

# Life after erasure: what are the factors determining restoration?

Andrew Merrett\*<sup>1,2</sup> and Len D'Cruz<sup>3</sup>

## Key points

A very small number of registrants are erased by the General Dental Council.

Some features of the proved allegations, where serious, may make restoration after erasure very difficult.

A registrant demonstrating insight, remorse and remediation is more likely to be restored.

## Abstract

This article is based on a review of cases involving UK dental registrants, erased and restored to the General Dental Council Dental Registers, in order to consider what factors might influence restoration.

## Introduction

One of the most significant events in the practising life of a dental professional could be an investigation by the regulator, the General Dental Council (GDC). The prospect of losing your hard-won career and livelihood as a result is high on the list of concerns expressed by many oral healthcare providers in the UK. Nobody wants to have their name erased from the Dental Registers and certainly not without good reason.

Every registrant wants to be dealt with fairly, proportionally and with a degree of understanding, considering the circumstances of the situation, the allegations made and the context in which the registrant works, including their personal life, human factors<sup>1</sup> and health issues, which may impact on their behaviour and performance.

## The Dental Registers

The GDC is appointed by statute and is the legal body responsible for maintaining and administering the Dental Registers.

However, its prime function is to protect the public and ensure patient safety.<sup>2</sup> It is a UK-wide regulator.

The Dental Registers, of which there are seven main ones, hold the names of those entitled to practise dentistry within their scope of practice, as determined relevant, to each Register. In addition, there are Specialist Registers.

### The composition of the Register, December 2020

- Dentists (43,000)
- Dental care professionals (DCPs) (77,000)
- Dental nurses, dental hygienists, dental therapists, orthodontic therapists, dental technicians and clinical dental technicians.

The Dentists Act 1984 determines how the GDC must perform its duties in relation to registration, discipline, sanctions, erasures and restorations. The Act is not static and amendments have been made over time; the latest was in 2018. The threshold for investigation is quite low since the key rule for assessment is Rule 3, which says the GDC: 'shall consider a complaint or other information...and shall determine whether a complaint or information amounts to an allegation'.<sup>3</sup>

This having been said, the GDC's most recent report<sup>4</sup> indicates that of every 100 cases received for review, by initial assessment:

- 81 progressed through to assessment
- 18 were closed immediately

- 1 was referred on to the NHS.
- Of the 81 sent for assessment:
  - 37 were reviewed by the case examiner and 22 were closed
  - 15 progressed to a practice committee.

## Situations that the GDC will investigate

The GDC's fitness to practise rules require them (at Rule 3) to 'consider a complaint or other information in relation to a registered dentist or a registered DCP, including a dentist or DCP whose registration is suspended, and shall determine whether a complaint or information amounts to an allegation'.

This means the GDC has very little discretion in what they consider or investigate. If a matter is raised with the GDC, in almost all cases (no matter how serious in terms of treatment or conduct), the GDC is obliged by legislation to investigate and consider whether an allegation of impaired fitness to practise needs to be made. The list below is an example of some of the issues that are reviewed, either because they are the triggers in themselves, or arise out of investigation:

- Serious or repeated mistakes in clinical care
- Failure to examine properly or obtain informed consent
- Failure to maintain satisfactory records
- Failure to respond reasonably to a patient's needs
- Lack of professional indemnity
- Infection control issues

<sup>1</sup>Clinical Lecturer and Clinical Teacher, Royal London Hospital Dental School, Queen Mary University of London, UK; <sup>2</sup>Specialist Advisor, Care Quality Commission (Dental), UK; <sup>3</sup>General Dental Practitioner, Woodford Dental Care, Head of BDA Indemnity, Essex, UK.

\*Correspondence to: Andrew Merrett  
Email address: andrewmerrett02@gmail.com

### Refereed Paper.

Submitted 3 January 2023

Revised 9 May 2023

Accepted 26 May 2023

<https://doi.org/10.1038/s41415-023-6446-9>

- Data handling and use of personal information
- Criminal offences
- Health and medical conditions impairing safe patient care.

The list is not exhaustive.

## The process

The GDC process follows the wording of the Dentists Act 1984. This specifies that it does not matter whether the concern raised against the registrant occurred outside the UK or at a time when the person was not registered – at a time before they were registered when they were a dental student for example.

