

# The GDC – a law unto itself?

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## In brief

Questions the need to increase the General Dental Council's (GDC's) annual retention fee and argues that monies should be returned to dentists.

Provides an analysis of the GDC's approach to reserves from 2014 to 2017.

Poses questions as to whom the GDC is actually accountable under the law, given that the Chair describes it as 'his organisation'.

The following two pieces are published here to help highlight the parlous state of affairs between the British Dental Association ([BDA] the dental profession) and its regulator, the General Dental Council (GDC). The first piece by Mick Armstrong details the background to one of the letters he sent to Mr William Moyes, Chair of the GDC and provides a link to rest of the lengthy correspondence. The second piece by BDA Chief Executive Peter Ward questions how autonomous the GDC can actually be under the law and asks whether such a body is in fact acting without the law.



Mick Armstrong

## GDC - Governance, Deceit and Chicanery?

In late October I wrote a long letter to the Chair of the GDC challenging a number of assertions that he had made in response to my earlier request that the organisation began to repay its ill-gotten gains to UK dentists. It is enormously disappointing to have to continue a debate over what should be a straightforward matter with what is supposed to be a legitimately constituted statutory body. The bottom line is that four years ago, the GDC used flawed data and unlawful methods of consultation to impose a massive hike in dentists' annual retention fee. The predictions that it relied upon have been shown to be

incorrect and the current situation is a million miles from the scene of devastation that the GDC shroud-wavers predicted. My request of the GDC was that, in the light of developments, it did the decent thing and reduce the ARF for 2018 instead of continuing to take monies from dentists' bank accounts to store in their own. My assertion was that it has already taken more than was warranted, and that could be justified. I expressed the view that the GDC's desire to empire-build and to extend its reach beyond statutory expectations were not good reasons to continue bleeding our profession.

The response I got was facile and dismissive, in the same way that previous responses have been. I took the view that the BDA needed to spell out the reasons for the profession's profound disagreement with the GDC's continuing stance. If the officers have either chosen to disregard the truth or are genuinely too ignorant to understand it, I felt we needed to make an unambiguous and line by line explanation that nobody could misunderstand. The trouble with that is that it is a long letter. For those who wish to read it, it is reproduced in full here (<https://www.bda.org/search-results?k=Moyes#k=Moyes>).

For those who wish to understand the main thrust of the reasoning it may be easier to see it graphically represented. I have presented it thus here:

## An analysis of the GDC's approach to reserves 2014–2017

In 2014 the GDC launched a consultation on the level of the ARF. The conclusion of the GDC's internal process was a proposal for a substantial raise in dentists' ARF based upon a number of presumptions. This document compares the figures and projections from 2014 with the comparable numbers as seen in 2017.

### Prediction of reserves position

The principal justification of the need for the massive rise in the ARF was the projected financial position if the rise in retention fees was not made. In the consultation document the GDC presented the same information in two formats (Table 1 and Fig. 1).

**Table 1 GDC Reserves.**  
Source: Consultation on the annual retention fee (ARF) level for 2015 – GDC

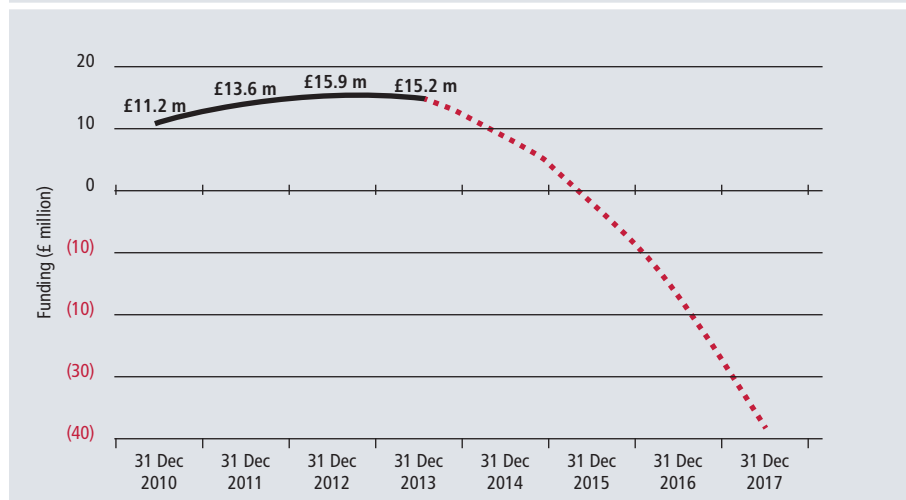
Year	Reserves £ m	Actual/projection
2010	11.2	Actual
2011	13.6	Actual
2012	15.9	Actual
2013	15.2	Actual
2014	9.3	Projected
2015	-2.9	Theoretical projection
2016	-16	Theoretical projection
2017	-30	Theoretical projection

