

HEARING HEARD IN PUBLIC

WILBY, Andrew Rae

Registration No: 162652

PROFESSIONAL CONDUCT COMMITTEE

July 2014 – August 2016

Most recent outcome: Suspended indefinitely

**** See page 11 for the latest determination.**

Andrew Rae WILBY, a dental technician, Verified experience in Dental Technology, was summoned to appear before the Professional Conduct Committee on 30 July 2014 for an inquiry into the following charge:

Charge

“That being a registered dental technician:

1. At all material times you were the owner of Highland Mobile Dentures Limited.

Advertising

2. In or around February 2013 you published, supplied or sought publication of an advertisement for Highland Mobile Dentures Limited, in which you purported to be a “Cosmetic Denture Specialist” when no such specialist list exists.
3. You wrote, allowed to be written, or otherwise enabled the publishing of statements suggesting and/or tending to suggest that you were able to:
 - a) take impressions for,
 - b) provide soft linings for,
 - c) provide relining for,
 - d) fit,dentures when such services were beyond the scope of your practice.
4. In behaving as you did at 2 and/or 3(a) and/or 3(b) and/or 3(c) and/or 3(d) above your conduct was:
 - a) Dishonest;
 - b) Misleading;
 - c) Inappropriate.

Scope of Practice

5. On 22nd May 2013, you agreed to make a new set of upper and lower dentures for a patient. In doing so you represented that you would fit and/or adjust the denture which was beyond your scope of practice.

And that by reason of the facts alleged above your fitness to practise as a dental technician is impaired by reason of your misconduct.”

Mr Wilby was not present and was not represented. On 31 July 2014 the Chairman announced the findings of fact to the Counsel for the GDC:

“Mr Grey,

Mr Wilby was neither present nor represented at this hearing. You made an application under Rule 54 of the General Dental Council (GDC) (Fitness to Practise) Rules Order of Council 2006 (the Rules) that this hearing should proceed in Mr Wilby’s absence. The Committee accepted the advice of the Legal Adviser.

The Committee first considered the issue of service of notice of hearing in accordance with rules 18 and 65 of the Rules. It saw a copy of the notice of hearing letter dated 24th June 2014 sent to Mr Wilby’s registered address. On 11th July 2014 a copy of the notice of hearing was also sent to Mr Wilby’s email address and to his new home address which he provided to the GDC in an email of 5th April 2014. It noted that Mr Wilby was advised by the GDC in a number of email correspondences with him to amend his registered address on the GDC website. The Committee was satisfied that all reasonable efforts had been made, in accordance with the Rules, to send notification of this hearing to Mr Wilby.

The Committee next considered whether to proceed with this hearing in Mr Wilby’s absence in accordance with Rule 54 of the Rules. The Committee bore in mind the legal adviser’s advice that its discretion to proceed with a hearing in the absence of a registrant must be exercised with the utmost care and caution. It noted that a number of attempts had been made by the GDC to keep Mr Wilby informed of the progress of his case. Mr Wilby engaged with the fitness to practise investigations against him in the early stages and he was in communication with the GDC via email. However in a telephone attendance note dated 29th July 2014 which records a conversation between the GDC and Mr Wilby, it is recorded that “Mr Wilby confirmed” that he had not received the notice of hearing and bundles which had been sent to his registered address, his alternative address and his email address. The telephone attendance note records that Mr Wilby informed the Council that he no longer resided at the alternative address and that his email address was no longer active. Mr Wilby declined to provide a new postal address and email address. The telephone attendance note also records that in relation to this hearing, although Mr Wilby informed the GDC that he was not happy for the hearing to proceed in his absence, he stated that he was “not happy about it but doesn’t ‘real’ care”. Mr Wilby was given the option of attending this hearing via telephone but he declined and did not give a reason. Mr Wilby was also informed that he could seek an adjournment of the hearing but he has not made such an application. The Committee determined that Mr Wilby was aware of this hearing and had voluntarily absented himself. The Committee was not satisfied that an adjournment would secure his attendance at a future date. The Committee determined to proceed with the hearing notwithstanding Mr Wilby’s absence. In making this decision the Committee would take care not to hold his absence against him.

