

HEARING PART-HELD IN PRIVATE**Professional Conduct Committee
Initial Hearing****3 to 5 January 2024****Name:** FOSTER, Christopher James**Registration number:** 192127**Case number:** CAS-203226-S2S9F7

General Dental Council: Alecsandra Manning-Rees, Counsel
Instructed by Tamara Krupski-David, IHLPS**Registrant:** Not Present
Unrepresented

Fitness to practise: Impaired by reason of misconduct and conviction/caution**Outcome:** Erased with Immediate Suspension**Duration:** N/A**Immediate order:** Immediate suspension order

Committee members: Marnie Hayward (Chair, Dental Care Professional Member)
Louise Wallace (Lay Member)
Sulaman Anwar (Dentist Member)**Legal Adviser:** Alastair McFarlane**Committee Secretary:** Lola Bird

At this hearing the Committee made a determination that includes some private information. That information has been omitted from this public version of the determination, and this public document has been marked to show where private material has been removed.

FOSTER, Christopher

Registration Number: 192127

1. This is a Professional Conduct Committee hearing in respect of a case brought against Mr Foster by the General Dental Council (GDC).
2. The hearing commenced on 3 January 2024, and is being conducted remotely by Microsoft Teams video-link.
3. Mr Foster is not present at the hearing, and he is not represented in his absence. The Case Presenter for the GDC is Ms Aleksandra Manning-Rees, Counsel.

PRELIMINARY MATTERS – 3 January 2024

Application to proceed with the hearing in the absence of the registrant

4. At the outset, Ms Manning-Rees made an application pursuant to Rule 54 of the *GDC (Fitness to Practise) Rules Order of Council 2006* ('the Rules'), to proceed with the hearing notwithstanding Mr Foster's absence.
5. The Committee took account of Ms Manning-Rees' submissions in respect of the application, and it considered the supporting evidence provided. The Committee accepted the advice of the Legal Adviser on the issues of service and proceeding in the absence of a registrant.

Decision on service

6. The Committee first considered whether notice of the hearing had been served on Mr Foster in accordance with Rules 13 and 65, and Section 50A of the *Dentists Act 1984 (as amended)* ('the Act'). It had sight of the Notice of Hearing dated 1 December 2023 ('the notice'), which was sent to Mr Foster's registered address by Special Delivery and First Class post.
7. The Committee took into account that there is no requirement within the Rules for the GDC to prove delivery of the notice, only that it was sent. Having had regard to the Royal Mail proof of postage information provided, the Committee was satisfied that the Council had met the requirement of sending notice to Mr Foster.
8. The Committee further noted that on 1 December 2023, a copy of the notice was sent to Mr Foster by way of an attachment within a secure email, and there is evidence indicating that the attachment was downloaded.

9. The Committee was satisfied that the notice of 1 December 2023, which was sent to Mr Foster, complied with the 28-day notice period required by the Rules. It was also satisfied that the notice contained all the required particulars, including the date and time of the hearing, confirmation that it would be conducted remotely by video-link on Microsoft Teams, and that the Committee had the power to proceed with the hearing in Mr Foster's absence.

10. On the basis of all the information before it, the Committee was satisfied that notice of the hearing had been served on Mr Foster in accordance with the Rules and the Act.

Decision on whether to proceed with the hearing in the absence of the registrant

11. The Committee next considered whether to exercise its discretion under Rule 54 to proceed with the hearing in the absence of Mr Foster. It approached this issue with the utmost care and caution. The Committee took into account the factors to be considered in reaching its decision, as set out in the case of *R v Jones* [2003] 1 AC 1HL, and the public interest considerations as set out in the case of *General Medical Council v Adeogba* [2016] EWCA Civ 162.

12. The Committee remained mindful that fairness to Mr Foster was an important consideration, however, it also bore in mind the need to be fair to the GDC and the public interest in the expeditious disposal of this case.

13. The Committee was satisfied that all reasonable efforts had been made by the GDC to notify Mr Foster of this hearing. It noted from information drawn to its attention that Mr Foster has not engaged at all with the Council in relation to these fitness to practise proceedings. Consequently, there is no information before the Committee to suggest that deferring this hearing would secure his attendance on a future date.

14. The Committee took into account that a copy of the notice of 1 December 2023 was successfully delivered to Mr Foster's email address with no response from him. He did not request an adjournment of these proceedings, and the Committee concluded that an adjournment would serve no meaningful purpose in all the circumstances.

15. The Committee determined that it was in the interests of justice and in the public interest to proceed with the hearing notwithstanding Mr Foster's absence.

Decision on application to hold parts of the hearing in private – 3 January 2024

16. Ms Manning-Rees next made an application for parts of the hearing to be held in private. She told the Committee that there may be occasions during the proceedings when it would be appropriate to go into private session, as there may be references to confidential matters concerning Mr Foster [IN PRIVATE].

