

## Hearing held in public

### Summary

<b>Name:</b>	<b>MATUSZAK, Lukasz Julian [Registration number: 210571]</b>
<b>Type of case:</b>	<b>Professional Conduct Committee (Review)</b>
<b>Outcome:</b>	<b>Suspended indefinitely</b>
<b>Date:</b>	<b>15 December 2022</b>
<b>Case number:</b>	<b>CAS-194276-R3C7M7</b>

This is a resumed hearing pursuant to s 27C of the Dentists Act 1984 (the “Act”).

On 4 December 2020 the Professional Conduct Committee (PCC) found Mr Matuszak’s fitness to practise as a dentist to be impaired by reason of misconduct and directed that his registration be suspended for a period of 12 months with a review, summarising the factual background to the case as follows:

The Committee found proved that, on 7 July 2014, Mr Matuszak submitted documents via email to the GDC, which purported to have been issued by Powszechny Zaklad Ubezpieczen (‘PZU’) Insurance, as proof of his indemnity arrangement for the period 15 March 2013 to 14 March 2014.

Subsequently, the GDC received information, anonymously, which alleged that the PZU insurance documentation that Mr Matuszak had submitted was not genuine. In response, the GDC commenced an investigation into Mr Matuszak’s fitness to practise.

The Committee found proved that, from 15 March 2019 to 23 March 2020, Mr Matuszak failed to fully cooperate with the GDC’s investigation, in that when asked to do so, he did not provide his consent to allow the GDC to verify with PZU the validity of the insurance documents he submitted on 7 July 2014. In fact, in an email to the GDC dated 20 March 2019, Mr Matuszak explicitly refused to give his consent, and in subsequent correspondence with the Council, he failed to address the matter at all.

It was the finding of the Committee that Mr Matuszak’s conduct in not providing the GDC with his consent to verify the validity of the PZU insurance documents was intended to frustrate the GDC investigation. The Committee further found that his conduct lacked integrity.

In finding Mr Matuszak’s fitness to practise to be impaired, the December 2020 PCC stated:

In reaching its decision, the Committee considered the context in which Mr Matuszak’s misconduct occurred. Whilst it was satisfied that the GDC’s request in seeking his consent was to establish his indemnity insurance status for the protection of patients,

it bore in mind that there is no evidence to suggest that the PZU insurance documents submitted by Mr Matuszak on 7 July 2014 were in fact not valid. Taking this into account, the Committee decided that it could not conclude that this matter had put patients at unwarranted risk of harm.

However, the Committee was satisfied that this matter had brought the dental profession into disrepute and that Mr Matuszak had breached fundamental tenets of the profession. This was clear from his failure to cooperate fully with the GDC's investigation into his fitness to practise, which was intended to frustrate the process, and consequently, his failure to show integrity.

The Committee went on to consider whether Mr Matuszak's failings were remediable, whether they had been remedied and the likelihood of repetition. It considered that there were steps that Mr Matuszak could have taken to address his misconduct, not least by providing his consent to the GDC to allow it to complete its investigation into the matter of his indemnity insurance. The Committee also considered that Mr Matuszak could have demonstrated remorse and insight into the concerns raised in this case.

There has been no evidence before the Committee that Mr Matuszak has changed his position regarding the giving of his consent. In relation to any demonstrations of remorse or insight, the Committee noted that Mr Matuszak did engage with the GDC during the initial stages of its investigation into this case. It had regard to his correspondence with the Council during that time, and found no evidence to demonstrate remorse or insight on his part. Mr Matuszak has not engaged at all with the hearing and, as such, there has been nothing further from him by way of evidence.

In view of the absence of any evidence to indicate insight or any expression of remorse, and given Mr Matuszak's ongoing lack of engagement, the Committee could not be confident that he would not repeat his misconduct. The Committee concluded that public confidence in the dental profession would be undermined if a finding of impairment were not made in the circumstances. It was further satisfied that such a finding is required to uphold proper standards, and to ensure that the GDC, as a regulator, is not fettered in investigating concerns raised regarding its registrants.

