

Fitness to Practise Committee 14 February 2013

General Dental Council initial stages audit review

Executive summary and recommendations

### **Introduction**

In August 2012 the Council for Healthcare Regulatory Excellence (now the Professional Standards Authority for Health and Social Care) published their findings following the audit of the initial stages of the fitness to practise process at the General Dental Council (GDC). The HCPC Fitness to Practise Department has undertaken a review of the audit to assess what learning can be taken from it and applied to HCPC processes. Attached is a summary of that review and the action being taken by HCPC.

### **Decision**

This paper is for information only. No decision is required.

### **Background information**

The last CHRE audit of the initial stages of HCPC fitness to practise process was undertaken in December 2010. HCPC is audited by PSA on a three year cycle. The next audit is due to take place in June 2013.

### **Resource implications**

None.

### **Financial implications**

None.

### **Appendices**

Audit of the General Dental Council's initial stages fitness to practise process  
CHRE GDC audit review

### **Date of paper**

04 February 2013

# Audit of the General Dental Council's initial stages fitness to practise process

August 2012

## About CHRE

The Council for Healthcare Regulatory Excellence promotes the health and well-being of patients and the public in the regulation of health and care professionals. We scrutinise and oversee the work of the nine regulatory bodies<sup>1</sup> that set standards for training and conduct of health and care professionals.

We share good practice and knowledge with the regulatory bodies, conduct research and introduce new ideas about regulation to the sector. We monitor policy in the UK and Europe and advise the four UK government health departments on issues relating to the regulation of health professionals. We are an independent body accountable to the UK Parliament.

## Our aim

The Council for Healthcare Regulatory Excellence works to raise standards and encourage improvements in the registration and regulation of people who work in health and social care. We do this in order to promote the health, safety and well-being of patients, service users and other members of the public.

## Our values

Our values and principles act as a framework for our decision-making. They are at the heart of who we are and how we would like to be seen by our partners. We are committed to being:

- focussed on the public interest
- independent
- fair
- transparent
- proportionate

Our values will be explicit in the way that we work; how we approach our oversight of the registration and regulation of those who work in health and social care, how we develop policy advice and how we engage with all our partners. We will be consistent in the application of our values in what we do.

We will become the Professional Standards Authority for Health and Social Care during 2012.

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<sup>1</sup> General Chiropractic Council (GCC), General Dental Council (GDC), General Medical Council (GMC), General Optical Council (GOC), General Osteopathic Council (GOsC), General Pharmaceutical Council (GPhC), Health and Care Professions Council (HCPC), Nursing and Midwifery Council (NMC), Pharmaceutical Society of Northern Ireland (PSNI)

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# 1. Overall assessment

## Introduction

- 1.1 In May 2012 we audited 100 cases that the General Dental Council (GDC) had closed at the initial stages of its fitness to practise (FTP) processes during the six month period 1 October 2011 to 31 March 2012.
- 1.2 In the initial stages of their FTP processes, the nine health professional regulatory bodies decide whether complaints received should be referred to a hearing in front of an FTP panel, or whether some other action should be taken, or whether they should be closed.
- 1.3 Our overriding aim in conducting audits is to seek assurance that the health professional regulators are protecting patients and the public, and maintaining the reputation of the professions and the system of regulation. We assessed whether the GDC achieved these aims in the particular cases we reviewed. We considered whether weaknesses in handling any of these cases might also suggest that the public might not be protected, or confidence not maintained, in future cases.
- 1.4 In our last audit report of the GDC dated June 2011, we summarised our findings as follows:

*“The audit revealed weaknesses in the GDC’s processes, some of which were the same as those highlighted in our two previous audits; for example, we found cases showing:*

- *Incomplete information gathering by GDC FTP staff*
- *Decision letters that did not fully address all the issues or properly explain why the GDC was taking no further action*
- *Unexplained delays in the FTP processes*
- *Poor record keeping*
- *Non-compliance with the GDC’s policy that cases cannot be closed by a single caseworker unless their decision is appropriately authorised.*

*We were pleased that in this audit we found no evidence of cases that had been closed too early, or of closure decisions that we considered were unreasonable.”*

- 1.5 Since our previous audit the GDC has implemented a programme of improvement to its FTP processes and to the support provided to staff and decision makers. We reported on this in detail in our performance review report 2011/2012, available from: [https://www.chre.org.uk/\\_img/pics/library/120620\\_CHRE\\_Performance\\_review\\_report\\_2011-12\\_Vol\\_II\\_\(Colour\\_for\\_web\\_-\\_PDF\)\\_1.pdf](https://www.chre.org.uk/_img/pics/library/120620_CHRE_Performance_review_report_2011-12_Vol_II_(Colour_for_web_-_PDF)_1.pdf)

In particular the GDC has introduced:

- a triage system to facilitate the prompt identification of high risk cases, case requiring fast-tracking, cases requiring clinical input
- a system for obtaining expert clinical input prior to consideration by the IC
- a process for seeking health reports in cases involving criminal convictions/cautions for offences involving alcohol/drugs
- legally qualified IC secretaries to provide improved support to the IC

- re-drafted operational guidance, alongside improved induction and training and development for staff and FTP panellists
- routine performance management of investigation work
- a compliance team that is responsible for auditing closed cases and assessing the quality and timeliness of casework and customer service as well as the quality of decision making.

We therefore looked for evidence of the impact of these improvements in this year's audit.

