Regulation of Dental Services Programme Board

OPERATIONAL PROTOCOL

Working together to reduce duplication

A PRACTICAL GUIDE FOR STAFF

Version 2.0 – November 2017

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SECTION ONE

Why we have created this protocol

The Care Quality Commission (CQC), NHS England and the General Dental Council (GDC) have developed this protocol so that our organisations can work more effectively together and reduce duplication. It encourages information to be shared more routinely which, in turn, improves the intelligence of each organisation, avoids duplication and provides a mechanism for improved communication between organisations.

Our collective aim, as members of the Regulation of Dental Services Programme Board (RDSPB) is to ensure that patients receive high-quality and safe dental services from professionals and organisations that are competent and meet national standards, and that supports services to improve.

The purpose of the RDSPB was to make regulation and commissioning oversight a simpler picture rather than redefining the system; we are working together to clarify roles and responsibilities so that the right action is taken at the right time by the right organisation.

Who is this protocol for?

This published protocol is primarily aimed at staff working in CQC, NHS England, and in the GDC and is designed to work alongside existing processes in each organisation. It is also intended to provide transparency regarding the joint intentions of our organisations in reducing regulatory burden. The framework will evolve in future iterations as we work together, our relationships mature and to reflect the changes in the ways we work as organisations.

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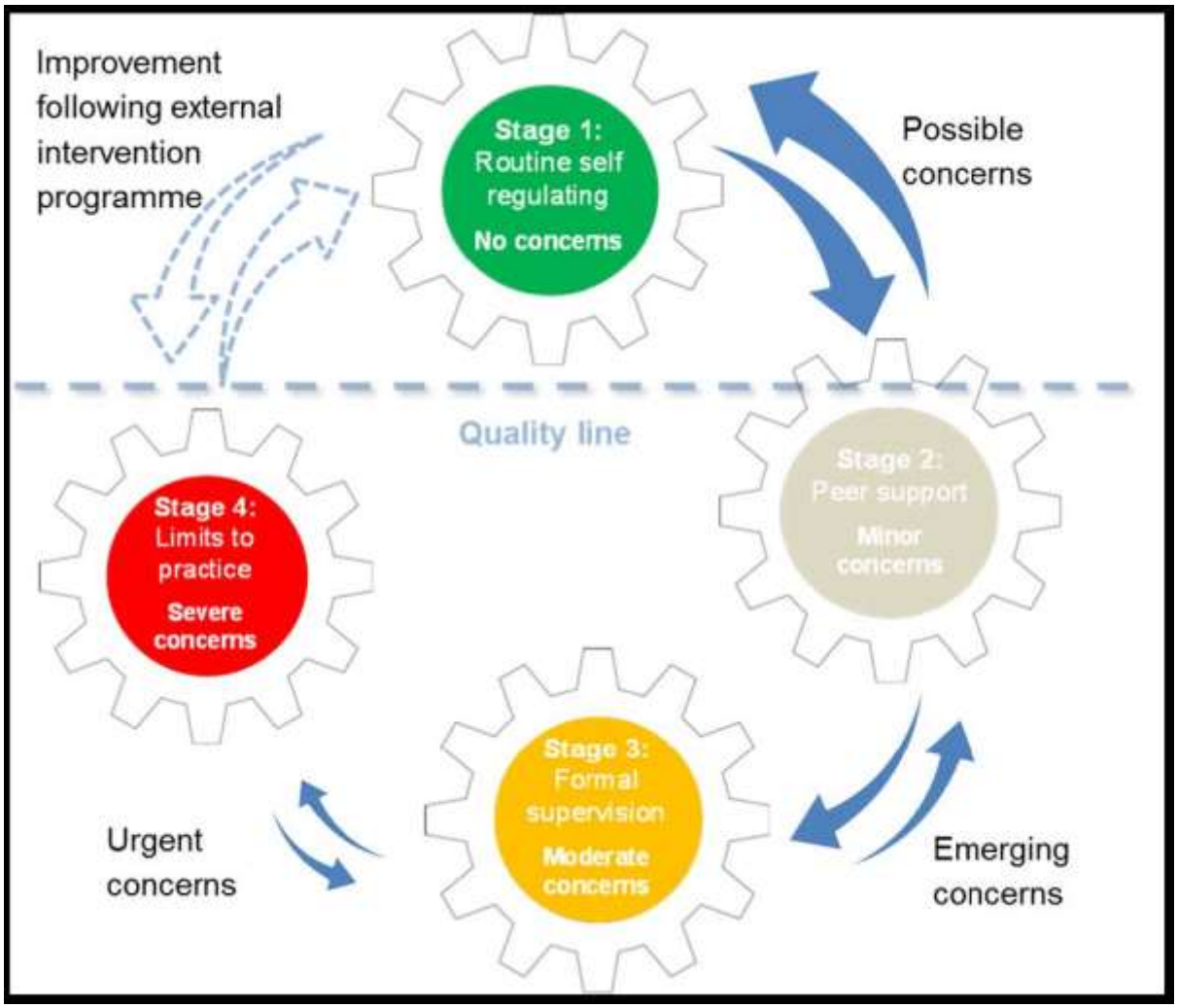
Quality Improvement Framework: a model for quality improvement across the dental sector

