

Department of Health consultation

The General Dental Council – proposed amendments to enhance the effectiveness and efficiency of its fitness to practise processes

Response from the Faculty of General Dental Practice (UK)

November 2014

About the FGDP(UK)

The Faculty of General Dental Practice (UK) is based at The Royal College of Surgeons of England. We are the largest of the UK dental faculties and provide a national voice for over 4700 fellows and members.

Around 95% of dental care in the UK is provided in the primary dental care setting. The FGDP(UK) improves the standard of primary care dentistry delivered to patients through standard setting, postgraduate training and assessment, publications, policy development, and research. The FGDP(UK) offers continuing professional development and training opportunities for all registered dental professionals.

Consultation questions

Introduction of Case Examiners

Q1: Do you agree the GDC should be provided with the power to introduce case examiners, who have the ability to exercise the functions of the Investigating Committee?

Agree (X)

Disagree ()

Unsure ()

Comments

We agree with the proposal to introduce case examiners (CEs) into the fitness to practise (FtP) process. CE's have been used at the General Medical Council for some time, and it is hoped that this would help to improve the efficiency of the process, which may help to reduce the significant costs associated with FtP cases at present. It

will benefit both complainants, who will welcome a more rapid resolution to their complaints, and also registrants, who do not want to experience the threat of disciplinary action for longer than is necessary. The proposed system would also help alleviate unnecessary delays in the interest of public safety and registrant accountability.

However, we would wish to make the following points:

- a) The process is only likely to be effective if high quality clinical advice is made available to CEs from carefully selected, well trained and highly competent clinical advisors at the preceding caseworker stage, who should have expertise relevant to the case in question. We would suggest that this will have the greatest impact on the process. It will be essential for a rigorous, transparent recruitment process to be in place for CEs, as well as the provision of effective, un-biased training and comprehensive guidance. The GDC will need to ensure that CEs are individuals of sufficient credibility and standing for both the profession and the public to have confidence in the system.
- b) The current process allows for majority decisions since there are three members of the Investigating Committee (IC). In the proposed system, a case would need to be referred to the IC should a situation arise whereby the two CEs cannot agree on the way forward. Clearly, this presents a risk that the process could become more protracted than is the case at present.
- c) We would like to seek some clarification on what it will mean for CEs to be 'Officers of the GDC' – does this mean that CEs will have the same level of independence from the GDC as is the case at present for IC members?

Power to agree undertakings

Q2: Do you agree that the Investigating Committee should have the power to agree undertakings with a registrant?

Agree (X)

Disagree ()

Unsure ()

Comments

CEs should have the same powers as the IC currently has in order to avoid an additional stage and unnecessary delay in accountability and action. If CEs do not have the same powers as the IC, they will merely become pre-IC screeners, which will add another layer of bureaucracy to the system and fail to bring about the rationalisation of the system that the GDC seeks.

The proposals allow the IC or CEs to impose conditions on the registrant, such as re-training, if appropriate. This is attractive since it seems that an expensive Practice Committee process can be avoided if the matter is likely to result in the imposition of conditions regardless. However, the registrant may feel that they have been disadvantaged and found culpable without having the opportunity of arguing their case before a hearing. We would suggest that registrants should retain the possibility of having their case heard at the Practice Committee, and without prejudice, should they consider unfair any undertakings dictated by the CEs or IC.

Power to review cases

Q3: Do you agree the GDC should be provided with a power to review decisions of registrar not to refer to the IC or case examiners and of the Investigating Committee not to refer to a Practice Committee?

Agree (X)

Disagree ()

Unsure ()

Comments

We agree that there should be in place a mechanism through which decisions can be reviewed. However, it may be appropriate for any review to be completed by a person or persons independent of the GDC to facilitate balanced and unbiased decision-making and to avoid undermining the credibility of the CEs or the IC.

Warnings

Q4: Do you agree that upon the imposition of a warning, there should be the ability to review the decision taken, as described above?

Agree (X)

Disagree ()

Unsure ()

Comments

While we agree with the possibility to review a decision to impose a warning, there should be clearly defined criteria setting out the circumstances under which this may be deemed appropriate. For instance, a review may be considered necessary should new information relating to the case become available, or if there is clear evidence of shortcomings in the way the case investigation was conducted. This could be facilitated by having an independent review panel to determine appropriateness, proportionality, and balanced judgement. There would need to be a mechanism in place to dissuade registrants from feeling that they have little to lose by applying to have the warning reviewed.

