

Changes to the timescales for the Rule 4 process

Consultation outcome report

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Published January 2020

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Introduction

The GDC continues to look to improve its Fitness to Practise (FtP) function to ensure the process is as efficient, fair and proportionate as possible. Within this, one key area of focus for the GDC is the overall timescales of FtP case progression. Our ambition is to ensure that in every case the time between the dental professional being aware of a concern and a final decision is not unduly delayed. Equally, we are working to ensure that all relevant information is shared at the earliest appropriate stage of the process.

During the End-to-End Review of FtP¹ several organisations made clear that the current timescales for responding to information as part of the 'Rule 4' process were challenging. The Rule 4 process currently allows 28 days for the dental professional to provide any observations to the allegations. Dental professionals subject to investigations do not have to provide observations, but most do.

The Rule 4 process provides dental professionals with an opportunity to submit their comments in response to the concern that has been raised. The observations, if provided, are considered and included in the material used to determine whether the concern can be concluded by the case examiners or if it should be referred to a practice committee hearing.

Several organisations have advised us that on occasion, 28 days can be insufficient time for the dental professional and their representative organisation to identify, prepare and provide observations. Their concern is that they are not able to provide all the relevant information within 28 days that would assist the GDC in making a well-reasoned, well-evidenced decision.

We are sympathetic to the time pressures faced by dental professionals and their representatives. Extending the time frame (for certain cases) to ensure the best possible evidence can be assessed aligns with our view that we need to be fully informed of all relevant facts as early as possible.

However, in our opinion, extending the timescale for every case would be inappropriate, as it may add unnecessary delay to the decision-making process which may be detrimental to patient protection.

To assess these competing considerations, we consulted on a proposal to provide dental professionals, and their representatives, under certain circumstances, the opportunity to request an extension to the period allowed for the preparation of their observations.

¹ This improvement programme formed part of the Shifting the balance strategic initiative to improve Fitness to Practise. The programme commenced in August 2017 and completed in June 2019

Proposed changes

The consultation invited comments on the proposed changes outlined below:

- Undertake a nine-month pilot to enable a 14-day extension to the Rule 4 time limit for cases involving clinical concerns where the registrant has no other FtP matter being actively considered at any stage.
- The willingness to disclose details of any clinical assessment that had been sought in advance of any investigation prior to the full 'Rule 4 Bundle' being made available.

If approved, we would begin by piloting the process for a nine-month period, followed by a review of the pilot, before determining whether or not to continue.

Response summary

The consultation was performed online via Smart Survey (although a number of direct submissions were also received).

We contacted all the major indemnifiers, as well as other stakeholders, to alert them to the consultation. A full list of respondents can be found at Appendix A.

There were six responses received via the online survey, two paper responses were received and an email response from the Professional Standards Authority (PSA), bringing the total to nine responses. Seven of the nine responses received have been made on behalf of organisations and two of the nine on behalf individuals; one registrant and one individual who didn't identify themselves.

The consultation consisted of eight questions. All responses, except the PSA response, provide direct replies to all questions posed in the consultation. As the PSA has not provided any particular comments on the proposals, their response has not been referenced below.

The GDC would like to thank all the organisations and respondents for their views. The positive feedback and the general support for the proposals is welcomed and provides a strong basis upon which to proceed.

General feedback

All those who responded agreed with the proposal to grant dental professionals, and their representatives, the opportunity to request additional time to provide observations at the Rule 4 stage. For some, it was felt that rather than the GDC 'usually' providing an extension for clinical cases, the 28-day period should be reconsidered in favour of a longer timeframe for the registrant, and their representative, to provide their observations for all cases.

All respondents were also in agreement with the proposal that GDC should disclose any clinical assessment to the registrant in advance of the full 'Rule 4 Bundle'. It was felt that early disclosure of the clinical assessment would facilitate a more efficient and effective FtP process.

Overall, it was felt that a higher likelihood of a 14-day extension being provided, together with early disclosure of the clinical assessment, would aid the registrant and their representative. The proposals would assist them in providing detailed observations and evidence to support learning or remediation undertaken. Respondents felt that this may assist the case examiners in disposing of a case, without referral for a substantive hearing, and also assist in a reduction of ‘Rule 6E’² applications.

All respondents believed that the proposals would be beneficial. However, a majority requested additional guidance on when extensions would be provided and called on the GDC to produce a consistent approach to extension decisions.