In directing a review of the period of suspension, the December 2020 PCC stated:

The Committee reviewing Mr Matuszak's case may find it helpful to receive the following:

- Evidence that he has complied with the GDC's request for consent to verify the PZU insurance documents referred to in this case.
- Evidence of his insight and reflections on his misconduct.

The PCC reviewed the case on 8 December 2021 and found that Mr Matuszak's fitness to practise continued to be impaired by reason of misconduct, stating:

...There is no evidence before this Committee that Mr Matuszak has addressed his past misconduct or provided any information as recommended to him by the initial Committee in December 2020. He has not provided any information to demonstrate any evidence of insight or remediation. In these circumstances, the Committee considers that there remains a risk that Mr Matuszak could repeat the misconduct identified and thus he remains a risk to the public.

The Committee notes that in November 2021, Mr Matuszak was sent a cease-and-desist letter in respect of a potential criminal offence under section 43 of the Dentist Act, in that he is a Director of a Company which was incorporated in October 2021. Mr Matuszak responded to the GDC on 2 December 2021, via email stating that “...I inform that from March 2020 I do not conduct any dental activities in the territory of the UK. I have not been in the UK since March 2020, I do not employ any dental staff, and I have no income from dental activities. I am a director in a Selva Solutions LTD Company and the my [sic] Company’s activities are not related to dentistry.” The Committee took account of this information but noted that this evidence has not been tested.

Aside from Mr Matuszak’s response to the GDC in relation to the cease-and-desist letter, the Committee notes that Mr Matuszak has not engaged with the GDC in relation to these proceedings over a protracted period of time, despite repeated attempts by the GDC to secure his involvement. The Committee considers that confidence in the profession and in the regulator would be undermined if a finding of impairment were not made. Accordingly, the Committee has determined that Mr Matuszak’s fitness to practise remains impaired.

The December 2021 PCC directed that the suspension of Mr Matuszak’s registration be extended by a further period of 12 months with a review, stating:

...the Committee took into account the serious nature of the outstanding concerns in this case. It was satisfied that this further period of suspension would adequately protect the public and the wider public interest. In the event that Mr Matuszak decides to engage with the remediation process, a period of 12 months will afford him time to focus on the recommendations made by the previous Committee in December 2020. It would also provide him time to demonstrate a commitment to return to practice and provide any other evidence he considers relevant in advance of the next review.

It is the role of the Committee today to undertake the review directed by the December 2021 PCC. Neither party was present at the hearing, which was conducted remotely using Microsoft Teams.

In its written submissions, the General Dental Council (GDC) requested that the hearing proceed in the absence of the parties and that the suspension be reviewed on the papers. Its position in relation to the question of current impairment is that:

48. The Council submits that there is no evidence to show any material change in position since the last hearing. This case has a history of limited engagement. The Registrant has not provided any evidence which demonstrates that he has developed any insight nor has he provided the Council with consent for verification of the insurance documents. The Registrant’s disregard to the regulator in relation to his activities as director of Selva Solutions shows the Registrant’s attitude towards his regulatory responsibilities.

The GDC’s position in respect of the question of sanction is that a direction for indefinite suspension should now be given.

There was no record before the Committee of any communication or response from Mr Matuszak regarding the hearing today. There was no record before the Committee of any further communication from him as part of the proceedings beyond

his email to the GDC on 2 December 2021, as recorded in the determination of the December 2021 PCC.

The Committee accepted the advice of the Legal Adviser on the requirements of service and proceeding in absence.

The Committee was satisfied that the notification of hearing dated 7 November 2022 had been served on Mr Matuszak in accordance with the requirements of Rules 28 and 65 of the General Dental Council (Fitness to Practise) Rules 2006 by virtue of its being sent to his registered address by both Special Delivery and first class post. An undated printout from the Royal Mail “Track and Trace” website records that the item was “Ready for Delivery” on 9 November 2022 and that it was due for delivery later that day. There is no record of any attempted delivery. However, service is effected under the Rules by the act of sending the notification by post and not by proof of actual or attempted delivery.

