

**DELIVERING QUALITY IN PRIMARY CARE**

**PRIMARY CARE TRUST MANAGEMENT OF PRIMARY CARE  
PRACTITIONERS' LISTS**

**GENERAL DENTAL PRACTITIONERS**

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## 1. INTRODUCTION

- 1.1 This note describes arrangements for Primary Care Trusts (PCTs) to manage lists of general dental practitioners (GDPs) who provide General Dental Services (GDS).
- 1.2 It applies in England only.
- 1.3 The arrangements provide for a range of new or modified procedures designed to allow decisions about the overall acceptability of GDPs to be taken locally by those who are responsible for the quality of primary care services. These controls are founded in the existing list system.
- 1.4 Similar changes are being made to the list arrangements for the other three contractor professions recognised in Part II of the NHS Act 1977 (doctors, pharmacists and optometrists) and later, their newer equivalents practising under Part I of the 1977 Act (eg performers of Personal Dental Services).

### NHS Plan

- 1.5 The NHS Plan (Chapter 10 – Changes for Patients) sets out the commitments which these changes are delivering. They relate directly to 10.8-10.16 which describe how we will improve the quality of NHS services to provide better protection for patients.
- 1.6 For primary care services the changes include modernisation and extension of the practitioner list system to cover all general practitioners involved in the provision of NHS primary care and to give powers to PCTs to remove, exclude or suspend practitioners from those lists. These commitments are set out at paragraph 10.12 of the NHS Plan:-

*“The NHS Tribunal will be abolished, and the power to suspend or remove GPs from a health authority’s list will be devolved to health authorities, subject to a right of appeal to the Family Health Services Appeal Authority, from 2001.”*

## **The Health and Social Care Act 2001**

1.7 The Health and Social Care Act 2001 (H&SC Act) received the Royal Assent on 11 May 2001. In part this provides a legal framework for the necessary statutory changes to deliver the NHS commitments on modernising the management of practitioner lists. The relevant sections of the Act are:

- the abolition of the NHS Tribunal (section 19);
- changes to the regulation of the existing dental (pharmaceutical, medical and optical) lists which introduce new Health Authority powers of suspension, removal from and refusal to admit to these lists (sections 20, 21 and 25);
- the establishment of the Family Health Services Appeal Authority (FHSAA) as a fully independent appeal body (section 27);
- the introduction of Health Authority supplementary lists of non-principals working in GDS and General Medical Services (GMS), General Optical Services (GOS) and Pharmaceutical Services (PhS);
- the introduction of Health Authority services lists for those dentists performing PDS (and similarly for PMS doctors) (section 26);
- the introduction of new regulations covering the declaration of financial interests by GPs (and other practitioners) (section 23).

1.8 The H&SC Act 2001 can be viewed or downloaded from the HMSO website: [www.legislation.hmso.gov.uk/acts/acts2001/20010015.htm](http://www.legislation.hmso.gov.uk/acts/acts2001/20010015.htm). [Provisions in the Act in relation to Health Authorities were delegated to PCTs under new provisions in the NHS Reform and Health Care Professions Act 2002](#)

## **Regulations**

1.9 The legal details of some of the changes need to be set out in regulations. This note explains these regulations and also refers to those regulations which have yet to be made.

- 1.10 It is important to point out that this note is not a substitute for reading the regulations and should not be treated as such. Examples used are illustrative and should not be treated as being definitive.
- 1.11 In addition, this note concentrates on the arrangements delivered by the H&SC Act and subsequent regulations.
- 1.12 Similarly, this note does not cover extant processes which remain unchanged, including:
- existing requirements for inclusion;
  - local disciplinary processes (dental discipline committees within the existing Service Committee and Tribunal Regulations, as amended); or
  - any voluntary local procedures in cases of poor health.

### **Primary Care Trust's new powers**

- 1.13 In abolishing the NHS Tribunal and conferring new powers on PCTs Parliament has widened their scope. The NHS Tribunal considered whether the continued inclusion of the practitioner would be prejudicial to the efficiency of the service that he provides. In future the PCT will be able to consider whether previous instances of fraud justify action and whether the practitioner is unsuitable for inclusion in the relevant list.
- 1.14 For ease in the text of this document these conditions will be referred to as "efficiency", "fraud" and "unsuitability". These terms are used to maintain consistency with the words used in the H&SC Act; they are looked at in more detail in [section 6.2.2](#) et seq. The underlying primary powers for these conditions is to be found in section 49F of the NHS Act 1977 (section 25 of the H&SC Act)
- 1.15 PCTs will also be able to consider these three issues when deciding whether a dentist should be admitted to one of its lists.

- 1.16 There are also provisions that allow a dentist to be entered onto a list, but subject to conditions set by the PCT (a conditional inclusion), or for the dentist's continued presence on a list to be similarly subject to conditions (a contingent removal).
- 1.17 Unlike the NHS Tribunal, a PCT decision will only be effective in relation to its own list. Where a national disqualification is felt necessary this decision will have to be taken by the independent FHSAA. This body will also hear appeals against PCT decisions to remove or exclude but not to suspend.

### **Quality**

1.18 These changes do not stand in isolation. They form part of the overall quality agenda. This involves new, robust systems for quality assurance and quality improvement and changes in culture and working practices.

1.19 New bodies have been created such as:-

- National Clinical Assessment Authority (NCAA)
- National Institute for Clinical Excellence (NICE)
- Commission for Health Improvement (CHI)
- National Patient Safety Agency

1.20 Other linked initiatives include:

- the promotion of Clinical Governance;
- the use of Continuing Professional Development
- expansion of Occupational Health Services
- the use of Clinical Audit
- National Service Frameworks
- appraisal underpinned by revalidation

although not all these are yet relevant to dental practitioners

- 1.21 The new arrangements for management of primary care contractor lists must be viewed and operated in this wider quality context. In many instances early and appropriate use of these complementary and supportive initiatives will avoid having to resort to removal of a practitioner from the list – which should usually be seen as a last resort.

### **Timetable**

- 1.22 This represents a major body of reform and a significant extension of the powers of PCTs. The introduction of these changes is therefore being phased. There is an underlying patient safety requirement to expedite these changes and recent high profile cases have highlighted the problems PCTs may face in taking prompt effective action to safeguard the public. Nonetheless practical considerations require a phased approach.

### **Communications**

- 1.23 PCTs have a role in ensuring that everyone affected by the changes is made aware of them and their likely impact. It is suggested that discussion with Local Dental Committees (LDCs) will help facilitate local implementation.
- 1.24 Meetings with local dentists, principals and assistants, would be a positive way of ensuring that these significant changes are brought to the attention of all those who need to be aware of them.

### **Detail**

- 1.25 The remainder of this note describes each of the changes in more detail.
- 1.26 It does so in modular form to allow individual sections to be inserted or updated as each part of the new system is developed and implemented. Each section is intended to be as self-contained as possible so that it may be read in isolation. This means that there is necessarily some duplication between different sections (such as those on the administration of the supplementary list and the previous main lists).

- 1.27 In addition for those who require more detail about the administration of these lists [section 6](#) discusses related procedures and the exercise of discretion in more depth.
- 1.28 Finally, following the custom in regulation references to “he” or “him” includes “she” or “her”

*Special Health Authority (Dental)*

*(Shadow Arrangements)*

*April 2004*

## 2. Summary of Changes

### 2.1 Changes to the existing Dental List

2.1.1 There is an expanded application process requiring:-

- i. more details about a dentist's previous professional career;
- ii. details of any criminal record;
- iii. details of any involvement in NHS fraud investigations;
- iv. details of past investigations by licensing, regulatory or other bodies into the dentist's professional conduct (this could be professional conduct in a field other than dentistry where the dentist was registered with an appropriate professional body) where there has been an adverse finding against the dentist;
- v. declarations concerning any involvement as a Director of a Body Corporate which delivers FHS services;
- vi. Consent to information sharing between PCTs and with professional bodies.

2.1.2 PCTs will be able to refuse admission where this appears justified on efficiency, fraud or unsuitability grounds. They may consider any information available to them but must consider certain specified issues (see [Annex E](#)). They can also defer consideration of applications in certain circumstances or make admission to the list conditional on adherence to specific conditions set by the PCT.

2.1.3 Most decisions will be discretionary, based, amongst other things, upon a dentist's declarations of previous criminal convictions, "findings against" by regulatory, licensing or other bodies, content of references, fraud investigations etc. More information about the use of discretion is contained in [section 6](#).

2.1.4 In some cases the PCT will have no choice but to refuse a request for admission to a list. Examples include any dentist with a murder conviction in the UK, or a criminal conviction in the UK on or after 14 December 2001; 3 March for Supplementary List) that leads to a sentence of imprisonment

of more than six months or where the dentist is nationally disqualified from the relevant list by the FHSAA.

- 2.1.5 PCTs are able to remove a dentist from the list in similar circumstances to those that relate to refusal to admit. This includes making retention on the list subject to conditions (a contingent removal).
- 2.1.6 PCTs have a discretionary power to suspend a dentist where they consider it is necessary to protect members of the public or it is otherwise in the public interest. Suspension can be pending a third party investigation (e.g. a dentist charged with assaulting a child could be suspended from the dental list pending the CPS decision and any resultant court case) or whilst the PCT itself investigates serious concerns about the dentist.
- 2.1.7 There is a duty placed on a dentist on the dental list to make declarations detailing any offences with which he is charged, any new investigations into professional conduct by regulatory, licensing or other bodies, or investigation by the NHS Counter Fraud and Security Management Services (CFSMS), within 7 days of its coming to his attention. It will be important to ensure dentists are aware of this new requirement.
- 2.1.8 Discretionary decisions by the PCT to refuse admission, conditionally include, to remove a dentist or to contingently remove a dentist will be appealable to the new FHSAA. Mandatory removals, mandatory refusals, suspensions and decisions to defer applications have no right of appeal.
- 2.1.9 Certain PCT decisions, for example the imposition of conditions, will be subject to review if a dentist asks for one in writing. This right to a review is subject to time constraints. Decisions made on review are subject to appeal to the FHSAA where the original decision was appealable.
- 2.1.10 When considering an application to the dental list, PCTs are required to check clinical references "so far as practicable".
- 2.1.11 These changes are contained in the following regulations:-

- i. The NHS (GDS) Amendment (No.6) Regulations 2001
- ii. The NHS (GDS Supplementary List) and (GDS) Amendment Regulations 2003

These can be viewed at

<http://www.hmso.gov.uk/si/si2001/20013741.htm>

<http://www.hmso.gov.uk/si/si2003/20030250.htm>

## **2.2 The (GDS) Supplementary List**

- 2.2.1 This list will apply only to dentists working, at least in part, in GDS. It will cover dentists engaged as an assistant (including Vocational Trainees).
- 2.2.2 Supplementary list provisions, when fully implemented, for GPs, pharmacists and opticians will have broadly similar provisions to the GDS supplementary list rules, which are described here.
- 2.2.3 Primary Care Trusts will have the same powers over admission, suspension and removal from the supplementary list as are described above in relation to the dental list.
- 2.2.4 An assistant can only be on the GDS supplementary list of one Primary Care Trust in England at any one time. He cannot be on a GDS supplementary list whilst also being on a dental list or a services (PDS) list. In addition when applying to the Primary Care Trust the assistant must provide reasonable assurances that he will provide GDS services in the area of the Primary Care Trust.
- 2.2.5 Some dentists, especially locums will work in PDS and GDS. Once the services (PDS) list is introduced there will be no requirement that, for example, a locum should have to be on both a supplementary and a services list. A locum on a GDS list will be able to work in PDS and vice versa. A locum who wishes to work in PDS or GDS will be able to choose which list (supplementary or services) he applies to join. In addition a GDP Principal on the dental list will be able to work as, for example, a locum in either GDS or PDS without having to join the supplementary or services list.

- 2.2.6 Having joined the Primary Care Trust supplementary list if an assistant does not work in the PCT's area for a period of twelve months he may, **not must**, be removed from the list.
- 2.2.7 From the 3 March 2003, subject to transitional rules until 3 September, a dentist, other than a vocational trainee during the first 2 months of training, cannot be employed or engaged to work in GDS unless he is on a dental list, a supplementary list or is named on an agreement under section 2 of the Primary Care Act as a performer of PDS (this latter criteria is temporary pending the introduction of the services (PDS) list). *Future references to the latter criteria will be expressed as "named as a performer of PDS"*.
- 2.2.8 These changes are contained in the National Health Service (General Dental Services Supplementary List) and (General Dental Services) Amendment Regulations 2003 – S.I. 2003/250 These can be viewed at [www.hmso.gov.uk/si/si2003/20030250](http://www.hmso.gov.uk/si/si2003/20030250)

### **2.3 The Services Lists**

- 2.3.1 These lists will initially cover all dentists performing PDS . The intention is to introduce the PDS services list in late 2003. They are expected to function along similar lines to the supplementary list rules.
- 2.3.2 This section will be expanded when the details are finalised

### **2.4 Declarations of Financial Interests [to be added later]**

### 3. The Introduction of Supplementary Lists

#### 3.1 Introduction

- 3.1.1 Primary Care Trusts started to build their supplementary list with effect from March 2003. All assistants, including vocational trainees after their first 2 months training, who are engaged in the delivery of GDS and who are not on a Primary Care Trust dental list will need to be on a supplementary list. The exception will be a dentist named as a performer of PDS; these dentist will frequently treat GDS patients, for example out of hours, but there is no need for them to separately register on the supplementary list. In due course they will be included in the PDS services list. No dentist, after 3 September, is able to work in GDS unless he is on an English Primary Care Trust's dental list or supplementary list or is named as a performer of PDS. **(But see paragraph 3.1.2 for transitional arrangements between 3 March and 3 September 2003.)** There is a legal requirement after that date that prevents one dentist engaging another as an assistant (this term includes vocational trainees) unless he is on a supplementary or dental list or is named as a performer of PDS.
- 3.1.2 Between 3 March 2003 and 3 September 2003 a dentist may assist in the delivery of GDS if he is not on a dental or supplementary list or named as a performer of PDS but **only** if he has applied to join a Primary Care Trust supplementary list prior to 3 March 2003 and that application has not been determined by the Primary Care Trust .
- 3.1.3 In respect of the GDS supplementary list, being on the list of one Primary Care Trust in England will be sufficient to allow a non-principal to work in any Primary Care Trust in England. It will also allow the non-principal to work in a PDS Pilot - subject to any PDS contractual or legislative requirements. In other words an assistant on the supplementary list in Leeds would not have to join the list of other Yorkshire Primary Care Trusts to locum throughout the county. Separate provisions will apply in Wales, Scotland and Northern

Ireland. This greatly reduces the administrative burden on Primary Care Trusts , and on dentists, but does create an expectation that Primary Care Trusts will share information where necessary. They will also need to consider the potential presentational difficulties where they reach different decisions on broadly similar facts relating to the same dentist .

- 3.1.4 Getting sufficient assistants on to the supplementary list to meet the requirements of the profession is clearly important. Primary Care Trusts are strongly recommended to be proactive in constructing and maintaining the supplementary list and are advised to discuss appropriate measures with their Local Dental Committees (LDCs) who are likely to be in a strong position to assist in the publication of these changes. The supplementary list needs to be in place by 3 September 2003.
- 3.1.5 However, to allow Primary Care Trusts the opportunity to monitor the impact on the supply of assistants and clear any late surge in applications the absolute prohibition on dentist working in GDS unless they are on a dental or supplementary list or named as a performer of PDS does not start until 3 September 2003 see 3.1.3 above.
- 3.1.6 Being on the supplementary list is a pre-requisite of working in GDS as an assistant. In admitting an assistant to the supplementary list the Primary Care Trust will consider clinical suitability; they must be satisfied that the assistant is suitable and that his inclusion would not prejudice the efficiency of general dental services. However, anyone subsequently employing or engaging an assistant who is on this list is responsible for satisfying themselves that the assistant has the necessary clinical skills and experience to undertake the tasks they are recruited to perform. **No-one should assume that the fact of being on the supplementary list indicates that an assistant has the necessary level of experience or clinical skill to undertake the tasks they might be recruited to perform.**
- 3.1.7 The content of the supplementary list is for the Primary Care Trust to decide but as a minimum must include the dentists full name, GDC Registration number, the date the dentist's name was entered onto the list and provided that the dentist consents to its inclusion, his date of birth, or, if he does not so

consent, the date of his first full registration as a dentist, PCTs are recommended to publish the list with effect from 1 April 2004.

- 3.1.8 As part of the supplementary list the assistants Dental Registration number should be directly associated with the relevant DoH organisational code (PCT organisational code) applying to the NHS organisation legally responsible for the list. The organisational code should be the suffix (xxx-yyy where “x” is the GDC number and “y” is the organisational code).
- 3.1.9 When the assistant has been added to the supplementary list, the information should be sent to the Dental Practice Board to enable the Board to update its record of assistants. For newly employed assistants this will be by the usual form DTR4 so that a suffix to the principals number can be added.
- 3.1.10 Primary Care Trusts might wish to include in the list some of the detail that they include in their local directory of dentists (in relation to the dental list) such as second languages. However, other than the mandatory items set out above a Primary Care Trust has no authority to include any personal details relating to a dentist on the supplementary list without the assistant’s consent. The list is to be available for public inspection.
- 3.1.11 Primary Care Trusts may also wish to consider the potential value of sharing information about who is on their supplementary list with other health service related bodies in their area. For instance the support available to an assistant might be broadened if information such as name and address was to be available to local bodies such as the LDC and Dental Post-graduate Dean. Such information may only be shared with the assistant’s permission. Primary Care Trusts are recommended to agree in advance which organisation they were prepared to share this information with; these should be organisations that could help/support the assistant if they were aware he was working locally. Application procedures could then make clear to the assistant that his contact details will be shared with the named organisations unless he specifically withholds his consent.

## **3.2 Admission**

- 3.2.1 A dentist wishing to work in any capacity in GDS will, if he is not eligible to be on the dental list or named as a performer of PDS, have to apply in writing to the Primary Care Trust for admission to its supplementary list.
- 3.2.2 Just as if he were applying to the existing dental list to be eligible for entry to the supplementary dental list, an assistant must be suitably qualified and free from national suspensions or disqualifications etc. The seventy age limit which applies to the dental list does not apply to the supplementary list.
- 3.2.3 The application for admission to the supplementary list has to include the matters listed in [Annex G](#). This is largely self-explanatory. However, Primary Care Trusts are asked to be aware that it could be seen as unreasonable to ask a dentist to list every appointment (job) he has undertaken when detailing his career history. An entry such as “dentist in general dental practice from April 1998 to date” would usually be perfectly acceptable. Where the period of work was interrupted by a permanent, or semi-permanent post, say six months in a hospital setting, then the entry could reflect this accordingly. In addition a dentist who had been in a permanent position would not have to show breaks caused by leave of absence for matters such as maternity or study leave. The entry should simply be, for example, "General Dental Practitioner at [location] from April 1980 to March 1997".
- 3.2.4 Primary Care Trusts are required to check details provided in applications as far as is practical. In examining the details provided by the assistant about his professional career it will not normally be practical (or expected) that all the details be checked. However, Primary Care Trusts are asked to consider any significant breaks in the career history. Further enquiries need to be made of the dentist where the Primary Care Trust has concerns.
- 3.2.5 The assistant must also supply with the application a declaration as detailed in [Annex C](#). concerning such matters as criminal convictions, GDC investigations and NHS Counter Fraud and Security Management Service investigations.
- 3.2.6 An assistant applying to the supplementary list must also provide a number of undertakings. These are:-

- i. not to assist in the provision of GDS in the area of another Primary Care Trust from whose dental , supplementary or services list he has been removed, except where that removal was at the request of the practitioner or in accordance with regulation 10(7) of the NHS (GDS Supplementary List) Regulations 2003 without the written consent of that Primary Care Trust;
- ii. to notify the Primary Care Trust within 7 days of any material changes to the information provided in the application until the application has been finally determined;
- iii. to notify the Primary Care Trust if he is included, or applies to be included, in any other list held by a Primary Care Trust or equivalent body (in Scotland, Northern Ireland or Wales);
- iv. to provide declarations required by regulation 9 of the NHS ( GDS Supplementary List) Regulations 2003 concerning such matters as new criminal convictions, new professional investigations by licensing, regulatory or other bodies and new NHS CFSMS investigations);
- vi. consent to a request being made by the Primary Care Trust to any employer or former employer, licensing, regulatory or other body in the United Kingdom or elsewhere, for information relating to a current investigation, or an investigation where the outcome was adverse, by them into the assistant or a body corporate referred to in regulation 9(1) or 9(2) NHS ( GDS Supplementary List) Regulations 2003.

