

HEARING HEARD IN PUBLIC

NASH, Paul James

Registration No: 157148

PROFESSIONAL CONDUCT COMMITTEE

JULY 2015 – JULY 2017

Most recent outcome: indefinite suspension **

** See page 12 for the latest determination.

Paul James NASH, a dental technician, Verified experience in Dental Technology; was summoned to appear before the Professional Conduct Committee on 8 July 2015 for an inquiry into the following charge:

Charge

“That being a registered as a dental technician, Paul Nash’s (157148) fitness to practise is impaired by reason of misconduct in that:

1. On 28 August 2014, in respect of a prospective patient, you offered to:
 - a. Carry out a clinical examination of that patient’s mouth;
 - b. Plan treatment for that patient;
 - c. Make a new denture without requiring a prescription from a dentist;
 - d. Take an impression of that patient’s gums for construction of that denture;
 - e. Record a bite or occlusal relation for that denture;
 - f. Try-in that denture;
 - g. Fit that denture.
2. You have offered to work outside the scope of your practice in relation to allegation:
 - a. 1.a;
 - b. 1.b;
 - c. 1.c;
 - d. 1.d;
 - e. 1.e;
 - f. 1.f;
 - g. 1.g.
3. On 28 August 2014, when asked if a prospective patient needed to see a dentist before a new set of dentures could be made, replied “no”.
4. Your conduct in relation to allegation 2 and 3 was:

- a. Misleading;
 - b. Dishonest.
5. From 8 October 2014 to at least 25 February 2015 you did not cooperate with an investigation conducted by the GDC in that you did not provide to them your:
- a. Employer information;
 - b. Details of indemnity insurance.”

Mr Nash was not present and was not represented. On 9 July 2015 the Chairman announced the findings of fact to the Counsel for the GDC:

“Mr Coke-Smythe,

Preliminary matters

Mr Nash is neither present nor represented in 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 the Committee should proceed with the hearing in the absence of Mr Nash. The Committee accepted the advice of the Legal Adviser on the issue of service of the notification of hearing and its discretionary powers to proceed with a hearing in the absence of a respondent.

The Committee was satisfied that all reasonable efforts have been made in accordance with the rules to send notification of this hearing to Mr Nash. It determined that service has been duly effected. In considering whether to proceed in Mr Nash’s absence the Committee was reminded of the principles set out in the case of R v Jones [2003] 1 A.C 1. Having considered the evidence presented, the Committee concluded that Mr Nash has voluntarily absented himself from this hearing. Mr Nash is aware that there are GDC proceedings against him. He contacted the GDC in May 2015 when he confirmed that correspondence from the GDC should be sent to his registered address. Notification of this hearing was sent to Mr Nash’s registered address to which Mr Nash had previously asked the GDC send all paperwork. The GDC then made numerous attempts to contact Mr Nash with no success. Given the absence of any response from Mr Nash, the Committee has concluded that he has chosen not to engage with these proceedings. The Committee noted that there was evidence before it which addressed Mr Nash’s health however it had received no request for an adjournment. The Committee was of the view that in the circumstances, an adjournment would not secure Mr Nash’s attendance at a future hearing. There is a public interest in the expeditious disposal of the case. The Committee determined to proceed with this hearing notwithstanding Mr Nash’s absence.

The Committee then considered your application that the witness statements of Investigator One, Investigator Two and that of a GDC caseworker should be admitted in evidence as their evidence in chief. It accepted the advice from the Legal Adviser. The Committee saw a copy of a letter from the GDC dated 22 June 2015 which was sent to Mr Nash. Copies of the witness statements of Investigator One, Investigator Two and the GDC caseworker were enclosed. Mr Nash was informed that the GDC intended to rely on the evidence of those witnesses and that their witness statements would be placed before the Committee to stand as their evidence in chief. The Committee granted your application to allow the witness statements of Investigator One, Investigator Two and the GDC caseworker to stand as their evidence-in-chief.

You addressed the Committee in relation to the issue as to whether an under-guise investigation resulting in allegations against a registrant could amount to entrapment and an abuse of process. You referred the Committee to the case of R v Looseley [2001] UKHL 53 and guidance in Archbold.

The Committee determined that it would not be appropriate to stay these proceedings. It was clear when applying the principles arising from the case law that the threshold for an abuse of process had not been reached.