### Summary of findings

- 1.6 We are pleased to report that this year's audit did not identify any decisions that might pose immediate risks to patient safety.
- 1.7 However as a result of our findings during this audit we have identified a concern that may impact upon patient safety as well as on public confidence. This is the lack of a requirement for registrants to notify the GDC about criminal convictions and police cautions, other than at initial registration. This puts the GDC out of step with good practice at other regulators that we oversee. We understand that the GDC is already considering requiring registrants to make an annual declaration when renewing their registration and we give more details about this in paragraph 3.4.
- 1.8 Many of the cases audited this year were opened before the GDC implemented the changes to its processes outlined above. This means that our audit identified a number of issues that are similar to those we highlighted in previous audits, as most of the cases we audited pre-dated the changes to process made in 2011/2012 (and the GDC acknowledged that was likely to be the case). It also means that we had a limited opportunity to assess the effectiveness of the improvements that were introduced in 2011/2012. However we were pleased to note that we saw evidence of the positive impact of the changes introduced in 2011/2012 in the small number of relevant cases that we audited, and there appears to be, in general, good compliance with the changes to process that have been introduced.
- 1.9 The main weaknesses we identified in this year's audit are as follows:
- Inadequate early stage administration in the receipt, logging and acknowledgement of complaints
  - Failings related to the standard and progression of casework. As already mentioned (see 1.4), in our last audit we highlighted concerns about unexplained and lengthy delays in case progression. This remains an area of concern, as this audit shows that delays continue to feature at all stages of the investigation process in many of the cases we audited this year
  - Poor standards of record keeping and file management.

We set out examples of cases where we found these weaknesses in our detailed findings below.

## Method of auditing

- 1.10 We reviewed 100 cases that had been closed by the GDC between 1 October 2011 and 31 March 2012<sup>2</sup>. These were selected from the 786 cases that the GDC closed in the period without referral for a hearing by either the Professional Conduct Committee (PCC) or the Health Committee (HC).
- 1.11 We selected 50 cases at random, which proportionally reflected the numbers of cases closed at each closure point within the initial stages of the GDC's FTP processes. The other 50 cases were selected at random from categories of cases that we consider are 'higher risk'. That is to say that, in our view a higher risk to the safeguarding of public protection or patient safety was present if proper procedures were not followed in these cases. When auditing regulators, we base our assessment of the risk associated with each case on the information we have gathered during previous audits, on the information we are provided with during our annual performance review of the regulators, on complaints we receive, as well as any other relevant information that comes to our attention.
- 1.12 In March 2010 CHRE led a meeting of representatives from the nine health professional regulators to agree a 'Casework Framework'. This was a description of the key elements that should be present in the different stages of a good FTP process. A copy of this is at Annex 1. When auditing a regulator, we assess the handling of a case against the elements of the Casework Framework.
- 1.13 In this year's audit we also looked for evidence of the effectiveness of the improvements that the GDC introduced in 2011/2012 in addressing the concerns we identified in previous audits. We set out details of the additional checks we conducted in relevant cases in the Appendix to this report.

## The GDC's FTP framework

- 1.14 The structure of the GDC's FTP process means that there are two points at which cases may be closed without referral to a hearing in front of an FTP panel. This is either (i) by GDC FTP staff at the initial stages of the process or (ii) by an investigating committee.

### *(i) By GDC FTP staff without referral to an investigating committee (IC)*

Cases will be closed at the initial stages of the FTP process if they do not amount to an allegation that a GDC registrant's fitness to practise is impaired.<sup>3</sup> Decisions to close cases on that basis are made on the recommendation of the GDC FTP team. Previously, three staff made closure decisions at this stage at a case assessment meeting. However, assessments are now agreed between the caseworker and their manager and then recorded in writing.

### *(ii) By an Investigating Committee*

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<sup>2</sup> One of the cases was wrongly included in our audit sample because it was incorrectly shown on the GDC's system as closed. It had in fact proceeded to a final fitness to practise hearing. This was not apparent until we had finished auditing the case.

<sup>3</sup> Paragraphs 2 and 3, 'The General Dental Council (Fitness to Practise) Rules Order of Council 2006'

- 1.15 The GDC's IC membership is made up of both dental professionals and lay people. The IC's role is set out in legislation. The Dentists Act 1984 (27A)(1) explains that the Committee's role is to: *'...investigate the allegation and determine whether the allegation ought to be considered by a Practice Committee [that is, the Professional Conduct Committee or the Health Committee]'*
- 1.16 In order to carry out its role, the IC must *'... determine whether the allegation ought to be considered by a Practice Committee... In considering a case the IC determines 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 a finding of current impairment being made...'*<sup>4</sup> if the case were to be considered at a hearing before an FTP panel (i.e. the Professional Conduct Committee or the Health Committee). The test is similar to the test used by decision makers at other health professional regulators and is commonly referred to as the 'realistic prospect' test. It means that a case will not be referred for a hearing by an FTP panel unless there is a 'realistic prospect' that the panel, at such a hearing, would make a finding that the practitioner's fitness to practise is impaired.
- 1.17 In the event that the IC decides not to refer a case for a hearing by an FTP panel, it can decide to:
- send a warning letter to the registrant (which may be published against their name on the GDC's register that is available from its website); or
  - send an advice letter to the registrant or any other person involved in the case.

