

HEARING HEARD IN PUBLIC

BOLSIN, Michael Anthony Cluley

Registration No: 52226

PROFESSIONAL CONDUCT COMMITTEE

JANUARY 2017 – MARCH 2018¹

Outcome: Erased with immediate suspension

Michael Anthony Cluley Bolsin, a dentist, BDS Lond 1978, LDS RCS Eng 1978 was summoned to appear before the Professional Conduct Committee on 23 January 2017 for an inquiry into the following charge:

Charge (as amended 23 and 24 January 2017)

“That being a registered dentist:

1. You failed to provide an adequate standard of care to patient A on 12 August 2015 including by:
 - a) Not carrying out sufficient diagnostic assessments by:
 - i. Failing to establish whether patient A’s level of caries risk had changed since her last dental appointment,
 - ii. Failing to enquire whether patient A was aware of any defects with her teeth.
 - b) Failing to effectively communicate with patient A by:
 - i. Not explaining your diagnosis following examination of patient A’s teeth,
 - ii. Not explaining your proposed treatment plan prior to patient A first leaving your treatment room,
 - iii. Not explaining the alternative treatment options available prior to patient A first leaving your treatment room,
 - iv. Proposing a treatment option for patient A after they had left your treatment room, contrary to your earlier advice, without explanation,
 - v. Not adequately explaining the treatment proposed when patient A was invited into your appointment room for a second time,
 - vi. Not adequately explaining the risks and benefits of treatment proposed.
2. At the appointment on 12 August 2015, you failed to obtain Patient A’s informed consent for your proposed treatment and/or treatment options in advance of telling your receptionist that Patient A required an appointment for a filling.

¹ The hearing adjourned on 26 January 2017 and resumed on 8 February 2018. It was adjourned again on 9 February 2018 and resumed on 12 March 2018.

3. You did not maintain an adequate standard of record keeping in respect of patient A's appointment on 12 August 2015 by:
 - a) Not recording any review of patient A's medical history,
 - b) Not recording your justification for not taking any radiographs,
 - c) Not recording that patient A had returned to your appointment room following the end of their initial appointment,
 - d) Not recording any of the concerns raised by patient A about the treatment proposed
4. For some of or all of the period between 1 January 2015 and 6 March 2016 you:
 - a) Failed to have indemnity insurance,
 - b) Provided dental services without having appropriate indemnity insurance,
 - c) You knew or ought to have known that you were providing dental services without having appropriate indemnity insurance,
5. In a letter sent to the GDC on 10 February 2016 you stated that you were not aware that you had been practising without indemnity insurance.
6. In an email sent to the GDC on 8 May 2016 you stated that you were sending indemnity insurance certificates that show you were covered by insurance from Dental Defence Union up to March 2016.
7. In light of that alleged in charge 4 c) your actions as alleged in charge 5 were dishonest.
8. Your actions in relation to charge 6 were dishonest.

In light of the above your fitness to practise is impaired by reason of your misconduct."

On 26 January 2017 the Chairman made the following statement regarding the finding of facts:

"Mr Bolsin,

This is a Professional Conduct Committee hearing. You are represented at this hearing by Mr Watson, Counsel. Mr Stevens, Counsel, is the Case Presenter for the General Dental Council (GDC).

The matters in this case concern your alleged failings in practice in relation to one patient, Patient A and a single course of treatment, which took place on 12 August 2015.

There are also allegations relating to your failure to have indemnity insurance between 1 January 2015 and 6 March 2016.

Preliminary amendments to the charge

At the outset of the hearing, Mr Stevens made an application to amend the charge under Rule 18 of the *GDC (Fitness to Practise) Rules 2006* (the Rules). He applied to amend a typographical error, by inserting the year '2016' after the words '10 February', in head of charge 4.

Mr Stevens made a further application to join two new allegations to the charge under Rule 25(2) of the Rules. This Rule states that:

“Where—

- (a) an allegation against a respondent has been referred to a Practice Committee,*
- (b) that allegation has not yet been heard, and*
- (c) a new allegation against the respondent which is of a similar kind or is founded on the same alleged facts is received by the Council,*
the Practice Committee may consider the new allegation at the same time as the original allegation, notwithstanding that the new allegation has not been included in the notification of hearing.”

Mr Stevens applied to add to the original charge, a new head of charge 2, to read as follows:

“At the appointment on 12 August 2015, you failed to obtain Patient A’s informed consent for your proposed treatment and/or treatment options in advance of telling your receptionist that Patient A required an appointment for a filling.”

Mr Stevens also applied to add an allegation of dishonesty in the form of a new head of charge 6, to read as follows:

“In light of that alleged in charge 4 c) your actions as alleged in charge 5 were dishonest.”

