Commentary on “Facing the judge and jury”

Chris Morris comments on DT’s article Facing the Judge and Jury published in Volume 4, No. 5 of Dental Tribune

I have spent nearly 20 years defending hundreds of dentists before the various Committees of the General Dental Council (GDC) and so read Mr Goodwin’s article with interest. Unfortunately, I fear that in a number of respects I found the article confusing and I hope you will permit me to offer some observations for the benefit of readers of the Dental Tribune.

Fitness to Practise Procedures

The Fitness to Practise procedures at the GDC are fairly labyrinthine but Mr Goodwin’s article makes them appear more impenetrable than need be. Indeed, I am still not sure whether his article intends to refer to the Interim Orders Committee (“IOC”); the Professional Conduct Committee; or the Investigating Committee.

Put simply, all complaints and convictions notified to the Fitness to Practise Department at the GDC (other than those screened out at an early stage) are referred to an Investigating Committee for consideration. That Committee can decide to take no further action; issue an advice or a warning; or refer the case to one of the Practice Committees. The Practice Committees comprise the Professional Conduct Committee, the Health Committee and the Professional Performance Committee. Their titles are self-explanatory and the Committees deal with conduct, health and performance issues respectively.

A practitioner receiving any correspondence from the Fitness to Practise Department of the GDC would be well advised to seek immediate assistance from his defence organisation (or a suitably experienced lawyer if he does not have defence organisation membership).

The IOC

There is a further strand to the GDC’s Fitness to Practise procedures which is also referred to in Mr Goodwin’s article. This is the IOC. This Committee has the power to impose an Interim Order upon a practitioner’s registration for a period up to 18 months (and thereafter the High Court can extend the Order for longer) if the Committee considers that it is necessary to do so to protect the safety of the public; or the practitioner; or it is otherwise in the public interest to do so. This Committee decides whether it is necessary to impose an Interim Order usually until such time as the case has been considered by a Practice Committee. It does not make any determination as to whether a practitioner’s fitness to practise is impaired, which is a decision only a Practice Committee can make.

Cases may be referred to the IOC at various stages of the Fitness to Practise procedures including at the outset (ie before the case is even considered by an Investigating Committee); or by the Investigating Committee following its deliberations.

It is right to indicate that time can be quite light when preparing for an IOC hearing, although this should never be a barrier to a properly prepared case.

In the event that a case is referred to the IOC, the appropriate document to be considered by the dentist and his defence team is entitled Guidance for the Interim Orders Committee – the latest version of which was published by the GDC in October 2009 and available on their website at www.gdc-uk.org (and not the document referred to in Mr Goodwin’s article).

Mr Goodwin’s article indicates that a dentist will need to take a number of specific steps to defend his position in the event of an IOC referral. In reality those steps will be taken on his behalf by his solicitor albeit with very considerable input from the practitioner. These are likely to include the taking of detailed instructions (not necessarily in the form of a statement) – for the eyes of the defence team only; the obtaining of any expert evidence required; the obtaining of references (if appropriate although they are not frequently used at an IOC hearing); the obtaining of any documentary evidence which may assist to present the dentist’s defence; and a careful consideration of any conditions which might be proposed to the Committee on the dentist’s behalf. It is highly likely that the solicitors will also brief a barrister on a dentist’s behalf who will present the defence case before the Committee at the hearing.

It is important to emphasise that the IOC is required to review its Order every six months which provides an opportunity for the dentist (or the GDC) to apply for amendments to the Order if there has been a change of circumstances (either for the better or worse).

Finally, Mr Goodwin, very openly, accepts that he has not dealt with what he describes as the “appeal procedure” that is available against Interim Orders. It is not, in fact, an “appeal procedure” but an application to set aside an Interim Order, which is made to the High Court. My firm obtained such an Order against the GDC in 2008 in the case of R (on the application ofidenpeare) v General Dental Council (2007) which is now referred to as a benchmark by lawyers in most GDC and GMC Interim Orders hearings. It should be noted that an application of this nature is unlikely to succeed except in unusual circumstances and the practitioner (or his defence organisation) is put to a considerable costs risk if it fails.

My firm has produced a brochure headed “The General Dental Council’s Fitness to Practise Procedures” which I would be delighted to make available to any readers if they would like to contact me at c.morris@hempsons.co.uk (or call me on 020 7859 0278).

About the author

Chris Morris BSc BDS LLM MBA is a partner at Hempsons Solicitors and Head of the Dental Team. He first qualified as a dentist and spent seven years in general dental practice before returning as a solicitor with Hempsons. Chris specialises in all aspects of dental law acting for defence organisations, dental institutions and many individual practitioners. He is the current President of the Dental Law & Ethics Forum.