At this stage, the GDC consider the matters raised, seek further information, including clinical records where relevant, indemnity certificates and employment or NHS contractual information from the registrant, and then consider whether there is an allegation of impaired fitness that should be referred to case examiners. From the numbers going through the system, it is clear that the case examiners see under half of the cases that actually come in. Even at that stage, many are closed with no further action, which should offer some reassurance that the GDC are applying appropriate filters to sift out the serious from the not so serious: something that was not being done back in the bad old days between 2014 and 2018.

In any case, where there is a real prospect of the allegations being found proved and resulting in a finding of an impaired fitness to practise, the case will be referred by the case examiners to a practice committee: a health, professional performance or professional conduct committee (PCC), depending upon the nature of the allegations.

It is worth noting that the burden of proof rests on the GDC in these matters, not the registrant, and the standard required to prove any allegations made by the GDC is the civil

**Table 1 Analysis of the 240 registrants erased from the GDC Register between 2005 and 2021**

Percentage of the 240 registrants erased	Percentage on Register 2020
Dentists: 63%	37%
DCPs: 37%	63%
Male: 87%	Ratio of men to women = 23:77
Female: 13%	Ratio of women to men = 77:23
Primary registration abroad: 57%	28%
Primary registration in UK: 43%	72%

not criminal standard, namely the balance of probabilities.

In other words, the registrant does not have to prove or disprove anything. It is for the GDC to prove their case as the prosecuting authority.<sup>5</sup>

If, following the tribunal hearing, a practice committee determines that the registrant's fitness to practise is impaired, a number of sanctions could be imposed.<sup>6</sup> The registrant could be:

- Erased
- Suspended for up to 12 months
- Have conditions placed upon registration for up to three years
- Reprimanded.

With all of these, there is a right of appeal.

## Being restored to the Dental Register

Section F89 28 of the Act covers restoration of names to the Register following erasure and states that a registrant has a right to apply for their registration to be restored after erasure. However, no such application can be made before five years elapse or within 12 months of an earlier application having been made. Such an application is referred to a PCC and the applicant will be asked to supply information and evidence in support.

The challenges facing a registrant seeking restoration to the Register after a five-year period should not be underestimated. In simple terms, they must show insight into their failings, remediation of those failings, and to demonstrate appropriate knowledge and skills where there was a prior lack of that as determined by the PCC that erased them. The applicant must prove that they are now fit to practise and of good character.

## Profiling 240 registrants who were erased

Between January 2010 and December 2020, some 240 registrants were removed from the Registers, while others had their registration suspended or changed in relation to disciplinary matters.<sup>7</sup>

Over a slightly longer period (2005 to 2021, including this one of 2010 to 2020), of those applications considered for restoration to the relevant Register, 44 applications were made: 18 were restored, all of whom were dentists (13 of those with conditions attached), one case was adjourned and 25 decisions were made to not restore.

## Features of a case that increase its gravity

This opinion piece is limited to a review of disciplinary erasures from Dental Registers<sup>8</sup> through the fitness to practise process. This is being considered separate to other erasures, such as administrative (for example, failure to pay retention fee) or voluntary (for example, professional retires). Singh *et al.* in their five-year review noted 56 erasures between 2003 and 2007.<sup>9</sup>

These demographic data need to be reviewed with caution.

Table 1 and Table 2 show the percentages of registrants grouped by certain characteristics.

**Table 2 Years since qualification when the dentists in this group were erased**

Year since qualification	Percentage of total erased
0–15	7%
15–25	24%
25–35	52%
35–45	44%
Over 45	25%

Their relation to the overall number on the Register at the relevant time of their respective cases may be different, since the authors have used the latest current data available.<sup>4</sup>

Those registrants who had legal and/or professional help during the disciplinary process, appeared to have a better outcome than those who did not have such help.

The reasons why a registrant may not have representation might include:

- They did not request assistance from their indemnifier
- They did not have cover for regulatory investigations
- They were denied cover by their indemnity provider
- Their indemnity policy was not valid at the time the investigation began.

Those cases with multiple allegations that included dishonesty or related to some form of criminal behaviour or convictions were more likely to result in erasure. The same pattern of erasures is found with doctors, with the most common reason for erasure being dishonesty and the second most common being inappropriate relations with both patients and colleagues.<sup>10</sup> Clinical competence did not feature as a reason for erasure from the Medical Register in 2020 and there were only nine cases between 2012 and 2020 for the past two years in relation to competence and communication.<sup>11</sup>

However, certain factors seem to lead to the application for restoration being unsuccessful. These arise when the gravity of the original reason for erasure meant that erasure was almost inevitable from the outset. This includes serious criminal behaviour, which, by definition, results in erasure and subsequent failure at restoration. Examples of this over the period looked at by the authors include serious sex offences, especially involving children, human trafficking and/or slavery, extortion and blackmail, with or without financial gain.

