



# GREY AREAS NEWSLETTER

A COMMENTARY ON LEGAL ISSUES AFFECTING PROFESSIONAL REGULATION

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## Researching Rapid Remediation

Bernie LeBlanc

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Most regulators use remediation as a tool for addressing competence or conduct concerns. Typically, remediation is negotiated or directed by the regulator at the end of a complaint investigation or at a discipline hearing. This summer the regulator for the oral health professions in the UK released research it commissioned on using remediation early in the complaints and investigations processes to better protect the public.

The report, entitled: [Exploring remediation in Fitness to Practise at the General Dental Council](#), was prepared by eight researchers from four universities. The methodology involved reviewing documents and conducting qualitative interviews with several internal and external participants including from other regulators, registrants, and representatives of registrants. It seems that representative of patients or the general public were not interviewed.

### Benefits of Early Remediation

Remediation was seen as having several benefits:

- “(1) time efficient,
- (2) fair to all parties,
- (3) in alignment with other regulators,
- (4) would instil greater confidence in the GDC from the perspective of registrants, and
- (5) will enable only the most serious cases to go forwards.”

Early remediation was also seen as effectively addressing concerns about competence or conduct before the adversarial process entrenched rigid positions. It was also viewed as a way to reduce mental health and financial stress on registrants.

The data suggested that remediation was appropriate for some, but not all concerns:

There was consensus as to the scope of the issues that could be considered

as remediable. This includes: deficits in clinical skills, knowledge, and communication or record keeping. Issues that are underpinned by either deep seated attitudinal issues or behavioural issues were unanimously deemed out of scope. These included, but were not limited to bullying, racism, misogyny or sexual harrassment [sic].

But even on the latter issues, there was some variation as to whether remediation might be possible in some circumstances.

### **Acceptance by the Public**

However, there was some apprehension that the regulator's oversight body, the Professional Standards Authority (PSA), and patient groups might not be supportive. One participant felt that early remediation might be viewed as a "get out of jail free" card. Some of these comments were cynical and extreme, with one interviewee saying that many complainants wanted "their pound of flesh".

However, some participants did believe that remediation would be accepted by the public.

The researchers noted the court precedents indicating that remediation can be seen as reducing the need for other disciplinary sanctions because the concerns have been addressed, however, the need for public confidence in the profession and the regulator suggests that remediation is not always adequate on its own.

### **Barriers to Effective Remediation**

The acceptability of remediation by registrants was seen to depend on whether it involved an admission of culpability and their degree of trust in the regulator.

In terms of making remediation effective, several points were raised. Different types of remediation (e.g., fostering self-reflection

and insight vs. supervised practice or interactive courses) would have varying degrees of success depending on the circumstances. As an aside, AI could pose a threat to being able to assess the genuineness of self-reflection and insight.

Equity, diversity and inclusion (EDI) considerations are also important. 'Generational differences (e.g., willingness to acknowledge a need to learn), cultural taboos (e.g., in using mental health supports), and first language limitations (e.g., in expressing insight) can have a disproportionate impact on the perceived or actual success of the remediation.

Work settings can also be significant. For example, those working on a locum basis or who are unemployed may not have meaningful opportunities for remediation.

The adversarial nature of the complaints and discipline process creates another barrier to remediation. There is a tendency for registrants and their legal advisors to "not show their cards" before seeing the strength of the regulator's case. This approach is antithetical to early recognition for and acceptance of remediation.

The possibility of collateral consequences (e.g., civil lawsuits, human rights complaints) may also discourage a registrant from agreeing to anything that might be seen as compromising those proceedings.

Terminology was also seen as a barrier and the use of language such as "strengthening practice" or "risk mitigation" was seen as making it easier for registrants to accept "remediation".

### **Making Early Remediation Effective**

The researchers identified the following steps to facilitate early remediation:

1. "The first step in the journey to better remediation is clarifying the concept

itself.” This includes both the language used to describe remediation, its goals, and its mechanisms.

2. Developing remediation tools that “include practical training on identifying deficiencies, applying remediation measures, and monitoring progress....”
3. A cultural change within regulators is necessary to encourage taking the risk of constructive action to address concerns rather than letting the adversarial process unfold.
4. Appropriate training for key decision-makers.
5. Making remediation a standard consideration for screening concerns as they enter the process. The initial assessment would be supported by written policies and guidelines.
6. While the researchers had conflicting feedback, it appeared that legislative changes were probably not necessary to enable the early addressing of concerns without a formal disposition.
7. Rebuilding of trust between the regulator and the profession and their legal representatives.

The researchers suggested an:

... approach may involve structured frameworks for remediation, similar to those used by other regulators.... These frameworks could include specific criteria for identifying deficiencies, targeted interventions, and ongoing monitoring to ensure compliance and improvement. Ideally, they would be shared with key stakeholders, including decision-makers at all points in the [complaints and discipline] process and the registrants themselves, in order to

avoid a ‘hidden curriculum’ in regard to acceptable remediation.

### Limitations to the Study

There are three major limitations to the research behind this report.

The first is that representatives of patients and the general public were not included. This perspective is likely necessary for any changes to the complaints process to succeed.

Secondly, there was minimal discussion of how regulators could evaluate the suitability of a remedial resolution without first conducting some investigation. Regulators must ensure that isolated or minor concerns are not the tip of the iceberg of major issues.

Thirdly, the research does not address public access to the outcome. The authors may have assumed that the remedial outcome would be private in order to encourage participation by registrants. However, the PSA has recently published [guidance](#) that accepted outcomes, which may involve remediation, should be public in some circumstances. More to the point for some Canadian regulators, remedial disposition of complaints must be public in some circumstances: [Welkoff v. Ontario \(Health Professions Appeal Review Board\)](#), 2025 ONSC 4515 (CanLII).

### Conclusion

This research identifies the barriers that prevent early remediation; it also indicates the value of early remediation and provide suggestions for its development. The study is a valuable resource for regulators doing work in this area.

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