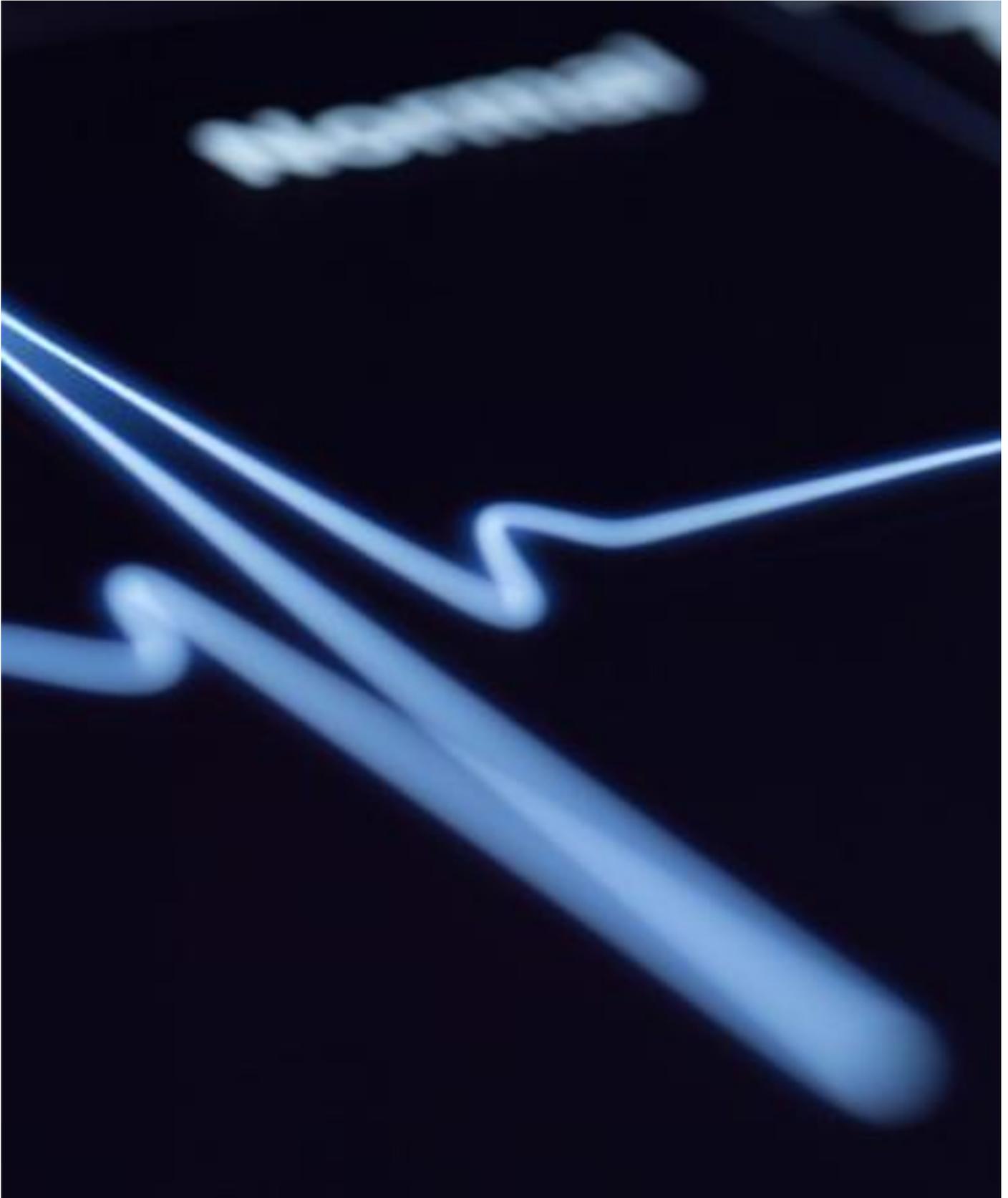

**A guide to GDC investigations
and fitness to practise
proceedings**



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Introduction

"Offers impressive regulatory strength as well as the resources to act on contentious issues."

