

HEARING HEARD IN PUBLIC
BADENHAUPT-BENCSIK, Alexander Nicolai
Registration No: 252861
PROFESSIONAL CONDUCT COMMITTEE
FEBRUARY 2023 – MARCH 2023
Outcome: Erased with Immediate Suspension

BADENHAUPT-BENCSIK, Alexander Nicolai, a dentist, Tannlege Oslo 1991, was summoned to appear before the Professional Conduct Committee on 27 February 2023 for an inquiry into the following charge:

Charge (as AMENDED on 27 February 2023)

“The hearing will be held to consider the following charge against you:

1. You were convicted of sexual assault under French legislation analogous to s.3 of the Sexual Offences Act 2003 in proceedings brought before the Correctional Court of Fort-de-France in Martinique, France, on 22 October 2018;
2. You failed to notify the General Dental Council of your conviction as set out in Charge 1;
3. On or around a date between June 2017 and 23 March 2018, you processed patient data by retrieving and/or using the contact details of Patient A without the permission of:
 - a. the Data Controller for Practice A;
 - b. Patient A.
4. **[AMENDED TO READ]:** On a date between 23 March 2018 and 30 July 2018, you processed patient data by using the contact details of Patient A to invite them to your new practice without the permission of:
 - a. The Data Controller for Practice A;
 - b. Patient A.
5. You failed to cooperate with the Council’s investigation, in that :
 - a. You did not provide any, or any sufficient, proof of your current indemnity when requested to do so between:
 - i. 22 August 2018 and 12 October 2018;
 - ii. 08 February 2021 and 03 March 2021.

- b. You did not provide any, or any sufficient, information concerning your working arrangements when requested to do so between 08 February 2021 and 03 March 2021;
- c. You did not provide any, or any sufficient, information about your account of events in relation to your conviction as set out in Charge 1, the contact details for the court, the court case numbers, and/or any court documentation when requested to do so between 08 February 2021 and 03 March 2021.

AND that by reason of the matters alleged above your fitness to practise is impaired by reason of misconduct and / or conviction.”

Mr Badenhaupt-Bencsik was not present and was not represented. On 27 February 2023 the Chairman announced a statement on proof of service and the preliminary application. On 28 February 2023 the Chairman announced the findings of fact to the Counsel for the GDC:

“This is a Professional Conduct Committee hearing. The members of the Committee, as well as the Legal Adviser and the Committee Secretary, conducted the hearing remotely via Microsoft Teams in line with current GDC practice. Mr Badenhaupt-Bencsik was neither present nor represented in this hearing. Mr Sykes (Counsel) is the Case Presenter for the General Dental Council (GDC).

Decision on service of notification of hearing (27 February 2023)

Mr Sykes made an application under Rule 54 of the General Dental Council (Fitness to Practise) Rules 2006 (“the Rules”) that the hearing should proceed in Mr Badenhaupt-Bencsik’s absence. He submitted that the notification of hearing had been served on Mr Badenhaupt-Bencsik in accordance with Rules 13 and 65.

The Committee had before it a copy of the notification of hearing letter dated 18 January 2023 which was sent Royal Mail International Tracked and Signed to Mr Badenhaupt-Bencsik’s registered address as it appears in the Dentists’ Register. It was satisfied that the letter contained all the components necessary such as the date, time and venue (Microsoft Teams) in accordance with Rule 13. The Committee noted the Royal Mail track and trace report showed that the letter was received on 1 February 2023. The notice of hearing was also sent to Mr Badenhaupt-Bencsik via email.

Having accepted the advice of the Legal Adviser, the Committee was satisfied that the notification of hearing had been served in accordance with Rules 13 and 65.

Decision on proceeding in Mr Badenhaupt-Bencsik’s absence (27 February 2023)

Mr Sykes then made an application under Rule 54 that the hearing should proceed in Mr Badenhaupt-Bencsik’s absence. The Committee bore in mind that its discretion to

proceed with a hearing in these circumstances should be exercised with the utmost care and caution. It took account of Mr Sykes' submissions and it accepted the advice of the Legal Adviser.

The Committee noted an email from Mr Badenhaupt-Bencsik dated 12 January 2022 in which he stated that he no longer wished to be contacted by the GDC and that he wished to be removed from the Register. This was his last communication with the GDC. Mr Sykes submitted that numerous attempts were made by the GDC to contact Mr Badenhaupt-Bencsik via post, email and telephone. No response was received. The Committee found all reasonable efforts had been made by the GDC. There was no request from Mr Badenhaupt-Bencsik for an adjournment of the hearing. In considering whether to exercise its discretion to proceed in his absence the Committee had regard, amongst other things, to the public interest in the expeditious disposal of this case, the potential inconvenience to the witnesses called to attend this hearing and fairness to Mr Badenhaupt-Bencsik. The Committee was of the view that an adjournment was unlikely to secure Mr Badenhaupt-Bencsik's attendance at a future hearing given that he has not fully engaged with these proceedings and it was satisfied there was no good reason to inconvenience witnesses. For all these reasons the Committee determined to proceed with the hearing in Mr Badenhaupt-Bencsik's absence. In reaching this decision the Committee had full regard to all the principles set out in the case of GMC v Adeogba [2016] EWHC Civ 162 relevant to the exercise of its discretion under Rule 54.