17. In the circumstances, Ms Manning-Rees invited the Committee to exercise its discretion under Rule 53(2)(a) to conduct the hearing partly in private for the protection of Mr Foster's private life.

18. Having accepted the advice of the Legal Adviser, the Committee granted Ms Manning-Rees' application. **[IN PRIVATE]**.

Decision on application to admit evidence

19. Ms Manning-Rees made a further preliminary application to admit into evidence information relating to Mr Foster's fitness to practise history. This was in the form of two previous PCC decisions made in respect of Mr Foster, one in December 2016 and the other in November 2020. Ms Manning-Rees submitted that these previous PCC decisions contained relevant information which may affect how this Committee determined the factual allegations before it at this hearing.

20. In making the application, Ms Manning-Rees relied on Rules 57(1) and 57(2), which state as follows:

57.— (1) A Practice Committee may in the course of the proceedings receive oral, documentary or other evidence that is admissible in civil proceedings in the appropriate court in that part of the United Kingdom in which the hearing takes place.

(2) A Practice Committee may also, at their discretion, treat other evidence as admissible if, after consultation with the legal adviser, they consider that it would be helpful to the Practice Committee, and in the interests of justice, for that evidence to be heard.

21. Ms Manning-Rees highlighted that the PCC decision in December 2016 related to Mr Foster's failure to declare to the GDC a conviction that he received in October 2014. Whilst that Committee did not find that Mr Foster had been dishonest in failing to declare that conviction, it did find that his failure amounted to misconduct. That Committee decided that Mr Foster "*either did not know or understand his responsibility to report the conviction*".

22. It was Ms Manning-Rees' submission that, as a result of the PCC proceedings in December 2016, Mr Foster would have been made aware of the importance of declaring convictions to his regulatory body.

23. Ms Manning-Rees also addressed the Committee in relation to the second previous PCC decision made in respect of Mr Foster in November 2020. **[IN PRIVATE]**.

24. **[IN PRIVATE]**.

25. Ms Manning-Rees submitted that it was a "*difficult balance*" putting the past PCC determinations before the Committee at the fact-finding stage, as opposed to any second stage of the hearing, as prescribed by the Rules. She stated however, that in fairness to Mr Foster and to ensure that the GDC meets its statutory objective, it was necessary for this Committee to have before it all relevant and useful information. Ms Manning-Rees submitted that the weight attached to the previous PCC decisions would be a matter for this Committee when making its findings.

26. In reaching its decision on the application, the Committee took account of Ms Manning-Rees' submissions. It accepted the advice of the Legal Adviser. The Committee had regard to its discretion to admit evidence under Rule 57.

27. The Committee noted that it was unusual to receive information about a registrant's fitness to practise history in advance of making findings on the alleged facts. It specifically considered the issue of admissibility of this evidence first before giving any consideration to matters of weight. However, it had regard to the GDC's reasons for providing the information at this early stage, including the potential advantages to both the Council and Mr Foster. The Committee particularly considered any potential prejudice to Mr Foster and balanced this against the arguments advanced by the GDC that its admission was also in Mr Foster's interests and had the potential to undermine the GDC's case in relation to the serious issue of dishonesty.

28. In all the circumstances, the Committee determined to exercise its discretion to admit into evidence the previous PCC decisions of December 2016 and November 2020. It considered on balance it was fairest to Mr Foster to admit this material. The Committee was satisfied that the past decisions contain relevant and helpful information, and that it was in the interests of justice for that information to be considered at the fact-finding stage.

FINDINGS OF FACT – 4 January 2024

Summary of the case background and evidence

29. In opening the case for the GDC, Ms Manning-Rees provided the Committee with written submissions and an evidence matrix. She also made submissions orally.

30. Ms Manning-Rees told the Committee that Mr Foster is registered with the GDC as a dental nurse, having first registered with the Council in June 2010. She stated that the allegations against him at charges 1 to 3 relate to the matter of his convictions in February and August 2018, and an adult caution which he received in September 2022, issued by the Police Service of Northern Ireland.

31. Ms Manning-Rees highlighted the memoranda of conviction provided within the documentary evidence and she drew the Committee's attention to Rule 57(5) of the Rules, which states that:

Where a respondent has been convicted of a criminal offence—

(a) a copy of the certificate of conviction, certified by a competent officer of a court in the United Kingdom (or, in Scotland, an extract conviction) shall be conclusive proof of the conviction; and

(b) the findings of fact upon which the conviction is based shall be admissible as proof of those facts.

32. In relation to the remaining allegations against Mr Foster, as set out at charges 4 to 8, Ms Manning-Rees submitted that these were matters upon which the Committee must decide whether the GDC had discharged its burden of proof.