The Committee has taken account of the oral and documentary evidence presented at this stage both by the GDC and the representations put forward by Mr Wilby. It has considered your submissions on behalf of the GDC. The Committee has accepted the advice of the Legal Adviser who advised that the Committee must consider each head and sub-head of charge separately. The Committee reminded itself that the burden of proof lies with the

General Dental Council (GDC) and that the standard of proof is the civil standard, which is on the balance of probabilities. Mr Wilby is required to prove nothing.

The Committee received a written report dated 26th April 2014 and heard oral evidence from Mr O'Brien, Dental Surgeon and Expert witness called on behalf of the GDC. The Committee accepted his evidence.

The Committee took into account the written representations dated 4th September 2013 made by Mr Wilby to the GDC's Investigating Committee in relation to the allegations against him.

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

1.	Not admitted but proved The flyer advertising Mr Wilby's services and which forms part of the evidence against Mr Wilby is headed 'Highland Mobile Dentures Ltd'. In his written representations to the GDC dated 4 th September 2013, Mr Wilby did not dispute that he was the owner of Highland Mobile Dentures Limited
2.	Not admitted but proved The flyer presented to the Committee in evidence clearly advertises that Mr Wilby is a "Cosmetic Denture Specialist". Mr Wilby accepted in his written representations that he had a flyer which referred to him as a Cosmetic Denture Specialist.
3 (a)	Not admitted but proved The Committee concluded that taking impressions is implicit in the provision of soft linings for dentures and this falls outside the scope of practice of dental technicians.
3 (b)	Not admitted but proved The flyer advertising Mr Wilby's services clearly states that he is able to provide soft linings for dentures which is beyond his scope of practice as a dental technician. In his written report, Mr O'Brien was of the opinion that soft linings should be prescribed by a dentist and will, in the vast majority of cases, need a new impression to ensure that an accurately fitting lining is made. Mr O'Brien considered whether a soft lining could be fitted at the request of a patient alone but was of the opinion that "this would represent a significant change in the design (requiring a change in prescription) and would still require a dentist or Clinical Dental Technician to fit the prosthesis". Mr O'Brien is also of the opinion that if a dental technician were to fit a denture that had been modified to incorporate a soft lining, the prescription and fitting would lie outside their scope of practice.
3 (c)	Not admitted but proved In his written report, Mr O'Brien states that relining of dentures requires clinical involvement insofar that their prescription, the clinical stages that may be involved (such as impressions) and fitting all fall outside the scope of practice of a dental technician.
3 (d)	Not admitted but proved

