

**Registration Appeals Committee
(CPD Appeal Meeting)****16 September 2024****Name:** MARIAFOLDY, Marcel Ferenc**Registration number:** 102229**Case number:** CAS-207068-W6X2Z

General Dental Council: Jayesh Jotangia, Counsel
Instructed by IHLPS**Registrant:** Present
Represented by Tom Day, Counsel
Instructed by Clyde & Co

Outcome: Appeal dismissed

Committee members: Martin Isherwood (Chair, Dental Care Professional member)
Anjali Patel (Dentist member member)
Richard van Noort (Lay member)**Legal adviser:** Rosemary Rollason**Committee Secretary:** Sara Page

1. This is an appeal hearing before the Registration Appeals Committee (RAC). The appeal is against the decision of the Registrar of the General Dental Council (GDC) to erase you from the Register for apparent non-compliance with the statutory Continuing Professional Development (CPD) requirements. The hearing is being held in accordance with the terms of the *General Dental Council (Registration Appeals) Rules Order of Council 2006* ('the Registration Appeal Rules'), pursuant to Schedule 4A of the *Dentists Act 1984* (as amended) ('the Act').
2. The hearing was conducted remotely via Microsoft Teams in line with current General Dental Council (GDC) practice.
3. You were present at the hearing and represented by Mr Tom Day, Counsel, instructed by Clyde & Co.
4. Mr Jayesh Jotangia, Counsel, appeared as Case Presenter on behalf of the GDC.

Decision and reasons on the appeal

Background and legal framework

5. The General Dental Council (Continuing Professional Development) (Dentists and Dental Care Professionals) Rules 2017 ('the CPD Rules') set out the CPD requirements placed on dentist registrants as of 1 August 2018, and the steps that the GDC shall take in respect of registrants' compliance and non-compliance with those requirements.
6. These Rules came into force on 1 January 2018 and took effect in respect of dentists on the same date.
7. In accordance with Rule 1, a 'CPD cycle' means, in respect of a dentist, a period of five years beginning on 1 January following the date the dentist is first registered and each subsequent period of five years. A 'CPD year' means, in respect of a dentist, a period of 12 months beginning on 1 January in any calendar year.
8. Rule 2(1) of the CPD Rules sets out the minimum number of hours of CPD a practitioner must complete within their CPD cycle.
9. Rule 2(5)(b) of the CPD Rules requires dental care professionals to undertake at least 10 hours of CPD during each period of two consecutive CPD years (including any such two-year period which spans over more than one CPD cycle).
10. Rule 3 provides the requirement that all registrants must maintain a written record of all CPD that the practitioner plans to undertake and has undertaken during the CPD cycle. Rule 3 also sets out what the written record must include.
11. Rule 4 of the CPD Rules states that for each CPD year, a practitioner must submit to the Registrar a statement which confirms the number of hours of CPD undertaken during that corresponding year or, if the practitioner has not undertaken any CPD in that CPD year, confirmation that no CPD has been undertaken. The practitioner must also confirm in this statement that they have kept a CPD record, that the CPD undertaken (where applicable) was relevant to the practitioner's field of practice and declare the information in their statement is full and accurate. This statement must be completed within 28 days of the end of that CPD year.
12. Rules 6 and 7 prescribe various notification requirements under which the Registrar may require a practitioner to, among other things, submit their CPD record and/or provide evidence of their compliance with the CPD requirement.
13. Rule 8 provides that the Registrar "*may erase the practitioner's name*" in circumstances where the practitioner has either failed to comply with a notice sent under Rule 6 or 7, or where the Registrar is

not satisfied from the response provided by the practitioner that they have met the CPD requirement and/or other related obligations under the relevant Rules.

