



BDA response to the General Dental Council’s consultation “Clear and certain: A new framework for fee-setting”

May 2018

Introduction and overview

1. The British Dental Association (BDA) is the professional association and trade union for dentists practising in the UK. BDA members are engaged in all aspects of dentistry including general practice, salaried primary care dental services, the armed forces, hospitals, academia and research, and our membership also includes dental students.
2. We welcome the opportunity to provide feedback to this consultation. There is a lot of history between the BDA and the GDC on this issue, and while there is clearly a need for a new approach, there is still some context to this subject matter from the last four years.
3. It is stated that the new fee setting policy has its foundation in the GDC’s *Shifting the Balance* policy, and a focus on upstream and prevention of formal fitness-to-practise action is of course welcome.
4. It is, however, also clear that the current ARF for dentists, which was set in 2014 for 2015 and is still in place, was obtained on the basis of an unlawful consultation, is the highest of the UK regulators, and has been used to top-up the reserves to a level that the profession, under the circumstances, has deemed completely inappropriate. No acceptable explanations have so far been given, and while this consultation makes mention of further policy considerations on reserves, it then moves on to say that ‘this will be a separate piece of work’. It is therefore impossible for us to ascertain the value of this whole consultation exercise when a significant part of the issue for discussion is not included.
5. It is hopefully also understandable that, given our concerns around transparency and accountability of the GDC and its use of registrant funding, the possibility that we will be consulted on a three-year high-level plan and then not have an opportunity to ascertain how successful any one workstream – which may or may not be supported by professional opinion – has been, does not entirely fill us with confidence in improved openness of our regulator.
6. We do wish to say in this context that co-operation has improved in the last two years or so, and that the renewed wish for partnership with the profession is welcome. Likewise, the GDC has undertaken a lot of work to address its failures in recent times.
7. The BDA does support its members and the wider profession in achieving high standards and provides leadership by engaging fully with the themes affecting dentistry at any given time. Professionals always do strive to do the best for their patients. Defensive dentistry remains a concern, however, as a generation of dentists, and possibly other registrants, have been familiar with the GDC’s previous approach which, as the GDC itself acknowledged as part of the *Shifting the Balance* discussions, was regarded as punitive.

This is where the upstream approach will need to start and show clear effects. The BDA does want to help change the system if the GDC's approach is reasonable.

8. The consultation document acknowledges a complex environment in which the dental profession works. There is a need for the GDC to take a stance about the current general practice contract in England, which is not fit for purpose and which directly affects the ability of dentists to care for their patients as best as possible. The BDA will be happy to provide further information on the issues to the GDC, as offered many times previously.
9. The BDA has consistently said that before any other significant work is initiated, dentists' ARF must come down by a significant proportion. The expected case load from 2014, on the basis of which the fee was increased to £890, did not materialise. The monies have been used first of all to address the backlog of cases in the system, but for the last couple of years or so the use of income has been out of line with the current fee policy as illustrated by the lack of an answer to that question in the exchange of letters from last year (see below). The profession is due an acknowledgement and a significant fee reduction for 2019.
10. While the fee level is not part of this consultation on policy, it is now proposed that there will, effectively, never again be a consultation on fee levels. This, as a proposal, is unacceptable in its own right. Instead, the GDC suggests that the profession should trust a three-year outline of a plan of regulatory activities that will be fully costed, while the GDC still retains the right to increase the fees on an annual basis under certain circumstances (while much less space is given to the comment that fees might also come down).
11. This is, of course, a statutory right – but it does nothing to encourage trust within the profession that its fees will be handled fairly and appropriately, especially when previous requests for explanations on the cost of planned or running projects have not answered the actual questions. The public information on the reasoning behind the business plan and reserves for 2018, discussed by the Council in autumn 2017, was scarce and, on asking, no clear answers were forthcoming¹. The GDC needs to demonstrate that it can be open about its actual plans before a policy based on good cooperation can be trusted.
12. We believe that consultation on fee levels – including the levels of the potential new fees – should remain part of the process.