The more detailed analysis of consultation responses is provided below.

Question 1: To what extent do you agree with the proposal that the registrant and their representative are provided with the opportunity to request additional time to provide observations at the Rule 4 stage?

All respondents agreed with the proposal to provide dental professionals, and their representatives, with the opportunity to request additional time to provide observations at the Rule 4 stage. It was felt that the additional time would, in some cases, enhance the observations made.

Some respondents felt that the opportunity should not be limited to clinical cases but open to all cases, in particular, multi-faceted or complex cases and one respondent suggested this be available for all cases at the Rule 4 stage.

There was also one request for the disclosure of the criteria against which requests would be judged, and for details on the extension limits that are within the decision maker’s discretion. There was a concern that requests for additional time could be made in nearly every case.

GDC response:

We welcome the feedback and broad agreement in respect of our proposal to provide additional time for observations in clinical cases. We recognise that, in time, this may have other applications. However, to ensure a well-defined and measurable pilot can be completed we will continue with our proposal, as set out in the consultation. We will publish the qualifying criteria for inclusion in the pilot and intend to commence this from January 2020.

We will consider further enhancements to our proposals following the pilot period and subsequent analysis. We would like to stress that these proposals are complementary to the existing arrangements for extensions and are not in any way intended to substitute the existing rules.

² This is the process by which either party may propose that a case be re-presented to the case examiners due to a material change to the nature or understanding of the evidence relating to any allegation(s).

Question 2: To what extent do you agree with the proposal that GDC should disclose any clinical assessment to the registrant in advance of the full 'Rule 4 Bundle'?

Respondents agreed with the proposal to disclose any clinical assessment to the registrant in advance of the full 'Rule 4 Bundle'. It was felt that this would provide sufficient time for all parties to analyse the clinical assessment and would potentially allow for dental professionals to engage in early remediation, demonstrate changes now embedded in their practice and obtain their own early expert opinion.

One respondent stated that in their experience clinical assessments were, on occasion, produced months in advance of the production of the Rule 4 Bundle. It was suggested that, in these cases, disclosure of the clinical assessment could be made at an earlier stage than proposed.

One respondent opined that the proposal was likely to make the FtP process more efficient and effective.

GDC response:

We welcome the feedback and broad agreement in respect of the proposal to provide clinical assessments once they have been completed and reviewed by the casework team. We will now implement this for all clinical assessments, while carefully monitoring and recording the additional time available to dental professionals, and their support organisations, to consider and compose observations. We will use this to determine what impact this has on the subsequent progression of cases.

Question 3: With the additional time at Rule 4 stage, what further information do you envisage being able to provide by way of observations?

Overall, respondents felt that the additional time at the Rule 4 stage would allow them to provide better quality observations and additional evidence, such as any completed Continuing Professional Development (CPD), their Personal Development Plan (PDP), remediation undertaken and any further expert evidence.

One respondent noted that the additional time could benefit dental professionals who no longer work at the practice where the incident took place, as the extra time may facilitate obtaining relevant information and documentation.

GDC response:

We note the feedback and will consider these points during the review of the pilot.

Question 4: It is important that we can engage all registrants on our proposals including unrepresented registrants. Do you have a view on how we can better support unrepresented registrants?

The responses to this question provided differing suggestions on how we could better support unrepresented registrants. However, the respondents universally agreed that there was a requirement for the GDC to provide further information to unrepresented registrants. This information should include:

- Providing a template of what is expected in observations or some guidance on how to set them out.
- Informing unrepresented registrants that if they do not think they will be able to respond within the timeframe, there is the possibility of an extension, by request.
- Informing registrants that they may wish to seek legal advice and providing additional time to allow them to engage the support of a lawyer or advocate.
- Outlining the support options available during the Rule 4 stage of the process.

One respondent also suggested updating the GDC website to include links to the most recent guidance and FtP rules.

One respondent stated that allegations, which were fully particularised, may provide an unrepresented registrant with a better opportunity to respond. It was felt that, in almost all cases, the GDC's summary allegation lacked sufficient detail and often failed to make it clear how and why a registrant's fitness to practise might be impaired. Another respondent suggested considering inviting junior barristers to assist unrepresented registrants.

GDC response:

We will make specific provision to inform and encourage unrepresented dental professionals to access the extension if they deem it appropriate.

