

**HEARING HEARD IN PUBLIC**

**HUTCHINSON, Richard Paul**

**Registration No: 162227**

**PROFESSIONAL CONDUCT COMMITTEE**

**FEBRUARY 2016- March 2018\***

**Most recent outcome: Suspended indefinitely**

\*See page 14 for latest determination

Richard Paul HUTCHINSON, a dental technician, Qual- National Diploma in Science (DT) BTEC 1994, was summoned to appear before the Professional Conduct Committee on 22 February 2016 for an inquiry into the following charge:

**Charge (as amended on 22 February 2016)**

“That being registered as a dental technician, Mr Richard Paul Hutchinson's (16227) fitness to practise is impaired by reason of misconduct. In that:

1. During a telephone conversation on or about 24 November 2014 you offered to provide work which was outside your scope of practice, in that you offered to provide a denture or dentures to a person you believed to be a prospective patient in the absence of an appropriate prescription;
2. During a telephone conversation on or about 2 February 2015 you offered to provide work which was outside your scope of practice, in particular;
  - a) To take impressions of the mouth of a person you believed to be a prospective patient;
  - b) To do a bite test in the mouth of a person you believed to be a prospective patient;
  - c) To use a wax try-in or similar item in the mouth of a person you believed to be a prospective patient;
  - d) To manufacture a denture or dentures in the absence of an appropriate prescription for a person you believed to be a prospective patient;
  - e) To fit a denture or dentures in the mouth of a person you believed to be a prospective patient.
3. Your actions set out at paragraphs 1 and 2 above were misleading;
4. Your actions set out at paragraphs 1 and 2 above were dishonest, in that;
  - a) You knew that the work you offered to do was beyond your scope of practice;
  - b) You intended that the other party to the telephone conversation would believe that you were entitled to carry out the work you offered to do.”

Mr Hutchinson was not present and was not represented. On 23 February 2016 the Chairman announced the findings of fact to the Counsel for the GDC:

**“Service of Notification of Hearing:**

Mr Hutchinson was neither present nor represented at this hearing. In his absence, the Committee first considered whether notice of this hearing had been served in accordance with Rules 13 and 65 of the *General Dental Council (Fitness to Practise) Rules Order of Council 2006* (‘the Rules’).

The Committee received a copy of the Notification of Hearing, dated 21 January 2016, which was sent to Mr Hutchinson by way of first class post and special delivery. The Committee had sight of a Royal Mail Track and Trace receipt dated 22 January 2016 signed in the name ‘Hutchinson’. The Committee was satisfied this receipt corresponded to the Notification of Hearing sent on 21 January 2016.

The Committee was satisfied that the notice of this hearing was served on Mr Hutchinson in accordance with the Rules.

**Proceeding in absence**

The Committee then considered proceeding in the absence of Mr Hutchinson in accordance with Rule 54 of the Rules. The Committee had regard to the submissions made by Mr Micklewright and the advice of the Legal Adviser.

The Committee was mindful that this discretion must be exercised with the utmost care and caution, and bore in mind the criteria approved by the House of Lords in the case of *R. v Jones (Anthony William), (No.2) [2002] UKHL 5*. These included all the circumstances of Mr Hutchinson’s absence, the nature of the case against him and the extent of the disadvantage to Mr Hutchinson of proceeding in his absence. The Committee considered its responsibilities for public protection, the expeditious disposal of the case and Mr Hutchinson’s right to attend the hearing.

The Committee noted Mr Hutchinson’s letter dated 15 January 2016 in which he states he will not be attending the hearing as he cannot afford to travel to London and that “*as the call was not recorded [he is]....unable to prove otherwise*”. The Committee was not persuaded that these explanations provided any basis for his non-attendance and was satisfied in the circumstances that he has voluntarily waived his right to attend. Further, the Committee noted that no application for an adjournment has been made and in any event did not consider that an adjournment would increase the likelihood of Mr Hutchinson attending.

The Committee was aware that the charges in this case are serious. It further noted that witnesses had attended the hearing in anticipation of giving evidence for the GDC. The Committee considered there was a public interest in considering these matters within a reasonable period of time. Having weighed the interests of Mr Hutchinson with those of the GDC and the public interest in an expeditious disposal of this hearing, the Committee determined that it is in the interests of justice to proceed in Mr Hutchinson’s absence.

**Preliminary matters**

Mr Micklewright made an application pursuant to Rule 18 of the Rules to amend the wording of head of charge 1. The amendment sought is to amend the date particularised from ‘24 November 2015’ to ‘24 November 2014’.

The Committee noted that Mr Hutchinson has not had notice of the proposed amendment. However, the Committee accepted that the evidence served on Mr Hutchinson referred to the alleged incident as occurring on 24 November 2014. The Committee accepted the date of 24 November 2015 is a typographical error and that Mr Hutchinson has been put on notice that the date it is alleged the conversation took place is 24 November 2014.

The Committee accepted the advice of the Legal Adviser in respect of amending the charges. It was satisfied there would be no prejudice to Mr Hutchinson in allowing the amendment. It acceded to the GDC application to amend the date contained in head of charge 1 to 24 November 2014.

