

Legislation for Oral and Maxillofacial Surgery (OMFS) in the UK lags behind the patient care we provide: an illustrative timeline and recommendations for the future

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Abstract

OMFS is the surgical specialty which bridges dentistry and medicine. As the specialty of OMFS emerged from the dental specialty of Oral Surgery during the 1980s the Dentists Act 1984, whose purpose included preventing medical practitioners providing unregulated general dental care, was published. In 2008 the Postgraduate Medical Education and Training Board (PMETB) review of training in OMFS concluded that dual qualification was essential and recommended that OMFS specialists should only be required to register with one regulator, the General Medical Council. For OMFS to continue to provide high quality patient care, and to help the GDC and GMC in their roles regulating our specialty, BAOMS has identified 5 areas for regulatory change: (1) All OMFS specialists should be able to practice the full curriculum of OMFS with only GMC registration if they wish to – this was recommendation 4 of the PMTEB Review of OMFS in 2008. (2) If an OMFS specialist or trainee is registered with both the GMC and GDC. (3) A Memorandum of Understanding between the GMC and GDC should prevent any fitness to practice concerns being processed by both regulators. (4) Dually registered OMFS specialists should be able to indicate that they have had “appraisal of the full scope of practice” to comply with GDC Continuing Professional Development (CPD) regulations. (5) Oral Surgery specialist list should retain Route 11 for OMFS specialists as the Oral Surgery Curriculum is entirely within the OMFS curriculum. Legislative changes may be the best route to deliver these recommendations. Until these changes happen, the GMC, GDC and BAOMS should work together in the best interests of patients.

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Background

The specialty of OMFS has its origins in the dental specialty of oral surgery. In 1984 BAOMS made a commitment that future OMFS trainees would require both medical and den-

tal degrees. The OMFS curriculum¹ has always contained significant elements of surgical dentistry.²

Also in 1984 a new Dentists Act replaced the 1957 Dentists Act, consolidating all the previous changes and Statutory Instruments. Until the 2005 amendment of the 1984 Act, a medical practitioner could legally provide all aspects of dentistry if they wished to, provided they did not call themselves a dentist or dental practitioner. A few doctors were known to be providing general dental care outside the regulation of the General Dental Council (GDC) and so the new 2005

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amendment was aimed at closing a loop-hole which might put patients at risk. The amendment recognised that some medical care may include elements of dentistry, but aimed to allow this by describing a ‘medical task’.

The relevant parts of the Dentists Act as amended in 2005 are quoted:

Dentists Act 1984 Paragraph 37: Definition of practice of dentistry.

(1) Subject to subsection (1A), for the purposes of this Act, the practice of dentistry shall be deemed to include the performance of any such operation and the giving of any such treatment, advice or attendance as is usually performed or given by dentists; and any person who performs any operation or gives any treatment, advice or attendance on or to any person as preparatory to or for the purpose of or in connection with the fitting, insertion or fixing of dentures, artificial teeth or other dental appliances shall be deemed to have practised dentistry within the meaning of this Act.

(1A) For the purposes of this Act, the practice of dentistry shall be deemed not to include the performance of any medical task by a person who—

(a) is qualified to carry out such a task; and

(b) is a member of a profession regulated by a regulatory body (other than the Council) listed in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002.”

Alongside the text of the Act there is also an Explanatory Memorandum which the authors of the Act added to clarify a number of terms within the Act including what a ‘medical task’ could be.

Explanatory Memorandum To The Dentists Act 1984 (Amendment) Order 2005

“Restriction on the Practise of Dentistry: A medical task under new subsection(1A) of section 37 means a task carried out as part of the delivery of clinical care for example assisting in an operating theatre or making a prosthesis”.

In 1995, to comply with European Union legislation, the dual degree medical specialty list of OMFS was created.³ All dually qualified OMFS specialists were registered with both the GDC and the GMC exposing them to the processes of both regulators.

The GDC³ has interpreted the explanatory memorandum as being permissive at times and being restrictive at others. This variation has created difficulties which are summarised in the timeline below.