Application to amend the charge (27 February 2023)

Mr Sykes made an application under Rule 18 of the GDC (Fitness to Practise) Rules Order of Council 2006 (the Rules) to amend a typographical error in relation to the stem of charge 4 by inserting the word '*them*' so that it now reads:

"On a date between 23 March 2018 and 30 July 2018, you processed patient data by using the contact details of Patient A to invite them to your new practice without the permission of"

The Committee accepted the advice of the Legal Adviser. It noted that Mr Badenhaupt-Bencsik had been notified of the proposed amendment and had not objected. The Committee was satisfied that the amendment would not prejudice or cause any injustice to Mr Badenhaupt-Bencsik. The Committee considered that it was a minor clarification and therefore it was appropriate and fair for the amendment to be made. The charge was duly amended.

The Charge

The GDC brings proceedings against Mr Badenhaupt-Bencsik for Heads of Charge arising from three areas, concerning allegations of: a conviction and a failure to declare that conviction which was for sexual assault; improper handling of patient data; and failure to cooperate with the Council's subsequent investigation.

Evidence

The Committee took account of all the oral and documentary evidence presented in this hearing. It considered the submissions made by Mr Sykes. It drew no adverse inferences from Mr Badenhaupt-Bencsik's absence. The Committee accepted the advice of the Legal Adviser. In accordance with that advice it considered each charge separately. The burden of proving the facts alleged is on the GDC and the standard of proof is the civil standard which is on the balance of probabilities. Mr Badenhaupt-Bencsik is not required to prove anything.

FINDINGS OF FACT – 28 February 2023

The Committee's findings are as follows:

1.	<p>You were convicted of sexual assault under French legislation analogous to s.3 of the Sexual Offences Act 2003 in proceedings brought before the Correctional Court of Fort-de-France in Martinique, France, on 22 October 2018</p> <p>Found Proved</p> <p>The Committee first considered whether the Correctional Court documentation relates to Mr Badenhaupt-Bencsik. It had regard to the Correctional Judgement and noted that it includes Mr Badenhaupt-Bencsik's name, date of birth, his UK address (which the GDC has previously used to contact him) and his professional status as a dentist. The Committee was satisfied on the balance of probabilities that the Court documentation relates to Mr Badenhaupt-Bencsik.</p> <p>The Committee had before it evidence from the French Correctional Court process. This included documentation from the court hearing on 22 October 2018 which convicted Mr Badenhaupt-Bencsik of sexual assault which was translated from French to English.</p> <p>Further, the French Public Prosecutor's Office contacted Hampshire Constabulary and informed them that Mr Badenhaupt-Bencsik had been convicted of Sexual Assault. The Committee had sight of various confirmatory emails from Hampshire Constabulary all relating to the conviction and that it was added on to the Police National Computer. It also heard evidence from a police constable from Hampshire Constabulary, which it accepted. The Committee was satisfied that this conviction would constitute a criminal offence if committed in England and Wales in that it was analogous to Section 3 of the Sexual Offences Act 2003.</p> <p>The Committee acknowledges that the documentation is not from the UK Courts, so there is no certificate of conviction upon which it can rely on conclusively. However, it has considered all the evidence before it and is</p>
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	satisfied on the balance of probabilities that this charge is found proved.
2.	<p>You failed to notify the General Dental Council of your conviction as set out in Charge 1</p> <p>Found Proved</p> <p>The Committee had regard to the GDC standards, particularly Standard 9.3 which reads: “<i>You must inform the GDC if you are subject to criminal proceedings or a regulatory finding is made against you, anywhere in the world</i>”. It was satisfied that there is a clear duty upon Mr Badenhaupt-Bencsik to notify his conviction to the GDC.</p> <p>The Committee had regard to a witness statement from a GDC Officer stating that Mr Badenhaupt-Bencsik has not at any time notified the GDC that he was subject to criminal proceedings, that he was charged with a criminal offence of Sexual Assault or that he was convicted of a criminal offence. The only acknowledgment the GDC has received from Mr Badenhaupt-Bencsik was an email dated 08 February 2021 in which he described the French Court process as a ‘wrongdoing’ and stated he had appealed the decision. The Committee noted the document headed ‘Certificate of Non-Appeal’ dated 4 July 2022 which indicated that there appeared to be no appeal outstanding.</p> <p>The Committee accepted the evidence before it and was satisfied on the balance of probabilities that Mr Badenhaupt-Bencsik failed to notify the GDC of his conviction.</p>
3.	On or around a date between June 2017 and 23 March 2018, you processed patient data by retrieving and/or using the contact details of Patient A without the permission of:
3.a	<p>The Data Controller for Practice A</p> <p>Found Proved</p> <p>The Committee noted that the matter first came to light in a complaint made to Practice A on 30 July 2018 by Witness 1 on behalf of Patient A. Witness 1 complained that Patient A had received an undated letter from another Practice, Practice B, inviting him to join as a new patient. The name and the address of Mr Badenhaupt-Bencsik were stamped on the back of the envelope. Practice A looked into Witness 1’s complaint and immediately reported the breach to the Information Commissioners Office (ICO) and to the GDC as they had not authorised for Patient A’s information to be retrieved for this purpose.</p> <p>The Committee did not receive evidence directly from Practice A’s Data Controller but accepted the evidence of Witness 2 who gave evidence on behalf of the Practice.</p>

