the allegation is considered important enough to have been made in the interests of good governance, it is important enough to be fully investigated'. From the evidence that we have seen, it is clear that the Council was aware of Alison Lockyer's views on this matter, and that this was taken into account during the discussion about whether or not to continue with the investigation. It appears that the Council took account of the relevant factors and balanced the benefits that might be achieved from continuing the investigation against the impact that its continuation was likely to have on the GDC's limited resources. The Council then reached a majority decision to discontinue the investigation, dependent upon the agreement of the member of staff who raised the matters. We consider that this was an appropriate and reasonable process to adopt to decide the matter, and that the decision reached was one within the Council's remit. We have not seen any evidence that the Council's decision was influenced in any way by the executive management team, or that it was wrong for any other reason.

Our overall conclusions on the fifth allegation

- 4.240 Alison Lockyer's overall allegation was that the process the GDC used to investigate the first matter against her was in breach of the requirements of natural justice and unlawful, and that the complaint was 'seized upon in an inappropriate and excessive way' by those who sought to discredit her before her peers and to force her to leave her office. From our review of the evidence, we do not consider that this was the case.
- 4.241 Evlynn Gilvarry received the first matter about Alison Lockyer 13 days after she formally took up office as the CE of the GDC, and she briefed the investigator 19 working days after she took up office. Our review of the evidence does not suggest that Evlynn Gilvarry used the first matter as an opportunity to force Alison Lockyer to leave her position as Chair of the GDC, although it is correct that she did escalate the matters raised with her into a formal complaint about Alison Lockyer. We note that this decision was based on legal advice and we consider, given the seriousness of the matter, that this decision was reasonable. In our view, the matter indicated an alleged serious failure by Alison Lockyer to understand the importance of the separation of functions and how to manage conflicts of interests.
- 4.242 Having reviewed the evidence, we also consider that it was appropriate for the GDC to take steps to investigate the second matter raised about Alison Lockyer. The allegation that was made by a member of staff at the GDC raised a serious issue about Alison Lockyer's understanding of her role, which in our view again

possibly stemmed from an alleged failure to understand the proper separation of functions within the organisation.

- 4.243 Alison Lockyer alleged that the investigation procedure she was subjected to was unlawful. From our review of the evidence, we consider that the GDC took steps to ensure that the procedure used in relation to both matters raised about Alison Lockyer was lawful. The GDC took legal advice when determining the procedure to be used to investigate the matters (in the absence of an up-to-date written procedure for investigating complaints about Council members) and also when communicating with Alison Lockyer's solicitors about the investigation procedure in order to ensure that it was fair. Whilst we understand that Alison Lockyer's legal advisers and Leading Counsel took a different view, we consider that it was reasonable for the GDC to prefer the advice obtained from its own legal advisers. We also consider, based on the evidence, that the GDC approached the matter appropriately from a governance perspective, in that it sought the input of its Audit Committee throughout the period in which the matters were under consideration/investigation. We do not consider that there is any evidence to support Alison Lockyer's allegation that the investigation process was unlawful.
- 4.244 Alison Lockyer also alleged that the investigation process was unfair. We consider that it might have been preferable for the GDC to have delayed the investigation into the first matter to allow time for the formal procedure for dealing with complaints about Council members to be updated, or to allow for an interim procedure to be developed (as it did in relation to the second matter). Following a written procedure that was more directly applicable to the circumstances might have reduced the risk of later criticism of the procedure. However we accept that the GDC's decision about the procedure for investigating the first matter was proportionate in the circumstances, given the need to conclude any investigation into the Chair's conduct as soon as possible. We have also identified some aspects of the GDC's investigation of the first matter and the reporting of its outcome that we think could have been improved. For example, as we have identified above at paragraph 4.110 we consider that the quality and clarity of the investigator's report could have been improved. The decision to ask the shorthand writer to leave the Council debate on 24 February 2011 was unhelpful and also unnecessarily exposed the GDC to the risks of a challenge relating to what was/was not said during the debate. Notwithstanding this, we do not consider that they were so significant as to render the entire process unfair.
- 4.245 Alison Lockyer also alleged that the GDC's motivation for taking action in response to these matters was to force her to leave office. During our investigation we have discovered that some Council members were very concerned about Alison Lockyer's behaviour in relation to the fitness to practise case referenced in the first matter against her. It appears that concerns about that matter compounded some Council members' pre-existing concerns about Alison Lockyer's performance as Chair. Those concerns, in addition to consideration of the impact of investigating the two matters about Alison Lockyer on the GDC's ability to focus on improving its performance, led one Council member to propose the motion of no confidence, which was seconded by two other Council members. We have not seen any evidence to support Alison Lockyer's suggestion that these actions were influenced by Evlynne Gilvarry or other members of the executive management team.

- 4.246 Our investigation into Alison Lockyer's allegations about the way in which the GDC dealt with the two matters about her has highlighted two related concerns. The first relates to the Chair of a regulator being elected rather than appointed. As some GDC Council members commented to us, when a chair is chosen by election, they effectively self-certify their suitability for the role, albeit that this may be done by reference to an agreed role brief or set of competencies. Importantly, an elected chair is not assessed against the relevant set of competencies required to be an effective chair. That means that the person may or may not be unsuitable, but it also means that they may have to deal with additional 'political' considerations once in office if the election is contested (ie because in those circumstances there may already be a group of Council members who would have preferred it if a different candidate had been elected as chair). By contrast, a chair that has been selected by appointment against defined competencies is likely to be in a stronger position and therefore better able to lead the organisation with authority and credibility. We are pleased to note that work has already begun to change the GDC's governing legislation, so that in future its Chair will be appointed against a defined set of competencies rather than being elected.
- 4.247 The second concern we identified relates to the importance of planning appropriately for the impact of significant changes within a regulator, including constitutional changes as well as those consequent upon a changeover of senior Council officers/staff. We consider that, to some extent, the need for our investigation resulted from a failure by the GDC in 2009/early 2010 to identify and/or progress a thorough review of its governance policies in light of the changes that occurred in 2009 to its Council, and its failure to provide adequate induction training, in particular for the new role of Chair. Some Council members to whom we spoke told us that they felt that Alison Lockyer had been left in a position where mistakes could be made because she had not received appropriate training for her role as Chair.
- 4.248 It is clear to us that some of the concerns Alison Lockyer has raised have arisen because of a lack of a shared understanding between her and the various holders of the CE post at the GDC during the period when she was in office about the appropriate boundaries of the role of the Chair, the Council and the CE/executive management team respectively, and how these relationships might appropriately differ from those between the previous Council, its President and the CE/executive management team. It also appears that some of the Council members we spoke to during our investigation were unclear about the extent of the remit that Alison White had been given on her appointment as the first interim CE, as well as the extent to which she consulted both the Chair and the Chair of the Audit Committee before taking any action. This lack of clarity on the part of Council members we spoke to is unsurprising, given that the accounts given to us by Hew Mathewson, Duncan Rudkin and Alison White do not agree on the remit that Alison White was given on appointment. Similarly Alison White may have been unaware that (as reported to us by Duncan Rudkin) the Council had, during its induction, established that it did not see the CE as having a leadership role within the organisation. These factors appear to have contributed to the development on the part of some Council members of a lack of confidence in the executive during this period.

- 4.249 Since these events have occurred, procedural changes have been implemented that address the specific governance issues that CHRE has identified during the course of our investigation, referred to above.
- 4.250 We would therefore draw to the attention of the GDC and other regulators the importance of planning for key changes at an early date, of making arrangements for there to be strategic oversight of any changes to be made, of putting checks in place to ensure that there is a comprehensive review of all the changes that are necessary, as well as of ensuring that there is a clear and shared understanding by Council members, the Chair and the CE/executive management team about the roles each of them are to play in the leadership and operation of the regulator, and where the boundaries between those roles lie.

5. Concerns raised during our investigation: the investigation stage of the GDC's fitness to practise process

Introduction

- 5.1 Concerns were raised during our investigation about some fundamental aspects of the operation of the Investigating Committee stage of the GDC's fitness to practise process. These concerns were raised by Alison Lockyer and by the two former Investigating Committee Chairs who resigned during 2011, one current Investigating Committee Chair, and by the Head of Prosecutions at the GDC.
- 5.2 We consider that these concerns fall within the remit of our investigation as, if they are genuine and remain unaddressed by the GDC, they could call into question the GDC's ability to deliver its statutory functions, which is one of the issues the Department of Health asked us to investigate. We have therefore investigated these concerns and have formed a view as to whether or not they are justified and, if so, whether they have prevented the GDC from carrying out its statutory functions.

How we carried out the investigation

- 5.3 To investigate these concerns we have:
- Met with/spoken with Evlynne Gilvarry (Chief Executive), Frances Low (Director of Governance), Neil Marshall (Director of Regulation) and the Head of Prosecutions on multiple occasions
 - Spoken to/met with the six current Investigating Committee Chairs (including the one who raised some concerns with us as set out in paragraph 5.1 above)
 - Considered documents provided to us by the first former Investigating Committee Chair between 2 November 2011 and 20 September 2012, including documents outlining their views on the performance of the Investigating Committee stage of the fitness to practise process, documents relating to a breach of confidentiality by the GDC, documents relating to Investigating Committee training days and emails which they exchanged with GDC staff which they have provided as evidence of the concerns raised with us
 - Considered documents provided to us by the second former Investigating Committee Chair between 3 December 2011 and 30 July 2012, including their views on the performance of the Investigating Committee stage of the fitness to practise process and documents relating to feedback provided by panellists/chairs of the Investigating Committee on the support and operation of the committee
 - Considered the allegations made by Alison Lockyer at the start of this investigation

- Considered emails relating to possible content for the Investigating Committee training day on 26 November 2010 from the Investigating Committee Chairs
- Considered statistics related to wasted and lost fitness to practise hearing days for 2010 to July 2012
- Reviewed papers considered by the Council between February 2011 and September 2012 in relation to the proposals for a review of the fitness to practise function and the findings of the review of the fitness to practise function. We also considered the quarterly performance reports provided to each of the Council meetings in 2011 and 2012
- Considered documentation relating to the investigation into an allegation of an Investigating Committee decision being changed unilaterally by a member of staff, including the statement obtained from the Chair of the Investigating Committee, the investigation report, the summary of the investigation findings provided to the 'whistle-blower' and a report on the actions taken to address the learning identified by the investigation
- Taken account of our findings about the GDC's performance of its fitness to practise function during 2009/10, 2010/11 and 2011/12 as set out in our performance review reports and fitness to practise audit reports.

The concerns

- 5.4 The specific concerns that have been raised about the operation and support provided to the Investigating Committee process are:
- i. Casework staff influencing or attempting to influence the decisions of the Investigating Committee by interrupting the committee's deliberations, including commenting on the matters under discussion.⁴⁶ This concern was raised by the first and second former Investigating Committee Chair and by the first current Investigating Committee Chair to whom we spoke (who raised concerns with us, as set out in paragraph 5.1 above)
 - ii. GDC staff pressurising Investigating Committee Chairs to change the committee's recorded decisions after the meeting has concluded, in circumstances where an error has apparently been made in the recording of the committee's decision during the meeting or where the staff member's view is that the recorded decision does not make sense. This concern was raised by the second former Investigating Committee Chair
 - iii. GDC staff unilaterally changing decisions of the Investigating Committee, without reference to the relevant Investigating Committee Chair. This concern was raised by the second former Investigating Committee Chair and a member of staff who was a 'whistle-blower' about one particular incident to the GDC

⁴⁶ We note that it is not unlawful or unfair for non-committee members to assist or give advice, or even warn against particular courses of action if the action in question is unlawful. However, it is unlawful for third parties to attempt to influence decisions.

- iv. Casework staff and the Investigating Committee Secretary providing conflicting and/or incorrect legal advice to the committee during the meeting. This concern was raised by the first and second former Investigating Committee Chairs
 - v. The Investigating Committee Secretary recording allegations and/or the committee's decisions incorrectly. This concern was raised by the second former Investigating Committee Chair and by the first current Investigating Committee Chair to whom we spoke
 - vi. Casework staff and the Investigating Committee Secretary failing to reply to queries raised by Investigating Committee Chairs about cases to be considered at forthcoming Investigating Committee meetings outside of committee meetings. This concern was raised by the first and second former Investigating Committee Chairs and by the first current Investigating Committee Chair to whom we spoke
 - vii. Inadequate IT support. This concern was raised by the first and second former Investigating Committee Chairs, the first current Investigating Committee Chair to whom we spoke and the Head of Prosecutions
 - viii. The size of the Investigating Committee's workload for each meeting has the effect that it is difficult to properly consider each case. This concern was raised by the second former Investigating Committee Chair, the first current Investigating Committee Chair to whom we spoke and the Head of Prosecutions
 - ix. Issues with the quality of the papers provided for Investigating Committee meetings, including the Chair's lists of allegations not being complete. This concern was raised by the first and second former Investigating Committee Chair and the first current Investigating Committee Chair to whom we spoke
 - x. Breaches of confidentiality, in that Investigating Committee papers have been sent to the two former Investigating Committee Chairs after their resignations. This concern was raised by the first and second former Investigating Committee Chair.
- 5.5 The first former Investigating Committee Chair also recently raised a concern about what they described as 'misfeasance in public office'. They raised a concern that Neil Marshall had inappropriately referred a fitness to practise concern about a registrant of another regulator to that regulator and signed that letter of referral as Registrar when not authorised to do so. Although this matter does not strictly relate to the operation of the Investigating Committee processes, we consider it in this section of the report, as it relates to an action that would have taken place at the end of the investigation stage of the fitness to practise process.
- 5.6 We were told about two potential consequences of the alleged problems with the Investigating Committee. First, we were told that there had been an increase in the number of applications made to the courts for judicial review of the Investigating Committee's decisions. Second we were told that these problems

had resulted in an increase in the volume of cases that are referred back to the Investigating Committee for reconsideration (under Rule 10 of the GDC's Fitness to Practise Rules). The first former Investigating Committee Chair, the second former Investigating Committee Chair and the Head of Prosecutions all made statements to us to this effect. The first former Investigating Committee Chair and the previous President of the GDC have also told us that they had been told that an outcome of an increase in the volume of cases being referred back to the Investigating Committee was that there was a high number of lost and wasted final fitness to practise hearing days. Such lost and wasted days impact on the GDC's ability to progress cases efficiently through their fitness to practise process and potentially have cost implications.

- 5.7 The responsibility for oversight of the administration of the Investigating Committee rested with the governance department from February 2010 to April 2011. We have seen email exchanges which evidence that some of these specific concerns were drawn to the attention of the governance department between May and December 2010, but that no action was taken in response during that period. We have also seen email exchanges and memos which show that these concerns were drawn to the attention of Evlynn Gilvarry and Neil Marshall between February and April 2011. The first and second former Investigating Committee Chairs have highlighted their concern that the problems with the Investigating Committee's processes were not drawn to the attention of the GDC's Council by the executive during 2010.

The evidence

The context in which the concerns arose

Changes in personnel

- 5.8 The first current Investigating Committee Chair to whom we spoke was a member of the GDC's Council until 2009. They told us that radical changes were made to the structure of the GDC's fitness to practise department in late 2009. They said that they had had concerns about those changes at the time, and that the CE in place at the time (Duncan Rudkin) had assured them that the changes would strengthen the legal support provided to the Investigating Committee and the fitness to practise panels. However, in the first current Investigating Committee Chair's view what actually happened was not what had been anticipated.
- 5.9 The changes that took place in late 2009 included:
- The departure of the Head of Fitness to Practise and the two senior caseworkers who supervised the caseworkers
 - The transfer of responsibility for the administration of Investigating Committee meetings/training from the fitness to practise department to the governance department, which reported directly to the CE
 - The addition to the Investigating Committee Secretary's duties of the responsibility for organising training, as well as managing the administration of committee meetings, with the result that one individual

became responsible for work that had previously been done by three staff members.

- 5.10 The Head of Prosecutions told us of further changes that were made to the fitness to practise department in early to mid-2010:
- They were made the head of the fitness to practise department
 - The two senior casework managers left the organisation which meant that there was no-one at a senior level within the department with relevant experience. The Head of Prosecutions told us that in May 2010 Alison White took the decision to promote two casework staff to senior caseworker status, albeit that neither of them had any experience of managing others. They believed that this meant that relatively inexperienced casework staff were left managing the casework teams, at the same time as the experienced Investigating Committee secretariat resource also stopped. The Head of Prosecutions viewed these appointments as a stop-gap measure until a senior manager could be appointed (which was not until 2011).
- 5.11 Given that the responsibility for managing the administration of the Investigating Committee fell to the governance department, we consider that it is important to note a number of critical changes in the capacity and experience of that team which occurred in 2010:
- In February 2010 the Director of Governance left the GDC, and no arrangements were made for their replacement until Evlynn Gilvarry came into post in October 2010. We understand from Alison White that it was her intention that responsibility for this function was to permanently transfer to the GDC's in-house corporate legal team. The GDC was therefore lacking senior leadership within its governance function for approximately 11 months, until Frances Low joined the organisation in January 2011
 - In mid-2010 the permanent Investigating Committee Secretary went on leave which meant that the governance department lost the only staff member who had experience of successful administration of the Investigating Committee function
 - In mid-2010, the GDC decided to place responsibility for managing the day-to-day administration of the Investigating Committee within the remit of a member of staff who was already responsible for managing the operation of the Council and committee meetings. It also decided to second a staff member from the fitness to practise casework team to carry out the day-to-day tasks required of the Investigating Committee secretary, as well as to recruit externally for a further Investigating Committee secretary
 - In mid-September 2010, the person responsible for managing the Council, committee and Investigating Committee meetings also left the GDC, and the person who had been externally recruited as a second Investigating Committee Secretary left on 14 October 2010.