The GDC (Continuing Professional Development) (Dentists and Dental Care Professionals) Rules Order of Council 2017.⁴

This legislation was drafted when OMFS was fully defined and in its current format as a surgical specialty regulated by the GMC. The requirements are less rigorous than those which govern doctors, who have a mandated annual full practice appraisal including their CPD and five yearly recertification. BAOMS has requested at meetings with the GMC

and in writing that, just as a dentist currently ticks a box on their eGDC portfolio to indicate that they have indemnity cover for their practice, a dentist who is also a doctor could tick a similar box to indicate that their whole practice, including their CPD and their Personal Development Plan (PDP) is appraised annually. The GDC views the legal requirements of this Statutory Instrument to exclude this approach meaning OMFS trainees and specialists who are on the Dentists Register must declare their CPD on the GDC website.

Timeline of Events Related to Dental Registration and the specialty of OMFS.

2008 – Postgraduate Medical Education and Training Board Review of OMFS.⁵

This review of OMFS training was one of the first activities of PMETB when it was created in 2005. One of the recommendations of the report was:

“Recommendation 4: Registration - Those on the specialist register in OMFS need be registered only with the GMC.”

2008 – Doctors working in OMFS department are threatened with prosecution for ‘illegal practice of dentistry’.

Some doctors working in an OMFS unit whilst they were studying for their dental degree were reported to the GDC for ‘illegal practice’ after extracting teeth on a GA operating list. The trainees received letters from the GDC and were suspended from work. The trainees were fully supported by their defence organisation. BAOMS contacted the GMC and GDC and, after some exchanges, the GDC produced a statement³ and BAOMS produced a position statement⁴ on ‘Medical Practitioners working in OMFS departments including extracting teeth’ which was also backed by a letter from the GDC Chief Executive.⁵

These communications supported the status quo and reassured OMFS consultants that they could, if they wished, practice on their medical registration only. In 2008 only 2 OMFS consultants had let their GDC registration lapse. The rapid resolution of this incident was a good example of the GMC, GDC and BAOMS working together in the best interests of our patients.

2011 – Confirmation from GDC that Dentally Registered OMFS Specialists have direct access to the Oral Surgery Specialist List by Route 11.

When the new Oral Surgery Specialist list was created, discussions between BAOMS and the GDC confirmed that OMFS specialists should be able to join the list if they wished to without undue bureaucracy. This process was defined as Route 11.⁶

2012 – OMFS Specialty Advisory Committee (SAC) provide guidance for OMFS trainees regarding their dental registration.

Advises that trainees should maintain their dental registration to join the OMFS specialist list (which requires a registrable dental qualification) if the GDC will not confirm registrability by letter.

2014 – GDC and BAOMS agree that OMFS specialists should be able to practice with medical registration only.

BAOMS and the GDC usually meet once per year. The GDC's notes from the 2014 meeting recorded:

“Update: The GDC will not require joint registration from an individual who is appropriately registered with the GMC and who works as an oral and maxillofacial surgeon, including the practise of dentistry insofar as this forms part of their role within an OMFS hospital department.

A GMC registrant would need GDC registration in order to practise dentistry outside of the maxillofacial/hospital setting and also to supervise the clinical work of undergraduate/non registered dental students or Temporary Registrants.”⁷

During the same meeting the on-going issues about ‘double jeopardy’, where complaints about OMFS specialists who were on both medical and dental registers were processed by both regulators, were discussed. It was planned that a ‘Memorandum of Understanding’ should be agreed between the GDC and GMC.

The notes of this meeting were shared with the membership of BAOMS. For the first time there appeared to be permission from the GDC for those OMFS specialists who practiced solely in OMFS to let their GDC registration lapse.

