

Dentistry

DDU: in association with **Dentistry**

Guide. Support. Defend.
The DDU – on your side





DDU

When you need
support, we're
by your side.

24 hours a day, 365 days a year, our dento-legal advisers, all dentists, are at the end of the phone. 98% of advice line calls are connected within 20 seconds during normal working hours.

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The pressures of modern dentistry

John Makin explains in this supplement how the DDU will be by your side throughout your career

John Makin
Head of the DDU



Few professions are as rewarding as dentistry and few offer so much variety in terms of the people you meet, the career paths available, or the opportunities to test your clinical knowledge, technical skills and creativity.

But I am also conscious that times have changed since I entered practice 34 years ago. Today, dental practice is a more challenging and high-pressured environment. There are many reasons for this but high on the list is the pressure to meet patients' expectations. It can feel demanding and stressful especially with the potential for a complaint, GDC investigation or claim if something is perceived to have gone wrong.

This is where the DDU comes in and as we highlight in this supplement, there are many ways we support our members.

Increased regulation

While professional standards remain high, dental professionals face increased scrutiny and regulation amid a more adversarial dento-legal climate. They may even be subjected to a series of investigations following a single

adverse incident, a phenomenon we call multiple jeopardy.

Against this background, it is more important than ever that dental professionals have someone in their corner. As a not-for-profit mutual defence organisation, our sole purpose is to support dental professionals and our only obligation is to our members. Unlike insurance companies, we don't answer to shareholders or have terms and conditions containing exclusions in the small print.

When you ask dental professionals to think about the worst thing that could happen to them during their career, most are likely to say a claim for compensation or a letter from the GDC.

The benefits of DDU membership meet the GDC's requirements and include access to professional indemnity in respect of legal costs to defend a claim and compensation payments where necessary.

If you face a claim you can be assured that we understand how stressful this is and the importance to our members of mounting a robust defence of their position. Even though dental cases are often carefully selected by firms specialising in dental claims, we have an excellent track record of successfully defending cases and in around 60% of claims we make no compensation payment. What's more, we have an enviable record of success in defending members' reputations at the GDC. For example, where our in-house solicitors represented members with cases that were

under consideration by case examiners, only 19% were referred to a practice committee, compared with the GDC's overall referral rate of 38% at the investigation stage, according to the GDC's 2017 annual report.

On the other end of the phone

However, the benefits of DDU membership go further than indemnity and dento-legal assistance. In 2017, we received around 11,000 requests for advice and assistance from dental professionals, including 8,000 calls to our dento-legal helpline, which is staffed by dentally-qualified advisers who understand your situation and listen empathetically to your concerns.

Our dento-legal advisers are only a phone call away to provide guidance and reassurance during stressful times, a core service that we encourage members to use as often and whenever they need, as it can help mitigate or even pre-empt problems. Feedback from members suggests that they really value the opportunity to discuss an issue with a supportive expert.

There are many challenges facing dental professionals in modern practice: social media, new GDPR regulations and dealing with a GDC investigation are among the examples highlighted in these pages. It is essential you know the pitfalls and understand the legal and ethical obligations. The DDU will be on your side and by your side, not only when the going gets tough but throughout your career. **D**



Defending your professional interests

Leo Briggs

Deputy head of the DDU



Leo Briggs explains how the DDU provides support and assistance to members who are facing a compensation claim

The DDU is a non-profit organisation that provides expert guidance and support to members who encounter difficult circumstances. In fact, the DDU's expert advice and guidance resulted in 61% of cases being successfully defended between January – June 2018.

The below are real-life cases, published in our annual Cautionary Tales, of dentists who have faced challenging circumstances and how the DDU has assisted in each case.

1. Fractured tuberosity during extraction

A patient in her late 50s attended her dentist complaining of pain from a back tooth. The dentist, a DDU member, found caries at the UL7 and gave advice about care and

treatment options. The patient opted to have the tooth extracted, and returned a month later for the procedure.

During the extraction, the left maxillary tuberosity fractured and came out along with the tooth. The dentist packed and sutured the site and referred the patient to the maxillofacial department of the local hospital, where antibiotics were prescribed, but no further treatment was required.

