

Professional Standards Authority response to the General Dental Council's consultation on revisions to Guidance for case examiners, and to the Undertakings bank for case examiners

1. About us

- 1.1. The Professional Standards Authority for Health and Social Care (PSA) is the UK's oversight body for the regulation of people working in health and social care. Our statutory remit, independence and expertise underpin our commitment to the safety of patients and service-users, and to the protection of the public.
- 1.2. There are 10 organisations that regulate health professionals in the UK and social workers in England by law. We audit their performance and review their decisions on practitioners' fitness to practise. We also accredit and set standards for organisations holding registers of health and care practitioners not regulated by law.
- 1.3. We collaborate with all of these organisations to improve standards. We share good practice, knowledge and our right-touch regulation expertise. We also conduct and promote research on regulation. We monitor policy developments in the UK and internationally, providing guidance to governments and stakeholders. Through our UK and international consultancy, we share our expertise and broaden our regulatory insights.
- 1.4. Our core values of integrity, transparency, respect, fairness, and teamwork, guide our work. We are accountable to the UK Parliament. More information about our activities and approach is available at www.professionalstandards.org.uk

2. Key points

- 2.1. We welcome the GDC's draft guidance for case examiners and updated undertakings bank. The guidance contains welcome new information for case examiners on a number of areas, and we are pleased to see that it addresses discrimination and harassment, particularly as this is an area where we have identified weaknesses in the approach taken by the GDC during our reviews of their performance. However, we have some concerns about these two elements being

considered under the same sub-heading, and suggest that dealing with them separately would result in clearer and more comprehensive guidance.

- 2.2. We also have concerns over the GDC’s proposed approach to the publication of undertakings and warnings, which we do not believe gives sufficient weight to the principle of open justice. In our view, ensuring that decisions are transparent and accessible is a key means by which confidence in regulators, and regulatory processes, is maintained. We are therefore concerned that the GDC’s proposed approach appears to give case examiners wide discretion to depart from open justice principles by failing to publish sufficient details of undertakings and warnings.

3. Responses to consultation questions

- 3.1. Our responses to the individual questions posed in the consultation are detailed below. We have chosen only to respond to those questions where we have substantive feedback and have omitted the other questions from our response for clarity.

Preliminary and general considerations (paragraphs 11 to 39)

Q5. We have scrutinised each paragraph of the proposed updated guidance with the objective that each point being made is clear. This has included the aim of using clear and commonly understood language, which is free of technical terminology, wherever possible.

To what extent do you agree that the proposed updated guidance makes its points clearly and, in doing so, uses clear and commonly understood language wherever possible?

- Somewhat agree

Q6. Please provide reasons for your response, including any suggestions for where and how the clarity of meaning or language in the guidance could/should be improved.

- 3.2. The information contained within the preliminary and general considerations section of the Guidance for Case Examiners is generally clear. The only term we have identified which may not be commonly used or understood is ‘informant’. It may be helpful to set out, either here or elsewhere in the document, what constitutes an informant. Where the informant is a harmed patient, they may be more likely to understand themselves to be a ‘complainant’ rather than an informant.

Q15. To what extent do you agree with our proposed policy change to set the duration of published warnings to a flat rate of 12 months?

- Somewhat agree

Q16. In addition to ensuring the guidance is up to date, the aim of this review is to support consistency of approach, transparency, and proportionality in decision making by case examiners. To what extent do you agree that all of these aims are

supported by the updated ‘Publishing details of the warning’ subsection, including the changes listed above?

- Strongly disagree

Q17. Please provide reasons for your responses to questions 15 and 16, including any suggestions for where and how the subsection could/should be improved in relation to how it reflects recent developments in case law and regulatory best practice, and to better support consistency of approach, transparency, and proportionality in decision making by case examiners.