The quality of the support available to the Investigating Committee

- 5.12 The view of the first current Investigating Committee Chair to whom we spoke is that the person who originally carried out the role of Investigating Committee Secretary (who left the GDC on leave on 5 August 2010) did an excellent job. The Chair commented that it appeared to them that this individual did not have the benefit of any oversight, support or supervision from a senior member of staff with knowledge of the GDC's fitness to practise procedures. They said that person was effectively left alone to manage this new role, including managing a significant number of committee panellists who were relatively new to the process, having only joined the committee in 2009 (when changes to the constitution of the Council meant that Council members could no longer be panellists of the Investigating Committee).
- 5.13 The first current Investigating Committee Chair to whom we spoke told us that only three of the 40 new Investigating Committee panellists who joined in 2009 had any previous experience. The second current Investigating Committee Chair to whom we spoke said that in their view the induction and initial training for the new and inexperienced Investigating Committee panellists was inadequate and would not have equipped them for their roles. They noted that there had only been one further training session (November 2010) which they considered to be a 'complete shambles' as it was badly managed and the content was inappropriate. They were also concerned about the lack of discipline shown by some panellists. They said that some panellists seemed confused about their role and wanted to become too involved with policy-making. The first former Investigating Committee Chair said that the GDC did not provide Investigating Committee panellists with regular refresher training and that the training when it was held did not meet the needs of the Investigating Committee or reach an adequate standard.
- 5.14 The first current Investigating Committee Chair to whom we spoke commented that by spring 2010 it was clear that there had been a significant increase in the Investigating Committee's caseload. At the same time, that there was a lack of knowledge and experience of the Investigating Committee process within the GDC, as a result of the influx of new Investigating Committee panellists and chairs and the lack of an effective management structure to support the Investigating Committee. In their view, this combination of factors resulted, by mid-2010, in a notable deterioration in the quality of the Investigating Committee's output. They told us that when the permanent Investigating Committee Secretary left the GDC on 5 August 2010 (initially for a time-limited period) the GDC appointed two individuals (one seconded from a casework role and the other newly recruited) to take over responsibility for the secretariat functions, in recognition of the heavy workload of the Investigating Committee. The Head of Prosecutions said that the member of staff seconded to the role of the Investigating Committee Secretary had considerable experience of casework but did not have the appropriate experience for the role as the secretary. The second current Investigating Committee Chair to whom we spoke said that in their view the Investigating Committee had been left to drift without any effective management following the departure of the permanent Investigating Committee Secretary.

- 5.15 The first former Investigating Committee Chair informed us that whilst there was guidance and training available to support Investigating Committee chairs until June 2010, upon the departure at that time of the permanent Investigating Committee Secretary the availability of such support lessened. Both the first former Investigating Committee Chair and the Head of Prosecutions commented that the GDC had failed to succession plan, given that it was aware that the permanent Investigating Committee Secretary would be leaving for some time before it happened.
- 5.16 The first current Investigating Committee Chair to whom we spoke told us that they had given the GDC feedback on three distinct occasions during 2010 about their concerns around the Investigating Committee processes and the level of support available to the committee to the Committee Secretary, during training sessions or when they were sent consultation documents. They said that they were not aware of having received any formal response to those concerns from senior management within the GDC (with the exception of an acknowledgement) nor were they aware of any senior manager to whom the committee could have provided such feedback directly. They said that in their view, everything seemed 'broken' by that point in time. They recognised that during this period the GDC had undergone major changes – with several changes in the role of CE – and noted their surprise about the volume of significant changes that one of the interim CEs had made, given their remit as an interim CE. They said that what was happening at the GDC during 2010 was not conducive to things happening in a managed or constructive way.
- 5.17 The second former Investigating Committee Chair provided feedback to the GDC's governance department in August 2010 about a number of issues relating to the support available to the Investigating Committee at that time, including the lack of IT support and the lack of legal advice. Further feedback was provided to the governance department on 26 November 2010 (in the form of a joint memorandum from all the Investigating Committee Chairs including the second former Investigating Committee Chair following a training session) about various matters including: IT support; inconsistencies in case bundle formats and contents; the need for the role of the casework staff at committee meetings to be clarified; problems caused by the late submission of papers; and suggestions for improved case management in clinical cases. The second former Investigating Committee Chair also provided feedback to the governance department on 16 March 2011 on the draft Investigating Committee guidance which had been circulated for the Chairs'/panellists' feedback.
- 5.18 The Head of Prosecutions said that they had also tried to raise concerns with the person responsible for the provision of secretariat support to the Investigating Committee but that the person had not been willing to listen and therefore nothing had changed. They believed that the governance department had been told not to take any remedial action until the new CE (Evelynne Gilvarry) commenced her role. The Head of Prosecutions also told us that these matters would not have been regarded as urgent at the time in the context of the other changes that the GDC was undergoing. They also recalled that Investigating Committee Chairs had raised concerns at the training sessions that took place in November 2010 and March 2011. The Head of Prosecutions could not recall whether or not a senior member of the governance department would have been

present at those sessions. In their view, even if Evlynne Gilvarry had been made aware of those concerns once she came into post in October 2010 meeting, the approach she would have taken would be to not implement any major changes pending the arrival of Neil Marshall in February 2011.

- 5.19 The third current Investigating Committee Chair to whom we spoke said that they had provided feedback during 2010. They said that whilst feedback was generally well received it was not acted on promptly and the GDC had been slow to improve its processes following feedback during this period. The second current Investigating Committee Chair to whom we spoke said that they had provided verbal feedback to a member of the GDC fitness to practise team about their concerns with the training day in November 2010. That Chair was later told (by email on 2 December 2010) by that member of GDC staff that Evlynne Gilvarry had taken on board their comments. Evlynne Gilvarry has confirmed that she received the second current Investigating Committee Chair's feedback.

Information known by the Chair of the Council and the Council

- 5.20 Alison Lockyer said that when she started as the Chair she was aware that all was not well from a staff point of view in the fitness to practise department as there had been a loss of experienced staff as well as an influx of new and inexperienced Investigating Committee panellists. She said that she learned of the problems with the standard of Investigating Committee panellists through observing an Investigating Committee meeting, rather than being informed of them by the executive. She said that, although she was concerned about the problems, she had no remit to become involved or to intervene, as such matters were dealt with by the Appointments Committee. However, she hoped or anticipated that the interim CE was aware of and would address these problems. Alison Lockyer said that the first and second interim CEs had tried to address issues with the GDC's fitness to practise performance (although we note that these improvements did not relate to the Investigating Committee part of the process specifically, but were concerned with introducing more in-house lawyers to reduce the backlog of cases and introducing new performance targets for the fitness to practise function). Alison Lockyer said that the Council was not kept informed about the problems at the Investigating Committee stage of the fitness to practise process, instead it was merely provided with statistical data about performance such as the volume of work and the number of days to process a fitness to practise complaint.

The concerns

Concern (i)

- 5.21 The second former Investigating Committee Chair told us that a senior caseworker and other caseworkers interrupted proceedings at Investigating Committee meetings and would argue with the committee about its decisions. In relation to one senior caseworker, they said that they would also routinely disagree with the factual findings of the panel. The second former Investigating Committee Chair provided an email dated March 2011 in which they raised this concern with Neil Marshall.

- 5.22 The first former Investigating Committee Chair said that it was routine for caseworkers to make comments and give advice during proceedings about the decisions of the committee.
- 5.23 The first current Investigating Committee Chair to whom we spoke said that from 2009 to mid-2010 it was their experience that the casework staff would attend Investigating Committee meetings, but that their participation was limited to listening and taking notes, unless a specific factual query arose. They said that at that time, even if the Investigating Committee asked for advice during a meeting, casework staff would refuse to participate/provide advice – which was in accordance with the Chair’s understanding of how the meetings should proceed (ie that only the Investigating Committee panellists and Chair should actively participate in any meeting). However, they said that senior caseworkers began intervening in Investigating Committee meetings in around mid-2010, once the permanent Investigating Committee Secretary had left the GDC. The first current Investigating Committee Chair told us that the nature of the senior caseworkers’ interventions was that they would say words to the effect of ‘you can’t do that’ when the committee was discussing the action it proposed to take. The first current Investigating Committee Chair to whom we spoke said that they had personally experienced such interruptions by a senior caseworker on one occasion, and that they had heard from another Investigating Committee Chair at the time that they had had similar experiences. They noted that this took place against a background of significant changes to the GDC’s approach, following the extensive changes to the senior management team and the transition to an Investigating Committee composed entirely of non-Council members.
- 5.24 The third current Investigating Committee Chair to whom we spoke said that caseworkers had provided limited input in committee discussions in the past and that in rare circumstances might make comments. Whilst they were not particularly happy with this arrangement they used to intervene where necessary and ignore any inappropriate comment or statement. They said that they had no knowledge of caseworkers exerting any influence over decision-making.
- 5.25 The fourth current Investigating Committee Chair to whom we spoke said that in the past it had sometimes been evident whether caseworkers agreed with the committee’s decisions, and that they had raised valid points that the committee should take into consideration. In their experience they said that points raised by caseworkers related to factual matters rather than subjective views about the decision.
- 5.26 The fifth current Investigating Committee Chair to whom we spoke said that they did not think that their decisions had been influenced by caseworkers. They said that the presence of caseworkers was occasionally helpful in terms of their ability to retrieve information quickly but that on balance they were glad the caseworkers were excluded from meetings.
- 5.27 The second and sixth current Investigating Committee Chairs to whom we spoke said that they had no experience of caseworkers influencing decisions.
- 5.28 The Head of Prosecutions told us that they were not aware until the second former Investigating Committee Chair suggested it to them in February 2011 that senior caseworkers had been seeking to advise the Investigating Committee about the appropriate outcomes of individual cases. They said that Evlyne

Gilvarry and other senior managers would not have been aware of this because they did not attend the meetings.

- 5.29 Neil Marshall told us that he had no concerns that casework staff's previous involvement in Investigating Committee meetings had impacted on the lawfulness of the Investigating Committee's decisions. However, as caseworkers had now been removed from the committee meetings, this was no longer an issue.

Concern (ii)

- 5.30 The second former Investigating Committee Chair told us that it was routine for staff to seek to alter decisions after the committee had agreed them because of secretariat errors. They said that they always referred to their contemporaneous notes of the panel discussions before confirming any changes. This Chair also provided email exchanges between themselves and the Committee Secretary and senior caseworker to illustrate the concern that they had. For example, in February 2011 this Chair was asked to include the word 'warn' in a warning letter to a registrant – the panel warns the registrant to seriously consider undertaking training. The Chair said that this was not the wording agreed by the committee as well as being grammatically incorrect. In another example given by the second former Investigating Committee Chair which occurred in February 2011, this Chair was asked to reference lack of indemnity insurance as an additional reason for the Investigating Committee's decision to refer a case to an Interim Order Committee when the committee had not specifically considered an allegation relating to the lack of indemnity insurance.
- 5.31 None of the current Investigating Committee Chairs to whom we spoke said that they had experience of caseworkers attempting to alter decisions of the Investigating Committee.

Concern (iii)

- 5.32 The second former Investigating Committee Chair told us that some changes were unilaterally made to the reasons for decisions by the executive. None of the current Investigating Committee Chairs said that they had experience of decisions being unilaterally changed by the GDC.
- 5.33 The Head of Prosecutions became responsible for overseeing the casework function (including the senior caseworkers) in February 2010. They told us that on one occasion (shortly after they had started in post in 2009) a former senior caseworker had asked them to approve a change to an Investigating Committee decision, which they had refused to do.
- 5.34 Neil Marshall has been in post as Director of Regulation since mid-February 2011. He told us that it is not uncommon for Investigating Committee Chairs to be asked to approve minor changes to recorded decisions where the changes relate to the correction of typographical or spelling errors. He also confirmed that he was not aware of any recent instances of GDC staff unilaterally changing Investigating Committee decisions.
- 5.35 However, we were told by Evlynn Gilvarry that the GDC had recently conducted an internal investigation into an allegation made by a 'whistle-blower' that a decision made by the Investigating Committee had been changed by another

member of staff after the event, in breach of the appropriate process. The process for changing an Investigating Committee decision required the staff member to notify the Investigating Committee Chair of the change and to give them an opportunity to present their views on the proposed change. We note that the change that was made to the decision in question was uncontroversial (it was to delete part of the decision that sought to refer the matter to the Interim Orders Committee – in circumstances where the registrant was already subject to an interim suspension order). The GDC did not uphold the complaint, following its investigation.

- 5.36 The member of staff who made the allegation under the GDC’s whistle-blowing policy approached us with their concerns about the investigation. They alleged that the investigation undertaken by Frances Low had been a ‘whitewash’. They said that:
- Frances Low had not approached the ‘whistle-blower’ or some of the other staff involved in the case to find out their knowledge of the matter
 - Frances Low had not addressed the apparent contradiction in evidence that the Investigating Committee Chair said that they did not receive a message regarding the change in the decision and the staff member stated that they had contacted the Chair
 - Frances Low had not found it inappropriate that a major amendment of an Investigating Committee’s decision had been made without going through the appropriate procedure of seeking the Chair’s approval
 - Frances Low had deliberately downgraded the seriousness of the incident by referring to it as an ‘irregularity’ rather than a ‘whistle-blowing’ incident in the report provided to them.
- 5.37 We reviewed the documentation relating to the investigation undertaken by Frances Low including the statements taken from staff, email exchanges between staff involved in the matter and internal reports. To undertake the investigation Frances Low met with the two members of staff and the Chair of the Investigating Committee directly involved with the changing of the Investigating Committee decision, reviewed all the emails/paperwork shared between GDC fitness to practise staff members about the change of the decision and reviewed the Investigating Committee guidance in place at that time. We note that she did not interview/meet with the ‘whistle-blower’ or some other staff who were involved in the case to find out their recollections of the matter.
- 5.38 According to the investigation report, Frances Low recognised that the nature of the actual allegation made by the ‘whistle-blower’ was unclear– whether it was that specific individuals did not follow the guidance or that the guidance itself was wrong – so she investigated both possibilities.

- 5.39 The outcome of the investigation was that the GDC staff recognised that a mistake had been made by the Investigating Committee (referring a registrant to an Interim Orders Committee when that person was already suspended) and that they had acted in line with a valid interpretation of paragraph 194 of the Investigating Committee guidance⁴⁷ when changing that decision. The relevant staff member said that they had left a message with the Chair of the Investigating Committee informing them that the decision required changing due to an error and when they did not hear back from the Chair they authorised the change. Frances Low found that the staff member had not been directed to take action to change the decision by any senior member of staff but instead had followed the Investigating Committee guidance and the established custom and practice. After speaking to the staff involved and the Chair of the Investigating Committee, Frances Low was unable to determine whether a telephone call and message had been left with the Chair (we note that the Chair's statement included that they were at the time using a mobile telephone which did not belong to them, they were away from home and could not be certain that a message was not left). However, Frances Low noted that it was discourteous and imprudent for the staff member not to have sent an email to the Chair confirming the action that had been taken.
- 5.40 As a result of the investigation Frances Low found two 'causes for concern' which are relevant to the allegation: the clarity of the case paper bundle presented to the Investigating Committee and the clarity and appropriateness of the Investigating Committee guidance. Recommendations were made for improvements to the GDC's processes and we note that according to a progress report provided to the executive management team these have been implemented:
- The Investigating Committee guidance has been amended to make it clear what steps should be taken by staff and the committee when a trivial error is made, when an ambiguity needs to be removed from a decision and where a mistake is such that it requires the committee to set aside its decision. This includes confirming in writing to the Chair all changes made to Investigating Committee decisions even when staff are entitled to make the change themselves
 - Caseworkers have been reminded that every case bundle presented to the committee should have an accurate case summary sheet and should be in a format which allows the committee secretary to easily identify all the relevant material. Case bundles will also be subject to audit through the GDC's internal annual quality assurance programme.

⁴⁷ 'The Committee as a whole will see and approve the substantive reasons during the meeting. However, the next day and simply because of the pressure of work on the day the IC Secretariat will check the document containing the reasons for, amongst other things, inaccuracies, typographical errors, grammar, clarity of English, unnecessary repetition, genuine mistakes etc. As a courtesy, the IC Chair will be asked to assist with this and ensure that the final draft reflects accurately the decision of the IC (as agreed the previous day in Committee). The final version will be circulated at the latest by the beginning of the following working day (ie the second working day after the IC meeting). This system ensures that all decisions relayed to the parties are clearly reasoned and error-free.'

- 5.41 The allegation and the outcome of the investigation was reported to Evlynn Gilvarry in the first instance and then to the Audit Committee (the body responsible for managing the GDC's risks).
- 5.42 Having reviewed the documentation we note that the terms 'whistle-blower', 'informant' and 'complainant' were used interchangeably to describe the person who made the allegation across and within different documents.