### Characteristics of registrants who were erased

In the review of these data in relation to sex, men, by far, are far more likely to be erased than women: 87% as compared to 13%. There may be a variety of reasons for this. In particular, non-clinical allegations were particularly apparent among men compared to women. Criminality of

various types, sexual crimes, and fraud and financial impropriety were more prevalent among male registrants. These non-clinical misdemeanours (excluding those which were health related) involving civil and criminal law matters, together with regulatory breaches, for example, NHS rules and regulations, were a particular feature of the allegations attributed to male registrants.

Within the small number of cases involved, there may be confounding factors for this in relation to male registrants. The period looked at by the authors has a larger cohort of men compared to women and in the period covered, the cases involving DCPs are less likely to have reached the hearing stage, bearing in mind the significant delays during the period. We know that age is a factor in the demographics of the registrant facing a hearing and the data available suggest that the older dentist still on the Register is likely to be male. It is possible that age is more of a significant factor than sex. The collection of registrant demographic details may not be complete, which may skew comparisons.

When we look at the origins of primary dental training, there appears to be a higher number of erasures among non-UK-trained dentists. More research is required as a matter of urgency to determine the reasons for this. While it might be easy to speculate that some aspects of the clinical training provided by some non-UK dental schools could be sub-optimal, it is not clinical competence that results in erasures.

Communication or cultural issues might be a determining factor in the patient's referral of the registrant to the GDC in the first place, but the GDC processes and the legal tests applied to the allegations should eliminate such a possibility.

Looking at the age of the registrants at erasure, the data suggest this is not a problem that is normally faced by younger dentists, which should be of some comfort to this cohort of the profession.<sup>12</sup> There will be as many theories as to why this might be as there are dental registrants, so until more detailed research is done, it is pointless to speculate.

### What helps to get you back on the Register?

Erasure from the Dental Registers is an extremely rare event. On average, it affects only 0.021% of total registrants every year.

Contrary to popular opinion, investigation by the GDC and even a referral to a fitness to practise committee should not be automatically considered as the end of one's career. Only 15% of such referrals end up before a practice committee and of these, only 20% result in erasure.

The data we have examined suggest that having been erased, the chance of being restored is far less than 50%. The exercise involves a time-consuming, convoluted process that can be costly and stressful for the applicant. It is unlikely that the applicant will receive any funding for this from their indemnity provider.

Our analysis of the deliberations by the practice committee indicated that when the reason for erasure was criminal in nature or involved a particularly serious matter, restoration to the Dental Register is increasingly less likely, regardless of whether the criminal offence related to either the registrant's professional or personal life.

For a dentist to be restored to the Register, the panel must have considered all the relevant information that has been presented before deciding if the dentist is fit to practise while ensuring the overarching objectives of:

- Protecting the public
- Maintaining and promoting confidence in the dental profession
- Ensuring proper professional standards and conduct among the dental profession.

A review of the reports from restoration hearings suggest a number of factors that help to determine the likelihood of success. The most important of these is the registrant's evidence, to demonstrate that they have insight into the concern(s) about their fitness to practise and that these have been actively addressed.

The registrant needs to demonstrate they understand what went wrong and how they could have done things differently. The registrant's current level of insight is a major determinant in considering the risk of the previous misconduct or poor performance being repeated. Oral questioning of the registrant will help the tribunal to determine this. A registrant's remorse, regret and apology adds weight to the tribunal's decisions about their current fitness to practise, particularly when dishonesty has been proven. Expressing remorse requires the registrant to take responsibility for their actions and a demonstration of regret for

their actions and the impact these may have had on patients, the public and other affected parties.

Along with their insight into an event, a demonstration of the remediation undertaken by the registrant is the key to a successful outcome. To be successful, the dentist needs to actively address concerns about their behaviour, skills, performance or health. Clinical errors are capable of being remedied more easily by training, supervision, course attendance and evidence of good practise.