The Committee has taken account of the evidence presented. It has considered your submissions on behalf the GDC. The Committee has accepted the advice of the Legal Adviser. He advised that the burden of proof is on the GDC and it is not for the respondent to prove anything. He advised as to the appropriate standard of proof and as to the need to take particular care in respect of allegations of a serious nature. The Legal Adviser also advised that no inference should be drawn from Mr Nash's absence. In relation to the dishonesty allegations, the Committee was advised to apply the two-stage test as set out in the case of R v GHOSH [1982] EWCA Crim 2. In accordance with that advice it has considered each head of charge separately.

Evidence

The Committee was provided with extracts from an interim orders hearing in November 2014 which Mr Nash attended via telephone without representation. At that hearing Mr Nash addressed some of the allegations against him. The Committee has considered this account.

The Committee received witness statements both dated 12 March 2015 and heard oral evidence from Investigator One and Investigator Two. Exhibited with the witness statements were type-written attendance notes of the investigators' contacts with Mr Nash, hand-written notes and pictures of the premises visited by the investigators where Mr Nash's laboratory is located. The methodology and recollection of both investigators were tested and the Committee found the evidence of both investigators to be thorough and convincing. The Committee considered that the attendance notes prepared by the investigators, reflected the conversations that took place when they visited the premises.

The Committee also received a report and an addendum report both dated 1 April 2015 and heard oral evidence from Mr Entwistle, expert in General Dental Practice called by the GDC. His evidence was also tested and clarified and the Committee found it credible, consistent and clear. It accepted his opinion.

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

1(a)	<p>Proved</p> <p>The Committee was satisfied on the basis of the recollection of the investigators supported by the attendance notes that Mr Nash did offer to carry out an examination of a prospective patient's mouth. In response to a question on whether the patient would need to see a dentist first, Mr Nash said words to the effect that if the prospective patient didn't have natural teeth he would just look in his mouth to make sure there wasn't anything there that shouldn't be.</p>
1(b)	<p>Proved</p> <p>The Committee was satisfied on the basis of the recollection of the investigators supported by the attendance notes that Mr Nash offered to</p>

	<p>plan treatment for a prospective patient. He said that there would be four appointments, impression, bite, try, fit and there would be a fifth appointment if everything didn't go right.</p>
1(c)	<p>Proved</p> <p>The Committee is satisfied that, on the basis of the recollection of the investigators supported by the attendance notes, Mr Nash offered to make a new denture without requiring a prescription from a dentist.</p> <p>In the attendance note dated 28 August 2014, it is noted that in response to the question "My father hasn't got a dentist because he hasn't got any teeth, do I need to get him to see anyone first?", Mr Nash said "No if he doesn't have any natural teeth I will just look in his mouth to make sure there isn't anything there that shouldn't be." The note goes on to record that Mr Nash was then asked "So he doesn't need to see a dentist then?" and he responded "No".</p>
1(d)	<p>Proved</p> <p>The Committee found that, on the basis of the recollection of the investigators supported by the attendance notes, Mr Nash offered to take an impression of that patient's gums for construction of that denture. In the attendance note dated 28 August 2014, it is noted that in response to the question "You mentioned about taking an impression how do you do that?", Mr Nash said "I take an impression of his gums then I make a cast then build it up from that". The attendance note goes on to record that in response to the question "Just for my own interest how do you make the impression?", Mr Nash said "He'll know all this if he has had teeth made before, I put it in his mouth and I get an impression of his gums."</p>
1(e)	<p>Proved</p> <p>The Committee found, on the basis of the recollection of the investigators supported by the attendance notes, Mr Nash offered to record a bite or occlusal relation for that denture. The attendance note dated 28 August 2014 records that Mr Nash used a mould to explain "how he took the impression, made a plaster cast from which he made the wax set. He then set the teeth in the wax which he used for the bite. He then made any adjustments and then made an acrylic set" It is also recorded in the attendance note that Mr Nash said "I then use this to check against his bottom set how he bites then I can adjust it before I making it in acrylic".</p>
1(f)	<p>Proved</p> <p>For the same reasons as in 1(e) above.</p>
1(g)	<p>Proved</p> <p>For the same reasons as in 1(e) above.</p>
2(a)	<p>Proved</p> <p>The Committee accepted the opinion of Mr Entwistle. It took account of the GDC's Scope of Practice, 30 September 2013 which set out clearly that "Dental technicians do not provide treatment for or give advice to patients in</p>