Concern (iv)

- 5.43 The second former Investigating Committee Chair described in detail one specific experience during the first quarter of 2011 of one senior caseworker and one Investigating Committee Secretary interrupting the committee to intervene with incorrect and contradictory legal advice. They also told us that it was routine for the Investigating Committee Secretary to provide incorrect legal advice as well as incorrect information on policy and guidance. The first former Investigating Committee Chair alleged that the Investigating Committee Secretary routinely provided incorrect advice and failed to seek legal advice and to seek the views of a senior caseworker present who could contradict the advice provided to the committee by the Investigating Committee Secretary.
- 5.44 The first current Investigating Committee Chair to whom we spoke said that they had personal experience of the senior caseworkers and the Investigating Committee Secretary providing incorrect legal advice. They referred to one occasion on which staff had advised the Investigating Committee that it could consider an allegation that had not been put to the registrant, rather than adjourning the meeting in order to give the registrant an opportunity to put forward representations about that allegation.
- 5.45 The second, fifth and the sixth current Investigating Committee Chairs to whom we spoke said that they did not have any experience of being provided with conflicting or incorrect legal advice. The third current Investigating Committee Chair to whom we spoke said that caseworkers were not in a position to offer legal advice and they would not have allowed them to do so. They said that in the past the Committee Secretary had given limited advice rather than conflicting or incorrect advice. The fourth current Investigating Committee Chair said that they had in the past been offered conflicting legal advice but that case law is open to interpretation and that therefore this is a peril of the law not necessarily of the legal advice itself.

Concern (v)

- 5.46 The second former Investigating Committee Chair suggested that the Investigating Committee Secretary routinely failed to draft reasons or correct reasons and incorrectly recorded whether the Investigating Committee considered that there was a case to answer in relation to the allegations. They said that this often led to Chairs having to attend the day after the committee meeting to amend and correct the decisions. The first former Investigating Committee Chair told us that when the permanent Investigating Committee Secretary went on leave in mid-2010 the quality of recorded decisions diminished. They said that it was routine to correct numerous errors recorded in the decisions and that they often had to return the next day to complete this task.

They also provided two emails as an example of where decisions had been recorded incorrectly which related to decisions taken in June 2010 and October 2010.

- 5.47 The first current Investigating Committee Chair to whom we spoke said that there had been a number of changes to the process of recording Investigating Committee decisions during the period in which they had been a committee panellist. Originally, committee chairs wrote up the committee's decisions. That practice was then changed so that a senior caseworker recorded the committee's decisions. Responsibility for recording the committee's decisions was then transferred to the Committee Secretary after 2009. The first current Investigating Committee Chair told us that during the period from mid-2010 onwards it was the practice for the Chair to articulate the decision of the committee in relation to each case, and for the Investigating Committee Secretary to formulate that decision in writing and read it back to the committee during the meeting. They identified that one difficulty with that practice was that it gave the committee an inadequate opportunity to scrutinise the decision in appropriate detail. They also told us that at one point a practice developed of the Investigating Committee Secretary simply saying 'we've got it' rather than reading out the written decision they had composed following the committee's discussion of the case. This account is consistent with that which we were given by the Head of Prosecutions. The first current Investigating Committee Chair noted that at the end of each meeting the Chair would have the task of signing off the recorded decisions. They told us that in their experience the recorded decisions were often poorly written and that they frequently had to be significantly amended in order to correct poor grammar and spelling, although the record of the actual outcome that had been agreed by the committee was usually correct.
- 5.48 The Head of Prosecutions told us that, towards the end of 2009, their team had suggested that Investigating Committee Chairs should be required to 'sign off' the recorded decisions before they were issued, rather than the recorded decisions being finalised by the Investigating Committee Secretary based on non-specific instructions given by the committee such as 'issue a strongly worded warning letter'.
- 5.49 Similarly to the first current Investigating Committee Chair to whom we spoke, the Head of Prosecutions told us that leaving the decisions to be reviewed at the end of the day was fraught with risk, for instance if an ambiguity or error was discovered at that stage, when the entire committee was not available to be consulted about it. The Head of Prosecutions also told us that in their view, during this period decisions often lacked sufficient detail, making them more vulnerable to challenge, and that both the number of 'Rule 10' referrals and the number of judicial review applications increased as a result.
- 5.50 The second, fifth and six current Investigating Committee Chairs to whom we spoke said that they had no experience of this allegation and decisions being recorded incorrectly. The third current Investigating Committee Chair noted that occasional administrative errors do occur and that these are inevitable. They said that they did not consider the frequency of the mistakes to be exceptional. The fourth current Investigating Committee Chair made similar comments to the third Chair. Both the second, third and fourth current Investigating Committee Chairs

said it was their responsibility as Chairs to sign off decisions and ensure that they were correct.

Concern (vi)

- 5.51 The first former Investigating Committee Chair told us about and gave us examples of email correspondence (July, August, September and October 2010) which demonstrated that they had experience of sending queries to the governance department, caseworkers and the Committee Secretary asking for advice about their roles and individual cases and not receiving responses.
- 5.52 The second former Investigating Committee Chair gave us an email that they had sent to the governance department in August 2010 in which they raised concerns that queries were not responded to by the Investigating Committee Secretary.
- 5.53 The first current Investigating Committee Chair to whom we spoke told us that they had occasionally experienced casework staff/the Investigating Committee Secretary failing to respond to committee queries outside of meetings. They commented that the casework staff had large caseloads, and that as a result they did not always have the capacity to respond to queries.
- 5.54 The fourth current Investigating Committee Chair said that they had experienced failures to respond to queries outside of the meetings but that this had improved over the last 12 to 18 months.
- 5.55 The two Investigating Committee Chairs who were appointed following the resignation of the first and second former Investigating Committee Chairs said that they had no experience of queries not being responded to outside of meetings. The third current Investigating Committee Chair said that it was not usually the Chair's role to send queries outside of the meetings but where it had been necessary they had always received a quick response from the Committee Secretary even when that person was 'hard pressed'.
- 5.56 The second current Investigating Committee Chair said that they had no experience of queries not being responded to but that part of their concern about the lack of discipline shown amongst some committee panellists included the issue of Chairs being too willing to email different people with queries outside of the meetings. .

Concern (vii)

- 5.57 The second former Investigating Committee Chair gave us a copy of an email sent in August 2010 in which they had raised their concerns about the IT support available to the Investigating Committee. This had been sent to the governance department. They highlighted a lack of consistent availability of laptops and printers and a concern over the typing skills of the Investigating Committee secretaries. They repeated similar concerns in an email to Neil Marshall in March 2011 in relation to the availability of IT during committee meetings. The first former Investigating Committee Chair told us that they had experience of IT failures occurring which meant that they had to return the next day to complete the approval process for decision made by the committee. They also provided emails (from October 2010) in which the Committee Secretary acknowledges a failure in the IT support at a committee meeting which meant that the Chair had

to return to complete the work the next day. Similar concerns were raised in the memo from all Investigating Committee Chairs following the Investigating Committee training day on 26 November 2010.

- 5.58 The first current Investigating Committee Chair to whom we spoke commented that the inadequacy of the IT support available to the Investigating Committee had been repeatedly raised as an issue at Investigating Committee meetings in the past, but that no-one of sufficient seniority to address this issue attended the meetings.
- 5.59 The Head of Prosecutions told us that they had proposed that a laptop computer should be provided for the committee's use during its meetings, so that decisions could be drafted at the time and printed off before the end of the meeting. The Head of Prosecutions told us that although the committee had subsequently been provided with a laptop computer (in around mid-2010) and some assistance in typing up decisions, the seconded Investigating Committee Secretary did not have to the skill to provide adequate support.
- 5.60 All of the current Investigating Committee Chairs commented to us that the IT support at the GDC had been inadequate in the past and although improvements had been made, there were still issues with the current quality of the IT which impacted on the efficiency of the meetings. For example, the second, fourth and sixth current Investigating Committee Chairs told us that failing IT systems could impact on the efficiency of the meetings as it could delay the meetings or lead to meetings having to be adjourned as the committee could not easily retrieve case papers and X-rays.
- 5.61 The third and fifth current Investigating Committee Chairs told us whilst the IT support had been inadequate, in their view, it had never prevented the committee from carrying out its statutory function. The third Chair also pointed out that it was very easy to criticise the facilities of organisations but it must be recognised that organisations were subject to budgetary constraints.

Concern (viii)

- 5.62 The second former Investigating Committee Chair referred to examples of the difficulties caused by the failure to limit the number of cases on each meeting agenda, which they said resulted in significant compromise in the quality of decision making. One example was a meeting on 8 March 2011 where over 4,000 pages of documents were to be considered by the committee and where one case alone involved 18 complaints against one registrant. They said that repeated requests had been made to limit the maximum number of cases that could be considered at each meeting and provided an email they had sent to Neil Marshall in March 2011 as evidence of this. The memo submitted by all of the Investigating Committee Chairs following the training day on 26 November 2010 suggested that the GDC should ensure a consistent of approach to cases for each committee meeting through an even mix of clinical and non-clinical review and substantive cases being assigned to each meeting with a minimum lunch break and final end time. No immediate response was forthcoming to this memo.
- 5.63 The Head of Prosecutions told us that they had also been concerned about the increasing volume of cases scheduled for each Investigating Committee meeting, and that on some occasions more than 30 cases were scheduled for a meeting,

which they believed left insufficient time for properly detailed reasons to be agreed by the committee. The Head of Prosecutions told us that their understanding was that the pressure to schedule more cases per meeting originated from the first interim CE. When we met with her, Alison White told us that that understanding was incorrect, and the difficulty arose from a lack of resources across the board. The Head of Prosecutions said that the number of cases scheduled for each meeting had now been reduced, from 30 cases down to 15 or fewer per meeting.

- 5.64 The first current Investigating Committee Chair told us that concerns had been raised since 2003 about the number of cases scheduled to be considered at each meeting. They told us that previously the volume of cases on each meeting agenda precluded the provision of detailed decisions. They said that in their view, the workload was now reasonable.
- 5.65 All of the current Investigating Committee Chairs noted that the committee has a heavy workload whilst recognising that there had been some reduction in the number of cases considered at each of the meetings over the last 12 to 18 months. Some of the Chairs also noted that it was not just the number of cases at each meeting which was important to consider but also the complexity of the cases. They thought that the GDC understood the need to ensure that there was a balance of cases on each of the committee's agendas. Other than the first current Investigating Committee Chair, the others did not think that the workload had resulted in decisions being rushed or cases not being considered properly. The third and fifth Investigating Committee Chair said that where time was pressured the urgent cases were prioritised and where necessary cases were adjourned. The third Chair also said that steps were being taken by the GDC to manage the workload as effectively as possible both by way of management of meetings and by the provision of additional committee meetings.

Concern (ix)

- 5.66 The second former Investigating Committee Chair reported to us that there was an inconsistent approach to the way papers were presented to the committee, in particular in relation to information relating to previous allegations considered by the GDC and how they had been disposed of. They forwarded an email that they had sent to Neil Marshall in March 2011 in which they raised their concern about the inconsistent formatting and content of case papers. The second former Investigating Committee Chair also raised a concern that often not all allegations against the registrant were recorded on the Chair's allegation list. The Chair provided an email exchange from February 2011 which showed that the Committee Secretary had failed to list all of the allegations on the Chair's list of allegations for one case at an Investigating Committee meeting. The first former Investigating Committee Chair told us that the Investigating Committee Chairs had repeatedly requested that the contents of the case bundle adhere to an agreed content and format but that this request had not been implemented. All of the Investigating Committee Chairs proposed a consistent format for case papers following the training day in November 2010 and they had not received a response to the memo they sent following that meeting.

- 5.67 All of the current Investigating Committee Chairs told us that the quality of case papers had improved but that there was still room for improvement. Issues included that papers were missing from the case bundles, there were incorrect dates recorded and that allegations were poorly drafted. They also said that the quality of case papers depended on the caseworker who had prepared the papers. There was a general concern that it was the management and training of caseworkers which was the issue rather than the operation and support provided to the Investigating Committee.

Concern (x)

- 5.68 The first and second former Investigating Committee Chairs reported to us that they had received documentation relating to ongoing Investigating Committee cases after they had resigned from the GDC. These papers contained confidential and personal data relating to the parties involved in the fitness to practise cases. The first former Investigating Committee Chair received this information on 17 November 2011, having resigned on 18 February 2011. The second former Investigating Committee Chair received papers in March 2011 (whilst they were still in post) which related to cases that had been considered at a Committee meeting they had attended earlier that month. It was not clear to them why they had been sent these particular papers and Neil Marshall did not respond to their email in which they notified him about it.
- 5.69 The first former Investigating Committee Chair also told us of another incident where an incorrect email address for an Investigating Committee panellist was used by the GDC and therefore material was not sent to that panellist, but instead to another member of the public. They said that this error was rectified immediately when it came to the attention of the GDC.
- 5.70 Neil Marshall provided us with copies of the self-referral to the Information Commissioner for the breaches of confidentiality by the GDC that were reported to CHRE by the first former Investigating Committee Chair in November 2011. He also informed us that the GDC had contacted the individuals whose confidentiality had been breached and took steps to prevent a recurrence of the error (by updating email lists). We were told that the error appeared to have resulted from casework staff using outdated lists of Investigating Committee panellists. We note that former Investigating Committee panellists and chairs are required to maintain confidentiality even after they have ceased to work for the GDC, which provides some additional assurance that the data that was inadvertently disclosed to the first former Investigating Committee Chair should not be disclosed onwards. Subsequently, Frances Low provided us with a copy of the Information Commissioner's response to the GDC's self-referral – which set out that no further action would be taken.

The other concern raised by the first former Investigating Committee Chair

- 5.71 In September 2012 the first former Investigating Committee Chair made an allegation that Neil Marshall had recently forwarded a complaint about a matter that concerned both a GDC registrant and another health care professional to that health care professional's regulatory body (it was alleged that Neil Marshall's previous history in relation to that individual rendered such a referral

inappropriate) and that he had signed the referral letter as the 'Registrar' when he was not in a position to do so.

- 5.72 Neil Marshall said that a case was considered by the Investigating Committee concerning a dentist to whom another health care professional had referred patients. The Investigating Committee was concerned about the dentist's handling of those patients and referred the allegation against the dentist for a hearing. The committee was also concerned about patients being sent down this route by the other health care professional, who, in their view, should have known better than to suggest this type of treatment. At the end of the formal committee meeting the committee called the other Investigating Committee Secretary into the room and expressed its concerns about the other health care professional and said that the GDC should do something. The Investigating Committee Secretary then checked the relevant rules and regulations and identified that there is a provision that permits the GDC's Registrar to make disclosures of information where it is in the public interest to do so. The Investigating Committee Secretary therefore drafted a letter to the relevant regulatory body to be sent by Neil Marshall as Director of Regulation on behalf of the Registrar. The letter set out the concerns that the committee had identified and explained that this information was being provided to the regulatory body in the public interest in line with the GDC's disclosure capabilities.
- 5.73 Neil Marshall stated that in his view it is entirely appropriate for a regulator to refer such a concern about another regulator's registrant to that regulator, and that this is the responsible thing to do. Such disclosures are made in the name of the Registrar, but that under the GDC's documented delegation scheme he (and indeed anyone at the level of a fitness to practise caseworker or above) has delegated authority from the Registrar to take make such disclosures. The legal authority to make such referrals is derived from section 36Z(3) of the Dentists Act 1984 (as amended) and the ability for the Registrar to delegate their functions is set out in section 14(5) of the same Act.

CHRE's reports on the performance of the GDC's fitness to practise function

- 5.74 Since 2009/10 we have been publicly reporting on our concerns about the performance of the GDC's fitness to practise function. For example in our performance review report 2009/10 we reported on our concerns about the number of cases awaiting a final fitness to practise hearing and the effectiveness of the GDC's case management system and in our fitness to practise audit report March 2011 we recorded our concerns about the GDC's record-keeping, the sufficiency of their investigations into complaints and the detail provided in decision letters to complainants. We repeated similar concerns in our fitness to practise audit report September 2011 and in our performance review report 2010/11.
- 5.75 In our most recent performance review report published in June 2012 we reported that the GDC had met all of the Standards of Good Regulation apart from two – which related to the quality of fitness to practise decisions and the timeliness of case progression. We said that we would be monitoring the GDC's performance in these areas to ensure that improvements were made. We also noted in that report that we had seen some evidence that changes introduced by

the GDC were having a positive impact. In our most recent fitness to practise audit report published in August 2012 we reported that we had seen evidence of the positive impact of the changes introduced in 2011/12 in the small number of relevant cases that we audited and that there appeared to be good compliance with the changes to the process that have been introduced.⁴⁸ We also reported that the audit did not identify any decisions that may pose risks to patient safety although we did identify a policy issue which we considered required consideration – the lack of a requirement for registrants to notify the GDC about criminal convictions and police cautions other than at initial registration.

The changes made to improve the Investigating Committee support and processes

- 5.76 Prior to the arrival of Neil Marshall and during Ian Todd's tenure as the second interim CE, Ian Todd was asked to develop performance indicators for the Fitness to Practise Policy Committee to consider implementing and to review fitness to practise case throughput. However, no other substantive work was undertaken during this period.
- 5.77 Following the arrival of Frances Low and Neil Marshall in early 2011 (Neil Marshall was recruited in November 2010 but did not start until February 2011), changes were made to improve the support available to the Investigating Committee. Evlynn Gilvarry told us that she accepts that the support provided to the Investigating Committee during the period from March 2010 to March 2011 was inadequate.