14. In accordance with Rule 9, it is open to the practitioner who has not complied with the CPD requirement as set out in Rule 2 in respect of a CPD cycle, to apply in writing to the Registrar for a further period in which to complete the outstanding CPD in respect of that cycle (a “period of grace”). They must do so before the end of the CPD cycle but no sooner than six months before the end of the cycle.
15. You appealed against the Registrar's decision that your CPD is non-compliant because you failed to provide a compliant CPD record demonstrating that you have met the minimum requirement for the period 1 January 2022 – 31 December 2023.

Summary

16. The GDC's case in support of its decision can be summarised as follows:

Mr Mariafoldy first registered with the General Dental Council (“the Council”) as a dentist, on 14 March 2006. Therefore, in accordance with Rule 1 as set out above, Mr Mariafoldy's current CPD cycle began on 1 January 2022 and will end on 31 December 2026. The CPD period which has been assessed, and the evidence for which has been deemed non-compliant, and which is the subject of this appeal, is Mr Mariafoldy's CPD years for the period 1 January 2022 to 31 December 2023.

Between 26 October 2023 and 10 January 2024, the Council sent numerous reminders to Mr Mariafoldy's by post, email and text. The reminders notified Mr Mariafoldy that his CPD year was coming to an end and reminded him that he was required to submit his CPD statement, detailing how many CPD hours he had completed. Mr Mariafoldy was advised that if he did not submit a compliant statement before the deadline, his registration may be put at risk. Mr Mariafoldy was also sent his Annual Renewal Notice, which is designed to remind registrants that their registration with the Council is due for renewal, of the need to pay their annual retention fee, make their indemnity declaration and, of the need to make their CPD statement.

On 30 December 2023, Mr Mariafoldy submitted an annual CPD statement for the 2023 CPD year, declaring that he had completed six verifiable CPD hours.

Rule 6 Notice

On 26 February 2024, the Council sent a notice under Rule 6 to Mr Mariafoldy by recorded delivery to his registered address. The notice stated that, although Mr Mariafoldy had submitted a CPD statement to the Council, he had not declared enough hours to meet the requirement to complete a minimum of 10 hours of CPD over two consecutive years. It was noted that he had submitted an annual CPD statement of 0 verifiable hours for the 2022 CPD year and an annual CPD statement of 6 verifiable hours for the 2023 CPD year. The notice stated that if Mr Mariafoldy wished to retain his registration, he should submit his CPD record to the Registrar by 25 March 2024 in order to demonstrate that he had met the requirement. Mr Mariafoldy was informed that if the Council did not receive a response to the notice or if his response was unsatisfactory, he may be erased from the register. Mr Mariafoldy was given details of what documentary evidence was required and the contact details of who to contact should he require further explanation.

On 20 March 2024, the Council received a covering letter, dated 18 March 2024, enclosing a number of supporting CPD documents via post from Mr Mariafoldy.

Within the covering letter, Mr Mariaföldy explained that he was aiming to reach the requirement to complete 100 hours within 5 years of his CPD cycle and unfortunately forgot to achieve the requirement to complete a minimum of 10 hours of CPD over two consecutive years. Mr Mariaföldy stated that he understood the importance of keeping up to date with his CPD and apologised for missing the requirements between 1 January 2022 and 31 December 2023.

He stated that in order to achieve the required hours within five years, he completed 46 hours of CPD and enclosed a number of CPD certificates including his personal development plan for the 2022-2026 CPD cycle period.

Rule 8 Notice

On 11 April 2024, the Council sent a Rule 8 notice to Mr Mariaföldy's registered address confirming that Mr Mariaföldy had failed to provide a compliant CPD record demonstrating that he had met the minimum requirement for the period 1 January 2022 to 31 December 2023 and that as a result, the Registrar had made the decision to remove his name from the register for non-compliance with the Rules. It was also noted that Mr Mariaföldy's CPD remained deficient as he failed to provide a completed Activity Log and had submitted CPD certificates which were dated outside of the requested cycle years. Mr Mariaföldy was notified that unless an appeal was submitted, the Registrar's decision would take effect on 14 May 2024.