### **Background**

The allegations before the Committee relate to two conversations alleged to have occurred on 24 November 2014 and 2 February 2015 between the Registrant and Mr Pierre Turner, an investigator with Invicta Investigation Limited. It is alleged that during these conversations Mr Hutchinson offered to provide work that was outside his scope of practice as a Dental Technician. It is alleged his actions in doing so were misleading and dishonest. Mr Hutchinson denied offering to work outside his scope of practice, and maintained that the telephone conversations with Mr Turner were with his son and without his knowledge.

### **Application in relation to Ms Woledge's evidence**

In the course of the hearing the GDC called Ms Deborah Woledge as a witness. Ms Woledge is an investigator with Invicta Investigation Limited. During the course of giving oral evidence it became apparent that the exhibits attached to Ms Woledge's witness statement were not the correct exhibits, and were in fact the exhibits of Mr Turner (the other investigator and first witness called before the Committee). The correct exhibits were located, and consisted of handwritten 'trigger notes', diary inserts and a summary of internet research undertaken by Ms Woledge.

Mr Micklewright confirmed that Mr Hutchinson had not been served with these documents by reason of an error by his firm. He submitted that the exhibits had some relevance to the issues but did not assist Mr Hutchinson's case that he had not made the telephone calls and did not undermine the GDC's case. He contended therefore that it was not necessary to adjourn the case for Mr Hutchinson to see the exhibits. He submitted that the appropriate course was for the GDC not to rely upon Ms Woledge's evidence in its entirety.

The Committee accepted the advice of the Legal Adviser.

The Committee bore in mind that this problem has resulted from an omission made by the GDC and that its overriding concern was to ensure a fair hearing. The Committee considered whether an adjournment was necessary to serve the documents on Mr Hutchinson. It noted the 'trigger notes' and diary inserts relate to the first telephone conversation on 2 February 2015 and that they do not directly relate to any allegations in the heads of charge, but are part of the chain of events. In respect of the internet exhibit, this also does not directly relate any allegation in the heads of charge. Further, similar but not identical documentation has been produced by Mr Turner which was sent to Mr Hutchinson. In addition, Mr Turner's investigation report details all the websites referred to by Ms Woledge. This has also been sent to Mr Hutchinson and he has had the opportunity to respond to this. The Committee also noted Mr Hutchinson's comments in his letter of 15 January 2016, in which he stated that the advertising was generic and beyond his control. Overall, the Committee was satisfied that Ms Woledge's evidence and exhibits have only

peripheral relevance to the issues it has to determine. Further, it was satisfied that the evidence in the exhibits does not assist Mr Hutchinson's stated defence and does not undermine the GDC's case. Given that conclusion, the Committee was satisfied that an adjournment for Mr Hutchinson to consider Ms Woledge's exhibits and to make representations on them, was not necessary in order to ensure Mr Hutchinson has a fair hearing.

The Committee noted that the GDC had indicated that if the Committee did not think an adjournment was necessary, then it would not seek to rely on Ms Woledge's evidence. The Committee could only see Ms Woledge's evidence as being relevant to corroborate Mr Turner's account of the first phone call on 2 February 2015. The Committee accepted that any unfairness in Mr Hutchinson not having received her exhibits could properly be cured by the GDC not relying on this evidence. It therefore approved this course and directed itself to ignore Ms Woledge's evidence entirely.

### **Findings of fact**

The Committee had regard to the submissions made by Mr Micklewright on behalf of the GDC. The Committee accepted the advice of the Legal Adviser.

The Committee considered each head of charge separately, bearing in mind that the burden of proof rests with the GDC and that the standard of proof is the civil standard, namely the balance of probabilities. This means that the facts of a charge will only be proved if the Committee finds that it is more likely than not that the matters alleged are true. The Committee reminded itself that Mr Hutchinson was not required to prove or disprove anything. The Committee also put Mr Hutchinson's good character into the balance in his favour.

The Committee took into account all the evidence presented to it. This included the written representations of Mr Hutchinson provided to the Investigating Committee on 18 April 2015 at a preliminary stage of these fitness to practise proceedings. It also included further representations of Mr Hutchinson submitted on 15 January 2016 for the purposes of this hearing.

The Committee received a written statement and heard oral evidence from Mr Turner. Mr Turner was instructed by the GDC to complete an under guise enquiry into Mr Hutchinson's practice. He provided evidence in relation to two telephone conversations he states he had with Mr Hutchinson on 24 November 2014 and 2 February 2015. During these conversations Mr Turner posed as the son-in-law of an elderly patient who required replacement dentures. Mr Turner gave oral evidence in relation to his notetaking processes to demonstrate to the Committee how he compiled an accurate account of the representations made by Mr Hutchinson during the alleged conversations.

I will now announce the Committee's findings in relation to each head of charge:

1.	<p><i>During a telephone conversation on or about 24 November 2014 you offered to provide work which was outside your scope of practice, in that you offered to provide a denture or dentures to a person you believed to be a prospective patient in the absence of an appropriate prescription;</i></p> <p><b>Found Proved</b></p> <p>The Committee considered Mr Turner's evidence in relation to the conversation on 24 November 2014. Mr Turner described to the Committee</p>
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his notetaking process, which he stated involved taking 'jot notes' contemporaneously during the telephone conversation of key salient points. Immediately following the conversation he made an 'attendance note' record containing the detail of the conversation. These notes and Mr Turner's recollection then formed the basis of his witness statement and oral evidence. The Committee considered this system would have resulted in an accurate account of what is likely to have been said. Whilst the Committee accepted it is not a verbatim account of the exact words spoken during the conversation, the Committee is satisfied on the balance of probabilities Mr Turner's evidence accurately reflects the representations made during the conversation.