Question 5: Do you have any suggestions for how we could further assist the registrant and their representative to provide full and complete observations at the Rule 4 stage but overall, minimise the time that a registrant's case is held within the FtP process?

Respondents provided several suggestions on how we could provide further assistance to registrants, and their representatives, to provide full and complete observations at the Rule 4 stage, while also minimising the time a case is held within the FtP process. The suggestions made were:

- Reducing mistakes in Rule 4 Bundle preparation.
- Levying a penalty.
- Early disclosure of the records when the registrant no longer works at the practice, to help identify, in advance of the Rule 4 stage, whether additional records are required.
 - Thorough particularisation of the allegations.
 - Peer review of clinical advice reports to ensure quality standards are upheld.
 - The use of expert reports (as opposed to clinical advice reports).
 - The ability for the registrant to obtain clarification of the expert or clinical advice report.
 - Formal witness statements from complainants for the Rule 4 stage, where this may assist.

While the majority of responses included suggestions on how further assistance could be provided, one respondent stated that the current timescales were good enough and another that more detailed observations would be likely to reduce the time taken at the other stages of the process.

GDC response:

We will consider the suggestions for potential improvements to our process which could assist with the completion of complete observations. These will be considered as part of our continuous improvement activities.

We do not intend to levy any fines or penalty in respect of non-compliance as this would be both impractical and disproportionate in our view.

Question 6: Do you have views regarding how the proposal could be further enhanced? Are there alternative options you wish to share?

The responses received did not provide any alternative options to the proposals. However, the following suggestions on how the proposals could be further enhanced were received:

- Stricter guidelines for how the process would operate, including criteria for inclusion in the pilot.
- Ongoing disclosure throughout an FtP investigation, prior to the Rule 4 stage.
- Detailed particularisation of the allegations.
- For the proposed 14-day extension not to be viewed as the default extension period, but for registrants and their representatives to be able to request longer extensions and the request for a longer extension to be considered on a case-by-case basis.

We received an additional proposal to reduce the quantity of cases going through the Rule 4 stage. It was suggested that the option would be to apply the determination of the case examiners, at the assessment stage, for historic concerns that have already been adjudicated on by the GDC. This option would be limited to registrants who have had multiple referrals to the GDC, and where the case relates to historic concerns (the type of concerns and time period) that have previously been considered by the GDC.

Another respondent suggested that the proposals could be enhanced by:

- Publishing the criteria for granting extensions in non-clinical cases.
- Allowing a subsequent extension, later in the FtP process.

GDC response:

As outlined in our response to Question 1 above, any potential further enhancements will be considered after an initial nine-month pilot has been completed.

Question 7: To what extent do you agree that our proposals would be effective for you?

All of the respondent agreed that the proposals would be effective and would enhance the quality of submissions. Respondents also felt the proposals were likely to allow them to obtain earlier instructions from clients. One submission noted the need for good quality GDC investigations.

One respondent stated that if the proposals were to be effective, that there should be a defined approach to implementation and that consistency must be maintained throughout. This would mean the production of guidance or other policy documentation to ensure that all parties were fully informed about the rules on extensions to observations.

Another respondent noted that there should be an increase of 14 days for *all* cases to the default 28-day timeframe that registrants and their representatives currently have to provide their observations at the Rule 4 stage i.e. not only clinical cases.

GDC response:

We are encouraged that all respondents felt that the proposals would be an improvement on the current process. See our response to Question 1 regarding an extension to all cases.

Question 8: Do you have any other comments?

We received additional comment from a respondent who was concerned that the proposals only applied to clinical cases. This issue is addressed in our response to Question 1.

Next steps

We remain committed to working in an open, collaborative and transparent way when seeking to make improvements within our FtP process.

We will develop and share more detailed internal guidance regarding the operation of the pilot and, once approved, aim to commence the pilot project in January 2020. We will also prepare and share our evaluation criteria for inclusion in the pilot to clarify our expectations as to the outcomes that would constitute success and a basis for continuing and/or extending this revised process.

Appendix A

Responses were received from the following organisations:

- British Dental Association
- BLM Law
- Dental Defence Union
- Dental Protection
- MDDUS – Medical and Dental Indemnity
- Professional Standards Authority
- Taylor Defence Services

There were two responses from individuals.

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