	the ways that are described under sections for dental hygienists, dental therapists, orthodontic therapists or dentists". It is clear from the 2013 Scope of Practice that the activities which Mr Nash offered to carry out must not be done independently by a dental technician.
2(b)	Proved For the same reasons as in 2(a) above.
2(c)	Proved For the same reasons as in 2(a) above.
2(d)	Proved For the same reasons as in 2(a) above.
2(e)	Proved For the same reasons as in 2(a) above.
2(f)	Proved For the same reasons as in 2(a) above.
2(g)	Proved For the same reasons as in 2(a) above.
3	Proved The Committee took account of Mr Nash's response to the Interim Orders Committee in November 2014 however it preferred the evidence of Investigator One and Investigator Two and accepted the accuracy of their recollections as supported by the attendance notes. In the attendance note dated 28 August 2014 it is recorded that in response to questions as to whether the prospective patient should see a dentist first, Mr Nash answered "No".
4(a)	In relation to allegation 2(a) – 2(g) – Proved The Committee found that in offering to carry out a clinical examination, plan treatment, make a new denture without requiring a prescription from a dentist, take an impression of that patient's gums for construction of that denture, record bite or occlusal relation, try-in that denture and fit that denture, Mr Nash represented himself as entitled to carry out the work which he was not registered to do. The Committee is satisfied that this was misleading. In relation to allegation 3 – Proved The Committee found that it was misleading for Mr Nash to also say that a dentist would not be required for the process of making a new denture in circumstances where the scope of practice makes it clear that a dentist would be required to see the patient.
4(b)	In relation to allegation 2(a) – 2(g) – Proved The Committee had regard to the fact that the limitations in the Scope of

	<p>Practice of a dental technician are basic and fundamental matters relevant to Mr Nash’s work and that he has worked as a dental technician for a long period. The Committee is satisfied that Mr Nash must have been aware of the limitations on his practice.</p> <p>That conclusion is corroborated by Mr Nash’s comments at the Interim Orders Hearing when he claimed that his invariable practice was to use the impressions taken by a dental surgeon. He also said that prospective patients for dentures have to see a dentist first.</p> <p>The Committee accepted the investigators’ account that nevertheless, Mr Nash did offer to work outside his scope of practice in this case.</p> <p>In the circumstances the Committee is satisfied that Mr Nash must have known that to offer to do this work was dishonest. The Committee is satisfied that in the circumstances, Mr Nash’s conduct was clearly dishonest.</p> <p>In relation to allegation 3 – Proved</p> <p>For the same reasons referred to above in 4(b) regarding allegation 2 (a) – (g), the Committee was also satisfied that Mr Nash must have known of the limitations on his scope of practice, which required a dentist’s prescription before a new set of dentures could be made. He must have known that his statement, set out in allegation 3, was misleading and untrue. In the circumstances Mr Nash must have known that his conduct in making the statement was dishonest.</p>
5(a)	<p>Proved</p> <p>In a letter from the GDC dated 8 October 2014 Mr Nash was asked to provide details of his employers. The Committee is satisfied on the evidence before it that Mr Nash did not respond to that request.</p>
5(b)	<p>Not Proved</p> <p>The Committee noted that following the letter from the GDC dated 8 October 2014, Mr Nash contacted the GDC on 20 October 2014 and in that conversation informed the GDC that he did not have indemnity insurance. The Committee found that Mr Nash did co-operate with the GDC in so far as he indicated that he did not have indemnity insurance. Accordingly the Committee found this allegation not proved.</p>

We move to Stage Two.”

On 10 July 2015 the Chairman announced the determination as follows:

“Mr Coke-Smythe,

The Committee has taken account of your submissions on behalf of the General Dental Council (GDC). It has accepted the advice of the Legal Adviser. The Committee has drawn no adverse inference from Mr Nash’s absence.