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<sup>4</sup> Paragraphs 5 and 6 GDC 2011, 'Investigating Committee Guidance Manual' GDC, London November 2011

## 2. Detailed findings

### Receipt of initial information stage and customer service

2.1 During our audit we identified several examples of sensitive and helpful handling of cases by GDC FTP staff, both in the way that their letters were expressed and the way in which complainants were referred on to other bodies. In one case we audited the GDC identified a clinical concern in a patient's x-rays and alerted the patient's dentist to this (although this was not the subject of the complaint). This indicates an overall emphasis on providing good customer service, including taking steps that are not strictly necessary for the purposes of the FTP process.

2.2 The following are examples of weaknesses that we identified during our audit in the GDC's customer care and the provision of clear and sensitive communication:

- One complaint which was not acknowledged for six weeks and took nearly four months to deal with, despite not requiring any investigation
- One case in which it may have appeared to the complainant that no action had been taken on a complaint for over three years. The registrant was under GDC investigation for other matters and a decision had been taken to pursue those matters separately to minimise delays. The registrant was eventually removed from the register. Our concern in the case we audited was the lack of an explanation to the complainants (employees of the registrant) about the reason for the delay
- One case in which the GDC failed to respond to a complaint about a closure decision that had been made by the IC for a period of three months, despite several emails from the complainant. This compounded a prior five month delay in this case
- Two cases which the GDC closed because of the lack of required information from the complainants. It would have been better practice for the GDC to have explained to the complainants the likely consequence of their failure to provide the information before closing the cases, in order to ensure they were aware of the importance of their co-operation with the requests for information. The GDC has recently addressed this issue by amending its standard follow up letter, making it clear that it cannot proceed without consent and/or further information
- We were concerned about the tone of one letter that was sent (in autumn 2011) to registrant witnesses in a case of alleged sexual assault by a colleague. The letter incorrectly referred to the witnesses as complainants and reminded the witnesses of their duty as GDC registrants to co operate with the investigation. While we agree that registrants should cooperate with their regulatory body in matters pertaining to patient safety, we suggest that a tailored letter with a less authoritative tone could have been adopted given the nature of the allegations
- One case in which a Primary Care Trust (PCT) had contacted the GDC to check if a registrant had any previous FTP issues and to ask if the regulator was aware that he had a previous serious conviction from 2000. A standard letter was sent in response, which thanked the PCT for its complaint. The PCT responded to clarify that a complaint had not been made and it would be in touch again after a meeting later that week. The GDC did not follow this up for a further month, which is of concern in light of the seriousness of the conviction

- One case in which the GDC wrote to a complainant to ask for the registrant's registration number, which had already been provided by the Dental Complaints Service. In another case we reviewed the complainant (who was not a patient) was erroneously asked for consent to release their medical records. Asking for unnecessary information increases the administrative burden on all those involved (including the GDC) and may also discourage some complainants or damage their confidence in the regulatory process.

## Gathering information

### *The process of gathering information*

- 2.3 Gathering the right information early enough in the FTP process is essential to enabling a regulator to assess the risks a registrant may pose to patient safety. It also ensures that appropriate action can be taken promptly including, where necessary, applying for an interim order.
- 2.4 In one case we audited it was notable that an application for an interim order was made within 10 days of the Registrar giving approval and within two months of receipt of the complaint (and patient records and consent forms were obtained during the same period). We consider this to be an example of good and efficient information gathering that prioritised patient safety and the maintenance of public confidence.
- 2.5 We also found several examples of cases where the GDC had made extensive efforts to gain all the information needed to assess a case and where it had endeavoured to ensure the cooperation of complainants and other witnesses with the information gathering stage of the process.
- 2.6 However we also found numerous cases that demonstrated there are still weaknesses in the GDC's processes for gathering information. We have highlighted below the cases we audited which demonstrate the weaknesses which we consider remain an issue, despite the improvements that were introduced by the GDC in 2011/2012.
- We identified a case, dating from 2010, where the GDC failed to pursue information to confirm that a registrant had been convicted of drink driving. While we note that there was a particular difficulty in this case in that the police refused to divulge the information without the registrant's consent, the GDC should have followed this up to confirm both the offence and the registrant's conviction given the public protection concerns with cases such as these
  - We audited one case in which the GDC were notified of potential cross infection concerns at a registrant's surgery. The GDC knew that an NHS Trust's inspection visit was due, and decided to await the outcome of that visit before considering whether or not an interim order application was appropriate. Our concern in this case was that the GDC then did not pursue the results of that inspection for three months
  - We reviewed one case in which the GDC initially failed to investigate a complaint against one of two dentists against whom a patient had alleged incompetence. The error only came to light when the complainant telephoned to ask about progress.

