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Immediate

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Enclosure(s): Appendix 1-6

Getting the Balance Right in Wales

Supporting quality and safety for dental registrants as part of an assurance process

This WHC replaces WHC (2005) 086 – *Guidance for local Health Boards on Local Procedures for General Dental Practitioners and Dental Care Professionals whose performance gives rise to concern* and the subsequent guidance issued in October 2012 – *Updated Guidance on a Model Operating Procedure for the Management of Dentists on the Dental Performers List whose Performance is of Concern.* It has been developed with input from a multi professional group drawn from across Wales.

It is primarily for use by health boards, but we hope it will also be useful for dental teams, Local Dental Committees and other organisations such as the British Dental Association, Health Education and Improvement Wales (HEIW), Community Health Councils, Healthcare Inspectorate Wales and Public Service Ombudsman Wales.

(Following the establishment of HEIW on 1 April 2018, the Dental Deanery in Cardiff University will become part of HEIW in October 2018. Throughout this WHC, references to HEIW apply to the Dental Deanery prior to its incorporation into HEIW).

The WHC applies to dentists who provide NHS services in general dental practice (either in wholly NHS or mixed private/NHS practice). References to "the dentist concerned" include a Performer, a Provider or an associate employed dentist. The principles can be applied when concerns are raised about dental care professionals (DCPs) working in practices with NHS contracts or private practice. Where appropriate, there are also references to dentists who work in wholly private practice.

Introduction

In *Shifting the Balance*: *a better, fairer system of regulation* the General Dental Council (GDC) recognises that, at present, when concerns are raised about a dentist the emphasis is on enforcement after things have gone wrong. It further identifies that good regulation should be proportionate, accountable, consistent, transparent and targeted.

This WHC sets out the model we want to adopt in Wales to give patients, the public, the dental profession, health boards and the GDC confidence that dental performance which causes concern can be identified promptly and dealt with proportionately to protect patients and support GDC registrants.

The WHC describes a process for health boards to act promptly when concerns are raised and respond proportionately. It also describes how the Welsh Government will work with the GDC to instigate a system of re-routing, repatriation and information sharing when concerns are raised directly with the GDC.

We want a system that:

- Engenders a culture of enquiry and shared learning to reduce the risk that other patients and registrants will be affected by the same issue;
- Identifies registrants who may be developing problems and who could benefit from early intervention and support;
- Promotes local resolution to address concerns promptly and minimise the impact on patients and registrants;
- Promptly identifies serious issues that should be referred to the GDC to deal with them appropriately; and
- Ensures the GDC deals with only those cases which should be dealt with by the GDC.

Appendix 1 describes concerns about performance and possible causes for these.

1. Working with the GDC

The GDC has developed a NHS Concerns Initiative whereby concerns which are directly with the GDC are repatriated for local resolution where it is considered safe and appropriate to do so.

When concerns are raised directly with the GDC, the GDC advises that “In most cases, the best way to get a resolution to your complaint is raising it directly with the place where you were treated, for example if you want an explanation or an apology”. In *Shifting the balance: a better, fairer system of dental regulation* the GDC sets out its proposals for a system in which “issues are dealt with in the right place, delivering the right outcomes for patients and the public at the right cost and within an acceptable timeframe”.

Using this system, the Welsh Government wants the GDC to re-route or repatriate certain concerns to Wales. Concerns about a dentist providing NHS care can then be addressed by health boards in line with the Putting Things Right Regulations or by HIW if the concern relates to care provided by a dentist working wholly in private practice.

Re-routing or repatriation may include cases:

- Where the registrant has failed to adequately explain the charges for treatment;
- Where the primary concern is poor communication;
- Where there is evidence of inadequate complaints handling;
- Which involve low level behavioural or attitudinal concerns and have no element of discrimination, violence and do not concern vulnerable adults or vulnerable children;
- Where there is evidence of minor issues in relation to record keeping;
- Where there are issues accessing NHS dental care due to contractual capacity;
- Which involve a single clinical incident where there is no evidence of repetition or an ongoing pattern of behaviour, and the case is not so serious that it raises fitness to practise issues (consideration will be given to the dates(s) of treatment and whether it is historic or recent);
- Which involves multiple low level clinical concerns over several appointments, or which may involve a number of individual complaints on similar issues which do not raise fitness to practise concerns.

Application of the criteria will be considered in detail and may include issues such as the response of the dentist and insight demonstrated following a concern being raised with the GDC.

Health boards will handle repatriated concerns in the same way as if the concern had been raised directly with the health board. Having dealt with the concern, the health board may decide it is necessary to refer the dentist concerned back to the GDC if the matter is found to be sufficiently serious.

The GDC provides information about issues they do not deal with at this link: https://www.gdc-uk.org/patients/raising-a-concern/who-can-help

Appendix 2 provides information about:

- dealing with concerns about private dental care; and
- registrants who have concerns about other GDC registrants.

2. Examples of matters which may warrant referral to the GDC Interim Orders Committee

The GDC Interim Orders Committee (IOC) deals primarily with registrants where it is necessary to protect the public or where there is a real risk of significant harm to the health, safety or the wellbeing of patients and others if the GDC registrant is allowed to practice without restriction.

We will work with the GDC and stakeholders to agree examples of matters which may warrant referral to the GDC Interim Orders Committee. These will support health boards in deciding when to refer a registrant to the GDC.

Appendix 3 includes examples of matters which may warrant referral to the GDC Interim Orders Committee.

3. A consistent approach

The Welsh Government is seeking consistency across Wales in the processes health boards and other organisations use to work with dentists when concerns are raised.