	<p>The Committee accepted the evidence of Mr O'Brien and concluded that fitting is implicit in the provision of soft lining and relining of dentures and falls outside the scope of practice of dental technicians.</p>
4 (a)	<p>Not admitted</p> <p>In relation to head of charge 2, 3(a), 3(b), 3(c), 3(d), proved. Mr Wilby as a registered dental professional is subject to the GDC's Standards Guidance, May 2005; Scope of Practice, April 2009; and Principles of Ethical Advertising, March 2012, all of which he should have been aware. In particular the Principles of Ethical Advertising (March 2012) states that "All information or publicity material regarding dental services should be legal, decent, honest and truthful...The onus is on you to be honest in your presentation of your skills and qualifications. If you make misleading claims, you may have to justify your decisions to the GDC through our fitness to practise procedures." Mr Wilby made advertisements on a website and with the use of flyers. The flyers made misleading statements.</p> <p>The Committee considered that it was significant that although the claims on the website were more limited, and included Mr Wilby's registration details, the flyers distributed directly to households advertised services which were outside the scope of a dental technician.</p> <p>As a registered professional, Mr Wilby should have been aware of the GDC Standards and his scope of practice as a dental technician. The advertising flyers were targeted at members of the public who would generally be unaware of the restrictions placed on the practice of dental technicians. The Committee found that Mr Wilby offered services outside his scope of practice. The Committee is satisfied that reasonable and honest people would have thought that his breach of these standards was dishonest and Mr Wilby himself realised that what he was doing was dishonest by those standards.</p>
4 (b)	<p>Not admitted</p> <p>In relation to head of charge 2, 3(a), 3(b), 3(c), 3(d), proved. The Committee found that Mr Wilby's assertions on his flyer were misleading. Any member of the public who receives the flyer in question which advertises Mr Wilby as specialist and lists the services as on the flyer would have been misled as to Mr Wilby's capabilities and scope of practice as a dental technician.</p>
4 (c)	<p>Not admitted</p> <p>In relation to head of charge 2, 3(a), 3(b), 3(c), 3(d), proved. The Committee found that Mr Wilby's assertions on his flyer were inappropriate in that he should not have been making such assertions.</p>
5.	<p>Not admitted but proved</p> <p>The Committee found that the first sentence in this charge was purely factual. The gravamen of the charge is the second sentence and fitting or adjusting dentures is clearly beyond Mr Wilby's scope of practice as a dental technician.</p> <p>Mr O'Brien was of the opinion that any type of denture services other than repairing broken dentures would require a prescription and proper fitting from a dentist or clinical dental technician both of which fall outside the scope of</p>

	practice for dental technicians.
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We move to Stage Two.”

On 31 July 2014 the Chairman announced the determination as follows:

“Mr Grey,

Having made its findings on the facts, the Committee heard submissions from you on misconduct, impairment and sanction. It accepted the advice of the Legal Adviser.

Background

At all material times, Mr Wilby was the owner of Highland Mobile Dentures Limited. In or around February 2013, he published, supplied or sought publication of an advertisement for Highland Mobile Dentures Limited in which he purported to be a “Cosmetic Denture Specialist” when no such specialist list exists. Mr Wilby wrote, allowed to be written, or otherwise enabled the publishing of statements suggesting and/or tending to suggest that he was able to: take impressions; provide soft linings; provide relining; and fit dentures when such services were beyond the scope of his practice. The Committee found that his actions were inappropriate, misleading and dishonest.

The Committee also found proved that on 22nd May 2013, Mr Wilby agreed to make a new set of upper and lower dentures for a patient. In doing so he represented that he could fit and/or adjust the denture which was beyond his scope of practice.

Misconduct

The Committee first considered whether its findings of fact amounted to misconduct.

You informed the Committee that Mr Wilby has no previous fitness to practise history. You submitted that singularly and taken together, the facts found proved by the Committee, save for head of charge 1, amounted to misconduct. You referred the Committee to the relevant sections of the GDC’s Standards for Dental Professionals (May 2005) which you submitted were breached by Mr Wilby.

The Committee was satisfied that Mr Wilby’s actions were a clear breach of the standards that he was expected to adhere to as a registered dental professional. In making inappropriate, misleading and dishonest statements in his advertising and agreeing to provide services outside his scope of practice, Mr Wilby failed to comply with the clear Scope of Practice guidance for dental technicians, contained within the GDC’s Scope of Practice publication, April 2009 (updated November 2013). His actions breached a number of the GDC’s Guidance applicable at the time of these events:

Standards for Dental Professionals (May 2005) and in particular -

- 1.1 Put patients’ interest before your own or those of any colleague, organisation or business.
- 1.3 Work within your knowledge, professional competence and physical abilities....
- 1.6 Make sure your patients are able to claim any compensation they may be entitled to by making sure you are protected against claims at all times, including past periods of practice.
- 5.2 Continuously review your knowledge, skills and professional performance. Reflect on them, and identify and understand your limits as well as your strengths.

- 5.4 Find out about laws and regulations which affect your work, premises, equipment and business, and follow them.
- 6.1 Justify the trust that your patients, the public and your colleagues have in you by always acting honestly and fairly.

Principles of Ethical Advertising, effective from 1st March 2012 which states:

“All information or publicity material regarding dental services should be legal, decent, honest and truthful.