## Evaluation and giving reasons for decisions

- 2.7 Ensuring that detailed reasons are provided for decisions taken by GDC staff and the IC, and that those reasons clearly demonstrate that all the relevant issues have been addressed, is essential to maintaining public confidence in the regulatory process. The requirement to provide detailed reasons also acts as a check to ensure that the decisions themselves are understandable.
- 2.8 In this year's audit we were pleased to note several examples of clearly and fully expressed reasons provided by the IC. However we also found examples of cases demonstrating weaknesses in the evaluation of evidence, the application of relevant criteria and the provision of reasoned decisions:
- One case in which a PCT had referred a registrant to the GDC after he was convicted of drink driving, registering its concern that the registrant might have an alcohol addiction. The IC (in February 2012) reversed its original referral of the matter for a hearing before the Health Committee without explaining why it had concluded that the case no longer met the 'realistic prospect' test. We note that no risk to public protection in fact arose as the registrant was struck off the GDC's register for non-payment of the annual registration fee. We also note that the particular circumstances of this case meant that it might have proved difficult to obtain a health assessment (as the registrant was no longer resident in the UK). Nevertheless, we remain concerned about the lack of clear explanation of the IC's rationale for its decision and the appearance that the appropriate test was not correctly applied
  - We identified other examples of the inconsistent application of the relevant test in this year's audit (as in our previous audit). In one case that we audited this year we noted that on the case assessment sheet, the GDC staff member had written, *'I do not feel that the incident raises a question of current impairment due to performance or misconduct.'* In our view this statement should have been expanded to explain the basis on which that conclusion had been reached, as it could be interpreted as suggesting that the staff member had weighed up the evidence, rather than simply assessing whether or not the complaint amounted to an allegation that the registrant's FTP was impaired. Any misapplication of the relevant test could result in cases being inappropriately closed, which would be a risk both to patient safety and to public confidence in the regulatory process
  - We identified one case which the GDC had closed because it regarded a registrant's failure to provide a patient with their dental records after the surgery had closed as a non-clinical issue which did not relate to the registrant's professional capability. The GDC advised the complainant to ask the registrant for her dental records directly and to get back in touch if she was unsuccessful. We note that two separate complaints were made about the same registrant and their failure to provide dental records. This suggests a pattern of behaviour on the part of the registrant which is not in patients' best interests and could call the registrant's professional conduct into question. In our view the case should not have been closed until the GDC was satisfied that there was no risk to the registrant's patients
  - We audited one case where the IC considered the poor treatment provided was sufficiently serious to issue the registrant with a warning but it was not clear why the IC decided that the warning in this case should not be published. We would

encourage the GDC to review decision-making about the publication/non-publication of warnings.

## Case management

### *Timeliness*

- 2.9 We found several cases in which there was an extensive unexplained delay in case handling, as in our previous audit. The following are illustrative examples of weaknesses in the GDC's case management and case progression that we found in this year's audit:
- One case in which there was a five month delay between the receipt of a complaint and the GDC acknowledging it. The GDC did not properly explain the reason for the delay to the complainant
  - Six further cases (which were opened in 2011) in which there were delays of between three and six weeks in the GDC acknowledging the complaint
  - One case which it took the GDC 17 days to triage under its new system as well as 5 other cases which were not triaged within the target of two working days
  - Several cases in which there were a series of mistakes and delays by the GDC:
    - In the first case there was a period of inactivity between May and August 2010, despite the GDC telling the complainant they would contact them in June 2010. Additionally, an expert opinion was omitted from the documents provided to the IC to consider, which caused an unnecessary adjournment
    - In the second case it took the GDC more than six weeks to acknowledge an email that had been sent to a different department of the GDC – and which was then forwarded to the FTP department. A standard letter was then sent to the complainant requesting their consent to forward their details to the registrant, in circumstances where the complainant had already indicated that they did not wish for this to happen
    - In the third case there was a two month delay between the receipt of a complaint and its acknowledgment by the GDC, and a further two month delay after the receipt of the complainant's consent form before the complaint was considered at a case assessment meeting. During that four month period the complainant had emailed the GDC twice to ask for an update on progress. The GDC imposed an unreasonable timeframe on the complainant by requesting their response to a query for further information within four days. When the complainant notified the GDC of their dissatisfaction with the lack of reasons in the IC's decision, it took three months and two emails from the complainant before the GDC sent a substantive reply (in April 2012)
  - One case which we considered would have benefited from more active case management – in reducing delays in information gathering (including dealing effectively with unhelpful responses from external bodies who withheld information). Failure to proactively manage the case led to its consideration by the IC being rescheduled three times. The GDC has advised us that it has since introduced a new escalation procedure where managers are informed of difficulties in obtaining third party information and will then take appropriate action to expedite matters

- One case in which the registrant had been removed contingently from the PCT's practitioners' list, but it took almost two months before the case was allocated to a caseworker and for initial contact with the informant to be made. The case was then not initially linked to an earlier referral on the same matter that the GDC had already dealt with
- We noted delays in the management of a case in which referral to the National Clinical Assessment Service (in late 2010) was delayed by over four months. This delay was due to the GDC failing to fill in forms correctly. There was later a failure to include records within the documents to be considered by the IC - which led to a deferral of the matter for a month
- One case in which the original complaint letter was lost and no progress was therefore made for four months
- One case in which there was a four month delay between receipt of further information from the complainant PCT in August 2011 and the holding of the case assessment meeting in December 2011. There was a further four month delay between the decision to close the case and the GDC writing to inform the complainant
- One case in which there appeared to have been no action taken between approximately July 2009 and March 2011 while the GDC waited for updates from the employer. Our concern was that there was no evidence that the GDC had chased for the awaited information during that period, and it therefore appeared that the case had been overlooked
- One case in which a failure to chase a PCT for further information led to the IC adjourning its consideration of the matter. This caused a further two month delay before the decision was taken to close the case in December 2011.