Q5: If the answer to question 4 is yes, should a limit be placed on the number of applications a person can make within the 2 year period to have the determination to issue a warning reviewed?

Agree (X)

Disagree ()

Unsure ()

Comments

Yes, we would agree with a limit being in place, and might suggest that no more than twice in two years appears appropriate. It may also be useful to consider only allowing the issue of a warning to be reviewed if certain conditions have been met, such as the submission of mentor reports, and to restrict this decision to an independent panel.

Referral to an Interim Orders Committee at any stage during the fitness to practise process

Q6: Do you agree with the changes to the legislation permitting the Registrar to refer an allegation to the IOC at any time provided that, in cases which are referred to the IC, the IC has not yet commenced its consideration of the allegation?

Agree (X)

Disagree ()

Unsure ()

Comments

Yes, this appears sensible as the GDC must act in the interest of patient safety and to protect care standards in order to retain the confidence of the public and the profession. However, in cases involving clinical matters, we would urge that referral to the IOC should only be possible once a clinical advisor has completed a full report on the case.

Q7: Do you agree that the IC should be able to refer an allegation to the Interim Orders Committee at any time, provided that, in cases which are referred by the IC to a Practice Committee, that Practice Committee has not yet begun its consideration of the case?

Agree (X)

Disagree ()

Unsure ()

Comments

Yes, this is sensible as new evidence can emerge at any time leading up to a Practice Committee hearing. Such new evidence may alter the view of how safe the registrant is.

Costs and benefits analysis

Q8: Will the proposed changes affect the costs or administrative burden on your organisation or those you represent, by way of:

An increase ()

A decrease ()

Stay the same ()

Unsure (X)

Please explain your answer

Comments

There is no obvious consequence for costs borne by the FGDP(UK) as a result of these proposed changes. We would expect both the GDC and registrants to continue to refer to our standards guidance when considering appropriate action, and the FGDP(UK) will continue to ensure that these guidelines are appropriate and up to date.

In the longer term, we would hope to see the cost savings gained through a more streamlined FtP process being reflected in the costs of regulation that are borne by registrants. This would only benefit membership organisation such as our own, where a registrant's decision to maintain their membership may be impacted by the registrants' disposable income. In this regard, and in the interests of transparency, we would urge the GDC to set out how it intends to use any savings generated through a more efficient FtP process.

Equality

Q9: Do you think that any of the proposals would help achieve any of the following aims:

1. eliminating discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010?
2. advancing equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it?
3. fostering good relations between persons who share a relevant protected characteristic and persons who do not share it?

If yes, could the proposals be changed so that they are more effective in doing so?

If not, please explain what effect you think the proposals will have and whether you think the proposals should be changed so that they would help achieve those aims?

Yes ()

No ()

Unsure (X)

Comments

It is not clear whether the proposals would have any effect on the aims listed.

The draft Order

Q10: Do you have any comments on the draft Order?

Yes (X)

No ()

Comments

The FGDP(UK) believes that the draft order is a step forward in making registrants of concern more accountable at an earlier stage, leading to swift resolution of many issues which may not be appropriate for Practice Committee hearings. The ability to refer to Interim orders at any stage in the process may also enhance the confidence in the GDC from the public and the profession.

However, we have some areas of concern around review of issued warnings and the potential for bias where a review is conducted by the GDC itself. The GDC may wish to implement a training review program to embed renewed practice and risk management strategies into habitual practice with effective change management. This focus would limit the number of further referrals.

Ultimately, the GDC needs to strongly encourage local resolution of complaints whenever possible, and CEs should ensure that attempts have been made to deal with a complaint in this way before progressing further. This would help prevent the GDC being used as a way of 'sounding-out' a complaint, without cost to the complainant, prior to pursuing any redress or compensation.

For information and correspondence

Charlotte Worker Public Affairs, PR and Policy Manager

cworker@rcseng.ac.uk 020 7869 6759



WWW.FGDP.ORG.UK