Not recorded in the GDC notes, but noted by BAOMS, the GDC said it considered OMFS consultants working in a location which looked like (or indeed was) a dental surgery should be on the Dental Register. BAOMS questioned this as OMFS consultants have NHS outreach clinics or private practice in dental surgeries. The GDC has not confirmed this in writing and there has been no test by legal action. The BAOMS view is that if a medical registrant practices within the scope of their specialty curriculum and does not hold themselves out to be a dentist, prosecution for illegal practice of dentistry should not be considered. An anaesthetist administering intravenous sedation (also part of the dental curriculum) in a dental surgery could equally be considered to be undertaking the illegal practice of dentistry.

2014 – GDC Agree to Provide Proforma Letter to confirm registrability of OMFS trainee's qualifications

This letter⁸ was a step toward OMFS specialty trainees no longer requiring to remain on the dental register. Advice from the OMFS SAC remained that trainees should maintain their registration⁹ until the GDC guaranteed to provide the letter for OMFS trainees both at the start and the end of their training.

2014 – GDC announce that from January 2015 the Annual Retention Fee will be £890

An increase from £576 and more than twice the GMC fee. The GMC and GDC fees are compared in Table 1.

2015 – Letter From NE Dental Dean states that GDC had advised that Dental Core Trainees working in OMFS may be at risk of fitness to practice proceedings because they were working beyond their scope of practice.

This letter raised a significant concern as the majority of Dental Core Trainees (DCTs) (previously called Senior House Officers or SHOs) work in OMFS departments. The

Table 1

General Medical Council Fees and General Dental Council Annual Retention Fees with time.

| Year | GMC | GDC |
|------|------|------|
| 2014 | £390 | £576 |
| 2015 | £420 | £890 |
| 2016 | £425 | £890 |
| 2017 | £425 | £890 |
| 2018 | £390 | £890 |
| 2019 | £399 | £890 |
| 2020 | £399 | £680 |

issue which provoked this was thought to be the involvement of DCTs in on-call ‘cross-cover’ with ENT.

BAOMS wrote to the GDC using Freedom of Information (FOI) to see the advice which had provoked this letter. No such advice could be found. BAOMS met the GDC to clarify this issue, highlighting that there were many aspects of the practice of dentists which would not appear to be dentistry to patients and many aspects of OMFS which would overlap with similar ENT problems (airway risk, peri-pharyngeal abscesses).

BAOMS worked with the GDC to draft a position statement which clarified that dentists working in areas of practice supported by their employer would not be at risk of ‘scope of practice’ proceedings.¹⁰ Another good example of BAOMS and the GDC working together in the best interests of patients and dentists.

2016 – Joint BAOMS COPDEND Position Statement on DCTs working in OMFS

Based on the 2015 BAOMS/GDC position statement on dentists working in medical specialties, this draft document supported DCTs working in OMFS.¹¹

2017 – Taylor et al¹² on GMC and GDC proceedings against the dually registered concluded that “double jeopardy” is a genuine entity.¹²

Despite numerous statements that dual registration is unnecessary, and that the GMC should lead regulatory proceedings for dually-qualified surgeons, the GDC continues to investigate OMFS dually-registered doctors over matters that are not related to the practice of dentistry.

2018 – Without notice GDC cease to provide OMFS trainees with letters confirming their qualification is registrable.

This created some difficulties for OMFS trainees who were not on the Dental Register. The OMFS Certificate of Completion of Training (CCT) guidelines require registration or a contemporaneous letter from the GDC confirming registrability.

2018 – BAOMS received notification from a member that his defence organisation questioned if he could undertake dental extraction in a private hospital whilst being only on the medical register.

In response, BAOMS contacted the GDC and asked for a meeting. At a series of meetings the GDC suggest that their previous recommendation may have been wrong and that

Table 2
Specialists and OMFS Specialty trainees and the number registered with GMC only by year.

| Year | Specialists | Specialists GMC only | Trainees | Trainees GMC only |
|------|-------------|----------------------|----------|-------------------|
| 2014 | 389 | 37 (10%) | 150 | 22 (15%) |
| 2015 | 389 | 121 (31%) | 150 | 37 (25%) |
| 2016 | 407 | 151 (37%) | 164 | 91 (55%) |
| 2017 | 410 | 119 (29%) | 145 | 32 (22%) |
| 2018 | 453 | 171 (38%) | 150 | 48 (32%) |
| 2019 | 499 | 221 (44%) | 143 | 48 (34%) |
| 2020 | 480 | 209 (44%) | 151 | 62 (41%) |

OMFS specialists may need to be on the dental register to extract teeth and other procedures which look like dentistry. They based this on the interpretation of the explanatory footnotes describing medical tasks in the context of the Dentists Act.