### *Risk assessment*

- 2.10 Robust risk assessment on receipt of a new complaint and on receipt of further information is necessary to enable the regulator to assess the risk based and proportionate action to take. Risk assessments also inform how cases should be prioritised.
- 2.11 In most cases that we audited we were pleased to see that there was evidence that risk assessment had been carried out. We did however find the following weaknesses in some of the cases that we audited:
- One case in which the GDC only applied for an interim order 15 months after receipt of the initial complaint. The case concerned fraudulent claims of over £20,000 in value. The GDC awaited the outcome of criminal proceedings before taking any action – which was three years after the Dental Complaints Service had first informed the GDC about the matter. Several risk assessments had been carried out during that period, without any decision being taken to apply for an interim order. We acknowledge that this case pre-dates the introduction of the GDC's new triage process.
  - We audited several cases that had been opened in the period post-dating the changes the GDC introduced in 2011 where we found that sections of the risk assessment form had not been completed. In some cases the risk assessment

section had not been completed on the triage allocation form, and so it was not apparent whether a risk assessment had been carried out and whether the decisions that had been made had been informed by the risk assessment

- One case in which it was unclear from the file whether or not a recommendation that had been made at a case assessment meeting to apply for an interim order had been actioned, or if not, why not. It was therefore unclear whether the decision to close the case had taken proper account of the risks that had been identified
- One case in which the complaint was received on 11 January 2012 but the triage form was not completed until 29 March 2012. We also audited a second case where the risk assessment was not carried out promptly - until 3 months after receipt
- One case concerning alleged sexual assault against a colleague, in which the GDC delayed 5 weeks before seeking necessary information from the police to support an application for an interim order. We consider that the seriousness of the allegation (which had been notified to the GDC by a PCT which had already suspended the registrant from its performers' list) was sufficient to warrant consideration of an interim order even before receipt of information about how the police were handling the matter. We acknowledge that this delay occurred in the autumn of 2009 and that the introduction of an electronic case management system should allow closer scrutiny and help minimise the risk of similar errors occurring in future
- One case in which the registrant's representative had stated in a letter to the GDC that their client was under no obligation to inform the regulator of his conviction. As noted [above] we are concerned that the GDC does not currently require its registrants to declare criminal convictions/cautions, as we believe that could put patient safety, public protection and confidence in the profession at risk. We understand that the GDC is currently examining possible options to address this issue as explained further in paragraph 3.4.

### *Quality control in decision making*

- 2.12 In previous audits we have expressed concern about isolated incidents where a single caseworker has closed a case without authorisation from an appropriately approved individual. We are pleased to report that we found no evidence that this had occurred in any of the cases we audited this year and note that the GDC's new case management system has been designed to include appropriate safeguards to ensure cases cannot be closed without appropriate authorisation.
- 2.13 However, the GDC's Quality Assurance Team are currently examining casework administration to identify and address under-performance by caseworkers. While we saw no evidence that files had been reviewed by the newly introduced compliance team, we note that the team audited all 110 decisions made by the IC October – December 2011. We note that the GDC's compliance team, having audited all 110 decisions made by the IC in the period from October – December 2011 has recommended the use of a standardised decision template which will ensure that decisions set out the IC's reasoning around their application of the realistic prospect test as well as explaining the reasons why any warning is to be published/unpublished. We will follow up on the

adoption of that recommendation in the 2012/2013 performance review, as well as looking for evidence of the impact of any changes made on the quality of decision making in our next audit. We will also follow up on the outcome of the compliance team's current work in evaluating casework administration.

### *Record keeping*

- 2.14 Poor record keeping can lead to inappropriate decision making, delays in case handling and bad customer service. Maintenance of a single comprehensive record of all actions and information on a case is essential for proper management of cases and for good quality decision making. We found examples of good information recording and file maintenance. We will look for evidence of a positive impact on the quality of the GDC's record keeping of the introduction of an electronic case management system in future audits.
- 2.15 During this year's audit we identified concerns that relevant information (such as interim order application outcomes, records relating to the progress of legal investigations and documents relating to preparations for hearings) were often kept in separate record systems without this being made clear by cross referencing. We also found files with incomplete assessment and triage forms and files where original complaints, letters or telephone notes were missing. The following are examples of weaknesses we identified in the GDC's record keeping in this year's audit:
- One case which was referred back to the IC for reconsideration (under the GDC's Rule 10 procedure) and where the file did not contain all internal emails between August 2011 and March 2012, and so it was not clear why the decision to refer back had been made
  - We identified one case where records relating to the case preparation (by external lawyers) were kept separately from the case files. We also found that there were inconsistencies between the paper and electronic files. The final letter (confirming that the registrant had been voluntarily erased) was kept on the legal team files and not copied to the case file. Similarly in a second case we found that several months' worth of papers appeared to be missing from the file and there was also no record of the outcome of an Interim Order Committee hearing that had been held in February 2011 on the case file (the information regarding the hearing outcome had been recorded on the registration record rather, than the case record)
  - One file on which papers from an unrelated case had been filed
  - Several cases where there was no copy of the initial complaint on the case file
  - Several cases where the files did not contain a copy of the closure letter to the complainant
  - One poorly organised file in which the assessment sheet was not fully completed, and some key documents such as the original letter from the complainant and telephone notes were missing
  - One file where the casework assessment sheet was not fully completed or signed or dated. It was therefore not clear when the decision was taken to refer the case to the IC. The complainant's consent form was also missing from the file, and the advice from the casework manager was not documented or dated.