This WHC will support health boards and other organisations to:

- Focus on good practice, quality and safety;
- Ensure good governance and probity;
- Protect the safety and wellbeing of patients and dental teams;
- Respond promptly to expressions of concern;
- Provide a structured framework for investigation of concerns;
- Ensure any investigation is open, transparent, proportionate and fair to all parties; and
- Provide an accurate assessment and report upon which to base decisions and appropriate action.

It requires health boards and other organisations to:

- Properly support dentists to do the “right thing”;
- Identify and rectify failing performance at an early stage;
- Encourage early resolution in the practice;
- Deal proportionately with concerns when they escalate to health board level;
- Deal promptly with performance which jeopardises patient safety or adversely affects quality, safety or probity; and
- Collate and share anonymised reports to inform learning from themes and issues identified from handling concerns, complaint and incidents.

To support this, the Welsh Government will establish a National Committee to work with health boards, other organisations and the dental profession**.** The Committee will be an expert group and will promote a consistent approach within an assurance process.

The Committee will:

- Promote patient and public protection within an assurance process;

- Receive anonymised information from health boards and NHS Wales Shared Services Partnership (NWSSP) about the number and type of concerns raised;
- Support local resolution;
- Identify examples of good practice in dealing with concerns;
- Identify the challenges associated with dealing with concerns;
- Identify trends and themes associated with concerns to support shared learning across Wales e.g. using the QAS outcomes;
- Act as a source of expertise on dealing with concerns in Wales;
- Develop all-Wales template communications for the informal procedures; and
- Assess the impact of the WHC.

The Committee will meet at least twice a year and stakeholders will include:

Welsh Government
Health Board Primary Care Executive team
Dental Practice Advisors
Public Health Wales
NCAS
HEIW
Healthcare Inspectorate Wales
General Dental Council
NWSSP
Medical Directors/Associate Medical Directors/Associate Dental Directors
NHS Dental Services
Welsh Dental Committee

4. Principles

The principles in this WHC are in line with:

- Welsh Government policy in *Putting Things Right* ;
- General Dental Council policies as outlined in *Shifting the Balance: a better, fairer system of dental regulation;*
- GDC Standards for the dental team - https://www.gdc-uk.org/professionals/standards/team;
- The National Health Service (Performers Lists) (Wales) Regulations (originally published in 2004 with a number of amendments since);

- The NHS (General Dental Services Contracts) (Wales) Regulations 2006 (Schedule 3, Part 6) which include the requirement for practices to "operate a complaints procedure to deal with any complaints". For NHS dental teams in Wales, this means using the Putting Things Right Regulations (PTR); and

- HIW dental practice inspection system.

This WHC refers throughout to "concerns". Putting Things Right (PTR) broadly defines concerns as expressions of dissatisfaction or complaints from patients and reports of adverse incidents from staff. Concerns can be written or verbal and encompass concerns about performance.

If the concern relates to a Practice or Contract, rather than an individual dentist, e.g. equipment, practice protocols or policy issues, then the issue will be dealt with under the NHS Contract Regulations.

Upholding Professional Standards in Wales applies to dentists who are employed by health boards. Directly employed dentists include those working in the Community Dental Service and the Hospital Dental Service.

A wide range of assurance and support systems are in place in Wales to support dentists and DCPs to maintain high standards of care and to ensure safe performance. These are described in *Quality and safety assurance in general dental services in Wales:*

http://gov.wales/topics/health/professionals/dental/publication/information/safety/?lang=en

In developing this new WHC we have drawn on expertise in Wales to ensure an integrated approach across dental practice, health boards and the Dental Postgraduate Section, Wales Deanery, Cardiff University.

5. Local Resolution

Concerns – and particularly complaints regarding dental care – can be distressing for patients and cause real anxiety to dental team members. Where possible, it is best to handle them promptly and effectively in the practice so they do not escalate.

The patient may raise a concern with the dental practice; the health board; the CHC; a patient advocate; or the GDC. As a rule, it is helpful for the dental team to deal with the concern at the outset – this may address the concern and resolve matters quickly. The practice team may seek advice from their health board complaints team to support them to handle the complaint effectively.

It is good practice to offer to meet the complainant. A meeting gives all parties an opportunity to discuss the issues and may well lead to speedy resolution. A

meeting may be helpful at any stage of the process but can be particularly useful at an early stage.

The NHS (General Dental Services Contracts) (Wales) Regulations 2006 include detailed information about requirements for handling complaints. For NHS dental teams in Wales, this means using the Putting Things Right Regulations (PTR). PTR aims to provide a straightforward way for patients (or their relatives/carers) to raise concerns about any aspect of their care and to have these concerns dealt with promptly and appropriately.

Dental practices need to ensure their practice complaints procedure mirrors PTR (especially in respect of the timeframes for a response).

If the health board is contacted regarding more general concerns about a dentist or dental practice, it may decide to investigate the concern in line with PTR requirements.

6. The health board approach.

Health boards receive information about general dental practices from a range of external and internal sources (see Appendix 4 for details). The health board must do its best to satisfy itself that concerns are genuine and not malicious. The health board is responsible at all stages for dealing with concerns about a dentist on their NHS performers list. Vexatious complaints and complainants can put a great strain on dental teams. Health boards should support dental teams to deal with these whenever they are alerted to them.

Health boards also have a responsibility to determine what action to take following any investigation within the contractual and professional regulatory framework.

Health boards have established dental quality and safety groups (or equivalent) as per the CDO letter at the link below:
http://gov.wales/docs/phhs/publications/150820letteren.pdf

These groups have an essential role to play in supporting health boards to deal appropriately with concerns about dentists.