3.2.7 A Primary Care Trust **must** refuse to include an assistant on the supplementary list if:-

- i. he has not for three out of the last six months, provided General Dental Services in its area, or has not provided satisfactory evidence that he intends to provide services in its area. Such refusal only arises if the assistant fails *both* tests ;
- ii. he is on the supplementary or dental list of any other Primary Care Trust in England unless he has given notice in writing that he wishes to withdraw from that list ;

- iii. he is on the services list of any other Primary Care Trust in England unless he has given notice in writing that he wishes to withdraw from that list;
- iv. if it is not satisfied that he has the knowledge of English which, in his own interest and those of his patients, is necessary for the provision of General Dental Services in its area ;
- v. where he has been convicted in the United Kingdom of murder;
- vi. where, on or after the 3 March 2003, he has been convicted in the United Kingdom of a criminal offence and sentenced to a term of imprisonment of over six months;
- vii. where he has been nationally disqualified (as defined in regulation 2 of the NHS (GDS Supplementary List) Regulations 2003;
- viii. where he has not updated his application following an earlier deferment of the application in accordance with regulation 7(4) of the NHS (GDS Supplementary List) Regulations 2003;
- ix. where he does not notify the Primary Care Trust under regulation 15(5) of the NHS (GDS Supplementary List ) Regulations 2003 that he wishes to be included in the list subject to specified conditions (set by the FHSAA).

*Note:* With regard to language testing, PCTs will not be able to insist that dentists from the European Economic Area provide an International English Language Testing System (IELTS) Test Report in accordance with the Department's guidance on admission to the main list issued in June 2002. Pending a review of this policy, PCTs will have discretion on how they check the knowledge of English of applicants to their supplementary lists. As well as IELTS, they could take account of any other language tests the applicant had undertaken or, failing this, interview the applicant. (IELTS will, however, continue to be appropriate in relation to inclusion in the main list).

3.2.8 The Primary Care Trust must always be able to demonstrate the factual basis of its decision. In particular in refusing to admit an assistant under (v)-(vii) above there is a clear expectation that the Primary Care Trust will have

tangible evidence of the conviction/disqualification from an appropriate body or via a confirmatory declaration from the assistant. There may be no right of appeal against mandatory refusal to admit but the decision can be challenged through the courts.

3.2.9 Otherwise a Primary Care Trust **may** refuse to include an assistant in its supplementary list if:-

- i. having considered, and checked where practical, the declaration required by regulation 4(4) and (5) of the NHS (GDS Supplementary List) Regulations 2003 of this advice and any other information in their possession in relation to the application it considers he is unsuitable to be included in the list;
- ii. having checked the information provided by the dentist in regulation 4(2)(e) & (f) of the NHS ( GDS Supplementary List) Regulations 2003 the Primary Care Trust considers he is unsuitable to be included in the list;
- iii. (if they choose to contact referees) having contacted referees, the Primary Care Trust is not satisfied with the references given in accordance with regulation 4 of the NHS (GDS Supplementary List) Regulations 2003;
- iv. having checked with the National Health Service CFSMS for any facts they consider relevant to past or current fraud investigations involving the dentist, and having considered these and any fraud case relating to the dentist (fraud within the meaning of section 49F(3) of the NHS Act 1977, as read with section 49H) the Primary Care Trust considers these justify such refusal;
- v. there are any grounds for the Primary Care Trust to consider that admitting the assistant to the list would be prejudicial to the efficiency of the service that he would undertake;
- vi. where the assistant's registration in the register of dental practitioners is subject to conditions imposed pursuant –
  - to a direction of the Professional Conduct Committee under section 27 of the dentists Act 1984

- to a direction of the Health Committee under section 28 of that Act,
- to an order of either of those committees;

3.2.10 Before reaching a decision on the issues in paragraphs (i)-(v) above the Primary Care Trust must consider those matters outlined at [Annex E](#).

3.2.11 Assistants who have not worked in the area for three out of the last six months will satisfy the criteria for admission to the supplementary list if they show that they intend to provide services in the area. It is for the Primary Care Trust to determine what constitutes satisfactory evidence of an intention to provide services in its area. However, the expectation is that the test should be applied liberally. It is envisaged that a refusal to admit an assistant who wishes to be able to work in the Primary Care Trust's area will be very rare. Evidence of intention to work might include something in writing from a general practice or from a corporate body:-

- offering the dentist work as an assistant;
- citing a willingness to offer the dentist work in the future as an assistant; or
- it could be evidence that the dentist has joined the Local Dental Committee;

3.2.12 Offers of employment might well be conditional on the dentist being entered on the Primary Care Trust supplementary list by the Primary Care Trust. Indeed where the dentist's application was accompanied by an actual offer of work the Primary Care Trust ought to be prepared to treat the application expeditiously so that the offer does not fall.

3.2.13 A dentist may not be able to provide information about prospective employment but may have a genuine and clear intention to work in the Primary Care Trust area. Dentists returning from maternity leave, overseas work or long term sick leave might have particular difficulty in this respect. In such cases the Primary Care Trust are recommended to be flexible and pragmatic. The Primary Care Trust may, for example, consider that satisfactory evidence that the dentist intends to work in its area can be a written commitment from

him coupled with some other factor which links him to the area such as a home in the Primary Care Trust area or evidence that he has, or is, working locally in a NHS Trust or a PDS pilot.

- 3.2.14 Before placing someone on the supplementary list, Primary Care Trusts must, in particular, make full checks on a dentist's qualifications. The NHS Act 1977 requires that, in order to work in general practice in any capacity dentists must be registered with the GDC.
- 3.2.15 In future whenever a Primary Care Trust refuses to include, conditionally includes, removes, contingently removes or suspends a dentist from any of its lists it shall forward basic details about that decision to the FHSAA (SHA). Over time this will provide a useful source of information to Primary Care Trusts wishing to verify a dentists' statement about incidents involving list status in the past.
- 3.2.16 In addition the Primary Care Trust must check with the NHS CFSMS for any past or ongoing fraud investigations relating to the assistant or in connection with a corporate body to which he has declared a link. It should be noted that the statutory power for CFSMS to disclose information about past or current investigations is permissive not mandatory. In particular, for current investigations, CFSMS staff are not compelled to disclose even the simple fact that there is an investigation if it would be premature to do so and might risk compromising or jeopardising the success of any potential criminal action by effectively forewarning the individual under suspicion. However, in such cases, the NHS CFSMS will notify the Primary Care Trust of any adverse outcome of an investigation.
- 3.2.17 Dentists from overseas are required to conform with Immigration and Employment rules. Primary Care Trusts are already checking the status of overseas dentists who apply to join the dental list and similar checks will be required before an assistant can be placed on the supplementary list. Official guidance (A Guide to Immigration and Employment of Overseas Medical and Dental Students, Doctors and Dentists in the United Kingdom), which is essential reading, is available at <http://www.doh.gov.uk/medicaltrainingintheuk/overseas.htm>

- 3.2.18 Most dentists who come within the definition of an overseas dentist in the aforementioned guidance and those who do not have settled status will require work permits, although some locums may be covered by the self-employed criteria. Work permit status can often be established from passport stamps but self employed status may require a confirmatory letter from the Home Office (a process Primary Care Trusts will be familiar with in respect of GDP Principals as eligibility had to be positively established before applicants details are forwarded to the GDC). General advice on GDS appointments is at paragraphs 36-39 and advice on how to check eligibility for employment is in Part IV of the aforementioned guidance.
- 3.2.19 It is a matter for the Primary Care Trust as to whether or not they wish to take up references before admitting an assistant to the supplementary list. Where they have doubts about the dentist's past, such as ambiguous statements about previous posts, it would be good practice to take up references.
- 3.2.20 If references are taken up these should be from referees who are willing to provide clinical references in respect of two recent posts (which may include any current post or a current/recent partner in practice) as a dentist that lasted at least three months without a significant break. There will be cases where the applicant cannot meet this requirement. For example where the dentist's preferred working pattern is a series of short-term locum positions. However, locum work might be felt to meet the condition where the locum has done separate periods of work within one practice over a twelve month period that amount to at least 13 weeks. Where the Primary Care Trust is satisfied that a dentist cannot meet the normal conditions it may accept references from any other clinicians who can comment objectively on the dentist's clinical abilities. In requesting references the Primary Care Trust must state that they are asking for clinical not general references. If a Primary Care Trust decides to ask the referee to complete a pro-forma, as opposed to a freestyle reference, it is recommended that they first discuss the content with local clinicians or their representatives to establish that the pro-forma is fit for purpose.

3.2.21 Many Primary Care Trusts will have developed best practice human resource initiatives in connection with the admission of a dentist to its dental list. These might include, for example, occupational health checks, immunisation status checks, child protection checks etc. Nothing in this advice should be seen as preventing a Primary Care Trust implementing similar good practice in relation to the supplementary list. However, Primary Care Trusts need to be able to recognise what is required under the law and what is voluntary. Any results from such checks do not create new grounds for refusing to admit a practitioner. They can only be relevant in this sense if they are within the ambit of the grounds for refusal outlined above.

3.2.22 As an alternative to admitting or refusing to admit an assistant to its supplementary list the Primary Care Trust can decide to make admission to the list subject to conditions. These conditions must be devised so as to minimise any risks associated with fraud or efficiency matters that the Primary Care Trust has identified. For example where there is a history of fraud or dishonesty the conditions might minimise the assistant's direct access to public funds. In efficiency cases they might address poor performance or other clinical issues by requiring certain additional training or supervision in a particular area.

3.2.23 Additionally where a Primary Care Trust has particular concerns about a clinical issue it may wish to consider including the dentist on the dental list on condition that the dentist agrees to participate in any local GDP performance procedures. In these cases the dentist would have to assure the Primary Care Trust that he would take steps to comply with any local recommendations. Just as importantly the Primary Care Trust would need to agree with those involved in these procedures that it would be in a position to support the dentist in any reasonable actions which might be proposed. Both sides should also recognise that this might include a further assessment after the dentist had been given a reasonable time to address any identified shortcomings.

3.2.24 The conditions cannot relate to issues of suitability. Therefore conditions such as:-

- i. that the dentist avoids future convictions related to alcohol abuse;

- ii. that because of a history of convictions for sexual offences that the dentist should only see certain patients if accompanied;

are unlikely to be appropriate.

3.2.25 Additionally conditional inclusion is not a substitute for a deficient application process. A condition that a non-principal should be admitted to the list subject to providing evidence in support of his application within 6 months would not be appropriate.

3.2.26 A Primary Care Trust is able to review the conditions it applies to an assistant when it considers such action appropriate. In addition the Primary Care Trust must review those conditions if the assistant requests a review in writing subject to:-

- i. the request being made no earlier than three months after the assistant was entered onto the list subject to the conditions;
- ii. the request being made no earlier than six months after the decision on any previous review.

3.2.27 On any such review the Primary Care Trust can:-

- i. maintain the existing conditions;
- ii. remove some or all of the existing conditions;
- iii. impose fresh conditions.

3.2.28 A Primary Care Trust may remove an assistant, subject to the normal criteria/procedures, at any time where there is evidence that he has breached a condition imposed on admission or at any subsequent review.

3.2.29 Before deciding to admit a dentist to the supplementary list subject to conditions (a conditional inclusion) it would be good practice for the Primary Care Trust to give him notice of its intention, why it proposes a particular condition(s) and afford the dentist an opportunity to discuss the issues with the Primary Care Trust orally or in writing as he might wish. All attempts

need to be made to do this in a way that does not unduly delay the process of handling an application to join the list.

3.2.30 A decision to refuse admission, on discretionary grounds (where the Primary Care Trust may, not must refuse) to the list, to make admission subject to conditions or any decision as to conditions made on review, should only be implemented:-

- i. where there is no appeal – after the 28 day period for appealing has ended;
- ii. where there is an appeal – where the FHSAA finally disposes of the appeal.

The exception to this rule is if an assistant who is subject to a conditional inclusion and appeals against that decision but indicates, in writing, that he is prepared to accept those conditions pending the outcome of the appeal. In those circumstances the assistant can be entered onto the list. If, following the appeal the assistant did not undertake to be bound by any conditions decided upon by the FHSAA on appeal the Primary Care Trust will be able to remove him from the list without any further appeal right.

3.2.31 The Primary Care Trust must notify applicants of the result of their applications in writing and, if this involves a conditional inclusion or a refusal to admit to the list the reasons for the decision, including the facts relied upon, and advise the dentist of any right to a review or any right of appeal (including details of how to exercise those rights).

3.2.32 The right of appeal to the FHSAA is against any Primary Care Trust decision to refuse to admit to the supplementary list on discretionary grounds (where the Primary Care Trust may, not must, refuse admission), any conditions applied to the dentist's entry to the list or to any decision made by the Primary Care Trust about such conditions on review. Appeals must be made in writing to the FHSAA within 28 days of the Primary Care Trust's decision. Appeal processes are covered in detail in [Section 7](#) of this advice.

- 3.2.33 Whenever they refuse to admit a dentist to their list on grounds of efficiency, fraud or unsuitability the Primary Care Trust should consider approaching the FHSAA for a national disqualification.
- 3.2.34 The Primary Care Trust may also choose to defer making a decision on a dentist's application to join the supplementary list. The purpose of this provision is to avoid a Primary Care Trust having to make a decision to admit or to refuse admission where there is a matter outstanding against the dentist which, if the outcome is adverse, would be **likely** to lead the Primary Care Trust to remove him from its list if it had admitted him in the first place.
- 3.2.35 The caveat "likely" is important. Before deferring an application the Primary Care Trust must form the opinion that if matters go badly for the dentist it is probable that if they had admitted him to their list they would choose to remove him from that list.
- 3.2.36 The regulations , Regulation 7, specify the only circumstances where a deferment can be applied.
- 3.2.37 The Primary Care Trust must notify the dentist that it is deferring the application and once the outstanding matter is resolved they must process the application. However, before processing the application they should ask the dentist if he wishes to continue with the application and if so to confirm the details in the application remain correct, updating the details as necessary.
- 3.2.38 The dentist must be allowed 28 days to respond. Where the Primary Care Trust considers it to be reasonable they can agree a longer period. This provision is included so an application is not left in a state of limbo and Primary Care Trusts should be helpful if asked to allow a longer period. They should consider that, for example, a court case, which cleared an individual of all allegations against him, might leave him unsure about continuing to live or work in the area. It is proper to allow the dentist time for reflection if asked. If he does not respond within that period the Primary Care Trust can refuse to admit him, as they will not be aware whether or not the application is still current.

3.2.39 Where the application continues it needs to be processed expeditiously given the delay which the deferment will have caused. Delay by the Primary Care Trust at this stage is not acceptable.

3.2.40 There is no right of appeal against a deferment.

3.2.41 However, a dentist subject to a deferment can at any time withdraw his application without restriction. He can also re-apply at any time. On a re-application the Primary Care Trust must consider the question of deferment afresh.

3.2.42 [Section 6](#) of this advice discusses how Primary Care Trusts shall apply the discretion they are given in relation to these decisions and looks in more depth at the related procedures and information sharing.

### 3.3 Removal

3.3.1 A Primary Care Trust **must** remove an assistant from its supplementary list where he:-

- i. has been convicted in the United Kingdom of murder;
- ii. has been convicted in the United Kingdom on or after 3 march 2003 of a criminal offence and has been sentenced to a term of imprisonment of more than six months;
- iii. has been nationally disqualified (as defined in regulation 2 of the NHS (GDS Supplementary List Regulations 2003) which includes a disqualification – the terms of which include the supplementary list - by the FHSAA in England under section 49N, and similar provisions in Wales, Scotland or Northern Ireland corresponding to section 49N;
- iv. has died;
- v. is no longer a dentist (that is no longer a registered dental practitioner);
- vi. is the subject of -
  - a direction given by the GDC Professional Conduct Committee under section 27 of the Dentists Act.

- an order made by that committee under section 28 or 30 of that Act;
- viii. is included in the dental or services list of any Primary Care Trust, or the supplementary list of another Primary Care Trust;
- ix. when notified by the FHSAA that it has,
- considered an appeal by the assistant against a contingent removal by the Primary Care Trust and has decided to remove him instead;
  - considered an appeal by an assistant against a conditional inclusion, where the assistant has been conditionally included in the list until an appeal has been decided, and has decided not to include him.

In removing an assistant under these provisions there is a clear expectation that the Primary Care Trust will have tangible evidence of the conviction/disqualification/ FHSAA decision etc. from an appropriate body or via a confirmatory declaration from the assistant as appropriate. There may be no right of appeal against mandatory removals but the decision can be challenged through the courts.

3.3.2 The removal is effective from the date of the Primary Care Trust's determination or, where paragraph 3.3.1 (iii), (vi) & (ix) applies, the date on which the decision, direction or order takes effect, if that date is later than the date of the Primary Care Trust's decision.

3.3.3 A Primary Care Trust **may** remove an assistant from its supplementary list in the following circumstances:-

- i. the assistant's continued presence on the list would be prejudicial to the efficiency of the services which those included in the list assist in providing; (an efficiency case as per NHS Act 1977 section 49F(2));
- ii. the assistant concerned (whether on his own or together with another) is involved in a fraud case in relation to a health scheme (NHS Act 1977 sections 49F (3) and 49H);

- iii. the assistant is unsuitable to be included in the list (an unsuitability case as per NHS Act 1977 section 49F(4));
- iv. if it decides the assistant is in breach of a condition imposed on him on inclusion on the list under regulation 8 of the NHS (GDS Supplementary List) Regulations 2003;
- v. if it decides the assistant has failed to comply with a condition imposed on a contingent removal under regulation 12 of the NHS (GDS Supplementary List) Regulations 2003 (see 3.3.6 below);
- vi. where the assistant cannot demonstrate that he has assisted in the provision of General Dental Services within the area of the Primary Care Trust during the preceding twelve months.

In all cases outlined in paragraphs (i)-(iii) the Primary Care Trust must consider the relevant matters outlined in [Annex E \(2-4\)](#).

3.3.4 Where paragraph 3.3.3 (vi) applies the Primary Care Trust ought to take particular care to examine the reasons why the assistant has not worked in its area of late. If this involves matters such as prolonged sickness or maternity leave then if the PCT believe that the assistant will resume work in its area removal is unlikely to be the right course of action. Prolonged contractual work with a local Trust or PDS pilot that is shortly to end ought to be treated in a similarly understanding manner. Additionally any period specified in regulation 10(8) of the Supplementary List regulations must be ignored. In these cases once the decision has been determined, or an appeal decided, the assistant's name should not be removed for three months to allow him the opportunity to apply to another Primary Care Trust.

3.3.5 In relation to the requirement to provide GDS locally there is no requirement on a Primary Care Trust to check every assistant every year or to keep ongoing employment records. However, it is in no-ones interest to have the list populated with assistants who no longer have any realistic connection with the delivery of GDS in the area. When looking at tidying up its supplementary list using the criteria in 3.3.3 (vi) the Primary Care Trust will be able to look at local records, such as NHS superannuation records etc. Where doubt still remains they will need to consider approaching the assistant.