## 3. Recommendations

- 3.1 We are pleased to report that, since our last audit, the GDC has taken forward several of the planned improvements to its FTP processes, including:
- the introduction of a triage system and standard operating procedures
  - the implementation of a computerised case management system
  - the provision of decision making guidance for the IC and its supporting staff
  - a review of standard letters with particular emphasis on whether warnings issued by the IC will be published or unpublished
  - the creation and deployment of a Quality Assurance team
- 3.2 In our performance review report for 2011/2012 (published in June 2012 and available from <https://www.chre.org.uk/overseeingregulators/305/> we indicated our expectation that this year's audit would provide us with an opportunity to assess whether the improvements introduced in 2011 had made the GDC's FTP function more effective. However, as indicated earlier in the report, a large proportion of the cases we audited pre-date the 2011 improvements, which means that we have not been able to assess their impact generally.
- 3.3 We found that certain elements of the new processes are not as yet being consistently implemented (for example, triage risk assessments that were delayed or not completed). We note that the GDC's Quality Assurance Team is currently focusing on assessing the quality of casework administration in order to identify and address under performance by caseworkers, which we hope will enable the GDC to take appropriate action to improve compliance with the documented procedures. We also acknowledge that it takes time for new systems and processes to be embedded. We anticipate that the impact of the recent changes will have become much more apparent by the time we carry out our next audit. In the meantime we will report upon the GDC's response to this audit report in our performance review for 2012/2013.
- 3.4 We understand that the GDC will publicly consult on a review of its current standards in September 2012. We fully support the GDC's intention to include within its standards a requirement for registrants to declare criminal convictions, cautions and any investigations or findings from other regulatory bodies both when received and in an annual declaration as part of the process of renewing their registration each year. We strongly believe that such a requirement is essential for patient safety and public protection and for maintaining confidence in the regulatory process. It would also bring the GDC in line with good practice within the other health professional regulators that we oversee.
- 3.5 We acknowledge the GDC's ongoing programme of improvements to its FTP processes, including the introduction of a triage system in November 2011, as well as new standard operating procedures, guidance and standard letters in April 2012. We also note that the GDC intends to provide FTP staff with clear guidance on the appropriate use of standard responses to ensure that the tone and content of letters and forms appropriately reflect the circumstances of the case. We hope that these changes will help to improve both the GDC's customer service and its risk management.

- 3.6 We remain concerned about continuing problems with case progression and delay, which have been a persistent feature in all of our audits of the GDC. We understand that the GDC intend for the new case management system, staff training and quality assurance to reduce unacceptable delays and improve record keeping.
- 3.7 We recommend that the GDC takes steps to satisfy itself that it has addressed all the issues identified in this audit. In particular we expect our next audit to find sound evidence that there are minimal delays across all FTP case handling processes.

## 4. Annex 1: Fitness to practise casework framework – a CHRE audit tool

The purpose of this document is to provide CHRE with a standard framework as an aid in reviewing the quality of regulators' casework and related processes. The framework will be adapted and reviewed on an ongoing basis.

### Stage specific principles

Stage	Essential elements
Receipt of information	<ul style="list-style-type: none"> <li>• There are no unnecessary tasks or hurdles for complainants/informants</li> <li>• Complaints/concerns are not screened out for unjustifiable procedural reasons</li> <li>• Provide clear information</li> <li>• Give a timely response, including acknowledgements</li> <li>• Seek clarification where necessary.</li> </ul>
Risk assessment	<p><u>Documents/tools</u></p> <ul style="list-style-type: none"> <li>• Guidance for caseworkers/decision makers</li> <li>• Clear indication of the nature of decisions that can be made by caseworkers and managers, including clear guidance and criteria describing categories of cases that can be closed by caseworkers, if this applies</li> <li>• Tools available for identifying interim orders/risk.</li> </ul> <p><u>Actions</u></p> <ul style="list-style-type: none"> <li>• Make appropriate and timely referral to Interim Orders Committee or equivalent</li> <li>• Make appropriate prioritisation</li> <li>• Consider any other previous information on registrant as far as powers permit</li> <li>• Record decisions and reasons for actions or for no action</li> <li>• Clear record of who decided to take action/no action.</li> </ul>

Stage	Essential elements
Gathering information/evidence	<p><u>Documents/tools</u></p> <ul style="list-style-type: none"> <li>Guidance for caseworkers/decision makers</li> <li>Tools for investigation planning.</li> </ul> <p><u>Actions</u></p> <ul style="list-style-type: none"> <li>Plan investigation/prioritise time frames</li> <li>Gather sufficient, proportionate information to judge public interest</li> <li>Give staff and decision makers access to appropriate expert advice where necessary</li> <li>Liaise with parties (registrant/complainant/key witnesses/employers/other stakeholders) to gather/share/validate information as appropriate.</li> </ul>
Evaluation/decision	<p><u>Documents/tools</u></p> <ul style="list-style-type: none"> <li>Guidance for decision makers, appropriately applied.</li> </ul> <p><u>Actions</u></p> <ul style="list-style-type: none"> <li>Apply appropriate test to information, including when evaluating third party decisions and reports</li> <li>Consider need for further information/advice.</li> <li>Record and give sufficient reasons</li> <li>Address all allegations and identified issues</li> <li>Use clear plain English</li> <li>Communicate decision to parties and other stakeholders as appropriate</li> <li>Take any appropriate follow-up action (e.g. warnings/advice/link to registration record).</li> </ul>

