

HEARING HEARD IN PUBLIC

PATEL, Jiten

Registration No: 72474

PROFESSIONAL CONDUCT COMMITTEE

FEBRUARY- MARCH 2022

Outcome: Erased with Immediate Suspension

PATEL, Jiten, a dentist, BDS Lond 1996, was summoned to appear before the Professional Conduct Committee on 24 February 2022 for an inquiry into the following charge:

Charge

“That, being a registered dentist:

1. Between 1 April 2009 and 31 March 2018 you were in general dental practice providing care and treatment under the National Health Service ('NHS') at Practice 1 as referred to in Schedule A¹ and treated the patients referred to in Schedule A.
2. Claims were submitted in your name for Units of Dental Activity ('UDA's) as set out in:
 - (a) Schedule 1;
 - (b) Schedule 2;
 - (c) Schedule 3;
 - (d) Schedule 4.

Claims for treatment which had not been provided - Schedule 1

3. In respect of the claims set out in Schedule 1, you caused or allowed a claim to be made under your name and performer number when the treatment claimed had not been provided under the provisions of the NHS or at all.

Inflated Claims – Schedule 2

4. In respect of the claims set out in Schedule 2, you caused or allowed a claim to be made under your name and performer number in a higher band than the treatment justified.

Private fees – Schedule 3

5. In respect of the claims set out in Schedule 3, you caused or allowed a private fee to be charged to the patient when no such fee was due.

Further Inflated Claims – Schedule 4

¹ Schedule A, 1,2,3 & 4 are all private documents which cannot be disclosed.

6. In respect of the claims set out in Schedule 4, you caused or allowed a claim to be made under your name and performer number in a higher band than the treatment justified.

Dishonesty

7. Your conduct as set out above at 3, and/or 4, and/or 5 was:

- (a) inappropriate;
- (b) misleading;
- (c) dishonest in that you sought to obtain additional UDAs and / or private fees to which you knew you were not entitled.

8. Your conduct as set out above at 6 was:

- (a) inappropriate;
- (b) misleading;
- (c) lacked integrity in that you failed to ensure your claims complied with the relevant regulations;
- (d) dishonest in that you sought to obtain additional UDAs to which you knew you were not entitled.

And that, by reason of the facts alleged, your fitness to practice is impaired by reason of your misconduct.”

Mr Patel was not present and was not represented. On 24 February 2022 the Chairman made a statement regarding the preliminary applications. On 28 February 2022 the Chairman announced the findings of fact to the Counsel for the GDC:

“This is a Professional Conduct Committee hearing. The members of the Committee, as well as the Legal Adviser and the Committee Secretary, conducted the hearing remotely via Microsoft Teams in line with current GDC practice. Mr Patel was not present at the hearing and not represented in his absence. Ms Lydia Barnfather appeared on behalf of the General Dental Council (GDC).

Preliminary matters

On 24 February 2022, the Chair made a statement regarding the following preliminary applications:

Decision on service of Notice of Hearing

The Committee was informed at the start of this hearing that Mr Patel was neither present nor represented at today's hearing.

In his absence, the Committee first considered whether the Notice of Hearing ('the notice') had been served on Mr Patel in accordance with Rules 13 and 65 of the '*General Dental Council (Fitness to Practise) Rules Order of Council 2006*' ('the Rules').

The Committee had regard to the indexed hearing bundle, Exhibit 5, which contained a copy of the notice, dated 5 January 2022. The notice was sent to Mr Patel's registered address by Special Delivery on 5 January 2022, in accordance with Section 50A of the '*Dentists Act 1984*' (as amended) ('the Act') and via email on the same date.

The Committee was satisfied that the notice contained proper and correct information relating to today's hearing. This included the time, date and that it is being conducted remotely via Microsoft Teams, as well as notification that the Committee has the power to proceed with the hearing in Mr Patel's absence.

The Committee had sight of an extract from the Royal Mail 'Track and Trace' service which showed the item was delivered to Mr Patel's registered address on 6 January 2022. It was signed for against the printed name of 'PATEL'.

In light of the information available, the Committee was satisfied that Mr Patel has been served with proper notification of this hearing, within a reasonable period of time, in accordance with the Rules.

Decision on whether to proceed in the absence of Mr Patel

The Committee next considered whether to exercise its discretion to proceed with the hearing in the absence of Mr Patel and any representative on his behalf. The Committee was mindful that its decision to proceed in the absence of Mr Patel must be handled with the utmost care and caution. The Legal Adviser reminded the Committee of the requirement to be fair to both parties, as well as considering the public interest in the expeditious disposal of this case. The Committee was referred to the relevant case law.

The Committee noted the letter from BLM Law, previous representatives of Mr Patel, dated 30 November 2021, which states:

"We write further to the above matter and in advance of the listed hearing in February 2022... Mr Patel does not intend to participate further in these proceedings or to attend the hearing in February 2022.

