



Independent Appeal Process -Consultation response

20th September 2021

The British Dental Association (BDA) is the voice of dentists and dental students in the UK. As the recognised trade union and professional body, we represent all fields of dentistry including general practice, salaried primary care dental services, the armed forces, hospitals, academia, public health and research.

We welcome the opportunity to respond to this important consultation on an Independent Appeal Process.

Firstly, we agree with the rationale of making provision for a new independent appeal process with the forthcoming closure of HSCB, and the subsequent transfer of decisions currently made by HSCB being transferred to DoH. As the consultation makes clear, it would be wholly inappropriate for such appeals to continue to be directed to DoH.

Scope of proposals to dentistry much too limited

However, our serious concerns with these proposals relate to the particularly limited scope that is being put forward to apply to the new Appeal Process as they will relate to dentistry, namely being confined only to hearing appeals to decisions formerly taken by HSCB (after closure) relating to inclusion on the dental list (GDS Regs. 5A), and to appeals against determinations by HSCB after investigating a disciplinary matter (Health and Social Care Disciplinary Procedures Regulations NI 2016, Reg. 5).

Correspondence issued to GDPs from General Healthcare Policy Directorate on 11th August 2021 states that, *'all other GDS appeals will continue to be against decisions made outside the Department i.e. by the BSO, NIMDTA or the Dental Committee...therefore, they will continue to be handled via the current procedures as set out in the Regulations'*. Moreover, email correspondence received from GDOS has confirmed that, *'The vast majority of the dental appeals received, such as Reg 21 and 33 of the General Dental Services Regulations, will remain with GDOS within the Department'*. Furthermore, excluding Pharmacy decisions, the total number of appeals to the Department under the present system by the rest of family practitioner services combined is 'fewer than 5', according to the consultation document.

The right to an independent appeals process -beyond only HSCB functions

While these proposals are being brought forward with a particular focus on HSCB closure and transfer of functions to DoH, it is not enough to simply put in place an independent appeal process for those narrow functions. Our assertion is that dental contractors should have the same rights to a fair and public hearing within a reasonable time by an independent and impartial tribunal, in law, relating to all other decisions taken by bodies such as BSO, NIMDTA, GDOS and the Dental Committee that can have as equally a profound financial or career altering impact as the two defined HSCB functions.

In particular, we refer to the lack of a formal independent appeal process for individual practitioners to object to determinations made regarding Financial Support Scheme (FSS) entitlements despite this continuing to be an important revenue source particularly during the COVID period of significant disruption to the GDS contract. Furthermore, we object to the lack of consistency, the inequity and access to natural justice if independent dental contractors will not be granted access to an independent appeal process for other decisions which have profound implications being taken where these do not relate to decisions by HSCB.

A new Independent Appeals process must be:

Independent of the Department of Health (DoH), to include an independent recruitment process with professional representation. The panel should have a dedicated secretariat and should not be physically based in the DoH.

Comprehensive, covering appeals to all determinations made by all decision-making committees of the DoH, including those within NIMDTA, BSO, the Dental Committee and GDOS.

Clear and simple, comprising a single appeals pathway made known to all dentists that is easily followed, similar to how a Complaints process would be laid out for service users

Consistent in process, no matter against which decision-making committee the appeal is lodged.

Transparent and Fair, where the investigation process is not solely paper-based, but in person and with appropriate representation and support for the appellant.

Have a Governance System with appropriate monitoring of outcomes to ensure good governance, including benchmarking with similar processes in the rest of the UK and accountability

Proportionate and Right-touch, and have Safety Mechanisms for the appellant.

The case for reform

We do not buy into the argument that because all other dental appeals will continue to be made against decisions made outside the Department i.e. by BSO, NIMDTA, or by the Dental Committee that it is not essential that those appeals need to be transferred to the new appeals panel because they can continue to be dealt with independently by the Department. We know that the absence of a universally available independent appeals process has caused significant distress and perpetuated a sense of injustice to many independent contractors, particularly with respect to challenging FSS determinations made by GDOS, but also to other areas such as probity. The high volume of FSS and contractual disputes alone versus 5 appeals received by DoH are not reconcilable.

The current process for access to an independent appeals process should be urgently clarified. Going forward, the threshold for right to appeal must be sufficiently low to capture any decisions which have a significant direct impact on an individual and/or a healthcare team, financial or otherwise. In the case of General Dental Services, these will be individual registrants and/or contractors running a healthcare business and employing healthcare staff. Therefore, access to the Independent Appeals Process for all determinations made by any decision-making committee of the DoH, is essential. **It is simply not acceptable that any decision by a DoH committee has no recourse to an independent appeal process.**

As we have alluded to previously, we are extremely concerned to note that this consultation appears to infer that while the 5 decision making committees of: Assessment Panel, Disciplinary Committee, Pharmacy Practices Committee, Reference Committee and Review Panel, will have a direct a line to the proposed Independent Appeals Process, for the other decision-making committees of the BSO, NIMDTA and the Dental Committee -and decisions taken by GDOS -the consultation is proposing that the DoH remains independent enough to consider appeals to these committees. **We strongly disagree with this assertion.** We assert the DoH is **not** of sufficient independence to host an appropriate appeals mechanism.

We emphasise the importance that any process of investigation or adjustment of contractual terms, including any temporary emergency arrangements such as the present FSS arrangements, should include clear direction on the right to an independent appeal process, and provide the means to do so.

All the above committees should therefore have access to the proposed independent appeals process through a clear and consistent pathway.

We assert it is important the proposed Independent Appeals Process is not merely a paper-based exercise, but offers the right to a full hearing where an appellant can be represented and given the opportunity to put their case if they so wish. It must also make appropriate wellbeing and safety support for all appellants. Evidence shows that one occupational risk to the safety of doctors is complaints/regulation.

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6436060/>

The proposed Independent Appeals process should sit physically separate from the DoH, with its own budget and secretariat. It should have an independent recruitment process for staff, while relevant professionally experienced dental panel members should be appointed following consultation with BDA on the seeking of nominees. Consideration should be given to siting the Independent Appeals Process in a neutral venue.

The proposed Independent Appeals Process will require appropriate governance and accountability mechanisms, neither of which are addressed in this consultation. This document lacks detail, and of course the wording of the regulations themselves that presumably will have to be rushed through the Assembly's legislative process over the final months of this mandate, another cause for concern.

Summary

- That fewer than 5 appeals from FPS have been heard by DoH points to the total inadequacy of the current process for independent contractors, including dentists, to make an independent appeal
- Untold stress and distress has been caused by practitioners being denied access to a truly independent appeals process, not least for many practitioners who have taken exception to FSS allocations without any independent, formal recourse
- A new independent appeals process scope for dentistry must be much wider, to go beyond merely HSCB decisions, to include appeals for decisions taken across all decision-making forums. GDOS/DoH does not constitute a sufficiently independent appeals body.