

HEARING HEARD IN PUBLIC

NAIDOO, Suresh

Registration No: 57686

PROFESSIONAL CONDUCT COMMITTEE

OCTOBER 2013 – DECEMBER 2015

Most recent outcome: indefinite suspension**

** See page 11 for the latest determination.

Suresh NAIDOO, a dentist, BDS Ncle 1983, was summoned to appear before the Professional Conduct Committee on 21 October 2013 for an inquiry into the following charge:

Charge as amended 22 October 2013

“That being a Registered Dentist under the Dentists Act 1984:

1. At the material times you were in practice at Dentease, 93 Robin Hood Way, London SW15 (“the Practice”);
2. During November 2011 Patient A consulted you on a routine basis during which consultation and upon examination you failed:
 - a) to diagnose:
 - i) a broken restoration in the UL6;
 - ii) caries present in the UL6;
 - b) to inform Patient A that:
 - i) there was a broken restoration in the UL6;
 - ii) there was caries present in the UL6;
 - c) to formulate a treatment plan to:
 - i) replace the broken restoration in the UL6;
 - ii) treat the caries present in the UL6;
 - d) WITHDRAWN
 - e) to inform Patient A that there was caries present in the UR3 requiring treatment;
 - f) to formulate a treatment plan to treat the caries in the UR3;
 - g) to diagnose a fractured restoration in the UL7;
 - h) to inform Patient A that the restoration in the UL7 was fractured;
 - i) to formulate a treatment plan to replace the restoration in the UL7;
3. During January 2012 Patient A consulted you as regards her LL6 during which consultation and upon examination you failed to treat caries present in the LL6 when re-cementing a crown;

4. Thereafter in the period January 2012 you effectively ceased working at the Practice and / or closed the Practice in circumstances such that you failed to:
 - a) provide prior notice to Patient A that you were ceasing work at the Practice;
 - b) provide prior notice to Patient A that the Practice was closing and/or had closed;
 - c) maintain any telephone answer-phone message to the effect that:
 - i) the Practice was closing and/or had closed;
 - ii) provided alternative emergency contact details;
 - d) make any or any appropriate alternative arrangements for Patient A's on-going dental care;
 - e) make any / or adequate provision for the safe keeping and appropriate access to Patient A's dental records;
 - f) make any / or any adequate arrangements for:
 - i) the continuing on-going dental care of the Practice's patients;
 - ii) the emergency care of the Practice's patients;
 - g) ensure that adequate arrangements were in place for the safe-keeping of:
 - i) the Practice's dental records;
 - ii) the Practice premises generally;
5. By correspondence dated 22 August 2012, 19 October 2012 and 25 January 2013 the General Dental Council ("GDC") sought to communicate and obtain from you information relevant to a complaint brought against you by Patient A, as regards which correspondence you:
 - a) failed to provide any details of your indemnity provider;
 - b) failed to maintain an up to date registered address;
 - c) failed to provide Patient A's dental records to the GDC and / or Patient A;
 - d) failed to facilitate the provision of Patient A's dental records to the GDC and/or Patient A;

And in relation to the facts alleged your fitness to practice is impaired by reason of your misconduct."

On 24 October 2013 the Chairman made the following statement regarding the finding of facts:

"Mr Hurst,

Mr Naidoo, a registered dentist, was neither present nor represented before this Committee. On behalf of the General Dental Council (GDC), you made an application to proceed in his absence, pursuant to Rule 54 of the GDC (Fitness to Practise) Rules 2006 (the 'Rules').

A notification of hearing dated 20 September 2013 was sent by both first class post and Special Delivery to: (i) Mr Naidoo's registered address; and (ii) an alternative last known address.

Royal Mail 'Track and Trace' confirms that the Special Delivery items were delivered to: (i) Mr Naidoo's registered address on 24 September 2013, signed for under the name "FINCH";

(ii) the alternative address on 14 October 2013, signed for under the name “WILSON”. The notification was also sent as an email attachment on 20 September 2013 to the last known work and personal email addresses of Mr Naidoo.