As a result of his decision to withdraw from these proceedings, Mr Patel appreciates that matters will proceed in his absence... He intends no discourtesy by his decision to withdraw from these proceedings."

On the basis of the information before it, the Committee agreed with Ms Barnfather's submission that it was clear from the 30 November 2021 letter Mr Patel has a settled intention not to participate in these proceedings and had voluntarily waived his right to be present. It was satisfied that an adjournment would not secure Mr Patel's attendance at a later date in any event.

In the circumstances, the Committee determined that it was fair and in the public interest to proceed with the hearing in the absence of Mr Patel.

Finding of facts

On 28 February 2022, the Chair announced the finding of facts:

Background

Mr Patel gained his Bachelor of Dental Surgery (BDS) degree in 1996.

Between 1998 and 2004, he worked as an Associate in an NHS practice in Sutton. In May 2005, he set up his own practice at [REDACTED] ('Practice 1') providing dental services under private contract and under the provision of the NHS. He worked at Practice 1 on a part-time basis.

From the inception of the new NHS Dental Contract in April 2006, Mr Patel was the sole contract provider at Practice 1 with a contract valued at about £320,000. In February 2014, he became a joint contract provider in partnership with another dentist. The contract was thereafter valued in the region of £340,000. The figures represent around 14,000 Units of Dental Activity (UDAs) individually valued at approximately £24. In addition to the joint contract providers, there were a number of other performers operating under the contract at Practice 1.

The GDC's case is that Mr Patel systematically and persistently defrauded the NHS between April 2009 and April 2017, as well as defrauding a number of patients into paying additional private fees on top of the claims made under the NHS for their treatment. It is alleged that the frauds were only halted following complaints by one or more whistle-blowers leading subsequently to an investigation by the NHS Counter Fraud Authority ('NHSCFA', previously NHS Protect). Faced with the evidence, eventually, in July 2019, Mr Patel made substantial admissions.

The Committee heard from Ms Jane Ford, expert witness, registered dentist and Dental Clinical Adviser to NHS England, who gave oral evidence on 24 February 2022, in addition to producing her expert report, dated 5 August 2021. The information contained within that report was not entirely a duplication of the investigation undertaken by NHSCFA but a review of a representative sample of the claims.

The Committee also had regard to the documentary evidence provided by the GDC, which included the following:

- Patient records;
- Signed witness statements, and supporting documents, for six witnesses; and
- Expert witness report, provided by Ms Ford, dated 5 August 2021.

At the outset of the hearing, the Committee was referred to the letter from Mr Patel's previous representatives at BLM Law, dated 30 November 2021, which stated:

"[Mr Patel] has previously admitted to the allegations save for charge 8(d) which is denied in accordance with the statement previously submitted to the Counter Fraud investigation (in which Mr Patel explained that those claims were accidentally erroneous and not therefore dishonestly claimed)."

Ms Barnfather informed the Committee that as a result of an anonymous complaint made by a staff member who worked at Practice 1 to the NHS Fraud Line, Mr Patel was invited to a meeting with NHS England. At the meeting, which took place on 15 December 2016, Mr Patel refuted any wrongdoing and instead sought to place the blame onto a receptionist who no longer worked for the practice. Ms Barnfather stated that Mr Patel later provided a statement prepared with his solicitor in which he admitted fraudulent claiming.

Ms Barnfather provided a case summary outlining the GDC's position in relation to all allegations, including the disputed allegation, charge 8.d). She submitted that Mr Patel had methodically defrauded the NHS and his patients over a protracted period of some eight years.

Ms Barnfather submitted that Mr Patel has demonstrated a pattern of deliberately dishonest conduct in order to maintain his NHS contract and gain financially as a result.

Committee's findings

The Committee considered all the evidence presented to it and took account of the submissions made by Ms Barnfather on behalf of the GDC. The Committee accepted the advice of the Legal Adviser. It 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, that is, whether the alleged facts are proved on the balance of probabilities.

The Committee noted that prior to the sending of the Notice of Hearing for this case, dated 5 January 2022, Mr Patel had in interview under caution with the NHSCFA on 30 July 2019, and in correspondence with the GDC's Registrar, made admissions to all of the heads of charge with the exception of head of charge 8.d). The Committee noted the following in particular:

Letter from BLM Law to the GDC, dated 11 October 2021

"The GDC has now served its finalised charges and evidence for the FTP hearing in February 2022. We enclose a copy of those charges with this letter. Mr Patel admits to all of the allegations save for charge 8(d). Charge 8(d) contends that the "inflated claims" at charge 6 (specified in schedule 4) were dishonestly submitted. This is denied in accordance with the statement previously submitted to the Counter Fraud investigation in which Mr Patel explained that those claims were accidentally erroneous and not therefore dishonestly claimed.