The changes made

- 5.78 An internal reorganisation resulted in responsibility for the administration of the Investigating Committee being transferred into the regulation directorate (the separation of function between staff servicing the Investigating Committee and those responsible for the casework has been maintained despite this move).
- 5.79 Neil Marshall told us that it had become apparent to him, shortly after his arrival at the GDC and following discussions with key operational staff, that there was an issue with the consistency and quality of the decision-making/reasoning of the Investigating Committee, which in part resulted from a lack of understanding of the 'realistic prospect' test. Neil Marshall told us that he had also identified concerns about the consistency of the Investigating Committee's approach, in terms of requiring additional investigation and/or identifying additional allegations. He told us that he therefore began to consider how to achieve improvements in the Investigating Committee's decision-making.
- 5.80 Neil Marshall said that it had been agreed that one solution to this issue was to introduce legally qualified Investigating Committee secretaries. This was a solution that could be implemented immediately, and a firm of solicitors was therefore instructed to provide temporary secretariat support to the Investigating Committee while the GDC recruited permanent legally-qualified staff to carry out

⁴⁸ We note that many of the cases audited in 2012 were opened before the GDC implemented the changes to its processes which we outline below and therefore a number of issues that were similar to those previously highlighted was also identified.

that function (those staff came into post in late 2011).⁴⁹ He told us that, in his opinion, it was not appropriate for a caseworker to have been seconded into the role of Investigating Committee Secretary, given the disparity between the two roles, and he felt that while the individual concerned had done their best, they had not had sufficient experience to allow them to carry out the role effectively.

- 5.81 Neil Marshall said that the two new legally qualified Investigating Committee secretaries are very experienced in panel work. They draft the committee's decisions during the course of the Investigating Committee meetings, and agree them with the committee before the committee moves on to consider the next case. Draft decisions are then reviewed to identify any typographical errors – once errors have been corrected, the Chair is asked to confirm their approval to issue the finalised decisions. Neil Marshall said that this process should prevent the need to amend decisions subsequently. He also noted that the GDC has recently agreed a process (to be accompanied by guidance and criteria for the relevant decision-makers) allowing for the administrative amendment of decisions in cases where a decision (or part of it) is plainly ridiculous. Previously this would have been dealt with by referring the matter back to the relevant committee chair (as set out above).
- 5.82 Neil Marshall told us that, at the same time as introducing legally qualified Investigating Committee secretaries, a decision was taken that casework staff should no longer attend Investigating Committee meetings (although it was legally permissible for them to attend, as representatives of the GDC's CE, as provided for in the GDC's fitness to practise rules). Notwithstanding this, Neil Marshall told us that he had no concerns that casework staff's previous involvement in Investigating Committee meetings had impacted on the lawfulness of the Investigating Committee's decisions.
- 5.83 He also informed us that the guidance provided for the Investigating Committee which had been withdrawn in June 2010 (prior to his appointment), had been revised, finalised and published in November 2011. He told us that the reason for its withdrawal was that the guidance did not give a correct and clear interpretation of the legal test that should be applied by the Investigating Committee. The revised guidance was approved by the GDC's Fitness to Practise Policy Committee, and had been subject to a period of consultation with key stakeholders.
- 5.84 Neil Marshall also notified us of a number of other improvements that have been made to the GDC's support for the Investigating Committee, following a review of the function that was undertaken by him shortly after his arrival:
- The provision of documented guidance and structured training for casework staff and panellists of decision-making committees
 - A reduction in the workload for each committee meeting
 - The introduction of a quality assurance programme (as well as the appointment of a compliance team)

⁴⁹ We understand that the GDC refers to 'legally-qualified' in this context as meaning a person in possession of a legal qualification and being registered with the appropriate regulator, but not necessarily in possession of a current Practising Certificate.

- Formal systems of recording feedback received from the Investigating Committee panellists and chairs since August 2011
- The assurance of committee panellists' performance, through an appraisal system.

What the Council was told about the changes

- 5.85 At the February 2011 Council meeting an addendum to Evlynn Gilvarry's Chief Executive's report was tabled. We have seen that report which sets out a proposal for a targeted review of the fitness to practise function in light of both CHRE audit reports (2010 and 2011) and the GDC's own internal audit report (October 2010). The audit report had highlighted issues in relation to: the level of skills possessed by the casework staff; differences of opinion between casework staff, managers and Investigating Committee panellists; the Investigating Committee's workload; the quality of case preparation prior to referral to the Investigating Committee; the scheduling of cases for consideration by the Investigating Committee; the limited training and guidance available to committee panellists; the lack of means of ensuring consistency of the committee's decision-making; and staff costs. The minutes of this meeting record that the proposal was placed before the Council.
- 5.86 We have seen that in May 2011 a paper was presented to the Council outlining the actions being taken to address the deficiencies identified through the ongoing review of the fitness to practise function and the audits conducted by CHRE and the GDC's internal auditors. The minutes record that the Council was told that a number of practical steps had been taken to improve the efficiency of the assessment, Investigating Committee and hearings stage of the fitness to practise process. It was also told that plans were in place to increase hearings capacity to effect a stabilisation of the number of cases awaiting a hearing by early 2013. It was recorded in the minutes that the Council noted the actions currently being taken to address the identified deficiencies in the fitness to practise process.
- 5.87 In September 2011 the Council was presented with a range of proposals for changes to the operation, policy and legislation associated with the fitness to practise function which the minutes of the meeting record that the Council approved. The proposals included the introduction of a triage process, the introduction of clinical advice at the initial stages of the fitness to practise process and increased administrative support for caseworkers. They also included the establishment of an operational excellence unit to support business improvement, a compliance team to manage systems to quality assure the work of the GDC and a case review team to pro-actively monitor any conditions imposed on registrants and the introduction of case examiners.
- 5.88 The Council was presented at its December 2011, February and May 2012 meetings with papers on the progress made in reviewing, consulting on, revising and finalising the GDC's proposed list of legislative changes (first presented in September 2011) for its fitness to practise functions. At the May 2012 Council meeting, the Council was also presented with a paper which reported on the scheduling of fitness to practise hearings, informed it about the impact of lost and wasted hearing days on reducing the queue of cases awaiting a hearing and the

measures to be taken to reduce the number of lost and wasted hearing days. (We note that the number of lost and wasted hearing days was a concern brought to our attention by the first former Investigating Committee Chair and by Hew Mathewson.)

- 5.89 At the Council meeting in September 2012, the Council was presented with three papers on the GDC's fitness to practise function. First there was a paper detailing the management's response to CHRE's recently published fitness to practise audit report (published August 2012). This paper included an analysis of the findings of the audit, the implications of the findings for the GDC's performance and how the concerns were being or were going to be addressed. The second paper provided an update on the ongoing work to make operational, policy and legislative changes to improve the GDC's fitness to practise function. This paper included a recap on the changes that had been made, the impact that those changes had had on performance so far, how those changes would continue to be monitored as well as an update on the changes still to be made. The final paper to be presented to the Council was on proposed outcomes guidance for the Investigating Committee. The purpose for introducing such guidance was to improve the consistency of the Investigating Committee's decision-making, which was a concern that had been highlighted by CHRE and internally by the GDC. The Council was told of the benefits and risks associated with such guidance as well as being provided with a plan for how such guidance could be implemented.

The effect of the changes on the performance of the GDC's Investigating Committee

- 5.90 All of the current Investigating Committee Chairs to whom we spoke said that they considered that there had been significant improvements in the support available to the Investigating Committee generally since May 2011. However, they also said that there was still room for further improvement. The third Investigating Committee Chair said that the level of support and interest shown by the senior management had increased and that this was having a positive impact. All of the current Investigating Committee Chairs also told us that they felt that most of their concerns about the Investigating Committee processes and support had now been addressed or that they were confident they were being addressed by the GDC. The first current Investigating Committee Chair said that the GDC had now listened to the concerns that had been raised by the Investigating Committee Chairs by appointing legally qualified Investigating Committee secretaries, removing caseworkers from the committee meetings and agreeing to provide proper training to panellists and chairs of the Investigating Committee.
- 5.91 The Chairs told us that the interim measures that were taken in early 2011 to improve the support provided to the Investigating Committee were very effective. The first current Investigating Committee Chair said that the external lawyers appointed to act as Investigating Committee secretaries wrote up the committee's decisions appropriately during the meetings, so that they could be signed off by the committee at the end of each meeting. The first current Investigating Committee Chair commented that these two individuals were meticulous about respecting the statutory framework, and did not interrupt the committee panellists' deliberations except to clarify wording (especially clinical or technical wording) or

their understanding of the committee's decision. The fourth current Investigating Committee Chair also said that since the introduction of the legally qualified secretaries the recorded decisions of the committee were more consistent, fuller and contained more detailed explanation.

- 5.92 The first current Investigating Committee Chair also commented that there have been a number of other improvements, as set out below:
- The Investigating Committee secretaries now answer any queries the Chair/panellists may have prior to the meetings
 - Improved training has been provided to the Investigating Committee chairs and panellists
 - The Investigating Committee's workload for each meeting has been reduced and is now more manageable
 - The IT support has improved
 - There have been qualitative improvements in papers and agendas.
- 5.93 However, some of the Chairs still had concerns about some weaknesses that they considered remained. The first current Investigating Committee Chair noted that the provision of late additional papers continues to be an issue, particularly for any committee panellists who have other commitments and may therefore find it difficult to read additional material provided (usually by the registrant's defence body, or by the complainant) at very short notice before a meeting. As noted above, some of the Chairs also still had concerns about the quality of the IT provision, the case paper bundles and allegations presented to them. The second current Investigating Committee Chair also had concerns that the GDC had still not acted upon concerns about the competence of some Investigating Committee panellists.
- 5.94 The first current Investigating Committee Chair's impression is that there is a lot of pressure on the GDC to minimise the threat of judicial review challenges, given the risks such challenges raise for the GDC's reputation amongst the public and registrants. They noted that the background to this is that the dental defence organisations have recently become more challenging of outcomes than they were before. The first current Investigating Committee Chair considered that this awareness of the possibility of legal challenge had influenced the training the Investigating Committee received. They told us of a concern (identified during committee meetings) that the Investigating Committee's approach is beginning to shift subtly to become less robust in terms of public protection, because of this focus on the threat of judicial review, which is frequently mentioned by both committee panellists and the committee secretaries. Alongside this, the fourth Investigating Committee Chair said that it would be helpful to have greater feedback about the decisions made by the committees as they believed that they were seeing a greater percentage of cases referred back to the committee for reconsideration (under Rule 10 of the GDC's fitness to practise rules 2006) than they were 18 to 24 months ago.

- 5.95 The first current Investigating Committee Chair also told us that the issue of staff interrupting Investigating Committee meetings has not been completely resolved by the appointment of legally qualified committee secretaries and the removal of the senior caseworkers from the meetings. They told us that the recent interruptions by the legally qualified committee secretaries are accurate in relation to the applicable legal and regulatory processes, in contrast to some of the interruptions by senior caseworkers in the past, but that the line between interventions to clarify the procedure the committee should follow and interventions that may influence the committee's decision-making is becoming blurred. In the first current Investigating Committee Chair's view, it might be preferable for the Investigating Committee secretary/training role to be separated, in order to avoid this happening. The second current Investigating Committee Chair also believes that the committee secretaries should have greater administrative and IT support so that they are able to undertake their work more efficiently and effectively.
- 5.96 The first current Investigating Committee Chair also told us of a slight concern about the way in which the decisions of the committee are formulated by the Investigating Committee secretaries. The first Investigating Committee Chair regards it as important that each decision is clearly focused on the circumstances of the particular case and that it is the Investigating Committee's 'voice' that should be audible, and believes that this does not always happen as the Investigating Committee secretaries tend to use formulaic language to record the committee's decisions.
- 5.97 We note that the Head of Prosecutions has told us that they believe that the committee secretaries have prepared the committee's decisions prior to meetings taking place, and that they have identified at least one decision purportedly made by the committee that appears to be far too detailed to have been reached by the committee during a meeting. The first current Investigating Committee Chair has also told us that they are aware that at some meetings advance drafting of the decisions has taken place. We asked Neil Marshall about the process that is followed in formulating the committee's written decisions. He stated that the committee secretaries do not prepare the committee's decisions in advance and that they are written during committee meetings and approved by the committee at the time. We note that we do not understand there to be any allegation that any staff members have deliberately sought to influence the decisions of the Investigating Committee, or of otherwise inappropriate behaviour.
- 5.98 The Head of Prosecutions acknowledges that there has been an overall improvement in the quality of the committee's decision-making, following the changes that have been made since 2011. He also said that there had been a decrease in the number of cases the committees considered at each meeting. However the Head of Prosecutions also notified us of a number of concerns about the effectiveness of some of the changes that have been introduced in 2011, which are described below.
- 5.99 The Head of Prosecutions told us that procedural mistakes continued to be made, even after the introduction of legally qualified committee secretaries, and expressed their view that it may be unhelpful to prevent casework staff from attending Investigating Committee meetings entirely, as they are likely to have

detailed knowledge of each file and therefore to be in a position to answer any factual queries or to correct any factual misunderstandings. The Head of Prosecutions cited various examples of cases in which factual errors had allegedly been made. We do not understand there to be any suggestion of incompetence on the part of the individuals concerned – the issue being simply that they cannot be expected to know all the relevant facts from all of the cases under consideration, and that the presence of caseworkers might help to avoid errors being made. The first current Investigating Committee Chair also considers that, on balance, and given the impossibilities of committee panellists researching all aspects of a case, the presence of caseworkers is more helpful than their absence. They told us that there have been occasions when a case adjournment could have been avoided had a caseworker been present to answer a query or access certain documentation. Neil Marshall acknowledges that casework staff are likely to be more familiar with case files than other staff, and therefore may be in a better position to assist with factual queries or correct misunderstandings. He commented that some errors/misunderstandings occurred during the period of transition from the old system (in which caseworkers were present at Investigating Committee meetings) to the current system (in which the only information about each case is that recorded in the papers) as the result of human error, but that these problems should not persist as casework staff are now fully aware of the need to ensure that all information is contained in the papers put before the committee.

- 5.100 The Head of Prosecutions also told us of a concern that the Investigating Committee does not necessarily apply the correct legal test when making decisions to refer a case for an interim order application. The Head of Prosecutions also said that the recent trend for over-referral is leading to inefficiency in the use of the GDC's hearing resources.
- 5.101 In response to concerns raised with us about the decision-making of the Investigating Committee, Neil Marshall told us that 37 cases were referred back to the Investigating Committee under the Rule 10 procedure during 2010, 51 cases in 2011 and 58 cases from January 2012 to 18 October 2012. Neil Marshall's view is that over-referral of cases is to some extent inevitable within the current legislative framework, given that the Investigating Committee considers cases before they have been completely investigated and there will therefore always be some cases where, on further investigation, it becomes apparent that the 'realistic prospect' test may not be met. Neil Marshall told us that the GDC does not hold data in its current database system relating to potential 'threats' to apply for judicial review of individual decisions, and that the number of pre-action protocol letters received in the last two years is very unlikely to have been more than 20. The first current Investigating Committee Chair also told us that it was likely that data was not recorded prior to 2010 as it was such a rare event for a case to be the subject of a rule 10 referral or of a judicial review application. Neil Marshall has also told us that in 2011, there were no legal challenges to decisions made at the point of assessment, but that in 2011 there were six legal challenges raised following an Investigating Committee decision, where five were agreed by consent and one was considered by the court and found in favour of the registrant. Neil Marshall told us that between January and October 2012 there had been no legal challenges to assessment decisions, one

Investigating Committee decision was judicially reviewed and was agreed by consent and there is one judicial review on hold pending the outcome of a Rule 10 referral back to the Investigating Committee. He also noted that there had been one further threat of a judicial review but that this had not materialised. Neil Marshall does not believe that the number of such letters has increased/decreased in recent years, although he is unable to provide any statistical data to support that view, as the GDC does not record such data on its systems.

- 5.102 When we asked Neil Marshall about the concerns raised with us that the number of wasted/lost hearing days had increased in 2012 because of the number of cancelled cases resulting from poor decisions being made by the Investigating Committee, he said that it was correct that there had been an increase in the percentage of days lost/wasted in 2012. He said that this was due in part to an increase in the number of hearing days scheduled and in part because not as many cases as expected have been ready to be heard by a final fitness to practise committee. From the statistics that we have been provided with we can see that in 2010 the number of lost/wasted hearing days was 118 with the two main reasons being cases finishing early and no cases to list when days were vacated at short notice. In 2011 175 days were lost/wasted with the two main reasons for the loss being cases finished early and adjourned for health reasons. In 2012 between January and July 261 days were lost/wasted and the two main reasons for this are cases referred back to the Investigating Committee and cases finishing early. This is a significant increase in the number of lost and wasted hearing days. We note that the number of productive, lost and wasted hearing days are reported at Council meetings with a brief explanation of the reasons for the lost/wasted days. This information is included in the quarterly Council performance report. The increase in lost and wasted hearing days was also the subject of a paper presented to the Council in May 2012.
- 5.103 Neil Marshall said that the GDC has a multifaceted plan for dealing with lost/wasted hearing days. This includes drafting guidance for cases that should be dealt with under Rule 10 to try to ensure that weaker cases are identified earlier and moving from the Investigating Committee to case examiners so that greater investigation can take place earlier in the fitness to practise process. It has also introduced better pre-hearing case management and the GDC is about to restructure the management of all legal services in fitness to practise, the aim being to introduce greater rigour in the performance management of the GDC prosecution team.