One of the RDSPB's key areas of focus was to define the system of quality improvement in the dental sector and the role of key stakeholders in improvement. The RDSPB shares a commitment to ensure that continuous quality improvement drives our approach as regulators and commissioners.

This version of the protocol aligns the roles of CQC, NHS England and GDC with the quality framework and illustrates how when concerns arise we will work more effectively together and reduce duplication. It sets out the practical arrangements we have put in place to support increased collaboration and partnership between CQC, GDC and NHS England with the aim of a single shared view of quality.



Source: RDSPB, A model for quality improvement across the dental sector, 2017

This model illustrates the four stages of improvement and recognises that earlier intervention and remedial action can reverse the flow. If concerns arise, a proportionate structured approach would be used, involving peer support, followed by more direct supervision and finally externally governed sanctions.

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SECTION TWO

Organisational Roles and Responsibilities

The Care Quality Commission (CQC), NHS England and the General Dental Council (GDC) have formal agreements in place to ensure that information is routinely shared. This protocol embeds the principle of partnership working at local level and provides guidance for operational staff.

The scope of this protocol is limited to primary care dental services (i.e. dental care provided in practice). It:

- Outlines the roles and responsibilities of each organisation;
- Makes clear which organisation needs to be involved for particular concerns;
- Provides guidelines for staff on when to refer concerns to another organisation;
- Provides key contacts in each organisation with responsibility for investigating concerns;
- Outlines the formal mechanisms in place for the three organisations to discuss issues;
- Provides forms (interval version only) for operational staff to complete in order to aid the information sharing process; and
- Provides case studies to assist operational staff when deciding whether to refer information to another organisation.

The protocol is designed to work alongside existing organisational processes. If you have any suggestions, feedback or queries on this protocol, please email:

futuredentalregulation@cqc.org.uk

Further information on the work of the RDSPB can be found here.

Regulatory framework

General Dental Council (GDC)

The GDC is the regulatory body for dentists and dental care professionals in the UK and its powers are derived from the Dentists Act 1984 (as amended).

It is responsible for:

- Maintaining a register of individual dentists and dental care professionals who are able to work in the United Kingdom;
- Setting professional standards;
- Quality assuring education;
- ensuring dental professionals stay up to date through the successful completion of CPD; and
- Investigating concerns about the fitness to practise of individual dentists and dental care professionals and, where an issue is sufficiently serious, either preventing or restricting an individual dental professional from practising in the United Kingdom.

The GDC's powers to investigate fitness to practise concerns are prescribed in the Dentists Act and secondary legislation. General guidance on fitness to practise proceedings and guidance can be found here.