Save for that one issue, the remainder of the charges are admitted and therefore the Registrar will see that Mr Patel admits to dishonestly submitting claims for (a) treatment which had not been provided, (b) inflated claims and (c) private "top-up" fees. He also confirms, through this correspondence, his admission to the question of misconduct and impairment of his fitness to practise consequent upon the above factual admissions."

Letter from BLM Law to the GDC, dated 30 November 2021

"Mr Patel does not intend to participate further in these proceedings or to attend the hearing in February 2022. He has previously admitted to the allegations save for charge 8(d) which is denied in accordance with the statement previously submitted to the Counter Fraud investigation (in which Mr Patel explained that those claims were accidentally erroneous and not therefore dishonestly claimed). Save for that single denial, the remainder of the charges are admitted and he also admits misconduct and current impairment of his fitness to practise consequent upon those factual admissions."

The Committee took account of these admissions but in reaching its decision on the facts carefully considered all the evidence presented by the GDC in support of the charges.

The Committee had received a case summary from the GDC. It was mindful this was a summary of the GDC's case but was not of itself evidence.

The Committee's findings in relation to each head of charge are as follows:

1.	<i>"Between 1 April 2009 and 31 March 2018 you were in general dental practice providing care and treatment under the National Health Service ('NHS') at Practice 1 as referred to in Schedule A and treated the patients referred to in Schedule A."</i>
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	<p>Found proved.</p> <p>The Committee had regard to the patient records listed in Schedule A and accepted that they were all patients of Mr Patel. This is corroborated by the statements he provided for the purpose of the investigation conducted by NHSCFA and has never been challenged by Mr Patel.</p> <p>The Committee also took account of Mr Patel's admission in his letters to the GDC, as set out above.</p> <p>The Committee finds charge 1. proved.</p>
2. a)	<p><i>"Claims were submitted in your name for Units of Dental Activity ('UDA's) as set out in Schedule 1."</i></p> <p>Found proved.</p> <p>The Committee had regard to the patient records listed in Schedule 1 and accepted that Mr Patel had made claims in his name for all those patients between 2009 and 2014. This has not been challenged by Mr Patel.</p> <p>The Committee also took account of Mr Patel's admission in his letters to the GDC, as set out above.</p> <p>The Committee finds charge 2. a) proved.</p>
2. b)	<p><i>"Claims were submitted in your name for Units of Dental Activity ('UDA's) as set out in Schedule 2."</i></p> <p>Found proved.</p> <p>The Committee had regard to the patient records listed in Schedule 2 and accepted that Mr Patel had made claims in his name for all those patients between 2009 and 2017. This has not been challenged by Mr Patel.</p> <p>The Committee also took account of Mr Patel's admission in his letters to the GDC, as set out above.</p> <p>The Committee finds charge 2. b) proved.</p>
2. c)	<p><i>"Claims were submitted in your name for Units of Dental Activity ('UDA's) as set out in Schedule 3."</i></p> <p>Found proved.</p> <p>The Committee had regard to the patient records listed in Schedule 3 and accepted that Mr Patel had made claims in his name for all those patients between 2010 and 2013. This has not been challenged by Mr Patel.</p> <p>The Committee also took account of Mr Patel's admission in his letters to the GDC, as set out above.</p> <p>The Committee finds charge 2. c) proved.</p>
2. d)	<p><i>"Claims were submitted in your name for Units of Dental Activity ('UDA's) as set out in Schedule 4."</i></p> <p>Found proved.</p> <p>The Committee had regard to the patient records listed in Schedule 4 and</p>

	<p>accepted that Mr Patel had made claims in his name for all those patients between 2010 and 2016. This has not been challenged by Mr Patel.</p> <p>The Committee also took account of Mr Patel's admission in his letters to the GDC, as set out above.</p> <p>The Committee finds charge 2. d) proved.</p>
3.	<p><i>"In respect of the claims set out in Schedule 1, you caused or allowed a claim to be made under your name and performer number when the treatment claimed had not been provided under the provisions of the NHS or at all."</i></p> <p>Found proved.</p> <p>The Committee had regard to the admissions made by Mr Patel when he completed the schedule during the period he was legally represented. In the written statement he provided for the NHSCFA investigation, dated 30 July 2019, it states:</p> <p><i>"I attach [Schedule 1] ...a schedule of claims which I accept are false. At the time that I submitted those claims on the practice computer system I knew that the treatment claimed had not been provided and that I was not entitled to claim for that treatment. I therefore accept that I inappropriately benefitted, both financially and in relation to my UDA target, by submitting those false claims."</i></p> <p>The Committee also took account of Mr Patel's admission in his letters to the GDC, as set out above.</p> <p>The Committee concluded that Mr Patel submitted nine false claims outlined in Schedule 1 and finds charge 3. proved.</p>
4.	<p><i>"In respect of the claims set out in Schedule 2, you caused or allowed a claim to be made under your name and performer number in a higher band than the treatment justified."</i></p> <p>Found proved.</p> <p>The Committee had regard to the admissions made by Mr Patel when he completed the schedule during the period he was legally represented. In the written statement he provided, dated 30 July 2019, it states:</p> <p><i>"I attach [Schedule 2]... a schedule of claims which I accept have been submitted at a higher band than was justified by the treatment provided. Those claims were submitted by me and were manually amended on the R4 computer system to generate a higher band than the system had automatically attributed to the coded treatment provided... I knew that I was not entitled to claim for the higher band and I therefore accept that I inappropriately benefitted, both financially and in relation to my UDA target, by submitting those exaggerated claims."</i></p> <p>The Committee also took account of Mr Patel's admission in his letters to the GDC, as set out above.</p> <p>The Committee concluded that Mr Patel submitted approximately 170 claims for a higher band than the treatment justified as outlined in Schedule 2 and finds charge 4. proved.</p>

