Submission of evidence

2023 Health and Social Care Select Committee Inquiry into NHS dentistry access

January 2023

Executive summary

Dental Protection is part of the Medical Protection Society (MPS) which has over 300,000 members around the world. We have supported over 30,000 dentists and dental care professionals in the UK for many years. Our in-house experts assist members with a wide range of legal and ethical problems that can arise from their professional practice, including clinical negligence claims, complaints, and General Dental Council (GDC) investigations.

As a member-owned defence organisation, we have a particular perspective on the reforms needed that would benefit dentists, dental care professionals and ultimately patients. Our submission is largely focused on the following:

1. **Wellbeing and its bearing on recruitment and retention.** Prioritising dentists and dental care professionals' wellbeing by dealing with longstanding issues of burnout as well as reducing the significant impact that a regulatory investigation has on wellbeing.

2. **Reducing unnecessary burdens of legal claims on dentists**. This is essential in order to reassure the profession, including resolving issues of vicarious liability via NHS forms.

3. **Overseas graduates**. Overseas dental graduates represent an integral and valued of the NHS dental workforce. While recruitment will be supported by imminent changes to legislation to facilitate registration in the UK, there are significant challenges that overseas graduates face including understanding the NHS contract and working in a high-pressure environment alongside potential vulnerability to claims and complaints which may impact international registrants to a greater degree. Cumulatively, this could disincentivise overseas graduates or make them less likely to stay in the UK.

1. Wellbeing and its bearing on recruitment and retention

We believe that prioritising the wellbeing of dentists and dental care professionals – including reducing stressors – will over the long term improve the perception and experience of NHS dentistry. It should facilitate recruitment and encourage retention respectively, with the end-goal of changes benefiting access to care for patients.

1.1 Preventing burnout

Even before the pandemic, we were concerned by – and committed to tackle the threat of – burnout. We launched *Breaking the burnout cycle* in September 2019 which outlined the different factors that lead to burnout as well as offering recommendations. As part of this work,

we carried out a survey among Dental Protection members to better understand the impact relationships at work have on their wellbeing. 50% of our members in the UK told us that they had considered leaving dentistry for reasons of personal wellbeing[1]. Burnout is a barrier to retention; we would suggest resolving burnout issues not as an 'incentive' but rather an essential to recruit and retain staff, preventing loss of experienced and valuable clinicians from the profession.

Dentists and dental care professionals experiencing burnout may be more susceptible to errors in judgment and decision making which can compromise the quality of care provided for their patients; they could also be less empathetic, and this can have a negative impact on patients as well as colleagues, teams, and the organisation. Burnout may also lead to periods of absence from work, further increasing the workload pressures on the rest of the practice reducing availability of NHS care.

As such, dental teams and practices should develop policies to allow for breaks, making rest and recovery periods the norm, and create work environments that encourage and recognise achievements.

We believe that dental schools and postgraduate training bodies should focus on providing dental practitioners who supervise others with the time and training to perform key management activities, such as debriefs, and identifying and supporting sick team members. More generally, dental schools and postgraduate training bodies should be encouraged to play a more prominent 'upstream', preparatory role when it comes to the wellbeing of their scholars.

They have a clear responsibility in laying physiologically healthy foundations for dentists and other dental healthcare professionals during their training and supporting them in their professional career development. They should establish markers for wellbeing at every career stage and carry out criterion-based audits against those markers. They should provide scholars with obligatory training in general wellbeing in the workplace, in building resilience, speaking up for safety, and how to develop effective, personalised coping strategies.

Recommendations:

- Dental teams and practices should develop policies to allow for breaks, making rest and recovery periods the norm; create work environments that encourage recognition of achievements and should be trained on the importance of putting policies in places to prevent burnout.
- The metrics for performance measurement in the GDS should be realistic and avoid the pitfalls of unrealistic targets
- Dental schools and postgraduate training bodies should be encouraged to play a more prominent 'upstream', preparatory role when it comes to the wellbeing of their scholars.