3.3.6 The H&SC Act also provides for **contingent removal** from the supplementary list as an alternative to removing an assistant from the Primary Care Trust list. The primary power is in sections 43D(6) & 49G of the NHS Act 1977 . The simple concept is that conditions are placed on the assistant's retention on the supplementary list. If these conditions are subsequently breached the assistant can be removed from the list. They represent a way of improving patient protection without taking the ultimate step of removing the assistant. The conditions put in place must be designed to minimise any risks associated with any fraud or efficiency matters that the Primary Care Trust has already identified in connection with the individual dentist. For example where there is a history of fraud or dishonesty the conditions might minimise the assistant's direct access to public funds or seek additional checks on any direct or indirect claims. In efficiency cases they might address poor performance and other clinical issues by requiring certain additional training or supervision in a particular area.

3.3.7 The conditions cannot relate to issues of suitability. Therefore conditions such as:-

- i. that the assistant avoids future convictions related to alcohol abuse;
- ii. that because of a history of convictions for sexual offences that the assistant should only see certain patients if accompanied,

are unlikely to be appropriate.

3.3.8 The Primary Care Trust is able to review the conditions it applies to an assistant when it considers such action appropriate. In addition the Primary Care Trust must review those conditions if the assistant requests a review in writing subject to:-

- i. the request being made no earlier than three months after the decision of the Primary Care Trust to impose conditions;
- ii. the request being made no earlier than six months after the decision on any previous review.

3.3.9 On any such review the Primary Care Trust can:-

- i. maintain the existing conditions;
- ii. remove some or all of the existing conditions;
- iii. impose fresh conditions.

3.3.10 A Primary Care Trust may remove an assistant, subject to the normal procedures, at any time where there is evidence that there has been a breach of a condition imposed as part of a contingent removal or as a result of a subsequent review.

3.3.11 A Primary Care Trust cannot, however, review conditions applying to a contingent removal decided upon by the FHSAA at an appeal. These must be reviewed by the FHSAA although the Primary Care Trust may seek such a review in the same way as the dentist. The time limits appropriate to reviews requested by the Primary Care Trust or the dentist to conditions imposed by the FHSAA are:-

- i. the request being no earlier than three months after the decision of the FHSAA to impose conditions;
- ii. the request been no earlier than six months after the decision on any previous review;
- iii. where the assistant and the Primary Care Trust jointly apply for the conditions to be changed, varied or revoked no earlier than one month after the previous FHSAA decision.

3.3.12 Before making a contingent removal or a discretionary decision under paragraph 3.3.3 or 3.3.10 to remove the assistant from its supplementary list, the Primary Care Trust must give the dentist 28 days notice of its intention and state why it proposes a particular course of action. It must afford the assistant an opportunity of making representations to the Primary Care Trust orally or in writing as he might wish.

3.3.13 A decision to remove from the list on discretionary grounds (that is where the Primary Care Trust may, not must, remove) to make retention subject to

conditions or any decisions about conditions made on review, should only be implemented:-

- i. where there is no appeal – after the 28 day period for appealing has ended;
- ii. where there is an appeal – where the FHSAA finally disposes of the appeal.

3.3.14 Where the Primary Care Trust determines that it will remove an assistant's name from its supplementary list, or make retention subject to conditions it must give notice in writing of its determination to the assistant together with the reasons for it, including any facts it relies on, and inform him of any right of review or any right of appeal (including details of how to exercise those rights).

3.3.15 The right of appeal to the FHSAA is against any Primary Care Trust decision to remove from the supplementary list on discretionary grounds (where the Primary Care Trust may, not must, remove), any conditions applied to the assistant's retention on the list or to any decision made by the Primary Care Trust about such conditions on review. Appeals must be made in writing to the FHSAA within 28 days of the Primary Care Trust's decision. Appeal processes are covered in detail in [Section 7](#) of this advice.

3.3.16 Whenever they remove a non-principal from their list on grounds of efficiency, fraud or unsuitability the Primary Care Trust is advised to consider approaching the FHSAA for a national disqualification – see Section 7 of this advice.

3.3.17 Section 6 of this advice discusses how Primary Care Trusts shall apply the discretion they are given in relation to these decisions and looks in more depth at the related procedures and information sharing.

## **3.4 Suspension**

3.4.1 Suspensions are intended to be a very rare event. It is imperative that suspensions are not misused as this can result in serious individual injustice, damaging an individual's career and personal life, as well as being a major

waste of public money. It is, therefore, in the interests of all concerned to ensure alternatives to suspensions are carefully considered. In this context it is important in these cases that the Primary Care Trust can substantiate its decision that the suspension was necessary in order to protect patients from the potential actions of the assistant or that there was a genuine public interest justification. If there is no risk to patients and no public interest justification there can be no suspension.

3.4.2 A Primary Care Trust can suspend an assistant from the supplementary list when it is necessary to do so for the protection of members of the public or is otherwise in the public interest. **All suspensions must meet these criteria.**

3.4.3 Additionally, even where the condition in 3.4.2 is met, a suspension is only possible in the following circumstances:-

- i. whilst the PCT considers whether or not to remove or contingently remove the assistant;
- ii. whilst it awaits the decision of a court or body which regulates the dentist's profession anywhere in the world affecting the assistant;
- iii. where it has decided to remove the assistant but before that decision can legally take effect;
- iv. whilst an appeal against a decision to remove the assistant is being considered.

3.4.4 A risk to the public might be said to exist if there is evidence of dangerous dental practice or if the assistant is awaiting trial for serious offences of a sexual or violent nature. A public interest justification might be said to exist if:-

- allowing the assistant continued access to staff, patients or records might significantly prejudice a major fraud investigation either by the NHS CFSMS or the police;
- allowing the assistant to continue to work in that area would seriously compromise/disrupt the efficient delivery of local health care.

- 3.4.5 The effect of a suspension is that although the assistant's name remains part of the supplementary list he is treated as though he has been removed. The effect is, therefore, that he cannot provide any aspect of GDS to any patient.
- 3.4.6 A suspension under 3.4.3 (i) cannot exceed six months. The Primary Care Trust is obliged to tell the assistant the extent of the suspension and where that is less than six months the Primary Care Trust can extend the period but not in such a way that the overall period exceeds six months.
- 3.4.7 A suspension under 3.4.3(ii) is not restricted to six months but any period of suspension imposed following the decision of the court or body cannot exceed six months and again the assistant must be told the length of any additional period of suspension as appropriate.
- 3.4.8 Suspensions under 3.4.3(iii) last until the removal is effected.
- 3.4.9 Suspensions under 3.4.3(iv) last until the appeal is disposed of by the FHSAA.
- 3.4.10 Suspensions under 3.4.3 (i) and (ii) can be extended beyond six months by the FHSAA on application. There will be cases where the original six-month suspension expires after the Primary Care Trust has applied to the FHSAA for an extension but before the FHSAA has reached a decision. In such cases the suspension will continue until the FHSAA has disposed of the application. Applications may also be made to the FHSAA to extend any period of suspension that the FHSAA have already imposed.
- 3.4.11 A Primary Care Trust can revoke a suspension at any time.
- 3.4.12 A Primary Care Trust is able to review a suspension under 3.4.3 (i) & (ii) imposed upon an assistant if it considers such action appropriate and must review the decision to suspend if the assistant requests a review in writing subject to:-
- i. the request being made no earlier than three months after the assistant was suspended;

- ii. the request being made no earlier than six months after the decision on any previous review.

3.4.13 On any such review the Primary Care Trust can:-

- i. maintain the suspension;
- ii. revise the period of the suspension;
- iii. revoke the suspension.

3.4.14 A Primary Care Trust cannot be required to review a suspension under 3.4.3 (iii) & (iv). However, it can of its own volition revoke or extend the period of suspensions at any time. However, where it extends a suspension it must follow the same procedures as apply to a review.

3.4.15 For suspensions under 3.4.3(ii) the Primary Care Trust must lift a suspension when the criminal process or the regulatory, licensing or other body investigation is completed and there is no finding against the assistant. Where there is a criminal conviction or a “finding against” by the regulatory, licensing or other body the Primary Care Trust shall consider whether or not there are grounds to remove the assistant from the supplementary list under the normal procedures. This can include a further suspension not exceeding six months subject to the usual conditions being met.

3.4.16 The Primary Care Trust shall give notice to the assistant of any decision to suspend him from the supplementary list giving reasons for its decision, including any facts it relies upon, and informing him of any right to a review. There is no right of appeal against a suspension. However, there is a very strong expectation that the Primary Care Trust will use all reasonable efforts to resolve the reasons for the suspension and either take substantive action against the assistant or allow him to resume his duties as quickly as possible.

3.4.17 [Section 6](#) of this advice discusses how Primary Care Trusts shall apply the discretion they are given in relation to these decisions and it is important that Primary Care Trusts acquaint themselves with these details. It also looks in more depth at the related procedures and information sharing.

### **3.5 Amendment of or withdrawal from the supplementary list**

- 3.5.1 An assistant is not required to withdraw from the supplementary list simply because he changes his address or the focus of his employment switches to another Primary Care Trust. However, there are benefits to registering with the Primary Care Trust where the assistant does most work. That Primary Care Trust might well be better placed to offer support through CPD, clinical audit etc.
- 3.5.2 If an assistant chooses to remain on the list of the Primary Care Trust where he works irregularly this is acceptable (but see paragraph 3.3.3(vi) where the assistant does not work in the Primary Care Trust area for twelve months). In these circumstances it would be good practice to encourage the assistant to build informal links, if he wishes, with the Primary Care Trust where he does most of his work for the purposes of accessing support functions such as CPD and clinical audit. It would be good practice for the Primary Care Trust to offer the same support in these circumstances to that afforded to assistants on the list locally.
- 3.5.3 Where an assistant is removed from the supplementary list the Primary Care Trust is advised to retain a record of his identification and contact details for a period of at least 6-12 months. This would help in tracing the assistant should the Primary Care Trust become aware of any matters that require them to contact him.
- 3.5.4 An assistant is required to notify the Primary Care Trust of any changes to the details recorded about him on the supplementary list or any change of the address provided by him when he applied to go on the list. The Primary Care Trust is then required to amend the list and associated records accordingly. It would be sensible to remind assistants that if their address details are not kept up to date important Primary Care Trust communications might not reach them.
- 3.5.5 Equally an assistant can ask to have his name removed from the supplementary list. Having given notice that he wishes to withdraw from the supplementary list an assistant can rescind that request at any time before the

Primary Care Trust removes his name except where the withdrawal is under 3.5.6. The assistant's name should be removed from the list three months after the date of the notification or on any earlier date to which the Primary Care Trust has agreed unless 3.5.7 applies.

3.5.6 An assistant on a Primary Care Trust supplementary list is required to withdraw from that list when he is admitted to any Primary Care Trust dental list or to any Primary Care Trust services (PDS) list. This is treated as a voluntary removal and the assistant's name should be removed immediately.

3.5.7 Where the Primary Care Trust is considering:-

- i. the removal of any assistant on the grounds of fraud, efficiency or unsuitability;
- ii. where the assistant is suspended;
- iii. where a decision has been made to remove or contingently remove the assistant but that decision has not yet been given effect, for example pending a potential appeal or pending the outcome of an appeal,

the assistant shall not, except with the consent of the Secretary of State, be entitled to have his name removed from the supplementary list until the matter has been determined by the Primary Care Trust. This prevents the assistant evading a determination by the Primary Care Trust (which would then be a matter of record) by voluntarily removing his name from the list.

## **4 Matters relating to the Dental Lists**

### **4.1 Introduction**

4.1.1 PCTs are currently required by the NHS Act 1977 to maintain a dental list containing the names and other prescribed details of dentists with whom they have made arrangements for the delivery of GDS in their area. Sections 20, 21 and 25 of the H&SC Act reform the powers that PCTs have to determine whom they will admit to the list and whom they will retain on their list. Section 25 also provides a power to suspend dentists from these lists. The new

primary powers in the Act have been augmented where appropriate by regulations specific to each contractor group.

4.1.2 These regulations are:-

The NHS (GDS) Amendment (No 6) Regulations 2001;

The NHS (GDS Supplementary List) and (GDS) Amendment Regulations 2003

They can be viewed at:

<http://www.hmso.gov.uk/si/si2001/20013741.htm>

<http://www.hmso.gov.uk/si/si2003/20030250.htm>

4.1.3 These reforms are in part necessary as a direct consequence of the abolition of the NHS Tribunal and partly due to the need to widen the criteria under which the NHS itself can deal with unsuitable and poorly performing dentists. They extend PCT powers as detailed below.

## 4.2 Admission

4.2.1 Dentists wishing to join the PCT dental list will still be required to apply to the PCT for inclusion and all the existing procedures will continue to apply. However, in future PCTs will be required to assess whether the dentist is thought appropriate to deliver GDS in the PCT's area. To help in this process, the detail provided by a dentist when applying to join the list has been extended.

4.2.2 The application for admission to the dental list detailed in Part I of Schedule 2 to the NHS (GDS) Regulations 1992 has been expanded and now includes such matters as criminal convictions, GDC investigations, NHS CFSMS investigations etc. A dentist applying to the dental list must also consent to the sharing of information between organisations. The revised list is shown at [Annex I](#). This is largely self-explanatory.

4.2.3 In examining the details provided by the dentist, as part of his application, about his professional career PCTs must consider any significant breaks in

the career history. Further enquiries should be made of the dentist where the PCT has concerns.

4.2.4 A PCT is now additionally obliged to refuse to include a dentist on the dental list:-

- i. where he has been convicted in the United Kingdom of murder;
- ii. where he has been convicted in the United Kingdom on or after 14 December 2001 (3 March in the case of Supplementary List) of a criminal offence and has been sentenced to a term of imprisonment of over six months;
- iii. where he is subject to a national disqualification;
- iv. where he has not updated his application in accordance with regulation 5Z(b)(4) following an earlier deferment of his application;
- v. where, following a conditional inclusion imposed by the FHSAA, he does not notify the PCT that he wishes to be included in the list subject to the specified conditions (regulation 5ZD(11)).

4.2.5 A PCT may also refuse to include a dentist in its dental list if:-

- i. having considered the information provided by the dentist in accordance with 5B of Part I of Schedule 2 (Annex I of this guidance) and any other information in their possession in relation to this application and considers he is unsuitable to be included in the list;
- ii. having checked the information provided by the dentist in paragraph 5B of Part I of Schedule 2 ([Annex I](#) of this guidance), the PCT considers the dentist is unsuitable to be included in the list;
- iii. that having contacted referees, the PCT is not satisfied with the references;
- iv. that having checked with the National Health Service CFSMS for any facts relating to past or current fraud investigations, involving the dentist, and having considered these and any other grounds of fraud within the meaning of section 49F(3) of the NHS Act 1977, as read with section 49H, the PCT considers these justify such refusal;

- v. that there are any grounds for the PCT to consider that admitting the dentist to the list would be prejudicial to the efficiency of the service that he would undertake.

Before reaching a decision on these issues the PCT must consider those matters outlined at [Annex E](#) (1).

- 4.2.6 Before placing someone on the dental list PCTs must, in particular, make full checks on a dentist's qualifications including those required by regulation 7 of the NHS (GDS) Regulations 1992, as amended by SI 2209 of 1993. This regulation states that a dentist is not entitled to have his name included in the dental list where: he has previously withdrawn his name from a dental list in circumstances where the Secretary of State has certified that in the interests of the efficiency of GDS he should cease to provide services; the PCT is satisfied following an inspection of the proposed premises that they do not meet the requirements of paragraph 33 of Schedule 1; or he does not have a vocational training number.
- 4.2.7 In addition the PCT must check with the NHS CFSMS for any past or ongoing fraud investigations relating to the dentist as an individual. Contact numbers are in [Annex F](#). It should be noted that the statutory power for CFSMS to disclose information about past or current investigations is permissive not mandatory. In particular, for current investigations, CFSMS staff are not compelled to disclose even the simple fact that there is an investigation if it would be premature to do so and might risk compromising or jeopardising the success of any potential criminal action by effectively forewarning the dentist under suspicion. However, in such cases, the NHS CFSMS will notify the PCT of any adverse outcome of an investigation.
- 4.2.8 In addition the PCT is obliged to take up and consider at least two references. These should be from referees who are willing to provide clinical references in respect of two recent posts (which may include any current post) as a dentist that lasted at least three months without a significant break. There will be cases where the applicant cannot meet this requirement. Where the PCT is satisfied that a dentist cannot meet the normal conditions it may accept references from any other clinicians who can comment objectively on the

dentist's clinical abilities. In any event two clinical references must be obtained and considered when assessing the dentist's suitability. In requesting references the PCT must state that they are asking for clinical not general references.

4.2.9 As an alternative to admitting or refusing to admit a dentist to its dental list the PCT can decide to make admission to the list subject to conditions (a conditional inclusion). The conditions can be freestanding or they can vary the dentist's formal terms of service. These conditions must be devised so as to minimise any risks associated with fraud or efficiency matters that the PCT has identified. For example where there is a history of fraud or dishonesty the conditions might minimise the dentist's direct access to public funds or seek additional checks on claims for fees and allowances. In efficiency cases they might address poor performance and other clinical issues by requiring certain additional training or supervision in a particular area.

4.2.10 The conditions cannot relate to issues of suitability. Therefore conditions such as:-

- i. that the dentist avoids future convictions related to alcohol abuse;
- ii. that because of a history of convictions for sexual offences the dentist may only see certain patients if accompanied.

Are unlikely to be appropriate.

4.2.11 Additionally, conditional inclusion is not a substitute for a deficient application process. A condition that a dentist should be admitted to the list subject to providing evidence in support of his application within 6 months would not be appropriate.

4.2.12 A PCT can remove the conditions at any time. The PCT is able to review the conditions it applies to a dentist when it considers such action appropriate and must review those conditions if the dentist requests a review in writing subject to:

- i. the request being no earlier than three months after the dentist was entered onto the list subject to the conditions;
- ii. the request being no earlier than six months after the decision on any previous review.

4.2.13 On any such review the PCT can:-

- i. maintain the existing conditions;
- ii. remove some or all of the existing conditions;
- iii. impose fresh conditions.

4.2.14 A PCT may remove a dentist, subject to the normal procedures, at any time where there is evidence that he has breached a condition (or variation to the terms of service) imposed on admission or at a subsequent review.

4.2.15 Before deciding to admit a dentist to the dental list subject to conditions (a conditional inclusion) it would be good practice for the PCT to give the dentist notice of its intention and why it proposes a particular condition(s). It should afford the dentist an opportunity to discuss the issues with the PCT orally or in writing as he so wishes. All attempts should be made to do this in a way that does not unduly delay the process of handling an application to join the list.

4.2.16 There is a right of appeal to the FHSAA against any refusal to admit to the dental list on discretionary grounds. There is also a right of appeal to the FHSAA against any conditions applied to the dentist's inclusion in the list or to any decision made by the PCT about such conditions on review. Appeals should be made in writing to the FHSAA within 28 days of the PCT's decision. Appeal processes are covered in detail in [Section 7](#) of the guidance.

4.2.17 A decision to refuse admission to the list, to make admission subject to conditions or any decision as to conditions made on review, should only be implemented:

- i. where there is no appeal – after the 28 day period for appealing has ended;

- ii. where there is an appeal – where the FHSAA finally disposes of the appeal.

The exception to this rule is if a dentist who is subject to a conditional inclusion and appeals against that decision but is prepared to accept those conditions in writing pending the outcome of the appeal. In those circumstances the dentist can be entered onto the list. If, following the appeal, the dentist did not undertake to be bound by any conditions decided upon by the FHSAA on appeal the PCT will be able to remove the dentist from the list without any further appeal right.

