

A retrospective analysis of the GDC's performance against its newly-approved fitness to practise guidance

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FULL PAPER DETAILS

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Objectives To assess if the GDC considers relevant factors at all stages of its deliberations into misconduct, as required by the determinations in the cases of Cohen, Zygmunt, and Azzam; and to assess whether those circumstances described in the *Indicative Sanctions Guidance* as warranting erasure from GDC registers led to that outcome. **Design** Retrospective analysis of practise committee transcripts **Materials and Methods** The consideration of specific factors in determining impairment of fitness to practise was compared with their subsequent consideration when determining the severity of sanction. Additionally, cases that highlighted aggravating circumstances deemed as serious enough to warrant erasure were monitored. Pearson's χ^2 test was used to detect any variation from the expected distribution of data. **Results** Sixty-six cases met with the inclusion criteria. Of the five factors considered, all but one was more likely to be heard when determining sanction having first been factored in to the consideration of impairment. Additionally, there was a statistically significant correlation between the aggravating factors and erasure from the registers. **Conclusions** The GDC do, in general, consider relevant factors at all stages of their deliberations into practitioner misconduct, and act in a manner that is consistent with their own guidance when determining sanction.

EDITOR'S SUMMARY

One of the qualities that we all have to apply in both our personal and professional lives is that of self-regulation. We may not think of describing it with such a term but we manage our daily dealings according to the standards we set ourselves. Being conscious of staying healthy and sleeping well so as to be at our best for treating patients, not drinking and driving, respecting our parents and so forth. These parameters will differ for us all but are inherent in everything that we do.

When it comes to self-regulation of our profession the General Dental Council (GDC) is charged with the task of protecting patients and regulating the dental team. I have long argued that since the demise of elections to the GDC by members of the team we cannot any longer be described as self-governing but that is an issue for another day.

When it comes to self-regulation of the *BDJ* we also apply the standards which we think are fair and which represent balance. Since the BDA and our

membership have been so vociferous in recent times about the overall appalling performance of the GDC, which we have reflected in the content of the Journal, it seems also fair to publish this paper. This broadly supports the fact that the Council's fitness to practise panels have taken into consideration the decisions in three judicial reviews as well as the GDC's own indicative sanctions guidance in the period covered by this research.

But the process continues for us all and it is significant that the three references cited by our Commentary author are all dated 2015, highlighting the current and continuing developments in this area, most notably the recent report by the Professional Standards Authority into the future of all regulatory bodies. Although often regarded as a 'dry' subject, regulation, ethics and behaviour form a key part of our work and the services that we provide to our loyal and trusting patients. Therefore, we do have to continue to engage in this debate wholeheartedly. It may not be as

interesting as clinical procedures, or as engaging as oral health but ultimately it concerns our very existence as professionals and our concomitant livelihoods. We will continue the debate in the variety of content that our standards dictate.

The full paper can be accessed from the *BDJ* website (www.bdj.co.uk), under 'Research' in the table of contents for Volume 219 issue 5.

Stephen Hancocks
Editor-in-Chief

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IN BRIEF

- Highlights that all registered dentists and DCPs are subject to the GDC's fitness to practise proceedings.
- Provides a concise, easily-understood, and up-to-date synopsis of the GDC's fitness to practice machinery.

COMMENTARY

To say that the GDC has been in the spotlight for the past 18 months (during part of the period this research looked at the fitness to practise (FtP) determinations) is stating the obvious. Following on from the GDC's defeat in a landmark legal case in December 2014 initiated by the BDA after the hike in the annual retention fee, the Professional Standards Authority (PSA) highlighted the GDC's failure to meet a total of seven of its standards of good regulation.¹ In August the PSA's report *Rethinking regulation* called for a review of the professional regulatory framework considering it to be out of date, overcomplicated and expensive.² The profession itself has been concerned about what it perceives to be the inconsistent, harsh or illogical decisions made by FtP panels as well as the case management of cases by the GDC itself, even before they get to the FtP committee.³

This research examines whether the GDC follows its own guidance set out in *Indicative sanctions guidance* in relation to insight, dishonesty and harm to patients as well as three important appeal court cases against the GMC. These cases of Cohen, Zygmunt and Azzam reiterated that those regulators have to look at the registrants current impairment, future conduct and mitigating circumstances.

The authors looked at 68 cases which fulfilled their inclusion criteria of first instance cases appearing before the Professional Conduct Committee (PCC) or Professional Performance Committee (PPC) covering the period 27 August 2013 to 10 October 2014. The issues of impairment and the factors that influence these decisions are considered in stage 2 of a GDC hearing after the specific allegations against

the registrant have been found proven or not on the balance of probabilities.

Every case before the GDC is different in that the facts of the case and the circumstances surrounding it will be unique to it. What is important in determining cases is that the correct principles are applied to the facts and the decisions made by the committee take into account legal precedents and guidance. The confidence the public and profession has in the management of complaints and concerns referred to the GDC is determined largely by these very crucial decisions over the livelihoods over the registrants who find themselves in the GDC machinery.

It is of some reassurance that the authors conclude, over the time period covered by their research, the FtP panels have taken into consideration the decisions in three judicial reviews as well as the GDC's own *Indicative sanctions guidance*. It is also logical to see that risk of serious harm to patients and dishonesty are more likely to lead to erasure than their absence as aggravating factors in a case and that a registrant's insight into their behaviour and subsequent good behaviour were positive factors.

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1. Professional Standards Authority. Performance Review 2014-15. 2015. Available online at <http://www.professionalstandards.org.uk/library/document-detail?id=d40c5b9e-2ce2-6f4b-9ceb-ff0000b2236b> (accessed September 2015).
2. Professional Standards Authority. *Rethinking regulation*. 2015. Available online at <http://www.professionalstandards.org.uk/docs/default-source/psa-library/rethinking-regulation.pdf?sfvrsn=2> (accessed September 2015).
3. Will the GDC ever learn? Regulator is accused of abuse of process in botched case against dentist. 24 June 2015. BDA Press release.

AUTHOR QUESTIONS AND ANSWERS**1. Why did you undertake this research?**

It has been suggested that fitness to practise (FtP) tribunals have applied a restrictive view of impairment because of a change in wording since the last FtP reforms, when consideration of 'whether a [registrant]'s FtP is impaired at the time of a hearing' was introduced, replacing the previous regime of whether they 'considered a [registrant] to have been guilty of serious professional misconduct'. As such, there exists a gap in research relating to whether the PSA-regulated councils are still applying a restrictive interpretation of impairment. We felt that this was an interesting project, which straddled the disciplines of healthcare and law.

2. What would you like to do next in this area to follow on from this work?

Funding is being sought to undertake an in-depth qualitative analysis of fitness to practise cases heard by the Medical Practitioners' Tribunal Service (MPTS), GDC and General Pharmaceutical Council (GPhC), which will hopefully be the subject of a PhD studentship beginning in early 2016. This will address not only whether specific criteria are considered, but also the degree to which subtle variations in the facts of each case effect the outcome.