On your behalf, Mr Watson raised no objection to Mr Stevens’ application made under Rule 18.

In relation to the application made under Rule 25, Mr Watson’s initial submission was that there was no objection to the joining of the new allegations proposed by Mr Stevens. Mr Watson confirmed to the Committee that you had received written notice in November 2015 of the GDC’s intention to apply to add the allegations. Mr Watson’s view was the new allegations did not change the substance of the case against you. Subsequently, following the consideration of a procedural matter under Rule 25(3), Mr Watson did oppose the Rule 25(2) application.

In considering the applications, the Committee took account of the submissions made by both Counsel. It accepted the advice of the Legal Adviser.

The Committee first considered the application for joinder under Rule 25(2). In doing so, it had regard to the representations made by both advocates in respect of Rule 25(3) and the correct procedure to be followed when proposing the joining of new allegations.

Rule 25(3) states that:

“Where it is proposed that a new allegation should be heard by a Practice Committee under paragraph (2), they shall—

- (a) inform the respondent of the new allegation, and the alleged facts on which it is based; and*
- (b) provide the respondent with an opportunity to make written representations on the new allegation and require any such representations to be received within the period of 28 days beginning with the date on which notification of the new allegation was sent to the respondent, or within such period as is otherwise agreed by the parties.”*

The Committee noted that both Counsel acknowledged that there was some ambiguity surrounding the word “they” in the stem of Rule 25(3). It accepted that on one interpretation, “they” could mean the Practice Committee itself. It concluded, however, that in circumstances where new allegations are being proposed, “they” must refer to the GDC. The Committee was of the view that it was incumbent on the Council, as the body proposing a new allegation, to undertake unilaterally the procedure set out at 25(3). The Committee noted that the GDC sent you formal notice of the new allegations by way of a letter, dated 15 November 2016. It was satisfied that the Council had complied with the requirements of Rule 25(3).

The Committee next considered whether it should exercise its power under Rule 25(2) and consider the new allegations together with the original allegations at this hearing. In reaching its decision, the Committee took into account Mr Watson’s submissions. It noted, however, that his objection was based on his interpretation of the technicalities of Rule 25(3), rather than an objection to the new allegations themselves. The Committee noted Mr Watson’s initial agreement that the new heads of charge would not change the substance of the case.

The Committee was satisfied that the new allegations were of similar nature to those contained within the original charge and that they were founded on the same alleged facts. It was satisfied that you received sufficient notice of the new allegations, both of which were based on material that had already been provided to you by the GDC. There was no suggestion that the GDC would be producing any additional evidence. In the circumstances, the Committee decided that there would be no risk of prejudice to the fairness of the proceedings, if it considered the new allegations at the same time as the original allegations. Further, the Committee considered that it would be expeditious and in the public interest to consider all of the alleged matters together at one hearing.

The Committee therefore acceded to the Rule 25(2) application and the new allegations were joined to the original charge. The individual heads of charge were re-numbered accordingly.

The Committee also acceded to Mr Stevens’ Rule 18 application in respect of what was head of charge 4; now head of charge 5 following the re-numbering of the allegations. In granting the application, the Committee took into account that no objection was raised by Mr Watson. It was satisfied that the minor amendment of the typographical error could be made without causing any injustice.

Further amendments to the charge

Prior to the close of the GDC’s factual case, the Committee acceded to a second Rule 18 application made by Mr Stevens. He applied to amend the charge to include the particulars of a further act of alleged dishonesty. The Committee took into account that Mr Stevens’ application was based on evidence to which he referred during his submissions in opening this case and which was already before the Committee.

In order to accurately reflect the evidence in this case, the Committee agreed to the inclusion of the following head of charge:

- “6. *In an email sent to the GDC on 8 May 2016 you stated that you were sending indemnity insurance certificates that show you were covered by insurance from Dental Defence Union up to March 2016.*”
- “8. *Your actions in relation to charge 6 were dishonest.*”

In all the circumstances, taking into account that Mr Watson did not oppose the application, the Committee was satisfied that the further amendment to the charge could be made without causing any injustice.

Evidence

The Committee received a copy of Patient A's dental records, including in respect of the appointment on 12 August 2015. It also received a number of other documents, including various letters and email correspondence, relating to the matter of your indemnity insurance. Also provided to the Committee were copies of Patient A's signed witness statement and supplementary witness statement, dated 8 August 2016 and 8 October 2016 respectively. The Committee further considered the copy of your signed witness statement, which is undated.

The Committee also heard oral evidence from Patient A and from you regarding the factual matters in this case. It found Patient A to be a credible witness. It considered that she was honest in giving her account. The Committee found that Patient A's oral testimony was consistent with the contents of her witness statement and her initial written complaint to the GDC. The Committee's view was that Patient A's evidence could be relied upon as an accurate version of the events of the appointment on 12 August 2015.