4.2.18 The PCT is required to notify applicants of the result of their applications in writing and if this involves a conditional inclusion or a refusal to admit to the list it is required to include the reasons for the decision, including the facts relied upon, and advise the dentist of any right to a review or any right of appeal.

4.2.19 Whenever they refuse to admit a dentist to their list on grounds of efficiency, fraud or unsuitability the PCT must consider approaching the FHSAA for a national disqualification – see [section 8](#).

4.2.20 The PCT may also choose to defer making a decision on a dentist's application to join the dental list. The purpose of this provision is to avoid a PCT having to make a decision to admit or to refuse admission where there is a matter outstanding against the dentist which, if the outcome is adverse, would be **likely** to lead the PCT to remove the dentist from its list if it had admitted the him in the first place.

4.2.21 The caveat "likely" is important. Before deferring an application the PCT must form the opinion that if matters go badly for the dentist it is probable that if they had admitted him to their list they would choose to remove him from that list.

4.2.22 The regulations specify the **only** circumstances where a deferment can be applied; these are listed at [Annex J](#).

4.2.23 The PCT must notify the dentist that it is deferring the application and once the outstanding matter is resolved it must process the application. However,

before processing the application it should ask the dentist if he wishes to continue with the application and if so to confirm that the details in the application remain correct, updating the details as necessary.

4.2.24 The dentist must be allowed 28 days to respond. Where the PCT considers it to be reasonable it can agree a longer period. This provision is included so that an application is not left in a state of limbo and PCTs should be helpful if asked to allow a longer period. It may consider that, for example, a court case that cleared the dentist of all allegations against him might leave him unsure about continuing to live or work in the area. It is proper to allow the dentist time for reflection if asked. If the dentist does not respond within that period the PCT can refuse to admit him.

4.2.25 Where the application continues it needs to be processed expeditiously given the delay that will already have occurred following the decision to defer. Delay by the PCT at this stage is not acceptable.

4.2.26 There is no right of appeal against a deferment.

4.2.27 A dentist subject to a deferment can at any time withdraw his application. He can also re-apply at any time. On a re-application the PCT would be required to consider the question of deferment afresh.

4.2.28 [Section 6](#) of this guidance discusses how PCTs shall apply the discretion they are given in relation to these decisions and looks in more depth at the related procedures and information sharing.

### **4.3 Removal**

4.3.1 A PCT must now remove a dentist from its dental list where the dentist:-

- i. is convicted in the United Kingdom of murder;
- ii. is convicted in the United Kingdom on or after 14 December 2001 (3 March 2003 for supplementary List) of a criminal offence and has been sentenced to a term of imprisonment of over six months;

iii. where he has been nationally disqualified;

4.3.2 The removal is effective from the date of the PCT's determination.

4.3.3 A PCT may now remove a dentist from its dental list if it becomes aware of information, from the dentist or from another source, that provides evidence on which to make a decision that:

- i. the dentist's continued presence on the list would be prejudicial to General Dental Services (NHS Act 1977 49F (2));
- ii. the dentist has been involved in an incident of fraud (NHS Act 1977 49F (3) and 49H);
- iii. the dentist is unsuitable to remain on the dental list (NHS Act 1977 49F(4)).

In all cases the PCT must consider the relevant matters outlined in [Annex E](#) (2-4)

4.3.4 As an alternative to removing a dentist from its dental list the PCT may decide to make his retention on the list subject to conditions – a contingent removal. The conditions may be free-standing or may vary the dentist's formal terms of service. These conditions must be devised so as to minimise any risks associated with fraud or efficiency matters that the PCT has identified. For example where there is a history of fraud or dishonesty the conditions might minimise the dentist's direct access to public funds or seek additional checks on claims for fees and allowances. In efficiency cases they might address poor performance and other clinical issues by requiring certain additional training or supervision in a particular area.

4.3.5 The conditions cannot relate to issues of suitability. Therefore conditions such as:-

- i. that the dentist avoids future convictions related to alcohol abuse;
- ii. that because of a history of convictions for sexual offences that the dentist may only see certain patients if accompanied

are unlikely to be appropriate.

4.3.6 A PCT can remove the conditions at any time. Additionally the PCT is able to review the conditions it applies to a dentist where it considers such action appropriate and must review those conditions if the dentist requests a review in writing subject to:

- i. the request being no earlier than three months after the decision of the PCT to impose conditions;
- ii. the request being no earlier than six months after the decision on any previous review.

4.3.7 On any such review the PCT can:

- i. maintain the existing conditions;
- ii. remove some or all of the existing conditions;
- iii. impose fresh conditions.

4.3.8 A PCT may remove a dentist, subject to the normal procedures, at any time where there is evidence that there has been a breach of a condition (or variation of the terms of service) imposed as part of a contingent removal or as a result of a subsequent review.

4.3.9 A PCT cannot, however, review conditions applying to a contingent removal decided upon by the FHSAA at an appeal. These must be reviewed by the FHSAA although the PCT may seek such a review in the same way as the dentist. The time limits appropriate to reviews requested by the PCT or the dentist to conditions imposed by the FHSAA are:

- i. the request being no earlier than three months after the decision of the FHSAA to impose conditions.
- ii. the request being no earlier than six months after the decision on any previous review.

- iii. where the dentist and the PCT jointly apply for the conditions to be changed, varied or revoked no earlier than one month after the previous FHSAA decision.

4.3.10 Before making a contingent removal or a discretionary decision under paragraph 4.3.3 or 4.3.8 to remove the dentist from its dental list, the PCT shall give the dentist 28 days notice of its intention and why it proposes a particular course of action. It must afford the dentist an opportunity of making representations to the PCT orally or in writing as he so wishes.

4.3.11 There is a right of appeal to the FHSAA against any decision to refuse, or remove from dental list on discretionary grounds. There is also a right of appeal to the FHSAA against any conditions applied to the dentist's retention on the list or to any decision made by the PCT about such conditions on review. Appeals must be made in writing to the FHSAA within 28 days of the PCT's decision. Appeal processes are covered in detail in [Section 7](#) of the guidance.

4.3.12 A decision to remove from the list, to make retention subject to conditions or any decisions about conditions made on review, must only be implemented:-

- i. where there is no appeal – after the 28 day period for appealing has ended;
- ii. where there is an appeal – where the FHSAA finally disposes of the appeal.

4.3.13 Where the PCT determines that it will remove a dentist's name from its dental list or make retention subject to conditions it has to give notice in writing of its determination to the dentist together with the reasons for it, including any facts it relies on, and inform him of any right of review or any right of appeal.

4.3.14 Whenever they remove a dentist from their list on grounds of efficiency, fraud or unsuitability the PCT should consider approaching the FHSAA for a national disqualification – see [section 8](#).

4.3.15 [Section 6](#) of this guidance discusses how PCTs may apply the discretion they are given in relation to these decisions and looks in more depth at the related procedures and information sharing.

#### 4.4 Suspension

4.4.1 A PCT can suspend a dentist from the dental list when it is necessary to do so for the protection of members of the public or is otherwise in the public interest. **All suspensions must adhere to these criteria.**

4.4.2 Additionally, a suspension is only possible in the following circumstances:

- i. whilst the PCT considers whether to remove or contingently remove the dentist;
- ii. whilst it awaits the decision of a court or body which regulates the dental profession anywhere in the world affecting the dentist;
- iii. where it has decided to remove the dentist but before the decision can take effect;
- iv. whilst an appeal is being considered.

4.4.3 A suspension under 4.4.2(i) cannot exceed six months. The PCT is obliged to tell the dentist the extent of the suspension and where that is less than six months the PCT can extend the period but not in such a way that the overall period exceeds six months.

4.4.4 A suspension under 4.4.2(ii) is not restricted to six months but any period of suspension that follows the decision of the court or body cannot exceed six months and again the dentist must be told the length of any additional period of suspension.

4.4.5 Suspensions under 4.4.2(iii) last until the removal is effected.

4.4.6 Suspensions under 4.4.2(iv) last until the appeal is disposed of by the FHSAA.

4.4.7 Suspensions under 4.4.2(i) and (ii) can be extended beyond six months by the FHSAA on application. There will be cases where the original six-month

suspension expires after the PCT has applied to the FHSAA for an extension but before the FHSAA has reached a decision. In such cases the suspension will continue until the FHSAA has disposed of the application. Applications may also be made to the FHSAA to extend any period of suspension that they have already imposed.

**4.4.8 The Department anticipates that suspensions will be a very rare event.**

It is imperative that suspensions are not misused as this could result in serious injustice damaging an individual's career and personal life as well as being a major waste of public money. It is, therefore, in the interests of all concerned to ensure that alternatives to suspensions are carefully considered. In this context it is important in these cases that the PCT can substantiate its decision that the suspension was necessary in order to protect patients from the potential actions of the dentist or that there was a genuine public interest justification. If there is no risk to patients and no public interest justification there can be no suspension.

4.4.9 A risk to the public might be said to exist if there is evidence of dangerous dental practice or if the dentist is awaiting trial for serious offences of a sexual or violent nature. A public interest justification might be said to exist if allowing the dentist continued access to staff, patients or records might significantly prejudice a major fraud investigation either by the NHS CFSMS or the police.

4.4.10 The effect of a suspension is that although the dentist's name remains part of the dental list he is treated as though he has been removed. The effect is, therefore, that he cannot undertake to treat any NHS patients within the GDS.

4.4.11 A PCT can revoke a suspension at any time.

4.4.12 A PCT is able to review a suspension under 4.4.2(i) & (ii) applied to a dentist if it considers appropriate and must review the decision to suspend if the dentist requests a review in writing subject to:

- i. the request being no earlier than three months after the dentist was suspended;

- ii. the request being no earlier than six months after the decision on any previous review.

4.4.13 On any such review the PCT can:

- i. maintain the suspension;
- ii. revise the period of the suspension;
- iii. revoke the suspension.

4.4.14 A PCT cannot be required to review a suspension under 4.4.2(iii) & (iv).

However, it can of its own volition revoke or extend the period of suspensions at any time. Where it extends a suspension it must follow the same procedures that apply to a review.

4.4.15 For suspensions under 4.4.2(ii) the PCT must lift a suspension when the criminal process or the regulatory, licensing or other body investigation is completed and there is no finding against the dentist. Where there is a criminal conviction or a “finding against” by the professional, regulatory or licensing body the PCT must consider whether there are grounds to remove or contingently remove the dentist from the dental list under the normal procedures. This can include a further suspension not exceeding six months where all the usual criteria are met.

4.4.16 The PCT must give notice to the dentist of any decision to suspend him from the dental list giving reasons for its decision and informing him of any right to a review. There is no right of appeal against a suspension; the expectation is that the PCT will use all available resources to resolve the reasons for the suspension and either allow him to resume his duties or take substantive action against the dentist as quickly as possible.

4.4.17 [Section 6](#) of this guidance discusses how PCTs may apply the discretion they are given in relation to these decisions and it is important that PCTs acquaint themselves with these details. It also looks in more depth at the related procedures and information sharing.



## **5. The Services List**

**[for later use]**

## 6. PCT Discretion/Procedures

### 6.1 Suspension

6.1.1 The basic conditions that apply to suspensions are outlined in those parts of section 4 which deal with the dental list. This section looks at the issues in greater depth and examines both mandatory procedures and those that might represent good practice.

6.1.2 The vast majority of dentists provide a first class service to their patients. However, a very small number do not provide an adequate level of care and on occasion may even represent a danger to patients and colleagues. The public has a right to be protected from these individuals. A PCT can suspend a dentist from any of its lists when it is necessary to do so for the protection of members of the public or it is otherwise in the public interest. **All suspensions must adhere to these basic criteria.**

6.1.3 A suspension can only take place after the PCT has first considered whether there is a case to answer and then considered whether there is reasonable and proper cause to suspend. This is likely to be where there is compelling evidence of guilt or lack of competence, sufficient evidence to warrant suspension pending detailed further investigation or an allegation of sufficient seriousness that immediate suspension is justified whilst an investigation is undertaken.

6.1.4 The Department anticipates that suspensions will be a very rare event. However, occasionally it may be necessary to suspend a dentist. Although it is not always perceived as such, in legal terms suspension is a neutral act and must not be used as a disciplinary sanction. Suspension is intended to protect the interests of patients, other staff, and the dentist or to assist the investigative process. It is imperative that suspensions are not misused, as this can result in serious individual injustice, damaging an individual's career and private life, as well as being a major waste of public money.

6.1.5 PCTs are asked always to consider alternatives to suspension where these will be effective. A dentist might voluntarily agree to withdraw from part or all of his normal duties whilst any matters are investigated. It may even be possible for the PCT to identify useful alternative NHS work that the dentist might be prepared to undertake during a short absence from his usual duties.

6.1.6 Where suspension is thought to be necessary the H&SC Act (and its subsequent related regulations) require that as a minimum:-

- i. the dentist is always given notice of the allegation being made against him including details of the action being proposed and why ;
- ii. the dentist must have an opportunity of putting his case to the PCT at a hearing;
- iii. the dentist should be given notice of the PCT's decision, and the facts it relies upon, and the reasons for it.

There is no right of appeal against a suspension.

6.1.7 This is a mechanistic process and at times immediate action will be required. The regulations allow the following truncated procedure to apply:

- i. the PCT to tell the dentist of the course of action it is proposing and why, either in writing or verbally;
- ii. a hearing before the PCT, a minimum of 24 hours notice must be given;
- iii. immediately after the hearing the PCT must notify the dentist of its decision, give reasons, including any facts it relies upon, and tell him of his right to a review, and immediately suspend him;
- iv. if the dentist does not want a hearing or does not attend for any reason the PCT must notify him of its decision, give reasons, including any facts it relies upon, and tell him of his right to a review, and immediately suspend him;

Where the initial notification to the dentist is verbal this must be confirmed in writing as soon as possible.

- 6.1.8 The procedure is provided to enable a PCT to act quickly and effectively. At times this will be necessary. However, the PCT will wish to consider the restricted time it allows both sides to fully present their position, this could be a particular difficulty for the dentist. It might be possible, for example, for PCTs to agree to put back hearings for 7 days, to allow a dentist a reasonable opportunity to consider his position and prepare his own observations, where other measures can be temporarily put in place to protect the public or address the relevant public interest considerations.
- 6.1.9 The procedures for suspension also apply to the consideration by a PCT of an extension to a period of suspension. It should not normally be necessary to hear these cases at 24 hours notice and a period of at least seven days notice ought to be the norm.
- 6.1.10 PCTs should also remember that they have the ability to look again at their decision to suspend at any time. In some cases where urgent action is felt to be appropriate it might be considered fair for the PCT to decide to look again at the case within a short period of time. For example an immediate suspension could be limited to 28 days where the dentist agrees to attend a review hearing (at a date set by the PCT) on an agreed date (say within 10 days) at which the suspension might be extended or revoked.
- 6.1.11 The procedures for a PCT hearing are discussed at [section 6.3](#).
- 6.1.12 Where a suspension is imposed it is essential that proper resources are committed to ensure that the dentist is allowed to return to work or that substantive action is taken against him as quickly as possible. A suspension should be for as short a period as possible and many PCT suspensions will be restricted to a maximum of six months. It is envisaged that the FHSAA will look for evidence that the PCT is taking all practical steps before imposing suspensions beyond six months.
- 6.1.13 It is strongly recommended that all suspension decisions be reported to the PCT board at the earliest opportunity. It is further recommended that at each of its meetings the board should receive an update on the position of each suspension and that it should proactively consider whether each such

suspension remains appropriate. It might also be appropriate to give a non-executive Director specific responsibility for ensuring that suspension is being used appropriately and effectively. This role could be used to monitor all “live” suspensions.

## **6.2 Discretionary Decisions - Refusal, Removal, Conditional Inclusion, Contingent Removal**

- 6.2.1 The H&SC Act provides for the abolition of the NHS Tribunal and creates for PCTs a hugely responsible role controlling which dentists can work within their local Primary Care Services. These provisions work through the revised list system by providing powers to refuse admission, conditionally include, remove or contingently remove a dentist. These decisions are crucial if we are to be both fair to dentists and to offer protection to patients. In all cases it is important to understand events and circumstances as they unfold and to afford a dentist every opportunity of addressing the PCT’s concerns wherever practical. It is also of the utmost importance to build cases around substantiated facts, not rumour, innuendo or prejudice.
- 6.2.2 Decisions can be made under three different, but overlapping, criteria that are spelt out in section 49F of the NHS Act 1977 (section 25 of the H&SC Act). They are “efficiency” (49F(2)), “fraud” (49F(3)) and “unsuitability” (49F(4)).
- 6.2.3 “Efficiency” was the criteria used by the former NHS Tribunal to the effect that the inclusion of the person on the list is prejudicial to the efficiency of the particular service they are providing. It was never felt appropriate to define or restrict the term “efficiency” and this stance has been carried forward in the new provisions.
- 6.2.4 The Health Act 1999 provided powers for the remit of the NHS Tribunal to be extended to “fraud”. Those powers were never commenced but those “fraud” provisions are now given to PCTs.
- 6.2.5 There is no definition of “fraud” in law, although we all have a common understanding of what the term means – that someone has obtained resources to which he is not entitled. Under the provisions of 49F(3) of the

H&C Act, there does not have to be a proven criminal conviction if there is sufficient substantiated facts to satisfy the PCT, that a dentist has secured, or tried to secure financial benefit for himself or another that he knew there was no entitlement to.

6.2.6 “Unsuitability” as a concept was considered in the aftermath of the Harold Shipman trial to capture matters such as the effect on a primary care practitioner’s suitability of a criminal record. However, a decision was taken that we did not wish to provide a restrictive definition within legislation, a decision debated at some length in Parliament before being accepted. Consequently the term can be ascribed its everyday meaning and provides a broad area of discretion for PCTs. The overlap with “efficiency” is marked and in many cases a PCT would be able to take action under either heading against a dentist.

6.2.7 This guidance is not going to seek to restrict definitions where this was thought to be unnecessary in legislation but the following **examples** might indicate one way of categorising issues:-

- i. “efficiency” could be held to relate to everyday work and encompass issues such as poor clinical performance, poor use of resources, actions that add to the burdens of others within the NHS etc.
- ii. “efficiency” is not a procedure for controlling the number of Primary Care dental contractors operating in the area of the PCT;
- iii. “fraud” could involve the misappropriation (or attempted misappropriation) of NHS resources for personal gain or for the gain of others (e.g. false claims for fees and allowances, such as recalled attendance or domiciliary visits);
- iv. “fraud” is not something that is nothing more than a misunderstanding over rules or procedures;
- v. “unsuitability” could be held to relate to decisions taken as a consequence of the actions of others (courts, professional bodies, poor references) or a lack of something tangible related to a persons ability to undertake his role (qualifications, experience, essential qualities);

- vi. “unsuitability” is not an excuse for imposing personal preferences or prejudices.

These are examples and it is unlikely that a PCT could be accused of acting wrongly by using “efficiency” for removing a dentist convicted of serious violence or for using “unsuitability” to take action against a dentist who defrauded the NHS. Guidance to NHS Trusts on the management of doctor’s and dentist’s performance provides a useful description of what could be classed as inadequate clinical capability or poor performance. This is included at [Annex D](#).