33. Charges 4 to 6 allege that Mr Foster failed to immediately inform the Council of his convictions and his caution. The associated allegations at charge 7 are that Mr Foster's conduct in failing to make those declarations was misleading and dishonest. Ms Manning-Rees submitted that it was plain that Mr Foster knew that declarations in respect of his convictions and caution were necessary,

given his prior involvement with the GDC for similar matters. She also referred the Committee to the *Standards for the Dental Team (Effective from September 2013)* ('the GDC Standards'), in particular:

9.3.1 You must inform the GDC immediately if you are subject to any criminal proceedings anywhere in the world.

34. **[IN PRIVATE]**. It was Ms Manning-Rees' submission that ordinary decent people would regard Mr Foster's alleged behaviour as dishonest.

35. Finally, charge 8 alleges that Mr Foster failed to cooperate with the GDC's investigation into his fitness to practise from 11 January 2021 to 22 December 2022. In this regard, Ms Manning-Rees referred the Committee to Standard 9.4, which states that:

9.4 You must co-operate with any relevant formal or informal inquiry and give full and truthful information.

36. Ms Manning-Rees submitted that there was ample evidence to prove the factual allegations against Mr Foster, including the witness statement of a Senior Paralegal within the GDC's In-House Legal Presentation Service, dated 6 December 2023. The Senior Paralegal produces with their witness statement a number of documents relevant to this case.

The Committee's findings

37. The Committee considered all the evidence presented to it. It took account of Ms Manning-Rees' submissions made on behalf of the GDC. The Committee accepted the advice of the Legal Adviser. It reminded itself of the observations of Collins J in *Lawrance v GMC* [2015] EWHC 586 (Admin) as to the need for cogent evidence to establish dishonesty on the balance of probabilities.

38. The Committee considered each allegation 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 matters are proved on the balance of probabilities.

39. The Committee findings are as follows:

1	<i>On 07 February 2018, you were convicted at Laganside Magistrates' Court of:</i>
1(a)	<i>On 14th of October 2017, driving a motor vehicle without being the holder of a driving licence contrary to Article 3(1) of the Road Traffic (Northern Ireland) Order 1981.</i> Found proved.
1(b)	<i>On the 14th of October 2017, using a motor vehicle without insurance contrary to Article 90(4) of the Road Traffic (Northern Ireland) Order 1981.</i> Found proved. The Committee considered charges 1(a) and 1(b) separately and found both matters proved on the basis of the memorandum of conviction provided. In

	accordance with Rule 57(5), the Committee accepted the memorandum of conviction as conclusive proof that Mr Foster was convicted of both offences on 7 February 2018 at Laganside Magistrates' Court.
2	<i>On 22 August 2018, you were convicted at Craigavon Magistrates' Court of:</i>
2(a)	<p><i>On the 9th of September 2017, using a motor vehicle without insurance contrary to Article 90(4) of the Road Traffic (Northern Ireland) Order 1981.</i></p> <p>Found proved.</p>
2(b)	<p><i>On the 9th day of September 2017, being in charge of a mechanically propelled vehicle when unfit through drink or drugs contrary to Article 15(2) of the Road Traffic (Northern Ireland) Order 1995.</i></p> <p>Found proved.</p> <p>The Committee considered charges 2(a) and 2(b) separately and found both matters proved on the basis of the memorandum of conviction provided. In accordance with Rule 57(5), the Committee accepted the memorandum of conviction as conclusive proof that Mr Foster was convicted of both offences on 22 August 2018 at Craigavon Magistrates' Court.</p>
3	<p><i>On 23 September 2022, you received an adult caution by the Police Service of Northern Ireland for Theft.</i></p> <p>Found proved.</p> <p>The Committee had before it a copy of the Certificate of Caution signed by both Mr Foster and the issuing officer, dated 23 September 2022. The Committee also received a copy of the Police National Computer identification details in respect of Mr Foster which included reference to this caution.</p> <p>The fact of Mr Foster's caution has not been challenged in any way, and the Committee had no reason to dispute the accuracy of the documentation provided. Accordingly, the Committee was satisfied on the balance of probabilities that this charge is proved.</p>
4	<i>You failed to immediately inform the General Dental Council that on 07 February 2018, you were convicted at Laganside Magistrates' Court of:</i>
4(a)	<p><i>On 14th of October 2017, driving a motor vehicle without being the holder of a driving licence contrary to Article 3(1) of the Road Traffic (Northern Ireland) Order 1981.</i></p> <p>Found proved.</p>
4(b)	<p><i>On the 14th of October 2017, using a motor vehicle without insurance contrary to Article 90(4) of the Road Traffic (Northern Ireland) Order 1981.</i></p> <p>Found proved.</p>