The Committee found you to be an unreliable witness. It considered that your oral evidence was largely inconsistent and lacked credibility. The Committee noted that in the giving of your evidence you provided a substantial amount of supplemental information, which was contrary to information that you had given in your witness statement. This suggested to the Committee that you did not have a particularly good recall of the appointment with Patient A. In fact, the Committee noted that most of your answers appeared to be based on what you said you would normally do in clinical practice, as opposed to what actually happened in Patient A's case. Further, in some instances, the Committee found your testimony totally implausible. In particular, your view on some of the information supplied to you by the insurance providers. In the light of the Committee's assessment of your evidence, it decided that it preferred the evidence of Patient A.

By way of expert evidence, the Committee received a report, dated 10 September 2016, prepared by Mr Conor Mulcahy, the expert witness for the GDC. Mr Mulcahy also gave oral evidence to the Committee. It found his report to be very thorough and it noted that he was measured and reasonable when giving his opinion in person. The Committee found the evidence of Mr Mulcahy helpful.

Admissions

You made no admissions at the outset of this hearing. However, at the end of the defence case, Mr Watson informed the Committee that you admitted heads of charge 4 a) and 4 b) as matters of fact. You therefore accepted that, for some or all of the period between 1 January 2015 and 6 March 2016, you failed to have indemnity insurance and that you provided dental services without having appropriate indemnity insurance.

Mr Watson further provided the Committee with an undated signed document in which you also make an admission to head of charge 6.

The Committee's findings of fact

The Committee considered all of the evidence presented to it. It took account of the submissions made by Mr Stevens on behalf of the GDC and those made by Mr Watson on

your behalf. 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.

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

1.	<i>You failed to provide an adequate standard of care to patient A on 12 August 2015 including by:</i>
1. a)	<i>Not carrying out sufficient diagnostic assessments by:</i>
1. a) i	<p><i>Failing to establish whether patient A's level of caries risk had changed since her last dental appointment</i></p> <p>Proved.</p> <p>The Committee had regard to the opinion of Mr Mulcahy, as set out in his expert report. He stated that <i>"one of the first factors to consider is the patient's previous carious experience."</i> Mr Mulcahy acknowledged that Patient A was a very low caries risk, but explained that it is accepted that a patient's caries risk can change.</p> <p>Mr Mulcahy stated in his report that he could not establish if you had any discussion about dietary factors with Patient A. Mr Mulcahy noted that you were said to have told Patient A that she must <i>"drink a lot of tea, coffee or wine or eat a lot of food with vinegar..."</i> It was his opinion, however, that such comments would have related to the aetiology of the staining present on Patient A's teeth, as opposed to any caries risk. Patient A told the Committee that, whilst you made some general comments about what could damage teeth, you did not explain how this information was relevant to her teeth.</p> <p>The Committee was satisfied on the basis of the evidence that you did not establish whether patient A's level of caries risk had changed since her last dental appointment. It accepted the evidence of Mr Mulcahy that you should have carried out this diagnostic assessment.</p>
1. a) ii	<p><i>Failing to enquire whether patient A was aware of any defects with her teeth.</i></p> <p>Proved.</p> <p>The Committee noted from Patient A's dental history, as contained in the clinical records, that she did have certain defects with her teeth, including a chipped tooth. The Committee had regard to your oral evidence that you had read Patient A's clinical notes in detail prior to the appointment on 12 August 2015. It therefore considered that you would have been fully aware of the noted defects with her teeth. The Committee was of the view that there was a duty upon you at that initial appointment to make enquiries with Patient A about her knowledge of those defects and to ensure that she had the most current and up to date knowledge about her dental health.</p> <p>The Committee was satisfied from the evidence of Patient A that you did not enquire whether she was aware of any defects with her teeth. In her witness statement, she stated that <i>"Mr Bolsin didn't say anything about my teeth".</i></p>