- 6.2.8 Colleagues in the NHS Counter Fraud and security Management Service have provided an outline of their work at [Annex F](#).
- 6.2.9 It will be evident from reading these paragraphs that the outcome of a fraud investigation can be far from clear cut. The H&SC Act does not require a criminal conviction for a case to come within the Act’s definition of a fraud case. PCTs are asked to at least consider the possible relevance on a dentist’s future of any findings following a fraud investigation of the type described in [Annex F paragraph 18 \(iii\)-\(v\)](#). We would expect dentists to declare this type of outcome to PCTs. The information made available to a PCT by the NHS CFSMS might involve all five categories and PCTs ought to treat cases where the information is unsubstantiated or untested with a degree of caution. If they do choose to rely on such matters in making their decisions the facts may well be tested before the FHSAA if there is an appeal.
- 6.2.10 The new legal framework gives PCTs considerable new responsibilities. Their decisions will effect the quality of care available to patients and just as importantly the individual dentist’s reputation and livelihood. As such it is vital that decisions are fair and proportionate. PCTs acting inappropriately are likely to fall foul of the FHSAA and might leave themselves open to Human Rights Act challenges.
- 6.2.11 PCTs are free to consider any information in their possession when reaching their decisions but to help them in these considerations the regulations provide criteria that must always be considered in these cases. They may also

consider a mix of issues as part of one single investigation and rely on a mix of the three removal conditions to arrive at a single proportionate decision. The compulsory criteria are in [Annex E](#).

- 6.2.12 The very fact that these criteria are specified within the regulations sends a clear message to PCTs that the simple fact of a criminal conviction (except where the mandatory rules apply), an incident of fraud or an example of poor performance does not automatically mean removal/contingent removal action should be taken. These matters must be carefully considered in context and action taken as appropriate.
- 6.2.13 Much of the criteria in [Annex E](#) is self-explanatory but reference to a few examples and ground rules might be of assistance. These are based on examples of criminal matters.
- 6.2.14 There are many criminal offences that would render a dentist liable for removal. In all cases, PCTs, having considered the facts, will need to consider whether the dentist poses a risk to patients or colleagues and whether their conduct is sufficiently serious to warrant instigating the disciplinary procedure. The PCT will have to give consideration as to whether the dentist can continue in his position once criminal charges have been brought. When a criminal charge is brought, this does not necessarily mean that appropriate local action should be put on hold. However, removing a dentist before the criminal issues are resolved might well be an inappropriate assumption of guilt. In these circumstances, the PCT needs to seek legal advice and consider asking the police whether the local procedures should continue. In general, the PCT may proceed with local procedures, unless the police request they be put on hold to avoid prejudicing the criminal proceedings, if a fair and proportionate decision can be made without any reliance on facts under dispute before the court.
- 6.2.15 Key matters for PCTs to consider are proportionality and public interest in European Convention on Human Rights terms. It might not be proportional to remove or refuse to admit a dentist for an isolated drink/driving offence 20 years before, because the penalty (removal) seems quite disproportionate to the offence particularly after this length of time and because public attitudes to

this type of offence 20 years ago were quite different. This might look slightly different if there had been a subsequent string of similar or other offences. The PCT might then consider a pattern was emerging of recklessness that might affect the dentist's patients, even though the most serious offence might be a long time ago.

6.2.16 Alternatively a conviction for serious bodily harm whenever committed might justify removal or refusal to admit unless it could be showed that there were extenuating circumstances. Such an attack might only fall short of murder by luck in that the person survived. Even after a long period, such an offence must be regarded as serious, but if the dentist can show it was an offence committed under extreme provocation, the PCT might consider removal was unjustified.

6.2.17 PCTs must always give careful consideration to offences under the Sexual Offences Act 1997, this is a reflection of society's serious attitude towards such offences. [Annex B](#) provides a précis of the offences detailed in the Sexual Offences Act 1997, but PCTs are recommended to obtain a copy of the legislation.

6.2.18 Some concern has been expressed by the professional bodies about the consideration of cautions as there has been no conviction as such. They are concerned that in accepting a caution in the past the dentist, doctor or other Primary Care professional, would have been unaware of the potential future consequences. However, for a police caution to be administered:-

- i. there must be evidence of the offender's guilt which would be sufficient to give a realistic prospect of conviction;
- ii. the offender must admit the offence;
- iii. the offender must understand the significance of the caution and give informed consent to being cautioned (one significance being that it becomes part of his antecedents).

There is therefore an unequivocal admission of guilt. However, in considering cautions PCTs should remember that they are at the bottom of the range of penalties imposed by the legal system. Therefore, given the issues a PCT

**must** consider outlined in [Annex E](#), a decision to refuse admission or remove a dentist from the lists solely on the basis of a caution, or even a number of cautions, could be very difficult to justify. PCTs might also wish to consider that a dentist who chose to accept a caution before these regulations came into force, rather than allow a court to adjudicate on the question of guilt, would have done so without the knowledge that in the future a PCT would take the matter into account when assessing his suitability.

6.2.19 Overall the question the PCT must answer in each case is whether the offence suggests that the dentist is unsuitable to be a dentist in the widest, not just clinical, sense bearing in mind the high standards expected of dentists, and the position of trust in which they are placed. To sum up, it is the relationship between the past offence and present circumstances which is vital.

6.2.20 In exercising discretion PCTs are also asked to consider the impact on public opinion if different PCTs reach different decisions on the same facts. Each PCT **must reach its own decision** but they should carefully consider the reasons why another PCT reached a different decision in relation to the dentist who is being considered. If it decides that a different decision might be appropriate, the PCT is recommended to ask itself how it would justify to an independent observer why it reached a decision that was different to another PCT in respect of the same dentist on broadly identical facts. If after this they are content with their decision making procedures they should make the decision they believe to be correct.

6.2.21 In looking at the dentist's declarations about both criminal, professional and fraud matters and the need for subsequent action, PCTs should bear in mind the following miscellaneous issues:-

- i. the NHS Tribunal was a regulatory body and current referrals or past adverse decisions must be declared;
- ii. for mandatory removal a sentence of more than six months imprisonment must be imposed for a single offence (two 4 month sentences of imprisonment to run consecutively would not equate to a mandatory removal);

- iii. the legal definition of the term “imprisonment” does not cover sentences to youth custody or youth training (or their predecessors such as Borstal); they are however convictions, must be declared and can be considered under the PCT’s discretionary powers to remove etc.
- iv. a suspended prison sentence is not to be treated as a sentence of imprisonment and cannot therefore attract a mandatory removal whatever the length of the sentence; unless it is at some future point invoked;
- v. fixed penalty tickets that do not result in a court hearing do not constitute part of a persons criminal record and need not be declared;
- vi. the term “regulatory, licensing or other body” covers any such body anywhere in the world and covers bodies that the dentist was connected with as well as those he is currently connected with in any professional capacity;
- vii. convictions by a military court do count as declarable convictions and a sentence of imprisonment of more than six months handed down by such a court would lead to a mandatory removal/refusal to admit;
- viii. that the Rehabilitation of Offenders Act 1974 does not apply to general dental practitioners for the purpose of their declarations. Offences considered “spent” under that Act must be declared.

### **6.3 Procedures - Refusal, Removal, Conditional Inclusion, Contingent Removal**

6.3.1 PCTs must decide whether to admit a dentist to the dental list within 21 days of their receiving all the information referred to in Part I of Schedule 2 ([Annex 1](#)), including references from referees. Where the PCT considers that the proposed practice premises should be inspected, they must carry out that inspection within that 21 day period.

6.3.2 Where removal or contingent removal is thought necessary the H&SC Act (and its subsequent related regulations) require that as a minimum:-

- i. the dentist is told in writing what action the PCT is proposing;
- ii. the grounds on which it is acting;

- iii. that he has 28 days in which to make written representations;
  - iv. that he has a right to an oral hearing before the PCT, if he requests one, within that 28-day period.
- 6.3.3 If there are no representations the PCT can make its decision but if there are written representations they must be considered before the decision is made.
- 6.3.4 If a hearing is requested one must be arranged. After the hearing the PCT may make its decision.
- 6.3.5 Decisions should be notified in writing, they should explain why the decision has been made, including any facts relied upon by the PCT in reaching its decision, and explain any appeal or review rights.
- 6.3.6 Beyond this we are not being prescriptive about the internal PCT procedures to be followed in reaching these decisions. PCTs are free to arrange their own procedures but these must be fair and accord with good HR management principles. The following paragraphs present potential scenario which would represent good practice; it is for guidance – where words such as “must” or “should” appear the intention is that in **this example** we believe this should form a mandatory element.
- 6.3.7 PCTs will have matters brought to their attention from a number of sources that might lead them to conclude that some action needs to be considered in relation to the dentist. Example are:-
- i. concerns expressed by other NHS professionals, managers, trainees or other non-clinical staff;
  - ii. information from the DPB;
  - iii. complaints by patients, their family or carers or their representatives;
  - iv. information from regulatory bodies;
  - v. litigation following allegations of negligence;
  - vi. information from the police or coroner;
  - vii. judgements made in courts.

6.3.8 PCTs will need to have procedures to deal with these issues. It is recommended that responsibility for the management of subsequent inquiries is vested in an executive member of the PCT board – the responsible board member – (deputies – the minimum number consistent with the size of the authority – normally of board, or near board, level should also be appointed). The responsible board member or his authorised deputy would make all decisions to suspend/remove or contingently remove a dentist. Ideally the responsible board member should be one of the Chief Executive, the Director of Primary Care (or a board member with these responsibilities) or HR Director (or the board member with these responsibilities). Except in sensitive cases it would be unusual for that responsible board member or their deputy to undertake the subsequent inquiries personally.

6.3.9 Where a PCT is investigating a dentist and reaches a point in that investigation where there is evidence to suggest that there is a realistic prospect that removing or contingently removing the dentist will have to be considered on efficiency, fraud or unsuitability grounds, under their discretionary powers (mandatory decisions should simply be signed off by the responsible board member) they should:-

- i. nominate an officer to manage any further investigation (“the investigator” for ease of reference);
- ii. unless there are reasons to the contrary notify the dentist of the name of the investigator and outline the nature of the PCT’s concerns;
- iii. notify any other PCT on whose list the dentist is included.

6.3.10 It would be good practice for the investigator to be drawn from a small group of suitably experienced staff (these staff could be shared between PCTs so they build up experience). In this way the investigator would be familiar with local issues. It also has the advantage of sharing resource implications between PCTs where the difficulties involving the dentist are restricted to PCT “A” but the list entry is controlled by PCT “B”. PCT “B” must, however, take the decision on suspension/removal/contingent removal. Where two or more PCTs have an interest they could each nominate the same investigator to examine the issues.

6.3.11 It is recommended that the investigating officer:

- i. is responsible for conducting any investigations into allegations or concerns about a dentist, establishing the facts for any oral hearing and investigating and reviewing the position of any suspension;
- ii. must not be the same as the person making the decision to suspend the practitioner and does not have the authority to impose, vary or lift a suspension, and may not be a member of the panel hearing the case;
- iii. must involve a suitably experienced clinician where a clinical judgement is required during the investigation process, any such clinician should not be a member of any panel hearing the case;
- iv. must ensure that checks are in place throughout the investigation so that breaches of confidentiality are avoided as far as possible; for example patient confidentiality needs to be maintained but the details will need to be disclosed at the oral hearing and the dentist has a right to know what allegations have been made. (If witnesses have to be questioned as part of an investigation, it is important that any information they provide is not tainted by hearsay. Investigating officers will need to remember that any evidence provided is likely to be most reliable if the witness being questioned answers without knowing what the allegations are. This will not always be possible, for example, when speaking to a patient who has made an allegation.)
- v. must ensure that most written statements have been collected prior to the decision to convene an oral hearing.
- vi. must consider and comment on any new evidence that may, on occasion, be presented to the appeal panel.

6.3.12 As alluded to above it is important that where an investigation is examining clinical issues that relevant clinical input is obtained. This might be from a dentist nominated by the LDC or some other competent person.

6.3.13 The course and nature of the investigation is a matter for the officer concerned, guided by the relevant responsible board member, who must be free to discuss the issues with the dentist and others as he sees fit (subject to the appropriate data protection/confidentiality rules). The investigator can be an official of the PCT or of a neighbouring PCT or NHS Trust. It should be

remembered that an “investigation” could be very short in some instances such as where the decision is based on clearly established facts such as an adverse GDC report or a criminal record. Matters looking at competency or fraud are likely to need more work. Remember a referral to NHS CFSMS might be required in fraud cases.

- 6.3.14 At any stage the investigator can discuss the need for a suspension with the responsible board member and if necessary invoke the necessary procedures.
- 6.3.15 When the investigator has completed the investigation a report must be prepared for the PCT (where two or more PCTs are involved each PCT must receive a report as each PCT must reach its own decision). The report should specifically contain recommendations as to whether the dentist should be retained on the list, should be removed or should be contingently removed from it (including a recommendation as to the appropriate conditions) and as to whether a suspension appears appropriate. The investigator must not be able to remove, contingently remove or suspend the dentist on his own authority; where the investigator is the responsible board member the decision should be made by an authorised deputy.
- 6.3.16 Where the PCT conclude that the dentist will not be suspended, removed or contingently removed, and he was aware of the investigation, they should notify the dentist accordingly. Where there are concerns remaining, such as performance, it would also be appropriate to discuss these with the dentist at this stage. This might include action against the dentist for a breach of his terms of service as per the Service Committee and Tribunal Regulations.
- 6.3.17 Where the PCT conclude that there appear to be grounds on which to remove or contingently remove the dentist under their discretionary powers they are legally obliged to follow the procedures in **6.3.1-6.3.4** above.
- 6.3.18 It is recommended that any decision to suspend, remove or contingently remove be reserved to the responsible board member or an authorised deputy.

- 6.3.19 Where a dentist receiving a notification that he is to be removed, or contingently removed, seeks an oral hearing the PCT must convene a panel to consider those representations. The panel will be most effective if it has the authority to confirm or change the proposed PCT decision(s) under the PCT's scheme of delegation. This is best achieved if it is chaired by the responsible board member or by an authorised deputy.
- 6.3.20 The alternative would be to convene a panel that made recommendations to the responsible board member but in general that is thought to be a less efficient way forward. However, where two or more PCTs have an interest and have shared the investigative process a single panel could hear the dentist's representations and then make recommendations to each PCT. Delegation in this way removes the need for multiple hearings on the same facts but embodies the basic principle that each PCT must reach its own final decision.
- 6.3.21 The panel should not sit in public.
- 6.3.22 A list of those individuals attending any particular panel meeting should be agreed between the chairperson and the parties to the hearing with the chairperson having the absolute right to adjudicate in cases of dispute.
- 6.3.23 Witnesses who have made statements that may be used during the hearing may be called to attend the hearing. The decision to call witnesses lies solely with the chairperson and they should only be called where that officer is certain that their attendance will be crucial to the decision making process. There is no requirement for all or any witnesses to attend and in most cases written statements should prove sufficient. Witnesses who are asked to attend an oral hearing are there to give direct evidence. If in exceptional circumstances they choose to be accompanied by a representative, the representative will not be able to participate in the hearing.
- 6.3.24 The panel should aim to meet within 28 calendar days of receiving the dentist's representations. It is recommended that the panel be chaired by a nominated PCT executive Director and include one PCT non-executive Director plus one suitably qualified dental representative nominated by the

LDC, drawn from the establishment of the PCT (or a neighbouring PCT) or from the executive board of a local (or neighbouring) PCT. An alternative to a non-executive board member might be the local CHC Chief Officer (or someone in a similar position in any successor organisation); this would add a patient dimension to proceedings. The choice of membership should be in the gift of the PCT; they may consult on the constitution of the panel as they see fit. The panel should not ordinarily sit with less than the three members (Normal requirement is minimum of three – ie a tribunal).

- 6.3.25 The dentist must be sent full details, including any written evidence, of the PCT's case against him no less than 14 calendar days prior to the date set for the panel. Any late documents must be sent as soon as possible together with an offer to put back the date of the panel to comply with the 7 calendar day advance notification requirement if the dentist wishes.
- 6.3.26 If the dentist requests a postponement for any reason other than on health grounds he should be asked to offer an alternative date, convenient to the PCT, within 7 calendar days of the original hearing. This also applies if the PCT wish in exceptional circumstances, to seek a postponement, and any such postponement must not be unreasonable. It is recommended that the PCT Chief Executive be informed and be responsible for ensuring that extensions are absolutely necessary and kept to a minimum.
- 6.3.27 If the dentist's ill health prevent the hearing taking place the PCT should consider at what point they should refer the matter to the occupational health service, if the dentist agrees, for an opinion. After a reasonable period (not normally less than 6 weeks) proceeding with the hearing in the dentist's absence ought to be considered. The PCT should act reasonably in deciding to do so.
- 6.3.28 The panel may hear a case in the dentist's absence where it is satisfied that the dentist knew of the arrangements and has failed to attend without good cause.
- 6.3.29 It would be appropriate for the investigator (who cannot be a member of the panel) to put the case for removal/contingent removal. The dentist must then

be afforded the opportunity of making their own representations. A friend of his choice may accompany the dentist and this can be a representative of the LDC. These are internal procedures and there will be no right or need for legal representation for either the PCT or dentist in these circumstances.

Therefore no legally qualified person may represent the dentist at the hearing or question witnesses although the “friend” may be legally qualified. The PCT ought not to engage a solicitor or barrister to represent them at the hearing.

6.3.30 The panel must be free to consider written and oral submissions from third parties where this appears relevant to them. The chairperson must have the absolute right of adjudication where there is a dispute relating to admissibility. Witnesses may be questioned by the panel or by either party to the hearing.

6.3.31 The decision must be notified to the dentist in writing. The notification must include, as appropriate, reasons for the decision (including any facts relied upon), clarification of any appeal and review rights and confirmation of any intent to make a referral to the FHSAA for a national disqualification or to any external or professional body.

6.3.32 The suggested procedure relating to PCT hearings outlined above would also be appropriate for suspension decisions, reviews of conditional inclusions and for reviews of contingent removals. It would be good practice to vary the make-up of panels (1 or 2 different members) where a panel are dealing with cases on a second or subsequent occasion (for example a removal decision where there had been an earlier suspension, or at a review hearing).

6.3.33 These paragraphs do not apply to decisions to defer an application or to refuse an application for inclusion in a list. These can be dealt with administratively by the PCT. It is, however, considered to be good practice informally to discuss with the applicant any issues that are not clear-cut. It might also be appropriate to have deferment decisions or refusal decisions made on efficiency, fraud or unsuitability grounds approved by the same responsible board member or a deputy. This would provide strong consistency assurances.

6.3.34 It would be good practice for the PCT to have agreed written procedures to follow in these cases. It is also important to document all investigations so that any future challenge can be fully responded to. A proper written record should be kept of any investigation into an incident or concern. This should include any written statements by witnesses and a record of any interviews. The PCT panel, the investigator and the dentist may use these records should the need arise. Care must be taken to protect the confidentiality of patients and witnesses, as appropriate. In preparing or holding such records, NHS employers must comply with the requirements of the Data Protection Act 1998.

6.3.35 It would be good practice for the board to consider any cases where following an appeal the FHSAA reaches a different conclusion to the PCT or if the FHSAA comments on the authority's internal procedures. The aim should be to identify what had been done well and not so well by the PCT with a view to learning and improving local systems. Groups of PCTs may wish to join together in a similar exercise as this would help the spread of good practice and help achieve consistent decision-making.

## **7. The FHSAA and The Appeal Process**

### **7.1 General**

7.1.1 The dentist's right of appeal in dental list cases is set out in section 25 of the H&SC Act. The appeal rights are consistent with the NHS's obligations under the Human Rights Act and as such they are to a fully independent appeal body which will be called the Family Health Services Appeal Authority (FHSAA).

[Section 12](#) deals with the future of the existing FHSAA.

7.1.2 The new FHSAA is an independent tribunal established by section 27 of the Health & Social Care Act 2001. It operates to Rules issued by the Department for Constitutional Affairs. Its President and members are appointed by the Lord Chancellor.