5	<i>You failed to immediately inform the General Dental Council that on 22 August 2018, you were convicted at Craigavon Magistrates' Court of:</i>
5(a)	<p><i>On the 9th of September 2017, using a motor vehicle without insurance contrary to Article 90(4) of the Road Traffic (Northern Ireland) Order 1981.</i></p> <p>Found proved.</p>
5(b)	<p><i>On the 9th day of September 2017, being in charge of a mechanically propelled vehicle when unfit through drink or drugs contrary to Article 15(2) of the Road Traffic (Northern Ireland) Order 1995.</i></p> <p>Found proved.</p>
6	<p><i>You failed to immediately inform the General Dental Council that on 23 September 2022, you received an adult caution by the Police Service of Northern Ireland for Theft.</i></p> <p>Found proved.</p> <p>The Committee considered charges 4 to 6 above separately and found each allegation proved on the same basis.</p> <p>The Committee took into account Standard 9.31 of the GDC Standards which requires all registrants to "...inform the GDC immediately if you are subject to any criminal proceedings anywhere in the world". The Committee considered this duty to be clear and was satisfied that the onus was on Mr Foster to notify the GDC of the criminal proceedings in relation to the convictions he received in 2018, as well as in relation to the caution he received in September 2022.</p> <p>The Committee accepted the evidence of the Senior Paralegal from the GDC's In-House Legal Prosecution Service, who confirmed in his witness statement that Mr Foster did not inform the GDC of his convictions and subsequent caution. The Committee noted that the Senior Paralegal had contacted various teams within the GDC to ascertain whether there had been any contact from Mr Foster, and it was confirmed that there had been no communication from him relevant to these criminal matters or to his fitness to practise.</p> <p>In all the circumstances, the Committee was satisfied on the balance of probabilities that charges 4 to 6 above are proved.</p>
7	<i>Your conduct in relation to 4, 5 and 6 was;</i>
7(a)	<p><i>Misleading, and/or</i></p> <p>Found proved.</p> <p>In finding charge 7 proved, the Committee took into account the ordinary every day meaning of misleading behaviour. It noted that to 'mislead' was to cause someone to believe something that is not correct.</p> <p>The Committee was satisfied that Mr Foster's failure to inform the GDC immediately of his convictions and his caution was misleading. His failure would have led the Council, and anyone referring to the GDC's Register for Dental Care</p>

	<p>Professionals, to believe that he had not received these convictions or cautions. This was clearly inaccurate. Accordingly, this charge at 7(a) is found proved.</p>
7(b)	<p><i>Dishonest</i></p> <p>Found proved.</p> <p>The Committee applied the legal test for dishonesty, as set out in the case of <i>Ivey v Genting Casinos (UK) Ltd t/a Crockfords</i> [2017] UKSC 67. In considering Mr Foster's state of mind, the Committee had regard to the information contained in the previous PCC decision of November 2020.</p> <p>[IN PRIVATE]. The Committee therefore decided that the November 2020 PCC had no bearing on the circumstances of this present case.</p> <p>Given his involvement in earlier fitness to practise proceedings in December 2016 relating to similar matters, the Committee was satisfied that Mr Foster would have been fully aware of the importance of immediately declaring any criminal proceedings against him to the GDC. However, he failed to do so. The Committee considered that ordinary decent people would regard such a failure as dishonest. In the Committee's view, members of the public would expect registrants to promptly declare to their regulator important information which could adversely impact public safety and the reputation of the dental profession.</p> <p>In all the circumstances, the Committee was satisfied that this allegation at charge 7(b) is proved.</p>
8	<p><i>From 11 January 2021 to 22 December 2022, you failed to co-operate with a GDC investigation.</i></p> <p>Found proved only in relation to the period 11 January 2021 to 19 February 2021.</p> <p>In reaching its decision, the Committee took into account that the burden rests with the GDC to prove the alleged matters to the requisite standard. The Committee noted that the documentation relied upon by the Council in support of this allegation shows the efforts made by the Council to contact Mr Foster from 11 January to 19 February 2021. Whilst the GDC's written opening submissions refer to a number of other instances when attempts to contact Mr Foster were made, those dates fall outside the period of this charge. Accordingly, the Committee considered that there was insufficient evidence to prove a lack of cooperation by Mr Foster beyond February 2021.</p> <p>In finding this allegation proved in part, the Committee accepted the evidence of the Senior Paralegal, who set out in his witness statement a chronology of the attempts made by the GDC to contact Mr Foster with no response. The Committee had regard to the supporting documentation provided. The Committee was satisfied that in accordance with Standard 9.4 of the GDC Standards, Mr Foster had a duty to "...co-operate with any relevant formal or informal inquiry and give full and truthful information".</p>

	The Committee was satisfied on the balance of probabilities that Mr Foster failed in his obligation to cooperate with the GDC's investigation and therefore this allegation is proved.
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40. We move to Stage Two.