- 3.3. We agree that introducing a fixed publication period with regards to the duration that warnings are published is likely to aid consistency. We note that the new policy of publishing warnings for a standard length of 12 months means that in some cases (approximately 13% of cases based on the GDC’s figures from 2023-25) warnings will be published for less time than would be the case were the current policy (case examiner discretion over the length of time warnings are published) to remain in force. It would have been useful to know whether the GDC had conducted any analysis of why some cases are currently published for longer than 12 months, and whether, in some cases, there may be strong public protection reasons for doing so.
- 3.4. With regard to publishing the details of undertakings (paragraphs 130-135) we are concerned the GDC is giving insufficient weight to the principle of open justice, as well as the public protection benefits of publication. Our comments here relate also to the section on publishing the details of warnings at paragraphs 191-196.
- 3.5. While the guidance acknowledges that details of undertakings and warnings should ordinarily be published, and that publishing the details supports public safety, confidence, and proper professional standards, it allows a great deal of latitude for case examiners to take a different approach. Paragraph 134 outlines that:
- 3.6. *“There may be circumstances where the case examiners consider that it is not appropriate to publish some, or all, of these details, because there are factors which outweigh the factors set out at paragraph [133]. For example, this may arise where there is cogent evidence which suggests publication is likely to cause significant harm to the registrant or a third party. In such circumstances, the case examiners should balance the public interest with the interests of the registrant in reaching their decision in relation to publication.”*
- 3.7. This wording is repeated, in relation to the publication of warnings, at paragraph 196. As we have outlined in our guidance document *Using accepted outcomes in fitness to practise: guidance for regulators*¹: *“Ensuring that decisions are transparent and accessible is a key means by which confidence in regulators, and regulatory processes, is maintained.”* Our guidance further sets out that regulators should make decisions publicly available. It acknowledges that there may be some circumstances in which information is not published, but that these are likely to be limited and exceptional, and in line relevant case law. While the PSA guidance referred to relates to accepted outcomes, the principles apply equally to the publication of undertakings and warnings; open justice should prevail except in

¹ [Using accepted outcomes in fitness to practise - guidance for regulators 4.pdf](#)

exceptional circumstances.

- 3.8. The importance of publishing warnings and undertakings is reinforced by the fact that they are not reserved for minor or trivial matters. The draft undertakings bank for case examiners, published as part of this consultation exercise, makes clear that undertakings should be considered in any case where there is no realistic prospect of erasure, meaning they can be used across a wide range of fitness to practise cases. Warnings, too, can apply in serious cases, including discrimination, harassment, offensive behaviour and dishonesty. The public is therefore likely to have a reasonable expectation that warnings and undertakings will be made public.

Appendix 1: Considerations in particular categories of cases (Appendix 1, paragraphs A1 – A175)

Q18 In addition to ensuring the guidance is up to date, the aim of this review is to support consistency of approach, transparency, and proportionality in decision making by case examiners. To what extent do you agree that all of these aims are supported by the updated Appendix 1 ‘Considerations in particular categories of cases’, including the changes listed above?

- Somewhat disagree

Q19. Please provide reasons for your response, including any suggestions for where and how the appendix could/should be improved both in relation to how it reflects recent developments in case law and regulatory best practice, and to better support consistency of approach, transparency, and proportionality in decision making by case examiners.

- 3.9. We welcome the GDC’s expansion of guidance on discrimination, particularly as our last two reviews of the GDC’s performance have identified gaps in how the GDC’s fitness to practise guidance addresses discriminatory behaviours.
- 3.10. However, we are not persuaded that addressing discrimination and harassment together in the guidance is the clearest approach. Paragraphs A19 – A33 of the guidance deals with both discrimination and harassment under the same sub-heading. However, the details as to what should be considered at ‘stage one’ (from A25) only deals with discrimination. In this section reference is (rightly) made to motivation as a separate matter which requires consideration of specific points in terms of discriminatory conduct. By contrast harassment is not dealt with at all as a ‘stage one’ matter. Consequently there is a risk of conflating these two types of allegation.
- 3.11. Further, there is no mention that harassment does not require intent to be proven on the facts, and there is a risk that this guidance does not arm case examiners with all they need to consider in terms of whether harassment is established. While we appreciate that these may have been grouped together due to both being matters arising in the 2010 Equality Act, they carry distinct considerations.
- 3.12. We would suggest splitting discrimination and harassment and including clear sub-headings and reference to relevant legislation and caselaw for each.
- 3.13. This section of the guidance also lacks reference to victimisation, which is briefly

mentioned as a concern arising from the Equality Act but not expanded upon.