[1] *Half of dentists in the UK have considered leaving dentistry for reasons of personal wellbeing (dentalprotection.org)*

1.2 Reducing the impact of GDC investigations on wellbeing

The current regulatory environment has a huge impact on the wellbeing of the profession, which in turn impacts both retention and recruitment for NHS dentistry.

The GDC received over 1,300 complaints about dentists and dental care professionals in 2021. Following an investigation, about 10% of this number were referred to a Practice Committee for a hearing.[2]

The prospect of a GDC investigation causes significant concern. A Dental Protection survey of members at an early stage of their career conducted in 2021 found that the fear of making a mistake comes top in the list of member worries, and that 29% of members surveyed worry about an investigation by the GDC either 'always', 'most of the time' or 'frequently'.

We also witness first-hand the impact that these investigations have on wellbeing. The GDC has itself stated that FTP investigations "are often a stressful experience… the current process is more onerous and cumbersome than it should be"[3].

A member under investigation recounts that:

> *"The whole ordeal left me so distressed and exhausted that… I decided to remove myself from the register."*[4]

We have recently completed a survey of members who have been subject to a GDC investigation in order to understand their experiences and where improvements could be made by the regulator. We will share these results with the Committee once we have finished our analysis.

Dental Protection welcomes that the GDC is making improvements to its investigation processes. There are however a few areas where we believe the Department of Health and Social Care and the GDC could take to significantly reduce the impact of regulatory investigations on dentists' and dental care professionals' wellbeing.

1.3 Modernising the GDC's legislation

The GDC is governed by the outdated 1984 Dentists Act, which requires the regulator to conduct some of its operations in ways that are outmoded and not always in the best interest of patients or professionals. The majority of GDC investigations are closed without action[5], with the result that far too many go through a stressful process each year and complainants endure a lengthy process with what is often for them a disappointing outcome.

It has been over 11 years since the DHSC first proposed fundamental legislative changes aimed at allowing professional regulators to take a more proportionate approach to investigating concerns[6]. A number of consultations have taken place in the intervening period, including a consultation which closed in March 2021. The latest position is that the Department

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[2] *GDC Fitness to Practise Statistical Report 2021*
[3] *Reporting the cause of death of registrants who have died while under fitness to practise investigation (gdc-uk.org)*
[4] *You've got mail: The emotional impact of a GDC investigation (dentalprotection.org)*
[5] *GDC Fitness to Practise Statistical Report 2021*
[6] Department of Health. 2011. Enabling Excellence. Autonomy and Accountability for Healthcare Workers, Social Workers and Social Care Workers.

has confirmed that it is committed to taking forward legislation to updating parts of legislation for the medical regulator, but, disappointingly, no clear timescale has been set for the GDC.

Dental Protection has long argued for reforms to the Act to enable the regulator to streamline its processes to improve efficiency, reduce the number of investigations into less serious allegations, and to require the GDC to conclude investigations in a timely manner. A clear timeline for next steps must be set out.

1.4 Improvements by the GDC to the way it conducts investigations

We are in ongoing communications with the GDC about improvements that we believe could be made to reduce the impact on individual dental professionals within the confines of their current legislation.

The first communication from the regulator about an investigation can have a significant impact on the dental professional's wellbeing. We believe that in the interest of registrants, initial contact by the GDC should be via email. We understand the GDC is concerned that GDPR is not breached by sending notification to a general practice email address or shared email. However, annual renewals could provide the opportunity for a private, secure email address, to be provided by each registrant. We suggest that, if it appears a registrant's email address is not private, the registrant be emailed at that address asking them to confirm an email address that is private and secure. Alternatively, if that is not deemed sufficient, an email could be sent to the address on file instructing the registrant to telephone the GDC to confirm a secure, private email address. Presumably, as with other organisations, security questions or other personal details could be confirmed on the telephone call to ensure it is the registrant in question on the line.

The structure and tone of communications, in particular formal letters, can have an impact on registrants' mental wellbeing. We would suggest a review of the GDC's current style, considering best practice across regulators. Across society, the direction is moving away from insolent language that may be perceived as harassing and intimidating. We consider it is possible to reduce the stress felt from what will always be an unpleasant letter to receive, by using a more sympathetic tone and language that reduces feelings of distress and overwhelm. The tone taken by the medical regulator, the GMC, in their letters has softened while still getting the information across in an efficient and official manner.