Background

This case concerns Mr Nash's practice as a Dental Technician. The GDC instructed Investigator One and Investigator Two to carry out an under-guise visit to Mr Nash's dental laboratory in order to establish whether he was working outside his scope of practice as a Dental Technician by providing denture services directly to patients. An under-guise telephone call was made to Mr Nash and arrangements were put in place for the investigators to visit Mr Nash's dental laboratory to discuss a denture problem which a relative was experiencing. Both investigators visited Mr Nash's dental laboratory on 28 August 2014. Following their visit, both investigators prepared attendance notes of their conversation with Mr Nash. The Committee considered that the attendance notes prepared by both investigators reflected the conversations that took place when they visited Mr Nash's dental laboratory. On the basis of the recollection of both investigators and their attendance notes, the Committee found proved that, in relation to a prospective patient, Mr Nash offered to:

- Carry out a clinical examination of that patient's mouth;
- Plan treatment for that patient;
- Make a new denture without requiring a prescription from a dentist;
- Take an impression of that patient's gums for construction of that denture;
- Record a bite or occlusal relation for that denture;
- Try-in that denture; and
- Fit that denture

The Committee found that these activities which Mr Nash offered to carry out fall outside the scope of practice for dental technicians, set out in the GDC's Scope of Practice (September 2013) as they must not be carried out independently by a dental technician. When Mr Nash was asked if the prospective patient needed to see a dentist before a new set of dentures could be made, he replied "No". The Committee found that in offering to carry out the activities set out above, Mr Nash presented himself as entitled to do work which his registration did not allow him to do. It found that it was misleading for Mr Nash to present himself as able to carry out this work. Further it was misleading of Mr Nash to say that a dentist would not be required for the process of making a denture when the scope of practice makes it clear that a dentist would be required to see the patient. The Committee also found that Mr Nash must have been aware of the limitations on his practice and that his conduct in making those statements was dishonest. It found that Mr Nash did not cooperate with the GDC's investigation by not providing details of his employer.

Misconduct

The Committee is of the view that Mr Nash's conduct, in offering to work outside his scope of practice, providing misleading information which was dishonest, and not cooperating with the GDC's investigation, is a serious departure from the GDC's Standards for the Dental Team (September 2013). In particular:

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| Principle 1 | Put patients' interests first |
| Standard 1.7 | You must patients' interest before your own or those of any colleague, business or organisation. |
| Standard 1.9 | You must find out about laws and regulations that affect your work and follow them |

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| Principle 7 | Maintain, develop and work within your professional knowledge and skills |
| Standard 7.2 | Work within your knowledge, skills, professional competence and abilities |
| Principle 9 | Make sure your personal behaviour maintains patients' confidence in you and the dental profession |
| Standard 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 profession. |
| Standard 9.4 | Co-operate with any relevant formal or informal inquiry and give full and truthful information. |

The Committee was of the view that Mr Nash's actions taken in all amount to grave breaches of the standards of the profession. It determined that the facts found proved amount to misconduct.

Impairment

The Committee next considered whether Mr Nash's fitness to practise is currently impaired by reason of his misconduct. In reaching its decision, the Committee exercised its own independent judgement.

The Committee considered that Mr Nash's fitness to practise was impaired at the time of these events. In considering current impairment, the Committee applied the formulation by Dame Janet Smith in her Fifth Report from the Shipman case and cited with approval in the case of CHRE v NMC and Grant [2011] EWHC 927 (Admin). Mr Nash's conduct would have placed the prospective patient at an unwarranted risk of harm. The misleading conduct found proved by this Committee breached a number of the standards of the profession and is liable to bring the profession into disrepute. It was also found that Mr Nash must have been aware of his scope of practice and must have known that his conduct, in offering to work outside his scope of practice and in making the statement that a dentist was not required for new dentures, was dishonest.

The Committee is of the view that a finding of dishonesty is not easily remediable. It noted that although Mr Nash's dishonest conduct occurred within the professional setting, there is no criticism of his clinical competence as a dental technician. Mr Nash has not really engaged with these proceedings or with the GDC. There is no evidence of remediation or insight into the allegations which have now been found proved. The Committee concluded that there is a risk of repetition of the behaviour in the future. In addition it concluded that given the seriousness of the misconduct, the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made. The Committee determined that Mr Nash's fitness to practise as a dental technician is currently impaired.

Sanction

The Committee then considered what sanction, if any, to impose on Mr Nash'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).

In considering the issue of sanction, the Committee took account of mitigation and the aggravating factors in this case. In mitigation the Committee noted that:

- Prior to this hearing, Mr Nash was a person of good character having practised as a dental technician from at least 1987;
- There is no evidence of actual harm to a patient;
- The evidence before the Committee is that this was a single and isolated incident.

The aggravating factors identified by the Committee include:

- There is no evidence of remorse or insight from Mr Nash;
- The Committee found that Mr Nash's conduct was dishonest;
- There is no evidence of steps taken to avoid a repetition;
- The services were offered for financial gain; and
- Mr Nash has not really engaged with the GDC proceedings or with this hearing.