Chambers UK, 2016, Healthcare

As a dental professional, any complaint or concern which is raised by the General Dental Council can be confusing and stressful, particularly because the outcome may have an impact on your ability to earn a living. It is therefore crucial that you take specialist legal advice at an early stage in order to put you in the best possible position to respond to the allegation and to help you to navigate your way through the various stages of the disciplinary process.

Charles Russell Speechlys specialise in providing a full range of legal services to the dental sector. We have been representing dentists for a number of years.

We have a dedicated team of solicitors who specialise in advising and representing people who are subject to fitness to practise proceedings. Our particular expertise in this area means that we are not only able to assist in relation to proceedings brought by the GDC, but we are also able to advise regarding associated issues which may be ongoing at the same time, such as investigations by the CQC; helping to protect your business as well as you.

This guide is intended as an overview of the GDC's fitness to practise process, and we hope that it will be of use to any dental professional concerned about fitness to practise proceedings, or who wants to know more about how the GDC regulates. It deals with the most common questions that our clients ask us when they are facing an investigation. The figures in this guide are taken from the GDC's Annual Report 2014 and the Registrant's Report for October 2015 (the most recent available at the time of writing).



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What is the GDC's role?

The GDC is the body responsible for registering and regulating dentists and dental professionals (both NHS and private) in the United Kingdom. The term 'dental professional' covers the following roles:

- clinical dental technicians
- dental hygienists
- dental nurses
- dental technicians
- dental therapists
- orthodontic therapists

The GDC has 107,052 registrants

As of October 2015, 107,052 dentists and dental professionals were registered with the GDC.

The GDC's prime statutory duty is to protect patients. In order to do this, its key functions are to:

“register qualified dental professionals, set and enforce standards of dental practice and conduct, protect the public from illegal practice, assure the quality of dental education and investigate complaints”

From time to time, the GDC may have concerns regarding whether a dentist or dental professional is practising safely and effectively. If it does, it may carry out a 'fitness to practise' investigation.

The GDC may start a fitness to practise investigation after receiving a complaint from someone who may have spotted a concern with a dentist or dental professional, for example, a patient, healthcare professional, NHS England or an inspector from the CQC.

Many dentists and other dental professionals will never have to face a fitness to practise hearing, but investigations by the GDC are not uncommon.

Between 2010 and 2013 there was a doubling of fitness to practise complaints and the numbers continue to increase. This may be due to a greater awareness amongst the public of the role of the GDC, combined with the ease with which the public can now raise concerns. The GDC also cites the effect of 'no win no fee rules'.

In 2014, the GDC considered 3,099 fitness to practise concerns

In 2014, the GDC considered 3,099 fitness to practise complaints. 403 of these were eventually referred to a Practice Committee.

The GDC says that it aims to complete its investigation within six months from receipt of the complaint. However, this may take longer depending on the seriousness and complexity of the case.