Care Quality Commission (CQC)

The CQC's powers are derived from the Health and Social Care Act 2012 and it is responsible for monitoring, inspecting and regulating care services to ensure they meet fundamental standards of quality and safety.

For dentistry, it is responsible for maintaining a register of providers undertaking regulated activities in England. These are individuals who have overall responsibility for the provision of dental services in nominated premises.

NHS England

NHS England is responsible for commissioning NHS dental services and is responsible for ensuring that services are delivered in line with national and local agreements. This function is performed by Local NHS England Offices. Each Local Office has a named Head of Primary Care who are responsible for the commissioning and oversight of primary care services. This individual is the named contact for sharing information regarding commissioning concerns.

NHS England also oversees the performance of NHS dentists in general practice through the National Performers List. Each Local NHS England Office has a small senior team leading on performer list issues and the team is led by the Medical Director.

The performers list system enables NHS England to ensure:

- the consistent delivery of primary care services
- that services are safe and effective
- continuous improvement of quality

The Performers List Regulations also enable NHS England to ensure that performers are fit to work and suitable to undertake NHS dentistry. NHS England has powers through these Regulations to prevent a performer from providing NHS services or apply conditions to the scope of their NHS work to protect patients from harm.

Where a dentist on the national performer list suffers with health concerns that may have an impact on their ability to safely and effectively deliver NHS dental services, NHS England can access an occupational health assessment for the dentist to provide advice and guidance.

NHS England's role and remit is outlined in the following:

- NHS Performers List Regulation 2013
- NHS (General Dental Services Contracts) Regulations 2005
- NHS (Personal Dental Service Contracts) 2005
- National Health Service Act 2006 (The Functions of the National Health Service Commissioning Board and the NHS Business Services Authority) Primary Dental Services 2013

In summary NHS England is responsible for managing 'performers' who are individuals that are able to provide NHS dental services in England.

The standard operating procedure and all relevant documents in relation to dental performers may be found here

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SECTION THREE

When and how we share information

As previously stated there are four planned ways that we share information:

• Routine information sharing
• Emerging and urgent concerns (non-routine)
• Local liaison
• Coordination of ongoing activities.

Routine information sharing

Routine information sharing is an important way of making sure that CQC, NHS England, and the GDC can fulfil their functions effectively. The GDC routinely shares the information it publishes about the fitness to practise of individual dental professionals with CQC and NHS England. Information about the health of a dentist (or any member of the dental team) is always kept confidential.

All three organisations have established processes for the routine of sharing information and examples of these include:

- The CQC shares a report with NHS England and GDC of recent inspection judgments;
- The GDC notifies the CQC and NHS England about the outcomes of all Practice Committees and Interim Order Committees as well as Case Examiner decisions that lead to an adverse outcome (e.g. undertakings);
- NHS England notifies the CQC and GDC of any action it takes under the Performers List Regulations;
- The GDC notifies NHS England of the existence of a complaint when it becomes aware that a dental professional is providing NHS services;
- The GDC notifies the CQC of cases where there are concerns raised in relation to the management of a practice (e.g. infection prevention control/cross-infection).

Emerging and urgent concerns (non-routine)

Emerging or urgent concerns that may present a risk to patient safety need to be shared more quickly than through routine channels.

Organisational responsibilities for managing concerns

One of the aims of establishing this protocol is to provide clear lines of responsibility for considering/investigating particular concerns. During the development of this protocol it became evident that drawing these lines was challenging as each organisation could take an interest in the same concerns but for differing reasons.

To address this, the three organisations signed up to this protocol have agreed the following general rules:

- NHS England should be the first contact where there are concerns relating to an individual performer;
- CQC should be notified where there are concerns across a practice or in the case of a wholly private provider; and
- The GDC should be notified where there are concerns about a dental professional's fitness to practise or where issues have not been successfully remedied through NHS England or CQC intervention and the result is the potential that patients are at risk.