The member received a letter of claim from the patient's solicitors. It was alleged that she did not employ sufficient skill in the extraction process and that she had put the patient at risk of foreseeable injury by not referring her to a hospital once it became clear it was a difficult extraction.

The patient also claimed for financial

losses, as well as for pain, anxiety and depression experienced. The dentist sought assistance from the DDU.

The DDU claims handler obtained and reviewed the complete clinical records and a factual report from the dentist, before instructing an independent expert to give a clinical opinion on the case.

The expert concluded that the patient had consented, had not been put at foreseeable risk and also noted that the risk of tuberosity

As a result of our robust response, the claim was discontinued

fracture in the extraction of a last standing upper molar was very small.

The DDU claims handler discussed the expert evidence with the member before carefully preparing a detailed letter of response, drawing together analysis of the clinical records, the member's comments and the expert opinion to firmly refute each of the patient's allegations. As a result of our robust response, the claim was discontinued.

2. Avoidable delay in extraction

A patient attended her dental practice for an emergency appointment. After assessing the tooth and taking a radiograph, the treating GDP diagnosed periapical infection. He discussed treatment options of no treatment, root canal therapy or extraction, and the patient opted for an extraction.

On the day of the appointment the practice did not have any lignocaine local anaesthetic in stock, so the GDP administered articaine local anaesthetic via infiltration, but he was unable to achieve sufficient local analgesia to proceed with the extraction. He apologised to the patient and gave her antibiotics, advising her to return for the extraction two weeks later when he was next available.

He apologised to the patient and gave her antibiotics, advising her to return for the extraction two weeks later



Over
£325k

highest dentist claim,
settled by DDU in 2017

However, after experiencing pain in the affected tooth soon after the appointment, the patient went to a different practice and had the extraction performed just one week after the originally scheduled date.

The patient complained directly to the GDP's practice, claiming compensation for the unnecessary delay in treatment, pain and additional dental charges. These charges

included the cost of the extraction and two courses of antibiotics, incurred as a result of the tooth not being extracted on the scheduled date.

The GDP turned to the DDU for assistance and a claims handler was assigned to the case. The claims handler sought a clinical opinion, which indicated that the dentist was responsible for the delay to the treatment. As he was unable to complete the treatment himself he could have considered alternative arrangements, such as arranging for the extraction to be carried out by another dentist. This would have limited the ongoing pain before the extraction could be completed.

The dentist confirmed that no charges had been refunded to the patient, and because the clinical advice was unsupportive of his care, he agreed to the claims handler's suggestion of a settlement offer of £100 to compensate the patient for the avoidable delay, pain suffered and the cost of antibiotics.

Since the tooth had needed extracting in any event, the offer did not include the cost of the subsequent extraction. The DDU made the offer on the member's behalf without admission of liability, and the patient accepted. **D**



Cautionary Tales

Real member stories

theddu.com

Read the latest selection of cases.



What our members say...

‘With me every step of the way’

How the DDU has helped members **practise with confidence**

Orthodontist at breaking point

An orthodontist contacted the DDU after the mother of a child patient made a complaint to the practice about the treatment her daughter had received. A response was sent to the patient's mother, explaining the treatment provided, while expressing their regret that she was unhappy, and offering a way forward for her daughter's treatment. Notwithstanding this, the patient's mother escalated the matter, complaining directly to the GDC.

The member found the six-month wait for an outcome from the GDC very stressful, but following advice from the DDU, he worked hard to be in a position to submit a positive response. The case was closed from the GDC, however, the practice as a whole had made a lot of

positive changes and ended up using the experience constructively.

The member remarked: ‘The support, help and guidance offered to me by the advisory team at the DDU has been incredible. In the early stages of the complaint, the matter had taken me to breaking point with worry. I contacted my dento-legal adviser who took a considerable amount of time, talking me through my fears surrounding the case, his support, kindness and empathy will always remain engrained in me. I will never forget that day and the conversation with my adviser who genuinely cared about my welfare and getting me through this awful episode in my career.’

An important lesson

A member contacted the DDU with regards to a complaint in relation to an implant retained over denture. The patient had been extremely satisfied with both her implant treatment and the denture and had given the member very positive feedback.

When the denture subsequently started to show wear and tear, our member provided a replacement over denture at no further cost.