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**Fig. 1 Funding gap: Actual and projected GDC reserves if fee levels were maintained as per 2013 level. Source: consultation on the annual retention fee (ARF) Level for 2015 – GDC**



The summary expectation was that the rise in ARF was to prevent the GDC running into a deficit of £40 million by 2017 (Fig. 1) or £30 million (Table 1).

#### Prediction of complaints/fitness to practise (FTP)

The GDC's position was that the principal driver of this deficit was the anticipated rise in the number of complaints cases and the associated cost in dealing with them.

The GDC produced Table 2 in support of this contention.

#### What happened then?

On the basis of the figures provided (which when reviewed by KPMG at the GDC's own request were described as having high levels of uncertainty connected with them), the GDC went ahead and increased the ARF to £890 from the previous £576, an increase of £314 for dentists or 55%.

The BDA challenged the consultation process in the courts and the result was that the consultation had been unlawful. The GDC escaped the demand to reverse the decision on the grounds that to do so would throw the GDC into administrative chaos. The GDC was

subsequently censured by the Parliamentary Health Committee. The £890 ARF was applied in 2015, was maintained at this level in 2016 and 2017, and now again for 2018. The total sums derived from the dentists' ARF over the last three years has been c41,000 X £890 X 3 = £109 million. The uplift from the previous ARF level has contributed £39m.

#### How have the figures turned out in reality?

The projected activity with regard to FTP and complaints turned out to be plain wrong. The reality was markedly different to what was anticipated in the consultation paper. In 2017, the GDC published its paper – *Shifting the Balance*.<sup>1</sup> In that document, it presented its case for further developing its services. On page 51 of the document it produced a graph labelled Figure 7, (Fig. 2 in this paper) showing annual numbers of FTP referrals received by the GDC.

The graph is reproduced here as Figure 2 and shows that compared to the projection in 2014 the GDC actually received 1,615 fewer cases than predicted in the two years 2014 and 2015. This, therefore, represents an overstatement in 2014 of 27%. The run rate into 2016 showed a further decline and the figures for 2017 are not yet available.

Similarly, the financial projections used in the 2014 consultation document were dramatically different to what actually happened over the period.

The anticipation of a massive decline in GDC reserves (-£40m by 2017) actually has been transformed to a positive reserve balance of £18.1m in 2017 and is projected to rise to £26.6m in 2020 (Fig. 3). The GDC has never had less than £9 million pounds of registrants' money in its reserve account in the last six years.

The cash difference to the GDC between the projected 2017 figure from 2014 and the actual 2017 figure is a staggering £58 million. The upshot is that, instead of activity rising meteorically and reserves plummeting to perilous levels we have seen activity fall and an amassing of registrants' money to a level that would require calamity of unprecedented scale to ever need the GDC to call upon them.

#### The ARF for 2018 and onward

The GDC has announced its intention to maintain the dentists ARF level for 2018 at £890 and this will contribute to the GDC's amassed reserves. In essence the additional monies received will be moved from dentists' current accounts into the GDC's reserve account. The money will not be used operationally.

#### The GDC reserves policy

The GDC is statutorily empowered to determine its own level of ARF. It similarly has the force of statute in enforcing payment. As a result, it has a guaranteed current income stream of about £35 million every December and about £10 million every July. Its workload and profile typically extends over two years and so in any given year there should be very few surprises as to the likely cash needs in the operating year. Should such surprises occur it is never more than five months away from a statutorily guaranteed cash injection of many millions of pounds.