Accordingly, the Committee is satisfied that notification has been duly served on Mr Naidoo in accordance with the Rules, that all reasonable efforts have been made to notify him of this hearing.

The Committee is satisfied that he did receive the notification of hearing and has voluntarily waived his right to attend. There is nothing to suggest that an adjournment would secure Mr Naidoo’s attendance. Under these circumstances, in the public interest and the convenience of witnesses, the Committee proceeds in his absence.

The factual inquiry

It is alleged that ‘Patient A’ attended Mr Naidoo at Dentease (the ‘Practice’) in November 2011 for a routine consultation, during which Mr Naidoo failed to diagnose the caries and/or broken restorations at the UL6, and a fractured restoration at the UL7. Further, that he failed to inform Patient A of these matters and of caries which he had seen in UR3, and to formulate any corresponding treatment plan. In January 2012 Mr Naidoo failed, it is alleged, to diagnose and treat caries present in Patient A’s LL6 when re-cementing a crown.

Thereafter Mr Naidoo effectively ceased working at the Practice without prior notice to Patient A. Further allegations include those relating to his abandonment of the Practice, his failure to ensure the continuing on-going and emergency care of his patients and his failure to keep their records secure and accessible.

The Committee considered each allegation separately and put the GDC to proof of the same, the burden being upon it to prove each allegation on the balance of probabilities.

The Committee carefully considered all the evidence before it. It heard evidence from Patient A, Ms Curant (a former dental nurse at the Practice), Mr Bhamra and Mr Rhidian (both of whom subsequently treated Patient A) and Mr Raitchev (a new tenant at the address of the Practice). It allowed the evidence of the following to be admitted in written form: Ms Conniss, a caseworker employed by the GDC; Ms Fullerton and Ms Dalais, paralegals employed at the firm of solicitors acting for the GDC in this matter; and Mrs Abdullah (the current owner of the former site of the Practice).

It also heard the expert evidence of Mr Turner, instructed on behalf of the GDC.

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

1.	<p>Proved.</p> <p>The Committee heard evidence from Ms Curant that, at the material times, Mr Naidoo was in practice at the Practice.</p>
2.	<p>Not Proved.</p> <p>Within the written notes of Patient A, Mr Naidoo had documented at least 5 previous examinations between 2 November 2005 and 16 September 2010 where he had documented “exam” or “consult” and specified the appropriate fee pertaining to such treatment. This did not happen for the November 2011 appointment, where all that was recorded is ‘S+P’.</p> <p>Patient A’s evidence was that she had expected to see Mr Naidoo’s hygienist wife for a scale and polish and was not expecting to see him for an</p>

	<p>examination.</p> <p>In his examination-in-chief, Committee questions and re-examination, Mr Turner conceded that a 'scale and polish' did not involve a full mouth examination and that a full examination would not therefore have been conducted at the November appointment.</p> <p>The Committee believes that a reasonable dental practitioner would not examine every surface of every tooth in the course of executing a pre-planned appointment, for a specific alternative treatment.</p> <p>The Committee therefore, on the balance of probabilities, does not find that Mr Naidoo carried out an examination of Patient A in November 2011. Accordingly, there being no examination, the Committee finds that the matters stemming from head of charge 2 fall away.</p>
2. a) i)	Not proved.
2. a) ii)	Not proved.
2. b) i)	Not proved.
2. b) ii)	Not proved.
2. c) i)	Not proved.
2. c) ii)	Not proved.
2. d)	WITHDRAWN
2. e)	Not proved.
2. f)	Not proved.
2. g)	Not proved.
2. h)	Not proved.
2. i)	Not proved.
3.	<p>Proved.</p> <p>Patient A's evidence and Mr Naidoo's written records confirm that she attended Mr Naidoo in January 2012 in relation to a crown which had come loose at the LL6.</p> <p>The evidence of Mr Turner was that, at that time, examination of the remaining tooth tissue of LL6 would have confirmed the presence of caries distally. It was 'inconceivable' to Mr Turner for obvious caries evidenced by Mr Bhamra's radiograph of 22 February 2012, to have been absent in January.</p>
4.	Proved.
4. a)	Proved.
4. b)	Proved.
4. c)	Proved.
4. c) i)	Proved.
4. c) ii)	Proved.