The Group can act as a source of professional advice, informing and supporting the Board in monitoring GDS/PDS quality and safety, probity and performance. The group can support the Medical Director (MD), Associate Medical Director (AMD) or Associate Dental Director (ADD) in dealing with concerns. If a concern requires very urgent attention it may not be practical to consult the full dental quality and safety group: in this case an advisory group which includes members of the dental quality and safety group can provide advice.

Health boards are strongly recommended to appoint an AMD or Associate Dental Director (ADD) who is an experienced clinician and who can support the MD in dealing with dentists whose performance causes concern.

Health boards are responsible for maintaining a comprehensive record of information regarding concerns. The information should be kept in line with the health board's record keeping and retention policy.

In some instances the health board may need to ascertain whether the dentist concerned has worked in other health boards and whether concerns have been raised there.

Locum practitioners

Dentists may work as locums in many practices and in a number of health boards. They are less likely to become integrated into the practice team and patterns of poor or sub-optimal practice may be difficult to identify. Where concerns are raised health boards have a duty to deal with the concern in the same manner as other dentists on their Performer's list. The NHS contract holder must ensure any dentist working as a locum must be linked to the contract number as soon as they commence in the practice. Contract holders are responsible for ensuring appropriate induction for locum practitioners to ensure they understand the standards of care expected and local processes/protocols in place to ensure quality and patient safety e.g. complaints procedure,

The Role of the Local Dental Committee (LDC)

Health boards are required to consult their LDC to ensure the way in which they apply this guidance is fair and reasonable. However, patients, the profession and health boards must be assured there are no conflicts of interest when consulting with the LDC. This does not preclude the LDC from providing support as a "friend" to the dentist concerned at any stage of the process.

The role of HEIW

The Director of Postgraduate Dental Education, or nominated individual, must be consulted at an early stage if the case involves a dentist:

- In Dental Foundation Training;
- Working under Performers List Validation by Experience (PLVE) or mentored arrangements; or
- Who has conditional inclusion on the Performers List.

However, this must not affect the health board's ability to put measures in place to protect the public. If a concern is likely to include referral for HEIW support, it is helpful to consult the Director of Postgraduate Dental Education, or nominated individual, as early as possible in the process. However, there will be some cases where issues of confidentiality preclude this.

Support for dentists

The dentist has the option to seek support at each stage as appropriate. Support should be available in every health board area and may be provided by the LDC; British Dental Association; a Dental Defence Organisation; a friend or colleague.

Sharing concerns

When applying for inclusion in the Dental Performers List a dentist is required to provide "all necessary authority to enable a request to be made by the Local Health Board to any employer or former employer, licensing, regulatory or other body in the United Kingdom or elsewhere, for information relating to a current investigation, or an investigation where the outcome was adverse." Health boards, working with NWSSP, should ensure that these checks are made before including the dentist on their List.

7. Processes for dealing with concerns

Previous unsubstantiated or unproven complaints or concerns should not form part of any evidence without further investigation.

The health board must ensure that concerns are:

- recorded securely and managed appropriately;
- not malicious, and that allegations are adequately verified, and assessed.

In some cases e.g. where there are safeguarding concerns, the health board may need to act promptly in line with safeguarding policies.

PHW has published Guidance for Dental Teams on Safeguarding Children and Adults at Risk

<u>The key stages of dealing with concerns are</u>:

1. A prompt validation of the concern: evaluation, analysis and response (this may conclude the process if the concern is minor).
2. Investigation, if necessary (this may conclude the process).
3. Formal decision making process (Reference Panel – see Stage 3, page 15).

These are included in the flow chart at Appendix 5.

Stage 1

The first task of the health board is to identify the nature of the concern with the support of the dental quality and safety group (or health board equivalent)

and assess the seriousness of the issue based on the information available. This will inform the decision as to whether the concern warrants any action, an informal approach or escalation. The National Clinical Assessment Service (NCAS) can be consulted at this stage, if necessary.

NCAS is part of NHS Resolution (formerly the NHS Litigation Authority). Its purpose is to provide expertise to the NHS on resolving concerns fairly, share learning for improvement and to preserve resources for patient care. NCAS can provide advice to health boards: http://resolution.nhs.uk/

See Appendix 6 for additional information about NCAS.

Where the concern involves a dentist in Foundation Training, working under Performers List Validation by Experience (PLVE) arrangements, or a dentist who has conditional inclusion on the Performers List, the Director of Postgraduate Dental Education, or nominated individual, should be involved as soon as possible.

At this stage the health board may decide to deal with the concern in confidence and the dentist concerned does not necessarily have to be notified.

Dealing with minor concerns

Where the concern is deemed to be minor and does not pose any risk to patients the health board can decide to:

- Take no action (where the concern is very minor or trivial the health board may decide not to inform the dentist concerned that a concern has been raised); or

- Deal with the matter as an area of development or support. In this case, the dentist concerned should be informed about the concern. The DPA may have a role to play in this.

Minor concerns in isolation may seem insignificant but taken together, can indicate a problem requiring action. Concerns can come to the attention of a health board in a range of ways and there is no simple set of indicators to define 'poor' performance.

Stage 2 - Concerns which require investigation to establish the facts

Where the concern is more serious or major or a pattern of concerns suggests an underlying performance concern it will be considered by the AMD/ADD in consultation with the dental quality and safety group (or equivalent group or dentist), and a decision made whether to investigate the concern. At this stage, it is advisable for the MD not to be involved in case he/she is required to act at a later stage. It may be necessary to investigate the concern to establish facts.