Some other issues can be more difficult to demonstrate sufficient remediation, such as cases involving dishonesty, sexual misconduct, violent and abusive behaviours. Concerns that unacceptable behaviour, skills and performance are likely to be repeated in the future is another important consideration for the panel, as well as the effect that restoration may have on the public's confidence in the profession.

A registrant must wait at least five years before they can apply for restoration. At that time, they will need to demonstrate that they have maintained their level of knowledge and skill and are safe to resume unrestricted practise. They will also need to show what they have done in the intervening five years in the field of dentistry, such as research, teaching, academic qualifications or publishing of articles, for example.

During the restoration hearings, the burden of proof is on the registrant, not the committee, to demonstrate that a return to registration is the correct outcome. This is the opposite of the principle adopted in

the original disciplinary hearings, where the burden of proof is on the committee to demonstrate allegations proven.

### In summary

For a registrant to have a reasonable chance of success in their application for restoration, they will need to evidence at the very least:

- Remorse, understanding and insight into their previous actions
- Evidence to show how those actions are unlikely to be repeated
- They are a fit and proper person to return to the Register
- Remediation activity has been undertaken
- Competency, where there had been a lack
- Appropriate knowledge and skills where there had been a lack
- The applicant is fit to practise on all grounds of health
- Specific risks associated with reasons for erasure are negated and no longer exist
- The public would be accepting of such a restoration and consider it appropriate
- All relevant provisions within the Dentists Act are satisfied
- There are no good reasons why such a restoration cannot be made.

While the likelihood of being erased remains relatively low in general, and even less likely for clinical competence issues, erasure is not necessarily the end of a dental career. Some of the demographic trends identified are worthy of some further research, which the authors hope this opinion piece will now prompt.

### Ethics declaration

*The authors declare no conflicts of interest.*

### Author contributions

*Both authors contributed equally to the planning, writing and revising of this article.*

### References

1. The National Advisory Board for Human Factors in Dentistry. Human Factors and Patient Safety in Dentistry. Available at <https://antwerpdentalacademy.co.uk/wp-content/uploads/human-factors-nabhf-position-paper.pdf> (accessed October 2022).
2. UK Government. Dentists Act 1984. Section 1 F1 (1ZA). 1984.
3. General Dental Council. Fitness to Practise Rules. 2006.
4. General Dental Council. Annual Report and Accounts 2020. 2021. Available at [https://www.gdc-uk.org/docs/default-source/annual-reports/gdc-annual-report-and-accounts-2020c7d6bc84-c137-48b9-badc-11be21fb95c5.pdf?sfvrsn=1e06e4a8\\_4](https://www.gdc-uk.org/docs/default-source/annual-reports/gdc-annual-report-and-accounts-2020c7d6bc84-c137-48b9-badc-11be21fb95c5.pdf?sfvrsn=1e06e4a8_4) (accessed September 2023).
5. D'Cruz L, Rattan R. *Dental Law and Ethics*. Herefordshire: Stephen Hancocks, 2022.
6. General Dental Council. Guidance for the Practice Committees including Indicative Sanctions Guidance. 2020. Available at [https://www.gdc-uk.org/docs/default-source/professional-conduct-committee/guidance-for-the-practice-committees06774dc265f0420a8fc95ae2ea44fd69.pdf?sfvrsn=51eb261c\\_27](https://www.gdc-uk.org/docs/default-source/professional-conduct-committee/guidance-for-the-practice-committees06774dc265f0420a8fc95ae2ea44fd69.pdf?sfvrsn=51eb261c_27) (accessed September 2023).
7. General Dental Council. Freedom of Information request. 5 April 2021.
8. Dental Professionals Hearings Service. Upcoming hearings. Available at <https://olr.gdc-uk.org/hearings> (accessed August 2021).
9. Singh P, Mizrahi E, Korb S. A five-year review of cases appearing before the General Dental Council's Professional Conduct Committee. *Br Dent J* 2009; **206**: 217–223.
10. General Medical Council. Analysis of cases resulting in doctors being erased or suspended from the medical register. 2015. Available at <https://www.gmc-uk.org/-/media/documents/analysis-of-cases-resulting-in-doctors-being-suspended-or-erased-from-the-medical-register--63534317.pdf> (accessed October 2022).
11. Melville C. Personal communication. October 2022.
12. Fox K. 'Climate of fear' in new graduates: the perfect storm? *Br Dent J* 2019; **227**: 343–346.