2019 – BAOMS, with the support of legal opinion, ask for urgent clarification from GDC with clear indication that a judicial review would be sought if an appropriate solution was not found.

There was a series of exchanges of formal communications through legal counsel.

2019 – GDC publishes position statement on its website supporting the status quo in the wording requested by BAOMS.¹³

Dental registration of OMFS Specialists: Do OMFS consultants need to be on the register to practice in the medical specialty of OMFS? December 2019 update: GDC confirms position on dual registration

The GDC is currently reviewing the need for dual registration with the GMC and GDC, including the need for OMFS to maintain GDC registration. Pending the outcome of that review, we are issuing this statement in order to clarify the current position. This statement is not a new position. It simply restates the existing position as set out in 2008 and clarified in 2014. Neither does it indicate or in any way bind the outcome of the full review.

Tasks that constitute the practice of dentistry are in most circumstances only able to be lawfully performed by GDC registrants. There are certain limited circumstances in which a suitably qualified and registered medical practitioner may perform tasks which would otherwise require GDC registration. Those circumstances require the task in question to be performed as an essential part of a necessary medical or surgical procedure. This is in addition to medical tasks that can be undertaken by suitably qualified and registered healthcare professionals to deal with dental emergencies.

Pending its final position, to be announced in due course, the GDC will not require dual registration from an individual who is appropriately qualified and registered GMC and who is working or training as an OMFS, to perform tasks that would otherwise be the practice of dentistry, insofar as those tasks are being undertaken as part of their role within an OMFS setting. In all other circumstances, including the practice of dentistry outside their role as an OMFS and the

Table 3
OMFS surgeons on the Oral Surgery Specialist List each year.

| Year | OMFS on OS list | Left List |
|------|-----------------|-----------|
| 2017 | 161 | |
| 2018 | 154 | 7 |
| 2019 | 135 | 19 |

supervision of registered dental students or temporary registrants, registration with the GDC will be required.

Changing Dental Registration of OMFS specialists and specialty trainees with time

Method

In January 2014 and subsequent years until 2020, the GDC was given the GDC registration numbers of OMFS specialists and trainees from a database of UK OMFS consultants and specialty trainees and asked to compare this list with those dentists who had renewed their dental registration. A similar process was used to compare the OMFS specialist list with the Oral Surgery Specialist List.

Results

The results for trainees and specialists are shown in Table 2 and represented graphically in Figs. 1 and 2.

The total number of dentists on the OS specialist list in 2019 was 724. The number of OMFS specialists on the OS specialist list in 2017, 2018 and 2019 are shown in Table 3 including the number of OMFS specialists joining/leaving the list. It shows the number of OMFS specialists on the list is declining as more let their dental registration lapse. OMFS decline in presence on the OS list shown in Fig. 3 is a combination of reduced new specialists joining and many leaving the list through retirement or dropping their dental registration.

Discussion

Focus first on specialty trainees, the change in the number on the Dental Register between 2016 and 2017 coincided with strong advice from the OMFS SAC. In 2018, BAOMS