### Overarching principles

Stage	Essential elements
Protecting the public	<ul style="list-style-type: none"> <li>Every stage should be focused on protecting the public and maintaining confidence in the profession and system of regulation.</li> </ul>
Customer care	<ul style="list-style-type: none"> <li>Explain what the regulator can do and how, and what it means for each person</li> <li>Create realistic expectations.</li> <li>Treat all parties with courtesy and respect</li> <li>Assist complainants who have language, literacy and health difficulties.</li> <li>Inform parties of progress at appropriate stages.</li> </ul>

Risk assessment	<ul style="list-style-type: none"> <li>• Systems, timeframes and guidance exist to ensure ongoing risk assessment during life of case</li> <li>• Take appropriate action in response to risk.</li> </ul>
Guidance	<ul style="list-style-type: none"> <li>• Comprehensive and appropriate guidance and tools exist for caseworkers and decision makers, to cover the whole process</li> <li>• Evidence of use by decision makers resulting in appropriate judgements.</li> </ul>
Record keeping	<ul style="list-style-type: none"> <li>• All information on a case is accessible in a single place.</li> <li>• There is a comprehensive, clear and coherent case record</li> <li>• There are links to the registration process to prevent inappropriate registration action</li> <li>• Previous history on registrant is easily accessible.</li> </ul>
Timeliness and monitoring of progress	<ul style="list-style-type: none"> <li>• Timely completion of casework at all stages</li> <li>• Systems for, and evidence of, active case management, including systems to track case progress and to address any delays or backlogs.</li> </ul>

## 5. Appendix: Additional checks conducted in relevant cases

We set out some additional checks we conducted in relevant cases during our Audit of the General Dental Council's initial stages fitness to practise process in May and June 2012

- (i) *Since August 2011 the IC has been supported by legally qualified managers. To test this we checked:*
  - *Whether it was clear that a warning letter would be published when it had been issued by the IC*
  - *Whether the IC's reasons for their decision were comprehensive*
  
- (ii) *In November 2011, the GDC introduced a system of triage for new complaints, with set targets and tasks to be completed for each case. To test this we checked:*
  - *Whether the case was triaged within two working days of receiving the complaint*
  - *Whether the caseworker identified high risk cases, including those which may require an interim order*
  - *Whether the caseworker identified cases which should be fast-tracked through the investigation procedure*
  - *Whether the caseworker identified cases which require expert clinical input at an early stage*
  - *Whether the caseworker identified cases which might reasonably and safely be closed and/or referred to other bodies*
  
- (iii) *From November 2011, the GDC introduced guidance to be used by the IC in its decision making and by staff in handling cases to be considered by IC. To test this we checked:*
  - *Whether the IC clearly explained in their decision whether or not the 'realistic prospect' test has been met*
  - *Whether there is evidence that any previous or current FTP history was disclosed to the IC*
  - *Whether there is evidence that the Quality Assurance team had reviewed the quality of the decision and communication with parties in this case*
  
- (iv) *For cases opened from January 2012, the GDC introduced a process for advising employers of a complaint. To test this we checked:*
  - *Whether there was evidence that the GDC contacted the registrant's employer to notify them of the complaint, and to ask they inform the GDC of any concerns they may have about the registrant's conduct, performance or health.*
  - *Whether consent was obtained from the registrant to contact their employer?*

- (v) *From December 2011 the GDC introduced health assessments for registrants in new FTP cases involving convictions and police cautions relating to alcohol or drugs.*
- In cases of drink and drugs related offences involving first conviction/cautions, we checked whether there was evidence that the registrant was required to produce a reference from a GP, a nurse practitioner or occupational health physician confirming they were medically fit to practise. Where the information provided by the GP was considered to be insufficient or itself raised issues, we checked whether consideration was given to requesting a full assessment.*
  - In cases of drink and drugs related offences involving more than one conviction/caution, we checked whether the registrant was automatically required to undergo a health assessment undertaken by GDC-appointed examiners.*

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## **CHRE GDC audit review**

### **1. Introduction**

A review has been undertaken of the Council for Healthcare Regulatory Excellence (CHRE) General Dental Council's (GDC) initial stages fitness to practise process audit report. The key points made by CHRE are set out below with comment about what measures HCPC has in place or areas of development planned for the future. The full CHRE report is attached to this paper.

### **2. Paragraph 1.5**

The areas in which the GDC have introduced improvements are:

- a triage system to facilitate the prompt identification of high risk cases, case requiring fast-tracking, cases requiring clinical input;
- a system for obtaining expert clinical input prior to consideration by the Investigating Committee;
- a process for seeking health reports in cases involving criminal convictions/cautions for offences involving alcohol/drugs;
- legally qualified Investigating Committee secretaries to provide improved support to the Investigating Committee;
- re-drafted operational guidance, alongside improved induction and training and development for staff and FTP panellists;
- routine performance management of investigation work; and
- a compliance team that is responsible for auditing closed cases and assessing the quality and timeliness of casework and customer service as well as the quality of decision making.

### **HCPC Comments**

In the areas set out above, the HCPC has the following in place:

- HCPC has recently reviewed the way the new cases are logged in light of the increase in cases since August 2012 as a result of the on-boarding of social workers. A same day logging and review process by Case Team Managers has been introduced. This will be kept under review to ensure it is effective.
- HCPC has the option using of registrant assessors at Investigating Committee stage to provide advice on clinical matters.
- As part of the work stream looking at public protection, the use of health assessments in cases other than health allegations is being assessed
- The Lead Hearings Officer now undertakes the role of Investigating Committee co-ordinator and attends those meetings to help ensure consistency in decision making
- A review of the Case Manager induction process has been undertaken and an updated version of the induction is now in place.
- There are a range of activities undertaken in relation to performance management. These include monthly case review meetings between Case Team Managers and Case Managers, the monitoring of case management

system (CMS) actions and Assurance and Development Team audits. Guidance was introduced for Case Team Managers in December 2012 to ensure consistency in their approach to performance management.