In order to encourage the local resolution of concerns about NHS dentistry, where the GDC is in receipt of information relating to NHS dentistry, unless there are immediate fitness to practise concerns, the complaint is referred back to the NHS under the 'NHS Concerns' process.

The lists below provide some guidance for staff on which organisation should be involved first for particular concerns, although is it important to note that these are for guidance purposes only. The staff member responsible for deciding whether to refer information to another organisation should use their judgment and discretion when deciding whether to refer information.

Issues that should be referred to the GDC

- Alleged physical or sexual assault of patients
- Serious performance, conduct or behavioural issues
- Criminal convictions, cautions and other relevant Court disposals
- Criminal charges for serious offences
- Allegations of dishonesty or deception
- Repeated pattern of performance, conduct or behavioural concerns which have not been successfully remedied
- Lack of insight into serious failings
- Non co-operation with remediation plans developed by NHS England or CQC
- Serious health issues that affect an individual's ability to practise
- Practising without current professional indemnity insurance in place
- Serious breach of scope of practice which has put patients at risk
- Serious breaches of patient confidentiality
- Removal from a Performers' List
- Restrictions have been placed on an individual by NHS England due to concerns about the individual and NHS England provides sufficient reasons for private patients needing the same protection
- Practising without appropriate CQC registration

Issues that should be referred to the CQC

- Management and leaderships concerns
- Practice wide cross infection concerns
- Concerns with practice environment
- Staffing issues (excluding those related to employment law e.g. pay and conditions of staff employed at a practice)
- Equipment and premises concerns
- Practice cleanliness concerns
- Concerns relating to appraisal of clinical governance systems

Issues that should be referred to NHS England

- Failure to obtain consent
- Communication issues
- Behavioural issues
- Single patient concerns absenting evidence of serious professional misconduct
- Potential fraudulent activity in relation to NHS contract
- Poor explanation of charges to patient
- Inadequate complaints handling
- Record keeping issues
- Contractual access issues
- Single clinical incidents where there is no evidence of repetition or an ongoing pattern of behaviour
- Whistleblowing concerns

The most difficult cases to manage are those which do not fall within the categories above or where more than one organisation *may* be interested in a particular individual but for different reasons. It is impossible to prescribe for these scenarios but **Appendix A** provides a number of case studies with some explanatory notes which are designed to assist staff who are faced with making those difficult decisions.

How to refer information

Where a decision has been made to refer information outside of the normal information sharing arrangements to one of the other organisations signed up to this protocol, then a form should be used.

When making a referral, the following information should be included:

- The dental professional's full name and GDC registration number;
- The name and address of the practice (or other setting) where they work;
- A full account of the events or incidents that prompted the referral, including specific dates if possible, and the referring organisation's view of the issues;
- Copies of any relevant papers and any other relevant evidence and permission to either disclose that information or disclose a summary of the issues including the source of that information;
- Details of action(s) already taken;
- Reasons for making the referral;

The form makes clear the reasons for the referral and provides a clear audit trail should the decision to involve another agency be challenged.

When considering whether to share information consideration must be given to:

- When information needs to be shared, sharing complies with the law, guidance and best practice;
- Only the minimum information necessary for the purpose will be shared and, if sharing with providers, will only be shared when the contract explicitly permits it;
- Individuals' rights will be respected, particularly confidentiality and security. Confidentiality must be adhered to unless there is a robust public interest or a legal justification in disclosure; and CQC's Information Governance policies.

How to request information

There may be instances where one organisation is conducting an investigation and requires specific information from one of the other organisations signed up to this protocol.

These requests may be made via email and there are also internal forms which can be used for this purpose to ensure the reasons for the request are clear and there is a clear audit trail. There are also a decision forms which can be completed by the requesting organisation if required.