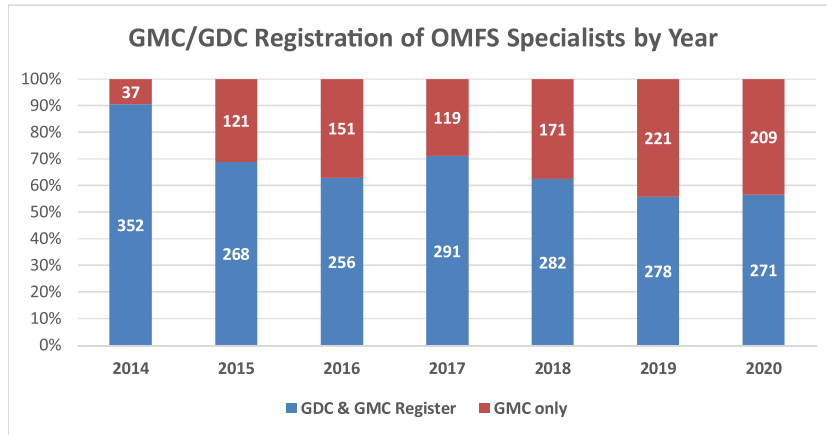


Fig. 1. Changes of GMC and GDC Registration of OMFS specialists with time.

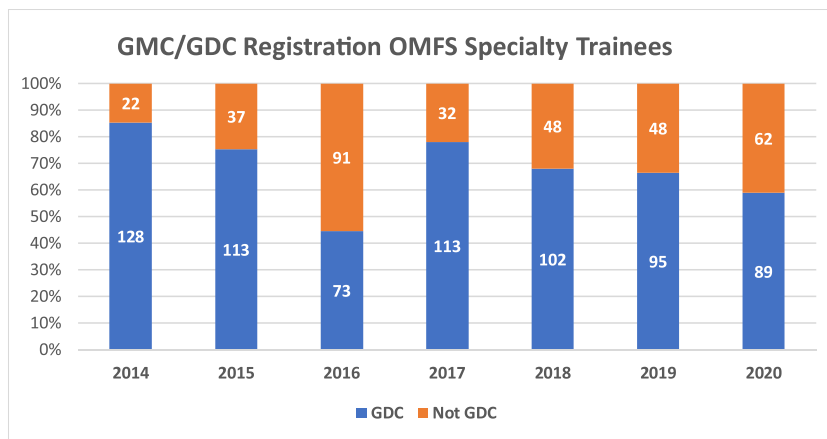


Fig. 2. Changes of GMC and GDC Registration of OMFS specialty trainees with time.

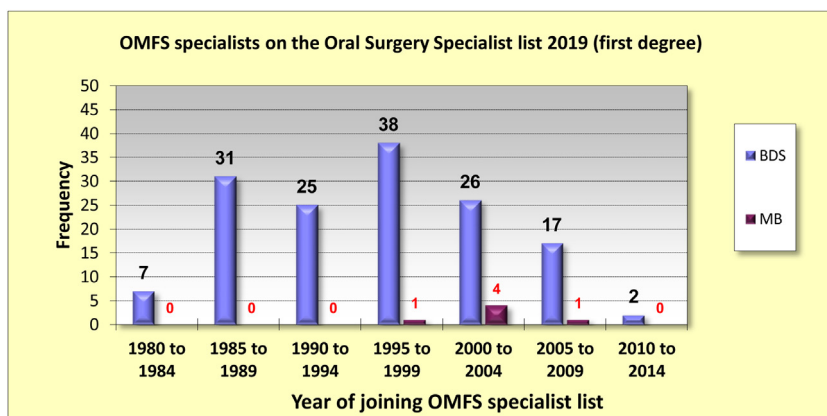


Fig. 3. OMFS specialists on Oral Surgery list by year that specialist completed training.

requested the GDC commit to providing proforma letters regarding the registrability of trainee’s dental qualification for the next 5 years which give security to those who let their dental registration lapse. Following this request the GDC immediately ceased providing the agreed proforma letter. This has caused some difficulty for trainees as either presence on the register or a letter from the

GDC is a requirement on the checklist for completing training.

For OMFS specialists, following the meeting between BAOMS and the GDC in 2014 at which the GDC agreed to Recommendation 4 of the PMETB Review and stated that OMFS surgeons working in hospitals did not need to be on the Dental Register, almost half of OMFS specialists have let

their GDC registration lapse. An initial drift by trainees and specialists became a major exodus in 2015 when the GDC Annual Retention Fee (ARF) increased from £576 to £890, an increase of 55%. In comparison the GMC annual fee for the same two years were £390 and £420 respectively, an 8% increase. Comparing the GDC fee to GMC fee in 2015, the ARF was 212% higher. The trainees were leaving against the advice of the national training committee the OMFS SAC.