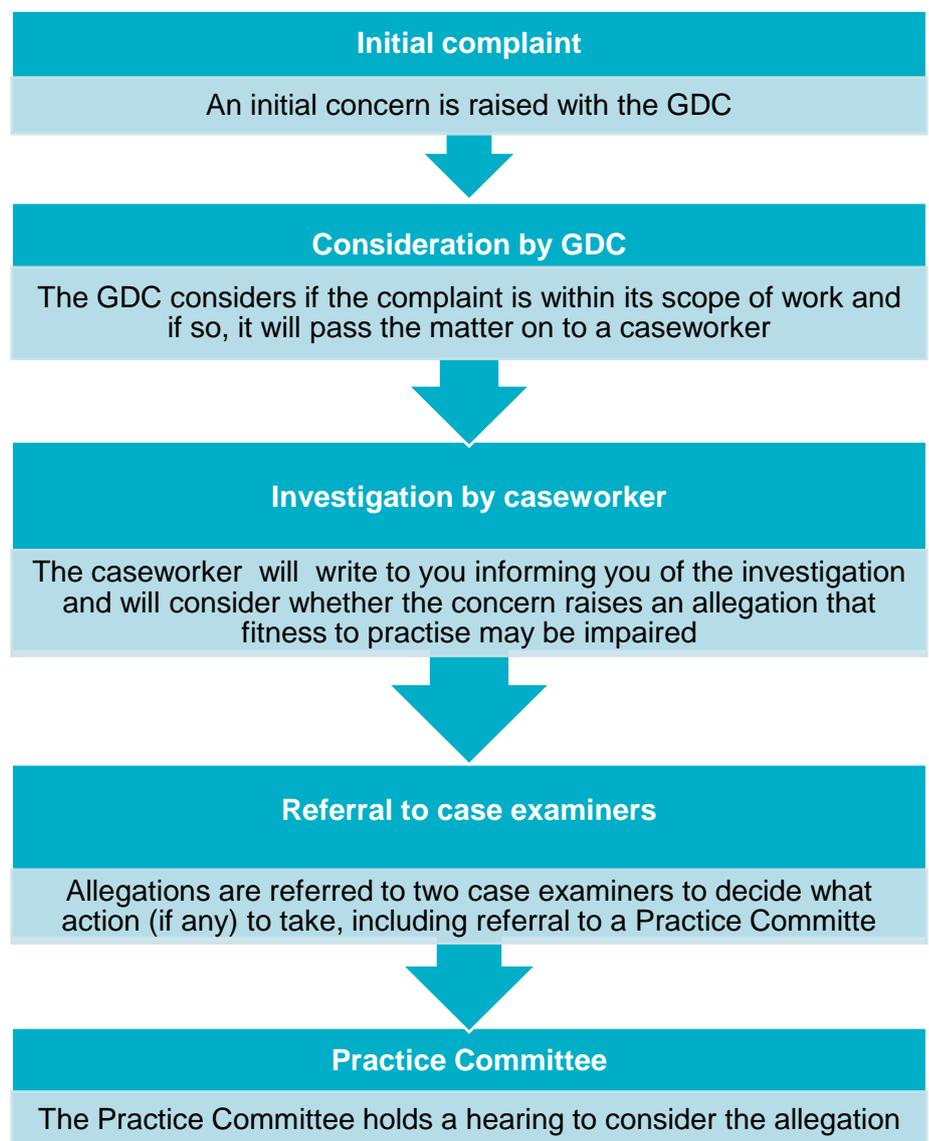
How does the GDC investigate concerns?

Most concerns do not result in a Practice Committee hearing

The GDC may investigate a concern using its own in-house caseworkers, or using external solicitors.

There are several stages to a fitness to practise investigation, and an investigation may conclude and be closed at any one of these stages – just because a concern has been raised does not mean that the concern will end up being considered at a Practice Committee hearing.

We have set out the main stages of an investigation in the flow chart below and will then look at each stage in more detail.



Stage 1 – Raising Concerns

Concerns may be raised by members of the public, NHS England, other dentists or dental professionals, or other healthcare professionals. Although the CQC has its own enforcement procedures, upon inspecting a dental practice, CQC inspectors may also decide to raise a complaint with the GDC regarding an individual.

Concerns can be communicated to the Council by email, by the completion of the 'reporting a dental professional' application form on the Council's website, or in writing.

The GDC triage team will conduct an initial review of the concern, to consider whether it should investigate further. For example, a concern may be raised which falls outside the scope of the GDC. If the GDC considers that the complaint is outside its remit, it will close its file without further action.

28% of concerns raised in 2014 fell outside the GDC's remit

In 2014, 888 complaints were concluded at this stage. That was just over a quarter (28%) of the total number of concerns it considered that year.

If the concern is within the scope of the GDC, the matter will move to the assessment stage for a caseworker to decide whether the concerns raised amount to a breach of one of the Standards for the Dental Team, or an allegation of potential impairment of fitness to practise. This can be due to potential ill health, poor performance or misconduct.