Unfortunately, some years later, when the patient had been discharged back to her general dentist, a tooth became dislodged from the denture and the patient contacted the member for further assistance. The member recommended she attend a local dental laboratory, who were allegedly critical of the member's work.

The patient made a complaint, and a request for a further replacement over denture to be provided free of charge, to the GDC. Following a review of the complaint, the records and the member's response drafted by the DDU, the GDC closed the case with no further action.

The member explains: ‘It was a stressful affair but I look upon it as an important lesson. I will be able to use the experience for the benefit of my mentees and hopefully help them avoid similar situations. I really want to say how grateful I am for the DDU's support, advice and the considerable efforts they went to on my behalf. They inspired me with confidence and this helped a great deal with my stress levels.’



The support, help and guidance offered to me by the advisory team at the DDU has been incredible

A team approach

The DDU assisted a member as she had become embroiled in a fitness to practise investigation due to information arising from a GDC case against another practitioner. Understandably, this was a distressing experience for her, however throughout the very lengthy investigation she was able to rely on the guidance and support from the DDU's dento-legal advisers. She found this of great comfort and became very proactive in her own professional development, engaging very early on with excellent targeted remediation, working with mentors and attending a whole host of courses.

In view of this the DDU instructed a barrister who was able to convince the GDC Committee at the hearing that she had full insight into any historical issues at

the practice and was doing all she could to ensure patient safety and a good standard of care moving forward. The member's fitness to practise was found not to be impaired and the case concluded without any action against her registration.

The DDU team included a dento-legal adviser, solicitor and barrister and the member wrote to thank them individually and collectively for their advice and support. She concluded by saying: 'To each and every one of you, I thank you from the bottom of my heart for having the faith in me and helping me to strive for constant improvement.'

Support every step of the way

A consultant orthodontist member treated a patient, in conjunction with a consultant maxillofacial surgeon, as an NHS patient in his hospital trust. This was a secondary referral, following an abandoned private treatment with another orthodontist in private practice.

Upon successfully completing the orthognathic surgery treatment, the member received a complaint from the GDC and subsequently contacted the DDU. The complaint, which contained some very unusual and serious allegations, resulted in the member feeling extremely distressed and frustrated. Consequently, the DDU's dento-

legal adviser liaised with the GDC and the hospital trust on the member's behalf and provided moral support and guidance to the member. The GDC complaint was closed with no further action taken.

Discussing the experience, the member explains: 'This was one of the most stressful experiences of my professional life. However, the DDU were with me every step of the way and as dental professionals, I felt they were knowledgeable, genuinely caring and relatable.'

Lack of informed consent

A member sought support from the DDU following a patient making a formal complaint to the GDC. The complainant focused on an alleged lack of informed consent prior to the extraction of a tooth and post extraction complications. This was a single patient complaint about a single tooth. The GDC case examiners offered to close the case with undertakings. Both the dento-legal adviser and the DDU's legal team provided expert guidance and support in declining the undertakings. The case progressed to a full GDC hearing where it was closed with a finding of no current impairment. Most important, the reputation of our member remains intact.

When describing their experience and the assistance they received from the DDU, our member

states that: 'It was a great comfort to know that there was a highly experienced and professional team behind me. I think that without the calm and reassuring demeanour of the DDU, it could have been a far more stressful experience.' **D**



Our dento-legal advisory team is

100%
dentists





DDU

The DDU at a glance

In numbers, **the DDU** explains how it has supported members over the past year

At a time when dental professionals are under increasing scrutiny from an adversarial dento-legal climate, we understand the importance of having expert advice at your fingertips.

During 2017, the DDU was busier than ever. We supported dental professionals with around 11,000 requests for advice and support made up of over 3,000 new case files and 8,000 calls to our 24-hour dento-legal advice line.



98%

of calls to dento-legal advisers connected straight away during normal working hours

There are a number of ways you can be held accountable following an adverse incident. An error that leads to a patient coming to harm may not only result in a complaint or claim, but can set in motion a series of investigations such as by the GDC and your employer or contract holder. In rare cases when a patient has died, we have also supported dental professionals with coroner's inquiries and police investigations.