1. b)	<i>Failing to effectively communicate with patient A by:</i>
1. b) i	<p><i>Not explaining your diagnosis following examination of patient A's teeth,</i></p> <p>Proved.</p> <p>The Committee was satisfied from Patient A's evidence that you did not explain your diagnosis following the examination of her teeth. She told the Committee that you had not told her about any problems with her teeth.</p> <p>In accepting Patient A's account, the Committee noted the clear inconsistencies in your evidence in relation to this allegation. You told the Committee in your oral evidence that you had diagnosed palatal and distal sticky fissures on Patient A's UL6 which required a filling. You stated that you had relayed this information to the dental nurse assisting you during the appointment. It was your assumption that Patient A had heard you do this and was therefore aware of the diagnosis. The Committee noted that this answer was contrary to that given in your witness statement, where you stated that <i>"I have already explained in great details all of the actual facts and items of information that were provided for patient A"</i>.</p>
1. b) ii	<p><i>Not explaining your proposed treatment plan prior to patient A first leaving your treatment room,</i></p> <p>Proved.</p> <p>The Committee was satisfied from Patient A's evidence that you did not explain your proposed treatment plan at this time. It accepted her evidence that she had been unaware that there were any problems with her teeth and therefore was not aware of a requirement for treatment.</p>
1. b) iii	<p><i>Not explaining the alternative treatment options available prior to patient A first leaving your treatment room</i></p> <p>Proved.</p> <p>The Committee was satisfied from Patient A's evidence that you did not explain your proposed treatment plan at this time. It accepted her evidence that she had been unaware that there were any problems with her teeth and therefore was not aware of a requirement for treatment.</p>
1. b) iv	<p><i>Proposing a treatment option for patient A after they had left your treatment room, contrary to your earlier advice, without explanation,</i></p> <p>Proved.</p> <p>The Committee was satisfied from the evidence of Patient A that the first time she became aware of the need for a filling at her UL6 was after she had left the treatment room.</p> <p>Patient A told the Committee that up until that point, she had been under the impression that she had no current dental problems. She explained that it was only when she had queried with the receptionist why she had been given a recall period of six months, that you appeared in a doorway behind the reception desk to explain that she needed a filling.</p>
1. b) v	<i>Not adequately explaining the treatment proposed when patient A was invited</i>

	<p><i>into your appointment room for a second time.</i></p> <p>Proved.</p> <p>The Committee accepted the evidence of Patient A that no such explanation had been given to her on this second occasion.</p>
1. b) vi	<p><i>Not adequately explaining the risks and benefits of treatment proposed.</i></p> <p>Proved.</p> <p>The Committee accepted the evidence of Patient A that no such explanation had been given to her. It was her evidence that very little at all was said by you during the consultation on 12 August 2015.</p>
2.	<p><i>At the appointment on 12 August 2015, you failed to obtain Patient A's informed consent for your proposed treatment and/or treatment options in advance of telling your receptionist that Patient A required an appointment for a filling.</i></p> <p>Proved.</p> <p>In view of the Committee's findings at heads of charge 1b(i) to 1b(vi), it was satisfied that you did not obtain Patient A's informed consent for your proposed treatment.</p> <p>The obtaining of informed consent is a fundamental professional standard, to which you were required to adhere, but you failed to do so in Patient A's case.</p>
3.	<p><i>You did not maintain an adequate standard of record keeping in respect of patient A's appointment on 12 August 2015 by:</i></p> <p>Proved.</p>
3. a)	<p><i>Not recording any review of patient A's medical history,</i></p> <p>Proved.</p>
3. b)	<p><i>Not recording your justification for not taking any radiographs,</i></p> <p>Proved.</p>
3. c)	<p><i>Not recording that patient A had returned to your appointment room following the end of their initial appointment,</i></p> <p>Proved.</p>
3. d)	<p><i>Not recording any of the concerns raised by patient A about the treatment proposed</i></p> <p>Proved.</p> <p>The Committee considered heads of charge 3(a) to 3(d) separately, but reached the same finding in respect of each allegation.</p> <p>The Committee noted the absence of the relevant information in your clinical records for Patient A. It also took into account your acceptance in your oral evidence that your record keeping in this case was non-existent and not adequate.</p> <p>In reaching its decision on head of charge 3(b) in particular, the Committee had</p>