The question then arises as to what the justification is for reserves at the level that the GDC currently holds. In 2017 the current holding would allow the GDC to operate for nearly

	2010	2011	2012	2013	2014	2015
Number of complaints received	1401	1578	2278	2990	3,500	4,000
% increase of complaints on previous year	N/A	13%	44%	31%	17%	13%
Number of FTP hearings	139	134	149	160	296	638
% increase in FTP hearings on previous year	N/A	-4%	11%	7%	85%	116%

six months with no income. This is wholly excessive and represents an unrealistic state of affairs. While there is an argument for a very minimal liquidity reserve there is no justification for taking further funds from dentists to sit in the regulator's bank account.

We are advised that by the time the GDC published its intention to set the fee for 2018 in September 2018 it was already too late to make a change to that level – the Council paper was not published in advance of the decision-making meeting and the fee regulations were signed at the same meeting. We of course had called for the fee to come down as part of our response to the *Shifting the Balance*<sup>1</sup> exercise, so the opposition to this decision should not have come as a surprise. Similarly,

we are advised that there is no mechanism for refunding fees to registrants without incurring yet more expense by the registrants themselves.

So be it, but we wish to put the GDC on long notice in time for its considerations for 2019. We have not forgotten, we are not persuaded, and we believe that the retention of dentists' money is unreasonable and immoral. We expect a major and substantial discount to be applied to the ARF bill for 2019. By that we anticipate a decrease of more than £400 to the dentist ARF in that year.

After that, we expect transparent and properly reasoned arguments for the proposed level of future ARFs and we expect that explanation to be made in time to have a proper conversation.



Peter Ward

## Is the GDC exempt from the rule of law?

Fundamental to the principles of democracy and freedom that serve the developed world is the adherence to the rule of law. Its development has been incremental over many centuries and its significance to our current lives is profound. It underpins autonomy and the sanctity of life and it prohibits the arbitrary use of power by government over citizens. The early origins related to the control of the monarchy which believed that it could wield special authority by virtue of a grant from God. More recently its applications have been used to challenge the unreasonable behaviour of governments and the attempts of authoritative bodies to abuse their powers.

The earliest foundation of the Rule of Law is attributed to Magna Carta in 1215. Some of the local disagreements are dealt with in detail, but there are also matters of principle established:

Para 52 'If, without the lawful judgement of his peers, a man has been dispossessed of his lands, castles, franchises or his rights, or had them removed by us, we will at once restore these to him.'

Para 55 'All fines rendered to us unjustly and against the law of the land, and all ameracements made unjustly and against the law of the land, shall be entirely remitted'

So, in addition to the major constitutional freedoms conferred by Magna Carta, we see great emphasis on fairness and impositions needing to be justified by statute or the judiciary rather than by arbitrary means.

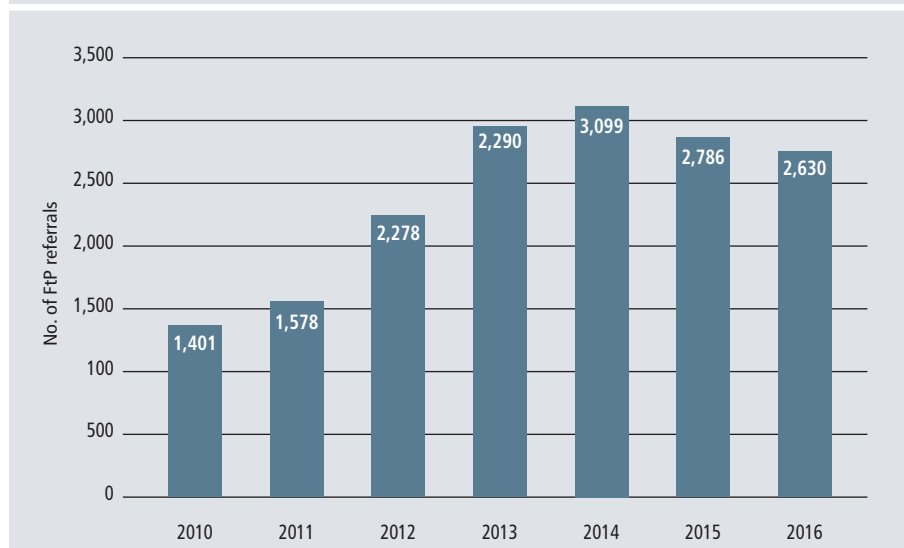
The centrality of Magna Carta to modern society has been underwritten by great thinkers such as,