The Committee determined that in the light of the gravity of the misconduct found, to conclude the case with no further action would undermine public confidence in the profession. It considered that a reprimand is inappropriate in the circumstances where misleading and dishonest conduct is found proved and there is an absence of engagement, remediation and insight by the respondent. It determined that a reprimand would not be appropriate in this case.

The Committee then considered whether a period of conditional registration would adequately protect patients and address the probity concerns arising from the Committee's findings. It was of the view that it could not impose conditions which adequately address the dishonesty and shortcomings found proved in this case. It determined that conditions would be neither workable nor appropriate.

The Committee next considered whether a period of suspension would be sufficient to mark the seriousness of the misconduct. The Committee was of the view that dishonesty in a professional setting is serious. The dishonesty in this case related to one incident and involved a prospective patient, and in the absence of any evidence of actual patient harm, the Committee concluded that suspension would be sufficient to meet the seriousness of the misconduct and that erasure would be disproportionate.

As a consequence the Committee has determined to direct that Mr Nash's registration in the dental care professionals register be suspended for a period of 12 months pursuant to section 36P(7)(b) of the Dentists Act 1984, as amended.

This direction for suspension will be reviewed prior to the end of the 12 month period. A Committee reviewing the order in the future will be assisted by receiving the following from Mr Nash:

- Reflections on the misconduct and steps taken to address it; and
- A demonstration of his understanding of the GDC's Standards and the limitations on a dental technician within the GDC's Scope of Practice."

“Mr Coke-Smythe,

The Committee has considered your application for an immediate order of suspension of Mr Nash’s registration. It has accepted the advice of the Legal Adviser.

The misconduct found proved is serious and in the absence of any evidence of remediation, insight and the lack of engagement by Mr Nash, the Committee determined that an immediate order of suspension is necessary for the protection of the public and otherwise in the public interest.

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

The interim order of suspension currently on Mr Nash’s registration is hereby revoked.

That concludes this case.”

At a review hearing on 28 July 2016 the Chairman announced the determination as follows:

“Ms Headley,

This is a hearing convened pursuant to s36Q of the Dentists Act to review the current suspension order relating to Mr Paul James Nash.

Decision on service of notice of hearing:

Mr Nash was neither present nor represented at today’s hearing. In his absence, the Committee first considered whether notice of this hearing had been served on him in accordance with rules 35 and 65 of the *General Dental Council (Fitness to Practise) Rules Order of Council 2006* (the rules).

The Committee received a copy of the Notice of Hearing, dated 29 June 2016, which was sent to Mr Nash’s registered address by Special Delivery and First Class Post. The Committee was satisfied that the notice contained proper notification of today’s hearing, including its time, date and location, as well as notification that the Committee has the power to proceed with the hearing in Mr Nash’s absence.

The Committee also had sight of the extract from the Royal Mail Track and Trace service, with reference to the notice of hearing.

The Committee was also informed that several telephone calls were made on 4th, 11th, 18th July 2016, leaving voice messages for Mr Nash. A further letter dated 18 July 2016 was sent to Mr Nash in relation to today’s hearing.

The Committee was satisfied that the notice of this PCC review hearing was served on Mr Nash in compliance with the rules.

Decision on Proceeding in the absence of Mr Nash:

The Committee then went on to consider whether to exercise its discretion under rule 54 to proceed with the hearing in Mr Nash’s absence. The Committee was mindful that this was a discretion that must be exercised with the utmost care and caution.

The Committee considered carefully the submissions made by Ms Headley, on behalf of the General Dental Council (GDC), and had regard to the issue of the public interest in the expeditious review of this case. She informed the Committee that Mr Nash was aware of today's hearing, had made no application for an adjournment, and had chosen voluntarily to absent himself.

The Committee accepted the advice of the Legal Adviser. It was aware that any registrant has the right to a fair hearing and the right to participate in it.

In the absence of any request from Mr Nash for an adjournment and taking into account his non-attendance at the initial interim order hearing and his non-engagement with the GDC, the Committee was of the view that no useful purpose would be gained by adjourning today. The Committee had no information before it to suggest that Mr Nash would be likely to attend any adjourned hearing for this review. The Committee was mindful that the existing order is due to expire shortly.

The Committee concluded, in all the circumstances, that it was in the public interest to proceed with the hearing in Mr Nash's absence.