	<p>On 23 January 2012 Mr Naidoo informed Ms Curant at the end of that working day that he would be closing down the Practice “there and then”. He paid her wages, stated that he was leaving for South Africa and she never heard from him again. She was given no instructions as to the care of patients or their records.</p> <p>The Committee accepted the evidence of Patient A that, shortly after, she had tried to phone the Practice 2-3 times a day for approximately a week, but only got an engaged ring-tone. She was in need of an emergency appointment. She also explained that she was bewildered by her inability to get through to the Practice. She asked her sister (who lived near to the Practice) to visit the Practice and she also contacted the operator to query if there was a fault on the line and she was told that the line was working but that the phone was off the hook.</p>
4. d)	<p>Proved.</p> <p>The Committee accepted the evidence of Patient A that her sister pushed a note under the Practice’s door asking the Practice to contact her. Ms Curant called Patient A upon receipt of this request and arranged for Patient A’s attendance with a new practice in order to receive emergency treatment and to pursue continuing on-going dental care.</p>
4. e)	<p>Proved.</p> <p>Patient A was left without access to her existing dental records, which included radiographs.</p>
4. f) i)	Proved.
4. f) ii)	Proved.
4. g) i)	<p>Proved.</p> <p>Ms Curant explained that patient records were stored in a cupboard located in a room set aside for staff; neither the cupboard nor the room was lockable. A lock was eventually put on the cupboard by the new owner.</p> <p>Some records, including radiographs, were also stored in a computer left behind in the Practice. The Committee accepted the evidence of Mr Raitchev that the computer was not password protected and that he was able to retrieve patient radiographs from it.</p> <p>The Committee reminded itself that the head of charge relates only to the security of patient records from January 2012 onwards. The failure to have stored the records in either a locked cupboard or room was inadequate, as was the failure to secure the computer using suitable encryption.</p>
4. g) ii)	<p>Not Proved.</p> <p>Ms Curant’s evidence was that the keys to the Practice were left with a neighbouring shop keeper with whom there had been a long standing arrangement. The Committee is satisfied that the premises were generally secure.</p>
5.	Proved.
5. a)	Proved.

5. b)	<p>Proved.</p> <p>Mr Naidoo's registered address remained at 55 Robin Hood Way throughout the period the GDC sought to correspond with him. The evidence of Ms Curant is that, in January 2012, Mr Naidoo abandoned his dental practice and left the country.</p> <p>In all the circumstances, it is likely that Mr Naidoo ceased to be contactable through his registered address from January 2012.</p>
5. c)	Proved.
5. d)	<p>Proved.</p> <p>The GDC corresponded to Mr Naidoo at his registered address by letters dated 22 August 2012, 19 October 2012 and 25 January 2013: each letter formally requested both proof of indemnity and Patient A's relevant dental records (for which a signed consent form from Patient A had also been supplied).</p> <p>The Committee accepted the witness statement of Ms Conniss, in which she states that Mr Naidoo had failed to respond to this correspondence. The Committee paid particular regard to the Gmail account which Mr Naidoo himself used on 28 December 2012 – and was therefore active at that time – which was used thereafter to notify him of both the IOC and this hearing.</p>

We move to Stage Two.”

On 24 October 2013 the Chairman announced the determination as follows:

“Mr Hurst,

The Committee heard your submissions on behalf of the General Dental Council (GDC). It accepted the advice of the Legal Advisor.