Advertising by dental professionals can be a source of information to help patients make informed choices about their dental care. But advertising that is false, misleading or has the potential to mislead patients is unprofessional, may lead to referral to fitness to practice proceedings.....

Patients may be confused and uncertain about dental treatment so you should take special care when explaining your services to them. This includes providing balanced, factual information enabling them to make an informed choice about their treatment. Do not exploit the trust, vulnerability or relative lack of knowledge of your patients.

Misleading claims can make it more difficult for patients to choose a dental professional or dental services and this can lead to expectations which cannot be fulfilled and, in more serious cases, can put patients at risk of harm from an inappropriate choice.

.....

The onus is on you to be honest in your presentation of your skills and qualifications. If you make misleading claims, you may have to justify your decisions to the GDC through our fitness to practice procedures.

Whenever you, your practice, or any place where you work as a registrant, produce any information containing your name, you are responsible for checking that it is correct. You must:

- i. ensure information is current and accurate;
- ii. make sure that your GDC registration number is included;
- iii. use clear language that patients are likely to understand;
- iv. back up claims with facts;
- v. avoid ambiguous statements; and
- vi. avoid statements or claims intended or likely to create an unjustified expectation about the results you can achieve.

.....

If you wish to offer services which your training as a dental professional does not qualify you to provide, make sure you undertake appropriate additional training to attain the necessary competence. Do not mislead patients into believing that you are trained and competent to provide other services purely by virtue of your primary qualification as a healthcare professional, but make clear that you have undertaken extra training to achieve competence.”

The Committee found that advertising in clear defiance of the above standards was behaviour that fell far below that which would be expected of registered dental professionals and amounted to misconduct which is serious.

The Committee was in no doubt that all of the facts found proved amounted to misconduct which was serious.

Impairment

Having found the facts proved amounted to misconduct, the Committee next considered whether Mr Wilby's fitness to practise is currently impaired. In reaching its decision, it exercised its own independent professional judgement. The Committee bore in mind that its duty is to protect the public interest, which includes the protection of patients, the maintenance of public confidence in the profession and the declaring and upholding of proper standards of conduct and behaviour.

The Committee was satisfied that Mr Wilby's fitness to practise was impaired at the time of the events because he put patients at risk by working outside his scope of practice. While the Committee was of the view that dishonesty was not easily remediable, it considered that Mr Wilby's misconduct in relation to his advertising and working outside his scope of practice was remediable in principle. In deciding whether Mr Wilby's fitness to practise is currently impaired, it considered whether there was any evidence of remediation by him. The evidence before the Committee is scant and relates to his representations to the GDC at the investigation stage of the fitness to practice proceedings. Mr Wilby declined the suggestion by the GDC to make representations to this Committee however no adverse inference has been drawn from that stance. Nevertheless, in the absence of any current evidence from Mr Wilby, the Committee is unable to judge his level of insight into his actions which put patients at risk and to consider what steps he has taken to remedy his misconduct. The Committee is concerned that there remains a real risk to patient safety and a real risk of repetition. It considered that in breaching fundamental tenets of the profession including acting dishonestly, public confidence would be undermined if a finding of impairment was not made. The Committee therefore determined that Mr Wilby's fitness to practise is impaired by reason of his misconduct.

Sanction

Having found that Mr Wilby's fitness to practise is impaired, the Committee next considered what sanction, if any, to impose upon Mr Wilby's registration. It reminded itself that the purpose of a sanction is not to be punitive although it may have that effect. The Committee bore in mind the principle of proportionality and its duty to protect the public and declare and uphold proper standards of conduct and behaviour so as to maintain public confidence in the profession. It carefully considered the GDC's *Guidance for the Professional Conduct Committee* (November 2009).

In light of the seriousness of the misconduct found proved in this case which included dishonesty and which raises concerns of patient safety, the Committee determined that it would be inappropriate to conclude this case with no action. The misconduct found was not of a minor degree and there remains a risk to the public which requires some restriction of practice rights. As such a reprimand would also not provide adequate public protection nor would it maintain public confidence in the profession.