Specific guidance on requesting information from the GDC

Any requests for information made to the GDC will be acknowledged within five working days. The timescales for providing the requested information will depend on the type of information required and the risks to patients.

Specific guidance on requesting information from the CQC

CQC's inspection reports are usually made publicly available on its website within 50 days of the inspection. CQC will not ordinarily share a draft report with any external organisation prior to that date.

However, if the inspection raises concerns which lead CQC to convene a management review meeting, then consideration will be given to disclosing the actions arising from that meeting to the GDC or NHS England where there are immediate patient safety concerns.

On occasions where significant failings are found on inspection, some enforcement actions require CQC to notify NHS England, for example issue of a Notice of Proposal to change an aspect of the registration. Unless urgent Notices are served, the provider has a right of representation or appeal and CQC would not ordinarily notify the GDC until the end of that period.

Specific guidance on requesting information from NHS England

Any requests for information made to NHS England will be acknowledged within five working days. The timescales for providing the requested information will depend on the type of information required and the risks to patients.

Safeguarding

Any organisation may receive information which indicates that abuse, harm or neglect has taken place. Any form of abuse, avoidable harm or neglect is unacceptable. Each organisation has procedures for managing these types of concerns and they must be followed.

SECTION FOUR

Collaborative working arrangements

Positive working relationships are critical for ensuring successful partnership working. The GDC, CQC and NHS England have established some formal mechanisms for ensuring successful collaborative working but these should not be seen the only means by which those relationships can be developed. The intention of these mechanisms is to help determine which organisation should take the lead in particular circumstances in order to avoid duplication of effort rather than adding another layer of bureaucracy.

It is recognised that telephoning the right person at the right organisation at the right time is the best means of both developing those relationships and avoiding duplication wherever possible.

GDC and CQC

Both the GDC and CQC have nominated relationship managers who are responsible for overseeing the working relationship between the two organisations.

These Managers will be responsible for meeting every month (either in person or via teleconference) to discuss specific cases and emerging risks. Each organisation will provide updates on specific cases where required and actions agreed at the meeting will be followed up within the timeframes agreed at the meeting.

Where an action is not followed up within the agreed timeframe the issue will be escalated to the appropriate escalation contact in each organisation to prevent any unnecessary delays to either organisation's operational processes.

These relationship managers will also be responsible for updating the operational contacts list.

NHS England and CQC

NHS England and CQC operate on a broadly similar regional model and as a result they have established local liaison meetings. Local liaison meetings provide a structured, scheduled way for the CQC and NHS England to share information at a local level. Meetings are held at least twice a year and can take place virtually.

Senior Managers in each organisation will be provided with updates to provide assurance that these meetings are taking place consistently at a national level.

The aim of these meetings is to identify risks impacting upon quality as early as possible. Information and intelligence is proactively shared between the two organisations in order to fulfil that aim. The meetings provide an opportunity to:

- Make individuals aware of any local changes for each organisation;
- Highlight key concerns and activities in the region;
- Discuss actions that may need to be taken in response to any concerns or activities;
- Discuss concerns which may need to be escalated to the GDC;
- Interrogate statistical data and analyse trends in the region;
- Build relationships between local teams;

- Review the effectiveness of communication and information sharing between the two organisations.

NHS England and GDC

The GDC routinely shares information about fitness to practise concerns with NHS England during the assessment stage of the FTP process where a dental professional has indicated that they hold an NHS contract.

Where additional information is needed by the GDC in order to inform its decision making, GDC staff will formally request that information from either the NHS England employee managing the case or the lead. As the GDC operates on a national level and NHS England operates on a regional level there are no regular meetings between key staff.

Coordination of ongoing activities

Having identified any potential risks or concerns, local contacts should ensure that action is taken to mitigate these risks and drive improvement in quality in an aligned and coordinated way and to resolve issues locally where possible. Local liaison should not add another level of bureaucracy to the system, but it should help to determine which organisation is leading in particular circumstances and avoid duplication of effort.