The DDU supported members 11,000 times in 2017

At the DDU, we have a team of 18 dentally-qualified dento-legal advisers helping members with a variety of issues. However, GDC investigations remain a large and important part of our work and during 2017 we supported members with around 150 new cases.

Our advisers work alongside our dedicated team of in-house solicitors. The team's aim is to demonstrate early on in a GDC investigation that there is no case



Led by dentists

with real-life experience of the pressures and challenges faced in practice

to answer and spare members the distress of a public hearing. Where our in-house legal team supported members with cases which proceeded for consideration by case examiners, only 19% resulted in referrals to one of the GDC's practice committees. This compares very favourably with the GDC's overall rate of 38%.

Head of the DDU, John Makin comments: 'Although the climate in which dental professionals work can often seem difficult, professional standards remain high and our members continue to provide excellent patient care.'

Don't just take it from us, here are some statistics highlighting our members' satisfaction with our services. **D**

MEMBER SATISFACTION

The DDU's dento-legal team hits a record high in 2017



Over **99%**

satisfaction with DDU dento-legal team by members surveyed in 2017 who used our service



Over **80%**

of membership calls answered within 20 seconds in 2017

Student elective photo competition

theddu.com/photocomp



Responding to complaints

Rupert Hoppenbrouwers tests your knowledge on how best to deal with complaints

Rupert Hoppenbrouwers

Senior dento-legal adviser at the DDU



Complaints are common and it's vital to know how to respond to them professionally and appropriately.

The sole purpose of responding to a complaint is to resolve it as quickly as possible to the satisfaction of all concerned. It is therefore vital to consider why the patient is complaining, what they might be seeking, and what you might reasonably say, do or offer that could satisfy them.

Sometimes it is appropriate to ask the patient this very question, but more often careful analysis of the background to the complaint and its content will indicate possible avenues for resolution.

Time spent wisely

DDU data indicates that around 90% of complaints can be resolved at practice level with our help. While a complaint made at practice level may be somewhat stressful and time consuming, it is time and effort well spent to

avoid it escalating outside the practice.

One or more of the following may help to satisfy a patient and resolve their complaint.

- A sincere apology and expression of sympathy and empathy
- A purely factual resumé of the clinical sequence that references the clinical records, to help remind the patient of events
- An explanation in plain language, so the patient understands what happened, why it happened and how it can be remedied
- An offer to meet the patient face-to-face to discuss matters
- An offer to treat the patient again and resolve the issue(s) they are complaining about
- An offer to refer the patient to a colleague in the practice for continuation of their treatment, so as to make a fresh start with a new face
- An offer to refer the patient to an independent consultant or specialist for a second opinion
- What action you have taken to learn from their complaint and prevent a recurrence

- An offer to refund the whole or part of the fees, or to provide remedial treatment free-of-charge, as a gesture of goodwill. This will not in any way prejudice your position if the complaint cannot be resolved at practice level and an outside body becomes involved. Rather, it will show you to be a reasonable practitioner who has done their best to resolve the complaint.

Support with complaints

At the DDU, we provide our members with expert advice on avoiding and dealing with complaints. Each year our dento-legal advisers help members respond to thousands of patient complaints. Our approach is focused on achieving resolution at a local level as this reduces the risk of the involvement of third-party organisations with all the additional stress that this brings for dental professionals. We achieve this goal in the vast majority of cases, particularly where the DDU is involved at an early stage. **D**

DDU data indicates that around 90% of complaints can be resolved at practice level with our help

TEST YOUR KNOWLEDGE

Get one hour of CPD using our comprehensive guide to complaints at ddujournal.theddu.com



Good record keeping post GDPR

Sarah Ide explains why the introduction of the new GDPR legislation means that good record keeping is imperative

Sarah Ide

Dento-legal adviser
at the DDU



On the 25 May, the new General Data Protection Regulation (GDPR) was introduced along with the new Data Protection Act 2018. While the Information Commissioner has acknowledged that the new legislation is evolution rather than revolution, it is

important to know what steps practices can take to ensure records are GDPR compliant.

What constitutes good patient records under GDPR?