The aim of the investigation is to:

- ascertain the facts in an unbiased manner;
- ascertain quickly what has happened and the reasons;
- determine whether there is a continuing risk;
- decide if immediate action is needed to remove the source of the risk; and
- recommend action to address any underlying problem.

Investigations are not intended to secure evidence against the dentist. They should be considered as a 'neutral' fact finding process. Information gathered during the course of an investigation may exonerate the dentist or provide a sound basis for effective resolution of the concern.

The health board must inform the dentist concerned in writing within 3 working days of the decision to investigate being made. The dentist should be made aware of the specific concern or complaint that has been raised and be given the name of a contact person in the health board.

The health board will:

- appoint an officer to undertake the investigation; he/she will:

- be a health board employee (if necessary, may be an employee of another health board);

- be suitably experienced and trained in investigating concerns;

- need timely advice and support from the DPA (assuming the DPA is not conducting the investigation);

- liaise closely with the dental quality and safety group;

- judge what information needs to be gathered and how it should be gathered;

- collect written statements and oral evidence to properly establish the facts;

- ensure that a formal written record is securely kept of the investigation in line with information governance policy; and

- compile a factual report and make conclusions and recommendations for consideration by the dental quality and safety group.

If the case involves more complex clinical issues than first anticipated, the officer should promptly seek advice from the dental quality and safety group (or equivalent).

In addition, he/she can:

- Ask the NHS Dental Services Clinical Adviser to undertake a review of patient records;
- Identify sources of occupational health support (it may be necessary to ensure the dentist concerned knows where to obtain occupational health support);
- Involve NCAS where appropriate;
- Liaise with HEIW or other professional training organisations;
- Work with the DPA and the dental quality and safety group to draw up development and training plans for individual dentists.

It is good practice to complete any investigation/assessment within three months of the time it was agreed to investigate the concern, although experience shows that more complex cases will take longer. Where the investigation takes more than 3 months, the health board must inform the dentist concerned that it is ongoing and continue to inform him/her at least every 3 months until it is complete.

Once the investigation is complete

The AMD/ADD and the dental quality and safety group will consider the investigation report on behalf of the health board and decide the next steps.

If the concern does not warrant immediate referral to a Reference Panel, the dentist will be invited to meet the DPA and Head of Primary Care (or suitably experienced and senior health board personnel, as appropriate, in the individual health board) to discuss the concern and identify learning needs.

The health board may also invite the contract holder to attend (if the dentist concerned is not the contract holder). In some instances the contract holder may not have sufficiently supported a performer.

The health board may decide the dentist can continue to practise but with support and a remediation programme in place. In most cases this will include a structured improvement plan to return the dentist to full unsupervised practice. The plan should normally be set out in a formal signed agreement between the dentist and the health board and the dentist will be required to complete it within a clearly identified timeframe. The health board should regularly monitor progress with delivering the plan. (See section 8 for further information about improvement plans).

A dentist employed in practice(s) should be advised to discuss the improvement plan with his/her employer, especially if the issues have implications for patient safety, the Provider, the NHS contract or the practice as a whole.

At this stage, the consequences of not completing the improvement plan or non-compliance with the processes should be clearly explained to the dentist concerned. He/she should understand that non-compliance may lead to referral to Reference Panel and the sanctions which the Panel can impose. This information should be included in writing as part of the improvement plan process.

If this process is agreed, the officer who conducted the investigation will:

- Advise the health board about the action and monitoring of performance; and
- Provide progress reports to the health board's Quality and Safety Committee (and onwards to the Board) at agreed intervals. In some health boards alternative committees or groups may receive progress reports but the Quality and Safety Committee will need to be assured that issues of performance concern in primary care are being addressed appropriately, fairly and effectively.

If the dentist does not attend the meeting or does not comply with the improvement plan process, the health board will immediately seek a response from the dentist concerned. The dentist should respond within 14 days and no later than 28 days. The response will be discussed by the MD/AMD/ADD and dental quality and safety group. A decision will be made as to whether there is a case to answer.

If the health board receives no response, or an inadequate response, from the dentist concerned, the dentist will be subject to the Reference Panel process or if necessary referred to the GDC, counter fraud or the police.

If the dentist has or appears to have, health issues the MD/AMD/ADD may advise him/her to contact the relevant professional medical or occupational support.

For NHS contract holders the health board may also request the dentist to undergo a medical examination as set out in paragraph 71(2)(m), Part 9 of Schedule 3 of the National Health Services (General Dental Services Contracts) (Wales) Regulations 2006 and paragraph 69(2)(l), Part 9 of Schedule 3 of the National Health Service (Personal Dental Services Agreements) (Wales) Regulations 2006. This should be thought of as a supportive action for the dentist concerned.

The investigation may identify wider concerns with the practice and the dental team. Individual dentists can "get into difficulty" as a result of poor quality and safety systems, lack of team support, inadequate equipment/facilities and demands placed on them by practice management. In these cases, the health

board must work with the practice as a whole as well as the dentist concerned. It may be necessary to liaise with HIW and HEIW to address a failing practice.

Protecting patient safety and service efficiency

Patient safety must be the first priority throughout the process of handling concerns. The health board may need to place temporary restrictions on the scope of clinical work carried out by the dentist, and ensure the dentist concerned has appropriate support from a colleague in the practice. Restrictions might include requirements not to treat specified categories of patient or only to use certain procedures in specified circumstances.

Dealing with very serious concerns

Where a concern is clearly very serious the health board may need to act rapidly and can at any stage:

- Go straight to a Reference Panel in accordance with the NHS Performers List (Wales) Regulations to consider suspension from the Dental Performers List (see Stage 3).
- Consider immediate referral to the GDC.
- Inform counter fraud or the police.