The Committee then considered whether to impose conditions on Mr Wilby's registration. It noted that conditions should be workable, clear, relevant, addressed to the registrant,

necessary in order to protect patients, the public or in the interests of the registrant and proportionate to the impairment. Mr Wilby made inappropriate, misleading and dishonest claims of being able to provide services that are outside his scope of practice. There are no workable conditions that could address a finding of dishonesty and it would not be appropriate to impose a condition that simply requires a registrant to adhere to the terms of their scope of practice. Moreover, in the absence of any current evidence from Mr Wilby, the Committee is not confident that conditions would be adequate and would be complied with. In these circumstances, the Committee decided that it could not formulate any workable conditions which would afford the necessary public protection, as well as satisfy the public interest.

The Committee next considered whether suspension of Mr Wilby's registration would be sufficient. Mr Wilby has engaged on a very limited basis with the fitness to practise process and there is little sign of remorse and insight into his behaviour. He appears to lack an understanding of his scope of practice and his limitations as a dental technician. His correspondence with the GDC does not demonstrate any acknowledgement of the risk to patients in carrying out the services he advertised. Indeed, in his correspondence he makes reference to other dental technicians advertising in a similar manner. This has raised serious concerns of patient safety and public confidence in the profession. Nevertheless, there is no evidence of patient harm as a result of Mr Wilby's behaviour and such a finding has not been made in this case. The Committee was of the view that the dishonesty found proved was at a relatively low level, took place over a short period of time and was an isolated incident. As such to direct erasure of Mr Wilby's registration would be disproportionate and merely punitive.

As a consequence, the Committee directs pursuant to Section 36P(7)(b) of the Dentists Act 1984, as amended that Mr Wilby's registration in the Dental Care Professionals register under the title of dental technician be suspended for a period of 12 months.

This case will be reviewed prior to the end of the 12 month period. Without restricting the scope of the review Committee, it is anticipated that it would look for independent evidence of testimonials and references showing that Mr Wilby:

- has demonstrated insight and understanding of the gravity of the misconduct that has been proved in this hearing;
- understands the scope of practice of a dental technician.

The Committee has deliberately imposed a 12 month period of suspension in order to mark the seriousness of the misconduct and to allow time for Mr Wilby to gather the necessary evidence before a review hearing.

The Committee will now invite submissions on whether an immediate order is necessary in this case."

"Mr Grey

The Committee has considered your submissions on behalf of the GDC. It has accepted the advice of the Legal Adviser.

The Committee has determined that it is necessary, for the protection of the public and is otherwise in the public interest to impose an order for immediate suspension of Mr Wilby's

registration. This order is made on the basis of the seriousness of Mr Wilby's misconduct and the risk to patient safety identified by the Committee.

The effect of the foregoing direction and this order is that Mr Wilby's registration will be suspended forthwith and unless he exercises his right to appeal, the substantive direction will take effect 28 days from when notice is deemed served on him. Should Mr Wilby exercise his right to appeal, this order for immediate suspension will remain in place pending the resolution of any appeal proceedings.

Any interim order currently on Mr Wilby's registration is hereby revoked.

That concludes the case for today."

On 21 August 2015 at a review hearing, the Chair of the Committee announced the determination as follows:

"Ms Price,

This is a resumed hearing of the case of Mr Wilby pursuant to section 27C (1) of the Dentists Act 1984. Mr Wilby was neither present nor represented at today's hearing. You made an application under Rule 54 of the General Dental Council (GDC) (Fitness to Practise) Rules Order of Council 2006 that this hearing should proceed in his absence. The Committee accepted the advice of the Legal Adviser.