Consultation questions

Question 1

Do you agree that these principles should underpin decision-making with regard to fee-setting for dental professionals?

13. We generally agree that there needs to be an allocation of cost in relation to risk of each professional group. We also agree that planned, costed activity, discussed and agreed in advance with the profession, would be a useful way forward to explain how GDC fees are actually used. We further agree that cross-subsidy should be reduced as much as possible and reasonable.
14. We do question what happens, in a three-year strategy, if some of the objectives for which monies were levied were not achieved. Each year the GDC notes certain actions that were not carried out due to changing priorities or lack of time or staff; other actions have been carried over into another financial year. We understand that a three-year strategy will reduce the need for such annual outlines.

¹ <https://www.bda.org/news-centre/press-releases/BDA-demolish-case-for-ARF-levels>

15. However, we believe that such situations should lead to a refund of monies to registrants of some sort, for example through an immediate lowering of the fee for the next year within a three-year cycle. There is a clear need here to outline, and provide assurances, as to how the money would be reimbursed to registrants. Given that there remains a significant lack of trust in the GDC, such a policy should be clearly enshrined as part of the new approach; monies cannot simply be used for something else if they had been charged for a certain policy approach. We would not accept a three-year plan that would be so broad as to allow constant shifting of the use of the fees raised.
16. It is also unclear from the consultation what happens when a policy proposal for the three – year strategy is not supported by the profession. There is a lot of ‘explaining decisions’ indicated that will take place, coming from the GDC. This is, however, very much a one-sided approach. Will the GDC press ahead with policies despite opposition, or will the fee be reduced if a proposal does not go into a three-year plan? In order for it to be a ‘debate’ (see principles), there needs to be an opportunity for those who are asked to pay for more than their registration, education and standards framework and the fitness-to-practise process to decline the funding of activities that do not fall within a much more tightly-defined role of the regulator, or are simply not seen as useful or sustainable.
17. It is suggested that the consultation will be on ‘high-level objectives’. How much actual detail will be provided? It is often the case that there is little to argue with certain principles, but everything to argue about the detail of their implementation.
18. In this context it is worth remembering that we have repeatedly pointed out that we believe that registrants’ money is being used for an extension of the GDC’s remit. The GDC has often disagreed with this. More recently, including in this consultation and in the exchange of letters referenced above, it instead takes the view that its remit is very broad – the subtext seems to be that no matter what sort of idea or project is being considered, it can easily be slotted into this remit. This, in essence, is a complete lack of actual accountability and the reason why, despite improvements in cooperation, there is little improvement in trust levels in the GDC.
19. Therefore, there remains a significant lack of confidence in the GDC’s ability to be open and transparent about the way it uses its fees. Indeed, the principles outlined would be difficult to argue against. Given that there is generally a belief that large amounts of registrants’ money have gone into inappropriately high reserves or into costs for projects which seem much higher than they should need to be, there is concern about this approach.
20. We therefore believe that more accountability to the profession for the spending of its monies must come into this process. Whenever we raise the issue of accountability, we are told that the GDC is accountable to Parliament. Effectively, this simply means that auditors have looked at the finances and that an annual report is laid before Parliament, but we are not aware of any proper financial scrutiny of the report by anyone, in terms of whether the spending has been necessary and appropriate or not. As we have pointed out a number of times in the past, the approach that the GDC has sometimes taken to the use of fees has been one in which, had it been publicly funded, the Public Accounts Committee would have been interested. We cannot see how a three-year approach without better arrangements for accountability to the profession could be supported.
21. What is therefore needed is a formal annual performance and stakeholder accountability process by the profession, providing scrutiny and reviewing exactly the proposals that have been made and whether or not they have been achieved. There should be a right to deny a fee increase.
22. We wonder what is meant by ‘smaller registrant groups’. In the current system, there are only dentists and DCPs, and out of the two, dentists are the smaller group. We would be surprised if this is what was meant by this paragraph; on the other hand, if that is not what

is meant, we would appreciate an explanation. If the concern is, for an example, that an increase in FTP cases involving hygienists or therapists would affect the fee being paid by nurses and dental technicians, then this would presumably be an argument for a differentiation of fee categories within the DCP register (also see below).