Stage Two of the hearing – 4 to 5 January 2024

41. The Committee's task at this second stage of the hearing has been to consider whether, in light of the facts found proved, Mr Foster's fitness to practise is currently impaired by reason of his convictions, his caution and/or misconduct. The matters of alleged misconduct in this case are those found proved at heads of charge 4 to 8, which relate to Mr Foster's failure to immediately inform the GDC of his convictions and his caution, his misleading and dishonest misconduct arising from those failures, and his further failure to cooperate with the subsequent GDC investigation into his fitness to practise.

42. The Committee noted that if it found current impairment on either or both of the statutory grounds of conviction/caution and misconduct, it would need to consider what sanction, if any, to impose on Mr Foster's registration.

43. The Committee considered all the evidence presented to it at the fact-finding stage and at this stage. The evidence received by the Committee at this stage was further information provided by the GDC relating to Mr Foster's fitness to practise history.

44. Mr Foster is neither present nor represented at this hearing, and the Committee received no material or written submissions from him, or on his behalf, in respect of any of the stages of this hearing.

45. The Committee took account of the submissions made by Ms Aleksandra Manning-Rees, Counsel for the GDC, in relation to misconduct, impairment, and sanction.

46. The Committee accepted the advice of the Legal Adviser. It reminded itself that its decisions were for its independent judgement. There is no burden or standard of proof at this stage of the proceedings.

47. The Committee had regard to the GDC's '*Guidance for the Practice Committees including Indicative Sanctions Guidance (October 2016; last revised in December 2020)*' ('the PC Guidance'), as well as the GDC's '*Guidance for decision makers on the impact of criminal convictions and cautions (May 2014; last revised in November 2017)*' ('the Guidance on convictions and cautions').

Summary of the facts found proved

48. On 7 February 2018, Mr Foster was convicted at Laganside Magistrates' Court of the following offences which occurred on 14 October 2017:

- Driving a motor vehicle without being the holder of a driving licence contrary to Article 3(1) of the Road Traffic (Northern Ireland) Order 1981; and

- Using a motor vehicle without insurance contrary to Article 90(4) of the Road Traffic (Northern Ireland) Order 1981.

49. On 22 August 2018, Mr Foster was convicted at Craigavon Magistrates' Court of the following offences which occurred on 9 September 2017:

- Using a motor vehicle without insurance contrary to Article 90(4) of the Road Traffic (Northern Ireland) Order 1981; and
- Being in charge of a mechanically propelled vehicle when unfit through drink or drugs contrary to Article 15(2) of the Road Traffic (Northern Ireland) Order 1995.

50. On 23 September 2022, Mr Foster received an adult caution for Theft, issued by the Police Service of Northern Ireland.

51. Mr Foster failed to immediately inform the GDC of his convictions and his caution in accordance with his professional obligation under the GDC Standards. The Committee found that his conduct in this regard was misleading and dishonest. It was satisfied that Mr Foster was aware of his duty to inform his regulatory body of the criminal proceedings against him.

52. Furthermore, the Committee found that from 11 January to 19 February 2021, Mr Foster failed to cooperate with the GDC's investigation into his fitness to practise.

Summary of the submissions made on behalf of the GDC

53. In accordance with Rule 20(1)(a) of the Rules, Ms Manning-Rees first addressed the Committee on Mr Foster's fitness to practise history. This included providing the Committee with information relating to a further previous PCC hearing held in respect of Mr Foster in November 2011. The matters considered at that hearing related to his respective convictions of Theft in December 2010 and January 2011. Ms Manning-Rees told the Committee that the PCC decision from November 2011, together with the two previous PCC decisions of December 2016 and November 2020, which were admitted into evidence at the fact-finding stage, represented the totality of Mr Foster's fitness to practise history with the GDC.

54. In relation to this current case, Ms Manning-Rees submitted that Mr Foster's most recent convictions and his caution, namely the matters found proved at charges 1 to 3, were, in and of themselves, statutory grounds for impairment. However, the findings made in relation to charges 4 to 8, would require further assessment by the Committee as to whether those matters found proved against Mr Foster amounted to misconduct.

55. In addressing the Committee on the issue of misconduct, Ms Manning-Rees submitted that misconduct is often referred to in case law as *"a word of general effect, involving some act or omission which fell short of what would be proper in the circumstances"*. Further, the falling short must be serious. Ms Manning-Rees submitted that the findings made by the Committee in relation

to Mr Foster's failure to declare his convictions and caution to the GDC represented a significant departure from the relevant GDC Standards and amounted to misconduct.