The GDC will investigate further and will send a letter to the dentist or dental professional notifying them of the investigation.

Stage 2 – Investigation

Many cases do not progress beyond the initial investigation

The first you may hear of a GDC investigation is likely to be when you receive a letter from a GDC caseworker informing you that an issue has been brought to their attention. That letter might not give any more information about the concern, and may simply state that the GDC is investigating a concern and will write to you again when it has investigated further.

The letter may ask you to provide:

- evidence of your indemnity or insurance cover
- details of your current employer(s) and anyone to whom you are contracted to provide services
- if the complaint relates to dental treatment, the patient's dental records including radiographs or study models
- if the information relates to health concerns, the letter may seek your consent to obtain information from your doctor, or ask that you undertake a medical examination

Any dentist or dental professional who receives a letter from the GDC will naturally be worried, but remember that many cases do not progress further than the initial investigation.

Sometimes the initial letter will state that you are not being invited to comment at that stage, but you may comment or provide documentation if you wish. You should seek legal advice before commenting or providing documentation at this stage, because you are unlikely to know the full picture, and anything you say at this early stage is likely to have an impact on the case as it progresses.

The GDC's investigation may be wide-ranging and take some time. The GDC may obtain statements from the complainant and witnesses. It may also obtain documents such as radiographs, notes and other dental records, standard operating procedures and treatment plans. Depending on your role in the dental practice, the GDC may ask you to provide those documents or they might ask someone else at the dental practice to provide them.

You may need to consider whether steps should be taken to protect your business

As part of the investigation, the case investigator may also ask you to answer questions. This is usually done in correspondence. Again, you should seek legal advice before answering any questions. Whilst the case investigator may explain that dentists have a duty to co-operate with fitness to practise investigations, careful thought must be given to replies.

If you own the business either as an individual or in partnership, you will also need to consider at this stage whether steps should be taken to protect your business. You will also need to consider this if you are a director in a limited company which owns the practice, if fewer than half of the directors would not be registered with the GDC should you step down as director.

Stage 3 – Conclusion of Investigation

Care should be taken when corresponding with the case investigator

When the caseworker has completed their investigation, they will consider whether any of the concerns give rise to an allegation that the dentist or dental professional's fitness to practise may be impaired.

An allegation may arise in many different circumstances, for example following a criminal conviction or caution, or a failure to comply with the Standards for the Dental Team.

If the GDC considers that no allegation of impairment of a dental professional's fitness to practise is raised, the case will be closed. If it considers that an allegation does arise, it will refer the case to the case examiners.

If the GDC believes that it is appropriate to do so, it may also refer the allegation to the Interim Orders Committee. Further details on interim orders are set out in a separate section on page 10 below.

At this stage, the case investigator will write to you to confirm either that the case has been closed or that the case is being referred to the case examiners. If the latter, this will be in the form of a notice.

The notice should contain:

- A summary of the allegation and particulars of the allegation
- Copies of the documents held by the GDC which relate to the allegation
- An invitation to respond in writing to the allegation and evidence obtained by the GDC

Even though the GDC may have taken many months to conclude its investigation, you will often be given only a short time to respond, usually around four weeks.

At this stage you will have to consider whether to respond and, if so, what you should say. Care must be taken with any response you give and any representations or documents sent to the GDC on your behalf as these may be shown to the complainant for their comment.

Stage 4 – The Case Examiners

The Case Examiners meet in private

The case examiners are appointed GDC staff members with a statutory duty to make decisions at the conclusion of an investigation.

Two case examiners, one a lay person and one a registrant of the GDC, will consider the allegations. They cannot decide disputes of fact. Their role is to consider the allegations which have been made against the dentist or dental professional. They must decide whether the allegations are sufficiently serious and have sufficient weight to be referred to a Practice Committee for a hearing, and if so, to which Practice Committee the case should be referred. The case examiners may also decide whether to dispose of the allegations in another way, such as by giving a letter of advice, or a warning. In particular, the case examiners will consider:

- whether there is a 'real prospect' of the facts as alleged being found proved, and if so:
- whether or not there is a 'real prospect' of the statutory ground being established, and if so:
- whether there is a real prospect of a finding of current impairment being made

The case examiners meet in private. Witnesses do not give evidence. It considers the allegations by reference to documents and statements.