Stage 3 – a formal decision making process: The Reference Panel

The Reference Panel is responsible for making formal decisions on disciplinary issues relating to dentists. Its remit is to ascertain the facts by reviewing any evidence presented as a result of the investigation conducted by the health board. The health board process should conform to requirements of the National Health Service (Performers Lists) (Wales) Regulations 2004 (as amended).

Panel members must be independent of the process prior to this stage. They should have training in performance procedures, or be judged to have equivalent experience of such processes. Training for Panel members may include courses at NCAS, NWSSP, HEIW or similar.

A senior member of the NWSSP should be in attendance to give advice on the processes and procedures. A recorder is also required to ensure accurate records are kept of the proceedings and written records available for inspection.

The health board may have appropriate legal support and advice prior to a Reference Panel, and at the Panel. The Panel must include a dental clinician with appropriate knowledge to advise Panel members.

Membership of the Reference Panel

The membership of the Reference Panel should include:

- Chair - an Executive Officer of the health board, with the power of suspension;

- Independent Member of the health board;

- The MD who has responsibility for primary care performance issues. This individual should not be the same person who has been involved in dealing with the concern to date. Given this the individual may need to be from another health board;

- ADD/DPA – a clinician with understanding of dental clinical issues and implications (if the ADD or DPA has been involved to date it will be necessary to ask an ADD or DPA from another health board to attend); and

- LDC nominee.

The LDC nominee brings a dental perspective from outside the health board and provides additional assurance to the health board and local independent contractors that the Reference Panel is properly conducted. The health board will usually fund this attendance, although local arrangements may differ.

Members of the Reference Panel should not have been involved in the process to date.

The health board officer who conducted the investigation can attend the open session of a Reference Panel as per the Model Procedures.

A senior member of the NWSSP should be in attendance to give advice about the processes and procedures. A recorder is required to ensure accurate records are kept of the proceedings and written records available for inspection.

The Chair of the Reference Panel may seek advice from the Welsh Government National Committee. Actions taken by the Reference Panel should be reported to the National Committee to support learning and share experience. The health board will also want to keep a local learning log to inform relevant local policies and protocols and facilitate effective sharing through the National Committee.

Possible Actions by Reference Panel

Under NHS Regulations the Reference Panel has the power to recommend that the health board:

- Remove the dentist from the NHS Performers List.

- Contingent removal from the NHS Performers List.

- Suspend the dentist from the NHS Performers List.

- Refer the dentist to the GDC.
- Refer the dentist to NCAS for consideration of an NCAS assessment.
- Take no action.

(NB - This list is not exhaustive).

The main points to consider are:

- Protecting patient safety and service efficiency;
- Specifying the remediation mechanisms;
- Specifying resources and support; and
- Reviewing progress and sign-off.

Decisions affecting the formal status of a dentist on a Dental Performers List must be reached in accordance with the relevant Regulations and statutory provisions. In broad terms, the Performers Lists Regulations give health boards the power to suspend, remove or contingently remove dental or medical Performer/Providers from their performers list. The running of the Reference Panel is at the discretion of the Chair and should use the Model Procedures published by NHS Wales Shared Services Partnership.

(*The Model Procedures to deal with Oral Panel/Committee Hearings of Representations relating to Removal; Contingent Removal; Suspension of Practitioners* are available from both NWSSP and Health Boards).

An all-Wales Reference Panel

Health boards may choose to work together to develop a single all-Wales Reference Panel or Regional Reference Panels**.** The members will be drawn from a pool of people with appropriate expertise and training. Participation in an all-Wales or Regional Panel may further enhance the skills of panel members. However, it must include an individual with the power of suspension from the NHS contracting health board relating to the dentist concerned.

An all-Wales Reference Panel could be managed and administered using relevant agency processes (e.g. NWSSP). Action will be in accordance with the Regulations and health board Standing Orders.

The Panel must be held in the health board area where the dentist concerned works.

8. Improvement plan

An ‘improvement plan’ is a formal agreement between the dentist and the health board. It is a way of engaging the dentist and gaining commitment to make specified improvements within a defined timescale. The plan will define roles and relationships and specify how the process will be brought to a close and signed off.

The plan will set out specific educational and other requirements. It will identify where and how the dentist will work during the programme – whether in their own practice (internal) or in an established training practice (external) or a mixture of both. Whether internal or external training is used an experienced mentor should be identified to help with performance problems and support the dentist to complete the improvement plan. The mentor needs to assess the dentist’s progress against the objectives and make periodic reports to the MD/AMD.

The plan should have SMART objectives which will help the dentist to demonstrate that he/she has delivered the plan and provide evidence to the health board to decide whether delivery is successful.

Depending on its scope and content, an improvement plan may entail costs which will be met by the dentist concerned and/or the contract holder if the concern relates to practice systems.

Reviewing progress and signing off

Completing the improvement plan gives the health board a basis to decide whether to let the dentist resume work with normal appraisal and support mechanisms.

At the end of the clearly designated timescale, the health board should review the evidence provided by the dentist concerned, identify whether the plan/actions have been satisfactorily carried out and, if not, what further action is needed.

When the dentist has completed the improvement process the health board will make a decision whether or not to close the concern. This may require consultation with the individuals and organisations which have supported the dentist concerned. The health board must be assured that the dentist’s performance is no longer impaired and that any restrictions can be lifted. This should be done as a formal review by the dental quality and safety group. If the health board is not assured then further action will be needed. This may include referral to a Reference Panel or the GDC.

Where the plan is not adequately completed, or the dentist fails to engage, the MD/AMD/ADD must be advised promptly and the health board can decide what action to take, including referral to the GDC or removal from the Performer’s List. This option exists for the health board at earlier review points.