Records have always been imperative to maintaining a high standard of patient care and can provide you with supporting evidence if your standard of care is questioned. Good patient records should follow the 'four C' rule:

1. **Contemporaneous:** records should be made at the time of the examination, treatment, observation or discussion or,

as soon as possible afterwards. Records should also be dated and signed

2. **Clear:** records should be written in 'plain English' so that they can be understood by anyone who may need to interpret them. As such, try to avoid using abbreviations,

It is important to know what steps practices can take to ensure records are GDPR compliant

unless absolutely necessary, as they may be misinterpreted or misunderstood and ensure your handwriting is legible

3. Concise: records should not be too lengthy, instead they should only be long enough to convey the essential information. Use one recognised system of dental charting (for example, Palmer notation, FDI notation etc) consistently throughout the records

4. Complete: all aspects of a patient's appointment should be recorded.

Additionally, all reports should be seen and evaluated. The review of the report should be noted before being filed, with any abnormal results recorded in the clinical record and any action noted.

It is important to check all notes thoroughly, including any made by an individual on your behalf (for example, a dental nurse) and ensure that any errors on a paper record are crossed out with a single line with the correction handwritten alongside the error. If making amends to computer records, make it clear when the change has been made.

Patients and their records under GDPR

Under GDPR, patients will still be able to request access to their own records and the criteria for subject access requests remains the same. Nevertheless, there have been some

practical changes under GDPR including:

- The subject access request does not have to be in writing
- Patients cannot be charged for copies of records unless the request is 'manifestly unfounded, excessive or repetitive' when you can charge a reasonable fee. There is currently no agreed definition of what constitutes a manifestly unfounded or excessive request, or what a reasonable fee is
- You need to provide the information within one month
- Requests that are unfounded or excessive can be refused but this should be explained and the patient told of their right to complain to the ICO and to seek judicial remedy
- Access requests must be documented,

Records should be written in 'plain English' so that they can be understood by anyone who may need to interpret them. As such, try to avoid using abbreviations

including details of any delay in providing the information and when requests have been refused.

Data controllers need to inform patients about how their personal data will be used and their rights as a data subject. Review your privacy policy using the checklist below as a guide.

- The identity and contact details of the data controller, and the data protection officer where relevant
- The purpose of the processing and the legal basis for it
- Any recipient of data or categories of recipients
- The existence of the data subject rights
- The right to withdraw consent at any time
- The right to lodge a complaint
- Retention periods
- The existence of automated decision-making, including profiling and information about how decisions are made, their significance and consequences
- Details of transfers to countries outside the EU and safeguards. **D**

FURTHER INFORMATION

See the Information Commissioner's Office (ICO) website - ico.org.uk.

DDU awarded prestigious Princess Royal Training Award for membership training

The DDU's membership team was recently awarded with the prestigious Princess Royal Training Award (PRTA), cementing its training as being of the highest quality.

The DDU is one of only 48 organisations who have received an award on the long list

and the only dento-legal organisation featured.

The DDU's membership team is also the only dento-legal organisation in the UK to be accredited under the prestigious Customer Service Excellence (CSE) programme, which recognises companies who provide excellent levels of service.

In 2017, over 80% of calls to our membership team were answered within 20 seconds with the team also processing over 99% of standard new membership applications within five working days. **D**

Standard new membership applications (processed) within five working days



CUSTOMER SERVICE EXCELLENCE





Scottish duty of candour

Angela Harkins explains duty of candour and the importance of an apology

Angela Harkins

Dento-legal adviser at the DDU



Apologising to a patient when something has gone wrong can sometimes be difficult, but it is an ethical duty for dentists. In 2014/15, a legal duty of candour was introduced for healthcare organisations registered with the CQC in England. In 2018, the duty of candour was extended to Scotland with the introduction of The Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016.

Duty of candour means that dentists are required to inform patients and their families when a patient has, based on an independent and reasonable opinion, been unintentionally or unexpectedly mentally or physically harmed as a result of their care or treatment.

The GDC stresses the importance of duty of candour for dentists and dental professionals who work within hospitals and corporate bodies by stating: 'In addition to the professional duty on individuals, organisations which provide healthcare have a statutory duty of candour. As part of this, organisations have a duty to support their staff to be open and honest with patients when something goes wrong with their care.'

An example of a clinical case which would prompt the duty of candour could be the extraction of the wrong tooth.