If those concerns appear to be minor – in accordance with the quality improvement framework – then local contacts may check that peer support mechanisms are in place.

Risk and Oversight Board

The risk and oversight board has been set up to build on the improved joint working established by the RDSPB. The aims of this group include:

- Supporting effective local and regional liaison between the three organisations;
- Developing and implementing mechanisms for ensuring that the right issue is dealt with by the right organisation; and
- Making the best use of data and other information held by partners in order to develop a shared understanding of sectoral risk;
- Better targeting of strategic and operational resources; and
- Minimising duplication.

In addition, data analysts from all three organisations meet at least once a year to discuss emerging trends and overlaps in data.

We will continue to revise the protocol and demonstrate an ongoing commitment from member organisations to work collectively. The protocol will evolve as we work together and these frameworks become embedded and our relationships mature.

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APPENDIX A - Case studies to aid decision makers

Case study 1

CQC is contacted by a whistle blower who has concerns about cross infection at a practice.

Should this case have been referred to the GDC at this stage?

If the whistle blower had contacted the GDC first, the GDC would have contacted CQC and asked them to conduct an inspection, so the CQC retaining ownership of that complaint was appropriate.

CQC conducted a focussed inspection which revealed that the autoclave at the practice is awaiting repair which meant there were inadequate sterilisation procedures in place. As a result of the inspection and the recommendations from that inspection, the dental professional alerts patients of the possible risks and cancels patients until the repairs have been completed. Public Health England is also made aware of the case and evaluates the risk to patients as low. CQC evaluates the risk of recurrence, decides that it is low and decides to keep the issue under active review.

Public Health England contacts the CQC's National Adviser to discuss whether a referral should be made to the GDC. Public Health England's view is that a referral could be made, however due to the remedial action taken by the dental professional, it would be difficult to say that their fitness to practise was impaired. CQC agrees that referral to the GDC is not appropriate as the dental professional has taken steps to resolve the issue; however CQC assures Public Health England that it will keep the dental professional under active review.

Should this case have been referred to the GDC?

Although the CQC found infection control issues, the dental professional engaged with the process and took appropriate steps to resolve the issue. Both CQC and Public Health England agreed that the risk to patients was low and so a decision not to refer the case to the GDC was appropriate. If the CQC became aware that there were further issues at the practice which warranted a referral to the GDC, then this case could be referenced at the same time in order to demonstrate an emerging pattern of behaviour.

What if a referral to the GDC had been made?

If the two organisations were uncertain whether to refer the case to the GDC or not, the CQC could have sent the case to the GDC for information. When making the GDC aware of the case, the CQC would outline the action that had been taken including the fact that the dental professional had taken active steps to resolve the issue and would also make clear that the view from both organisations was that the risk to patients was low. The GDC would then decide whether to take any further action.

Could this case be referred in future?

If either the CQC or Public Health England became aware of further cross infection issues at the same practice, then consideration should be given to referring the case to the GDC as this indicates a pattern of poor performance and conduct which has not been successfully remediated at a local level and could require regulatory action.

Learning points

This case is a good example of positive collaborative working. Public Health England and

the CQC were able to have a frank discussion about whether to refer the case to the GDC. Knowing who to contact to have that discussion was key to reaching an agreed way forward. This prevented an unnecessary referral to the GDC and also avoided duplication.

Case study 2

The GDC received a complaint from a patient about the standard of treatment provided by their dentist and also made allegations that the practice was in poor decorative condition and the equipment was outdated. The GDC sought early clinical advice which confirmed there were no issues in relation to the treatment provided.

The GDC also contacted the NHS England regional team to ask whether it had any concerns about the performer. The Local Area Team (LAT) confirmed it had no concerns and had already handled two similar complaints from the patient about similar issues raised at different practices.

The GDC contacted CQC because of the concerns raised by the patient and CQC conducted a focussed inspection. CQC had no concerns with the communal areas, but found the practice to be non-compliant in relation to Regulations 12 of the Health and Social Care Act.