The Committee saw a copy of the notice of hearing letter dated 16 July 2015 which was sent by the GDC to Mr Wilby's registered address by special delivery. It also saw a copy of the Royal Mail track and trace document which showed that the letter was "returned to sender". The Committee saw a telephone attendance note dated 4 August 2015 which records a conversation between the GDC and Mr Wilby. He was informed that the notice of hearing sent to him was returned to the GDC undelivered. Mr Wilby was asked for an alternative address for the notice of hearing to be re-sent. He informed the GDC that he could not disclose his home address or email address. The Committee was satisfied that all reasonable efforts had been made to notify Mr Wilby of this hearing in accordance with rules 28 and 65 of the Rules.

The Committee next considered whether to proceed with this hearing in the absence of Mr Wilby. It bore in mind the legal advice that its discretion to proceed must be exercised with the utmost care and caution. The Committee noted that the telephone note of 4 August 2015 records Mr Wilby as saying that he was "not interested" and he would not attend this hearing. The Committee concluded that Mr Wilby was aware of this hearing but had voluntarily absented himself. He has not made a request for an adjournment and the Committee was not assured that an adjournment would secure his attendance at a future date. The facts found proved are serious and there is a public interest in proceeding with this hearing today. The Committee determined to proceed with the hearing notwithstanding Mr Wilby's absence.

At a hearing in July 2014, a Professional Conduct Committee (PCC) found that Mr Wilby owned Highland Mobile Dentures Limited, and that in or around February 2013, he supplied or sought publication of an advertisement for Highland Mobile Dentures Limited in which he purported to be a "Cosmetic Denture Specialist" when no such specialist list exists. Mr Wilby wrote, allowed to be written, or otherwise enabled the publishing of statements suggesting and/or tending to suggest that he was able to: take impressions; provide soft linings; provide

relining; and fit dentures when such services were beyond the scope of his practice. That Committee found that his actions were inappropriate, misleading and dishonest. It also found that on 22 May 2013, Mr Wilby agreed to make a new set of upper and lower dentures for a patient and that in doing so he represented that he could fit and/or adjust the denture which was beyond his scope of practice.

That PCC found that Mr Wilby's fitness to practise was impaired and directed that his registration should be suspended for a period of 12 months with a review.

This Committee has reviewed the case. It has considered your submissions on behalf of the GDC. The Committee has accepted the advice of the Legal Adviser.

Impairment

The Committee first considered whether Mr Wilby's fitness to practise remains impaired. There is no evidence of remediation from Mr Wilby. There is no evidence of his insight into the facts found proved against him. Mr Wilby has not engaged with the GDC following the hearing in July 2014. The only correspondence from him is the telephone attendance note of 4 August 2015 in which he told the GDC that he would not be attending this hearing, he would not provide his home address or email address and that he was not interested. The facts found proved are serious. In the absence of any evidence of remediation or insight, there remains a real risk to patient safety and a risk of repetition. The Committee determined that Mr Wilby's fitness to practise remains impaired.

Sanction

The Committee next considered what sanction, if any, to impose on Mr Wilby's registration. It reminded itself that the purpose of a sanction is not to be punitive although it may have that effect. The Committee bore in mind the principle of proportionality and its duty to protect the public and declare and uphold proper standards of conduct and behaviour so as to maintain public confidence in the profession. It carefully considered the GDC's Guidance for the Professional Conduct Committee, including Indicative Sanctions Guidance (April 2015).

The Committee was of the view that in the absence of any evidence of remediation and insight from Mr Wilby, it would be inappropriate to revoke the suspension and take no further action. It further determined that conditions would not be appropriate at this stage in light of Mr Wilby's non-engagement with these proceedings. The Committee concluded that in the circumstances of this case, it is appropriate continue to the suspension of Mr Wilby's registration.

The Committee therefore determined that Mr Wilby's registration should be suspended for 12 months with a review prior to the end of that period.

A review Committee may be assisted by receiving the following from Mr Wilby:

- Evidence of insight and an understanding of the gravity of the misconduct that has been found;
- Evidence of his understanding of the scope of practice of a dental technician.

That concludes the case for today."