Appeal

On 9 May 2024, the Council received a Notice of Appeal ('NOA') via email, from Mr Mariaföldy's instructing solicitors, which confirmed that he wished to appeal against the Registrar's decision to remove his name from the dental register.

Within the NOA, it was stated that Mr Mariaföldy accepted that he had failed to meet the CPD requirements for the period 1 January 2022 to 31 December 2023 and he apologised "unreservedly for his failure to comply". It was noted that Mr Mariaföldy had never come to the attention of the Council before and there are no past or ongoing fitness to practice concerns. It was stated that the only "blemish on his otherwise successful career" was a shortfall of "only three hours". Mr Mariaföldy's representatives set out the reasons, in their submission, mitigation, and timing of those reasons, that resulted in Mr Mariaföldy's non-compliance with the CPD requirements. Those circumstances were as follows: -

- In 2022, Mr Mariaföldy decided to retire from his practice and advertised for an associate dentist position on recruitment website Indeed, but received no interest for the position.*
- As such, Mr Mariaföldy continued working as a single practitioner serving approximately 6,000 NHS patients, despite his intentions were to retire from dentistry.*
- Ultimately, as Mr Mariaföldy was unable to find an associate dentist, he took the decision to continue practicing in order to not place his patients at any disadvantage by closing the Practice.*
- As a result, Mr Mariaföldy lost sight of the requirement to complete 10 hours of CPD over each two consecutive years.*

It is submitted that it would not be in the public interest for Mr Mariafoldy's name to be removed from the register as it would deprive approximately 6,000 patients of his services. This would adversely affect a large number of NHS patients, being without a dentist for a considerable period.

It is also submitted that Mr Mariafoldy has taken steps to rectify the shortfall and has enclosed a copy of his CPD log confirming that he completed an additional 40 CPD hours which brings him to a total of 100 hours across the five-year CPD cycle period.

Within Mr Mariafoldy's NOA, it was explained that Mr Mariafoldy had an arrangement with a local dentist which allowed him to take short periods of annual leave, however, it would not be reasonable or practical for this colleague to take on Mr Mariafoldy's full patient list while he applied for restoration to the Register.

Mr Mariafoldy's has a waiting list of two to three months for new patients and therefore, if he was unable to practice, his patients will inevitably struggle to find any continuity of dental care.

On the basis of the submissions set out above, Mr Mariafoldy's representatives urge the Registrar to take a pragmatic and proportionate approach in this matter and exercise discretion with respect to erasing Mr Mariafoldy's name from the register.

On 15 May 2024, Mr Mariafoldy's CPD evidence, evidence accompanying his NOA, was assessed by a Senior Operations Officer. Mr Mariafoldy was deemed to be non-compliant with his CPD requirements on the basis that he had three verifiable CPD hours outstanding for the period 1 January 2022 to 31 December 2023. It was noted that the CPD certificates provided by Mr Mariafoldy in support of his appeal were for courses completed outside of the relevant period and therefore, they could not be counted for the purpose of the assessment. It was confirmed that, as of 15 May 2024, Mr Mariafoldy had completed 7 verifiable CPD hours between 1 January 2022 and 31 December 2023.

Submissions

17. Mr Jotangia, on behalf of the GDC, submitted that you have failed to provide a compliant CPD record demonstrating that you had met the minimum requirement for the period 1 January 2022 to 31 December 2023. He submitted that you have submitted seven hours of CPD for the relevant period, leaving a deficit of three hours.
18. Mr Day, on your behalf, referred the Committee to your NOA. He confirmed that you accepted you have a shortfall of three hours for the relevant period. He stated that you are an individual that is competent and effective, who has developed your professional learning, with no issues in your past with the GDC. He stated that you are an effective and longstanding member of the dental profession who made a small mistake in that you did not perform the ten hours of CPD in a two-year period. As to why the Committee should exercise its discretion to erase you over that mistake, Mr Day submitted that there is nothing in the GDC's submissions for why that should be exercised. He stated that it seemed to be that where anyone makes this mistake, they are to be erased. In this regard, he asked the Committee to consider why and to look at the overarching objective, including public interest.
19. Mr Day confirmed that you have performed all the CPD hours required now, that you are entirely up to date at this point. He submitted that if you were to be erased, it was likely you would be readmitted upon application but there would be a period of time where you would not be on the Register. In this regard, he asked the Committee to consider the impact upon you, and more importantly the impact on your patients. Mr Day stated that you own and run your practice as a single-handed practitioner who serves some 6000 patients, which he submitted is substantially more than the national average. He told