The Committee accepted the conversation therefore took place and that the representations set out in Mr Turner's evidence were made. The Committee next considered the defence offered by Mr Hutchinson in his written statements to the GDC dated 18 April 2015 and 15 January 2016 that it was his son who had these conversations with Mr Turner. He states "*I was only aware of these conversations after receiving this letter*". The Committee was satisfied that Mr Hutchinson has denied that he would offer to perform work outside the scope of his practice and that in respect of both telephone calls (24 November 2014 and 2 February 2015).

Having carefully considered the note of the 24 November 2014 telephone call, which it had determined was accurate, as well as its tone and content, the Committee rejected Mr Hutchinson's assertions as not credible. It was satisfied that it was Mr Richard Hutchinson who spoke to Mr Turner. The Committee considered it significant that Mr Turner called the number advertised by Mr Hutchinson as his laboratory telephone. He left a voicemail and immediately received a return call from a mobile telephone associated with Mr Richard Hutchinson in his advertising. During this conversation the caller identified themselves as 'Richard Hutchinson' and also made reference to working at 'Carisbrooke' and 'Alderhey Children's Hospital', which is consistent with Mr Hutchinson's employment information.

The Committee also noted that Mr Richard Hutchinson's son was contacted by the GDC and was recorded as confirming his father's account. The GDC then sought a witness statement from the son but despite several attempts no witness statement was forthcoming. In these circumstances the Committee placed no weight on the reported unsworn untested assertion from Mr Hutchinson's son. On the balance of probabilities the Committee was satisfied the person who participated in the telephone conversation on 24 November 2014 was Mr Richard Hutchinson.

The Committee had regard to the GDC's *Scope of Practice* (30 September 2013) which provides that Dental Technicians (DTs) "*make dental devices to a prescription from a dentist or clinical dental technician*". It states that "*Dental technicians **do not** work independently in the clinic to: perform clinical procedures related to providing removable dental appliances*" and "*fit removable appliances*".

The Committee next considered the representations made by Mr Hutchinson during this conversation. In response to the question "*do you*

	<p><i>make the teeth there” he answers “Yes, it’s £450 for a full set”, and further states “Yes I can go to his house and do it all there”. The Committee drew a reasonable inference that in the context of the conversation Mr Hutchinson was offering to provide a denture in the absence of an appropriate prescription. There is no mention by Mr Hutchinson of the prospective patient requiring a prescription before Mr Hutchinson could provide the laboratory stages of denture manufacture. The Committee was satisfied that this was outside his scope of practice.</i></p> <p>Accordingly, for the reasons set out above, the Committee found this head of charge proved.</p>
2.a) – e)	<p><i>During a telephone conversation on or about 2 February 2015 you offered to provide work which was outside your scope of practice, in particular;</i></p> <ul style="list-style-type: none"> <li><i>f) To take impressions of the mouth of a person you believed to be a prospective patient;</i></li> <li><i>g) To do a bite test in the mouth of a person you believed to be a prospective patient;</i></li> <li><i>h) To use a wax try-in or similar item in the mouth of a person you believed to be a prospective patient;</i></li> <li><i>i) To manufacture a denture or dentures in the absence of an appropriate prescription for a person you believed to be a prospective patient;</i></li> <li><i>j) To fit a denture or dentures in the mouth of a person you believed to be a prospective patient.</i></li> </ul> <p><b>Found Proved</b></p> <p>The Committee again considered Mr Hutchinson’s representation that the conversation Mr Turner had, was with his son. The Committee noted Mr Turner’s first conversation on 2 February 2015 was with a female who indicated when asked whether ‘Mr Hutchinson’ was available that he was working at Barnsley. This is consistent with Mr Hutchinson’s account of his employment history. The receiver of this call was identified as Mrs Hutchinson and told Mr Turner that Mr Hutchinson would get in “<i>normally about 7pm</i>” and would call that evening “<i>when he gets in</i>”. Mr Turner received a telephone call at 7pm from an individual who identified themselves as “<i>Richard, the Dental Technician</i>” and referenced the previous conversation had with Mr Turner by stating “<i>Yes I remember. You’re from down South</i>”. The Committee considered this is consistent with an inference that the caller is the same person on both telephone conversations, and given the particular knowledge of the caller, that the caller is Mr Richard Hutchinson. The Committee was satisfied this conversation occurred between Mr Turner and Mr Richard Hutchinson.</p> <p>The Committee accepted that Mr Turner’s evidence is an accurate account of the representations made by Mr Hutchinson during this conversation for the reasons set out in relation to head of charge 1.</p> <p>The Committee next considered whether the statements as particularised</p>