At a review hearing on 11 August 2016, the Chair announced the determination as follows:

“Mr Grey,

This is a resumed hearing of Mr Wilby’s case, pursuant to section 36Q(1) of the Dentists Act 1984 (as amended) (‘the Act’).

Mr Wilby was neither present nor represented today. On behalf of the General Dental Council (GDC), you made an application under Rule 54 of the GDC (Fitness to Practise) Rules Order of Council 2006 (‘the Rules’) for this hearing to proceed in Mr Wilby’s absence.

The Committee took into account your submissions in respect of the application. It accepted the advice of the Legal Adviser.

Service

The Committee first considered whether Mr Wilby had been sent notification of the hearing in accordance with Rules 28 and 65. It saw a copy of the Notification of Hearing, dated 12 July 2016, which was sent to Mr Wilby’s registered address by Special Delivery and by First Class post. A copy was also sent to him by email. The Committee was satisfied that the letter contained proper notification of today’s hearing, including its date, time and location, as well as notification that the Committee had the power to proceed with the hearing in Mr Wilby’s absence. The letter was returned to the GDC on 15 July 2016 marked ‘addressee gone away’. The Committee took into account that the requirement within the Rules is that notification be sent. There is no burden upon the GDC to prove receipt. It was Mr Wilby’s responsibility to keep his details with the GDC up to date. He was asked for an up to date address by a GDC officer, but he refused to provide it. The Committee was satisfied that all reasonable efforts had been made to send notification to Mr Wilby in accordance with the Rules and that the requirements of service had been met.

Proceeding in the absence of the respondent

The Committee next considered whether to exercise its discretion under Rule 54 to proceed with the hearing in the absence of Mr Wilby. It approached this issue with the utmost care and caution. The Committee had regard to the evidence of the GDC’s efforts to contact Mr Wilby regarding this hearing. It saw the Attendance Note of 2 August 2016, which detailed a telephone conversation between Mr Wilby and an officer of the GDC. Mr Wilby confirmed that he would not be attending this hearing today. In view of the comments made by Mr Wilby during that telephone conversation, the Committee considered that an adjournment today would not make Mr Wilby’s attendance on another occasion any more likely. It noted that he did not request an adjournment in any event. In all the circumstances, the Committee determined that it was fair and reasonable to proceed with the hearing in the absence of Mr Wilby.

Background

Mr Wilby’s case was first considered by the Professional Conduct Committee (PCC) at a hearing in July 2014. That Committee found proved allegations that he had acted beyond his scope of practice as a dental technician. At the material times, Mr Wilby was the owner of Highland Mobile Dentures Limited.

It was found proved that in or around February 2013, Mr Wilby had supplied or sought publication of an advertisement for Highland Mobile Dentures Limited in which he purported to be a “Cosmetic Denture Specialist”, when no such specialist list exists. Further, Mr Wilby wrote, allowed to be written, or otherwise enabled the publishing of statements suggesting and/or tending to suggest that he was able to: take impressions; provide soft linings; provide relining; and fit dentures, when such services were beyond the scope of his practice. The

Committee in July 2014 found that Mr Wilby's actions were inappropriate, misleading and dishonest. It also found that on 22 May 2013 Mr Wilby had agreed to make a new set of upper and lower dentures for a patient and that in doing so, he represented that he could fit and/or adjust the denture, which was beyond his scope of practice.

The Committee in July 2014 determined that the facts it found proved in Mr Wilby's case amounted to misconduct. It also determined that his fitness to practise was impaired by reason of that misconduct and suspended his registration for a period of 12 months. It directed a review of his case prior to the end of the 12-month period. That Committee stated that:

"Without restricting the scope of the review Committee, it is anticipated that it would look for independent evidence of testimonials and references showing that Mr Wilby:

- has demonstrated insight and understanding of the gravity of the misconduct that has been proved in this hearing;*
- understands the scope of practice of a dental technician."*

The order of suspension was reviewed at a resumed hearing held in August 2015. That Committee noted that Mr Wilby had not engaged with the GDC following the hearing in July 2014 and it stated that, *"In the absence of any evidence of remediation or insight, there remains a real risk to patient safety and a risk of repetition."* It determined that Mr Wilby's fitness to practise remained impaired and it extended the suspension of his registration by a further period of 12 months, with a review prior to the end of that period.