Winston Churchill: '[...] a system of checks and balances which would accord the monarchy its necessary strength, but would prevent its perversion by a tyrant or a fool.'

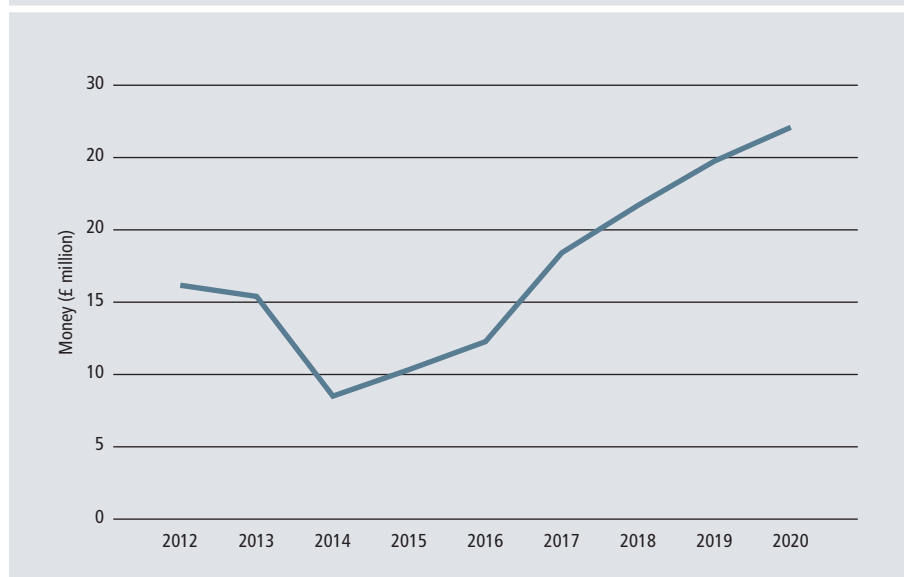
Lord Denning: '[...] the greatest constitutional document of all times – the foundation of the freedom of the individual against the arbitrary authority of the despot.'

Lord Neuberger: 'Where justice is concerned, the principles of Magna Carta are a reference to

**Fig. 2** Graph showing annual numbers of FTP referrals received by the GDC.  
Source: *Shifting the balance: a better, fairer system of dental regulation – GDC*



**Fig. 3** GDC reserves



*which we should always return to ensure that we are proceeding in the right direction.'*

The philosopher John Locke (1632–1704) further articulated the principle:

*'The natural liberty of man is to be free from any superior power on earth, and not to be under the will or legislative authority of man, but to have only the law of nature for his rule.'*

And his thoughts were echoed in the Bill of Rights (1689) during his lifetime which asserted 'certain ancient rights and liberties' by declaring among other things that:

*'[...] levying taxes without grant of Parliament is illegal.'*

All of this may seem a long way from dentistry in the twenty-first century and, frankly, I am surprised that I am caused to even reflect on such matters of major constitutional significance. It is only the egregious behaviour of the UK dental regulator (The General Dental Council) that has caused me to do so. As Mick Armstrong describes above, he has gone to great lengths to seek explanations for a set of actions by the GDC. He first wrote in reasoned terms to call for a reduction of the ARF for 2018 in advance of the September Council meeting when the fee had appeared on the GDC website without prior notice or a formal decision by the Council. Having been given the brush-off he then wrote a very detailed letter explaining his justification and questioning certain assertions made in the GDC's response. The brusque and dismissive response from the GDC Chair is quite shocking in its self-affirming and rebuking tone. Even more significantly, it has still failed to respond to the concerns raised and cites parliamentary approbation as its authority.