the Committee that you have searched for an associate dentist to serve your function whilst you are off the Register but received no applications at all. The effect of the decision sought by the GDC would be that some 6000 patients would not have access to dental care for a period of time whilst you seek to reapply to the register. Removal from the Register would be on the basis that you completed seven hours rather than ten hours of CPD in a two-year period, with no submissions from the GDC to say why that would be a proportionate outcome.

20. Mr Day referred the Committee to the GDC document, *'Guidance on the Registrar's Discretion to Erase for CPD Non-Compliance'*, in particular paragraph 18. He submitted that paragraph 18 sets out a series of factors for the Registrar's assessment including factors that it considers not to be relevant. On this matter, Mr Day submitted that the guidance is wrong in law as, if one were to follow the wording of paragraph 18, the guidance is so restrictive that that there is no discretion at all. He submitted that each one of the factors in paragraph 18 must be added together to assess all of the circumstances to determine whether erasure is proportionate. Mr Day submitted that upholding the decision to erase would be disproportionate in the circumstances. Mr Day stated that this is a case where the public confidence would not be undermined at all should the Committee allow your appeal and retain your registration.

Committee's decision

21. The Committee had regard to the documentary evidence provided today and took account of the submissions made by Mr Jotangia on behalf of the GDC and those made by Mr Day on your behalf. It heard and accepted the advice of the Legal Adviser.
22. The Committee noted that you have acknowledged your shortfall of three hours for the period 2022 - 2023 and that this did not appear to be as a result of a lack of respect for the Rules or being unable to comply with them. The Committee bore in mind that you have since maintained your CPD requirements and your CPD is currently up to date.
23. However, the Committee was satisfied that you ought to have been aware of your responsibility to complete ten hours of CPD over a two-year period and, despite being reminded on at least five occasions of those requirements, including an extension to submit your evidence by 25 March 2024, did not do so. In your letter to the GDC, dated 18 March 2024, you stated that you were sorry that you missed the requirements and that you *"must have overlooked"* them as you were planning your retirement but due to being unable to recruit an associate, you decided to continue practising.
24. The Committee considered the impact on your patients should you be removed from the Register. It noted your assertion that you were focused on employing an associate dentist to take over the practice during your retirement at the relevant time and that you failed to focus on the completion of your CPD hours. The Committee did not consider this to be compelling evidence of circumstances that are so exceptional that you were prevented from completing the required hours.
25. All registrants have a duty to comply with the CPD requirements in order to maintain public safety and uphold public confidence in the dental profession.
26. The Committee is aware that, at this stage of the process, it has the discretion to allow or dismiss the appeal in accordance with paragraph 4(8) of Schedule 2A of the Act. The Committee has exercised this discretion, taking into account the overarching objective of the GDC and the circumstances of your case. The Committee acknowledged Mr Day's position that to remove you from the Register would negatively impact on some 6000 patients, but in the circumstances of this case, your explanation for not having completed the required CPD hours was not exceptional. Balancing the overarching objectives against your interests, the Committee was satisfied that the importance of compliance with statutory CPD requirements outweighed your interests in the circumstances of this case.

27. Therefore, in order to promote and maintain proper professional standards and conduct for members of the dental professions, your appeal is dismissed. The Committee wished to remind you that it is open to you to apply for the restoration of your name to the Register.
28. This will be confirmed to you in writing.
29. That concludes this determination.