The Committee in August 2015 also said that the next Committee may be assisted by receiving evidence of insight and understanding from Mr Wilby in relation to his misconduct and the scope of practice of a dental technician.

Today's review

This is the second review of the suspension order initially imposed on Mr Wilby's registration in July 2014.

In further reviewing the order today, this Committee has considered all of the evidence presented to it. It has taken into account your submissions made on behalf of the GDC and it has accepted the advice of the Legal Adviser.

Impairment

The Committee first considered whether Mr Wilby's fitness to practise remains impaired. In reaching its decision, the Committee has exercised its independent judgement. It has remained mindful of its duty to consider the public interest, which includes the protection of patients, the maintenance of public confidence in the profession and the declaring and upholding of proper standards of conduct and behaviour.

Mr Wilby has chosen to take no active part in these fitness to practise proceedings since well before the original PCC hearing in 2014. Consequently, there has been no material change in the circumstances of this case.

The Committee considered the Attendance Note of 2 August 2016 and took into account the negative comments made by Mr Wilby about his regulatory body. In the Committee's view, his attitude demonstrates a complete lack of insight into the concerns first raised by the Committee in 2014.

In the continued absence of any evidence of insight or remediation, this Committee has concluded that there remains a real risk that Mr Wilby could repeat his misconduct and put

patients at risk of harm. This Committee also considered that public confidence in the dental professional would be undermined if a finding of impairment were not made in the circumstances of this case.

Accordingly, the Committee has determined that Mr Wilby's fitness to practise is currently impaired.

Sanction

The Committee considered what action, if any, to take in respect of Mr Wilby's registration. It had regard to its powers under Section 36Q of the Act, which sets out the directions that the Committee may make. The Committee has borne in mind that the purpose of any action taken is not to be punitive, although it may have that effect, but to protect patients and the wider public interest.

The Committee took into account the '*Guidance for the Practice Committees including Indicative Sanctions Guidance (effective from October 2015)*'. It applied the principle of proportionality, balancing the public interest with Mr Wilby's own interests.

The Committee determined that in the absence of any evidence of remediation and insight from Mr Wilby, it would be inappropriate to terminate the suspension and take no further action.

The Committee considered whether it would be appropriate to impose conditions on Mr Wilby's registration. It concluded, however, that conditional registration would not be appropriate or workable in view of Wilby's clear lack of insight and his refusal to engage in this regulatory process.

The Committee next considered whether to suspend Mr Wilby's registration for a further specified period. In doing so, it considered the serious nature of Mr Wilby's misconduct, which he has not addressed. There remain outstanding public protection concerns in this case. Mr Wilby has refused to engage with all of his fitness to practise hearings to date and there is nothing to indicate any future engagement on his part. The Committee has taken into account the efforts made by the GDC in this regard.

The Committee considered the public interest in these matters, in particular the expense that is incurred by continued review hearings. It also considered Mr Wilby's interests and the potential consequences that an indefinite period of suspension may have for him. However, the Committee considered that the public interest outweighs his own interests in this particular instance. The evidence of Mr Wilby's refusal to co-operate is clear and there is nothing to suggest an imminent change in his current attitude.

For these reasons, the Committee has determined that a period of suspension of only 12 months would not serve any meaningful purpose. It considered that the onus should now rest with Mr Wilby to contact the GDC if and when he is willing to engage with its processes.

Accordingly, the Committee directs the indefinite suspension of Mr Wilby's registration in accordance with Section 36Q(1)(d) of the Act.

Unless Mr Wilby exercises his right of appeal, his registration will be suspended indefinitely, 28 days from the date that notice of this direction is deemed to have been served upon him. In the event that he does exercise his right of appeal, the suspension order currently on his registration will remain in force until the resolution of the appeal.

That concludes this hearing today."