A genuine apology

In 2017, the relevant part of the Apologies (Scotland) Act 2016 (The Apologies Act)

Apologising to a patient when something has gone wrong can sometimes be difficult, but it is an ethical duty for dentists

also came into force. This ensured that dentists and other healthcare professionals in Scotland had the same legal protection as their colleagues in England and Wales under Section 2 of the Compensation Act 2006.

Under this piece of legislation, it is possible to apologise without fear of prejudicing the person making the apology or the apology being used to attribute blame in litigation. A well-placed genuine apology can often, in the experience of the DDU, resolve matters to a patient's satisfaction without the need for a formal complaint process to be invoked.

Instances that can prompt the duty of candour include:

- Pain or psychological harm that has or is likely to be present for 28 days
- An increase in the patient's treatment
- Changes to the structure of their body
- Shortening of their life expectancy
- Impairment of function, which has lasted or is likely to last at least 28 days
- The patient requiring further treatment to prevent death or to manage an injury that would lead to one of the above noted outcomes
- Death or a permanent lessening of function, which is defined as 'severe harm'.

The GDC also states that: apologising to the patient is not the same as admitting legal liability for what happened

An apology is more likely to be successful if it is personal to a patient, relevant to their situation (as opposed to being a generic declaration of regret) and given in a timely manner.

Timing is an important element as an explanation to the patient whilst still in the surgery, for example the wrong tooth has been root treated, is better received than a telephone call later informing the patient. A discussion in the surgery means you can use additional information such as X-rays to explain and apologise fully.

During the apology, you should explain what happened, what has been done and why. If it is possible, options could also be offered to put matters right, along with insight into the mistake by addressing what could be done to stop the same thing happening to someone else (if relevant).

The GDC also states that: 'apologising to

the patient is not the same as admitting legal liability for what happened. This is set out in legislation in parts of the UK and NHS Resolution also advises that saying sorry is the right thing to do. You should not withhold an apology because you think that it might cause problems later.'

What next?

Remember, you do not have to take responsibility for something that went wrong which was not your fault (for example, a mistake by another member of the team) but it is important to explain what has happened and ensure that the patient knows who to contact if they have further questions. You may also be required to follow a verbal apology with a written one.

Document your apology in the patient's notes. Allow the patient options to how they wish the matter to be managed, such as whether a colleague or specialist opinion is required and ask the patient what outcome they want.

Do contact your indemnity provider to discuss the case for support and advice. The earlier you contact your defence organisation the more helpful they can be in trying to assist in keeping matters at a local level of resolution. **D**



DDU

We understand, because we are you.

We have a dedicated team of dentists and lawyers with expert knowledge of Scots law.

theddu.com/scotland



The dento-legal aspects of using social media

Eric Easson

Dento-legal adviser
at the DDU



Eric Easson explains the importance of avoiding social media pitfalls

Many dentists have embraced social media and it can be said that overall it is having a positive impact on dentistry by, for example, helping them to market their practice or giving patients access to more healthcare information from the profession itself.

However, mistakes on social media, such as an inappropriate comment or photo, are easy to make and can damage your reputation and career.

Avoiding the pitfalls

The DDU has recently launched a new e-learning resource to educate dental professionals on how to use social media ethically and effectively, without experiencing career-damaging pitfalls.

To do this, the resource includes fictional scenarios that are based on common queries

The DDU has recently launched a new e-learning resource to educate members on how to use social media ethically and effectively, without experiencing career-damaging pitfalls

and concerns we receive from members.

Following completion of the course, you will receive a certificate for one hour of verifiable CPD.

Topics covered on the DDU's e-learning resource include:

- Communication with patients and colleagues
- Marketing yourself using social media
- Relevant legal and ethical obligations.

Andrew Chandrapal, former president of the British Academy of Cosmetic Dentistry (BACD) and member of the DDU's Dental Advisory Committee remarks that: 'Professional development is vital for dentists who wish to enjoy a long and rewarding career.'

'The DDU's e-learning course enables dental professionals to promote their practice ethically on social media, understand the reputational risks associated with social media and how to respond appropriately to online complaints.' **D**



DDU

We understand,
because
we are you.

We're led and staffed by dentists with real-life experience of the pressures and challenges faced in practice.

theddu.com

How to contact the DDU

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Website

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