	<p>regard to the opinion of Mr Mulcahy that not all practitioners would record a justification for not taking any radiographs. However, it considered that in the particular circumstances of Patient A's case, a record was required. You had diagnosed palatal and distal sticky fissures in the patient's UL6 and the Committee considered that you should have clearly stated why you did not take a radiograph of that tooth.</p>
4.	<p><i>For some of or all of the period between 1 January 2015 and 6 March 2016 you:</i></p>
4. a)	<p><i>Failed to have indemnity insurance,</i></p> <p>Admitted and proved.</p>
4. b)	<p><i>Provided dental services without having appropriate indemnity insurance,</i></p> <p>Admitted and proved.</p>
4. c)	<p><i>You knew or ought to have known that you were providing dental services without having appropriate indemnity insurance,</i></p> <p>Proved.</p> <p>The Committee found your oral evidence on the matter of your indemnity insurance to be inconsistent and confused. It considered, however, that there was clear evidence to show that you knew or ought to have known that for some of or all of the period between 1 January 2015 and 6 March 2016 you did not have appropriate indemnity insurance. You accepted in evidence that you were providing dental services over the period in question.</p> <p>In particular, the Committee considered the email correspondence sent to you by the insurance provider, Lockton LLP. The Committee noted a number of emails warning you that your indemnity insurance cover for the period in question was in jeopardy due to non-payment. In an email dated, 18 March 2015, a representative of Lockton LLP, advised you that if payment for the premium was not received by 31 March 2015, the insurers would consider cancelling your policy. You were further advised that this would mean that the policy <i>"would be lapsed from renewal (1st January 2015) and no cover would be provided"</i>.</p> <p>The Committee received no evidence of your response to this email and you confirmed that you did not receive an insurance certificate from Lockton LLP. Further, the Committee noted the subsequent letter you sent to another insurance provider, DPL, in which you applied for membership with them. You stated in that letter that <i>"I do hope very much that you will be able to successfully process my application for membership as soon as possible"</i>.</p> <p>In the Committee's view, all of the evidence indicates that you were aware that you were without appropriate indemnity insurance and that you knew it was a matter of urgency that you obtained such insurance.</p>
5.	<p><i>In a letter sent to the GDC on 10 February 2016 you stated that you were not aware that you had been practising without indemnity insurance.</i></p> <p>Not proved.</p> <p>The Committee saw your letter of 10 February 2016, but noted that it does not</p>

	contain the statement as alleged. It therefore concluded that this head of charge, as drafted, cannot be proved.
6.	<i>In an email sent to the GDC on 8 May 2016 you stated that you were sending indemnity insurance certificates that show you were covered by insurance from Dental Defence Union up to March 2016.</i> Admitted and proved.
7.	<i>In light of that alleged in charge 4 c) your actions as alleged in charge 5 were dishonest.</i> This head of charge falls away because the GDC has not proved that you did act as alleged in head of charge 5.
8.	<i>Your actions in relation to charge 6 were dishonest.</i> Proved. The Committee had regard to the letter sent to you by the Dental Defence Union (DDU), dated 19 April 2016. In this letter, you were clearly informed that your application for membership had been unsuccessful. Therefore, you were aware of your true position in respect of indemnity insurance, some weeks before sending the email detailed in head of charge 6 above. The Committee has found that you wrote to the GDC knowing that you had never been covered for the relevant period and that you did not have, nor would you ever receive any insurance certificates from the DDU for this period. In the Committee's view, this was obviously dishonest and it was satisfied that both the objective and subjective limbs of the relevant legal test are made out.

We move to Stage Two."

On 12 March 2018 the Chairman announced the determination as follows:

"Mr Bolsin,

On 26 January 2017 the Committee announced its findings of fact, which can be summarised as follows:

- a. At an appointment on 12 August 2015 you failed to provide an adequate standard of care to Patient A, by failing to carry out sufficient diagnostic assessments and by failing to communicate effectively with her. At that appointment you also failed to obtain her informed consent for your proposed treatment and you failed to make adequate records.
- b. For at least some of the period between 1 January 2015 and 6 March 2016 you provided dental services without having appropriate indemnity insurance in place and knew or ought to have known that you were providing dental services without that insurance.
- c. In an email sent to the General Dental Council (GDC) on 8 May 2016, you stated that you were sending indemnity insurance certificates that showed you were covered by insurance from Dental Defence Union (DDU) up to March 2016. However, the DDU had refused your application for membership and they communicated this to you

clearly by letter dated 19 April 2016. Accordingly, you knew that there was no cover with the DDU and were therefore dishonest in your email to the GDC on 8 May 2016.

The hearing then adjourned part-heard and resumed on 8 and 9 February 2018 for Stage Two, where the Committee is to decide whether your fitness to practise as a dentist is currently impaired by reason of misconduct. By the end of the second day the Committee had retired to make its decision. The hearing was adjourned to today's date. This morning you applied to reopen your case to rely on further documents. Mr Stevens, for the General Dental Council (GDC), did not oppose the application and submitted that in the interests of fairness, it would be appropriate to allow you to rely on those documents albeit, at this late stage, for the purposes of Stage Two only. The Legal Adviser agreed with your submission and the Committee decided to grant your application.

The Committee had regard to all the documentary and oral evidence that had been placed before it, including the further documents on which you relied.

The Committee took into account your submissions, which you made in writing and supplemented orally and those of Mr Stevens.

The Committee accepted the advice of the Legal Adviser.

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

Fitness to practise history

In accordance with Rule 20(1)(a) of the General Dental Council (Fitness to Practise) Rules 2006, Mr Stevens addressed the Committee on your fitness to practise history.