56. Ms Manning-Rees further submitted that Mr Foster's fitness to practise is impaired by reason of his misconduct, and his conviction and caution. She stated that it may be considered that the criminal offences of which Mr Foster was convicted and cautioned were not the most serious. She submitted, however, that an aggravating feature of this case was Mr Foster's repeated offences of a similar nature, as evidenced by his regulatory history, a number of which included dishonest acts. Ms Manning-Rees submitted that Mr Foster had a longstanding history of convictions.

57. It was Ms Manning-Rees's submission that there is no evidence before the Committee of any insight or remediation on the part of Mr Foster. Furthermore, she contended that the previous PCC decisions relating to Mr Foster, his ongoing lack of engagement with the GDC and [IN PRIVATE] all demonstrate a risk of repetition, including of the types of criminal offences brought before this Committee. Accordingly, Ms Manning-Rees submitted that a finding of impairment is necessary for the protection of the public.

58. Ms Manning-Rees also submitted that a finding of impairment is in the wider public interest. She submitted that the serious matters found proved have the ability to bring the dental profession into disrepute and to undermine public confidence in it.

59. In making her submissions on sanction, Ms Manning-Rees referred the Committee to the PC Guidance. She highlighted paragraph 6 of Appendix A to the Guidance which states that:

"The Registrar must be able to carry out their function of scrutiny effectively, including consideration of the implications of any convictions or cautions on an applicant or registrant's suitability to be on the register. If a registrant fails to disclose a conviction or caution at the point of registration or, if already registered, at any point after receiving it, it strikes at the very heart of the registration process and the reliability and integrity of the register i.e. to ensure that only fit and proper persons are registered as dental professionals. Therefore, a failure to disclose a conviction or caution may not only impact on the protection of the public, but it may also undermine the public's confidence in the profession and its regulation..."

60. It was Ms Manning-Rees' submission on behalf of the GDC that the only appropriate and proportionate sanction in this case is one of erasure. She stated that Mr Foster's longstanding regulatory history, [IN PRIVATE], and his ongoing lack of engagement with the GDC demonstrates a blatant and wilful disregard of the role of the Council and the systems regulating the dental profession. Ms Manning-Rees submitted that Mr Foster's behaviour, as highlighted in this case, was fundamentally incompatible with continued GDC registration.

Decision on misconduct

61. The Committee first considered whether the facts found proved at charges 4 to 8 amount to misconduct. It took into account that a finding of misconduct in the regulatory context requires a serious falling short of the professional standards expected of a registered dental professional. The Committee had regard to the GDC Standards, and it considered the following standards to be engaged in this case:

1.3 Be honest and act with integrity.

9.3 Inform the GDC if you are subject to criminal proceedings or a regulatory finding is made against you anywhere in the world.

9.3.1 You must inform the GDC immediately if you are subject to any criminal proceedings anywhere in the world. See our guidance on reporting criminal proceedings for more information.

9.4 Co-operate with any relevant formal or informal inquiry and give full and truthful information.

9.4.1 If you receive a letter from the GDC in connection with concerns about your fitness to practise, you must respond fully within the time specified in the letter. You should also seek advice from your indemnity provider or professional association.

62. In the Committee's view, the above GDC Standards are essential to the effective regulation of the dental profession. It is a fundamental requirement for a registrant to inform their regulatory body of any criminal proceedings against them, so that the matters can be properly investigated. It is also fundamental that a registrant cooperates with any such investigation. The Committee also took into account the overarching requirement for all registrants to be honest and act with integrity. Honesty is a fundamental tenet of the dental profession.

63. The Committee considered that Mr Foster's conduct in dishonestly omitting to immediately inform the GDC of his convictions and caution was a serious falling short of the standards expected of him as a registered dental professional. His failure to declare his criminal offences and his failure to cooperate with the subsequent investigation into his fitness to practise undermined the GDC's regulatory function, which had the potential to put patients at risk and to undermine public confidence in the dental profession. The Committee considered that fellow dental professionals and members of the public would regard Mr Foster's conduct as deplorable.

64. In all the circumstances, the Committee was satisfied that the facts found proved at charges 4 to 8 amount to misconduct.

Decision on impairment

65. The Committee next considered whether Mr Foster's fitness to practise is currently impaired by reason of his misconduct, convictions, and caution. It had regard to the over-arching objective of the GDC, which is: the protection, promotion and maintenance of the health, safety, and well-being of the public; the promotion and maintenance of public confidence in the dental profession; and the promotion and maintenance of proper professional standards and conduct for the members of the dental profession.

66. The Committee first considered Mr Foster's misconduct. It took into account his dishonest failure to declare his convictions and his caution, as well as his lack of engagement with the GDC's investigation, despite having ample opportunity to do so. The Committee considered these to be serious failings, for which there has been no explanation and no apparent mitigation.