	<p>were outside Mr Hutchinson's scope of practice.</p> <p>Mr Hutchinson is reported by Mr Turner in the telephone call as stating <i>"I will go and see him and have a look and discuss it with him. If we decide he should have a new set I do an impression....Then I'll have to take his denture from him to make a copy, I can get him to bite on some silicone and that fills parts that are missing. I do an alginate impression where he bites on a tray in his mouth....I would also take an impression of the bottom so I can see where the teeth are going. Then I would do a bite. The next time a try with the teeth in wax and check them out a couple of days later."</i> The Committee was satisfied that Mr Richard Hutchinson made the offers particularised in 2a) – c).</p> <p>The Committee considered the conversation in its entirety, and was satisfied that Mr Hutchinson offered to manufacture a denture for a person he believed to be a prospective patient without a prescription, and to fit that denture in the prospective patient's mouth. In particular Mr Turner asks whether the patient needs to see a dentist and Mr Hutchinson replies <i>"That doesn't matter if he's got a full full"</i>, explaining that this means if he has no teeth he does not need to see a dentist. He also states the patient can come to his house to have the denture fitted. The Committee was satisfied that Mr Richard Hutchinson made the representations particularised in 2d) – 2e).</p> <p>The Committee had regard to the <i>Scope of Practice</i> for Dental Technicians. It was satisfied that the work offered was outside this scope of practice.</p> <p>Accordingly, it found head of charge 2 proved in its entirety.</p>
3.	<p><i>Your actions set out at paragraphs 1 and 2 above were misleading;</i></p> <p><b>Found Proved</b></p> <p>The Committee noted it had found proved that Mr Hutchinson had made a number of representations to an individual he considered to be the son-in-law of a prospective patient that he could undertake work which was outside of his scope of practice. The Committee considered his actions were misleading, as an individual to whom these representations were made would consider that Mr Hutchinson was entitled to undertake this work when, in fact, it was not within his scope of practice. This was an implied representation that he was entitled to provide this work. The Committee was satisfied this was misleading.</p>
4. a) – b)	<p><i>Your actions set out at paragraphs 1 and 2 above were dishonest, in that;</i></p> <p style="padding-left: 40px;"><i>a) You knew that the work you offered to do was beyond your scope of practice;</i></p> <p style="padding-left: 40px;"><i>b) You intended that the other party to the telephone conversation would believe that you were entitled to carry out the work you offered to do.</i></p> <p><b>Found Proved</b></p> <p>The Committee had regard to the representations made by Mr Richard Hutchinson. In his letter dated 15 April 2015 he puts forward the defence</p>

that it was his son who had this conversation, and that “*I have explained to him [his son and fiancée] that this is not something we could offer*”. He further refers to being aware of his “*scope of practice*”. The Committee could reasonably draw the inference that Mr Hutchinson knew there was a Scope of Practice document which applied to his work as a Dental Technician, and was further aware that the proposed treatment as particularised by the GDC would be outside that scope of practice. As the Committee found above that it was Mr Hutchinson who made the relevant representations to Mr Turner, it was satisfied in so doing he knew that the work he offered was beyond his scope of practice as particularised in allegation 4a.

The Committee considered the context and content of the two conversations and was satisfied that they demonstrate that Mr Hutchinson believed he was talking to the son-in-law of a prospective patient. He clearly outlined a course of action which would result in the prospective patient receiving a set of dentures. He further made representations that the prospective patient would not need to see a dentist, as he could undertake the requested work. The Committee was satisfied on the balance of probabilities Mr Hutchinson intended that the other party to the telephone conversation would believe he was entitled to carry out the work he offered to do.

The Committee next considered whether Mr Hutchinson’s actions, as particularised were dishonest. The Committee was referred to the case of *R v Ghosh [1982] Q.B. 1053*, as adapted for the civil standard of proof, in relation to dishonesty and the two part test which it must apply when reaching its decision on this charge. First is the objective test; whether according to the ordinary standards of a reasonable and honest person what was done by Mr Hutchinson was dishonest. If it was dishonest by those standards then secondly, the subjective test should be applied and the Committee had to consider whether Mr Hutchinson realised that what he was doing was, by those standards, dishonest, on the balance of probabilities.

The Committee was satisfied that a reasonable and honest person would consider that a registered dental technician offering to do work outside of their scope of practice, with the knowledge they were so acting and with the intention of inducing another to believe they were entitled to do that work, would be acting dishonestly.

Further, the Committee was satisfied that Mr Hutchinson did indeed appreciate that acting as he did would be considered dishonest by the standards of reasonable and honest people. The Committee had regard to the fact that Mr Hutchinson has worked as a Dental Technician for a long period and that the *Scope of Practice* is a document fundamental to his work. In his letters of defence he mentions knowledge of his scope of practice as a Dental Technician, and his desire to train as a Clinical Dental Technician. In considering all the evidence the Committee was satisfied that Mr Hutchinson was aware he was offering to work outside his scope of practice, and that he must have known that this was dishonest.

We move to Stage Two.”



On 24 February 2016 the Chairman announced the determination as follows:

“The Committee has considered all the evidence presented to it. The Committee heard submissions from Mr Micklewright on behalf of the General Dental Council (GDC). It accepted the advice of the Legal Adviser.