In November 2004, the Professional Conduct Committee (PCC) found your fitness to practise to be impaired as *"you were on 26th January 2004, at Chelmsford Crown Court, convicted on four charges of false accounting and nine charges of furnishing false information, and on 2nd April 2004 you were sentenced at Chelmsford Crown Court to nine months imprisonment."* The PCC directed that your registration be suspended for a period of 3 months. In its decision the PCC stated: -

You have appeared before this Committee following convictions for dishonesty of sufficient gravity that the Judge sentencing you could follow no other course than to send you to prison. Dishonesty is always a serious matter and the Public and Profession have a right to expect high standards of conduct from Dentists.

The offences for which you were convicted are sufficiently serious as to warrant erasure from the Dentists Register. However, the Committee has heard the factors put forward in mitigation including the steps you have already taken to modify the administration of your practice. Accordingly, rather than erase, the Committee has decided to suspend your registration for a period of three months.

In February 2006 you appeared before the PCC again in respect of allegations relating to, amongst other things, inappropriate claiming from the NHS. The PCC found that your conduct in respect of making a claim for payment, although not dishonest, was inappropriate, unprofessional, misleading and had been intended to mislead. The PCC concluded that the findings it had made were insufficient to support a finding of misconduct and therefore concluded the case. However, the PCC made the following statement to you:

...the Committee wishes to express its disapproval at... the circumstances in which you submitted a misleading claim. The Committee hopes that you will have learned from this experience, and that in the future your professional conduct will be exemplary.

Misconduct

The facts proved will amount to the statutory ground of misconduct if the conduct fell short of what would have been proper in the circumstances and was, in context, serious: *Roylance v GMC* [2000] 1 AC 311, PC at pp. 330 to 331. The necessary degree of seriousness has been variously described as “conduct which would be regarded as deplorable by fellow practitioners”: *Nandi v GMC* [2004] EWHC 317 (Admin); and “an elementary and grievous failure”: *Meadow v GMC* [2006] EWCA Civ 1390; [2007] 1 QB 462 at [200].

In assessing whether the facts found proved amount to misconduct the Committee had regard to the following principles from *Standards for the Dental Team* (September 2013)

1.1 You must listen to your patients

1.1.1 You must discuss treatment options with patients and listen carefully to what they say. Give them the opportunity to have a discussion and to ask questions. 1.3 You must be honest and act with integrity

1.3.1 You must justify the trust that patients, the public and your colleagues place in you by always acting honestly and fairly in your dealings with them. This applies to any business or education activities in which you are involved as well as to your professional dealings.

1.3.2 You must make sure you do not bring the profession into disrepute.

1.8.1 You must have appropriate insurance or indemnity in place to make sure your patients can claim any compensation to which they may be entitled....

2.1 You must communicate effectively with patients – listen to them, give them time to consider information and take their individual views and communication needs into account

2.2.1 You must listen to patients and communicate effectively with them at a level they can understand. Before treatment starts you must:

- explain the options (including those of delaying treatment or doing nothing) with the risks and benefits of each; and
- give full information on the treatment you propose and the possible costs.

2.3 You must give patients the information they need, in a way they can understand, so that they can make informed decisions

3.1 You must obtain valid consent before starting treatment, explaining all the relevant options and the possible costs.

3.2 You must make sure that patients (or their representatives) understand the decisions they are being asked to make.

4.1 You must make and keep contemporaneous, complete and accurate patient records

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 concluded that by reason of its findings of fact you failed to comply with these standards.

Your clinical and record-keeping failings were limited to your treatment of a single patient at one appointment. However, those failings were most basic and fundamental. You also failed to communicate adequately with the patient and to obtain her informed consent for the proposed treatment. The Committee also took into account the expert's report and concluded that in all the circumstances your failings in respect of Patient A are serious.

Practising without indemnity for any period of time is a breach of the basic standards of the profession. It puts patients at risk of harm and undermines public trust and confidence in the dental profession. For at least some of the period between 1 January 2015 and 6 March 2016 you provided dental services without having appropriate indemnity insurance in place and you knew or ought to have known that you were providing dental services without that insurance. This extremely serious abuse of fundamental standards was compounded by the false information you dishonestly gave to your regulator about your indemnity status, when asked for proof of your indemnity, as part of its fitness to practise investigation. The Committee concluded that your conduct in relation to these matters would be regarded as deplorable by fellow members of the profession.

All the many documents you relied on which related to the attempts you made (many of which were made outside the charged period) to get insurance did not address the underlying seriousness of your practising without cover.

Accordingly, the Committee is satisfied that the facts found proved in respect of your care, record-keeping and clinical treatment of Patient A, your practising without indemnity and your dishonesty are both individually and collectively sufficiently serious to amount to misconduct.