The decline in OMFS specialists holding dual registration stopped in 2018 when the GDC changed its approach to those practicing with only medicine registration, stating that their previous advice was wrong. The first indication of this was when an OMFS specialist who was only registered with the GMC received a letter from one of the defence societies suggesting that extracting teeth in a private hospital may be illegal practice of dentistry. When clarification was sought by BAOMS with the GDC, rather than the expected reassurance, the GDC stated that its previous recommendation in 2014 was incorrect and that the Dentists Act¹⁴ was written to be restrictive rather than permissive of ‘medical tasks’. Their new position was that the extraction of teeth could only be undertaken as part of another necessary medical operation. This change was explained in meetings but not formally disclosed.

In response to this, BAOMS consulted Leading Counsel and wrote to the GDC requesting clarification in writing that, as they indicated in 2014, the full practice of OMFS is permitted without dental registration. After an escalating exchange which included the threat of judicial review the GDC published a statement on their website which says “*the GDC will not require dual registration from an individual who is appropriately qualified and registered with the GMC and who is working or training as an OMFS, to perform tasks that would otherwise be the practice of dentistry, insofar as those tasks are being undertaken as part of their role within an OMFS setting*”.¹³

The GDC plans a review of the relationship between GDC, dentistry and medical specialties including OMFS. No timeline for this review has been published, but it is likely that any plans have been interrupted by the COVID pandemic.

Conclusion

The specialty of OMFS bridges medicine and dentistry. The lack of recognition of OMFS in the Dentists Act 1984 and its 2005 Amendment has been exacerbated by the absence of a Memorandum of Understanding between the regulators of dentistry, the GDC, and medicine, the GMC. The PMETB⁵ and GMC¹⁵ reviews of OMFS recognised the patient benefit of OMFS as a dual degree specialty. Legislation and both regulators should support OMFS trainees and specialists to put the previous false dawns and moments of crisis behind us. For the benefit of UK patients, BAOMS has five simple recommendations:

- 1) All OMFS specialists should be able to practice the full curriculum of OMFS in any suitable clinical setting, including a dental surgery, with only GMC registration as per recommendation 4 of the PMTEB Review of OMFS in 2008.
- 2) If an OMFS specialist or trainee is registered with both the GMC and GDC:
- 3) A Memorandum of Understanding between the GMC and GDC should prevent the same fitness to practice case being processed by both regulators. Instead it should indicate when the GMC should take the lead (when it is practice within the OMFS curriculum i.e. a medical task or if there are health/behaviour issues) and when it should be the GDC (dentistry outwith the OMFS curriculum).
- 4) Dually registered OMFS specialists should be able to indicate that they have had “appraisal of the full scope of practice” to comply with GMC regulations. This should satisfy all the requirements of dental registration as it has a record of CPD, indicates a Personal Development Plan (CPD) is present but also reviews performance.
- 5) As the OMFS Curriculum includes the entire Oral Surgery curriculum, the General Dental Council should retain Route 11 for OMFS specialists to have a simple pathway onto the OS specialist list should they wish to join it.²

A clear and trouble-free future, which maintains OMFS as the surgical bridge between the two professions of dentistry and medicine, would be secured by appropriate legislative changes in dental and medical law which recognise the unique nature of the specialty. This would avoid the burden on both regulators, protect patients and support the specialty of OMFS. As other changes of law will be required by Brexit, these modifications should be part of any legislative changes in that process. Even if it is not possible to make legal changes in the immediate future, history¹⁶ has shown that the GDC, GMC and BAOMS can work together constructively in the interests of our patients. We hope that all stakeholders will work together to the benefit of all and especially those needed the care which oral and maxillofacial surgeons can provide.

Conflict of interest

We have no conflicts of interest.

Ethics statement/confirmation of patients’ permission

None needed.

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