5.	<p><i>“In respect of the claims set out in Schedule 3, you caused or allowed a private fee to be charged to the patient when no such fee was due.”</i></p> <p>Found proved.</p> <p>The Committee had regard to the admissions made by Mr Patel when he completed the schedule during the period he was legally represented. In the written statement he provided, dated 30 July 2019, it states:</p> <p><i>“I attach [Schedule 3]...a schedule of claims which I accept were accompanied by inappropriate private fees. Those private fees were taken as “top up fees” so that I could provide the patient with a more expensive restoration than would otherwise have been available under the NHS. I knew that I was not entitled to take those “top up fees” but my rationale at the time was that it benefitted the patient. I now accept that I should not have taken those private fees and that I misled the patients into thinking that there were entitled to materials that would ordinarily have incurred a full private fee.”</i></p> <p>The Committee also took account of Mr Patel's admission in his letters to the GDC, as set out above.</p> <p>The Committee concluded that on four occasions Mr Patel charged patients a private fee in addition to the NHS claim as outlined in Schedule 3 and finds charge 5. proved.</p>
6.	<p><i>“In respect of the claims set out in Schedule 4, you caused or allowed a claim to be made under your name and performer number in a higher band than the treatment justified.”</i></p> <p>Found proved.</p> <p>The Committee had regard to the admissions made by Mr Patel when he completed the schedule during the period he was legally represented. In the written statement he provided, dated 30 July 2019, it states:</p> <p><i>“I attach [Schedule 4]... a schedule of claims which I accept are erroneous...[This includes] a large number of preventative sealant restorations which have erroneously been claimed as band 2 treatments... I now accept that those restorations should have been claimed as band 1 preventative sealants...”</i></p> <p>The Committee also took account of Mr Patel's admission in his letters to the GDC, as set out above.</p> <p>The Committee concluded that Mr Patel submitted 176 inappropriate claims as outlined in Schedule 4 and finds charge 6. proved.</p>
7. a)	<p><i>“Your conduct as set out above at 3, and/or 4, and/or 5 was inappropriate.”</i></p> <p>Found proved.</p> <p>The Committee had regard to the admissions made by Mr Patel when he completed the schedules during the period he was legally represented. This included the details he provided for the schedules of treatment claims that had not been provided, the inflated claims, and the “top up fees”. He accepted in his admissions that he made inappropriate claims and benefitted financially.</p>

	<p>Mr Patel has admitted in his letters to the GDC, as set out above, that he caused, or allowed, claims to be made in his name that were not genuine.</p> <p>The Committee concluded that the accuracy of claims is paramount and dentists are expected to ensure that any claim made in their name is an accurate representation of the treatment provided. The Committee was satisfied that every dentist is under a moral and regulatory obligation to familiarise themselves with the terms of the NHS Contract and to only claim in accordance with them.</p> <p>The Committee also considered the witness statements and supporting documents of Mr 1 (a dentist and NHSCFA fraud dental adviser who examined the claims) and Ms Ford, which supported the assertion that the claims and unnecessary top up fees made by Mr Patel in charges 3, 4 and 5 had been inappropriate.</p> <p>The Committee also took account of Mr Patel's admission in his letters to the GDC, as set out above.</p> <p>The Committee concluded that in respect of charges 3 and 4 and 5, Mr Patel's conduct was inappropriate and finds charge 7.a) proved.</p>
7. b)	<p><i>"Your conduct as set out above at 3, and/or 4, and/or 5 was misleading."</i></p> <p>Found proved.</p> <p>The Committee had regard to Mr Patel's statement, dated 30 July 2019, in which he said:</p> <p><i>"I therefore accept that I inappropriately benefitted, both financially and in relation to my UDA target, by submitting those false claims...</i></p> <p><i>[And] by submitting those exaggerated claims... I now accept that... I misled the patients."</i></p> <p>The Committee also considered the witness statements of Mr 1 and Ms Ford.</p> <p>The Committee also took account of Mr Patel's admission in his letters to the GDC, as set out above.</p> <p>The Committee concluded that in respect of charges 3 and 4 and 5, Mr Patel's conduct was misleading and finds charge 7.b) proved.</p>
7. c)	<p><i>"Your conduct as set out above at 3, and/or 4, and/or 5 was dishonest in that you sought to obtain additional UDAs and/or private fees to which you knew you were not entitled."</i></p> <p>Found proved.</p> <p>The Committee had regard to the admissions made by Mr Patel in his letters to the GDC as set out above that he had been dishonest by claiming for more UDAs than were justified and by charging additional private fees from his patients.</p> <p>In coming to its decision, the Committee considered the advice provided by the Legal Adviser in relation to the case of <i>Ivey v Genting Casinos</i> [2017] 3 WLR 1212. The Committee accepted that Mr Patel had knowledge of the NHS</p>