67. The Committee has not received any evidence of remorse or insight on Mr Foster's part or any evidence of remediation. There is nothing before the Committee to suggest that Mr Foster has acknowledged his misconduct or reflected on how he might improve his behaviour in future. In the circumstances, the Committee considered that the risk of repetition is high. It took into account the impact of Mr Foster's misconduct on the GDC's ability to effectively regulate the dental profession for the safety of the public.

68. The Committee concluded that a finding of impairment in relation to Mr Foster's misconduct is necessary for the protection of the public. It also considered that such a finding is in the wider public interest, to maintain public confidence in the dental profession and the regulatory process, and to maintain and uphold proper professional standards.

69. The Committee next considered the issue of Mr Foster's impairment by reason of his convictions and his caution. In doing so, it considered the general principles set out in the Guidance on convictions and cautions, which it considered relevant in the context of this case. The Committee noted that at paragraph 9 it is stated that, when deciding on the impact of a conviction or caution on fitness to practise, "*the nature and seriousness of the offence and the applicant's character and conduct since the offence*", should be considered. At paragraph 11, it is stated that "*...character and conduct since the offence are important issues in the context of ... ongoing fitness to practise*", as this may give a useful factual basis "*on which to assess whether the offence was indicative of attitudes or personal characteristics which are fundamentally incompatible with professional registration as well as the risk of re-offending*".

70. The Committee considered the nature and seriousness of Mr Foster's criminal offences, as found proved in this case. It considered that the type of Mr Foster's criminal conduct raised serious concerns about his attitude towards public safety and his own safety. It took into account the repeated driving convictions before it that it had found proved, which included driving whilst unfit to do so, and driving without insurance. The Committee also took into account the nature of the offence for which Mr Foster was cautioned, which involved a serious act of dishonesty. **[IN PRIVATE]**.

71. The Committee acknowledged that Mr Foster's criminal offences occurred some time ago and that they may not be regarded as the most serious crimes in a legal context. However, they included repeated driving offences and a caution for an offence of theft which includes dishonesty. The driving offences posed a risk to the public.

72. The Committee has received no evidence in relation to Mr Foster's character and conduct since his convictions and caution. There has been no evidence of remorse, insight, or remediation and, as such, the Committee considered that there is a high likelihood of repetition. In determining that there is a real risk of repetition the Committee took into account that Mr Foster's fitness to practise history involves other previous convictions.

73. In all the circumstances, the Committee decided that a finding of impairment in relation to Mr Foster's convictions and caution is necessary for the protection of the public. The Committee also considered that a finding of impairment is in the wider public interest, given the serious nature of Mr Foster's offending behaviour, including Theft, of which an integral element is dishonesty.

74. Accordingly, the Committee determined that Mr Foster's fitness to practise is currently impaired by reason of his misconduct and his convictions and caution.

Decision on sanction

75. The Committee considered what sanction, if any, to impose on Mr Foster's registration. It noted that the purpose of a sanction is not to be punitive, although it may have that effect, but to protect the public and uphold the wider public interest. In reaching its decision, the Committee had regard to the PC Guidance. It applied the principle of proportionality, balancing the public interest with Mr Foster's own interests.

76. In deciding on the appropriate sanction, the Committee first considered the issue of mitigating and aggravating factors. The Committee did not identify any mitigating factors in this case.

77. In terms of aggravating features, the Committee identified the following:

- Risk of harm to the public on account of the nature of Mr Foster's convictions.
- Dishonesty.
- Financial gain from Theft.
- 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.
- Previous warnings, convictions, or other adverse findings.
- Lack of insight.

78. Taking all the above factors into account, the Committee considered the available sanctions, starting with the least restrictive, as it is required to do.

79. The Committee first considered whether to conclude this case without taking any action in relation to Mr Foster's registration. It decided, however, that such a course would not protect the public or serve to uphold the wider public interest, given the serious nature of Mr Foster's impairments and the identified risk of repetition.

80. The Committee reached the same conclusion in respect of a reprimand. It had regard to the relevant paragraphs of the PC Guidance, including paragraph 6.7 which states that, "*A reprimand is the lowest sanction which can be applied and may therefore be appropriate where the misconduct or level of performance is at the lower end of the spectrum. A reprimand does not impose requirements on a registrant's practice and should therefore only be used in cases where he or she is fit to continue practising without restrictions*". The Committee considered that this is not such a case, and therefore concluded that a reprimand would neither be appropriate nor proportionate.

81. The Committee next considered the option of a conditions of practice order. However, it concluded that there are no workable conditions that would address the concerns in this case, which relate to the issue of Mr Foster's criminal offending, his dishonesty, and his attitude towards his regulatory body. The Committee also took into account his complete lack of engagement with this fitness to practise process and was not confident that he would comply with conditions even if they

could be imposed. Accordingly, the Committee concluded that conditional registration would not be appropriate, proportionate, or sufficient to protect the public and the wider public interest.