7.1.3 The FHSAA deals with:

- i. Appeals from dentists against PCT discretionary decisions to refuse to admit them to a list;
- ii. Appeals from dentists against PCT decisions to impose conditions on their admission to a list;
- iii. Appeals from dentists against PCT discretionary decisions to remove them from a list
- iv. Appeals from dentists against PCT decisions to contingently remove them from a list
- v. Applications from PCT that dentists removed from a list should be disqualified nationally (section 8) from all PCT lists
- vi. Requests from PCTs to extend certain periods of suspension beyond six months;
- vii. Requests for review of earlier decisions taken by the FHSAA (see below)

Dentists have 28 days from the date of a PCT's decision to make an appeal. The appeal must be in writing and sent to the FHSAA.

- 7.1.4 The President of the FHSAA is Mr Paul Kelly. The FHSAA's address is 30 Victoria Avenue, Harrogate HG1 5PR.
- 7.1.5 When dealing with any matter that is the responsibility of the FHSAA, it is important that PCTs and their legal advisers operate in accordance with:
- i. The Family Health Services Appeal Authority (Procedure) Rules 2001 (SI 2001/3750). These Rules must be observed by all the parties to a case before the FHSAA, as well as by the FHSAA itself. These rules are clear about the way in which appeals will be dealt with, so there is no detailed commentary on them here. PCTs are advised to keep a copy of the Rules available for reference.
  - ii. Any directions issued by members of the FHSAA as a result of, or in connection with an individual case.
- 7.1.6 It is in everyone's interests that the appeal process is handled efficiently and with appropriate speed. A dentist involved in an appeal has a justifiable expectation that the process will not be unduly delayed.
- 7.1.7 The procedures and rules of the FHSAA have been devised to be fair to all parties but also with a view to dealing with matters efficiently and within a reasonable period of time.
- 7.1.8 The effort and priority needed to meet these timeframes is not just something for the FHSAA. They are reliant on prompt responses from the PCT. When they write out for information they will allow the PCT 21 days for a response. If these deadlines are not met it slows down the overall process and places the PCT in breach of the FHSAA's statutory rules. The appeal process can be undertaken efficiently and quickly if everyone treats the process responsibly and with a high degree of priority. Everyone is asked to do so.
- 7.1.9 There is no right of appeal against:-
- i. mandatory removals from a list;
  - ii. mandatory refusals to accept onto a list;
  - iii. suspensions from a list;

iv. decisions to defer applications.

7.1.10 Appeals to the FHSAA are re-determinations of the original decision. This means that the FHSAA may make any decision that the PCT could originally have made.

7.1.11 All PCT decisions must be notified to the dentist in writing and must include a reference to any right of appeal that exists.

7.1.12 A dentist who receives a notification as required by the preceding paragraph may, where there is a right of appeal, has 28 days in which to submit an appeal in writing to the FHSAA. Unless the appeal is withdrawn by the appellant the FHSAA will determine any appeal in accordance with its rules and any directions it may issue about the way in which the appeal will be dealt with. These rules are binding on the parties to the appeal.

7.1.13 A dentist may appeal against a decision of the FHSAA to the courts on a point of law.

7.1.14 PCTs must implement decisions of the FHSAA. In most cases the decision will be implemented on the basis that it is a decision of the FHSAA. However, for technical reasons, FHSAA decisions that involve conditions that are to be applied in a conditional inclusion case must be implemented as PCT decisions.

7.1.15 In these cases the PCT must ask the dentist if he is prepared to be bound by the FHSAA decision. The dentist is to be allowed 28 days to respond. Where the PCT considers it to be reasonable they can agree a longer period; the intention is that they should use this power sympathetically. If the dentist does not respond within that period the PCT can refuse to admit him.

7.1.16 If the dentist confirms that he is prepared to be bound by the FHSAA's decision he must be admitted to the list accordingly. In such cases reviews will fall to the PCT not the FHSAA.

## **8. National Disqualification**

8.1.1 A decision by a PCT to remove a dentist from its list is only a local decision. It applies only within that PCT and whilst other PCTs must consider the facts behind that decision they can reach a different conclusion. Though it must be emphasised that in doing so they are recommended to consider how they would justify this different approach if asked to do so by the public, especially if there were to be an adverse incident.

8.1.2 Where the facts of the case are serious it would be wrong to allow the dentist to offer his services to every PCT in turn in the hope that he will find one willing to accept him. The FHSAA can issue a national disqualification to prevent such a practitioner joining the list of another PCT.

8.1.3 A national disqualification can cover:-

- i. all PCT "principal", supplementary or services lists involving all four contractor professions;
- ii. all PCT lists of the type the dentist was on or has applied to join;
- iii. all PCT, supplementary or services list (or the equivalent for each contractor profession);
- iv. any combination of all PCT lists specified by the FHSAA.

(PDS service lists will be implemented during 2003)

8.1.4 When considering an appeal from a dentist the FHSAA can decide itself to impose a national disqualification.

8.1.5 A PCT can ask the FHSAA for a national disqualification within 3 months of removing the dentist from a list or within three months of refusing to admit, nominate or approve the dentist to/for a list. PCTs are reminded of the benefits of a national disqualification both for protecting the interests of patients and for saving NHS resources. Unless the grounds for their decision were essentially local it would be normal to give serious consideration to such an application. The FHSAA (Procedure) Rules 2001 govern this procedure.

8.1.6 A request for a national disqualification will cover the dental lists, but there may be cases where the PCT feels that a dentist is unsuitable to be a principal but would be acceptable to it as a non-principal and, if so, a more limited request would be in order. The PCT can also ask the FHSAA to issue a national disqualification that covers all PCT lists across dental, medical, optical and pharmaceutical services.

8.1.7 A national conditional inclusion or contingent removal is not permissible.

8.1.8 Once subject to a national disqualification a dentist can ask the FHSAA to review the disqualification. Such requests cannot be made within two years of the original FHSAA decision or within one year of a previous FHSAA review. On review the FHSAA may confirm or revoke the national disqualification.

8.1.9 The FHSAA can vary the review periods in 8.8 only in the following circumstances:-

- i. If on making a decision to impose a national disqualification, the FHSAA states that it is of the opinion that the criminal or professional conduct of the dentist is such that there is no realistic prospect of a further review being successful if held within the period specified in section 49N(8)(a) of the NHS Act 1977, the reference to “two years” in that provision shall be a reference to five years;
- ii. If on the last review by the FHSAA of a national disqualification the dentist was unsuccessful and the FHSAA states that it is of the opinion that there is no realistic prospect of a further review being successful if held within a period of three years beginning with the date of its decision on that review, the reference to “one year” in section 49N(8)(b) of the NHS Act 1977 shall be a reference to three years;
- iii. the FHSAA states that it is of the opinion that because a criminal conviction considered by the FHSAA in reaching the decision that has effect has been quashed or the penalty reduced on appeal, there is a need for an immediate review, the reference to “two years”

or “one year” in section 49N(8) of the NHS Act 1977 shall be a reference to the period that has already elapsed;

- iv. the FHSAA is of the opinion that because the decision of a licensing, regulatory or another body has been quashed or the penalty reduced on appeal, there is a need for an immediate review, the reference to “two years” or “one year” in section 49N(8) of the NHS Act 1977 shall be a reference to the period that has already elapsed.”.

8.1.10 PCTs are obliged to act in accordance with the terms of a national disqualification; removing/refusing the dentist as necessary.

**9. Declaration of Convictions etc by Dentists on the Dental List**

Applies only to new applications.

## 10 Sharing Information

10.1.1 When they have grounds to take action against a dentist under the reformed list provisions, it is vitally important that PCTs not only share information between themselves but also with all other NHS Bodies and any outside organisations that might employ a dentist. Patient safety is the over-riding concern.

10.1.2 It would also be inappropriate to allow the dentist to thwart this sharing of information by refusing permission for the data to be processed using the provisions in the Data Protection Act 1998. To avoid this, regulations specify circumstances in which information can be shared. This means that consent to share information is not required by virtue of Schedule 2 of the Data Protection Act 1998. Other rights under the Data Protection Act such as subject access continue to apply.

10.1.3 In addition the dentist will, via linked procedures, have given his consent to the following information sharing:

- i. by any employer (or former employer), licensing, regulatory or other body in the United Kingdom or elsewhere, relating to a current investigation or a past investigation where the outcome was adverse, by them into the dentist at any time;
- ii. by one PCT to another (including equivalent bodies), including information about any decision to refuse an application to be included in any of its lists, or to remove or currently suspend a person included in any such list.

10.1.4 The PCT is required to share information whenever it makes any decision in relation to any of its lists to refuse admission, to conditionally include, to remove from, to contingently remove from or to suspend a dentist. It is recommended that the PCT should aim to send these notifications within 14 days of the decision.

10.1.5 The information must be shared with:

- i. the Secretary of State;
- ii. any PCT in England that has the dentist on any of its lists, or is considering an application for inclusion in any of its lists from such a dentist;
- iii. the Scottish Executive;
- iv. the National Assembly for Wales;
- v. the Northern Ireland Executive;
- vi. the General Dental Council or any other appropriate regulatory body;
- vii. the Dental Practice Board;
- viii. any other organisation that, to the knowledge of the PCT, employs or uses the services of the dentist in a professional capacity;
- ix. where it is a fraud case, the National Health Service Counter Fraud and Security Management Service.

10.1.6 Home Country contact details are:-

- i. **Scotland**  
Mr J Davidson  
Scottish Executive Health Department  
St Andrews House  
Regent Road  
Edinburgh EH1 3DG  
email - john.davidson@scotland.gsi.gov.uk
- ii. **Wales**  
Elise Stewart  
Primary and Community Health 1  
National Assembly for Wales  
Cathays Park  
Cardiff CF1 3NQ
- iii. **Northern Ireland**  
Mr R Haworth  
General Medical and Ophthalmic Services Branch  
Primary Care Directorate

Department of Health, Social Services and Public Safety  
Room 425  
Dundonald House  
Belfast  
BT4 3SF

10.1.7 For the NHS CFSMS contact details are in [Annex F](#).

10.1.8 The information that must be shared is:

- i. identifying details of the dentist (name, DoB, NI Number or similar);
- ii. professional registration number;
- iii. date and copy of the decision;
- iv. contact name within the PCT for further details.

The requirement for a copy of the decision would be met by providing the substance of the decision such as “removed from the list on [date] following a criminal conviction for [.....].”

10.1.9 The GDC operates a statutory conduct procedure to investigate and discipline dentists by revoking or suspending registration. Where appropriate, the GDC should be supplied with information to enable it to consider whether professional disciplinary proceedings should be instigated. In determining whether it is appropriate to supply the GDC with the specified information, it may be helpful to discuss the matter, initially on an informal and anonymised basis, with the GDC.

10.1.10 Where one of the bodies in paragraph 10.5 above contacts the PCT seeking further information, the PCT may provide further information relating to the evidence it considered in arriving at its decision. This can include the representations made by the dentist. PCTs have discretion in what they

provide and it would be advisable at this stage to anonymise third party information to protect identities where this is considered appropriate.

- 10.1.11 In addition to the bodies mentioned at 10.1.5 the PCT can also share information as in 10.1.8 & 10.1.11 with other bodies who can establish they are considering employing the dentist in his professional capacity.
- 10.1.12 Once information has been shared with a third party the PCT is responsible for keeping that information up to date. For example if a suspension or conditions applied on inclusion are lifted this information should be passed on. There is a clear moral duty on the PCT to pass these updates on immediately a decision is changed.
- 10.1.13 Where the PCT is notified by the FHSAA that a dentist has been nationally disqualified they should pass this on immediately to:-
- i. any PCT that has the dentist on any of its lists, or is considering an application for inclusion in any of its lists from such a dentist;
  - ii. any other organisation that, to the knowledge of the PCT, employs or uses the services of the dentist in a professional capacity;
  - iii. where it is a fraud case, the National Health Service Counter Fraud and Security management Service.

## **10.2 Notifying the Secretary of State**

10.2.1 The Secretary of State notification should be sent to the FHSAA(SHA) at 30 Victoria Avenue, Harrogate HG1 5PR.

10.2.2 Over time the FHSAA(SHA) will build a database providing details of dentists who have been removed, refused access, conditionally included, conditionally removed, suspended etc. They will provide information about specific dentists to NHS Bodies who might, for example, have doubts about the validity of a dentist's application. It will not be a definitive source of information but will provide a useful fallback as the role develops.

10.2.3 The contact telephone number is 01423-530280.

## **10.3 Notifying the dentist**

10.3.1 It is only fair that the dentist who has been the subject of an investigation knows what information about him is being shared.

10.3.2 Where the same information is sent to a number of bodies a list of those bodies together with the shared information must be copied to the dentist if his address is known. In other cases the dentist should be sent a copy of the information sent to any third party where his address is known.

## **10.4 Alert Letters**

10.4.1 These procedures do not replace the "Alert Letter" processes. The Department issued revised alert letter guidance (HSC 2002/011) and this describes how the system should relate to dentists (and other health care professionals whose profession is regulated by an independent statutory body) working in general practice. The alert letter system is the only way other NHS organisations (including Strategic Health Authorities and PCTs) unconnected with the individual will know that there are reasonable grounds to believe that he poses a serious potential danger to the safety of patients or other staff and his performance or conduct has been such as to seriously

compromise the effective functioning of a clinical team or local primary care services, or both; and that he is likely to be working or may seek work elsewhere. It is important that dentists in general practice are aware of the system and that it is used in all appropriate cases.

## **11 Reporting Gifts from Patients**

- 11.1 The H&SC Act, section 23, provides that regulations can be introduced requiring the declaration of financial interests and gifts. No regulations have yet been made therefore at present there is no “terms of service” requirement to make this type of declaration.

## **12. The “existing” FHSAA**

12.1 The existing FHSAA is a special health authority dealing with appeals and adjudicating on disputes on behalf of the Secretary of State for Health. It will continue to perform its current functions under the new name “Family Health Services Appeal Authority (Special Health Authority)” (FHSAA(SHA)).

12.2 The main areas in which the FHSAA(SHA) operates are:

- i. Determining appeals made under the Pharmaceutical Regulations
- ii. Determining appeals made under Parts I and II of the Service Committees & Tribunal Regulations
- iii. Determining certain appeals, references and representations made under the General Dental Services Regulations

For dentistry responsibility for determining appeals against decisions not to award vocational training numbers rests with the Dental Vocational Training Appeal Body rather than with the FHSAA.

12.3 The FHSAA(SHA) will continue to perform these existing functions, and it may perform additional appellate and adjudication functions if the Secretary of State directs it to.

12.4 In addition, the FHSAA(SHA) will:

- i. Provide staff and support services for the President and members of the new FHSAA
- ii. Maintain a NHS database of practitioners refused admission to a list, conditionally admitted to a list, suspended by a Health Authority, removed from the list on efficiency, suitability and fraud grounds, or contingently removed from a PCT list.

12.5 PCTs should:

- i. Continue to deal with the FHSAA(SHA), at its usual address (30 Victoria Avenue, Harrogate HG1 5PR) on matters set out above
- ii. Send the FHSAA(SHA) a copy of their formal notification to any practitioner whom they refuse to admit to a list, conditionally include in a list, suspend from a list, remove from a list or contingently remove from a list
- iii. Note that the contact point for telephone inquiries about a practitioner's list status is [01423-530280].

## **13. Other Important Issues**

### **13.1 Appeals Against Criminal Convictions**

- 13.1.1 The PCT can act against a dentist once he has been convicted by a court irrespective of any appeal that the dentist might lodge. There will be instances where the dentist wins his appeal and the sentence that lead to the decision to remove the dentist is either quashed or reduced.
- 13.1.2 A quashed sentence is effectively struck from the record; it did not happen and PCTs can have no further regard to it in any way.
- 13.1.3 Where a sentence is reduced on appeal the dentist may apply to join a dental list and that application shall be decided on the facts in the normal way, but considering the revised sentence not the original sentence.
- 13.1.4 In all these instances the dentist may well wish to resume his career quickly and PCTs are asked to ensure that any application to join a list from a dentist in these circumstances is given priority and dealt with expeditiously.
- 13.1.5 Where a dentist is on any list but subject to conditions (conditional inclusion or contingent removal) and has a conviction quashed or a sentence reduced the PCT are advised to consider whether or not the conditions should be reviewed; this will depend on the reasons the conditions were imposed. There would be no justification for not reviewing them where they directly relate to the conviction or sentence dealt with by the Court of Appeal.
- 13.1.6 The FHSAA can review a national disqualification when any criminal conviction considered in reaching the original decision is quashed or reduced on appeal. The dentist is required to seek such a review directly.

## **13.2 Access by NHS Counter Fraud and Security Management Services to Declarations**

13.2.1 The question has been asked as to whether or not NHS CFS can have access to the declarations made by doctors/dentists under the terms of the new regulatory regime.

13.2.2 Legal advice is that there is no objection to the NHS CFSMS seeing the declarations as part of a genuine investigation (not a fishing investigation). The whole purpose is to check deceitful declarations, so it must follow that they can be checked by suitably qualified people; such as accredited fraud investigators.

13.2.3 It is however, recommended that PCTs should check their data protection registrations to ensure that they reflect this use of the PCT's data.

## **13.3 Checking Declarations of Criminal Convictions**

13.3.1 Existing legislation does not allow a PCT to have access to the criminal record of a dentist working in general practice.

13.3.2 The Home Office has set up a new organisation called the Criminal Records Bureau (CRB). This organisation will provide criminal record checks but on the basis that it has to be the dentist, not the PCT, that will apply to the Bureau for a criminal record certificate.

13.3.3 Section 19 of the H&SC Act amends section 115 of the Police Act to provide that Health Authorities had access to enhanced criminal records certificates for all dentists as well as the other three contractor professions. Further legislation amended the Act to allow access by Primary Care Trusts as necessary. In addition the Home Office have by virtue of the Rehabilitation of Offenders Act 1974 (Exceptions)(Amendment) Order 2001 clarified that the

four contractor professions are exempt from the provisions of the Rehabilitation of Offenders Act.

13.3.4 PCTs will only get a copy (the original will go to the dentist) of the criminal record certificate where they countersign the dentist's application to the CRB and only if the information is required to assess the suitability of an individual for a post. There is a fee payable to the CRB and we will provide advice on this issue later.

13.3.5 To be entitled to countersign an application, and therefore receive a copy of the criminal record certificate, an employer or PCT will have to register with the CRB. In return they will be required to adhere to a strict "Code of Practice" which is available from the CRB or via its website at <http://www.crb.gov.uk/index.htm> PCTs should register now if they have not already done so. There is a registration fee of £300.

13.3.6 At present the CRB is not providing an operational service in relation to dentists.

13.3.7 We plan an amendment to the dentist's terms of service which will require them to apply to the CRB for a criminal record certificate in connection with applications to join PCT lists or for the purposes of verifying declarations.

13.3.8 The CRB will not be a source of data for overseas offences although they have indicated that they may hold very limited data in respect of some countries. They may also be able to advise PCTs on how to check overseas matters.

#### **13.4 Checks by the General Dental Council (GDC)**

13.4.1 The GDC will co-operate with PCTs and others who are required to verify declarations made by dentists who are on dental lists or are applying to join dental lists. The paragraphs under 13.4 are guidance notes, not regulations. The GDC will keep these notes under review.

#### **Dentists already on lists (including supplementary lists)**

13.4.2 The GDC is not able to process bulk requests for verification. PCTs should contact the GDC only where they have reason to doubt a dentist's statement and need to verify it. This is in line with the practice adopted in relation to medical services.

#### **Dentists applying to join lists**

13.4.3 Primary Care Trusts are advised to verify dentists' declarations in all cases. The GDC will respond to requests as quickly as it can.

#### **What the GDC will need**

13.4.4 In cases where GDC verification is sought, a faster more efficient service can be provided if the PCT request contains the necessary information and the dentist's consent in appropriate terms. Some of the information the PCT needs is not publicly available in the Dentists Register. The GDC will therefore need to see a copy of the dentist's consent to disclose the information. GDC does not prescribe the wording of the consent the PCT needs to obtain from the dentist.

