

PUBLIC HEARING

**Professional Conduct Committee
Initial Hearing
28 -29 November 2024**

Name: TALBOT, Toby Ralph
Registration number: 51225
Case number: CAS-197801- R0V0S5

General Dental Council: Mr Guy Micklewright, counsel.
Instructed by Mr Andrew Richardson - IHLPS

Registrant: Present
Represented by Mr Christopher Gillespie, counsel.
Instructed by Francesca Carlino, Medical Protection

Outcome: GDC application to withdraw all the charges granted

Committee members: Greg Heath (Chair, Dentist Member)
Debbie Gould (Lay Member)
Caroline Ross (Dental Care Professional Member)

Legal adviser: Tehniat Watson

Committee Secretary: Jenny Hazell

Preliminary matter

1. Mr Talbot, you are present at this hearing and are represented by Mr Gillespie, Counsel. Mr Micklewright, Counsel, appears on behalf of the General Dental Council (GDC) via Microsoft Teams.

2. At the outset Mr Micklewright made a preliminary application under Rule 17(4) of the General Medical Council (Fitness to Practise) Rules (the Rules) to withdraw all the charges in the Notice of Hearing. This was on the basis that there is no realistic prospect of proving the allegations that could attract necessary culpability to amount to misconduct. Rule 18 states:

At any stage before making their findings of fact in accordance with rule 19, a Practice Committee may amend the charge set out in the notification of hearing unless, having regard to the merits of the case and the fairness of the proceedings, the required amendment cannot be made without injustice. (2) Before making any amendment under paragraph (1), a Practice Committee shall consider any representations from the parties.

3. Both parties agreed that it was open to this Committee to consider the application as a preliminary matter under Rule 18.

4. Mr Micklewright set out the background to the application. The allegations in this case, as set out in the Notice of Hearing dated 28 October 2024, concern the sale and distribution of Filtering Facepiece Particles 3 (“FFP3”) masks by you to nearby residents in and around April 2020 at the cost of £50 each, at the beginning of the Covid-19 pandemic. Further, that they were marketed as being able to be used for up to 12 days for 24 hours which indicated that the masks could be used for a total of 288 hours. The GDC received concerns from a member of the public and from the Local Dental Committee to the effect that you were profiteering from the pandemic in advertising for sale Personal Protective Equipment (PPE). Mr Micklewright addressed the Committee on each of the charges.

5. Charge 1 – this charge is not in dispute: it is accepted that on or around April 2020 you distributed leaflets advertising the sale of FFP3 masks to nearby residents for £50 each for repeated use of up to 12 days. The GDC submits that this charge does not allege any culpable conduct.

6. Charges 2(a) and 2(b) - it is not in dispute that the FFP3 masks were advertised in the way alleged. The GDC submits that these charges do not allege any culpable conduct.

7. Charge 3 alleges that the conduct in charge 1 was improperly financially motivated (3(a)) and inappropriate (3(b)). The GDC instructed Mr Nikolai Stankiewicz (the Expert), a registered dentist with expertise in infection control in dentistry, to provide an expert opinion. He provided a report dated 17 April 2024. His opinion was that:

- The global market for PPE due to Covid-19 increased the unit price for respirators paid by the Department of Health and Social Care by 166% in 2020
- Unless the retailer is dominant in the market, it is not unlawful for a retailer to charge a higher price for an item.

- The leaflets were sent to neighbours and not to patients of the practice, GDC's Standard 1.7.1 (You must always put your patients' interests before financial gain) is not engaged.
- It was not inappropriate to offer the masks for sale because the masks were compliant with EU regulation 201/425.

8. The GDC's position in relation to Charge 3 is that it was open to you to offer the surplus PPE for sale to members of the public. There is no evidence that patients or vulnerable members of the public were targeted, nor is there any evidence of any adverse impact on the NHS's supply of PPE. Further, that the GDC's statutory function does not extend to regulating competition or markets and that it is not open to the GDC, in the absence of a breach of a GDC standard, or a breach of legislation, to bring proceedings in respect of the price of resold PPE.

9. Charge 4 alleges that the contents of the leaflets, as set out in charge 2, were misleading and dishonest. The GDC's position, based on the Expert's opinion, is that the statements in the first paragraph of Charge 2(b) are essentially accurate. However, the Expert disagreed with the statement at Charge 2(a) that an FFP3 mask could be worn for up to 288 hours. His view was that the manufacturer's statement that the mask could be used for up to 14 days represented a period of use that starts on the first use of the mask and ends 13 calendar days later, irrespective of the hourly use. He opined that if a committee accepted that you erroneously interpreted the extended hourly use of the mask in good faith, then the statement would be misleading but not dishonest.

10. In respect of the issue of whether or not your assertion of the length of time the mask could be used for can be said to be objectively misleading, Mr Mickelwright set out the steps taken by the GDC to obtain information from the manufacturer, based in USA, on this point. He referred to the emails dated 27 March 2024 and 4 April 2024 from the GDC to the manufacturers of the masks seeking information as to whether it published any guidance on their use, the efficacy of the masks and whether they could explain whether the masks could be worn for 14 consecutive days from the date of first use or whether they could be used on non-consecutive days. To date, the GDC has received no response from the manufacturer. In respect of the GDC's powers under Section 33B of the Dentists Act 1984 to compel production of the information sought, Mr Mickelwright submitted that it was reasonable not to do so for the reasons set out in his skeleton argument. This included the fact that the company's lack of engagement and location, to date suggested that it was unlikely that it would co-operate with any powers exercised by the GDC under Section 33B.