82. The Committee went on to consider whether to suspend Mr Foster's registration for a specified period. It had regard to the PC Guidance at paragraph 6.28, which sets out the factors to be considered when deciding whether the sanction of suspension would be appropriate. The Committee considered that a number of those factors are engaged in this case. However, it also took into account that it is stated in paragraph 6.28 that a suspension may be appropriate when *"there is no evidence of harmful deep-seated personality or professional attitudinal problems (which might make erasure the appropriate order)"*.

83. Given Mr Foster's fitness to practise history, and the ongoing and serious concerns arising from this case, including his attitude towards his professional obligations and his continued lack of engagement with the GDC, the Committee considered that there is evidence to suggest that Mr Foster has a harmful deep-seated personal or professional attitudinal problem. The Committee therefore rejected the appropriateness of a period of suspension. In the light of its concerns, the Committee had regard to paragraph 6.34 of the PC Guidance which deals with the sanction of erasure.

84. The Committee noted that a number of the factors for erasure are present in this case, which include the following:

- Serious departure(s) from the relevant professional standards.
- A continuing risk of harm to the public.
- Serious dishonesty which was repeated, regarding the non-declarations to his professional body.
- A persistent lack of insight into the seriousness of actions or their consequences.

85. Having noted the presence of the above factors from paragraph 6.34 and having taken into account the nature and seriousness of Mr Foster's convictions, caution, and misconduct, together with the absence of any evidence of remorse, insight or remediation, the Committee concluded that the sanction of suspension would not be sufficient, appropriate and proportionate in all the circumstances. In the Committee's judgment, Mr Foster's behaviour is fundamentally incompatible with continued GDC registration, and therefore a period of suspension would not satisfy the public interest.

86. Accordingly, the Committee determined that the only appropriate and proportionate sanction is that of erasure.

87. Unless Mr Foster exercises his right of appeal, his name will be erased from the Register of Dental Care Professionals, 28 days from the date when notice of this Committee's direction is deemed to have been served upon him.

88. The Committee now invites submissions from Ms Manning-Rees as to whether an immediate order of suspension should be imposed on Mr Foster's registration to cover the 28-day appeal period, pending its substantive determination for erasure taking effect.

Decision on an immediate order – 5 January 2024

89. In reaching its decision on whether to impose an immediate order of suspension on Mr Foster's registration, the Committee took account of the submissions made by Ms Manning-Rees on behalf of the GDC. She invited the Committee to impose an immediate order on Mr Foster's registration for the protection of the public and in the wider public interest. Ms Manning-Rees acknowledged the technicalities arising from the fact that Mr Foster's registration is already suspended by virtue of an indefinite suspension order previously imposed by another Practice Committee. She submitted however, that the safest course of action was for this Committee to reach its decision in relation to an immediate order on the case before it.

90. The Committee accepted the advice of the Legal Adviser. He drew the Committee's attention to its power to impose an immediate order under section 36U of the *Dentists Act 1984 (as amended)*. He noted that the situation in this case is unusual, given that Mr Foster's registration is currently subject to an indefinite order of suspension. He advised however, that the Committee could impose an immediate suspension order in respect of this case, if it was satisfied that the statutory test for imposing such an order is met. He advised that the Committee must be satisfied that an immediate order is necessary for the protection of the public or is otherwise in the public interest or is in the interests of Mr Foster.

91. In deciding on the necessity for an immediate order, the Committee took into account that Mr Foster's registration is currently subject to an order of indefinite suspension. However, it was also mindful of the submissions made by Ms Manning-Rees regarding the potential for Mr Foster to ask for a review of that indefinite suspension order, which he is entitled to do. Therefore, given its ongoing concerns about the risk of repetition and public safety, as identified in its substantive determination, the Committee was satisfied that it is necessary for the protection of the public to impose an immediate order of suspension on Mr Foster's registration.

92. The Committee was also satisfied that an immediate order is required in the wider public interest. It has determined that Mr Foster's behaviour is fundamentally incompatible with continued GDC registration. The Committee considered that public confidence in the dental profession and the regulatory process would be undermined if an immediate order was not imposed in all the circumstances of this case.

93. The effect of the foregoing substantive determination and this order is that Mr Foster's registration will be suspended to cover the appeal period. Unless he exercises his right of appeal, his name will be erased from the Register for Dental Care Professionals, 28 days from the date when notice of this Committee's direction is deemed to have been served upon him.

94. Should Mr Foster exercise his right of appeal, this immediate order will remain in place until the resolution of the appeal.

95. That concludes this determination.