Our view

- 5.104 It is apparent from various sources of information which we have considered (including that provided by the two former Investigating Committee Chairs, Alison Lockyer, the current Investigating Committee Chairs and the Head of Prosecutions and our own reports on the GDC's performance)⁵⁰ that there were various weaknesses in the operation of the Investigating Committee stage of the GDC's fitness to practise process from at least mid-2010. These weaknesses appear to have arisen as a result of a combination of factors, including the loss of

⁵⁰ Our initial stages fitness to practise audits and performance review reports.

key staff at both a management and an operational level during 2009 and 2010, at the same time as significant changes were occurring within the Investigating Committee itself, as a result of the changes to the composition of the GDC's Council that took effect in 2009, and an increase in caseload.

- 5.105 In addition to the problems outlined above relating to the Investigating Committee stage of the process, it was evident that there were other challenges across the whole of the fitness to practise function. The data annexed to the Fitness to Practise Policy Committee's annual report presented to the previous Council in mid-2009 demonstrated that the fitness to practise function was building up a 'backlog' of cases. Duncan Rudkin's outgoing CE's annual report to the Council in June 2009 also highlighted a number of challenges, including the need to improve the quality, accessibility and analysis of the associated operational data in order to identify areas for improvement and to enable the executive to be held to account effectively, as well as the increase in the fitness to practise caseload, the upward trend in the age profile of the caseload, the ongoing work in relation to key performance indicators, and the impact of the proposed restructure within the fitness to practise department.
- 5.106 In relation to the loss of the relevant operational staff, we consider that there was a lack of effective succession planning when the permanent Investigating Committee Secretary went on leave in mid-2010, despite the fact that the GDC had been aware of the impending leave for some time. It appears that at that time the GDC was left with no-one who had direct experience of providing secretariat functions to the Investigating Committee. This placed the staff member who was seconded to that role in a very difficult position, as the GDC's 'knowledge base' about the processes had effectively been lost. Similarly when both the senior case managers left in 2010 the decision to replace them with senior caseworkers meant that the GDC was left without staff with sufficient managerial experience to oversee the work of the two casework teams.
- 5.107 The weaknesses in the support and operation of the Investigating Committee were known to a variety of staff and committee panellists within the GDC at that time. However, despite various efforts made by those individuals to feed back their concerns to the governance department, it appears that there was little willingness or ability within that department to address them at the time. We have concluded that this is likely to have been a direct consequence of the lack of senior management within the governance department after February 2010 (when the Director of Governance left the GDC – and was not replaced until early 2011). The lack of senior leadership within the department meant that there was no-one in a position to address the concerns that the Investigating Committee Chairs began to raise from May 2010 onwards. In addition, the Head of Prosecutions told us that the staff member who was responsible for the provision of secretariat services to the Investigating Committee (who reported direct to the interim CEs) from February to October 2010 was not willing to listen when the Head of Prosecutions attempted to raise concerns about the level of support being provided to the committee, but just told the Head of Prosecutions to 'back off'. We are also mindful that at that time the GDC was an organisation without a permanent CE or a complete executive management team, which would have made obtaining authority to make any sustainable changes potentially difficult for more junior members of staff. From this investigation, we note that the GDC has

found it difficult to collect all the feedback that we have been told had been submitted to the GDC by committee panellists and GDC staff, and that in itself indicates that there was also a lack of a systematic approach to collecting and acting on the feedback submitted. This combination of factors alongside those mentioned in paragraph 5.104 meant that the weaknesses were left unaddressed – which we do not consider to be acceptable.

5.108 It is also clear that the Council was not informed of these weaknesses until Neil Marshall came into post in February 2011. Alison Lockyer acknowledges that she was aware of some concerns about the performance of the Investigating Committee, but believed that Alison White and Ian Todd were taking sufficient steps to resolve them. We consider that the failure to notify the Council of the trends of concerns that were emerging in 2010 concerning the Investigating Committee process was not good practice, in a context where there was little performance data available that the Council could otherwise rely upon in order to hold the executive effectively to account for the operation of the fitness to practise function.

5.109 The GDC's current executive management team accepts that weaknesses existed and Evlynn Gilvarry said that the support available to the Investigating Committee at the time she came into post was inadequate, and that the problems began to be addressed in early 2011 once the new executive management team was in place. In our view, the weaknesses in the GDC's operation of the Investigating Committee stage of the fitness to practise process in 2009 and 2010 exposed the GDC at that time to the risks of:

- Legal challenges by registrants to Investigating Committee decisions
- Decisions being made by the Investigating Committee that failed to protect the public, and
- Loss of confidence in the GDC as an effective regulator as a result.

5.110 Given the significance of the decisions made by the Investigating Committee both for the protection of the public and the maintenance of confidence in the regulator, we consider that the GDC should have had systems in place (eg a quality assurance process) to identify these weaknesses and to address them promptly. Further, the GDC should have had systems in place for staff and or committee panellists to escalate any concerns that remained unaddressed to the CE or the Council.

5.111 As illustrated by the papers considered by the Council since February 2011, the GDC under Evlynn Gilvarry and the new executive management team have carried out a review of the support provided to the Investigating Committee in order to identify where and how improvements can be made. This review looked at operational, policy and legislative changes that could be made. As a result, we consider that a significant amount of work has already been carried out by the GDC to improve the quality of the support available to the Investigating Committee as well as the quality of its decision-making. This includes:

- Appointing experienced Investigating Committee secretaries to ensure that correct legal advice is given

- Improving the training provided to Investigating Committee chairs and panellists
- Ensuring accurate recording of decisions
- Providing appropriate responses to enquiries
- Removing casework staff from meetings (to ensure that they can have no opportunity to influence the decisions of the Investigating Committee – although we note that there may be disadvantages as well as benefits to that approach because it removes a useful source of detailed knowledge of each case and may on occasion therefore mean that a case has to be adjourned in circumstances where that might not have been necessary had someone with detailed knowledge of the case been present to answer queries)
- Developing better guidance and processes to support the committee’s decision-making (including the amendment of errors).

5.112 It is also clear from these papers that the Council is being kept informed of the progress of the operational, policy and legislative changes/proposed changes, the impact that the changes have had on performance and any challenges being faced by the executive in improving performance in light of these changes (such as the number of lost and wasted hearing days). In conjunction with such stand-alone papers, the Council is presented with quarterly performance reports which provide statistical data on the GDC’s performance across all of its regulatory functions including fitness to practise. We consider that this is an appropriate level of information exchange between the Council and the executive and should enable the Council to hold the executive to account.

5.113 All of the current Investigating Committee Chairs with whom we spoke/met confirmed that there have been evident improvements since early 2011. The Head of Prosecutions at the GDC also recognised that improvements have been achieved. However, both the Head of Prosecutions and others (as reported above) have raised concerns about the impact and propriety of some aspects of the changes that have been introduced. We recognise that there remains room for improvement by the GDC and will want to see continued evidence of such improvements being made through our scrutiny of its work in the future.

5.114 Our attention has been drawn to the recent increase in Rule 10 referrals and therefore the number of lost and wasted hearing days and the increase in threats of judicial reviews as evidence of a trend towards over-cautiousness by the Investigating Committee. We do not consider that this necessarily demonstrates any failure in delivery of the GDC’s statutory function. To the extent that there may be any current trend towards over-referral of cases, we would expect that to correct itself once the committee and staff gain more experience and following feedback that may be generated from the cases once they reach formal hearings. We would suggest that the GDC may also benefit from providing feedback to Investigating Committee chairs and panellists on the reasons that individual cases are referred back to the GDC and subsequently closed by another Investigating Committee panel.

- 5.115 In any event, in our view, the corollary of this – the under-referral of cases – would be of greater concern to us, given the potential negative impact of that on public protection. We would only be concerned about any persistent trend of over-referral of cases if it impacted on public confidence in the regulatory process, or if it led to failures in the timeliness or quality of the GDC’s case-handling overall, due to its effect on the GDC’s resources. We will therefore monitor through the annual performance review process the number of cases referred back to the Investigating Committee under Rule 10 and the impact that this has on the GDC’s efforts to reduce the queue of cases awaiting a hearing. We will also continue to consider the quality of the GDC’s Investigating Committee’s decision-making as part of our fitness to practise audit process.
- 5.116 In addition to the concern that was raised by the Head of Prosecutions referred to in paragraph 5.97 above, the first current Investigating Committee Chair also raised an issue about the apparent advance drafting of committee decision documents. As noted above, Neil Marshall disagrees with those views and told us that this does not take place. We would not have concerns about the preparation of decision templates (including standardised wording) in advance of Investigating Committee meetings, as that may improve efficiency and throughput of cases as well as aiding consistency and clarity and minimising any risk of important factors being overlooked, but we would be concerned if there was any evidence that the content of the Investigating Committee’s decisions was being inappropriately influenced by GDC staff.⁵¹ We have not been told of any concerns that such pre-drafting has inappropriately influenced the Investigating Committee’s decision-making during the course of our investigation. We have not sought to explore this issue further during the course of our investigation. Should the GDC identify any evidence of such inappropriate influence, we would expect them to address this as a priority.
- 5.117 In relation to 11 specific concerns that were raised with us, our views are as follows.

Concern (i)

- 5.118 The former and current Investigating Committee Chairs did provide evidence that the senior caseworkers and the Committee Secretary commented on decisions and/or responded to factual queries during the Investigating Committee meetings. However, the Chairs’ experience of this interference varied across the Chairs, with most acknowledging that it occurred but not that it influenced their decision-making. We consider that it was not appropriate for GDC staff to interfere in the committee’s deliberations (if that is what occurred). It is important that the independence of the Investigating Committee’s decision-making is maintained. We note that the GDC has addressed this concern by removing caseworkers from Investigating Committee meetings. We also consider that the GDC should give some thought to the first current Investigating Committee Chair’s view that the role of the Investigating Committee secretary should be split, so that the secretariat and training function are carried out independently of

⁵¹ Our view is supported by the Court’s decision in Jennifer Colman (1) and John Patrick Hickey (2) v General Medical Council [2010] EWHC 1608 (QB).

each other. This would prevent any blurring of the role of the secretary at individual committee meetings.

Concern (ii)

- 5.119 There is documentary evidence provided by the second former Investigating Committee Chair of the casework staff, via the Committee Secretary, attempting to make changes to the decisions of the Investigating Committee. The first current Investigating Committee Chair has also told us of occasions on which they consider post-meeting changes have been made to decisions. As noted above it is not appropriate for GDC staff to intervene in committee decisions and we do not condone such actions. We note that the GDC is addressing this issue through the introduction of legally qualified Investigating Committee secretaries who now produce better quality recorded decisions so as to prevent the need for changes to be made to decisions and through better management and training of caseworkers.

Concern (iii)

- 5.120 An allegation was made to us that the GDC had failed to appropriately investigate an incident whereby a GDC staff member unilaterally changed a decision of the Investigating Committee. We have reviewed the investigation undertaken by the GDC and consider that this was reasonable. The staff and the committee chair directly involved in the matter were spoken to by Frances Low and documentary evidence was considered. Whilst it may well have been preferable for Frances Low to speak with the 'whistle-blower' and the other staff involved in the case in order to ascertain their knowledge of the events, we note that they were not directly involved in the events which led to the allegation and therefore would not have been able to provide direct evidence about the key facts of the matter. Following the investigation, Frances Low produced an investigation report for Evlynne Gilvarry and then for the Audit Committee which we consider were the appropriate governance reporting arrangements for such a matter. Whilst it may have been preferable to have informed the 'whistle-blower' of these reporting arrangements and maybe to have provided them with a copy of the investigation report itself rather than a summary of the report, the failure to do this does not render the investigation process unreasonable in our view. We note the 'whistle-blower's' concern that the term 'whistle-blowing' was not used in the summary investigation report produced by Frances Low for them – instead the phrase 'allegation of procedural irregularity' was used. We do not consider that the use of that phrase by Frances Low was untoward, because we have seen that the term 'whistle-blower' has been used interchangeably with 'informant' and 'complainant' throughout and across the documentation. Importantly, the report for the Audit Committee (the body responsible for managing the GDC's risks) does refer clearly to this matter as a 'whistle-blowing' allegation. We consider that the inconsistent use of the term 'whistle-blower' is more likely to be a result of the quality assurance process not being completed adequately so that inconsistency of terms was not identified.
- 5.121 We also consider that the outcome of the investigation was reasonable. Frances Low reached a considered view based on the evidence, she clearly highlighted that it was not possible to determine whether a message had been left with the

Chair, and she identified two areas of concern which she believed required attention. A progress report presented to the executive management team indicated to us that action has been taken to address the two areas of concern to prevent such an incident from recurring.

Concern (iv)

- 5.122 There were mixed views expressed to us by the former and current Investigating Committee Chairs about whether the Investigating Committee had been offered conflicting and incorrect legal advice by the previous Investigating Committee Secretary and the senior caseworkers. As neither were in a position to offer legal advice, we do not consider it appropriate that any such advice was given, and consider that if such advice was needed the case should have been adjourned until that advice could be obtained. However, we note that the GDC has addressed this issue by recruiting two legally qualified Investigating Committee secretaries and by removing casework staff from Investigating Committee meetings.

Concern (v)

- 5.123 The documentary evidence presented by the second former Investigating Committee Chair indicated that the Investigating Committee Secretary did not always record all the allegations on the Chair's allegation list and their and the first former and current Investigating Committee Chair's written evidence was that the Secretary did not always record decisions correctly or write them well. Similarly to the problems with the IT support, such inaccurate recording meant the Chairs often had to stay late or return the next day to correct the decisions. However, two of the other Chairs that we met/spoke with did not consider that the frequency of errors was exceptional and all of the current Investigating Committee Chairs (other than the first) considered that it was their role as Chair to ensure the quality of the decision (rather than that of the Committee Secretary). It is important that decisions are accurately recorded at the time to ensure that errors or queries do not arise after the event, and it is vital that parties to a fitness to practise case can rely on the recorded decision. However, we note that with the introduction of the legally qualified Investigating Committee secretaries, the current Investigating Committee Chairs consider that the quality of the recorded decisions has improved significantly. This view is also supported by the findings of our fitness to practise audit in 2012. We will keep this area of the GDC's work under review through our next fitness to practise audit.

Concern (vi)

- 5.124 The first and second former Investigating Committee Chairs provided documentary evidence that certain queries raised by the Investigating Committee Chairs were either not responded to at all, or a response was not received in a timely manner, and this was supported by the verbal accounts of some of the current Investigating Committee Chairs. This may (as the first current Investigating Committee Chair said) have been the result of the workloads of the Investigating Committee Secretary and the caseworkers at the relevant time. Whilst it is discourteous not to respond to queries, we are inclined to agree with the view expressed by two of the current Investigating Committee Chairs about

the appropriateness of the Chair raising such queries outside of the committee meetings. We agree that some queries such as ‘has a document arrived yet?’ can be made outside of a meeting, but in our view queries relating to requesting additional documentation should only be raised by the committee as a whole at the committee meeting. We note that the current guidance for the Investigating Committee does not expressly envisage any investigation (such as requesting additional documentation) by committee panellists in advance of a meeting. We recommend that the GDC considers whether there remains any scope for confusion about this amongst the Investigating Committee chairs, panellists and GDC staff in light of that guidance – and if so whether they would benefit from guidance/training on what queries should be made outside of committee meetings, and how such queries should be dealt with. This may improve consistency of approach across the committees and casework staff.

Concern (vii)

- 5.125 The first and second former Investigating Committee Chairs provided documentary evidence that the IT support provided to the Investigating Committee has been variable from 2010 onwards. This was supported by the verbal accounts provided by the current Investigating Committee Chairs. The inadequacies of the IT has resulted in Chairs having to stay late/return the next day to finalise the approval process for the committee’s decisions as well as delays in the deliberations of the committee. Whilst the current Investigating Committee Chairs recognised that there had been a recent improvement in IT support, they clearly also felt that there was still room for improvement. We understand that the GDC is subject to budgetary constraints and that it is already taking steps to improve the IT available to the Investigating Committee (it is piloting the use of iPads and electronic case bundles), however, administrative difficulties with IT can lead to inefficient processing of cases and we therefore suggest it considers if there is anything further it can do to improve the IT support available to the committee.

Concern (viii)

- 5.126 The second former Investigating Committee Chair provided documentary evidence about the concerns relating to the extent of the Investigating Committee’s workload at each of its meetings. This was supported by the verbal accounts provided by the current Investigating Committee Chairs. However, there are mixed views as to whether or not this impacts on the quality of decision-making (although it is recognised that it impacts on the committee’s ability to produce detailed reasons in every case, which is a concern we have also identified in our recent fitness to practise audit reports). We recognise that it can be difficult to judge the desirable caseload for individual committee meetings, so we are pleased to note the consistent view across the Investigating Committee Chairs and the Head of Prosecutions that the workload has reduced at each committee meeting, and the view of the Chairs that their requests for a more even caseload at each meeting have been listened to by the GDC. It is important that the Investigating Committee panels have sufficient time to consider each fitness to practise case in sufficient detail to enable them to reach and record robust decisions.