	<p>Contract system and knew at the time he was behaving dishonestly. He admitted in his statement dated 30 July 2019 that his deliberate actions had the intention of financial gain for himself and Practice 1.</p> <p>The Committee was satisfied that it was clear that by making claims for additional UDAs and charging additional fees to which he was not entitled, Mr Patel was dishonest by the objective standards of ordinary decent people.</p> <p>The Committee concluded that in respect of charges 3 and 4 and 5, Mr Patel's conduct was dishonest and finds charge 7.c) proved.</p>
8. a)	<p><i>"Your conduct as set out above at 6 was inappropriate."</i></p> <p>Found proved.</p> <p>The Committee had regard to the admissions made by Mr Patel in his letters to the GDC as set out above, where he accepted that causing or allowing claims to be made in a higher band than the treatment justified was inappropriate.</p> <p>In his statement, dated 30 July 2019, Mr Patel explained that the claims were <i>"accidentally erroneous"</i>, but the Committee concluded they were nonetheless inappropriate.</p> <p>In her report, Ms Ford stated that it is the performer's responsibility to ensure that all claims submitted in their name and/or performer number are an accurate representation of all treatment identified and provided. In addition, Ms Ford stated that there is evidence in the data and records which appears to amount to an <i>"inappropriate modus operandi"</i> that would benefit the practice financially.</p> <p>Therefore, the Committee concluded that in respect of charge 6, Mr Patel's conduct was inappropriate and finds charge 8.a) proved.</p>
8. b)	<p><i>"Your conduct as set out above at 6 was misleading."</i></p> <p>Found proved.</p> <p>The Committee had regard to the admissions made by Mr Patel in his letters to the GDC as set out above, where he accepted that causing or allowing claims to be made in a higher band than the treatment justified was misleading. In his statement, dated 30 July 2019, Mr Patel explained that the claims were <i>"accidentally erroneous"</i>, but the Committee concluded they were nonetheless misleading.</p> <p>Again, this was supported by Ms Ford in her report.</p> <p>Therefore, the Committee concluded in respect of charge 6, Mr Patel's conduct was misleading and finds charge 8.b) proved.</p>
8. c)	<p><i>"Your conduct as set out above at 6 lacked integrity in that you failed to ensure your claims complied with the relevant regulations."</i></p> <p>Found proved.</p> <p>The Legal Adviser referred the Committee to the guidance concerning the meaning of 'lack of integrity' in the case of <i>Wingate and Evans v. SRA</i> [2018] EWCA Civ 366. The Court stated that in professional codes of conduct the</p>

	<p>term 'integrity' is a useful shorthand to express the higher ethical standards which society expects from professional persons and which the professions expect from their own members.</p> <p>Again, the Committee had regard to the admissions made by Mr Patel in his letters to the GDC, as set out above, where it was stated that he admitted all of the GDC allegations with the exception of the dishonesty alleged in head of charge 8.d).</p> <p>In addition, the Committee noted that in his statement dated 30 July 2019, Mr Patel accepted that he <i>"got into the habit"</i> of recording codes which were incorrect.</p> <p>In her report, Ms Ford confirmed that it is the performer's responsibility to ensure that claims are appropriate and accurate.</p> <p>The Committee also had regard to Mr 1's statement to the NHSCFA, in which he stated, <i>"It is not conceivable to me that a qualified and experienced practitioner is not aware of the difference and know the correct claim to be made."</i></p> <p>The Committee considered that there is a duty on professional people to adhere to the standards of their profession. It was satisfied that the public and other professionals would not expect dentists to continue to make incorrect claims, over such a protracted period of time, particularly as Mr Patel acknowledged that he had a <i>"habit"</i> of recording the incorrect codes.</p> <p>Therefore, the Committee concluded that in respect of charge 6, Mr Patel's conduct lacked integrity and finds charge 8.c) proved.</p>
8. d)	<p><i>"Your conduct as set out above at 6 was dishonest in that you sought to obtain additional UDAs to which you knew you were not entitled."</i></p> <p>Found proved.</p> <p>In respect of this charge, Mr Patel denied that he had acted dishonestly. The Legal Adviser invited the Committee to consider the test set out in the case of <i>Ivey v Genting Casinos</i>. The Committee first considered the actual state of Mr Patel's knowledge or belief as to the facts.</p> <p>In his statement dated 30 July 2019, Mr Patel stated that he <i>"misunderstood...and did not appreciate that the distinction between the band 1 and band 2 sealant treatments was the removal of carious tissue."</i> He stated that he believed the distinction to be the material used for the procedure. He went on to say, <i>"I specifically recorded that the treatment was for 'prevention', 'to re-seal' or because of 'staining' and I made no attempt to disguise the fact that caries was not present."</i></p> <p>Mr Patel claimed that at the relevant time he had not seen the guidance provided by the NHS Business Services Authority Knowledge Base, in particular, <i>"What band of treatment is a fissure sealant or a sealant restoration?"</i> In this regard, he stated <i>"I deny....these sealant claims were deliberately or fraudulently mis-claimed."</i></p> <p>Having considered this explanation, the Committee referred to the patient</p>