Impairment

The Committee considered whether your misconduct is remediable, whether it had 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: *CHRE v NMC* and *Grant* 2011 EWHC 927 (Admin) at [64]-[76].

In the Committee's judgment, your clinical and record-keeping failings are, in principle, relatively easy to remedy. Over the past 12 months you have made progress towards remediation in this regard. You have completed relevant Continuing Professional Development (CPD) activity, formulated a Personal Development Plan (PDP) and produced audits completed at your practice of record keeping and radiography. The material you put before the Committee, however, lacked objective verification and you also had not involved third parties, such as a Postgraduate Dental Deanery, in formulating and reviewing your PDP. It was also unclear from your answers to the Committee's questions whether the audits were undertaken by you or in conjunction with other practitioners at the practice.

The Committee did recognise that there have been no further concerns raised in respect of your care and treatment of patients.

The Committee considered that your failures in respect of communication and informed consent are more difficult to remedy, as they stem more from your attitude towards communicating adequately with patients and always obtaining their informed consent. Communicating well with patients and obtaining informed consent are both important aspects of dentistry.

It was of considerable concern to the Committee that you showed no insight into your failings in respect of Patient A. You continued to deny that you had done anything wrong. For example, in your written closing submissions, which you also read to the Committee, you stated in respect of informed consent:

The fact that Patient A only had a check up done does not seem so far to be relevant to anyone at the moment and it is very relevant as no treatment was provided

whatsoever and therefore there can be no allegation proven of not getting consent for treatment, no treatment was done, no consent needed, simple.

Why has this dragged on and on and been a scourge and constant source of ridiculous and unnecessary problems for me at these Hearings.

In your evidence and submissions you repeatedly complained that there was no real issue in respect of the matters which had been found proved against you in respect of Patient A. Whilst you have the right to deny those matters, your role as a registered dental professional is to reflect on the findings made by this Committee with a view to addressing them adequately.

This is not a case where there was a single failing: you made numerous deeply concerning basic errors. The Committee is not satisfied that you have remedied your failings in relation to this range of clinical matters. Therefore, there remains a risk of repetition of the clinical aspects of your misconduct.

Your failure to have had appropriate indemnity cover in place during some or all of a 15 month period is extremely serious in the Committee's judgment. It is a substantial breach of a fundamental tenet of the profession. It puts patients at a real risk of financial harm and breaches the trust placed in you and the profession. Public confidence in the profession is seriously undermined by a practitioner practising dentistry without indemnity. Your lack of indemnity over such an extended period is compounded by the fact that you knew or ought to have known that you were providing dental services for some or all of that period without indemnity. This is made even worse by your dishonesty to the GDC during its fitness to practise investigation. You dishonestly represented to your regulator that you had indemnity for the relevant period when you knew that to be untrue.

You vehemently blamed the various insurance and indemnity providers, and the terms on which they required payment, for your inability to have secured indemnity cover when providing dental services. The Committee considered the various explanations you gave for your conduct. Having done so, the Committee remains in no doubt that you were entirely responsible for your failure to have appropriate indemnity in place when providing dental services. In short, if you did not have cover, you should not have been practising. Your attitude in your evidence and submissions on the question of indemnity was deeply concerning to the Committee. You again demonstrated a complete lack of insight. For example, in your written submissions, you stated:

I have to say that I have Life Insurance, House Insurance, Car Insurance and other Insurance policies and absolutely NONE of them ask for all of the annual premium payment in 1 instalment on the 1st of each month as Lockton LLP decided to do and that is unacceptable behaviour. Maybe Mr Stephens was not listening to me when I told him that, **very quietly**, at the last Hearing. It is very clear to me who exactly is totally at fault here and it is not and was not and never was my fault. [sic]

Your failure to have appropriate indemnity insurance when providing dental services, and your subsequent dishonesty to the GDC, are most serious matters, which have brought the profession into disrepute. You have shown no insight or remorse in relation to these matters and there is a real risk that you would practise in the future without indemnity insurance.

Public confidence in the profession would also be seriously undermined if a finding of impairment were not made in respect of the matters concerning your lack of indemnity and your dishonesty.

In view of the conclusions reached by the Committee on these aspects of your misconduct, and its earlier conclusion as to the risk of repetition of your misconduct in relation to clinical matters, the Committee has concluded that your fitness to practise as a dentist is currently impaired.

Sanction

The purpose of a sanction is not to be punitive, although it may have that effect, but to protect the public and the wider public interest. In assessing what sanction, if any, to impose, the Committee applied the principle of proportionality, balancing the public interest with your interests.

The mitigating features in this case are that the clinical concerns related to a single patient and to one appointment. You have taken some remedial steps to address the risk of repetition of those shortcomings. There have also been no further concerns raised in respect of clinical matters.