### **Misconduct**

The Committee first considered whether the facts found proved amount to misconduct. In considering this matter the Committee exercised its own independent judgement. In reaching its decision the Committee considered the following paragraphs of the GDC's *Standards for the Dental Team* dated September 2013 ('Standards') were relevant:

*1.3 You must be honest and act with integrity*

*1.7 You must put patients' interests before your own or those of any colleague, business or organisation*

*9.1 Ensure that your conduct, both at work and in your personal life, justifies patients' trust in you and the public's trust in the dental profession*

The Committee was of the view that Mr Hutchinson's actions breached these standards. The Committee noted that Mr Hutchinson's conduct involved knowingly and deliberately offering to work outside his scope of practice in return for financial reward. This included offering to undertake clinical procedures and offering to provide a denture without the prescription of a dentist.

The Committee noted in acting outside scope of practice a dental professional would be undertaking work which they may not have the education and training to perform. This necessarily involves a risk to patients, and is a serious departure from acceptable standards.

The Committee found that Mr Hutchinson's conduct was misleading and dishonest, in that he knew he was not entitled to carry out the work he offered to do. The Committee noted that honesty and integrity are fundamental tenets of the dental profession. Mr Hutchinson's conduct represented a serious and significant departure from the standards expected of a registered dental care professional.

The Committee was satisfied that the facts found proved amounted to misconduct.

### **Impairment**

The Committee next considered whether Mr Hutchinson's fitness to practise is currently impaired by reason of his misconduct. In doing so, it has exercised its own independent judgement. It has borne in mind the public interest, which includes the protection of patients, the maintenance of public confidence in the profession and the declaring and upholding of proper standards of conduct and behaviour.

The Committee noted that offering to undertake work outside his scope of practice, and acting in a way that is misleading and dishonest, is serious and highly likely to damage public confidence in the profession. In particular, the Committee noted that Mr Hutchinson's dishonesty in this case involved knowingly offering to undertake work which he was not entitled to undertake, and in doing so sought to avoid regulations that are in place for the purpose of protecting patients. Mr Hutchinson then attempted to disguise the extent of his conduct from his regulator by stating it was his son who had been the maker of the representations.

The Committee was of the view that dishonesty is not easily remediable. There was no evidence before the Committee of insight into the allegations which have been found proved or of remediation. The Committee considered that should Mr Hutchinson return to immediate practice, there remained a real risk of repetition of the Registrant offering to work outside his scope of practice.

The Committee has borne in mind that it must also take into account the wider public interest, which includes maintaining confidence in the dental profession and the GDC as its regulator, and upholding proper standards and behaviour. The misconduct identified in this case was, in the view of the Committee, so serious that the need to uphold proper professional standards and public confidence in the profession would be significantly undermined if a finding of impairment were not made in the particular circumstances of this case. The Committee concluded that Mr Hutchinson's dishonesty had brought the profession into disrepute and breached fundamental tenets of the profession. Having regard to all of this the Committee has concluded that Mr Hutchinson's fitness to practise is currently impaired by reason of his misconduct.

### **Sanction**

The Committee then determined what sanction, if any, would be appropriate in light of the findings that it has made. The Committee recognises that the purpose of a sanction is not to be punitive, although it may have a punitive effect, but is concerned with protecting the public and the public interest. The Committee applied the principle of proportionality, balancing the public interest with Mr Hutchinson's own interests. In its deliberations the Committee has had regard to the GDC's *Guidance for the Practice Committees, including Indicative Sanctions Guidance* (October 2015).

The Committee noted the mitigating and aggravating circumstances in this case. It considered the mitigating factors to be that before this hearing Mr Hutchinson was of good character and had been a dental technician for over 20 years with no previous complaints. There was no actual harm to any patients as a result of this conduct and the conduct involved a single prospective patient and was, in effect, as the GDC submitted, an isolated incident. There is some evidence Mr Hutchinson was under financial pressure. The aggravating factors include that Mr Hutchinson engaged in misleading and dishonest behaviour, there was no evidence of insight, the services were offered for financial gain and he attempted to cover up his wrongdoing.

The Committee has considered the range of sanctions available to it, starting with the least serious. In light of the seriousness of the findings made against Mr Hutchinson, including a finding that he acted dishonestly, the Committee decided that it would be inappropriate to conclude this case with no action. Similarly, were the Committee to issue a reprimand, Mr Hutchinson would be permitted to return to unrestricted practice with immediate effect. The Committee considered that such an outcome would undermine public confidence in the profession and would fail to mark the gravity of the misconduct and ensure proper standards of conduct and behaviour were declared and upheld.

The Committee next considered imposing a conditions of practice order upon Mr Hutchinson's registration. Dishonesty is not easily capable of being remedied by conditions of practice. It considered that no conditions could be formulated which are sufficiently workable, practicable and measurable which would address the identified failings in this case. In particular, no conditions could assist Mr Hutchinson's development of full insight and reflection upon his conduct in any meaningful way. This can only be achieved by his

own efforts. Further, an order of conditions would be insufficient to mark the seriousness of the finding of dishonesty.

The Committee next considered suspending Mr Hutchinson's registration for a prescribed period of time, and concluded that suspension is the least severe sanction which is sufficient and appropriate to protect the public interest. It is self-evident that dishonest conduct by a registrant is very serious. The public are entitled to rely on a dental professional's integrity. Nonetheless the dishonesty in this case related to telephone communication about one prospective patient and did not result in actual patient harm. Further, it noted that the dishonesty occurred in relation to his scope of practice, but there is no criticism of his competence as a dental technician, and that he has been in practice for over 20 years without a complaint.