records for those in Schedule 4 and noted there were references to staining and/or deep pits that may have resulted in a preventative sealant being required. However, this did not assist the Committee in determining whether or not Mr Patel knew at the time the correct band under which he should have claimed for this treatment.

In the statements provided by Mr 1 and Ms Ford, they both refer to a pattern of incorrectly claiming for exempt patients, particularly children, where it would be less likely for a query regarding costings to be raised. It was accepted by Ms Ford that when the NHS Dental Contract changed in 2006, it was met by great confusion from the profession, although the details of it were well-publicised and statements were available detailing how claims were to be made. Ms Ford was satisfied that by the time these patients were treated, starting in 2009, any uncertainties should have been addressed and resolved. She stated, *“As an experienced practitioner, I would expect [Mr Patel] to be very familiar with the NHS Dental Contract by 2009 as he would have been operating... under the contract since April 2006.”*

The Committee bore in mind the repetitive nature and similarities of the claims made. However, the Committee accepted that it did not automatically follow that because of Mr Patel's dishonesty admitted in his letters to the GDC in relation to charge 7.c) (regarding Schedule 1, 2 and 3), he had also been dishonest in relation to the claims in Schedule 4.

However, the Committee concluded that Mr Patel's self-professed “habit” between 2000 and 2017 of entering the incorrect code resulting in overclaiming in his favour is a further demonstration of his dishonesty and propensity to defraud the NHS for personal gain.

Having considered all the evidence, the Committee was satisfied on the balance of probabilities, in relation to the first limb of the ‘Ivey test’, that as an experienced dentist, Mr Patel did know how to claim the correct UDAs for these patients.

The Committee then considered the “objective test”, namely whether applying the objective standards of ordinary decent people, Mr Patel's conduct would be considered dishonest. The Committee was satisfied that any member of the public would consider that seeking to obtain additional UDAs, to which Mr Patel knew he was not entitled, was dishonest.

Therefore, the Committee did not accept Mr Patel's explanation and finds charge 8.d) proved.

We now move to Stage 2.”

On 02 March 2022 the Chairman announced the determination as follows:

“Having announced its decision on the facts, the Committee then moved on to consider whether the facts found proved amount to misconduct and, if so, whether Mr Patel's fitness to practise is currently impaired. In accordance with Rule 20 of the Fitness to Practise Rules 2006, the Committee heard submissions from Ms Barnfather, on behalf of the GDC, in

relation to the matters of misconduct, impairment and sanction. The Committee accepted the advice of the Legal Adviser.

Ms Barnfather informed the Committee that the GDC's position was that Mr Patel has been guilty of misconduct, that his fitness to practise is currently impaired and that the only appropriate sanction was erasure.

In informing the Committee of the history of this case, Ms Barnfather reminded the Committee that Mr Patel had unsuccessfully applied for voluntary erasure in October 2021 and has stated he intends to retire from dental practice. There are no previous adverse disciplinary findings against him.

In relation to misconduct, Ms Barnfather described Mr Patel's conduct as multi-faceted, proactive and sophisticated dishonesty. She said that any insight shown was extremely limited and more akin to a recognition of the weight of the evidence against him.

Ms Barnfather referred the Committee to the relevant case authorities in relation to misconduct, impairment and sanction and to the GDC's Standards applicable during the period of the charges.

In relation to sanction, Ms Barnfather referred the Committee to the GDC's document "*Guidance for the Practice Committees including Indicative Sanctions Guidance*" (effective 1st October 2016, revised December 2020) (the Guidance) and the factors which are relevant to the sanction of erasure.

In considering the decisions at this stage, the Committee bore in mind the admissions made on behalf of Mr Patel in the letters from his solicitors of 11 October 2021 and 30 November 2021 to the effect that he accepted that he had been guilty of misconduct and that his fitness to practise is impaired. The Committee applied its own judgement when considering these issues.

