

## Dealing with complaints and concerns about oral health practitioners protocol and procedures

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Scheduled review	
Approved by	Council

### Purpose

The purpose of this document is to provide transparency on how the Dental Council responds to complaints or concerns raised about oral health practitioners. It is not intended to replace the advice to the public on the process for making a complaint.

### There are different protocols for complaints and concerns

There are different processes to be followed when managing either a complaint or a concern.

Complaints received will be dealt with in accordance with the disciplinary provisions set out in the HPCA Act 2003. Concerns, such as information provided to the Dental Council about a practitioner's performance, will be managed according to the protocol set out in this document.

### Complaints

1. If a person wishes to make a complaint about an oral health practitioner, they can do so verbally or in writing to the Health and Disability Commissioner (HDC) or the Dental Council Registrar. Complaints received by the Dental Council must be forwarded to the HDC, who may refer the matter back to the Dental Council for Action.
2. Generally anonymous complaints cannot be proceeded with because the HPCA Act's procedures require the complainant to participate.
3. Once the complaint is received, the complainant is contacted and advised that his or her letter of complaint will be provided to the practitioner concerned. This gives the complainant an opportunity to delete any personal information or unwarranted disclosure of his or her affairs prior to the letter being provided to the practitioner.

**Note:** It is usual for both the Dental Council and the HDC to disclose the whole letter of complaint to the practitioner so that he or she knows all of the circumstances surrounding the allegation that has been made against him or her. This will generally be the case unless to do so is likely to put the complainant in danger or may be withheld pursuant to one of the statutory reasons set out in sections 27 and 29 of the PA.

4. Upon receipt of a complaint referred by the HDC, there are a number of actions that the Dental Council can take under the HPCA Act 2003. Before deciding what, if any, action to take, Council may seek further information.

5. Possible actions include:

If...	Then Council...
The matter raises concerns about the practitioner's competence and where the competence review threshold has been met	May refer the practitioner for competence review[s36] <sup>1</sup>
The matter raises concerns about appropriateness of the practitioner's conduct and safety	May refer the matter to a PCC for investigation [s68(3)]
The matter raises concerns about the health of a practitioner	May refer the matter to the Health Committee for consideration
The matter involves allegations that a practitioner may have practised outside his or her scope of practice	Will normally refer the complaint to a PCC for investigation.
Council has serious concerns about the unethical conduct and/or unsafe practices of a practitioner	Will normally refer the complaint to a PCC for investigation.
Council has concerns or information that the practitioner may not be complying with a Code of Practice (e.g. the Code of Practice on Cross Infection Control),	May consider requiring the practitioner to undergo an inspection as part of an individual recertification programme pursuant to s41.

6. Council might also consider:

- a) Establishing an individual recertification programme for the practitioner to ensure he/she is competent to practise in his/her registered scope(s) of practise [s41]
- b) Any other action considered appropriate, e.g. referral to DHAS; referral to mediation/conciliation.

## Concerns about oral health practitioners

1. Sometimes people do not want to make a formal complaint about a practitioner but feel very strongly that they are able to deliver useful information, for example, a concern about a practitioner's performance.<sup>2</sup>
2. When a serious concern is received about a practitioner it is expected that the Council will act on that concern.
3. Sometimes informants may want to remain anonymous. However, knowledge about how the information will be dealt with and the appropriateness of the Council's processes will, in the majority of cases, result in the informant becoming willing to have their identity disclosed.

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<sup>1</sup> Refer to the Dental Council *Policy on Competence Review*

<sup>2</sup> This differs from the s34 HPCA provisions which provide that any written notice from a health practitioner, the HDC, an employer or a Professional Conduct Committee, raising concerns about an individual's competence must promptly be considered by the regulatory authority which must make inquiries into and may review the competency of the practitioner.

4. Initially the concern will be considered by the Secretariat staff in consultation with the appropriate Professional Advisor and Chair of Council, with a view to sifting out vexatious complaints and deciding whether the matter should be referred to the Council.

#### If no action is required

5. Sometimes the concern will be a single incident, not of a serious nature and it may be decided that no further action needs to be taken at this time. If so:
  - a) The practitioner will be told that the concern has been received and that it will be kept on his or her file.
  - b) The informant will be advised that the concern is to be held on the practitioner's file. Consent will be sought to release a copy of the concern to the practitioner for comment. The informant will be advised that if similar concerns come to the attention of the Council in the following five years then action may be taken in relation to their concern.
  - c) The practitioner will be sent a copy of the concern and invited to comment. There is no obligation on the practitioner to comment but he or she is advised that if comment is made it will be attached to the concern on his or her file.
  - d) Under privacy law the information contained in the letter of concern is generally considered personal information about the person being informed on. Consideration will be given to whether there is a statutory reason for refusing to disclose the concern to the practitioner. If the informant does not want to be identified the Council will consider his or her reasons for that. However disclosure gives greater credence to the information.

#### If action is required

6. If the Professional Advisor, the Chair of Council and Secretariat Staff believe that the concern is significant enough to be acted on, it will be referred to the Council to be considered. See paragraphs 5-6 for possible actions that may result.
7. Informants will be advised that their letter of concern will be disclosed to the practitioner and they will be asked if there is any objection. Consideration will be given to whether there is a statutory reason to refuse to disclose the concern pursuant to sections 27 and 29 of the Privacy Act.

#### Retaining complaint and concern information on file

1. The Dental Council may only collect information about a practitioner if it is for a lawful purpose and connected with the function of protecting the health and safety of the public.
2. Keeping complaints or concerns on a practitioner's file enables the Council to identify the same or similar conduct in the future (i.e. a pattern of conduct).
3. However, this needs to be balanced against the principle that the longer data is kept the more likely it is to become out of date, incomplete or misleading.

#### References

1. Policy on Competence Review.
2. Health Practitioner's Competence Assurance Act 2003.
3. Privacy Act 1993.