If the dentist does not cooperate or progress is not satisfactory, the remediation process can be ended before completion. It can also be extended

if the dentist, MD/AMD/ADD and dental quality and safety group agree that a further period of remediation may be beneficial.

Support

Further resources for support and training may be available from:

- HEIW appointees or others acting in an advisory capacity;
- Advanced or developmental trainers; and
- Clinical specialists within the health board (e.g. Dental Practice Advisers) or consultants/specialists working within or beyond the health board e.g. clinical attachment.

Appendix 1

Concerns about performance

Concerns about performance can be summarised as 'patients or members of the dental team are placed at serious risk of harm by any aspect of a dental service'. They can be complex, multi-factorial and may include performance that:

- Poses a threat or potential threat to patient safety or places patients or the dental team 'at risk';
- Is outside acceptable practice guidelines and standards or fails to meet required standards without sufficient reason;
- Consistently departs from what is considered normal practice;
- Exposes services to financial or other substantial risk;
- Undermines the reputation or efficiency of services in some significant way.

Poor or failing performance includes concerns about:

- Clinical care and/or organisational and managerial skills in the delivery of health care;
- Knowledge, skills, behaviour, attitudes and health;
- A pattern of performance in a range of areas over a period of time;

and can encompass:

- Clinical and professional practice;
- Dealing with patients and the wider public;
- Management of the practice and the dental team;
- Finance and probity.

Possible causes of failing performance include**:**

- Professional isolation;
- Lack of continuing professional education;

- Physical or mental ill-health;
- Drug or alcohol misuse;
- Practice workload, stress, meeting an NHS contract, the contract management approach and finance;
- Complaints;
- Practice infrastructure, equipment, culture, environment and ineffective team working;
- Lack of induction or support for dentists who are new to the practice or new to UK NHS systems;
- Interpersonal relationship problems – at home or work;
- Tragic and upsetting professional experiences.

Appendix 2

Concerns about private dental care

Where concerns have been expressed about a wholly private dentist or practice the concern should be raised with Healthcare Inspectorate Wales (HIW). Health boards have a duty to act where issues in wholly private practice may impact on the health and safety of their population.

The General Dental Council advises people who have had private dental treatment to contact the Dental Complaints Service (DCS):

https://dcs.gdc-uk.org/

Registrants who have concerns about other GDC registrants

Standard 8 of the GDC standards for the dental team states:

Patients expect that the dental team will act promptly to protect their safety if there are concerns about the health, performance or behaviour of a dental professional or the environment where treatment is provided.

Registrants must always put patients' safety first and raise any concern that patients might be at risk due to:

- The health, behaviour or professional performance of a colleague;
- Any aspect of the environment where treatment is provided; or
- Someone asking you to do something that you think conflicts with your duties to put patient's interests first and act to protect them.

The GDC provides advice on raising a concern:
https://www.gdc-uk.org/professionals/ftp-prof/advice-on-concern

The GDC does not specify where any concerns are to be reported. In the past, concerns may not have been brought to the attention of the health board because registrants with concerns about a colleague's performance did not want to be identified. It is essential that the health board handles whistle-blowers in line with the Health and Care Standards and in accordance with their whistle blowing policy.

Healthcare Inspectorate Wales (HIW) has a special role for people who are thinking about "blowing the whistle" about concerns they have with wrongdoing in healthcare in Wales. HIW are a prescribed body under the whistleblowing laws.

Appendix 3

Examples of matters which may warrant referral to the IOC

Removal from a Primary Care Organisation performer list because of poor performance	But consider: has that situation now been remedied? Is the Registrant back on the list and performing appropriately? In other words, is it still an emergency or has that emergency passed.
Supervised neglect allegations involving numerous patients/ a very serious single clinical incident	Consider if these allegations are current or historic and the present risk i.e. is there an ongoing risk to patients from the Registrant's clinical practice? Is it alleged that there is a serious lack of basic clinical knowledge or skills?
Alleged physical or sexual assault of patients or staff	Each case will very much depend upon the circumstances.
Sexual or improper relationship with a patient	Has the Registrant used their professional position to establish or pursue a sexual or improper relationship with a patient? As above, each case will depend upon the circumstances.
Serious cross infection control breaches	Consider if they have been rectified and whether there is a current risk.
Criminal investigations or charges for serious offences	It will always depend on the gravity of the criminal investigation and/or charge e.g. is it murder, manslaughter, rape and sexual abuse of children? Other offences of indecent behaviour may be referred but will depend on the circumstances. In other cases ask what would be the difficulty of the Registrant holding unrestricted registration while the allegations are resolved and whether a reasonable and properly informed member of the public would be surprised to learn that the Registrant had been allowed to practise in the interim?
A decision to bar the registrant from working with children or vulnerable adults	
Health grounds	i.e. Health grounds which affect the Registrant's ability to do his/her job or may result in passing on some serious communicable disease. A Registrant's refusal to co-operate with a health assessment may be a relevant factor in deciding whether to make an IOC referral.
Serious scope of practice breach	Importantly, is it a continuing breach (so there is a current public protection risk) or is the allegation historic?

No indemnity	Are we considering a period of past practice without indemnity or evidence that the Registrant continues to practise without indemnity notwithstanding the investigation?

GDC Guidance on Interim Order Referrals

Test for referring/imposing an interim order

1. The test for the Registrar to refer a case to the IOC is whether the Registrar considers it *appropriate* to do so in all the circumstances[1].