In all the circumstances the Committee considered that an order of suspension for the maximum period of 12 months was necessary to mark the seriousness of the misconduct and was proportionate. It would protect the public, adequately indicate to the profession and the public the gravity of such behaviour and would be sufficient to uphold the reputation of the profession and maintain public confidence in it.

The Committee did consider the sanction of erasure, and determined that it would be disproportionate in this case. Whilst the conduct was a serious departure from professional standards the Committee did not consider that in the circumstances of this case that the behaviour was incompatible with Mr Hutchinson remaining on the register. Further, there is a public interest in an otherwise competent professional being allowed to practice should appropriate remediation and insight be demonstrated.

Prior to its expiry, the suspension order will be reviewed by the Professional Conduct Committee. The reviewing Committee may be assisted by Mr Hutchinson by providing evidence, including but not limited to: reflections on his misconduct and the importance of integrity; and any recent CPD, particularly where focused upon professional and ethical issues.

The Committee directs that the registration of Mr Richard Hutchinson be suspended for 12 months, with a review prior to the expiry of the order. The Committee directs that, pursuant to section 36P(10) of the Dentists Act 1984 (as amended), the interim order currently in place upon his registration is hereby revoked.

The Committee now invites submissions as to whether to impose an immediate order.

### **Immediate Order**

The GDC has applied for an order for immediate suspension. The Committee took into account Mr Micklewright's submissions and accepted the advice of the Legal Adviser.

In this case, the Committee has made a finding of current impairment as a result of Mr Hutchinson offering to work outside his scope of practice, and his misleading and dishonest conduct. For the same reasons as its substantive sanction, the Committee determined that it was necessary that Mr Hutchinson's registration be subject to immediate suspension to protect the public. An order was also necessary on the grounds of it being otherwise in the public interest given the gravity of the misconduct and to uphold and declare appropriate standards. It noted that should an immediate order not be imposed, Mr Hutchinson could practice unrestricted pending the imposition of the substantive direction.

The effect of the foregoing direction and this order is that Mr Hutchinson's registration will be suspended forthwith and unless he exercises his right to appeal, the substantive direction for suspension will take effect 28 days from the date on which notification is deemed served on him. Should Mr Hutchinson exercise his right to appeal, this order for immediate suspension will remain in place pending the resolution of any appeal proceedings.

That concludes this hearing."

At a review hearing on 17 March 2017 the Chairman announced the determination as follows:

### **Service of Notice of Hearing**

"Mr Hutchinson was not in attendance nor was he represented at this review hearing today.

The Committee saw a copy of the Notification of Resumed Hearing dated 16 February 2017 that was sent to Mr Hutchinson's registered address via Special Delivery, First Class Post and email.

It saw a printout from the Royal Mail Track and Trace website service which stated that the item was delivered and signed for in the name of Hutchinson on 18 February 2017.

The Committee was satisfied that notification of the hearing had been effected in accordance with Rules 28 and 65.

### **Proceeding in the absence of Mr Hutchinson**

The Committee then considered whether to exercise its discretion to proceed in the absence of Mr Hutchinson. It bore in mind that its discretion to proceed had to be exercised with the utmost care and caution. It balanced the interests of Mr Hutchinson against the public interest in the expeditious disposal of this matter. It is aware that the current order will expire on 27 March 2017.

Mr Hutchinson emailed the GDC on 8 March 2017 stating he would 'be unable to attend the hearing' and was not being represented. He stated that he did not mind the hearing going ahead in his absence.

The Committee noted that Mr Hutchinson had made no request for an adjournment. It was satisfied that he had been furnished with all of the relevant information to allow him to participate in the hearing. It was satisfied that he was afforded the opportunity to be present and had chosen voluntarily to absent himself. It determined that there was a pressing public interest in proceeding, bearing in mind the imminent expiry of the order.

The Committee therefore determined that it was fair and reasonable to proceed with the hearing notwithstanding Mr Hutchinson's absence.

### **Proceeding on the papers**

Having read the documents submitted to it, the Committee was satisfied that in this case it could reach a proper conclusion on the basis of the papers alone, and that there would be no unfairness to either party in doing so.

### **Background**

On 24 February 2016 Mr Hutchinson was found to have knowingly and deliberately offered to work outside his scope of practice in return for financial reward. His actions included offering to undertake clinical procedures and offering to provide a denture without the

prescription of a dentist. The Committee also found that he had acted dishonestly in so doing. The PCC determined that the facts found proved against Mr Hutchinson amounted to misconduct

That Committee found that his fitness to practise was currently impaired and suspended his registration for a period of 12 months.

### **Decision on review**

Today this Committee has undertaken a review. It took account of the written submissions put forward by the GDC and all of the material before it. It accepted the advice of the Legal Adviser.

### **Impairment**

The Committee considered whether Mr Hutchinson's fitness to practise remains currently impaired by reason of his misconduct.

As was stated at the initial hearing, Mr Hutchinson's conduct in having offered to undertake work outside of his scope of practice, and having acted in a way that is misleading and dishonest, was serious and highly likely to damage public confidence in the profession. His dishonesty involved knowingly offering to undertake work which he was not entitled to undertake, and in doing so he sought to avoid regulations that are in place for the purpose of protecting patients. He then attempted to disguise the extent of his misconduct from his regulator by stating it was his son who had been the maker of the representations.