This is the first review of a suspension order initially imposed on Mr Nash's registration for a period of 12 months, with a review, following the decision by the Professional Conduct Committee (PCC) in July 2015.

At the initial substantive hearing in July 2015 the PCC considered allegations relating to whether Mr Nash's fitness to practise was impaired by reason of misconduct. At that hearing the following was found:

that these activities which Mr Nash offered to carry out fall outside the scope of practice for dental technicians, set out in the GDC's Scope of Practice (September 2013) as they must not be carried out independently by a dental technician. When Mr Nash was asked if the prospective patient needed to see a dentist before a new set of dentures could be made, he replied "No". The Committee found that in offering to carry out the activities set out above, Mr Nash presented himself as entitled to do work which his registration did not allow him to do. It found that it was misleading for Mr Nash to present himself as able to carry out this work. Further it was misleading of Mr Nash to say that a dentist would not be required for the process of making a denture when the scope of practice makes it clear that a dentist would be required to see the patient. The Committee also found that Mr Nash must have been aware of the limitations on his practice and that his conduct in making those statements was dishonest. It found that Mr Nash did not cooperate with the GDC's investigation by not providing details of his employer.

The Committee is of the view that Mr Nash's conduct, in offering to work outside his scope of practice, providing misleading information which was dishonest, and not cooperating with the GDC's investigation, is a serious departure from the GDC's Standards for the Dental Team (September 2013).

The Committee determined that Mr Nash's fitness to practise as a dental technician is currently impaired.

The July 2015 Committee found that Mr Nash's fitness to practise was impaired by reason of misconduct and imposed a suspension order for 12 months with a review. In making that decision the Committee stated that a reviewing Committee would be assisted by receiving the following from Mr Nash:

- *Reflections on the misconduct and steps taken to address it; and*
- *A demonstration of his understanding of the GDC's Standards and the limitations on a dental technician within the GDC's Scope of Practice."*

Today Ms Headley referred the Committee to the documentation before it. She outlined the background to this case and submitted that no evidence of remediation had been received by the GDC to address the issues raised in his initial PCC hearing. She submitted that there is no evidence to suggest that the position of Mr Nash has changed, and therefore his fitness to practise remains impaired.

Ms Headley referred the Committee to the available sanctions and invited it to consider all the circumstances of this case. She sought a further order of suspension with a review.

The Committee accepted the advice of the Legal Adviser.

The Committee considered that although the misconduct identified was remediable, there is no evidence of any steps taken by Mr Nash to remediate it, particularly as he has not been engaging with his regulator. In the absence of any such evidence that Mr Nash has addressed his shortcomings the Committee considers that there remains a serious risk of repetition and that Mr Nash's fitness to practise remains impaired on the grounds of both the risk to public safety and the wider public interest.

The Committee then considered what, if any, sanction to impose. The Committee was aware that it should have regard to the principle of proportionality, balancing the public interest against Mr Nash's interests. The public interest includes the protection of the public, the maintenance of public confidence in the profession, and declaring and upholding standards of conduct and performance within the profession. Having considered available sanctions, starting with least serious the Committee determined that nothing short of an extension of the current suspension order for a further 12 months, with a review, would suffice to protect the public and address the wider public interest.

Accordingly the decision of the Committee is that the current order of suspension will be extended for 12 months with a review before it expires. The Committee again points out that the Committee conducting that review may be assisted by receiving from Mr Nash:

- *Reflections on the misconduct and steps taken to address it; and*
- *A demonstration of his understanding of the GDC's Standards and the limitations on a dental technician within the GDC's Scope of Practice."*

That concludes the case for today."

At a review hearing on 28 July 2017 the Chairman announced the determination as follows:

"Service and proceeding in the absence of Mr Nash

Mr Nash was neither present nor represented at today's Professional Conduct Committee (PCC) review hearing. Mr Tom Middleton appeared on behalf of the General Dental Council (GDC). In Mr Nash's absence, the Committee considered whether the GDC had complied with service of the Notice of Hearing in accordance with Rules 28 and 65 of the GDC (Fitness to Practise) Rules Order of Council 2006 (the Rules).

The Committee took into account the submissions of Mr Middleton. It accepted the advice of the Legal Adviser in relation to both service and proceeding in the absence.