Up to now, the GDC has shown itself to be avoiding proper scrutiny of most of its governance activities, be it by Government, Parliament, or the Judiciary; its own regulator has to date not had a role in assessing actual governance issues. But it is empowered to set its own fees at whatever level it wants, to use them however it wants and to retain dentists' money in reserves without any reasonable justification as to why. So, to whom do we complain?

The GDC Chair, Mr Moyes, may have opened the door to that question. His assertion, in his correspondence, that the

GDC's actions are validated by four parliaments would certainly fit with how things are supposed to work. Following the constitutional framework as based upon Magna Carta as described above, no body should be above the law. And no 'taxes' should be levied without the express authority of parliament. While the GDC is mandated to set its own fees via the rules, what are the processes to check that the considerations made at Council level are in line with what should happen?

Mr Moyes says that the GDC is accountable '...directly to the Westminster Parliament and the devolved legislatures...' This is in keeping with the way non-governmental bodies are supposed to operate, but it is something of a challenge to find out how that accountability actually operates. In 2014, the House of Commons Public Administration Select Committee published a report entitled *'Who's accountable? Relationships between Government and arm's length bodies'*. The review doesn't make for happy reading but it does seem familiar.

We should note here that the GDC is neither a public nor an arm's length body, but it has in the past expressed the intention to comply with rules and requirements that cover such bodies.

In its review of the sector, the committee reports that 'Accountability arrangements... have been ad hoc'. It found that 'How individuals are appointed to the boards ...remains in many cases obscure... So is the basis for deciding whether to reappoint a person...'

The conclusion of the report is perhaps most telling. It said that 'We have reviewed the state of accountability for arm's length bodies in the UK and found inconsistency, overlaps, confusion and clutter.' The final recommendation is that the civil services should '...motivate and educate talented people in this important work, in order to improve efficiency, transparency and effectiveness in public bodies and to provide assurance that they are carrying out their functions as intended, meeting their aims and achieving value for money'.

From all of this it would appear that the GDC is not unique in benefiting from the morass of confusion and the lack of orderly accountability in the oversight of such bodies. In many cases, and with right-minded and

reasoned leadership, many of these organisations may manage their affairs properly and effectively. In those cases, the absence of clear accountability is mitigated by the presence of reasonable and reasoning leaders. In our direct experience, the challenges that Mick Armstrong has put and the dismissive reaction to them of our regulator give real cause for concern. The protection from the dangers identified by Churchill and Lord Denning is only afforded when parliaments actively participate in the accountability process. When the accountability is notional and passive, the arms-length body becomes accountable only unto itself. What is even worse is that the body can then cite the notional accountability as a validation of its own actions safe in the knowledge that such accountability is honoured only by lip service.

It is possible that some bodies are held accountable indirectly by other means. For example, wherever taxpayers money is used, the body will be separately accountable to the Public Accounts Committee of Parliament. When the police seek to prosecute legal proceedings they must seek approval from the Crown Prosecution Service who will first determine legitimacy and prospects of success before allowing the use of taxpayers money. The fact that the GDC is funded not directly by taxpayers but by registrants removes it from any such scrutiny.

It is certainly the case that the profligate excesses and financial mismanagement at the GDC would have been sorted out long ago if such examination had been applied. Instead, the GDC has what is in essence a money-printing machine over which the payers have no control. When the payers raise objection the Chair of the GDC brushes aside their concerns and asserts his own rectitude. The fact that the Chair now describes the GDC as his own organisation and cites his own centrality to the way it works gives an insight into what we are up against.

The worries and prescience of Churchill and Denning may seem far removed from dentistry but it would seem that our difficulties stem directly from them.

1. General Dental Council. Shifting the balance. 2017. Available online at <https://www.gdc-uk.org/about/what-we-do/regulatory-reform> (accessed December 2017).