13.4.5 The GDC can process applications more quickly if the consent contains at least the following, or words to the same effect -

*"I consent to a request being made by the Primary Care Trust to ...[the GDC or any ....regulatory ...body in the United Kingdom or elsewhere,] for information relating to a current investigation or an investigation where the outcome was adverse, by them into my professional conduct and to the disclosure of such information to the Primary Care Trust by [the body in question OR the GDC]."*

13.4.6 The GDC also need to see on the consent

- A signature, which should an original or be validated by the requesting authority
- Full name
- GDC registration number
- Date

## **Disclosure**

13.4.7 The dentist must have consented not only to the PCT making the request but also to the disclosure by the GDC.

13.4.8 Information about the following matters would be disclosed in response to a consent in the form shown above:

- Current investigations where the matter has proceeded beyond the initial "screening" stage: prior to that, the Council cannot be said to have commenced an "investigation".
- Past investigations (without time limit) in which
- The Preliminary Proceedings Committee has issued a letter to the dentist warning him/her as to future conduct (although this is not registered information, it would fall under the heading of adverse outcomes, in that it is adverse to the dentist's interests to receive such a letter).
- The Professional Conduct Committee has found the dentist guilty of serious professional misconduct or has found that the dentist has been convicted of a criminal offence.

13.4.9 Consent refers to specified investigations by the Council. So it would not cover information held by the Council about a third party (eg. police, HSE) investigations which were not otherwise disclosable by the Council under 13.4.7 above.

13.4.10 For further information contact:

The Operations Manager  
Professional Standards Directorate  
General Dental Council  
e-mail: [jcarpenter@gdc-uk.org](mailto:jcarpenter@gdc-uk.org)

## **13.5 Payments to Dentists during a PCT imposed suspension.**

13.5.1 The general principle where a dentist is suspended by the PCT under its powers is that the suspended dentist shall have his normal level of income

protected as far as is practical, although the Secretary of State may make provision that payments should not exceed a specified amount in any specified period. Suspension is a neutral act and the protection of income is an important symbol of this status.

13.5.2 The Dental Practice Board will make payments to any dentist who is suspended by a PCT in accordance with the Secretary of State's determination made under section 28B of the NHS (General Dental Services) Regulations 1992, as amended.

### **13.6 Statistics**

13.6.1 Statistical information on the number of decisions made under these new powers will be collected annually on 1 April – beginning in April 2002. The information which PCTs will be asked to collect will fall into the following categories and should be made in respect of dental lists:

- i. numbers refused admission to list – mandatory or discretionary – (broken down by grounds of fraud/unsuitability/prejudicial to the efficiency of the service). In cases where there is more than one reason, only the main reason should be stated on the return.
- ii. numbers conditionally included in list
- iii. numbers suspended from list
- iv. number of applications deferred
- v. numbers removed from list (broken down by grounds of fraud/unsuitability/prejudicial to the efficiency of the service)
- vi. numbers contingently removed from list and variation of conditions/terms of service on review.

All of the above data should also reflect gender profile.

13.6.2 Further information will be provided in due course by the Department of Health.

13.6.3 As now PCTs may periodically be asked to provide details of any dentist who might find himself in difficulties and who is under investigation by the PCT or other body.

## DECLARATIONS OF PROFESSIONAL INVESTIGATIONS

### General

1. The regulations provide that a dentist going onto the dental list has to declare if he has been subject to any investigation into his professional conduct by any licensing, regulatory or other body anywhere in the world where the outcome is adverse or outstanding, and if so, give details, including approximate dates, of where the investigation or proceedings were or are to be brought, the nature of that investigation or proceedings, and any outcome.
2. The regulations further provide that a PCT has the discretion to refuse to admit (or conditionally include) or remove (or contingently remove) a dentist from a dental list if he has been the subject of any investigation into his professional conduct by any licensing, regulatory or other body in the United Kingdom or elsewhere where the outcome of that investigation was a finding against him.
3. In addition a PCT may suspend a dentist from the dental list if it is satisfied that it is necessary to do so to protect members of the public or it is otherwise in the public interest where the dentist's professional conduct is being investigated by any licensing, regulator or other body in the United Kingdom or elsewhere.

**Sexual Offenders Act 1997**

**Offences to which Part 1 of the Sexual Offenders Act 1997 applies**

- 1(a) Offences under the provisions of the Sexual Offences Act 1956:-
- i. Section 1 (Rape);
  - ii. Section 5 (intercourse with a girl under 13);
  - iii. Section 6 (intercourse with a girl between 13 and 16);
  - iv. Section 10 (incest by a man);
  - v. Section 12 (buggery);
  - vi. Section 13 (indecenty between men);
  - vii. Section 14 (indecent assault on a woman);
  - viii. Section 15 (indecent assault on a man);
  - ix. Section 16 (assault with intent to commit buggery);
  - x. Section 28 (causing or encouraging prostitution of, intercourse with, or indecent assault on a girl under 16);
- 1(b) an offence under section 1(1) of the Indecency with Children Act 1960 (indecent conduct towards a young child);
- 1(c) an offence under section 54 of the Criminal Law Act 1977 (inciting a girl under 16 to have incestuous sexual intercourse);
- 1(d) an offence under section 1 of the Protection of Children Act 1978 (indecent photographs of children);
- 1(e) an offence under section 170 of the Customs and Excise Management Act 1979 (penalty for fraudulent evasion of duty etc) in relation to goods prohibited to be imported under section 42 of the Customs Consolidation Act 1876 (prohibitions and restrictions);
- 1(f) an offence under section 160 of the Criminal Justice Act 1988 (possession of indecent photographs of children).

2. In paragraph 1 above:-
  - (a) paragraph 1(a)(iii), (v) and (vi) does not apply where the offender was under 20;
  - (b) subject to paragraph 3 below, paragraph 1(a) (iv) to (ix) does not apply where the victim of or, as the case may be, the other party to the offence was 18 or over; and
  - (c) paragraph 1(e) does not apply where the prohibited goods did not include indecent photographs of persons who were under the age of 16.
  
3. Paragraph 2(b) above does not prevent the application of paragraph 1(a) (vii) or (viii) above in any case where, in respect of the offence or finding, the offender:-
  - (a) is or has been sentenced to imprisonment for a term of 30 months or more; or
  - (b) is or has been admitted to a hospital subject to a restriction order.
  
4. For the purpose of paragraph 2(c) above:-
  - (a) section 7 of the Protection of Children Act 1978 (interpretation) shall apply as it applies for the purpose of that Act; and
  - (b) a person shall be taken to have been under the age of 16 at any time if it appears from the evidence as a whole that he was under that age at that time.
  
5. This is not intended to be an accurate or authoritative copy of the relevant text from the Act. It is for guidance only and HAs are advised to provide a copy of the relevant legislation for their own use.

**Specimen declaration from a General Dental Practitioner in accordance with the NHS(GDS) Regulations 1992 (Schedule 1 – 31H); or the NHS (GDS Supplementary List) Regulations 2003 (Regulation 9)**

Dentist's Name

GDC Registration Number

Have you any criminal convictions; or have you has been bound over following a criminal conviction; or have you accepted a police caution in the United Kingdom; or are you currently the subject of any proceedings that might lead to such a conviction?

Yes/No

*Have you been convicted elsewhere of an offence; or have you been the subject of a lesser penalty that, if committed in England and Wales, would constitute a criminal offence or the equivalent of being bound over or cautioned; or*

*are you currently the subject of any proceedings that might lead to such a conviction?*

Yes/No

*Have you ever been the subject of an investigation:*

- *by any licensing, regulatory or other body into your professional conduct any where in the world; or*
- *by any current or former employer into your professional conduct any where in the world; or*
- *by the NHS Counter Fraud Services*

*where the finding was adverse?*

Yes/No

*Are you currently the subject of any investigation:*

- *by any licensing, regulatory or other body into your professional conduct anywhere in the world; or*
- *by any current or former employer into your professional conduct any where in the world; or*
- *by the NHS Counter Fraud Services?*

Yes/No

*Are you currently the subject of an investigation by any Health Authority, or equivalent body in Wales, NI or Scotland, that could lead to your removal from a list of theirs?*

Yes/No

*Have you ever been refused admission or conditionally included in, removed or contingently removed from, or are you currently suspended from any list of a Health Authority, or equivalent body in Wales, NI and Scotland?*

Yes/No

**Note:**

- i. Please note that the Rehabilitation of Offenders Act 1974 does not apply to general practitioners for the purpose of this declaration. Offences considered “spent” under that Act must be declared.
- ii. Matters dealt with by a fixed penalty ticket need not be declared.

**If you have answered yes to any of the preceding questions please give details below, including approximate dates, of where the investigation or proceedings were or are to be brought, the nature of that investigation or proceedings, and any outcome. (Please use a separate sheet of paper if required)**

Declaration by the Dentist. I declare that the information I have given on this form (and any continuation sheet) is correct and complete and I understand that if it is not action may be taken against me.

**Signature:**

**Date:**

**Extract from “NHS Medical and Dental workforce: Dealing with Performance – Fitness to Practice”**

**Clinical Capability to deliver adequate standards of care**

- In the great majority of cases, the causes of adverse events stretch far beyond the actions of the individuals immediately involved. They are a combination of active failures – ‘unsafe acts’ by individuals – and systems or organisational failures.
  
- If an employer considers a failure to deliver an adequate standard of care, or standard of management, is through lack of knowledge or ability, then the case will be categorised as “clinical capability”.
  
- Examples of issues which would come under the clinical capability heading are:
  - Out of date clinical practice
  - Inappropriate clinical practice arising from a lack of knowledge or skills that puts patients at risk.
  - Incompetent clinical practice.
  - Inability to communicate effectively.
  - Inappropriate delegation of clinical responsibility.
  - Inadequate supervision of delegated clinical tasks.
  - Ineffective team working skills
  
- The key to dealing with issues of capability is that, wherever possible, employers should be looking to satisfactorily resolve the issue, through assessment and support. The employer should be looking to identify any problems early enough to prevent serious harm to patients. Where the employee is prepared to work with the employer to resolve the problem and where they can be returned to a satisfactory level of performance, through for example, retraining, instigating disciplinary procedures would not usually be appropriate. The introduction of the NCAA will greatly facilitate this process.

**Criteria that must be considered by the PCT in discretionary decision making.**

1. When considering applications for admission the PCT must consider the following criteria before making any discretionary decisions to refuse to admit or conditionally include a dentist in its lists:-
  - i. the nature of any offence, investigation or incident;
  - ii. the length of time since such offence or incident was committed and since any conviction or investigation;
  - iii. whether there are other offences, incidents or investigations to be considered;
  - iv. any action or penalty imposed by any licensing, regulatory or other body (which includes any NHS organisation), the police or the courts as a result of any such offence, incident or investigation;
  - v. the relevance of any offence, investigation or incident to the provision by him of general dental services and any likely risk to his patients or to public finances;
  - vi. whether any offence was a sexual offence to which Part I of the Sexual Offences Act 1997(see [Annex B](#));
  - vii. whether he has been refused admission to or conditionally included in, removed, contingently removed, or is currently suspended from any of a PCT's lists or from equivalent list in Wales, Scotland or NI, and if so, what the facts were in those cases and the reasons given by the PCT or equivalent body involved; and
  
2. When considering the removal or contingent removal of a dentist on discretionary efficiency grounds the PCT must consider:-
  - i. Whether it was prejudicial to the efficiency of the General Dental Services provided by the dentist;

- ii. the length of time since any incident occurred, and since the investigation was concluded;
  - iii. any action taken by any licensing, regulatory or other body National Health Service body, any licensing, regulatory or other body (which includes any NHS organisation), the police or the courts as a result of any such incident;
  - iv. the nature of the incident and whether there is a likely risk to patients;
  - v. whether the dentist has previously failed to make a declaration or comply with an undertaking required by these Regulations;
  - vi. whether the dentist has been refused admittance to, conditionally included, removed, contingently removed or is currently suspended from other PCT lists including equivalent lists in Wales, Scotland and NI, and if so, what the facts were in those cases and what were the reasons given by the PCT or equivalent body in the case.
3. When considering the removal or contingent removal of a dentist on discretionary fraud grounds the PCT must consider:-
- i. the nature of the incidents of fraud;
  - ii. the length of time since any incident occurred, and since the investigation was concluded;
  - iii. whether there are other incidents of fraud or other criminal offences to be considered;
  - iv. any action taken by any licensing, regulatory or other body (which includes any NHS organisation), the police or the courts as a result of any such incident;
  - v. the relevance of the investigation to the provision by him of general dental services and the likely risk to patients or to public finances;
  - vi. whether the dentist has been refused admittance to, conditionally included, removed, contingently removed or is currently

suspended from other PCT lists including equivalent lists in Wales, Scotland and NI, and if so, what the facts were in those cases and what were the reasons given by the PCT or equivalent body in the case.

4. When considering the removal or contingent removal of a dentist on discretionary unsuitability grounds the PCT must consider:-
  - i. the nature of any criminal offence, investigation or incident;
  - ii. the length of time since any such offence or incident was committed, and since any criminal conviction or investigation;
  - iii. whether there are other criminal offences to be considered;
  - iv. the penalty imposed on any criminal conviction or the outcome of any investigation;
  - v. the relevance of any criminal offence or investigation into professional conduct to the provision by him of general dental services and the likely risk to patients;
  - vi. whether any criminal offence was a sexual offence to which Part I of the Sexual Offences Act 1997 (see [Annex B](#)) applies;
  - vii. whether the dentist has been refused admittance to, conditionally included, removed, contingently removed or is currently suspended from other PCT lists including equivalent lists in Wales, Scotland and NI, and if so, what the facts were in those cases and what were the reasons given by the PCT or equivalent body in the case.

## **INTRODUCTION TO THE NHS COUNTER FRAUD AND SECURITY MANAGEMENT SERVICE (CFSMS)**

### **Legal Framework and Structure**

1. The NHS Counter Fraud and Security Management Service (NHS CFSMS) previously NHS CFS, established in September 1998, has the remit to tackle losses to fraud and corruption wherever they occur in the NHS and to reduce them to a minimum. The CFSMS is comprised of three parts:

### **The CFSMS Central Unit**

2. The CFSMS Central Unit (CU) (formerly known as the Directorate of Counter Fraud Services) holds responsibility for all policy and operational work on fraud and corruption within the NHS. It has the central co-ordinating and directing role, revising policy and processes to prevent fraud arising, providing information to target counter fraud action, continuously identifying the nature and scale of the problem of fraud and corruption and setting and monitoring the standard of counter fraud work.

### **The CFSMS Operational Service**

3. The CFSMS Operational Service is based in PCTs in each region of the NHS. There are eight area CFSMS Operational Service teams, a specialist Pharmaceutical Fraud Team, a National Proactive Team and a specialist Dental Fraud Team. These teams undertake special projects and investigate the largest cases of fraud. The CFSMS Operational Service works to detect and investigate fraud and corruption, to seek to apply sanctions where fraud is found and to supply information where fraud is proven to PCTs and NHS Trusts so that losses to fraud can be effectively recovered. The CFSMS Operational Service also provides advice and support to Local Counter Fraud Specialists (LCFSs).

## **Local Counter Fraud Specialists (LCFSs).**

4. Secretary of State (S of S) Directions issued in December 1999, require every PCT and NHS Trust to appoint a Local Counter Fraud Specialist (LCFS) and set out the respective responsibilities between PCTs and the CFSMS Operational Service regional and specialist teams. How these posts are resourced is left to the good judgement of PCTs and NHS Trusts. LCFSs have a vital role to play in acting as the first line of defence against fraud and corruption. Further SofS Directions were issued to PCTs in November 2000, requiring PCTs to nominate LCFSs.
5. Every Counter Fraud Specialist (CFSMS), whether a LCFS or a member of CFSMS Operational Service, is required to pass a course of specialist professional training accredited by the Institute of Criminal Justice Studies at Portsmouth University.

## **What is a Fraud Case?**

6. The new Section 49F (3) of the NHS Act 1977 Act describes “fraud cases” as where the person concerned:
  - “(a) has (whether on his own or together with another) by an act or omission caused, or risked causing, detriment to any health scheme by securing or trying to secure for himself or another any financial or other benefit, and knew that he or (as the case may be) the other was not entitled to the benefit.”
7. This definition is expanded further in subsequent sections of the Act:

### **“Health scheme”**

8. A “health scheme” means any publicly funded health or medical scheme as defined in regulations made under the power set out in the new section 49F(8) of the NHS Act 1977 Act.

9. The Act specifies that it includes the corresponding services in Scotland and Northern Ireland (Wales are covered by the same primary legislation).
10. Health schemes are further defined in the subsequent regulations for each of the professions to include services:
  - (a) provided by HM forces. This includes medical and surgical treatment;
  - (b) by the Port Health Authorities – e.g. to asylum seekers;
  - (c) to prisoners in the care of the medical officer of a prison, or of another officer, such as a dentist, optician or pharmacist, appointed for the purposes of section 7 of the Prison Act 1952;
  - (d) which are publicly funded health services provided by or on behalf of the NHS by any organisation anywhere in the world. This includes, for example, where a service has been contracted out to the private sector but is still funded by the NHS.
11. PCTs may therefore consider any evidence of fraud involving the above services as well as fraud involving services provided by the NHS itself.
12. “Fraud cases” under (d) could include, for example,
  - operations in private sector hospitals on NHS patients, paid for by the NHS – where the operation is either not actually provided, or is also paid for privately and the dentist pockets the money.
  - Collusion between dentists and private sector management running stand alone NHS or out of hours provision.
  - Collusion between doctors and PFI e.g. over improvements grants and development of computer systems.
  - Dentists charging private fees to patients while holding out to be providing NHS services.

## **Detriment**

13. “Detriment” is defined in new section 49F(9) of the NHS Act 1977 as including detriment to a patient, or a person working in that health scheme, or any person liable to pay charges for services under that scheme.

## **Body corporate and fraud**

14. The new section 49H of the NHS Act 1977 states that if any one of a body of people controlling a body corporate meets the grounds for removal for fraud, then the body corporate itself is also to be treated as meeting those grounds. This applies even if the fraud relates to a time before that person became a director.
15. Sanctions may be imposed on a body corporate if a director of an ophthalmic business, or of a dental corporation, or any person controlling a pharmacy business meets the condition for removal, whether or not he was a director or person controlling the company at the time. This is necessary to prevent, for example, a doctor already removed for fraud from practising again simply by setting up a new company.
16. Similarly, if they have failed to take reasonable steps to prevent fraud, dentists will be liable for removal on fraud grounds on the basis of the fraudulent acts or omissions of other people e.g. an employee providing services on their behalf. This means a dentist will be held liable where he has failed to take reasonable steps to prevent fraud by an employee acting on his behalf.
17. PCTs will need to consider the specific circumstances of each case in deciding the nature and extent of the fraud by a practitioner and/or body corporate, as illustrated by the following examples:
  - where an agency or deputising service is engaged by a dentist to find work for him and the dentist has colluded with the agency for both his and the agency’s financial gain (e.g. in falsifying or failing to obtain references), this would be a clear breach of section 49H(2) of the NHS Act 1977. The

health authority may consider taking action against both the agency and the dentist. Action should only be considered against the principal practitioner where it can be shown that he failed to take reasonable steps to prevent the fraud.

This list of examples is not exhaustive.