The Committee had sight of the notice of hearing, dated 14 June 2017, which was sent to Mr Nash's registered address by way of Special Delivery. It also had before it a copy of the Royal Mail Track and Trace receipt which confirmed the item was 'returned to sender' on 21 June 2017.

Further, the Committee had sight of a second letter, dated 19 July 2017, which was also sent to Mr Nash's registered address by way of Special Delivery. The letter informed Mr Nash that the venue for the hearing had changed. The Committee had sight of a Royal Mail Track and Trace receipt which confirmed the item was 'returned to sender' on 24 July 2017.

The Committee was satisfied that the notice of hearing set out the date, time and venue of the hearing, as well as confirming the powers available to the Committee.

Taking all this into account, the Committee was satisfied that notification of this hearing had been served on Mr Nash in compliance with the Rules.

The Committee then considered whether to proceed with this hearing in Mr Nash's absence in accordance with Rule 54 of the Rules.

The Committee was mindful that this was a discretion that must be exercised with the utmost care and caution. It also had regard to the need for fairness to both parties, as well as the public interest in the expeditious disposal of the hearing.

Mr Nash had been sent notification of this hearing and the change of venue. The Committee was satisfied that he had not attended at the original venue listed for this hearing. Taking into account all the information before it, the Committee was satisfied that he had been sent the means to be aware of today's hearing. The Committee noted that there has been no engagement from Mr Nash in relation to this PCC review hearing. It further noted that Mr Nash had not requested an adjournment of today's hearing. It therefore concluded that he has voluntarily absented himself from this hearing. The Committee noted that Mr Nash did not engage with the previous initial or review PCC hearings. It concluded that an adjournment would be unlikely to lead to Mr Nash's attendance at a future hearing. The Committee noted that the current substantive order of suspension is due to expire on 12 August 2017 and the possibility that the GDC could lose jurisdiction should the matter not be considered today.

Having weighed the interests of Mr Nash with those of the GDC and the public interest in the expeditious disposal of this hearing the Committee determined to proceed in his absence.

Background

The initial PCC detailed the background to the case as follows:

"This case concerns Mr Nash's practice as a Dental Technician. The GDC instructed Investigator One and Investigator Two to carry out an under-guise visit to Mr Nash's dental laboratory in order to establish whether he was working outside his scope of practice as a Dental Technician by providing denture services directly to patients. An under-guise telephone call was made to Mr Nash and arrangements were put in place for the investigators to visit Mr Nash's dental laboratory to discuss a denture problem which a relative was experiencing. Both investigators visited Mr Nash's dental laboratory on 28 August 2014. Following their visit, both investigators prepared attendance notes of their conversation with Mr Nash. The Committee considered that the attendance notes prepared by both investigators reflected the conversations that took place when they visited Mr Nash's dental laboratory. On the basis of the

recollection of both investigators and their attendance notes, the Committee found proved that, in relation to a prospective patient, Mr Nash offered to:

- Carry out a clinical examination of that patient's mouth;
- Plan treatment for that patient;
- Make a new denture without requiring a prescription from a dentist;
- Take an impression of that patient's gums for construction of that denture;
- Record a bite or occlusal relation for that denture;
- Try-in that denture; and
- Fit that denture"

The initial PCC determined that the facts found proved, including those of dishonesty, did amount to misconduct. It stated the following in relation to current impairment:

"Mr Nash has not really engaged with these proceedings or with the GDC. There is no evidence of remediation or insight into the allegations which have now been found proved. The Committee concluded that there is a risk of repetition of the behaviour in the future. In addition it concluded that given the seriousness of the misconduct, the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made. The Committee determined that Mr Nash's fitness to practise as a dental technician is currently impaired."

That Committee determined to impose a 12-month suspension order.

A review of Mr Nash's case took place on 28 July 2016. At the review, the Committee determined that Mr Nash's fitness to practise remained impaired and decided to impose a further 12-month period of suspension. The initial and reviewing Committee suggested that a future reviewing Committee might be assisted by the following:

- *"Reflections on the misconduct and steps taken to address it; and*
- *A demonstration of his understanding of the GDC's Standards and the limitations on a dental technician within the GDC's Scope of Practice".*

Submissions

Mr Middleton outlined the background to Mr Nash's case. He submitted that Mr Nash has not engaged in any way with the GDC regarding the initial hearing or any subsequent reviews and that he has not communicated with the GDC for over two years. He submitted that there is no evidence of any steps taken by Mr Nash to remedy the failings identified by the initial and review PCC's. He further submitted that Mr Nash has not demonstrated any insight into the failings identified. He submitted that Mr Nash's fitness to practise is currently impaired.