You will not be able to attend the meeting at which your case is considered. However, you will be given the opportunity to submit a written response to the allegations which have been made against you, and this response will be provided to the case examiners in advance of the meeting.

The examiners have a wide range of options for the disposal of cases and may:

- Take no further action and close the case
- Adjourn the case for further investigations
- Issue a letter of advice and close the case
- Issue a warning and close the case (and it may also direct that the warning be published on the GDC website)
- Refer the case to one of the three Practice Committees for a hearing
- Agree a legally binding promise with the registrant by way of an 'undertaking'
- Refer the matter to the Interim Orders Committee to decide whether to suspend or apply conditions on registration, if it considers this appropriate.

If the case examiners cannot agree on how best to deal with the allegations, they will refer them to the Investigating Committee to decide.

In 2014, 60% of investigations referred to the Investigating Committee (who previously performed the role of the case examiners) which were not adjourned concluded without a referral to a Practice Committee being made.

Your GDC caseworker should inform you of the decision in writing within two working days.

60% of investigations concluded without a referral to a Practice Committee

Stage 5 – The Practice Committees

The Practice Committees consider allegations at a hearing

There are three Practice Committees to which the case examiners may refer a case for a formal hearing. These are:

The Professional Conduct Committee (“PCC”)

The PCC deals with allegations relating to misconduct (such as harassment or theft) and criminal cautions or convictions. The majority of Fitness to Practise cases are heard before this Committee.

The Professional Performance Committee (“PPC”)

The PPC deals with allegations relating to poor professional performance (such as failing to following basic clinical procedures).

The Health Committee (“HC”)

The HC deals with allegations relating to a dentist or dental professional's physical or mental health (such as inability to perform procedures due to a degenerative illness).

In 2014, just over 12% of cases which were concluded in that year were considered by one of the Practice Committees.

12% of cases in 2014 were considered by a Practice Committee

Before the final hearing takes place, formal allegations and documentary evidence will be sent to you by the GDC or its lawyers. If you are going to give evidence, you will have to send a written statement to the GDC together with the statements of any other witness on whose evidence you intend to rely at the hearing. There are time limits and formalities that apply to these procedures. Careful thought must be given to the preparation of your evidence because it may have a significant impact on the outcome.

65% of cases referred to a Practice Committee had an initial hearing within 9 months, although this can take over a year in some cases.

The Practice Committee secretary will give formal notice of the date and time of the final hearing. Depending on the complexity of the case, the hearing may last several days.

You will have the opportunity to attend the hearing and ask questions

When the hearing takes place, a Practice Committee will consider the allegations. You will have the opportunity to attend the hearing, ask questions of the GDC's witnesses, give evidence, and address the Committee. Whilst it is possible to attend a formal hearing without a lawyer, it is recommended that you instruct an experienced lawyer who understands dental practice and will know what questions to ask, what points should be drawn to the Committee's attention and the best way to present your case.

The Interim Orders Committee

IOC hearings are usually open to the public

At any stage of the proceedings, the GDC may decide that it is appropriate for interim steps to be taken to restrict the dentist or dental professional's ability to practise before the end of the final hearing. If so, the GDC will refer the case to the Interim Orders Committee ("IOC") to decide whether an interim order should be made.

424 IOC hearings were heard in 2014. In 25% of these cases, no order affecting registration was made.

The process of the hearing will involve the Committee inviting submissions from the GDC and then the dentist or dental professional's representatives. After hearing the submissions, the IOC will withdraw to make its decision and will then return to announce what it has decided. IOC hearings are usually open to the public.