11. In short, Mr Mickelwright submitted that if the Committee considers that there is a realistic prospect of finding allegation 4(a) proven, then the evidence does not attach sufficient criticism to your actions such it could come close to meeting the threshold for misconduct. He outlined the Expert's opinion, that if allegation 4(a) was found proved, i.e that your conduct in respect of 2(a) was misleading, in that you erroneously interpreted the extended hourly use of the mask, then this would amount to a falling "below" the standard expected of a Registrant to breach the trading regulations but would not be a significant departure.

12. In respect of Charge 4(b) (dishonesty), the GDC submitted that the evidence lacks sufficient cogency for it to be properly said that there is a realistic prospect of you being found to be dishonest.

13. The GDC's position is that the gravamen of the alleged mischief is set out in charges 3 and 4 and if its application to withdraw in respect of these two charges is acceded to, then all culpability falls away. In summary, Mr Micklewright reiterated that there is no realistic prospect of any allegation being proven that could attract the necessary culpability to amount to misconduct.

14. Mr Gillespie, on your behalf, did not oppose the application. He submitted that the GDC had analysed the position correctly regarding the status of the evidence. He also referred to the evidential gaps in the GDC's case and submitted that it would not be proportionate for the GDC to take any further steps to carry out further enquiries with the manufacturer. Mr Gillespie also made the point that information from the manufacturer of the FFPs masks would offer little assistance in determining whether your conduct was dishonest. In short, Mr Gillespie submitted that there is no reasonable prospect of any allegation being proven.

The Committee's decision

15. The Committee has carefully considered the submissions made by both parties. It has accepted the advice of the Legal Adviser. It is aware that its task is not to make any factual findings in determining this application. The Committee is aware that this matter has been considered by the GDC's Case Examiners on several occasions between the period October 2020 and September 2024. However, it is not bound by the previous decisions of the GDC's Case Examiners, nor is it its task to review those decision. Rather, its task was to make an independent evaluation and determine the application before it. The Committee bore in mind the GDC's statutory overarching objective in exercising their functions under the Dentists Act 1984 which is the protection of the public.

16. The Committee has had regard to the GDC's bundle of documents which includes a copy of the Expert's report dated 17 April 2024.

17. The Committee first considered whether it had jurisdiction to consider the GDC's application or whether it was necessary to refer the matter back to the Case Examiners under Section 27B(4) of the Dentists Act 1984. The Committee is satisfied that it does have power to amend the charge set out on the notification of the hearing and therefore it does have jurisdiction to consider the application made by the GDC.

18. The Committee next considered the merits of the case. In considering this matter, the Committee had regard to the specific allegations, turning first to charge 3 and the facts on which it was based within charge 1. The Committee has taken into account the Expert's opinion which was that it was open to you to offer surplus PPE for sale to members of the public and there was no breach of the GDC's standards. It noted that the leaflets were sent to neighbours/nearby residents and not your patients. It further accepted the GDC's argument that the GDC's statutory function does not extend to regulating competition or markets and therefore it is not open to the GDC, in the absence of a breach of the GDC's standards or a breach of legislation, to bring proceedings in respect of the price of sale for the surplus masks. It therefore finds that there is no realistic prospect of this allegation being proven.

19. Turning to charge 4 as it related to charge 2. It noted the Expert's view in respect of charge 2(b). Whilst the expert was unclear what research your statement at charge 2(b) referred to, he considered the statement to be essentially accurate.

20. It also noted the Expert's position in respect of charge 2(a). The Expert disagreed with the statement that an FFP3 mask could be worn for up to 288 hours and considered that the manufacturer had rated the mask to be worn for 14 days. The Committee noted the evidence and your interpretation of the manufacturer's intention, which was to calculate 288 hours i.e. the number of hours within a 12-day period. The Expert opined that if you made the statement in good faith i.e. a mistake, then the statement would be misleading but not dishonest and further that it would be below the standard expected of a reasonable dentist. The Committee has noted the attempts made by the GDC in obtaining a response from the manufacturer to its question. There was no information available to establish what the manufacturer's intention was. There was also no information before it from any alleged impact or harm to the public, arising from the alleged statement. It acknowledged that the assessment of seriousness of any proven "misleading" charge would be for the Practice Committee upon consideration of all evidence leading to such a finding. However, in assessing the merits of the case before it now, it took the view that such a finding resulting from an honest mistake, would not attract sufficient culpability and agreed with the expert's view that it was not likely to result in amounting to misconduct.

21. The Committee also took the view that further information from the manufacturer would not be determinative of charge 4(b). The Committee agreed with the GDC's position that the limited evidence lacked cogency and sufficiency to be capable of leading to any realistic prospect of inferences of dishonesty being made. It noted the information from the GDC about the attempts made to contact the manufacturer (*emails sent and a call made, and neither being answered*). It agreed with the GDC's position and considered that further enquiries or attempts to compel production of information were not reasonable nor proportionate. The Committee therefore finds that there is no reasonable prospect of allegation 4 being proven.

22. The Committee's decision is therefore to accede to the application made on behalf of the GDC, and supported on your behalf, to withdraw all of the charges. The Committee has taken its decision, keeping in mind, the Overarching Objective of the Council which is to protect the public. It has also considered the interests of fairness to both parties.