Patient A attended Mr Naidoo at Dentease (the ‘Practice’) in January 2012, in relation to a crown which had come loose at LL6. Mr Naidoo permanently re-cemented the crown but failed to treat the caries present in LL6. Thereafter, on or around 23 January 2012, he closed the Practice and left the country. In doing so, he failed to put in place any arrangements at all for the continuing on-going dental care for Patient A and indeed for any of the other patients at the Practice.

No arrangements were made by Mr Naidoo to inform patients that (i) the Practice had closed and (ii) any provision for emergency dental care. When Patient A was in need of an emergency appointment, she repeatedly phoned the Practice but was met only with an engaged ring-tone. When she inquired with the operator to see if there was a fault on the line, she was told that the phone was simply off the hook. When she sent her sister to visit the premises, the Practice was found to be abandoned with no information for patients.

Further, patient records held in paper form were neither secure nor accessible: they had been abandoned at the locked Practice premises, but in an unlocked room and cupboard. Patient A would have been unable to access those records, including her radiographs. In order to investigate Patient A's complaint, the GDC repeatedly wrote to Mr Naidoo to formally request her records, along with a request for proof of his indemnity status. The GDC received no response to those requests.

Misconduct

In considering whether these matters, taken individually or together, amount to misconduct, the Committee had regard to principles laid down in the GDC *Standards for Dental Professionals*, dated November 2009. In particular:

- 1.1 Put patients' interests before your own or those of any colleague, organisation or business.
- 1.4 Make sure that patients have easy access to their records.
- 1.5 Co-operate with any formal inquiry into the treatment of a patient.
- 2.1 Treat patients politely and with respect, in recognition of their dignity and rights as individuals.
- 2.4 Listen to patients and give them the information they need, in a way they can use, so that they can make decisions. This will include:
 - communicating effectively with patients;
 - explaining options (including risks and benefits); and
 - giving full information on proposed treatment and possible costs.
- 3.1 Treat information about patients as confidential and only use it for the purposes for which it is given.
- 3.2 Prevent information from being accidentally revealed and prevent unauthorised access by keeping information secure at all times.

The Committee considers that Mr Naidoo's conduct in abandoning the Practice and his patient records was deplorable. Whatever the circumstances of his departure, he need only have taken simple measures to have protected the records of his patients and to have provided information regarding the closure of the Practice and their continuing on-going dental and emergency care. He could have arranged for, among other things: a sign at the Practice; an answerphone message; the secure removal of the records from the Practice. No measures whatsoever were taken.

The public interest in the effective regulation of the profession was harmed by Mr Naidoo's failure to properly engage with the registrar by not disclosing (i) the relevant records of Patient A and (ii) proof of his indemnity status. As to his clinical failure to treat the caries present in LL6, the Committee finds that this fell below the standard expected of a reasonable general dental practitioner.

The Committee therefore finds that these acts amount to misconduct.

Impairment

In considering whether Mr Naidoo's fitness to practise is impaired by reason of his misconduct, the Committee finds that there is no evidence of any insight into the misconduct, which spans three distinct areas of practice. Whilst all three areas are remediable, the Committee has no evidence of any remediation by Mr Naidoo in this case. There has been no expression of regret or apology.

The only information favourable to Mr Naidoo is that he accepted an offer from Mr Bhamra to take on his patients for him.

Mr Naidoo's actions in abandoning his Practice are serious and are likely to have brought the profession into disrepute. A finding of impairment is always required when the public

interest is harmed. The Committee is of the view that the protection of the public, the declaration and upholding of proper standards, and the public confidence in the profession are damaged by Mr Naidoo's misconduct.

Disposal

The Committee has borne in mind that the purpose of any sanction is not to be punitive, although it may have a punitive effect. In its deliberations on sanction, the Committee has applied the principle of proportionality. The Committee's primary task is to protect the public, which includes the public interest in upholding proper standards of conduct and behaviour and maintaining public confidence in the profession.

The Committee had regard to *Guidance for the Professional Conduct Committee*, dated November 2009. It considered each sanction available to it in ascending order of seriousness.

The Committee first considered whether to conclude this case with either no action or a reprimand. It determined that this would be wholly insufficient, given the seriousness of the misconduct which spans three distinct areas of practice.