The IOC does not investigate the allegations or conduct a fact finding exercise, but will make an order restricting registration where it believes this is necessary to protect the public or is otherwise in the interests of either the public or the individual themselves. The IOC may also make no order at all.

No order was made in 25% of IOC hearings

Typically, an interim order will involve a dentist or dental professional being suspended from practice or having conditions imposed on their registration until the final hearing has ended (for a maximum of 18 months). The IOC must normally review an interim order every six months.

If you receive a notification from the GDC that they are going to apply for an interim order you need to take urgent legal advice as you may only receive a few days' notice before the application is heard.

Following the hearing, the matter will continue through the remainder of the fitness to practise process as normal.

Three stages of a Practice Committee hearing

A Practice Committee will consider the allegations in three stages. These are set out below.

You will have the opportunity to address the Committee twice; at the fact-finding stage and then again at the impairment and sanction stage. The Committee will consider its decision in relation to each stage in private before calling the parties in to deliver its decision. It can take some time between stages for the Committee to make its decision.

After announcing its decision at the impairment and sanction stage, the Committee will revoke any existing interim order and decide whether to impose an order of immediate suspension or conditions, after hearing submissions from both parties. This is because sanctions will otherwise take effect only after the 28 day appeal period has expired.

The Preliminary Stage

The Committee deals with any preliminary matters and if either party requests, the notification of hearing will be read out.

Findings of fact

Having regard to the evidence, which, if any, of the facts alleged are found proved?

Impairment and Sanction

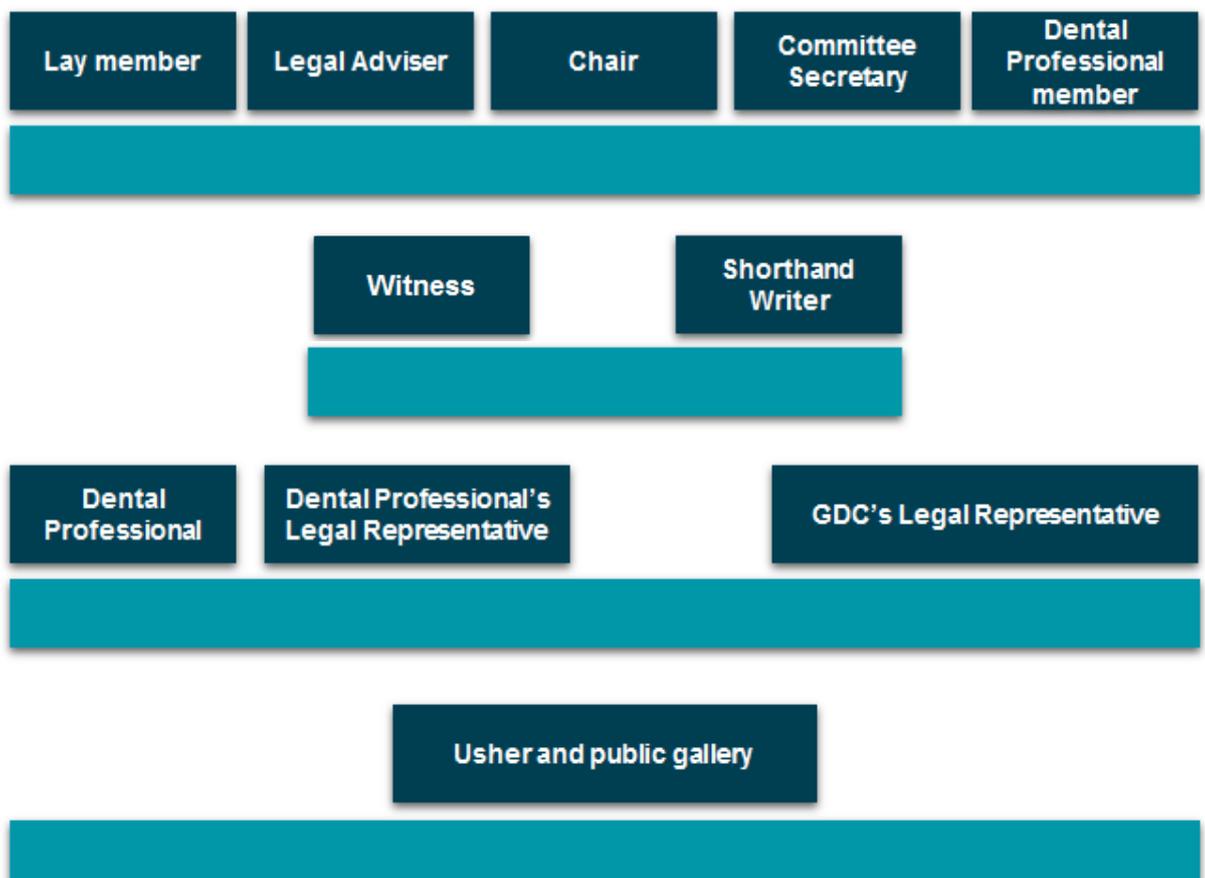
- 1) As a result of the facts proven, is the dentist or dental professional's fitness to practise impaired?
- 2) If fitness to practise is impaired, what sanction should be imposed?