Concern (ix)

- 5.127 The verbal accounts provided by all the Investigating Committee Chairs indicated that the quality of the case bundles prepared for the Investigating Committee meetings is an ongoing concern. Whilst there is recognition that there has been some improvement, it is the Chairs' view that the quality is variable, depending on the individual caseworkers who prepare the bundle – indicating that this is an issue with the management and training of caseworkers. It is important for robust and efficient decision-making that the case bundles enable the committee chair/panellists and the committee secretary to identify the key issues and documentation. We would reiterate the Chairs' request that an agreed format for the case bundles is developed and adhered to by the caseworkers. We are reassured to note that the GDC has included as part of its annual quality assurance programme an internal audit of its case bundles by its compliance team. This should also mean that any weaknesses in performance are identified, so that they can be promptly addressed.

Concern (x)

- 5.128 The first former Investigating Committee Chair presented documentary evidence that the GDC breached the confidentiality of individual parties to fitness to practise cases when it mistakenly sent the first former Investigating Committee Chair (after they had resigned) papers relating to a forthcoming Investigating Committee. Whilst we recognise that the GDC acted appropriately when this was brought to its attention – it referred the matter to the Information Commissioner and notified the parties involved of the breach – such breaches of confidentiality are not acceptable. We publicly reported in the performance review report 2011/12 our view that such actions equate to inconsistent performance with standard 10 of the Fitness to Practise Standards of Good Regulation. We will follow up with the GDC in this year's performance review the actions it has taken to improve its performance in this area.

The additional concern raised with us by the first former Investigating Committee Chair

- 5.129 We do not consider, based on the evidence we have seen, that Neil Marshall behaved in an untoward manner when he disclosed information to another regulator in relation to one of their registrants. Neil Marshall was entitled to make such a disclosure in the public interest (according to the Dentists Act 1984 as amended in 2005) and was entitled to make that referral in the name of the Registrar (according to the GDC's scheme of delegated authorities).

Concluding remarks

- 5.130 It is clear that there were deficiencies in the support and operation of the GDC's Investigating Committee which impacted on the efficiency and effectiveness of the committee from at least mid-2010 until early 2011. Whilst mindful of the organisational difficulties facing the GDC at that time, we do not consider that these weaknesses should have been allowed to remain unaddressed for such a significant period of time, particularly given the amount of feedback provided to GDC staff in the governance department in relation to these concerns. That said, having considered all of the evidence, we do not consider that these weaknesses

were sufficient individually or collectively to amount to a failure on the GDC's part to carry out its statutory function in relation to the Investigating Committee stage of the fitness to practise process.

- 5.131 We are satisfied that the work the GDC has already undertaken or is currently undertaking to improve its performance (as outlined above) is leading to some improvement in the GDC's performance. This is evidenced through our findings in our most recent fitness to practise audit report and through the views of both committee panellists and GDC staff. However, there are no grounds for complacency – the GDC should ensure it considers fully those concerns that have been raised with us which remain unaddressed by the changes that have already been made. We will also continue to monitor the GDC's performance through our scrutiny function – our review of final fitness to practise decisions, the annual performance review and the fitness to practise audits. Our next public report on the GDC's performance will be the performance review report 2012/13 which will be published in June 2013. We expect the GDC to demonstrate to us through the performance review process the positive impact of the work it has already undertaken, as well as the continuation of its programme of improvements.

6. Conclusions

6.1 We were asked by the Department of Health to advise whether:

- Concerns raised by the former Chair of the GDC, Alison Lockyer about the organisation's governance indicate that the GDC may have been failing to fulfil its statutory functions
- There are concerns about the actions of individuals on the Council which ought to be drawn to the attention of the Appointments Commission.

6.2 We answer each question in turn below.

Do the concerns raised by the former Chair of the GDC, Alison Lockyer about the organisation's governance indicate that the GDC may have been failing to fulfill its statutory functions?

6.3 The GDC's statutory functions are set out in the Dentists Act 1984 (as amended). The purpose of the GDC is to protect the public by regulating dentists and dental healthcare professionals in the United Kingdom. In particular, the GDC: registers qualified professionals; sets standards of dental practice and conduct; assures the quality of dental education; ensures professionals keep up to date; helps patients with complaints about a dentist or a dental care professional; and works to strengthen dental patient protection.

6.4 We have concluded as a result of our investigation that the instability within the executive management team and the staff of the GDC during 2009/10 contributed to difficulties that the GDC encountered in achieving significant improvement in the organisation's performance during 2010. In particular, we note that a number of weaknesses in the Investigating Committee stage of the GDC's fitness to practise process developed during 2009/10 (partly, it appears as a result of changes that had occurred during 2009) which did not start to be addressed until the new executive management team came into post in early 2011.

6.5 It also appears to us that a lack of clarity in 2009/10 about the respective roles of the interim CE, the Chair (a new position at the time), and the newly constituted Council led to uncertainty and a loss of confidence on the part of some Council members in both the first interim CE (Alison White) and in Alison Lockyer (as Chair); and on the part of the Chair in the lay members of the Council and subsequently in Evlynne Gilvarry as CE. We consider that this lack of clarity of roles, alongside the numerous changes in leadership and staff that occurred during 2009/10 and the lack of adequate performance data available at the time, created obstacles for the GDC's achievement of its objective of improving its performance.

6.6 At the same time there were clearly gaps in the GDC's governance arrangements (including the lack of an up-to-date procedure for handling complaints about Council members/the Chair). It appears that the Council was slow to address these issues in the first 10 months of 2010. We acknowledge that the loss of the GDC's Director of Governance in February 2010 and the loss of the GDC's experienced CE from December 2009 will have contributed to this issue. Nevertheless, the gaps had been identified by the outgoing Council, and

- therefore must have been apparent to those Council members who had been members of the outgoing Council, including the Chair.
- 6.7 Notwithstanding this and the fact that improvements can still be made (as set out in various parts of this report), we do not consider, based on the evidence, that the GDC has failed or is failing to carry out its statutory functions.
- 6.8 We consider that Alison Lockyer's allegation that the GDC did not adequately protect the public during the period when she was Chair demonstrates a misunderstanding of her role as Chair. The GDC's Chair is expected to deliver effective strategic leadership of the Council, including oversight of the effective running of the organisation as a whole. In our view, if it were established that the GDC had failed to protect the public during the period when Alison Lockyer was the GDC Chair, then she would, by virtue of her role as the Chair at the time, bear some personal responsibility for that failure.
- 6.9 Under Evlynne Gilvarry's management, following the recruitment of a new executive management team, we have seen a commitment to ensuring that the weaknesses in the GDC's performance (both in terms of its governance and its fitness to practise function) are identified and addressed. In our view, this has been undertaken in a transparent manner with both the Council and the GDC's stakeholders being informed of the relevant plans. In particular the quality of the performance data provided to the Council to enable it to hold the executive to account has improved since mid-2010, which has in itself led to an increase in the level of confidence that the Council members to whom we spoke have in the executive team.
- 6.10 We do not consider, based on the evidence, that the GDC's investigations into the matters concerning Alison Lockyer and the two former Investigating Committee Chairs adversely affected the GDC's ability to manage and progress its programme of improvements.
- 6.11 On the basis of the evidence we have seen, we have not concluded either that the GDC behaved inappropriately in relation to the investigation of the matters that were raised concerning Alison Lockyer and each of the two former Investigating Committee Chairs, or that the GDC's actions were triggered by 'challenges' that previously had been made by these individuals to the executive. We consider that it was appropriate for the GDC to treat each of the matters as complaints, given their seriousness, even where the matter emerged from a 'concern' or 'feedback' provided. However, we consider that it might have been beneficial if the GDC had communicated more clearly at an early stage with each of the individuals concerned about the process that would be followed to deal with each complaint/concern/set of 'feedback'. Clearer communication about this issue might have avoided some of the concerns that arose subsequently.
- 6.12 It is clear that a number of Investigating Committee panellists and GDC staff raised concerns about the support available to the Investigating Committee on various occasions, and particularly during the period from mid-2010 until early 2011. It appears that these concerns were not appropriately addressed and/or escalated to senior management until early 2011. This may have been, at least in part, due to the absence of a Director of Governance from February 2010, as well as a lack of shared understanding at that time about whose responsibility it was to investigate and action any such concerns promptly. It seems likely that the

various changes in the staff responsible for servicing the Investigating Committee during that period, and their relative lack of experience of that type of work, would have been a further contributory factor. Having carefully considered these issues (and the evidence which goes to them), we do not consider that this ultimately meant that the GDC failed in its statutory duties with regard to fitness to practise matters. We are pleased to note that there is a general consensus that many of the issues have been fully or partially addressed by the programme of improvement work that was initiated in 2011. We are satisfied that the work the GDC has already undertaken or is currently undertaking to improve its performance (as outlined above) is leading to some improvement in the GDC's performance, as evidenced in our most recent fitness to practise audit report.

- 6.13 We consider that Evlynn Gilvarry, the new executive management team, the new Chair Kevin O'Brien (who was elected in September 2011) and the Council are now working together effectively to improve the governance and the performance of the GDC. We are confident that the standard of the GDC's governance arrangements is now reasonable, and that the GDC understands where and how it needs to improve its performance, and is in a position to do so.
- 6.14 We appreciate that it can take time for the impact of wide-reaching and significant changes to become evident within an organisation's day-to-day activities. We also acknowledge that the GDC will require time to rebuild and instil confidence in its staff, its Council and its stakeholders. We look forward to seeing evidence of improvements in the coming months, including in our next audit of the initial stages of the fitness to practise process, and in our annual performance review.

Are there concerns about the actions of individuals on the Council which ought to be drawn to the attention of the Appointments Commission?

- 6.15 Until October 2012 the Appointments Commission held the power on behalf of the Privy Council to remove or suspend GDC Council members. The Appointments Commission was empowered to carry out the Privy Council's functions on appointments of regulators' council members – and 'appointment' has an extended definition when applied to this function according to the Health Act 2006, s71 (2) (In this Part 'appointment' includes – (a) any process involving an appointment (whether described as re-appointment or replacement or otherwise) including a temporary appointment; and (b) nomination for appointment; and also includes removal or suspension from office).
- 6.16 That power has now reverted to the Privy Council itself, and a new process has been set up by which the Privy Council can seek assistance from the Professional Standards Authority for Health and Social Care (CHRE's new name) prior to reaching any decision.
- 6.17 The GDC's Constitution Order sets out the grounds for removal and suspension.
- 6.18 Having carefully considered all of the matters identified in this report, we have not identified any concerns about the actions of individual GDC Council members which we consider should be drawn to the attention of the Privy Council.
- 6.19 Alison Lockyer did not specify either in her letter to the Secretary of State or in the information she gave to us whether she thought that the actions of any particular Council member/members were of sufficient concern that they ought to

be reported to the Appointments Commission. The only comment that Alison Lockyer made to us about this aspect of our investigation was that in her view Council members 'do not know what is going on' and 'are not actioning anything'. Alison Lockyer referred to questions that some Council members had asked that indicated that they did not know which committees were statutory committees. She also said that the outcome of our 2011 audit of the initial stages of the GDC's fitness to practise process is 'proof that the organisation is not taking effective action'. We spoke to 15 members of the Council⁵² and were satisfied that as a group they are well aware of their role in ensuring delivery of and improvement in the GDC's statutory functions. We have also reviewed the publicly available evidence of the work that the GDC has been undertaking in the form of its Council papers. We have not seen any evidence to demonstrate that this allegation about the capacity/activities of the GDC's Council members is correct. In any event, we do not consider that a lack of knowledge about the statutory/non-statutory status of a particular committee (particularly if that lack of knowledge was displayed by a recently-inducted new Council member) is a matter that merits referral to the Privy Council, although we accept that it may result from a 'gap' in that individual's induction and we note that the Council itself has already identified the relevant learning from the induction process that was provided in 2009 with the aim of improving this in future.

- 6.20 Nor do we agree that the findings of our 2011 fitness to practise audit demonstrated a failure by the organisation to take effective action at that time. By the time that audit took place, Neil Marshall was in post and had already identified a number of improvements that needed to be made to the fitness to practise process, and was making arrangements to implement those improvements. We would however agree that it is disappointing that the GDC did not take effective action to address the weaknesses in its fitness to practise process that we identified in our 2009/10 and 2010/11 audits and in our performance review for 2009/10 (published in summer 2010) more promptly. This issue was the responsibility of the Chair, the Council and the executive in place at the time.
- 6.21 The only issues that have been drawn to our attention in relation to specific individual Council members were highlighted by Alison White. She described to us what she considered to be dysfunctional behaviour on the part of two Council members during her period in office (November 2009 to May 2010). These matters raised by Alison White have not been specifically investigated for the purposes of the report and therefore we make no comment as to their correctness. Based on the limited information we have considered in connection with this however, we do not regard these matters as being serious enough to merit a referral to the Privy Council.
- 6.22 Whilst we do not consider that the GDC was failing at the relevant time or is failing currently to fulfil its statutory functions or that there are any individuals on the GDC's Council whose actions ought to be drawn to the attention of the Appointments Commission (or now the Privy Council), we have identified some general learning that can be gained from the experiences of the GDC that we believe is relevant to the work of the Department of Health, the other health

⁵² See paragraph 1.11 above.

professions regulators, as well as the work of the Professional Standards Authority. We set out that learning below.

Planning for effective transition

- 6.23 The importance of effective succession planning became clear to us throughout the course of this investigation. The GDC's experiences in 2010 suggest that any succession planning that was undertaken in preparation for the changeover of the GDC's Council and Chair in 2009, and following the announcement of the resignation of Duncan Rudkin, was inadequate. There is a general consensus amongst the current Council members to whom we spoke that the induction they received was not as effective or detailed as it should have been. The Council members to whom we spoke said that their induction contained insufficient focus on the performance of the GDC and therefore the priorities the Council should have, and they said that the training was too generic and not sufficiently tailored to individual members' needs.
- 6.24 It seems that that there was no separate formal induction provided to either Alison Lockyer or Evlynn Gilvarry in relation to their roles (we understand from Hew Mathewson that an induction had been planned for Alison Lockyer, but it did not take place as planned). It appears to us that some of the allegations that Alison Lockyer has made have their source in the lack of a shared understanding between her and the various holders of the CE post at the GDC during the period when she was in office about the appropriate boundaries of the role of the Chair, the Council and the CE/executive management team respectively, and how these relationships might appropriately differ from those between the previous Council, its President and the CE/executive management team.
- 6.25 We have concluded that the GDC's inadequate succession planning in 2009 was a contributing factor in the difficulties subsequently experienced, and it may be that a clearer and/or more detailed induction process (including a formal induction for the Chair and for any interim senior executive post-holder) might have prevented some of these issues from arising.
- 6.26 We also consider that some of the issues that prompted our investigation originated from the GDC's failure in 2009/early 2010 to prioritise a thorough review of its governance policies, in light of the changes that occurred in 2009. This caused particular difficulties when a complaint about the Chair was received, as the procedure for handling such complaints had not been appropriately updated. This highlights the importance of having planned arrangements for both formal periodic reviews of governance and other policies and procedures, and of reviewing such policies and procedures shortly after any constitutional changes are made, to ensure that they are up to date.

The Council

- 6.27 It became apparent during our investigation that the relatively large size of the GDC's Council had the potential to limit its effectiveness. In our advice to the Department of Health⁵³ in 2012 we highlighted that smaller sized councils are able to communicate more effectively, reach decisions more quickly, are less likely to suffer fragmentation and clique-formation, and are in a better position to focus their efforts on core governance issues than larger ones. The information that we have been given by GDC Council members during the course of this investigation demonstrates that the Council may have suffered from fragmentation, that some of its communication on matters discussed at Council meetings has not been entirely clear and that the Council (albeit because of the circumstances it found itself in) sometimes struggled to maintain the boundary between operational and strategic matters. Concerns about the potential impact the size of the Council has on its effectiveness have also been raised with us by several Council members and by Evlynne Gilvarry. We are therefore pleased that the GDC will be moving to a smaller Council in 2013, following the Department of Health consultation that concluded during 2012.
- 6.28 As well as the size of the Council, we have seen the difficulties that can arise when the chair of a regulator is elected rather than appointed. As some GDC Council members commented to us, when a chair is chosen by election, they effectively self-certify their suitability for the role, albeit that this may be done by reference to an agreed role brief or set of competencies. Importantly, an elected chair is not assessed against a chair-specific set of competencies. That means that the person may be unsuitable, but it also means that they may have to deal with additional 'political' considerations once in office, if the election was contested. By contrast, a chair that has been selected by appointment against defined competencies which have arisen from an agreed and clear definition of the role and responsibilities of a chair is likely to be better able to lead the organisation with authority and credibility. We are therefore pleased to note that work has already begun to change the GDC's governing legislation, so that in future its Chair will be appointed against a defined set of competencies rather than being elected.
- 6.29 We have also heard from GDC Council members about the difficulties arising due to the relatively few meetings the Council held each year. Council members told us (when we met with them in 2011) that the small number of Council meetings meant that the meeting agendas were substantial, generally containing more than 20 items of business. Concerns were raised with us by Council members that this could result in matters not being considered in sufficient detail, or in time running out before all the agenda items had been considered. This is clearly not beneficial to the efficient and effective running of an organisation. We are pleased to note that the GDC has increased the number of scheduled Council meetings for both 2012 and 2013 and we will expect the GDC's Council to keep under review whether these scheduling changes are sufficient to facilitate the effective governance of the organisation.