The Committee next considered whether conditions on Mr Naidoo's registration would be sufficient. For the reasons outlined above, the Committee decided that it would not be sufficient. Further, there has been no engagement from Mr Naidoo in relation to these proceedings and therefore no evidence that conditions could be complied with, or that conditions could be formulated to be workable or measurable.

The Committee then considered whether to suspend Mr Naidoo's registration. In the Committee's view, his conduct had been well below the standards expected of the profession. His behaviour in abandoning his practice, his patients and his professional responsibilities is unacceptable. For these reasons, the Committee determined that a period of suspension is necessary and proportionate to protect the public and the public interest.

For the avoidance of doubt, the Committee considered that erasure would be disproportionate.

The name of Suresh Naidoo shall be suspended from the Register for a period of 12 months with a review before the end of that period.

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

"The Committee has determined that it is necessary for the protection of the public, otherwise in the public interest, and in Mr Naidoo's own interests to suspend his name from the Register forthwith under s 30 of the Dentists Act 1984 (the 'Act').

The effect of the foregoing determination, and this order, is that Mr Naidoo's registration will be suspended from the date on which notice is deemed to have been served upon him and, unless he exercises his right of appeal, his name will be suspended from the Register under s 26B of the Act for a period of 12 months 28 days from the date of deemed service.

Should Mr Naidoo exercise his right of appeal, this immediate order for suspension will remain in place until the resolution of any appeal.

The interim order imposed on Mr Naidoo's registration is revoked in accordance with s 27B(9) of the Act.

That concludes the case for today."

At a review hearing on 13 November 2014, the Chairman announced the determination as follows:

“Ms French,

This is a resumed hearing for the purposes of s 27C of the Dentists Act 1984.

On behalf of the General Dental Council (GDC) you applied to proceed in the absence of Mr Naidoo.

A notification of hearing dated 15 August 2014 was sent to Mr Naidoo at his registered address by Special Delivery; Royal Mail ‘Track and Trace’ records that the item was ‘Returned to sender’ on or before 8 September 2014.

A copy of the notification was also sent to Mr Naidoo at an alternative address in South Africa by International Signed; Royal Mail ‘Track and Trace’ records that delivery of the item was attempted on 3 September 2014. This address was supplied to the GDC by the Health Professions Council of South Africa, where Mr Naidoo is currently registered as a dentist.

A further copy of the notification was also sent to Mr Naidoo at an another alternative address in South Africa by International Signed; Royal Mail ‘Track and Trace’ records that the item was delivered on 8 September 2014. This address is the GDC registered address of Mr Naidoo’s wife.

The notification duly set out the time, date and venue of this hearing, amongst other matters required under Rule 28 of the General Dental Council (Fitness to Practise) Rules 2006 and was served on Mr Naidoo in accordance with Rule 65.

The notification was also sent as an email attachment to three email addresses pertaining to Mr Naidoo.

There has been no response from Mr Naidoo, who was also neither present nor represented before his initial hearing before the Professional Conduct Committee (PCC) on 23 - 24 October 2013.

The Committee was satisfied that all reasonable efforts had been made by the GDC to notify Mr Naidoo of this hearing. There has been a lack of engagement from Mr Naidoo throughout these proceedings and there is therefore nothing to suggest that an adjournment would facilitate his attendance at a future date. The last correspondence the GDC received from Mr Naidoo was an email timed 03:45 on 28 December 2012, in which he stated he was living in South Africa and was unlikely to return to the United Kingdom, thus he stated that he would like his registration suspended. The Committee determined that Mr Naidoo had effectively waived his right to attend this hearing, given his lack of engagement in these proceedings.

In all the circumstances, balancing the public interest in the expeditious disposal of proceedings against Mr Naidoo’s interests in attending this hearing, the Committee determined that it would be fair to proceed, notwithstanding the absence of Mr Naidoo.