Misconduct

Misconduct can be described as "*some act or omission falling short of what is proper...a serious falling short*" as referred to in the case of *Roylance v. GMC No 2 [2000] 1 AC 311*. In considering whether any or all of the facts found proved amount to misconduct, the Committee had regard to the following principles from the GDC's '*Standards for Dental Professionals (May 2005)*', in particular:

1 Put patients' interests first and act to protect them

- 1.1 *Put patients' interests before your own or those of any colleague, organisation or business.*
- 1.10 *Do not make any claims which could mislead patients.*

6 Be trustworthy

- 6.1 *Justify the trust that your patients, the public and your colleagues have in you by always acting honestly and fairly.*
- 6.2 *Apply these principles to clinical and professional relationships, and any business or educational activities you are involved in.*
- 6.3 *Maintain appropriate standards of personal behaviour in all walks of life so that patients have confidence in you and the public have confidence in the dental profession.*

The Committee also had regard to the following principles from the GDC's 'Standards for the Dental Team (September 2013)', in particular:

Principle 1

Put patients' interests first

- 1.3 *Be honest and act with integrity.*
- 1.6 *Treat patients fairly, as individuals and without discrimination.*
- 1.7 *Put patients' interests before your own or those of any colleague, business or organisation.*

Principle 9

Make sure your personal behaviour maintains patients' confidence in you and the dental profession

- 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 satisfied that Mr Patel defrauded the NHS, and therefore the public, and misled individual patients, who were registered as exempt, into paying additional private top-up fees. Mr Patel's conduct was multi-faceted, calculated and proactive dishonesty involving multiple untruths to the NHS, patients and other members of staff. The Committee concluded that his pattern of systematic and sophisticated dishonesty was of a scale that would be considered deplorable by fellow professionals and members of the public.

The Committee concluded that Mr Patel demonstrated a sustained disregard for the fundamental tenet of the profession to act honestly and with integrity, and defrauded both the NHS and his patients over the course of some eight years for his own financial gain.

In light of the findings of fact that it has made, the Committee has concluded that Mr Patel's conduct and, in particular, his dishonest conduct fell far short of the standards reasonably expected of a dental professional and amounts to misconduct.

Impairment

The Committee next considered whether, in the light of its finding of misconduct, and taking account of all other information known to it, Mr Patel's fitness to practise is currently impaired.

The Committee considered whether Mr Patel's misconduct is remediable, whether it has been remedied, and the risk of repetition. The Committee also had regard to the wider public interest, which includes the need to uphold and declare proper standards of conduct and behaviour, and to maintain public confidence in the profession and this regulatory process.

The Committee took into account that dishonesty by its nature is difficult to remediate. However, it acknowledged that there are circumstances where this can be demonstrated, for example through insight or remorse, or active steps to correct any dishonest behaviours. The Committee has not been provided with any evidence that Mr Patel, beyond his admissions and apology, has any real insight into his behaviour. The Committee has no evidence before it of any efforts by Mr Patel to remedy the misconduct. The Committee was of the view that Mr Patel's pattern of behaviour was only halted when the investigation by the NHSCFA into the allegations began.

In this regard, the Committee considered the judgement of Mrs Justice Cox in the case of *CHRE v. NMC and Grant [2011] EWHC 927 (Admin)*. The Committee was in no doubt that Mr Patel's dishonesty and misconduct caused his patients and the NHS financial harm. Mr Patel breached fundamental tenets of the profession and thereby brought it into disrepute. In the absence of any evidence to the contrary, there is nothing before the Committee to offer reassurance that Mr Patel does not continue to pose a significant risk of repetition of his misconduct. Therefore, a finding of impairment is necessary on the grounds of public protection.

The Committee bore in mind the overarching objective to maintain public confidence in the profession and uphold standards. The public has a right to expect appropriate standards of conduct and behaviour from dentists, including submitting correct and honest claims to the NHS. In the light of the serious nature of Mr Patel's protracted dishonesty towards both the NHS and the public, the Committee concluded that public confidence would be severely undermined if a finding of current impairment was not made in this case. Therefore the Committee also finds that Mr Patel's fitness to practise is currently impaired on the grounds of public interest.

Sanction

Having found Mr Patel's fitness to practise to be currently impaired, the Committee next considered what action, if any, to take in relation to his registration. It took into account the GDC's document '*Guidance for the Practice Committees, including Indicative Sanctions Guidance*'. The Committee reminded itself that any sanction imposed must be proportionate and appropriate and, although not intended to be punitive, may have that effect.

The Committee first took into account the following mitigating factors:

- Mr Patel has no previous disciplinary findings against him;
- There is evidence of an apology in Mr Patel's statement prepared for the NHSCFA investigation, dated 30 July 2019.