- The new Assurance and Development Team has been in place since May 2012.

### **3. Paragraph 2.1**

The report provides the following positive comments on good examples of case handling.

*“During our audit we identified several examples of sensitive and helpful handling of cases by GDC FTP staff, both in the way that their letters were expressed and the way in which complainants were referred on to other bodies. In one case we audited the GDC identified a clinical concern in a patient’s x-rays and alerted the patient’s dentist to this (although this was not the subject of the complaint). This indicates an overall emphasis on providing good customer service, including taking steps that are not strictly necessary for the purposes of the FTP process.”*

#### **HPCP comments**

Stakeholder communication training is taking place in March 2013 for the FTP department and will include elements of customer service and making all interactions with the department positive. Part of the work plan for 2013-14 includes a wider piece on ensuring a positive experience.

### **4. Paragraph 2.2 – 2.6**

The report sets out examples of weaknesses identified during the audit in the GDC’s customer care and the provision of clear and sensitive communication. Also highlighted are weaknesses in gathering information as part of the investigation.

#### **HPCP comments**

The examples provided in the CHRE audit report were of very lengthy delays. There is no evidence of such delays in HPCP cases. Case review meetings and the audits undertaken by the Assurance and Development Team should identify these issues should they arise. CMS actions also now assist Case Managers in managing their cases and deadlines.

### **5. Paragraph 2.7**

Weaknesses in the evaluation of information and the provision of reasons for decisions are outlined in the report.

#### **HPCP comments**

It is important that enough information contained in administrative decisions to close cases or take a particular course of action and in risk assessments. File audits check that the correct forms have been completed at particular stages of the process. From January 2013 Investigation Managers have undertaken a monthly qualitative review of reasoning on risk assessment and case closure forms on a sample of cases.

### **6. Paragraph 2.9**

CHRE comment on the timeliness of case management and state that:

*“We found several cases in which there was an extensive unexplained delay in case handling, as in our previous audit.”*

**HCPC comment**

A report to measure the length of time from receipt of a case to performing the Send Acknowledge action in the CMS is being rolled out and will be included in weekly reporting. Access to the CMS via laptops during case review meetings is now in place which allows Case Team Managers to review all case activity with Case Managers during the meeting. Reports on length of time are included in manager statistics and in the management commentary and anomalies are reviewed where identified.

**7. Paragraph 2.10**

CHRE comment on the risk assessment of cases undertaken by the GDC in the report at paragraph 2.10.

**HCPC comment**

The presence of completed risk assessment forms on the file at specific points in the process forms part of the file audits that are undertaken. A qualitative review of the content of the assessments is now undertaken by the Investigations Managers

**8. Paragraph 2.12**

Reference is made to quality control in decision making, and the CHRE comment that:

*“the GDC’s Quality Assurance Team are currently examining casework administration to identify and address under-performance by caseworkers. While we saw no evidence that files had been reviewed by the newly introduced compliance team, we note that the team audited all 110 decisions made by the IC October – December 2011.”*

**HCPC comment**

The Assurance and Development Team have now taken responsibility for file audits and the audit of the Investigating Committee Panel decisions (which was previously undertaken by the Policy Department). This is evidenced in an audit database for Investigating Committee decisions and a record of the file audits undertaken, and the outcome of any learning is recorded.

**9. Paragraph 2.14**

CHRE make the following comment on record keeping at the GDC:

*“During this year’s audit we identified concerns that relevant information (such as interim order application outcomes, records relating to the progress of legal investigations and documents relating to preparations for hearings) were often kept in separate record systems without this being made clear by cross referencing. We also found files with incomplete assessment and triage forms and files where original complaints, letters or telephone notes were missing.”*

**HCPC comment**

All documents are now stored electronically in the CMS and paper files are no longer in use. Documents migrated into the CMS did not migrate in date order in all instances although an extensive exercise was undertaken prior to the migration to

ensure that all paper documents were stored in electronic form. Documents within the CMS are either saved against the case or against a hearing, and therefore not all the information is in the same place, however, there are clear links between the two areas of the system and business rules about which documents are stored in which location.

## **10. Report Recommendations**

The report sets out that since their last audit, the GDC has taken forward several of the planned improvements to its FTP processes, including:

- the introduction of a triage system and standard operating procedures.
- the implementation of a computerised case management system .
- the provision of decision making guidance for the IC and its supporting staff.
- a review of standard letters with particular emphasis on whether warnings issued by the IC will be published or unpublished.
- the creation and deployment of a Quality Assurance team

## **HCPC comments**

In relation to those areas highlighted above, the HCPC has undertaken the following:

- HCPC has recently reviewed the way the new cases in light of the increase in new cases in August 2012. A same day logging and review process by Case Team Managers has been introduced. This will be kept under review to ensure it is effective.
- The CMS has been implemented.
- Lead Hearings Officer now acting as ICP co-ordinator. Decision templates and a case to answer practice note have been in place for some years and were reviewed in December 2011.
- Standard letter review undertaken in 2011. Further review to be considered to coincide with customer service training in 2013.
- Assurance and Development Team was formed in summer 2012.