The PCC of 24 October 2013 found Mr Naidoo’s fitness to practise to be impaired by reason of his misconduct, the factual background of which it summarised as follows:

Patient A attended Mr Naidoo at Dentease (the ‘Practice’) in January 2012, in relation to a crown which had come loose at LL6. Mr Naidoo permanently re-cemented the crown but failed to treat the caries present in LL6. Thereafter, on or around 23 January 2012, he closed the Practice and left the country. In doing so, he failed to put in place any arrangements at all for the continuing on-going dental care for Patient A and indeed for any of the other patients at the Practice.

No arrangements were made by Mr Naidoo to inform patients that (i) the Practice had closed and (ii) any provision for emergency dental care. When Patient A was in need of an emergency appointment, she repeatedly phoned the Practice but was met only with an engaged ring-tone. When she inquired with the operator to see if there was a fault on the line, she was told that the phone was simply off the hook. When she sent her sister to visit the premises, the Practice was found to be abandoned with no information for patients.

Further, patient records held in paper form were neither secure nor accessible: they had been abandoned at the locked Practice premises, but in an unlocked room and cupboard. Patient A would have been unable to access those records, including her radiographs. In order to investigate Patient A's complaint, the GDC repeatedly wrote to Mr Naidoo to formally request her records, along with a request for proof of his indemnity status. The GDC received no response to those requests.

The PCC in October 2013 considered that Mr Naidoo's conduct in abandoning the Practice without taking measures to protect the records of his patients or make appropriate arrangements for their ongoing dental and emergency care was deplorable. It found that the public interest in the effective regulation of the profession was harmed by Mr Naidoo's failure to properly engage with the registrar by not disclosing (i) the relevant records of Patient A and (ii) proof of his indemnity status.

That Committee had no evidence of remediation, nor did it see any evidence of regret or apology expressed by Mr Naidoo. It directed that Mr Naidoo's registration be suspended for a period of twelve months with a review, on the grounds that such a direction was necessary and proportionate to protect the public and the public interest.

Today, this Committee considered all the written material placed before it and heard your submissions. It accepted the advice of the Legal Adviser.

You put before the Committee evidence that Mr Naidoo has not declared any CPD hours to the GDC from 2013 and had not paid his Annual Retention Fee for the years 2013 and 2014.

You submitted that Mr Naidoo's fitness to practise remains impaired and it is necessary to continue to suspend his registration.

In assessing whether Mr Naidoo's fitness to practise remains impaired, the Committee had regard to the fact that there is no new material before it to demonstrate the Mr Naidoo has demonstrated any insight, remorse or remediation since his last hearing. There has been no engagement at all from him since that time.

In the absence of any such evidence and engagement, there remains a real risk to patient safety and public confidence in the profession. There is nothing before the Committee which would compel it to depart from the reasoning and concerns of the initial PCC.

Accordingly, the Committee finds that Mr Naidoo's fitness to practise remains impaired by reason of his misconduct.

To terminate the suspension or replace it with a period of conditional registration would be wholly inappropriate, given the complete lack of engagement and the risk to the public. Public confidence in the profession would be seriously undermined if Mr Naidoo were able to practise unrestricted; there are no conditions of practice which could be formulated to be workable, measurable and proportionate in view of Mr Naidoo's continuing lack of engagement with the GDC and the absence of evidence to satisfy this Committee that he has taken steps to address the issues identified in this case.

Accordingly, the Committee has determined that the only appropriate and proportionate sanction is to impose a further twelve month period of suspension, which shall be reviewed prior to its expiry.

That concludes the hearing.”

At a review hearing on 17 November 2015 the Chairman announced the determination as follows:

“Ms Brown,

The Committee has considered your submissions on behalf of the General Dental Council ('GDC'). It has accepted the advice of the Legal Adviser in reaching its decisions.

Service of the documents

Mr Naidoo was not present and not represented in the hearing. The Committee first considered whether service of the documents had taken place in accordance with the relevant rules.