The GDC should also continue efforts to ensure that cases that do not require a sanction can be closed down sooner, and that interim sanctions are only put in place when it is proportionate to do so. In 2021, of the 152 cases referred to an initial interim order hearing, 60 (39%) concluded with no interim sanction suggesting that the cases should not have been referred in the first place.

We have also called for more work to be done to increase understanding and transparency with regards to the number of registrants who die during a fitness to practice process, including those who die by suicide. We welcome the GDC's recent commitment to make progress in this area.

Recommendations:

- The Department of Health and Social Care should set a clear timeline for updating the GDC's powers as set out in the Dentists Act, so that it is able to make significant improvements to its fitness to practice investigations.

- The GDC should conduct a review of the way it interacts with registrants, including its style guide for written communications, in order to lessen the impact of contact.

2. Reducing unnecessary burdens of legal claims on dentists

2.1 Vicarious liability and NHS forms

We recommend that the Committee looks into the case for making minor amendments to NHS treatment forms to ensure patients understand who their treating clinician is and who has overall responsibility for their dental care. This will help ensure that any clinical negligence claim is directed towards the treating clinician.

The prospect of being subject to a clinical negligence claim is a significant cause of concern for dentists and dental care professionals. For those who become involved in a claim, the process can be lengthy and cause significant anxiety for the clinician. There are a range of tort reforms that we have proposed in order to create a more efficient management system and to reduce the cost of clinical negligence claims, including reforms aimed at limiting the amount that claimant solicitors can charge. Of more relevance to this inquiry, there are some more minor administrative reforms aimed at reducing the burden of claims on NHS dental contract holders and employers that could be made easily and which we think would have a positive impact.

The prospect of clinical negligence claims in relation to vicarious liability and 'non-delegable duty of care' have become increasing matters of concern for dentists in England and Wales since two high-profile clinical negligence cases were pursued through these routes. They centred on the various degrees of employment, relationships akin to employment, and independent contracting that happens in the provision of dentistry. These cases also highlighted the lack of clarity for patients in terms of who is responsible for their care.

The longer-term impact on practice owners is that the cost of their indemnity arrangements may increase to cover the additional risk they are facing. We consider that NHS dental practice owners in England and Wales are most exposed to this risk with the current NHS forms and contract increasing the likelihood of non-delegable duty of care claims being decided against them. This could therefore place further strain on NHS practices which are struggling in the current climate.

In the *Hughes v Rattan* case, Dr Rattan, a member of Dental Protection and its Dental Director, was sued by a claimant who had received NHS treatment carried out by associates at his former practice. Mr Rattan never treated the patient. The Court of Appeal ruled that Dr Rattan was not vicariously liable for the actions of the self-employed associate dentists concerned because of the freedoms they had in the practice. However, as the finding was specific to this case, the judgment does not set a precedent for all other vicarious liability claims.

The judges took into consideration the claimant's own perception that she was a patient of the practice rather than the individual dentists who treated her. The personal dental treatment plan form used in England and Wales (FP17DC) was significant in relation to this point, as this named Dr Rattan as the dentist providing her treatment and the claimant had not received any other documentation naming the individual dentists. This resulted in a finding against the practice of a non-delegable duty of care.

We believe that to prevent this from occurring in the future, changes to the NHS Personal Dental Treatment Plan form (FP17DC), NHS Dental Care Orthodontic Acceptance form (FP17DCO) and Patient Record Form (FP17PR) are needed and have written to the DHSC requesting these changes. Specifically, we would like to see the addition of a field on the FP17DC and FP17DCO form to enter the name of the treating dentist (performer) who is responsible for the patient's care and who is for carrying out the treatment.