The Committee then took into account the following aggravating factors and concluded they were engaged in this case:

- Financial harm or risk of financial harm to a patient or another;
- Dishonesty;
- Premeditated misconduct;
- Financial gain;
- Breach of trust;
- The involvement of a vulnerable patient or other vulnerable individual;
- Misconduct sustained or repeated over a period of time;
- Blatant or wilful disregard of the role of the GDC and the systems regulating the profession;
- Attempts to cover up wrongdoing; and
- Insufficient insight.

The Committee concluded that clearly the aggravating factors far outweigh the very limited mitigating factors identified.

The Committee had regard to its previous findings on misconduct and impairment in coming to its decision and considered each sanction in ascending order of severity.

The Committee first considered whether to take no action or issue a reprimand but concluded that this would be wholly inappropriate in view of the seriousness and type of misconduct in this case. The Committee has identified a real risk to public protection should Mr Patel return to practise without restriction. The Committee considered the misconduct to be at the higher end of the spectrum and therefore it would be neither proportionate nor in the public interest to allow Mr Patel to return to unrestricted practice.

The Committee next considered whether placing conditions on Mr Patel's registration would be a sufficient and an appropriate response. However, due to the level of risk already identified, it was of the view that there are no practical or workable conditions that could be formulated to address the dishonest behaviour. In addition, it did not consider that conditions would adequately address the considerable public interest issues in this case.

The Committee then went on to consider whether a suspension would be the appropriate sanction. The Committee considered the Guidance at paragraph 6.28 that sets out the factors to be considered when deciding whether the sanction of suspension would be appropriate. The Committee noted that the majority of factors are present in this case. There is evidence of repetition of the behaviour, Mr Patel has shown limited insight and poses a significant risk of repeating the behaviour. Patients' interests would be insufficiently protected by a lesser sanction as would the public's confidence in the profession.

However, the Committee also noted from paragraph 6.28 that a suspension could be considered appropriate in circumstances where *"there is no evidence of harmful deep-seated personality or professional attitudinal problems (which might make erasure the appropriate order)"*. It was the view of the Committee that Mr Patel's dishonesty does demonstrate a harmful deep-seated professional attitudinal problem that is central to this case.

The Committee had regard to the Guidance at paragraph 63,

"Where dishonesty is a central feature of a Committee's decision, there will always be a severe risk of a registrant's name being erased from the register. Where little remorse, regret or insight is demonstrated... then this may point to a more serious sanction needing to be imposed to ensure public confidence in the profession is not undermined and that proper professional standards of conduct are maintained."

Having considered the Guidance, specifically the sections dealing with dishonesty (paragraphs 54 to 65), the Committee concluded that the suspension of Mr Patel's registration would not be sufficient or appropriate in light of its findings.

In considering erasure, the Committee had regard to paragraph 6.34 of the Guidance which states erasure will be appropriate when the behaviour is fundamentally incompatible with being a dental professional, any or a combination of the following factors may point to such a conclusion:

- serious departures from the relevant professional standards;

- where serious harm to patients or other persons has occurred, either deliberately...
- where a continuing risk of serious harm to patients or other persons is identified;
- the abuse of a position of trust or violation of the rights of patients, particularly if involving vulnerable persons;
- serious dishonesty, particularly where persistent or covered up;
- a persistent lack of insight into the seriousness of actions or their consequences.

The Committee concluded that all of the factors listed above are relevant in this case.

In light of all its conclusions, the Committee was satisfied that erasure is the only sanction that would appropriately and proportionately address the misconduct and current impairment in this case, and send the public and the profession a clear message about the standards expected of a dental professional. To adequately protect the public and the wider public interest, nothing short of removal from the register would be sufficient.

The Committee now invites submissions as to whether a suspension order should take immediate effect to cover the 28-day appeal period.”

Decision on immediate order

“The Committee has considered whether to make an order for the immediate suspension of Mr Patel’s registration in accordance with Section 30 of the Dentists Act 1984 (as amended). Ms Lydia Barnfather, on behalf of the GDC, submitted that such an order is necessary for the protection of the public and is otherwise in the public interest.

The Committee has considered the submission made. It has accepted the advice of the Legal Adviser.

The Committee is satisfied that an immediate order of suspension is necessary for the protection of the public and is otherwise in the public interest. The Committee concluded that given the nature of its findings and its reasons for the substantive order of erasure in Mr Patel’s case, it is necessary to direct that an immediate order of suspension be imposed on both of these grounds. The Committee considered that, given its findings, if an immediate order was not made, there would be a risk to public safety and public confidence in the profession would be undermined.

The effect of this direction is that Mr Patel’s registration will be suspended immediately. Unless Mr Patel exercises his right of appeal, the substantive order of erasure will come into effect 28 days from the date on which notice of this decision is deemed to have been served on him. Should Mr Patel exercise his right of appeal, this immediate order for suspension will remain in place until the resolution of any appeal.

That concludes this hearing.”