From 16 October 2015 until an email of 13 November 2015, the correspondence from the GDC to Mr Naidoo had indicated that the hearing would take place at the GDC's venue at 4-12 Norton Folgate. The original letter of 15 October 2015 stated that the hearing would be at the venue where this Committee is sitting, namely Smithfield; and the GDC's email of 13 November 2015 indicated that the hearing would take place at Smithfield. Given the different instructions, it was appropriate for you to check that no one had attended at 4-12 Norton Folgate this morning. You produced exhibit 3, which is a message from a GDC officer at Norton Folgate stating that Mr Naidoo had not attended there as at 9:16am, and you confirmed that he had not attended Norton Folgate thereafter this morning. In those circumstances, the Committee is satisfied that nothing turns on the change of venue previously notified to Mr Naidoo.

The Committee examined the notification letter dated 15 October 2015 sent to Mr Naidoo's registered address in London, by recorded delivery. The Committee noted the certificate from Royal Mail's website which confirms that the notification was returned to the GDC with a message, dated 16 October 2015, stating that the addressee had “gone away”. The letter was also sent to two known email addresses for Mr Naidoo. One of the emails was not delivered, and in respect of the other email, the documents attached to it by secure link were not downloaded by Mr Naidoo.

No other correspondence address was provided by Mr Naidoo to the GDC. An address in South Africa was provided to the GDC by the Health Professions Council of South Africa, where Mr Naidoo was known to have practised as a registered dentist. A copy of the notification was sent to Mr Naidoo at this address in South Africa. The notification was also sent to Mr Naidoo at a second known address in South Africa. Both letters were sent by international recorded post. However, two certificates from Royal Mail's website indicate that delivery of these letters has not yet been attempted. The Committee noted that the GDC's legal team has attempted to telephone Mr Naidoo on several recent occasions, each time in vain.

The GDC has made a substantial effort to send the notification to Mr Naidoo, taking many more steps than are required for compliance with the relevant rules. In the circumstances, the Committee determined that the notification had been served in accordance with Rules 28 and 65 of the *General Dental Council (Fitness to Practise) Rules 2006* ('the Rules').

Proceeding in the absence of the Registrant

The Committee next considered whether this hearing ought to proceed in Mr Naidoo's absence. It has exercised the utmost care and caution and has had regard to the need for fairness to both parties, as well as the public interest in the expeditious disposal of this case.

The GDC has received no response from Mr Naidoo and no request for a postponement of this hearing. An adjournment would be unlikely to lead to Mr Naidoo attending a future hearing in any event. Moreover, Mr Naidoo has not attended any previous GDC hearings and there has been no contact and no engagement from him for nearly three years. Mr Naidoo has deliberately absented himself from these regulatory proceedings and, therefore, has voluntarily waived his right to submit representations to the Committee. Under the circumstances, and taking into account the public interest in the expeditious disposal of cases, the Committee has determined that it is fair for this hearing to proceed in Mr Naidoo's absence.

Background

On 24 October 2013 the Professional Conduct Committee ('PCC') found that Mr Naidoo's fitness to practise was impaired at that time, and suspended his registration for a period of 12 months. This suspension order was reviewed on 13 November 2014. At that hearing the PCC found that Mr Naidoo's fitness to practise remained impaired, and the suspension order was extended for a further 12 months. This is a resumed hearing, pursuant to section 27C(1) of the Dentists Act 1984 (as amended) ('the Act'), to review the suspension order, which is due to expire on 25 November 2015.

The PCC determinations on 24 October 2013 and 13 November 2014 both summarised the factual background to Mr Naidoo's misconduct in the following terms.

"Patient A attended Mr Naidoo at Dentease (the 'Practice') in January 2012, in relation to a crown which had come loose at LL6. Mr Naidoo permanently re-cemented the crown but failed to treat the caries present in LL6. Thereafter, on or around 23 January 2012, he closed the Practice and left the country. In doing so, he failed to put in place any arrangements at all for the continuing on-going dental care for Patient A and indeed for any of the other patients at the Practice.