The Committee notes that the GDC wrote to Mr Hutchinson on 26 February, 11 August, and 14 December 2016, as well as on 28 February 2017 reminding him of the evidence that the initial Committee suggested he put together prior to this review in order to assist this Committee in reaching its decision. Mr Hutchinson did not respond to any of these letters beyond his email of 8 March 2017 saying that he would not be attending this hearing.

At this review, the onus is on Mr Hutchinson to demonstrate that he has addressed the concerns identified.

Mr Hutchinson has submitted no evidence of insight into the seriousness of his misconduct or of remediation. The Committee has seen no evidence of continuing professional development, no reflective documentation, nor any evidence relating to courses or other activity in relation to ethics or professionalism.

The Committee therefore takes the view that there remains a risk of repetition of Mr Hutchinson's misconduct.

The Committee has determined that Mr Hutchinson's fitness to practise remains impaired. It has further determined that such a finding remains necessary in order to declare and uphold proper professional standards and to maintain public confidence in the profession.

### **Sanction**

The Committee sought to determine what action to take in relation to Mr Hutchinson's registration. It bore in mind that the purpose of a sanction is not to be punitive, but rather to protect patients and the wider public interest.

It first considered whether to revoke the order of suspension and take no further action. In the light of the seriousness of the findings made against Mr Hutchinson, including a finding

that he acted dishonestly, the Committee decided that it would be inappropriate to revoke the order and conclude the case with no action.

The Committee considered whether to revoke the order of suspension and replace it with one of conditional registration. It noted Mr Hutchinson's limited engagement with the GDC in relation to this matter. He has produced none of the evidence suggested by the initial Committee and has demonstrated no insight. The Committee determined that conditional registration would therefore not be appropriate. It considered that no conditions could be formulated which would be sufficiently workable, practicable and measurable and which would address the identified failings in this case. In particular, no conditions could assist Mr Hutchinson's development of full insight and reflection upon his conduct in any meaningful way. This can only be achieved by his own efforts.

The Committee has determined that an extension of the order of suspension for the maximum period of 12 months is necessary for the protection of patients and will serve to safeguard public confidence in the profession and uphold standards.

The order is imposed for 12 months from the date at which the current order would otherwise expire and will be reviewed shortly before the end of that period.

The reviewing Committee may be assisted by Mr Hutchinson providing evidence that demonstrates remediation and insight. This may include reflections on his misconduct and the importance of integrity; and any recent CPD, particularly where focused upon professional and ethical issues."

At a review hearing on 14 March 2018 the Chairman announced the determination as follows:

"Mr Hutchinson was neither present nor represented at the hearing. Mr Middleton, for the General Dental Council (GDC), submitted that service had been effected on Mr Hutchinson in accordance with the General Dental Council (Fitness to Practise) Rules 2006 (the Rules) and that the hearing should proceed, notwithstanding his absence.

### **Service and absence**

The notice of hearing was sent to Mr Hutchinson at his registered address by Special Delivery on 31 January 2018. Royal Mail 'Track and Trace' records that the item was 'Returned to Sender'.

The Committee was satisfied that the notification of hearing duly contained the required information under Rule 28, including the time, date and venue of this hearing, and that it had been served on Mr Hutchinson in accordance with Rule 65, by virtue of it having been sent to his registered address.

A copy of the notification of hearing was also sent to Mr Hutchinson by an email secure file sharing service on 31 January 2018. Mr Hutchinson replied by email at 16:40 that day to state: "*Thank you for your email When looking at the attached documents I can not see a hearing date or time.please can y[o]u confirm these but I will not be attending.*" The GDC replied to Mr Hutchinson the following day at 12:35 to assist him in downloading the notification of hearing from the secure file sharing service.

Mr Hutchinson was aware of this hearing and its purpose. He had not applied for a postponement and he confirmed to the GDC that he "will not be attending". There was nothing to suggest to the Committee that an adjournment would make his attendance any



more likely at a future date. There was therefore no good reason for an adjournment. The Committee was satisfied that Mr Hutchinson had voluntarily absented himself from this hearing. There was a need to review the suspension of his registration prior to the pending expiry of that suspension, otherwise the Committee risked losing jurisdiction over the matter. Having regard to all the circumstances, the Committee determined that it was fair and in the interests of justice to proceed, notwithstanding his absence.

### **The proceedings before the Professional Conduct Committee**

On 24 February 2016, the Professional Conduct Committee (PCC) found Mr Hutchinson's fitness to practise to be impaired by reason of misconduct, summarising the misconduct as follows:

...Mr Hutchinson's conduct involved knowingly and deliberately offering to work outside his scope of practice in return for financial reward. This included offering to undertake clinical procedures and offering to provide a denture without the prescription of a dentist.

The Committee noted in acting outside scope of practice a dental professional would be undertaking work which they may not have the education and training to perform. This necessarily involves a risk to patients, and is a serious departure from acceptable standards.

The Committee found that Mr Hutchinson's conduct was misleading and dishonest, in that he knew he was not entitled to carry out the work he offered to do. The Committee noted that honesty and integrity are fundamental tenets of the dental profession. Mr Hutchinson's conduct represented a serious and significant departure from the standards expected of a registered dental care professional.