⁵³ CHRE, 2011. *Board Size and Effectiveness: advice to the Department of Health regarding health professional regulators*. London: CHRE. Available from: <http://www.professionalstandards.org.uk/docs/psa-library/september-2011---board-size-and-effectiveness.pdf?sfvrsn=0>

- 6.30 Whilst we have concluded in paragraph 6.21 above that the behaviour of two Council members during early 2010 does not require referral to the Privy Council, these issues may highlight a gap in the procedures that were in place in 2010 to deal with such concerns, and/or a lack of guidance/training provided to the Chair about how to handle any behaviour issues relating to individual Council members. We would encourage the GDC to ensure that all Council members have received appropriate training to facilitate a professional working relationship between each Council member and GDC staff based on mutual respect and a shared understanding of strategic priorities and operational boundaries; as well as ensuring that prompt and appropriate action is taken (in accordance with the procedure set out in the GDC's *Governance Manual*) in the event that a Council member behaves inappropriately either towards staff or towards another Council member.

Information sharing

- 6.31 One of Alison Lockyer's principal allegations was that Evlynn Gilvarry had failed to share information with her and with the Council about the GDC's performance. Whilst we do not consider that this allegation has been substantiated, it does raise an important issue about the extent and types of information that should be shared with regulators' councils. It is an established principle of good governance that the executive management team should manage operational matters while the council focuses on strategic matters. However, there will be times where the boundaries between operational and strategic matters are blurred. It is therefore important that there is a shared understanding between the CE and the council about the matters that should be brought to the council's attention. We recommended in our report on the General Social Care Council⁵⁴ that 'the executive should be open, transparent and comprehensive when reporting to Council and its committees, and should be able to do so with confidence of support through constructive challenge'. One way to achieve this may be the suggestion made to us by one GDC Council member that criteria should be developed and agreed by the GDC's Council to establish which matters should be brought to its attention by the CE/executive management team, in order to avoid any potential misunderstanding about where the boundaries of responsibility for operational matters lie.
- 6.32 Several Council members described the difficulties they had encountered when trying to obtain performance data throughout most of 2010. They considered that this hindered their ability to have effective oversight of the GDC. This issue has been resolved and, as a result of the improvement work that Evlynn Gilvarry and the new executive management team have carried out, the Council now receives a detailed performance report at each of its Council meetings, which covers performance across the GDC's statutory functions as well as organisational complaints. The reports detail the GDC's activities as well as the throughput of its work and its outcomes. The Council members we spoke to about this told us that the quarterly reports helped them to understand the GDC's performance at a glance and improved their oversight of the GDC. We are aware

⁵⁴ CHRE, 2009. *Report to the Secretary of State on the Conduct Function of the General Social Care Council*. London: CHRE. Available from: [http://www.professionalstandards.org.uk/docs/special-reviews-and-investigations/general-social-care-council-review-\(september-2009\).pdf?sfvrsn=0](http://www.professionalstandards.org.uk/docs/special-reviews-and-investigations/general-social-care-council-review-(september-2009).pdf?sfvrsn=0)

that some of the other regulators also produce such reports for their councils, and we would recommend that those that do not currently do so should consider adopting a similar practice.

The role and remit of interim chief executives

- 6.33 Alison White began an organisational restructure and a major review of the GDC's regulatory processes in January 2010, shortly after she began her role as interim CE. We expressed concern at the time about the speed of the changes and asked for assurances (which were given to us by her and by Alison Lockyer as Chair) that the appropriate processes had been followed in undertaking these changes.
- 6.34 It has become clear during our investigation that several of the Council members felt that Alison White exceeded her remit, which they understood to be that of a 'caretaker' within an organisation which was not considered to be failing at the time of her appointment. This appears to have led to a loss of confidence in the executive amongst certain members of the Council. Whilst it would be unusual for an interim CE to be expected to make wide-ranging changes in circumstances where the organisation was not considered to be failing at the time of their appointment, we note that Alison White's remit was not restricted to that of a 'caretaker', and that she sought legal advice to establish that she was acting within her powers as interim CE. She also told us that she had sought the approval of Alison Lockyer and had informed Alan MacDonald of her proposals before taking action (both Alison White and Alan MacDonald agree that it was not within his remit to approve her actions on behalf of the Council). We also note that Alison White's view is that the extent of the resourcing problems that the GDC was facing when she was appointed was not appreciated by the organisation's leadership at that time. In contrast, the former President told us during the course of this investigation that at the time of his departure, the GDC was 'in very good order'.
- 6.35 It is clearly important that any interim CE (or indeed any other senior post-holder) is given an adequate and clear briefing about what is expected of them, and that the boundaries of their role are made clear to the council and its chair and other senior staff within the organisation, as well as to the individual concerned. The lack of a shared understanding in this case of the extent of Alison White's remit appears to have given rise to mismatched expectations and a consequent loss of confidence in the executive amongst certain Council members.

The accountability of the Chair and the Council

- 6.36 Council members and chairs are responsible for the performance of the organisation, and need to approach their task with a seriousness of purpose, probity, and integrity. Individual responsibility requires them to be sure they understand, to challenge, and to raise issues as they identify them, and to ensure they are addressed.

6.37 The role of chair is a key role in the leadership of a regulatory body. Chairs are responsible for leading their councils in holding the executive to account, for providing effective leadership, and for setting the strategic direction of the organisation. They are also responsible for working effectively with the executive management team in order to ensure that the organisation's objectives are delivered.

7. Recommendations

7.1 We make the following recommendations to the health professions regulators.

The health professions regulators

7.2 We recommend to the GDC and the other health professions regulators that they reflect on the experiences of the GDC as set out in this report, and that they ensure that they:

- Review the processes in place to investigate complaints about council members (including chairs) and the arrangements for reporting the outcome of such investigations to the council and to the audit and risk committee
- Plan for key changes in personnel (the council, the chair of the council, the CE and the executive management team) as early as possible
- Put in place appropriate arrangements to identify any changes that are necessary to ensure strategic oversight of the changes to be made, as well as to monitor of the progress of those changes
- Put arrangements in place for periodic review of governance and other policies and procedures, to ensure that they remain up to date, as well as for reviews to take place following any significant organisational change
- Implement induction processes that are tailored to the needs of individual participants, and which enable a clear and shared understanding to be achieved about the current performance of the regulator (both in relation to any areas of concern, and any areas of achievement), about the respective roles the council, chair of the council and the CE play in the leadership and operation of the regulator, as well as where the boundaries between those roles lie
- Consider our advice to the Department of Health on board size and effectiveness
- Review the arrangements they have in place concerning the number and length of council meetings, in order to ensure that councils have sufficient time available at those meetings to focus on matters that are key to their strategic role
- Consider the arrangements in place between the chair and the CE for the approval of agendas and papers for council meetings
- Review the performance data provided to their councils to ensure that data enables sufficient oversight of the regulator's performance
- Discuss with their councils whether there is a clear and shared understanding about which matters that affect the regulator's performance, the regulator's strategy or the regulator's reputation should be brought to council's attention by its CE/executive management team

-
- Review the processes and support that they have in place for their investigating committees, including the arrangements for gathering and monitoring feedback received.

8. Annex 1 – Letter from Department of Health 3 June 2011

3 June 2011

Harry Cayton
Chief Executive
Council for Healthcare Regulatory Excellence
157-197 Buckingham Palace Road
London
SW1W 9SP

Dear Harry

Subject: Resignation of the Chair of the General Dental Council

I am writing to you regarding the resignation of Dr Alison Lockyer as Chair of the General Dental Council (GDC).

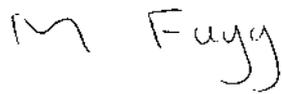
The Department is aware that in her resignation letter to the Council of 4 May, Dr Lockyer raised concerns about the role of the Council's executive and that she alleges gross breaches of the principles of natural justice in the process they adopted to look into her conduct. Concerns have also been raised with Ministers about the possible impact that the Chair's resignation may have on the work that the Council has in hand to address the concerns about delays in the Council's handling of fitness to practise cases. Those concerns were raised by the Council for Healthcare Regulatory Excellence in its latest performance review of the health professions regulatory bodies.

The Parliamentary Under Secretary of State for Public Health's letter to you of 19 April asked that you keep the Department apprised of progress made by the GDC in addressing the issues raised in the latest performance review. As part of your ongoing work, I would ask you to consider paying particular attention to the GDC's performance in respect of its fitness to practise function at this time.

I would also ask you to advise the Department of Health whether, in the opinion of the CHRE, the concerns raised by Dr Lockyer about the governance of the GDC suggest that the GDC may have in any way be failing to deliver its statutory functions, or whether there are concerns about the actions of individuals on the Council which ought to be drawn to the attention of the Appointments Commission.

As you are well aware the GDC is independent of Government and the decision of the Council to seek a vote of no confidence in its elected Chair is essentially an internal matter. However, our view is that the Department has a legitimate interest here as we act as both advisors to the Privy Council (to which the GDC has certain accountabilities and which has delegated to the Appointments Commission its appointments functions in relation to the GDC's Council) and as sponsors for the Appointments Commission. Depending on CHRE's advice, we may need to consider whether any further action is appropriate, or whether there are matters here which should be drawn to the attention of other persons.

Yours Sincerely

A handwritten signature in black ink that reads "M Fagg". The letters are cursive and slightly slanted.

Matthew Fagg
Acting Head of Professional Regulation

9. Annex 2 – Letter from Department of Health 28 July 2011

28 July 2011

Harry Cayton
Chief Executive
Council for Healthcare Regulatory Excellence
157-197 Buckingham Palace Road
London
SW1W 9SP

Dear Harry,
Subject: Resignation of the Chair of the General Dental Council

I am writing to you in follow up to Matthew Fagg's letter of 3 June 2011, regarding the resignation of Dr Alison Lockyer as Chair of the General Dental Council (GDC).

That letter asked you to advise the Department of Health whether, in the opinion of the CHRE, the concerns raised by Dr Lockyer about the governance of the GDC suggest that the GDC may have in any way be failing to deliver its statutory functions, or whether there are concerns about the actions of individuals on the Council which ought to be drawn to the attention of the Appointments Commission.

The Department has written to Dr Lockyer seeking permission to share her correspondence to the Secretary of State for Health directly with CHRE, but has received no response within the timeframe requested. I therefore attach below a summary of the concerns she raised, which we made clear was our intention to submit to you.

We look forward to hearing from you on the issues raised in Matthew's letter and would be grateful if you could indicate when this might be. If you have any further queries then please don't hesitate to contact me.

Yours Sincerely,

Alexandra Mortimer
Head of Non-Medical Regulation
Professional Standards Division

Direct line: 0113 2545839
Email address: alexandra.mortimer@dh.gsi.gov.uk

The Department of Health's summary of concerns raised with the Secretary of State about the functioning of the GDC on the occasion of the resignation of the former Chair

An investigation is required into the functioning and conduct of the GDC executive, for the following reasons:

The former Chair has admitted that she made a mistake when she allowed a personal reference for a colleague to be issued in her name on GDC headed notepaper which was then used for a purpose for which it was not intended. However, there was then an inadequate investigation process, which was in breach of the requirements of natural justice and unlawful, and was seized on in an inappropriate and excessive way, possibly with the intention of discrediting the Chair and forcing her to leave her office.

A second complaint, which is still being investigated, was raised immediately after the conclusion of the investigation into the first complaint. This second complaint had no sensible basis, as it related to conversations between the former Chair and a member of staff about issues that were well within the remit of the Chair.

A vote of no confidence in the Chair was tabled, but members of Council had not been given full and accurate information about all relevant circumstances by the executive. The procedure proposed by the executive for debating this motion was unfair, in that the Chair would have been called upon to respond to a debate from which she had been excluded!

There are concerns about the working of the GDC executive and its relationship with the Council. Specifically, there is a risk that the extent to which the executive has become embroiled in internal disputes could affect adversely the GDC's primary duty to protect the public. In particular, the chief executive has spent a disproportionate amount of time on internal disputes and a pattern may be emerging where a challenge to executive decisions is countered by complaints directed at the challenging person. Of the six Chairs of the statutory Investigating Committee, two have resigned, as a result of the way in which internal issues concerning them were handled.

10. Annex 3 – Role brief for Chair

The General Dental Council (Constitution) Order 2009 (the Order) provides that the Council should elect a Chair from its own number. The Order states that ‘the term of office of a chair is to be determined by the Council on appointment but it shall be for a period that is no longer than the period between the chair’s date of appointment as chair and the date on which the chair’s term of office as a member is due to expire (irrespective of whether or not they are thereafter reappointed as a member)’⁵⁵

The Order also states that ‘A member serving as a chair shall cease to be chair –

- (a) *On ceasing to be a member*
- (b) *If the member resigns as chair, which the member may do at any time by a notice in writing to the Council;*
- (c) *If the member’s membership of the Council suspended by the Privy Council; or*
- (d) *If a majority of the Council, excluding the chair (but not simply a majority at a quorate meeting), votes to terminate the member’s appointment as chair.*⁵⁶

Role brief

In addition to the duties of a Member the Chair of the Council of the GDC is to play a key role in the leadership of the Council. The Chair is the first among equals whose role is to promote and support the Council and the Nolan Principles by leadership and example.

Leadership

- Model and uphold the Council’s values
- Chair Council meetings to ensure open discussion and informed decision-making
- Provide strong non-executive leadership of the Council of the GDC and encourage open and pro-active accountability to the public and patients
- Lead the Council in setting the strategic direction for the GDC
- Facilitate the effective contribution of Members
- Ensure that the Council works collectively and that each Member puts the interests of the GDC before their own.

Governance

- Support and develop Council Member’s performance
- Promote the Council Code of Conduct and deal with complaints from and about Council Members in accordance with any complaints procedure agreed by the Council⁵⁷

⁵⁵ 8(2) of the Order.

⁵⁶ 8(3) of the Order.

- Ensure that the Council focuses on governance, strategy and on ensuring that the GDC is performing to the required standards
- Lead the Council in holding the executive to account
- Lead the Council in exercising financial stewardship.

Internal relationships

- Work together with the Chief Executive and Registrar to ensure that the complementary roles of the Council and the executive to deliver the GDC objectives
- Support constructive relations between Council members and between the Council and the executive
- Act as a formal and informal conduit between members and between the Council and the Executive and support conflict resolution
- Lead, in consultation with the Remuneration Sub-Committee, the assessment of the Chief Executive's performance.

External relationships

- Act as an ambassador for the Council, inspiring confidence in the organisation by developing and maintaining constructive collaboration, networking and consultation with key stakeholders
- Promote public confidence in dental regulation
- Undertake media interviews and contribute to media broadcasts
- Represent the GDC at meetings with Ministers and with Assembly and Parliament members throughout the UK
- When called upon to do so, account for the GDC's performance to House of Commons Committees or to public inquiries
- Represent the GDC in meetings with leaders of patient and consumer organisations, leaders of the dental professions, educational leaders and employers, senior figures in other regulatory and public authorities, and other stakeholder groups
- Develop partnership working with the Chair of the Council for Healthcare Regulatory Excellence and chairs of the other healthcare professional regulators.

This role brief is an indication of the duties of the incoming Chair. Following election the chair may want to develop the role brief with Council to fit with their style of chairing.

⁵⁷ The current complaints procedure, agreed by Council in June 2004.

11. Annex 4 – Disciplinary Procedure for Statutory Committee Members (used as the framework for the investigation of the first matter raised about Alison Lockyer)

GENERAL DENTAL COUNCIL DISCIPLINARY PROCEDURE FOR STATUTORY COMMITTEE MEMBERS

Part 1: Introduction

Who this procedure applies to?

1. This procedure applies to all members of the Investigating Committee, the Health Committee, the Interim Orders Committee, the Professional Conduct Committee, the Professional Performance Committee, and the Registration Appeals Committee. When deciding whether to remove or suspend a Committee member from the relevant Committee, the Appointments Committee must normally follow this procedure. Any minor deviation from this Procedure will not invalidate the process.
2. The application of this procedure is subject to the Dentists Act 1984 and the General Dental Council (Constitution of Committees) Rules Order of Council 2009.
3. A member of staff of the General Dental Council who wishes to make a complaint against a Committee member should use the Council's Fairness at Work Procedures⁵⁸ before following this procedure.

The test for removing a Committee member

4. The Appointments Committee shall remove a Committee member if and only if, it is satisfied that any of the conditions set in Rule 7(1)(a) – (l) inclusive of the General Dental Council (Constitution of Committee Rules) 2009 are fulfilled.
5. The Appointments Committee may suspend a Committee member if and only if the member has become a person to whom Rule 8(1)(a) - (e) or 8(2) of the General Dental Council (Constitution of Committees) Rules 2009 applies. The Appointments Committee must suspend a Committee member if the member is a person to whom Rule 8(2) of the General Dental Council (Constitution of Committees) Rules 2009 applies.

⁵⁸ General Dental Council, *Fairness at Work: Policy and procedures to deal with problems in the workplace*, May 2007, V1.0.