No arrangements were made by Mr Naidoo to inform patients that (i) the Practice had closed and (ii) any provision for emergency dental care. When Patient A was in need of an emergency appointment, she repeatedly phoned the Practice but was met only with an engaged ring-tone. When she inquired with the operator to see if there was a fault on the line, she was told that the phone was simply off the hook. When she sent her sister to visit the premises, the Practice was found to be abandoned with no information for patients.

Further, patient records held in paper form were neither secure nor accessible: they had been abandoned at the locked Practice premises, but in an unlocked room and cupboard. Patient A would have been unable to access those records, including her radiographs. In order to investigate Patient A's complaint, the GDC repeatedly wrote to Mr Naidoo to formally request her records, along with a request for proof of his indemnity status. The GDC received no response to those requests."

Determination

Having read the documents before it and heard your submissions, the Committee first considered whether Mr Naidoo's fitness to practise remains impaired. Mr Naidoo was neither present nor represented at either of the previous PCC hearings and, as stated above, has

not engaged with the GDC since. The last communication was in the form of an email dated 28 December 2012 from Mr Naidoo, in which he stated he was living in South Africa and would like his registration to be suspended. Mr Naidoo has at no time made a formal application for voluntary removal from the register. Mr Naidoo has not submitted any evidence of continuing professional development ('CPD') nor paid his Annual Retention Fee ('ARF') for more than two years.

It is incumbent upon all dental professionals to engage with the GDC and to maintain their CPD and ARF. Mr Naidoo appears to have not only ignored these fundamental duties, but in his last communication in 2012, he stated his desire for his GDC registration to be suspended. Mr Naidoo's failure to respond to the GDC over a protracted period of time exacerbates the seriousness of his misconduct. He has demonstrated a total disregard for the GDC's role in protecting the public and maintaining confidence, both in the regulatory process as well as in the wider dental profession. The Committee has drawn no adverse inference from Mr Naidoo's non-attendance. However, this Committee is in the same position as the previous PCCs; there is no evidence before it to demonstrate any remediation of the misconduct found, any apology to Patient A or any insight into the serious and ongoing risk of patient harm. There is nothing before the Committee to establish any positive change in the circumstances that led to the finding of impairment in October 2013. The Committee therefore determined that the public and patients remain exposed to serious risk of harm if Mr Naidoo were to resume his practice within the UK.

In considering the public interest, the Committee was referred to the case of *CHRE v NMC and Grant [2011] EWHC 927 (Admin)* where Cox J stated at paragraph 74,

"In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances."

In the Committee's view, this case falls within the scope of this test, in that a finding that Mr Naidoo's fitness to practise remains impaired is in the public interest to maintain confidence in the dental profession, and this must outweigh Mr Naidoo's own interests in the outcome in this case. Accordingly the Committee has determined that Mr Naidoo's fitness to practise remains impaired.

The Committee next considered whether to impose conditions on Mr Naidoo's registration. It considered that, given the circumstances of continued non-engagement, it would not be possible to construct conditions that are sufficiently workable, practicable and measurable to protect the public and uphold public confidence in the profession. Moreover, there was no evidence to suggest Mr Naidoo would comply with any conditions imposed.

The Committee next considered whether to extend the current period of suspension of Mr Naidoo's registration for a further specified period. On two separate occasions the PCC has suspended Mr Naidoo's registration for a period of 12 months. Mr Naidoo has continued to fail to engage with the GDC as the statutory regulator of his chosen profession. There is no evidence of remediation undertaken or of any insight into the misconduct found or the important role of these regulatory proceedings.

The Committee has determined that it is neither proportionate nor appropriate to issue a further specified period of suspension. Accordingly, the Committee directs, pursuant to Section 27C(1)(d) of the Act, that Mr Naidoo's registration be suspended indefinitely.

Mr Naidoo will have 28 days from the date when written notification of this decision is deemed to have been served upon him, to appeal against this Committee's direction.

That concludes this case for today."