2. Whilst the Registrar may also refer the matter to the Investigating Committee (pursuant to sections 27(5)(a) and 36N(5)(a)) at the same time as making an IOC referral, this is not always possible (e.g. where further investigation is needed before assessment can take place) and is not required.

3. In considering whether it is appropriate to refer a case, the Registrar should consider the IOC's test as outlined below.

4. The test that the IOC applies in deciding whether to impose an interim order against the registration of a dentist is set out at section 32(4) of the Act[2]:
   "Where a Committee are satisfied that it is necessary for the protection of the public or is otherwise in the public interest, or is in the interests of the person concerned, for the person's registration to be suspended or to be made subject to conditions, the Committee may make –

   (a) an order that his registration in the register shall be suspended during such period not exceeding 18 months as may be specified in the order (an "interim suspension order");
   Or

   (b) *an order that his registration shall be conditional on his compliance, during such period not exceeding 18 months as may be specified in the order, with such conditions so specified as the Committee think fit to impose (an "order for interim conditional registration")"*.

5. Therefore, cases should be referred to an IOC where the Registrant faces matters of such a nature that it may be necessary for the protection of the public, or otherwise be in the public interest or in the interests of the Registrant for his or her registration to be restricted

[1] Sections 27(5) (*dentists)* and 36N(5) (*dental care professionals*) of the Act: *"The registrar— (a)…….(b) may also, if he considers it appropriate, refer the allegation to the Interim Orders Committee."*
[2] The corresponding provision for dental care professionals is set out at section 36V(4) of the Act

while the matter is investigated. Each of these areas is considered in turn, below:

Public Protection

6. The IOC must be satisfied on all the available information before it that an order is **necessary** for the protection of the public: that is to say, there is a real risk of significant harm (both actual and potential) to the health, safety or well-being of a patient, visitor, colleague or other member of the public if the Registrant is allowed to practise without restriction.

7. Therefore when considering whether to refer a matter to the IOC, the seriousness of the risk of harm to members of the public if the Registrant were to continue to hold unrestricted registration, should be taken into account. In assessing the risk to members of the public, the IOC will consider the seriousness of the matter, the cogency and weight of the evidence, including evidence about the likelihood of recurrence while the matter is investigated.

Public Interest

8. As well as protection of the public, the public interest includes:

    a. preserving public confidence in the profession; and
    b. maintaining good standards of conduct and performance.

9. Therefore, an interim order, solely on the basis of the public interest, is sought to protect public confidence in the profession and uphold and maintain proper professional standards pending a determination of the proceedings as a whole. In deciding whether to impose an interim order, the IOC will consider whether **serious** damage will be caused to public confidence in the profession and the maintenance of good standards if an order is not imposed and whether an informed member of the public looking on would be surprised, if the IOC did not make an order in respect of a matter that was later found proved.

10. It will be a relatively rare case where an order is made solely on the basis of the public interest. Although the word “necessary” is not used for this ground, it does at least carry some implication of necessity and desirability. In the context of imposing an interim suspension order on this particular basis, in the ordinary case at least, necessity is an appropriate yardstick. That is so because of reasons of proportionality. It is a very serious thing for a registrant to be suspended. It is serious in many cases just because of the impact on that person’s right to earn a living. It is serious in all cases because of the detriment to the

registrant in reputational terms. Accordingly, as mentioned above, it is likely to be a relatively rare case where a suspension order will be made on an interim basis on the ground that it is in the public interest alone.[3]

Registrant's own interests

11. This is an unusual ground and may apply because the registrant is ill and does not recognise it, or other factors suggesting lack of insight where the Registrant needs to be protected from himself/herself. That will be weighed against any hardship caused to the Registrant by any interim order and the potentially devastating effects if an order is made. Again, the IOC will look at significant risk of harm in the future if there is no restriction on registration. It is perhaps difficult to conceive of circumstances where such an order would be made on this ground alone.

Proportionality

12. The IOC must apply in its deliberations the important principle of proportionality. They must weigh in the balance the need to protect the public and the wider public interest against the Registrant's own interests. Proportionality involves taking the minimum necessary and appropriate steps to address the concerns identified. The IOC does no more than is necessary and considers the impact of any order on the Registrant both professionally and financially[4]

[3] *Sheikh v General Dental Council* [2007] EWHC 2972 (Admin)

[4] *Houshian v General Medical Council* [2012] EWHC 3458 (QB) King J

Appendix 4

Identifying concerns

The health board can be made aware of concerns in many ways, including:

- Concern expressed by other members of the dental team, NHS professionals, out of hours providers, secondary care providers, health care managers and non-clinical staff (including whistle blowing);
- Serious incidents or patterns of problems identified from incidents;
- Serious complaints or patterns of problems identified from complaints;
- Review of performance against personal development plans, annual appraisal, the QAS;
- Monitoring of data on performance and quality of care by the health board dental quality and safety team;
- Audit and other quality improvement activities;
- Information from regulatory bodies (particularly HIW/GDC);
- Information from NHS DS Clinical Advisers;
- Counter Fraud Services;
- Information from the police or coroner;
- Court judgements.