The next consideration for the Committee was whether to proceed with the hearing in the absence of Mr Matuszak. This is a discretion which must be exercised with great care and caution. A link to download a copy of the notification of hearing was also sent to Mr Matuszak by email on 7 November 2022. The Committee was satisfied that the GDC had made all reasonable efforts to send notice of today’s hearing to Mr Matuszak. There has been no response or other engagement from him. He is likely to be aware of the fact of these continuing fitness to practise proceedings and the burden is on him to engage with his regulatory body. Having regard to all the circumstances, including his long history of non-engagement, the Committee determined that he appears to have voluntarily absented himself from this hearing. There was no application for a postponement from him and there was nothing to suggest to the Committee that adjourning the hearing today would make his attendance any more likely at a future date. Having regard to these factors and to the pending need to review the current period of suspension prior to its expiry on 6 January 2023, the Committee determined that it would be fair and in the public interest to proceed with the hearing, notwithstanding the absence of Mr Matuszak. The Committee further determined to proceed in the absence of the GDC and to review the suspension on the papers.

The Committee accepted the advice of the Legal Adviser relating to the review of the suspension.

The Committee had regard to the *Guidance for the Practice Committees, including Indicative Sanctions Guidance* (October 2016, last revised December 2020).

The Committee determined that Mr Matuszak’s fitness to practise continues to be impaired by reason of his misconduct. This is because of his continued lack of engagement in these proceedings. He provides no evidence of any insight, remorse or reflection. There is no evidence whatsoever of any remediation. The Committee today is in no different a position to that of the initial PCC in 2020 and the last reviewing PCC in 2021. Mr Matuszak’s misconduct was particularly serious and exposed both the public (in the absence of any evidence that he held valid indemnity cover) and the reputation of the profession to a serious risk of harm. In the absence

of his engagement and any evidence of remediation, those risks remain today. In the Committee's judgement, Mr Matuszak had demonstrated through his continued lack of engagement a blatant or wilful disregard of the role of the GDC and the systems regulating the profession.

The Committee determined that there is a significant risk of repetition should Mr Matuszak be allowed to resume practice without any restriction on his registration. Public confidence in the profession and this regulatory process would also be seriously undermined if no finding of impairment continued to be made.

Accordingly, the Committee determined that Mr Matuszak's fitness to practise as dentist continues to be impaired by reason of misconduct.

The Committee determined that the continued restriction of Mr Matuszak's registration remains necessary to public confidence in the profession and in this regulatory process. The Committee could not be satisfied that conditions of practice could be formulated which would be workable, measurable and proportionate, owing to the nature and seriousness of Mr Matuszak's misconduct. Further, the Committee could not in any event be satisfied that he would comply with any conditions on his registration given his lack of engagement in the proceedings.

The Committee therefore determined that the suspension of Mr Matuszak's registration remains necessary and proportionate.

The Committee considered whether to direct that the suspension of Mr Matuszak's be extended by a further period with a review, or whether a direction for indefinite suspension should now be given under s 27C(1)(d) of the Act. Mr Matuszak has demonstrated over a period of years no willingness to engage in this regulatory process and to provide evidence of insight, remorse or remediation. There is nothing to indicate to the Committee that he would be likely to engage and provide such evidence within the next 12 months (the maximum period of suspension which the Committee can direct). Accordingly, there is nothing to suggest that any reviewing PCC in 12 months' time would be in any different a position to the Committee today. In the Committee's judgement, a direction for indefinite suspension is now the appropriate sanction to impose given the seriousness of the outstanding concerns regarding Mr Matuszak and his long history of non-engagement in these proceedings.

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

That concludes the hearing.