The initial PCC directed that Mr Hutchinson's registration be suspended for a period of 12 months, with a review:

...an order of suspension for the maximum period of 12 months was necessary to mark the seriousness of the misconduct and was proportionate. It would protect the public, adequately indicate to the profession and the public the gravity of such behaviour and would be sufficient to uphold the reputation of the profession and maintain public confidence in it.

...

Prior to its expiry, the suspension order will be reviewed by the Professional Conduct Committee. The reviewing Committee may be assisted by Mr Hutchinson by providing evidence, including but not limited to: reflections on his misconduct and the importance of integrity; and any recent CPD, particularly where focused upon professional and ethical issues.

The review took place on 17 March 2017, when the PCC found that Mr Hutchinson's fitness to practise continued to be impaired and directed that the suspension be extended for a further period of 12 months, with a review:

The Committee notes that the GDC wrote to Mr Hutchinson on 26 February, 11 August, and 14 December 2016, as well as on 28 February 2017 reminding him of the evidence that the initial Committee suggested he put together prior to this review in order to assist this Committee in reaching its decision. Mr Hutchinson did not respond to any of these letters beyond his email of 8 March 2017 saying that he would not be attending this hearing.

At this review, the onus is on Mr Hutchinson to demonstrate that he has addressed the concerns identified.

Mr Hutchinson has submitted no evidence of insight into the seriousness of his misconduct or of remediation. The Committee has seen no evidence of continuing professional development, no reflective documentation, nor any evidence relating to courses or other activity in relation to ethics or professionalism.

In reaching its decision on suspension, the March 2017 PCC reasoned that:

...no conditions could be formulated which would be sufficiently workable, practicable and measurable and which would address the identified failings in this case. In particular, no conditions could assist Mr Hutchinson's development of full insight and reflection upon his conduct in any meaningful way. This can only be achieved by his own efforts.

The Committee has determined that an extension of the order of suspension for the maximum period of 12 months is necessary for the protection of patients and will serve to safeguard public confidence in the profession and uphold standards.

The order is imposed for 12 months from the date at which the current order would otherwise expire and will be reviewed shortly before the end of that period.

The reviewing Committee may be assisted by Mr Hutchinson providing evidence that demonstrates remediation and insight. This may include reflections on his misconduct and the importance of integrity; and any recent CPD, particularly where focused upon professional and ethical issues.

It is the role of the PCC today to undertake that review. The Committee heard the submissions made by Mr Middleton. The Committee accepted the advice of the Legal Adviser. The Committee had regard to the *Guidance for the Practice Committees, including Indicative Sanctions Guidance* (October 2016).

The Committee first considered whether Mr Hutchinson's fitness to practise continues to be impaired by reason of the misconduct found by the initial PCC. There is a persuasive burden on him to demonstrate to this review Committee that he has adequately addressed that misconduct. He has continued to fail to do so, due to his non-engagement at this and the last review hearing. He was given clear guidance on how he might demonstrate remediation to this Committee, through reflective writing on his misconduct and through targeted Continuing Professional Development activity.

Mr Hutchinson's only engagement has been to confirm his non-attendance at the hearing. He puts no evidence before this Committee of any insight, reflection or remorse for the serious breaches of fundamental standards found proved by the initial PCC. In the Committee's judgment, there is a real risk of Mr Hutchinson repeating his misconduct. There is in any event nothing to suggest that the risk of him repeating his misconduct is low. There is therefore a real risk of significant harm to patients, should Mr Hutchinson be allowed to practise without restriction.

Further, public confidence in the profession and this regulatory process would be seriously undermined if a finding of continued impairment were not made today. At this review hearing, Mr Hutchinson shows no insight, reflection or remorse for his misconduct. He has neither addressed nor remedied the seriousness of that misconduct. Whether or not he maintains his denial of the matters found proved against him, he has shown no acknowledgement or acceptance of the gravity of those findings.

The Committee today is in no better a position than the initial and last review Committees: there is no evidence of any progress or remediation since the time of the initial hearing in February 2016.

Accordingly, the Committee finds that Mr Hutchinson's fitness to practise as a dental technician continues to be impaired by reason of his misconduct.

In deciding the question of sanction, the Committee applied the principle of proportionality, balancing the public interest with Mr Hutchinson's interests. The purpose of a sanction is not to be punitive, although it may have that effect, but to protect the public and the wider public interest.

To impose no further sanction would put patient's at risk of harm and would offend the public interest, given the risk of repetition and Mr Hutchinson's failure to demonstrate any insight or remediation today. Conditions of practice would be unworkable, given Mr Hutchinson's lack of engagement in these proceedings. The Committee could not be satisfied that he would comply with any conditions on his registration. Further, as noted by the previous review Committee, this is not a case where conditions would meaningfully assist Mr Hutchinson in his remediation: he needs, through his own efforts, to develop insight and to reflect.

The Committee was satisfied that the suspension of Mr Hutchinson's registration remains necessary and proportionate. There is nothing to suggest that a further fixed period of suspension for up to 12 months would serve any useful purpose. There has been no progress over the past two years. There is no evidence before the Committee that Mr Hutchinson intends to engage in any reflection and remediation. There is nothing to suggest that the position would be in any different at a review hearing in 12 months' time.

Accordingly, the Committee directs that Mr Hutchinson's registration be suspended indefinitely.

That concludes the hearing today."