Part 2: Complaints about Committee members

6. If a member wishes to talk through the issues before raising a formal complaint they are encouraged to speak to the Head of Hearings or the Secretary of the Investigating Committee (as appropriate).
7. Complaints about a Committee member's behaviour, or relevant information about a Committee member, should be submitted in writing in confidence to the Secretary of the Appointments Committee within two months of the event being complained about or within two months of the complainant⁵⁹ finding out about the event.
8. Complaints may also be raised via the Head of Hearings or the Secretary of the Investigating Committee (as appropriate) under the appraisal system and/or Capability Procedure⁶⁰ if a Committee member's performance is persistently identified as poor (through team or individual performance review or other means), or there are serious concerns about his or her behaviour, or where the member has failed to respond to remedial training and support to improve performance.
9. The Secretary of the Appointments Committee will refer the complaint, or information, to the Chair of the Appointments Committee within 5 working days of receiving it.
10. The person against whom the complaint has been made (the Committee member) will be informed of the complaint by the Secretary of the Appointments Committee and will be provided with a copy of the complaint and any supporting documentation. Observations from this individual will be sought in writing.
11. It is not the role of the Committee member or the complainant to contact witnesses and/or gather supporting evidence.
12. The Chair of the Appointments Committee may decide to accept complaints that are not made in writing, or not made within two months, if he/she feels that it is reasonable under all the circumstances to do so. The Chair will deal with the complaint in a timely manner.
13. If the Chair of the Appointments Committee receives information that leads him/her to believe that the fitness to practise of a Committee member who is also a registered dentist or registered dental care professional may be impaired then the Chair: –
 - (a) must refer that complaint or information to the Registrar for consideration under the General Dental Council (Fitness to Practise) Rules Order of Council 2006; and

⁵⁹ The person making the complaint will be known as the complainant.

⁶⁰ The Capability Procedure is currently under development by the Appointments Committee.

- (b) must not consider that complaint or information under this procedure until it has been considered under the General Dental Council (Fitness to Practise) Rules Order of Council 2006 (including where the Registrar has decided under rule 3 of those Rules that the complaint or information does not amount to an allegation).
14. If it appears to the Chair of the Appointments Committee that a member has come within Rule 8 of the General Dental Council (Constitution of Committee 2009) then the Chair should: –
- (a) advise the Head of Hearings and/or Secretary of the Investigating Committee; and
 - (b) call a meeting of the Appointments Committee as soon as possible and recommend to the Committee (giving reasons) that the member should be suspended from sitting on Panels or Committees whilst investigation or proceedings concerning the member's fitness to practise are ongoing.⁶¹

Part 3: Consideration by the Chair of the Appointments Committee

15. To assist the Chair of the Appointments Committee in making a decision on how best to deal with the complaint under paragraph 16, he/she shall: -
- (a) invite the complainant and the person against whom the complaint has been made (the Committee member) to attend a preliminary meeting to ascertain the substance of the complaint, this meeting may be held separately or jointly and should be held with 10 working days of receiving the complaint (subject to the interested parties' availability);
 - (b) ask the Head of Hearings and/or Secretary of the Investigating Committee to provide details of any issues which have been raised by the appraisal system and/or performance management actions which directly relate to the complaint being made; and
 - (c) consider any complaints raised under this Procedure, within the last 2 years, which were upheld.
16. Where a complaint has been referred to the Chair of the Appointments Committee under Part 2, the Chair must decide whether: –
- (a) the complaint should be dismissed;
 - (b) advice should be offered to the Committee member about how he/she behaves in the future;

⁶¹ Subject to Rule 8(1)(a) - (e) or 8(2) of the General Dental Council (Constitution of Committees) Rules 2009.

- (c) the Committee member should be invited to apologise and/or give an undertaking about how he/she behaves in the future;
 - (d) the matter requires further investigation;
 - (e) the member should be suspended until a decision can be taken about the matter;⁶²
 - (f) the matter should be referred to the Appointments Committee.
17. If the Chair of the Appointments Committee considers at any point in the procedure that the complaint may result in suspension or dismissal s/he must refer the matter to the Appointments Committee.
18. In reaching a decision under paragraph 16, the Chair of the Appointments Committee:–
- (a) must take into consideration
 - (i) the rules of natural justice; and
 - (ii) that public confidence in the regulation of the dental profession must be maintained
 - (b) must take into account
 - (i) any documentary evidence;
 - (ii) any representations made by the complainant or the Committee member under paragraphs 8 or 13 (a)
 - (c) must give reasons for his/her decision in writing.
19. If the Chair of the Appointments Committee decides that the complaint should be dismissed, he/she must: –
- (a) tell the complainant, in writing, within 7 days what decision has been made; and
 - (b) tell the Committee member who the complaint was made about, in writing the decision he/she, the Chair, has made.
20. If the Chair of the Appointments Committee decides that advice should be offered to the Committee member: –
- (a) advice should be given as soon as reasonably practicable in person by the Chair of the Appointments Committee and confirmed in writing; and

⁶² Following the procedure set out in paragraph 14 above.

- (b) the Chair of the Appointments Committee will write to the complainant, within 10 working days of the advice meeting, setting out his/her decision and details of the advice which was given to the Committee member.
21. If the Chair of the Appointments Committee decides that the Committee member should be asked to apologise or give an undertaking about how he/she behaves in future: –
- (a) the Chair will inform the Committee member in writing that an apology or an undertaking regarding future behaviour is being requested;
 - (b) if the Committee member refuses to apologise or give an undertaking, the Chair will refer the matter to the Appointments Committee.
22. If the Chair of the Appointments Committee decides that the matter needs further investigation: –
- (a) the Chair will consider whether it is appropriate to suspend the member during the course of the investigation and if appropriate follow the procedure under paragraph 14 above;
 - (b) the Chair will appoint an independent investigator, who may be an employee of the General Dental Council who does not work in a department that deals with the Committee member;
 - (c) the Secretary of the Appointments Committee will write to the complainant and the Committee member, informing them of the appointment of the investigator;
 - (d) the independent investigator must investigate the matter in accordance with the rules of natural justice;
 - (e) subject to paragraph (d) above, the independent investigator may: –
 - (i) speak to the complainant and the member and take notes of what they say;
 - (ii) make such further inquiries as appear to the independent investigator to be necessary in the particular circumstances;
 - (f) following the inquiries set out in paragraph (e), the independent investigator will prepare a draft report for the Chair of the Appointments Committee, which must contain: –
 - (i) a summary of the facts;
 - (ii) his/her conclusions with reasons; and
 - (iii) a recommended decision

- (g) the Chair of the Appointments Committee will consider the independent investigator's report and decide whether the recommended decision or any of the other options available under paragraph 16 should be followed.

Part 4: Consideration by the Appointments Committee

- 23. If the Chair of the Appointments Committee decides that a complaint should be referred to the Appointments Committee under Part 3 of this Procedure the Secretary of the Appointments Committee will write to the Committee member about whom the complaint has been made against: –
 - (a) setting out the details of the complaint and including all relevant documents including the investigation report and those which will be referred to by the Appointments Committee when considering the complaint;
 - (b) telling the Committee member that, if the complaint is found to be true, s/he could be removed from office;
 - (c) telling the member that the Appointments Committee will be considering the complaint, and that the Committee member has a right to be heard before the Appointments Committee or to put his/her case in writing; and
 - (d) giving the member 10 working days in which to tell the Secretary of the Appointments Committee that s/he wants to take up the right to a meeting or put his/her case in writing.
- 24. The Secretary of the Appointments Committee will write to the person who made the complaint telling them that: –
 - (a) the Committee is considering the complaint; and
 - (b) if the Committee member requests a meeting, the complainant may be asked to give evidence before the Appointments Committee.
- 25. If, following receipt of a letter under paragraph 23, the Committee member requests a meeting with the Appointments Committee, the Secretary will arrange a meeting of the Appointments Committee within 10 working days.
- 26. If, following receipt of a letter under paragraph 23, the member does not request a meeting with the Appointments Committee, the Committee may of its own volition invite the member to a meeting or decide to deal with the complaint at an ordinary meeting as appropriate taking into account the circumstances of the case.
- 27. The Secretary of the Appointments Committee must write to the Committee member and the complainant about any meeting arranged under paragraph 25 or 26 notifying them of the date and providing all the necessary information.

28. If a meeting of the Appointments Committee is held pursuant to paragraphs 25 and 26 above: –
 - (a) The member shall be given an opportunity to address the Appointments Committee on all points s/he considers to be relevant.
 - (b) The member may be accompanied by a friend who may not be a Council member or an employee of the GDC. The friend may take notes in the meeting but may not speak.
 - (c) Subject to paragraph (d), the Appointments Committee shall consider all spoken, written or other evidence, including any independent investigator's report before reaching its decision.
 - (d) The Appointments Committee will consider its decision in private and will notify the Committee member and the complainant, in writing (by email) as soon as possible after the meeting.
29. The Appointments Committee may: –
 - (a) dismiss the complaint;
 - (b) decide that no further action is necessary;
 - (c) give a formal warning about the Committee member's future conduct;
 - (d) require the Committee member to have further training;
 - (e) if, and only if, it is satisfied that any of the conditions set out in Rule 7(1)(a) – (l) inclusive of the General Dental Council (Constitution of Committee Rules) 2009 are fulfilled,
 - (f) remove the Committee member from office;
 - (g) if, and only if, it is satisfied that any of the conditions set out in Rule 8(1)(a) - (e) or 8(2) of the General Dental Council (Constitution of Committees) Rules 2009 are fulfilled, suspend the Committee member from office.
30. The Secretary of the Appointments Committee will write to the member and the complainant confirming its decision and giving its reasons.
31. The Appointments Committee may review a suspension of a member by the Appointments Committee in accordance with the provisions of Rule 8(4) of the General Dental Council (Constitution of Committees) Rules 2009.
32. In accordance with the GDC (Constitution of Committees) Rule Order of Council 2009 the decision of the Appointments Committee is final.

12. Annex 5 – The initial and finalised processes for the investigation of the second matter raised about Alison Lockyer

Initial process proposed for the investigation of the second matter raised about Alison Lockyer

- 1) A complaint has been received by the CE from a member of staff under the whistleblowing procedure. The GDC has received leading counsel's advice that usually in such circumstances the identity of the member of staff must be protected and the complaint must be routed through the CE. In this case, the complainant has agreed to be named.
- 2) A letter will be sent to Alison Lockyer setting out the details of the complaint made against her and detailing the infraction of the Code of Conduct which is alleged. The letter will enclose copies of all the relevant documents and other evidence. For the avoidance of doubt, this will include the original email containing the complaint.
- 3) The matter will be referred by Evlynne Gilvarry, Chief Executive to the Chair of the Appointments Committee, to consider under this process. A copy of the referral letter will be included in the papers sent to Alison Lockyer under paragraph 2 above.
- 4) The Chair of the Appointments Committee will consider the matter and carry out any necessary investigations including interviewing the complainant and anyone else she deems appropriate. A note of the Chair of the Appointment Committee's interview with the complainant and any other evidence (including notes of all other interviews) will be sent to Alison Lockyer in sufficient time before her meeting with the Chair of the Appointments Committee.
- 5) Having carried out the investigation under paragraph 4 above, the Chair of the Appointments Committee will meet with Alison Lockyer. Alison Lockyer may be accompanied at this meeting by a colleague or a friend but not by a lawyer. This person may take notes, but may not speak on Alison Lockyer's behalf. The Chair of the Appointments Committee may have a note-taker if they wish. The note-taker will take no other part in the interview.
- 6) After the meeting the Chair of the Appointments Committee may carry out any further investigation they consider appropriate and Alison Lockyer will be given the opportunity to comment on the results of any such investigation.
- 7) The Chair of the Appointments Committee will then reach a decision on what should happen next. Their options will include:
 - (a) A decision that there was no case to answer and the matter is dismissed
 - (b) Offering advice to Alison Lockyer about how she behaves in the future

- (c) Inviting Alison Lockyer to apologise and/or give an undertaking about how she behaves in the future
 - (d) Referring the matter to the Council with a recommendation as to how it should be taken forward which may include:
 - i. Whether in the Chair of the Appointments Committee's view Alison Lockyer's position as Chair or as a member of the Council has been affected; and/or
 - ii. A recommendation that the matter should be referred to the Privy Council for consideration.
- 8) In reaching their decision under paragraph 7, the Chair of the Appointments Committee must take into account:
- (a) All documentary and other evidence put to Alison Lockyer
 - (b) All representations made by Alison Lockyer orally and in writing
 - (c) The fact that public confidence in the regulation of the dental profession by the GDC must be maintained.
- 9) In addition, the Chair of the Appointments Committee may take into account the first complaint made against Alison Lockyer including the letter of decision dated 4 January 2011 and Alison Lockyer's email to the Audit Committee dated 25 January 2011.
- 10) The Chair of the Appointments Committee must notify Alison Lockyer of her decision within 7 days of the meeting in paragraph 5 above, or, if she carries out further investigation under paragraph 6, within 7 days of receiving Alison Lockyer's representations on those further investigations. The Chair of the Appointments Committee will give reasons for her decision in writing.
- 11) If the Chair of the Appointments Committee finds that there is a lacuna in the process set out above, or that in fairness to either Alison Lockyer or the GDC some variation should be made, she will tell Alison Lockyer and seek her comments. The Chair of the Appointments Committee will then decide what if any variation should be applied.
- 12) If at any time the Chair of the Appointments Committee feels the matter ought to be referred to the Privy Council she must immediately refer the matter to the Chair of the Audit Committee with a recommendation to this effect. In her referral the Chair of the Appointments Committee must set out their reasons for the recommendation that the matter must be referred to the Privy Council.
- 13) On receipt of a referral under paragraph 12 above, the Chair of the Audit Committee shall take such steps as he considers appropriate.
- 14) If she makes a referral under paragraph 12 above, the Chair of the Appointments Committee will notify Alison Lockyer immediately of her referral and sent to her a copy of the referral letter.

Finalised process agreed for the investigation of the second matter raised about Alison Lockyer

- 1) A complaint by email dated 27 January 2011 from the complainant was received by the Chief Executive of the GDC. The complainant has agreed to be named for the purpose of this procedure only.
- 2) A letter has been sent to Alison Lockyer (Ms Lockyer) setting out the details of the complaint made against her, detailing the infractions of the Code of Conduct which are alleged and enclosing copies of all the relevant documents and other evidence, including the original email containing the complaint.
- 3) The matter will be referred by Evlynn Gilvarry, Chief Executive, to the investigator to consider under this procedure. A copy of the referral letter will be sent to Ms Lockyer.
- 4) The investigator will consider the matter and carry out any necessary investigations, including interviewing the complainant, any persons reasonably nominated by Ms Lockyer, and anyone else the investigator deems appropriate who is willing to be interviewed.
- 5) Copies of any and all potentially relevant materials will be sent to Ms Lockyer from time to time as they become available, such materials to include the copies of records of interview of Evlynn Gilvarry and the complainant made by the Investigator, and any other records of interview compiled for the purposes of the investigation.
- 6) No earlier than five working days after Ms Lockyer has received the materials referred to above, the investigator will invite Ms Lockyer for interview. (Receipt is deemed 2 days after sending by first class post or immediate if following transmission by email). The investigator may have a lawyer present to assist if so desired. Ms Lockyer may be accompanied by a colleague, relative, friend, or professional or legal representative, who may advise her generally during the interview but may not give evidence on her behalf nor make submissions as to the substance of the complaint. The investigator will be accompanied by a note taker who will prepare a record of the interview.
- 7) A copy of the record of Ms Lockyer's interview will be sent to her by email and any observations upon it are to be received by the investigator not later than five working days after receipt of the record by Ms Lockyer.
- 8) After the investigator has interviewed Ms Lockyer, the investigator may carry out any further investigation deemed appropriate and any further information or materials obtained as a result will be provided to Ms Lockyer. When the investigator has completed his/her investigations he/she will notify Ms Lockyer of that fact; any further comments or representations Ms Lockyer wishes to make whether upon any new material provided to her or generally are to be received in

writing by the investigator no later than 5 working days after his/her notification of the completion of the investigation.

- 9) The investigator will thereafter prepare a written report setting out his/her findings of fact, with reasons, including reference to the evidence on which they are based. The investigator will go on to consider whether the findings of fact raise a case to answer and record his/her reasoned conclusion on that issue in the report.
- 10) If the investigator concludes there is no case to answer, the complaint will be dismissed. If he/she concludes there is a case to answer he/she will go on to consider whether the complaint or any part of it is made out. His/her reasoned conclusions on that issue will be recorded in his/her report.
- 11) If the complaint or any part of it is made out the investigator will consider what action if any it is appropriate for him/her to take. In considering what if any action he/she should take he/she shall also have regard at this stage, but not before, to any matters contained in Ms Lockyer's personal file held at the GDC considered by him/her to be relevant.
- 12) The further action open to the investigator includes:
 - (d) Offering advice to Ms Lockyer as to future conduct
 - (e) Inviting an apology and/or undertaking as to future conduct
 - (f) Inviting undertakings from Ms Lockyer to undergo further training or suitable education
 - (g) Reference to the Council to consider what action or further action it wishes to take if any
 - (h) Any combination of a. to d. above.
- 13) The investigator will give his/her reasoned conclusions for his/her decision on the matters arising in his/her report.
- 14) The process contained in this document may be departed from if the investigator, after hearing representations from both sides, believes there is good reason to do so, and, except as set out in this document, the procedure is within the discretion of the investigator.
- 15) Nothing in this document is intended to have the effect of removing or restricting any of the powers of the GDC as elsewhere set out.

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