What does the hearing room look like?

Each Practice Committee usually has three members: a Chair, who is an experienced panel member and runs the proceedings, as well as a dental professional member and a lay member. Other people may be at the hearing such as the legal adviser, Committee secretary, witnesses or a medical adviser.

The Committee will hear evidence and submissions in the hearing room. The hearings usually take place in public (unless the matter is being heard before the Health Committee) and may be reported.

An example of how the Committee room is arranged is given below:



What sanction can the Practice Committees impose?

The Committees have a range of sanctions available to them

The Committees have a range of sanctions available to them. When considering sanction, each Committee must impose only the minimum sanction which is necessary to address the findings that it has reached. A Committee may:

- Take no further action.
- Issue a reprimand (only the PCC may do this). This was the outcome in 9% of PCC final hearings in 2014.
- Impose conditions upon the dentist or dental professional's registration for up to three years. The conditions must be designed to address the failings that have been identified, must be for a fixed period and may be reviewed at the end of that period at a review hearing. Conditions were imposed in 25% of non-review PCC hearings in 2014.
- Impose a period of suspension. The suspension must be for a fixed period of up to 12 months, and will usually be reviewed at a hearing before the end of that period. The PCC directed that the dentist or dental professional should be suspended from practice in 23% of non-review cases in 2014.
- Erasure from the register. A dentist or dental professional whose name is erased from the register can apply to be restored once a period of five years has expired. Erasure was the eventual outcome in 20% of non-review PCC hearings in 2014.

In certain circumstances the Committee can order the GDC to pay some or all of the dental professional's legal costs, or it can order that the dental professional pays some or all of the GDC's legal costs. However, in practice, costs orders are rarely made.

There is a right of appeal against a Practice Committee's decision

There is a right of appeal against a Practice Committee's decision. The appeal must be made within 28 days of the decision, so if you intend to appeal, you must act quickly.

Conclusion

We won't charge you for an initial call to discuss your case

If there is anything raised in this Guide that you would like to discuss, or if you are currently the subject of an investigation and would like to speak to one of our team then please do not hesitate to contact us. We won't charge for the call. We will usually give you a written estimate of fees in advance of doing any work for you.

We would typically assist dentists and other dental professionals with:



Having many years' experience with investigations, we can advise you during any of the above stages on the process and can offer time and cost-effective solutions.

Our team



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"Noel Wardle is described as "very approachable and commercial and his judgement is clearly trusted by clients." He handles some of the team's most complex contentious instructions, including judicial reviews and disciplinary hearings."

Chambers UK, 2016, Healthcare



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Chambers UK, 2016, Professional Discipline



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Chambers UK, 2014, Professional Discipline



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"Susan Hunneyball 'has such good knowledge of pharmacy law that it makes it easier for us to make technical decisions'."

Chambers UK, 2014, Professional Discipline



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