All dentists and dental care professionals have a statutory and professional obligation to ensure they have adequate and appropriate indemnity or insurance in place to cover their work. This underpins a long-standing model which enables patients who consider that their treatment has been negligent to proceed with a claim in relation to the dental professional that treated them. Providing clarity of the name of the treating dentist/orthodontist will help ensure patients clearly understand who their dentist is and who is responsible for their dental care. It would also reassure dental practice owners who are party to an NHS General Dental Services (GDS) contract or Personal Dental Services (PDS) agreement and who are concerned about the implications of the recent vicarious liability and non-delegable duty of care claims.

Recommendations:

- The relevant dental patient treatment forms – FP17DC, FP17DCO, and FP17PR – should be amended so that they name the clinician who is responsible for the patient's clinical treatment and care.

3. Overseas graduates

The UK has long benefitted from skilled and experienced dental professionals from around the world. In 2020, 35% of new GDC dentist registrants qualified outside of the UK (22% in the EEA and 13% in the rest of the world). The current main challenge is the registration process for those coming from outside the EEA. Attempts to make this a more straightforward and efficient process are therefore needed.

Changes to international registration

Dental Protection welcomes the progression of *The Dentists, Dental Care Professionals, Nurses, Nursing Associates and Midwives (International Registrations) Order 2022* which will in part help give greater flexibility to the regulator so that overseas dental professionals can access the work and improve recruitment and retention.

While it is important to give the regulator the flexibility of determining the standards of international registration, it is also crucial that it retains consistency in the standards that are expected of dental professionals wherever they qualified. It is important for the GDC to ensure that those who come to the UK are held to the same high standards that are expected of all dental professionals while also removing all disproportionate delays and burdens. Proposed changes to registration requirements made by the GDC following the passage of this legislation should be subject to stakeholder engagement and independent review to ensure standards are consistent.

We are aware that international dental professionals with a very wide range of skills and experience take the ORE and apply for registration through the international registration process. We believe that there should be monitoring mechanisms in place to ensure that any overseas diplomas recognised are equivalent to ensure standards are maintained in terms of competencies, to include skills, knowledge, and behaviours. A curriculum mapping exercise should also be undertaken to ensure that international applicants are not potentially exposed to a higher risk of claims and complaints as a result of gaps in the curriculum.

We also believe that overseas graduates need to receive better induction, including being informed of the need for indemnity not just for clinical negligence claims but also for wider professional support. Data from the GDC obtained via an FOI for the period 2018-21, revealed that 84% of dentists without representation were erased or suspended while only 31% of dentists with representation were erased or suspended.

We therefore recommend that the GDC, dental practices and employers make overseas graduates aware of the benefit of indemnity that provides support with a GDC investigation. Membership of a professional indemnity organisation can also help with risk prevention through professional support, education and advice.

Dental Protection is also aware of instances where dentists who graduated overseas are registering as DCPs. We believe that all registrants in the dental care professionals' register must have a DCP qualification – whether UK or international – as this would ensure that they have been taught and assessed to the standards of a DCP and have a thorough understanding of the limits of their role of a DCP. From an indemnity perspective, this would also help to ensure that registrants are appropriately indemnified to perform a defined role in practice for which they have been trained.

Recommendations:

- The GDC should ensure that all registrants in the dental care professionals' register have a DCP qualification.
- The GDC should ensure that there are monitoring mechanisms in place so that any overseas qualifications are equivalent in outcome, and a curriculum mapping exercise should ensure that international applicants are not potentially exposed to a higher risk.
- The GDC, dental practices and employers should make overseas graduates aware of the wider need for indemnity beyond just clinical negligence claims.

About Dental Protection

Dental Protection is part of the Medical Protection Society (MPS), the world's leading protection organisation for doctors, dentists, and healthcare professionals. MPS protects and supports the professional interests of more than 300,000 members around the world and is proud to have supported over 30,000 dentists and dental care professionals in the UK for many years.

Membership provides access to expert advice and support together with the right to request indemnity for complaints, investigations or claims arising from professional practice.

We are a mutual non-for-profit organisation and the benefits of membership of MPS are discretionary as set out in the Memorandum of Articles of Association. MPS is not an insurance company.

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