Question 2

What, if any, other key matters do you think should affect decision-making on fees? Please explain your rationale.

23. We would list in addition:

- the necessity of the work being proposed
- the relevance of the work to the GDC's actual statutory objectives rather than what is referred to the 'broad remit'; we maintain that some of the GDC's actions do amount to an extension of remit;
- the actual effect of any such work on the fee levels
- the fee should not be raised to make up for inefficiency/underperformance of the GDC against the standards it has to meet
- clear, published evidence for the need of reserves at the level set

Question 3

Do you agree that the cross subsidy between successful and unsuccessful applicants to the register should be eliminated?

24. Yes.

Question 4

Do you agree that the levying of a fee per application is an effective way of doing this?

25. Potentially, yes. However, there will need to be a reduction in the overall fee so that the processing costs would be split from the actual registration cost.

26. In particular for new registrants, who are unlikely to be working at the point of registration, a lot of thought needs to go into making this fee proportionate. Effectively, there is a risk that the registration fee for foundation dentists would go up, which would not be a policy that we could support.

27. To clarify, we expect the ARF to be reduced significantly. The new, lower, ARF should then be split into the application fee and the registration cost.

Question 5

What do you see as the advantages and disadvantages of such an approach?

28. As mentioned above, an elimination of cross-subsidy is of course to be welcomed and should in itself lead to a reduction in the fee. There needs to be great caution about the level of such an application fee so that it does not become prohibitive. It would have been helpful to have a general idea of what this level would be. In the absence of a forthcoming consultation on actual fee levels or any reassurance that fees will actually come down, this is a difficult question to answer.

29. The figures of unsuccessful applications by category were very interesting. We would like to know if they were for individuals, or whether they include repeat applications? We assume the latter. A fee would ensure that applicants take greater care with their application first

time round and this again would reduce administrative burden, and therefore cost, which should result in a lower fee overall.

Question 6

Do you agree that the cross subsidy resulting from the difference in processing costs of the various routes to registration should be addressed?

30. Yes. The issues around this – workforce implications, more need for assessment, may well happen sooner than expected, depending on the outcome of the government negotiations on leaving the EU. However, again there is a lack of detailed information on the sort of level at which this fee might be set.

Question 7

Do you agree that the introduction of an assessment fee for certain types of application is an effective way of doing this?

31. Perhaps, but see above.

Question 8

What do you see as the advantages and disadvantages of this approach?

32. Such fees, combined with the UK potentially becoming a less attractive place to come and work, could be a disincentive for new dentists. In terms of current dentist recruitment issues in many areas this needs to be borne in mind.
33. Other disincentives might be longer waits for applications to be processed if their number increased due to EEA nationals potentially no longer benefitting from mutual recognition.
34. Issues around financial hardship should also be considered – the ARF must come down, but these fees should not constitute a simple return to the overall level of the current fee.
35. Application fees for ORE candidates must also be considered in this context – the ORE cost is already prohibitive for some dentists. This is notwithstanding the fact that the ORE should be cost neutral and also fit for purpose.
36. The GDC might also consider whether it would look at support for refugee dentists by waiving such fees, for example for their first attempt to pass the ORE.

Question 9

Do you agree that we should maintain the current two-band fee structure for fee setting?

37. We believe that dentists, as the leader of the dental team and therefore carrying the risk for overall patient care, should be covered by higher fees than DCPs.
38. However, in line with CPD requirements and a risk-based approach, there may be an argument to develop a split within the DCP categories between those groups that provide clinical work (and can do so under direct access arrangements), that is dental therapists, dental hygienists, orthodontic therapists and clinical dental technicians, and those registrant categories that do not work clinically independently with patients, such as dental nurses and dental technicians.
39. This is also particularly relevant to your comments about the impact on the volatility of fee levels (that is how much small changes in workload would cause the fee to change) and the impact on small registrant groups. For example, if there was an increased use of direct access by dental therapists, dental hygienists and clinical dental technicians, we believe

that there would be a high likelihood that complaints in these professional groups would also increase over time, and these costs should be borne by the relative registrant groups.