Effective practice monitoring can identify concerns at an early stage and allow for a supportive process. The health board dental quality and safety group has a part to play in this and can:

- Identify good practice to share;
- Review the wide range of information they receive about NHS dental contract holders and practices;
- Identify practices or dentists in difficulty and agree what steps can be taken to address this. Health boards can agree “quality triggers” which help to indicate that a practice is getting into difficulty;

- Encourage dentists who may be getting into difficulties to seek early advice from the DPA, LDC, the practice Quality Improvement Tutor or defence organisation;

- Seek assurance that concerns are acted on promptly and fairly;

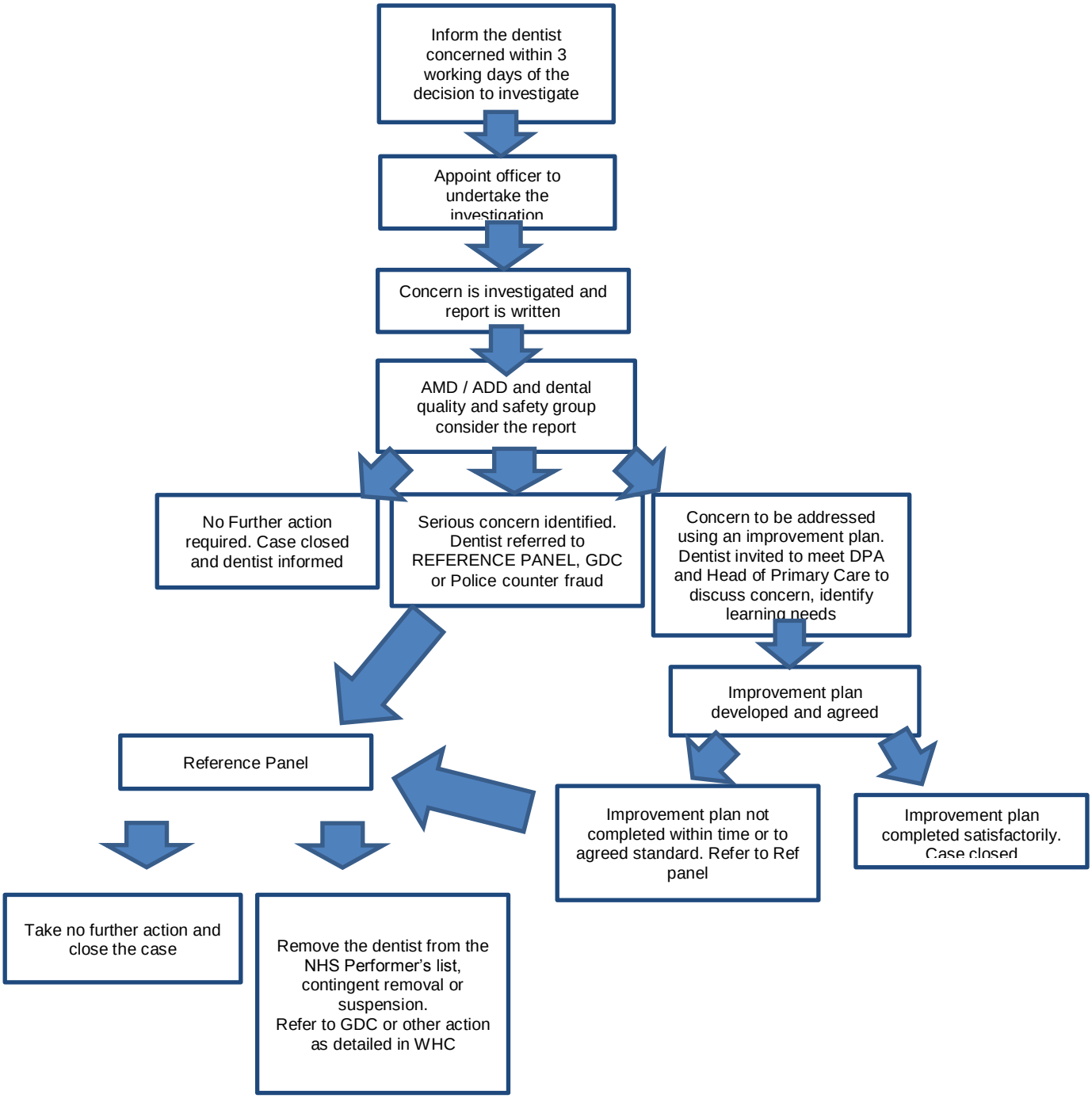
- Assist in identifying improvements and inform the development of any improvement plan;

- Collate information on concerns “trends and themes” which will help to identify risk factors and support learning and bring these to the attention of the MD/AMD/ADD.

Appendix 5

Process flowchart when a concern has been assessed as requiring investigation.

The concern may have been raised directly with HB or via GDC.



Appendix 6

The role of NCAS

NCAS has provided the information below

NCAS works to resolve concerns about the practice of dentists, doctors and pharmacists. Our aim is to work with all parties to clarify the concerns, understand what is leading to them and make recommendations to help the practitioner to deliver a high quality and safe service. We respond to calls about any aspect of individual or team practice, even where it is not yet clear whether there is evidence of poor practice. We can provide advice on long-standing and complex cases. We also provide advice on developing local clinical governance procedures. We provide expert advice and support, clinical assessment and training to the NHS and other healthcare partners.

Most requests come from the health board that employs or contracts with the practitioner about whom there are concerns. Contact is usually made by a senior member of staff, for example, the Medical Director, Director of HR or Head of Primary Care. However, we can receive initial contact from any representative of the health board, providing they have the delegated authority to act on behalf of that body. We are keen that concerns about practice are identified and resolved early, to prevent harm to patients and increase the opportunity for the individual to return to safe practice. Our advice is therefore to contact us as early as possible and to provide us with as much information as you can about the case. We can discuss a case without the need for you to identify the individual practitioner in the first instance.

NCAS deals with a wide variety of concerns about practice. Our experience indicates that a third of cases contain a range of concerns including behaviour and health - behaviour 58%, clinical 58% and health 21%. However, concerns are rarely seen in isolation and are often present as a variety of concerns across domains of practice, health and behaviour.