- 18 Examples of types of fraud by an employee acting on behalf of a principal practitioner include:
- where a practice manager or receptionist has falsified cheques;
  - receptionists or practice managers diverting practice funds for their own purposes; or
  - practice staff making inappropriate claims.
19. In considering whether a principal practitioner has failed to take adequate steps to prevent the fraud occurring, the PCT should take into account all relevant factors, including whether:
- the practice manager/receptionist/assistant was capable of, or suitable to, undertake all functions assigned by the principal practitioner;
  - there was a clear delegation of functions from the principal practitioner to the practice manager/receptionist/assistant;
  - lines of accountability were clear and there were adequate checks to monitor financial accounts. For example, if financial responsibilities were delegated to staff, especially if the use of the principal's PIN were delegated to staff for EDI claims, the PCT should consider what checks were in place, as the ultimate responsibility would still lie with the principal.

Again, this list is illustrative and not exhaustive.

## **Fraud Outcomes**

20. The CFSMS may decide to pursue a range of sanctions in investigating allegations of fraud and corruption. A key factor in deciding which course of action to take will be the amount and quality of evidence available to substantiate a case. In the civil courts and for disciplinary cases, the burden of proof is “on the balance of probability”, whereas for prosecutions in the criminal courts, the burden of proof is “beyond reasonable doubt”. The CFSMS may decide to take a “triple tracking” approach – to pursue action across the disciplinary/civil courts/and criminal prosecution routes.
21. There are a range of outcomes which may be the result of an investigation into allegations of fraud and corruption;
- i. No evidence/mistake – where there is no evidence to substantiate the initial allegation, or the initial allegation was made on false premises
  - ii. Insufficient evidence – there may be some evidence of a possible fraud, but insufficient to take the matter further, either through disciplinary systems or through the civil or criminal courts.
  - iii. Disciplinary action – may include action in relation to professional regulatory body or the new PCT/FHSAA regime or under the existing rules relating to a breach of the dentist’s terms of service (Schedule 1 to the NHS (GDS) Regulations 1992). Where a practitioner who is under investigation resigns from his post and the matter does not proceed any further, this is not classified as an adverse outcome for the purposes of these regulations.
  - iv. Civil action - where the burden of proof of fraud is insufficient to consider prosecution, action may be taken to recover money, interest and costs through the civil courts (where the burden of proof is on the “balance of probability.”)
  - v. Criminal sanction – Cases of fraud may be prosecuted under a range of offences such as:
    - theft;

- false accounting,
- obtaining by deception;
- dishonest handling,
- gaining pecuniary advantage; and
- conspiracy to defraud.

Where the courts decide that the defendant is guilty, they may impose a range of sanctions. These include:

- imprisonment;
- fine;
- community service order;
- conditional discharge.

In addition, in serious cases of fraud, where the suspect is charged with a relevant criminal offence the CFSMS can apply to the courts to make orders concerning the restraint/confiscation or compensation orders.

### **Procedures for PCTs checking with the CFSMS**

22. On receipt of a declaration from a dentist who is applying to join one of its lists, the PCT is required to check with the CFSMS whether or not the applicant admits to being subject to an investigation in relation to fraud.
23. In handling catch up declarations this check should be limited to dentists who declare that they have been investigated at some point or are currently subject to an investigation.
24. In addition PCTs may wish to check a random sample with the CFSMS where there is any doubt or suspicion about the dentist's past.
25. PCTs should provide the CFSMS Operational Service with basic information about the practitioner;
  - Full name

- Address and telephone number, plus previous address if new to an area
  - Identifying details (e.g. date of birth, NI number or similar)
  - Professional registration number
  - If they are, or have been a member of a body corporate, the name and registered office of any such body
  - Contact name within the PCT for further details and to whom the reply should be sent.
26. This information should be requested in writing, so that there is a clear audit trail for disclosure of information, by e-mail [hcsa@cfos.nhs.uk](mailto:hcsa@cfos.nhs.uk). Urgent information may be requested by telephone and confirmed in writing, although this should be the exception rather than the rule.

### **Information to be provided by CFSMS**

27. CFSMS will provide information relating to any NHS fraud investigation since the NHS CFS was established in 1998. It will not be able to provide information about fraud in the NHS prior to this. The enquiry from a health body will be matched against the national database. If no match is found on the details given, then a response to this effect will be made, by letter, directly to the health body concerned. If a potential match is found then it will be referred to the relevant Operational Fraud Manager to deal with and liaise with the health body concerned, confirming that they have the right person. Please remember that CFSMS can only provide information on the details given to them. It is the PCT's responsibility that any information supplied relates to the person they have enquired about and that such information is only used for the purposes for which it was requested.
28. It should be noted that the statutory power for the CFSMS to disclose information about past or current investigations is permissive not mandatory. In particular, for current investigations, the CFSMS staff are not compelled to disclose even the simple fact that there is an investigation if it would be premature to do so and might risk compromising or jeopardising the success of any potential criminal action by effectively forewarning the dentist under suspicion. However, in such cases, the CFSMS should notify the PCT of any adverse outcome of an investigation.

29. Not all fraud investigations will result in an outcome which should be disclosed to the PCT as evidence of a history of fraud. For example, where there was no evidence to substantiate a case, or a mistake was made, or insufficient evidence for any action to be taken, CFSMS will advise PCTs that there is no evidence of a proven fraud.
30. CFSMS may, in certain circumstances, contact the PCT during the course of an investigation, where the Operational Fraud Manager has concerns over clinical or financial propriety, in order that contingent inclusion or suspension can be considered. Such a case may arise where a dentist has been charged with criminal or disciplinary offences that relate to the way they have managed the financial affairs of the practice. It may, in this scenario, be sensible to allow the dentist to continue practising, but prevent them from dealing with practice affairs, until the matter has been concluded.
31. Where CFSMS records indicate that disciplinary action has resulted in an adverse outcome, it will advise the PCT to contact the original body who made the decision for further details, e.g. the relevant human resources department or the professional regulatory body.
32. The CFSMS will need to decide what information it wishes to provide in relation to the categories on which the PCT will make its decision listed in the regulations. Standard forms will be used to request and supply this information between PCTs and the CFSMS.
33. The CFSMS Operational Service will provide PCTs with any information in relation to the practitioner within 14 days. However, in exceptional cases, the PCT may request an urgent response. E-mails should be clearly marked as urgent and the CFSMS Operational Service will endeavour to respond within 3 working days. If the PCT has not heard within these time-scales, they should follow up with a telephone call to the FCRL or the Operational Fraud Manager on 01744 692602.

34. The following contacts should be used when contacting the CFSMS Operational Service regional teams:-

**Counter Fraud Operational Teams; Contact details**

<b>South Western Regional Team</b>	<b>Northern &amp; Yorkshire Regional Team</b>
Debbie Lloyd CFSMS Operational Service 3 <sup>rd</sup> Floor, Kings Square House Kings Square Bristol BS2 8EE  Tel (0117) 900 2582 Fax (0117) 924 8852 e-mail: Debbie.Lloyd@cfos.nhs.uk	Derek Johnson CFSMS Operational Service 3 <sup>rd</sup> Floor A Block Scottish Life House Archbold Terrace Jesmond Newcastle Upon Tyne  Tel: 0191 203 5060 Fax: 0191 203 5060 e-mail: Derek.Johnson@cfos.nhs.uk

<p><b>London Regional Team</b></p> <p>Karen Shorter  CFSMS Operational Service  Block B  4<sup>th</sup> Floor,  50 Eastbourne Terrace  London W2 6LX</p> <p>Tel (020) 7725 3424  Fax (020) 7706 9547  e-mail: Karen.Shorter@cfos.nhs.uk</p>	<p><b>Eastern Regional Team</b></p> <p>Frank Ginnelly  CFSMS Operational Service  Level 16, Terminal House  Terminus Street  Harlow  Essex CM20 1XE</p> <p>Tel (01279) 694 732  Fax (01279) 437 929  e-mail: Frank.Ginnelly@cfos.nhs.uk</p>
<p><b>East Midlands Team</b></p> <p>Richard Ball  CFSMS Operational Service  Ransom Wood Business Park  Southwell Road West  Rainworth  Mansfield  Nottinghamshire NG 21 0ER</p> <p>Tel (01623) 676 041  Fax (01623) 633 871  e-mail: Richard.Ball@cfos.nhs.uk</p>	<p><b>North West Regional Team</b></p> <p>Allan Carter  CFSMS Operational Service  3<sup>rd</sup> Floor,  Lakeside  Alexandra Park  Prescot Road  St Helens  Merseyside WA10 3TL</p> <p>Tel (01744) 692 610  Fax (01744) 692 613  e-mail: Allan.Carter@cfos.nhs.uk</p>

<b>West Midlands Regional Team</b>	<b>South East Regional Team</b>
<p>Nick Dann  CFSMS Operational Service  Lichfield House  27-21 Lichfield Street  Walsall WS1 1TE</p> <p>Tel (01922) 656 153  Fax (01922) 656 152  e-mail:  Nick Dann@cfos.nhs.uk</p>	<p>Wayne Stone  CFSMS Operational Service  1<sup>st</sup> Floor  187, Ewell Road  Surbiton  Surrey KT6 6AU</p> <p>Tel (020) 8339 4643  Fax (020) 8390 8037  e-mail:  Wayne Stone@cfos.nhs.uk</p>

**Supplementary List – Application Details**

**(Regulation 4 of the Supplementary List Regulations : 4(2)** The dentist shall provide the following information -

- (a) his full name;
- (b) his sex;
- (c) his date of birth;
- (d) his private address and telephone number;
- (e) a declaration that he is a fully registered dentist included in the Dentists Register;
- (f) his professional registration number and date of first registration in the Dentists Register;
- (g) chronological details of professional experience (including the starting and finishing dates of each appointment together with an explanation of any gaps between appointments) and any additional supporting particulars, including whether that experience was in the provision of general dental services (whether as a principal or assistant) and an explanation of why he was dismissed from any post;
- (h) names and addresses of two referees who are willing to provide clinical references relating to two recent posts (which may include any current post) as a dentist which lasted at least three months without a significant break, and where this is not possible, a full explanation and the names and addresses of alternative referees;
- (i) the name and address of the principal dentist who, or the body which, proposes

to employ him as an assistant in the provision of general dental services and whether or not that name is included in a Primary Care Trust's dental list and, if that person has partners, associates or directors, the names and addresses of any such persons;

(j) whether the general dental services, which he is to assist in providing, are restricted to orthodontic treatment; and

(k) has any outstanding application, including a deferred application, to be included in a list or an equivalent list.

(3) The dentist shall provide the following undertakings and consent -

(a) undertaking to provide the declarations and documents required by regulation 9;

(b) undertaking to provide general dental services when employed as an assistant;

(c) undertaking not to assist in providing general dental services in the area of another Primary Care Trust or equivalent body from whose supplementary, dental or services list he has been removed, except where that removal was at his request or in accordance with regulation 10(7), without the consent, in writing, of that Primary Care Trust;

(d) undertaking to notify the Primary Care Trust within 7 days of any material changes to the information provided in the application until the application is finally determined;

(e) undertaking to notify the Primary Care Trust if he is included, or applies to be included, in any other list held by a Primary Care Trust or equivalent body; and

(f) consent to the disclosure of information in accordance with regulation 9.

(4) The dentist shall send with the application a declaration as to whether he -

- (a) has any criminal convictions in the United Kingdom;
- (b) has been bound over following a criminal conviction in the United Kingdom;
- (c) has accepted a police caution in the United Kingdom;
- (d) has accepted and agreed to pay either a procurator fiscal fine under section 302 of the Criminal Procedure (Scotland) Act 1995<sup>[19]</sup> or a penalty under section 115A of the Social Security Administration Act 1992<sup>[20]</sup>;
- (e) has, in summary proceedings in Scotland in respect of an offence, been the subject of an order discharging him absolutely (without proceeding to conviction);
- (f) has been convicted elsewhere of an offence, or what would constitute a criminal offence if committed in England and Wales, or is subject to a penalty which would be the equivalent of being bound over or cautioned;
- (g) is currently the subject of any proceedings which might lead to such a conviction, which have not yet been notified to the Primary Care Trust;
- (h) has been subject to any investigation into his professional conduct by any licensing, regulatory or other body, where the outcome was adverse;
- (i) is currently subject to any investigation into his professional conduct by any licensing, regulatory or other body;
- (j) is to his knowledge, or has been where the outcome was adverse, the subject of any investigation by the National Health Service Counter Fraud Service in relation to fraud;
- (k) is the subject of any investigation by another Primary Care Trust or equivalent body, which might lead to his removal from any of that Primary Care Trust's lists or any equivalent lists;
- (l) is, or has been where the outcome was adverse, the subject of any investigation into his professional conduct in respect of any current or previous

employment;

(m) has been removed, contingently removed, refused admission to, or conditionally included in any list or equivalent list kept by another Primary Care Trust or equivalent body, or is currently suspended from such a list and if so, why and the name of that Primary Care Trust or equivalent body; or

(n) is, or has ever been, subject to a national disqualification,

and, if so, he shall give details, including approximate dates, of where any investigation or proceedings were or are to be brought, the nature of that investigation or proceedings, and any outcome.

(5) If the dentist is, has in the preceding six months been, or was to his knowledge at the time of the originating events a director of a body corporate, he shall in addition make a declaration to the Primary Care Trust as to whether the body corporate -

(a) has any criminal convictions in the United Kingdom;

(b) has been convicted elsewhere of an offence, or what would constitute a criminal offence if committed in England and Wales, or is subject to a penalty which would be the equivalent of being bound over or cautioned;

(c) is currently the subject of any proceedings which might lead to such a conviction, which have not yet been notified to the Primary Care Trust;

(d) has been subject to any investigation into its provision of professional services by any licensing, regulatory or other body, where the outcome was adverse;

(e) is currently subject to any investigation into its provision of professional services by any licensing, regulatory or other body; or

(f) is to his knowledge, or has been where the outcome was adverse, the subject of any investigation by the National Health Service Counter Fraud Service in relation to fraud;

and, if so, he shall give the name and registered office of the body corporate and details, including approximate dates, of where any investigation or proceedings were or are to be brought, the nature of that investigation or proceedings, and any outcome.

(6) The dentist shall consent to a request being made by the Primary Care Trust to any employer or former employer, licensing, regulatory or other body in the United Kingdom or elsewhere, for information relating to a current investigation, or an investigation where the outcome was adverse, by them into the dentist or a body corporate referred to in paragraphs (2), (4) and (5).

(7) If, in the case of any application, the Primary Care Trust finds that the information, references or documentation supplied by the dentist are not sufficient for it to decide his application, it shall seek from that dentist such further information, references or documentation as it may reasonably require in order to make a decision and that dentist shall supply the material so sought to the Trust.

(8) Subject to regulation 21, the Primary Care Trust shall decide whether the dentist is to be included, (whether conditionally or otherwise) in its supplementary list, or decide to defer that decision under regulation 7, within the period of 21 days beginning with the date on which all the information, references or documentation required by these Regulations or otherwise necessary to make its decision have been received by that Trust.

(9) In the case of an application to a Primary Care Trust by a dentist, who is included in the dental list or the services list of that Trust, seeking to withdraw from that list and to include his name in its supplementary list, that dentist shall only be required to provide the information required by paragraph (2) insofar as -

(a) he has not already supplied it to that Trust; or

(b) it has changed since it was provided.

**Dental List – Application Details**

Full name.

Sex.

Date of birth.

Private address.

Date of registration as a dental practitioner in the register kept under section 14 of the Dentists Act 1984 and registration number, dental qualifications registrable under that Act and when obtained.

5A His vocational training number, if he has one.

5B Information on whether –

- (a) he has any criminal convictions in the United Kingdom;
- (b) he has been bound over following a criminal conviction in the United Kingdom;
- (c) he has accepted a police caution in the United Kingdom;
- (d) he has been convicted elsewhere of an offence, or what would constitute a criminal offence if committed in England or Wales, or is subject to a penalty which would be the equivalent of being bound over or cautioned;
- (e) he is currently the subject of any proceedings which might lead to such a conviction, which have not yet been notified to the PCT;

- (f) he is currently, or has been where the outcome was adverse, subject to any investigation into his professional conduct by any licensing, regulatory or other body anywhere in the world;
- (g) he is to his knowledge. Or has been where the outcome was adverse, subject to any investigation into his professional conduct in respect of any current or previous employment;
- (h) he is currently to his knowledge, or has been where the outcome was adverse, subject to an investigation by the National Health Service Counter Fraud Service in relation to a fraud case;
- (i) is the subject of an investigation by another PCT or equivalent body which might lead to his removal from any of that PCT's lists or equivalent lists;

and if so, he must give details, including approximate dates, of any investigation or proceedings which were or are to be brought, the nature of that investigation or proceedings, and any outcome.

Address of proposed practice premises and in the case of any mobile surgery, the address to which correspondence may be sent.

Proposed days and hours of attendance and whether patients will be seen by appointment only and in the case of any mobile surgery, particulars of places to be visited regularly by the dentist and the times of those visits.

An undertaking to –

- (a) be bound by the terms of service;
- (b) notify the PCT within 7 days of any material changes to the information provided in the application until the application is finally determined;
- (c) supply the information required by paragraph 31H of Schedule 1; and

- (d) provide general dental services in the area of the PCT.

Whether intending to practice –

- (a) as a single-handed practitioner; or
- (b) as a partner and if so the name and address of each intended partner and whether his name is included in the PCT's dental list; or
- (c) as an associate and if so the name and address of each intended associate and whether his name is included in the PCT's dental list.

The names of any assistants he or any person referred to in paragraph 9(b) or (c) intends to employ or already employs at the proposed practice premises.

Professional experience (including starting and finishing dates of each appointment with an explanation of any gaps between appointments) an explanation of why he was dismissed from any post, and any additional supporting particulars.

The names and addresses of two referees who are willing to provide clinical references for the last two clinical posts where the employment lasted for a continuous period of at least three months, and where this is not possible, a full explanation and the names and addresses of alternative referees.

Proposed place of residence (including telephone number and distance from main surgery) and an undertaking to inform the PCT whenever changing permanent residence.

Whether he –

- (a) is or has ever been subject to a national disqualification;
- (b) has ever been removed or contingently removed from a list held by a PCT or by an equivalent body from an equivalent list;
- (c) has been refused admission to or conditionally included in a PCT list or equivalent list, with an explanation as to why; or
- (d) is suspended.

Whether he is indemnified against claims relating to the practice of dentistry in relation to dentistry performed by himself, and by any assistant, deputy and dental auxiliary whose work the dentist intends to direct, and if he is so indemnified documentary evidence to that effect.

Details of any limitations imposed by the Home Office which restrict his ability to work in any specific capacity in England and Wales.

Consent to the PCT requesting from any employer or former employer, licensing, regulatory or other body in the United Kingdom or elsewhere, information relating to a current investigation, or an investigation where the outcome was adverse, by them into the dentist.

### **Circumstances where an Application to Join a List can be Deferred**

- i. where there are criminal proceedings against the dentist anywhere in the world that if successful would be likely to lead to the removal of the dentist from the PCT list if he were to be included;
- ii. where there is an investigation anywhere in the world by the dentist's licensing or regulatory body or any other investigation (including one by another PCT ) relating to him in his professional capacity that if successful would be likely to lead to the removal of the dentist from the PCT list if he were to be included;
- iii. where the dentist is suspended from any of the lists or equivalent lists by any PCT or equivalent body, or is suspended nationally;
- iv. where the FHSAA is considering an appeal by the dentist against a decision of a PCT to refuse to approve, nominate or admit him to its list, or to conditionally include him in or to contingently remove him from, or to remove him from any list kept by a PCT and if that appeal is unsuccessful the PCT would be likely to remove him from the PCT list if he were to be included;
- v. where the dentist is being investigated by the National Health Service Counter Fraud Service in relation to any fraud, where the result if adverse would be likely to lead to his removal from the PCT list if he were to be included; and
- vi. where the FHSAA is considering an application from a PCT for a national disqualification of the dentist.