



Risky business?

Direct-to-consumer orthodontic care carries a number of risks for patients, and this is creating increasing professional concern among dentists.

The growing popularity of adult orthodontic treatment has resulted in increased activity from companies offering orthodontic services directly to patients in many of the countries where Dental Protection has members.

The restrictions on practice arising from the Covid-19 pandemic, coupled with

patients becoming accustomed to accessing remote healthcare services, may lead to more patients seeing orthodontic treatment through a direct-to-consumer (DTC) approach as an attractive option.

Irish guidance

In the face of increasing professional concerns surrounding DTC orthodontics, the profession has looked to its professional regulators to consider and address the risks that patients may be exposed to. Of the countries in which we have members, the Dental Council of Ireland was one of the first regulators to respond, issuing a statement in 2017¹ providing advice for both patients and dentists. Of significance:

- ▶ the Dental Council stressed that orthodontics is the practice of dentistry and best undertaken under the supervision of a dentist or specialist orthodontist for the duration of the treatment;
- ▶ obtaining an appliance without appropriate examination or ongoing dental support could compromise treatment and possibly dental health; and,
- ▶ dentists working for companies supplying appliances directly to patients still owe the same duty of care to patients as they would if the patients attended their practice, including the need to ensure that:
 - the patient has given full informed consent to the treatment, including information about the benefits and risks;
 - full and proper records are maintained; and,
 - appropriate indemnity or insurance arrangements are in place that include remote provision of dental care.

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UK approach

In May 2021, the UK regulator, the General Dental Council (GDC), provided clarity on its position, reflecting the sentiments of the Dental Council of Ireland's statement but going further to state that it is necessary for a full face-to-face assessment of the patient's oral health to have taken place to ensure that the patient is suitable for orthodontic treatment. In addition, the GDC's guidance states that the patient must know the full name of the dental professional responsible for their treatment, and be able to make contact with that person. The latter point is an issue that has clearly caused patients concern, particularly where treatment is unsuccessful, and there is no obvious way of identifying who is ultimately responsible for the patient's treatment.

Additional clarity from dental regulators about the expected professional standards is welcomed, particularly at this time, when the profession has been exposed to a sea change in healthcare provision, as remote consultation and telehealth are a recognised part of practice. Remote healthcare, and the regulatory and legal framework in which it is provided, are inevitably going to develop and grow. In the interim, dentists continue to ask questions about the safety of remote orthodontic care and their obligations towards their patients.

Acting in the patient's best interests

Central to the dentolegal questions that members pose about DTC services is the risk of harm to patients. Concerns range from a patient not understanding the implications or limitations of treatment, to the risks relating to the treatment itself, such as:

- ▶ progression of pre-existing dental conditions such as periodontal disease or caries;
- ▶ root resorption;
- ▶ exacerbation or development of temporomandibular joint dysfunction; and,
- ▶ adverse tooth movement such as creation of anterior or lateral open bites and changes to occlusion.

Of course, all of the above risks can apply to any course of orthodontic treatment and these types of complications form the basis of some of the claims we deal with. However, the risk of a problem developing, or not being identified at the outset, is likely to be significantly increased if a patient has not had a full clinical examination prior to commencing treatment.

Dental dilemma

The Dental Council's advice that orthodontics is best undertaken under the supervision of a dentist or orthodontist for the duration of the treatment implies that a professional duty rests with clinicians involved in the patient's orthodontic care to ensure that this has taken place.

A question we are often asked is what a clinician should do if they become aware that a patient is, or is contemplating, undergoing treatment provided through a DTC setting. In this situation it would be appropriate to make patients aware of the potential risks of proceeding with a course of treatment in the absence of a face-to-face orthodontic examination taking place.

To assist in communicating the risks, members may find it helpful to direct patients to websites that provide objective information about orthodontic care. The Dental Council's statement and advice for patients may be a starting point in communicating this information. Other sites such as Safe Brace,² a joint initiative developed by the British Orthodontic Society and the Oral Health Foundation, www.orthodontist.ie (the Orthodontic Society of Ireland's site), and www.dentalhealth.ie (the Dental Health Foundation) may also help to educate

patients about orthodontic treatment options and risks from 'DIY' treatment. It is also important to consider that patients may fail to disclose that they are, or have been, undergoing treatment with aligners obtained directly from a DTC provider. This could impact on the assessment of a dental problem or provision of dental care where tooth position may not be stable. This may now become a more common scenario due to patients not attending for routine dental care during the Covid-19 pandemic and having proceeded with DTC orthodontic treatment in the interim. Dentists may therefore wish to consider asking specific questions to elicit whether a patient has had any form of dental treatment, including any 'DIY' approaches, as part of their assessment process.

Access to records

Another question that arises is how to respond to a request from a patient, or DTC orthodontic provider, to supply written confirmation that a patient is fit to proceed with orthodontic treatment. This is in effect asking a dentist to make a decision on whether or not a patient is suitable for treatment that the practitioner themselves will play no part in planning or delivering.

Even if a patient has attended recently for a dental examination, this does not equate to a patient being fit to proceed with a specific course of orthodontic treatment. It is Dental Protection's view that it would not be appropriate for a clinician to comment on whether a patient is fit to proceed with orthodontic treatment where that clinician has no involvement in the clinical assessment, treatment planning or provision of that course of treatment. In this scenario, it would be in the patient's interests to advise that a clinical examination, with an appropriately trained orthodontic clinician, would be required to ensure that all treatment options and specific risks are considered.

However, patients may instead request a copy of their records or provide authority for these to be disclosed to a third party. If the patient has made such a request, and provided a signed form of authority, then the disclosure of information should be dealt with in accordance with data protection legislation. If the records are to be disclosed with a view to dental treatment being provided elsewhere, a courtesy call to the patient confirming receipt of the request would allow a discussion to take place into what treatment the patient is seeking and whether this is in their interests. A clear note of any discussion with the patient regarding what was advised should be recorded in the patient's records.

Finally, as highlighted by the Dental Council, it is important that any clinician involved in the provision of remote healthcare ensures that they have appropriate indemnity arrangements in place, which will help protect them and their patients. For clinicians who are considering moving into this area of practice, it is important that they ensure they are not straying outside of their Code of Practice and professional standards, and speak to their indemnity provider to ensure that they have the appropriate protection in place.

Further advice and support

Dental Protection members affected by the issues outlined in this article can call our dentolegal advice service, which is open to members with urgent queries and dentolegal emergencies 24 hours a day, 365 days a year.

References

1. **Dental Council of Ireland.** Statement on Orthodontic Devices Provided Directly to the Public. 2017. Available from: http://www.dentalcouncil.ie/Orthodontic_Devices.php.
2. See: <https://www.dentalhealth.org/this-is-safe-brace>.