The original patient complaint was closed, however the CQC inspection results were referred to the GDC's Investigating Committee and the dentist was issued with a published warning letter for a period of 12 months.

Learning points

- Good example of positive collaborative working as there was a clear delineation between concerns which fell within the CQC's remit (practice in poor condition and outdated equipment) and those which could have been for the professional regulator (poor standard of treatment). Had the patient been clear that the treatment was provided under the NHS, then the case could have been referred back to the LAT before early clinical advice was sought by the GDC, particularly as the LAT had no other concerns about the dental professional. Under the 'NHS Concerns' process, cases of this nature will now routinely be referred back to the NHS.

- The CQC reacted to information raised by the GDC in relation to practice concerns and conducted an inspection.

- The patient treatment concerns were insufficient to amount to an FTP allegation, however the evidence provided by the CQC in reaction to the GDC's information was sufficient to warrant a referral to the Investigating Committee.

Case study 3

The GDC received a number of complaints about a dentist which did not refer to specific treatments or individual patients. The informants were reluctant to provide their consent as they were dental nurses employed by the dentist. The GDC was unable to investigate any further without consent so decided to refer the information to the CQC. The GDC also notified the Local Area Team (LAT).

CQC confirmed that on the basis of the information provided, it was arranging for an unannounced inspection to be conducted. Following the inspection, the CQC confirmed that issues had been found at the inspection and the dentist had agreed an action plan for completion in April. As a result of this information, the GDC case was put on hold. The CQC updated the GDC in May and confirmed that all actions had been completed.

The LAT contacted the GDC to confirm that the dental nurses, who had been encouraged to contact the LAT by the GDC, had done so and some local resolution actions had taken place to resolve the concerns raised by those individuals as well as the CQC.

The GDC decided to close the case at assessment stage as the issues had been managed locally and there was no immediate risk posed to patients.

Learning points

- The GDC knew that the CQC was best placed to investigate the issues and the CQC reacted to that information quickly due to the potential risks to patients.
- As the issues were successfully remediated locally by CQC's actions, there was no need for the GDC to intervene and this avoided duplication.
- The GDC encouraged the dental nurses to raise their concerns through a less adversarial process which resulted in those concerns being successfully managed at a local level.

APPENDIX B Whistleblowing

The term whistleblowing can be defined as raising a concern by a current or ex-employee of an organisation who reports on concerns about the safety and quality of care being provided.

CQC, NHS England and the GDC have joined with other regulators, professional bodies and trade unions to launch the Speaking Up Charter, a commitment to work together to support people who raise concerns in the public interest. The identity of whistleblowers will remain confidential, but the content of the concerns identified from the information provided by will be shared as appropriate. For example, fitness to practise concerns with the GDC, whilst concerns regarding system concerns at health care providers will be shared with CQC.

You can find the Speaking Up Charter at www.nhsemployers.org/your-workforce/retain-and-improve/raising-concerns-at-work-whistleblowing/speaking-up-charter

In response to concerns about the culture in the NHS, the Secretary of State for Health commissioned Sir Robert Francis to carry out an independent policy review 'Freedom to Speak Up'. The review was asked to identify measures to foster a culture in the NHS in England where staff can feel safe to speak out about patient safety, as well as learning lessons by listening to those who have experiences to share both positive and negative. (See Freedom to Speak Up: An independent review into creating an open and honest reporting culture in the NHS: February 2015.)

The GDC operates a 24-hour helpline (in partnership with Public Concern at Work) that can be accessed by calling 0800 668 1329.

From 1 April 2016, NHS England also became a 'prescribed body', along with CQC and GDC (already prescribed bodies), under the Public Interest Disclosure Act. Staff working in primary dental services, will be able to raise a concern with NHS England, CQC or GDC, if they do not feel they have been listened to within their organisation or are anxious about raising their concern.