Question 10

Are the reasons for not introducing mechanisms to vary the fee according to income, hours worked etc sufficiently clear?

40. We believe that this should be considered further. There is some evidence that part-time dentists leave the register because the fees are prohibitive for the work they do. If indemnifiers can charge them a lower fee on the basis of lower risk, it should be possible for the GDC to do the same.
41. More evidence on the GDC's reasons for its approach and a specific question ascertaining the views of registrants on these reasons would have been helpful.
42. We also believe that there is merit in thinking further about introducing a 'non-practising' register, especially for retired registrants. We believe that it is detrimental to the profession that experienced colleagues simply leave when they no longer practise clinically; their expertise is thus simply lost. A non-practising register for retired registrants who might still be able to support colleagues, for example through mentoring or peer review arrangements, could facilitate a new approach to making use of their knowledge and experience. There could still be limited requirements for remaining on this register, for example in the area of undertaking relevant CPD. We would welcome the opportunity to discuss this possibility further with the GDC to explore how this group of professionals could continue to contribute to dentistry.
43. Furthermore, we would like to ask under what circumstances a registrant could be given a fee refund part-way through a registration year (for example terminal illness, full retirement, etc), and what consideration has been given to this as part of this consultation exercise.

Question 11

Are the reasons for not introducing mechanisms to reduce the burden of paying fees for certain groups sufficiently clear?

44. We do not believe that any evidence has been provided in this consultation to support this approach; we are just being told there is no business case. As other regulators permit the payment by instalments, it is unclear why this should create major difficulties or significantly increase costs for the GDC.
45. BDA members strongly support payments by instalments. Given the level of the ARF, this is a considerable expense for dentists to pay in a single instalment, particularly for those working part-time. Once the ARF has been reduced, the line of argumentation might be different.

Question 12

What, if any, other key matters do you think should affect decision-making on introducing a system for paying by instalments? Please explain your rationale.

46. We believe that the GDC should further consider the payment of the fee by instalments, especially for new entrants to the register. It would ease the burden for newly-qualified dentists in particular, who have to pay twice within a six-months' time frame at a time when they leave dental school with £70k debt and have not yet established any earnings (for most, the first pay cheque will land towards the end of September). There should not be a need to use a finance company to handle this. Other regulators do offer the opportunity to pay registrant fees by instalments.

Question 13

Are there any aspects of the proposed policy and our approach to charging fees that you believe are likely to have a differential impact on certain groups of registrants? If so, please explain this impact and how you think this could be addressed.

47. This question is difficult to answer. The outline is kept in very general terms with which it is probably difficult to disagree on the face of it. It will be good to have 'clear' processes and procedures for fee setting and 'certainty' around their levels. But what does this actually mean, and how useful is it if the policy behind it is not supported by the profession, or the fee is too high?
48. The main issues are around the things which are either not covered in the consultation (such as the reserves policy) or the things that are outlined in the consultation (such as the 'broader approach to regulation') but which are not covered in detail in the consultation questions. What exactly will be the plans for more 'upstream' regulatory activity? We understand that there is a wish to focus on better local resolution, to work closely with the profession on this, and to work with the profession on a stronger focus on professionalism issues. But it is not clear what this means in detail; what, for example, if the GDC's view of professionalism is different to the profession's view of professionalism, how respected will the profession's views be in any discussions on such matters?
49. Furthermore, without indicative costings of how the proposals would affect the fees it is difficult to answer any of these issues, but it is explicitly stated that there will not be another chance to provide feedback on the fees or indeed any detailed annual business plan.
50. Consideration needs to be given to any groups for whom the cost of registration might be prohibitive – new graduates, part-time workers, overseas and refugee dentists who are unable to earn money prior to registration, registrants on maternity leave, for example. We would expect the GDC to undertake a thorough equalities impact assessment of these issues.