In relation to sanction, Mr Middleton submitted that the necessary and proportionate sanction would be one of indefinite suspension.

Committee's considerations

This hearing was the second review of Mr Nash's case. The Committee today considered all the information before it and took account of the submissions from Mr Middleton on behalf of the GDC.

The Committee accepted the advice of the Legal Adviser.

In its considerations, the Committee took into account the GDC's Guidance for the Practice Committees, including Indicative Sanctions Guidance (October 2016).

Decision on impairment

The Committee first considered whether Mr Nash's fitness to practise remained impaired by reason of the misconduct found proved against him. In reaching its decision on the issue of impairment, the Committee exercised its own independent judgement. It bore in mind that its duty is 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.

In making its decision on current impairment, the Committee carefully considered the failings identified by the initial and previous reviewing Committee's. It noted that the facts found proved against Mr Nash are serious. It considered whether those failings had been sufficiently addressed by Mr Nash and whether he had demonstrated insight into them. The Committee noted that it had no evidence before it to suggest that Mr Nash had breached his current substantive order of suspension. However, it further noted that there has again been no engagement from Mr Nash since the last PCC review.

The Committee had no evidence before it of any steps taken by Mr Nash to address the failings identified by the initial PCC or reviewing Committee. Further, it had no evidence to demonstrate that Mr Nash may have developed any insight. It could not be satisfied that he now understands the severity of the failings in this case. It concluded that little has changed since the last PCC review, but for a further 12-month period of non-engagement, and that the concerns raised previously are present today. It noted that Mr Nash had been given multiple opportunities to address the failings identified, which he has not. The Committee concluded that given the persistent lack of engagement and lack of remediation and insight, there remains a risk to the public as identified previously. It also concluded that the public interest concerns initially raised remain.

Taking all this into account, the Committee concluded that Mr Nash's fitness to practise remains impaired.

Decision on sanction

The Committee next determined what sanction, if any, would be appropriate in light of its findings of current impairment. The Committee recognised that the purpose of a sanction is not to be punitive, although it may have that effect, but is instead imposed in order to protect patients and safeguard wider public interests. In reaching its decision on sanction the Committee again took into account the GDC's Guidance for the Practice Committees, including Indicative Sanctions Guidance (October 2016). The Committee applied the principle of proportionality, balancing the public interest with Mr Nash's own interests.

The Committee first considered whether it would be appropriate and proportionate to terminate the current order of suspension on Mr Nash's registration. It concluded that given its reasons for finding current impairment, that such a course of action would not be sufficient for the protection of the public and the wider public interest.

The Committee next considered whether to terminate the current order of suspension and replace it with a further specified period of conditional registration. It considered whether it could formulate conditions which would be workable, measurable and which would address the risks that have been identified. The Committee concluded that given the nature and severity of the findings in this case, including dishonesty, it could not formulate conditions

which would be practicable, workable or which would address its concerns, particularly in light of the lack of remediation, insight and reflection. It also concluded that given the lack of engagement from Mr Nash it could not be satisfied that he would comply with any conditions imposed on his registration.

The Committee considered whether it would be appropriate and proportionate to impose a further specified period of suspension. In considering this, the Committee was of the view that an extension of the current suspension order would safeguard the public from any repetition of the kind of misconduct found by the initial PCC. However, this Committee considered the public interest in these matters, including the expense incurred by repeated review hearings. The Committee noted that Mr Nash has continued to fail to engage with substantive GDC proceedings and that it has no evidence that he has taken any steps to address the failings identified or demonstrated any insight into them. It noted that the failings in this case are serious and it concluded that there would be no useful purpose in suspending Mr Nash's registration for a further specified period when he had shown no efforts to engage.

In reaching its conclusion, the Committee considered Mr Nash's interests and the potential consequences that an ongoing suspension may have for him. However, it decided that the public interest outweighs Mr Nash's own interests in this particular instance.

Accordingly, the Committee directs the indefinite suspension of Mr Nash's registration in accordance with section 36Q(1)(d) of the Dentists Act 1984, as amended ('the Act'). In making this direction, the Committee was satisfied that the criteria for imposing an indefinite suspension are met.

Unless Mr Nash 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 in accordance with Section 36W of the Act.

That concludes this determination."