The particularly serious features in this case consisted of practising without indemnity insurance and then lying to your regulator to cover it up. This is part of a wider history of concerns about your integrity. In 2004 the PCC found your fitness to practise to be impaired by reason of a criminal conviction involving dishonesty and suspended your registration for 3 months. In 2006 the PCC found that you had engaged in potentially misleading conduct in respect of the claiming of NHS payments. Whilst those matters were not serious enough to amount to misconduct, the PCC gave you a clear warning as to the importance of maintaining professional standards.

Although the clinical concerns could be regarded as relating to an isolated event, your failure to maintain appropriate indemnity was over some or all of a period of 15 months. Whilst there was no actual harm identified to patients, there was a real risk of harm to them in respect of your lack of indemnity. Your dishonesty to your regulator as part of its fitness to practise investigation was calculated to mislead it as to your indemnity status. You breached the trust placed in you by patients by not having the cover in place and also breached the trust placed in you by your regulator by lying to it when it investigated your indemnity cover.

There has been a blatant and wilful disregard of the role of the GDC and the systems regulating the profession. Notwithstanding a period of 12 months since the last hearing in this case, you have demonstrated no insight, nor have you made any apology.

The Committee considered each sanction in ascending order of severity. To conclude this case with no further action or a reprimand would be wholly inappropriate, given the seriousness of your misconduct, the risk of repetition and the wider public interest.

The Committee next considered whether conditions of practice could be formulated to be workable, measurable and proportionate. It concluded that your misconduct is far too serious to be addressed through conditional registration, despite the likely effect of a more serious sanction on you. Further, your lack of insight meant that the Committee could have no confidence that you could comply with any conditions, even if appropriate conditions could be drafted to address all aspects of your impaired fitness to practise.

The Committee then gave careful consideration to whether to suspend your registration. It took into account the mitigating factors in your case and the likely catastrophic effect of a suspension on you. However, the Committee has concluded that you do have deep-seated professional attitudinal problems. These include your lack of integrity, shown over a considerable period of time, and the disregard you have shown towards your regulator by

lying about your indemnity cover. This was then compounded by the stance you took in the evidence you have given to this Committee in February 2018 in which you showed a complete lack of insight, particularly with regard to your failings in indemnity cover, and a failure to show any remorse for the dishonesty you have demonstrated to your regulator.

This case involves practising without indemnity for some or all of the period between 1 January 2015 and 6 March 2016 and then lying to your regulator about the indemnity cover that you asserted to have been in place. These are most serious departures from relevant professional standards, you have breached fundamental tenets of the profession. Integrity is a fundamental requirement of professional practice and your professional integrity can no longer be relied upon.

In view of all your attitudinal problems, and the utmost gravity of your misconduct, the Committee considered that a period of suspension would neither be appropriate nor proportionate to your misconduct, despite the (limited) mitigation in your favour and the likely effect of a suspension order on you.

The Committee has concluded that the protection of the public, the public interest in maintaining and upholding proper standards of conduct and behaviour, and maintaining public confidence in the profession, far outweigh your interests in the circumstances of this case.

Accordingly, the Committee directs that the name of Michael Anthony Cluley Bolsin be erased from the Register.

The Committee now invites submissions on the question of an immediate order.

The Committee took full account of your submissions and those made by Mr Stevens. The Committee accepted the advice of the Legal Adviser.

The Committee is satisfied that it is necessary for the protection of the public, and is otherwise in the public interest, to order that your registration be suspended forthwith under s 30(1) of the Dentists Act 1984. In reaching its decision, the Committee balanced the public interest with your interests.

The Committee has found that there is a risk of you repeating your misconduct and that there is therefore a real risk of significant harm to patients should you be allowed to practise without restriction. There was little from the submissions you made to the Committee at this stage, that gave it any comfort that the risk to the public in relation to your lack of integrity in particular, and to which it has referred in its determination, would be any the less in the intervening period before the direction for erasure takes effect. The Committee has also found that you have deep-seated professional attitudinal problems and that your professional integrity can no longer be relied upon. Given your fitness to practise history, your misconduct in the present case and the disregard you have demonstrated for the role of the GDC, a fair minded and well-informed member of the public would be very concerned and would lose confidence in the profession if your registration is not immediately suspended. Having regard to all the circumstances, the Committee determined that it would be inconsistent with the decision the Committee has made not to make an immediate order.

The effect of this order is that your registration is suspended immediately. Unless you exercise your right of appeal, your name will be erased from the Register in 28 days' time.

Should you exercise your right of appeal, this immediate order of suspension will remain in force pending the disposal of the appeal.

That concludes the case.”