	<p>The Committee considered other possible sources for the data of Patient A but concluded it more likely than not that this data came from Practice A, given the title used in the letter to address Patient A, which was one he rarely used.</p> <p>The Committee was satisfied that Mr Badenhaupt-Bencsik had retrieved Patient A's data without the permission of the Data Controller as it would not be in Practice A's interests to allow Mr Badenhaupt-Bencsik to retrieve Patient A's details to join another dental practice. Furthermore, Practice A reported the breach immediately to the ICO and GDC.</p> <p>The Committee accepted the evidence before it and was satisfied on the balance of probabilities that Mr Badenhaupt-Bencsik retrieved Patient A's details without the permission of the Data Controller between the relevant dates.</p> <p>The Committee made findings in relation to the 'retrieving' of Patient A's details and not the 'using' of the details. The 'using' of Patient A's data is covered in charge 4 below. There is no evidence to suggest he used the patient data between these dates.</p>
3.b	<p>Patient A.</p> <p>Found Proved</p> <p>Witness 1 was clear in her evidence that neither she nor Patient A had consented to Mr Badenhaupt-Bencsik to retrieve Patient A's details. In fact, Witness 1 was adamant that neither she nor Patient A wished to see Mr Badenhaupt-Bencsik again due to their experience with him at an appointment in March 2018. Witness 1 stated <i>"after the appointment I specifically requested that we never have an appointment with the Registrant again because I was very unhappy with how we were spoken to and treated and I felt very uncomfortable with the Registrant's attitude and behaviour."</i></p> <p>The Committee accepted the evidence before it and was satisfied on the balance of probabilities that Mr Badenhaupt-Bencsik retrieved Patient A's details without the permission of Patient A between the relevant dates.</p>
4.	<p>On a date between 23 March 2018 and 30 July 2018, you processed patient data by using the contact details of Patient A to invite them to your new practice without the permission of:</p>
4.a	<p>The Data Controller for the Practice A</p> <p>Found Proved</p> <p>The Committee noted that the dates in this charge relate to the period of time after Mr Badenhaupt-Bencsik left the Practice and before the</p>

	<p>complaint was made by Witness 1 in person at the Practice.</p> <p>The Committee considered this charge separately and reached the same finding as in charge 3.a above. The Committee has already found in Charge 3.a above that the Data Controller did not provide permission to Mr Badenhaupt-Bencsik to retrieve Patient A's details. The Committee noted that as soon as the Practice was made aware of what had happened there was an immediate follow up for Mr Badenhaupt-Bencsik to cease and desist using Patient A's details and the Practice reported the incident to the ICO and GDC.</p> <p>The Committee accepted the evidence before it and was satisfied on the balance of probabilities that Mr Badenhaupt-Bencsik used Patient A's details without the permission of the Data Controller between the relevant dates.</p>
4.b	<p>Patient A</p> <p>Found Proved</p> <p>The Committee considered this charge separately and has reached the same finding as in charge 3.b above. The Committee has already found in Charge 3.b above that neither Witness 1 nor Patient A had provided their consent to Mr Badenhaupt-Bencsik to retrieve Patient A's details. Witness 1 complained directly to the Practice after she had received an undated letter from Mr Badenhaupt-Bencsik inviting Patient A to join his new Practice.</p> <p>The Committee accepted the evidence before it and was satisfied on the balance of probabilities that Mr Badenhaupt-Bencsik used Patient A's details without the permission of Patient A between the relevant dates.</p>
5.	<p>You failed to cooperate with the Council's investigation, in that</p>
5.a	<p>You did not provide any, or any sufficient, proof of your current indemnity when requested to do so between:</p> <p style="padding-left: 40px;">i. 22 August 2018 and 12 October 2018</p> <p>Found Proved</p> <p>The Committee had regard to the GDC standards, particularly Standards 9.4 and 9.4.1 which read: <i>"You must co-operate with any relevant formal or informal inquiry and give full and truthful information"</i> and <i>"If you receive a letter from the GDC in connection with concerns about your fitness to practise, you must respond fully within the time specified in the letter. You should also seek advice from your indemnity provider or professional association."</i> It was satisfied that there was a clear duty upon Mr Badenhaupt-Bencsik to cooperate with the GDC investigation.</p>

The Committee considered that this duty applies to the entirety of charge 5.

The Committee had before it a clear documentary trail which is a letter from the GDC to Mr Badenhaupt-Bencsik dated 22 August 2018 requesting specific information which included ***“Proof (for example, your indemnity certificate) that you had indemnity insurance at the time of treatment and for the period from then to the present.”***

This was followed up by another email from the GDC on 3 September 2018 and again on the 25 September 2018 when a letter was sent to Mr Badenhaupt-Bencsik with a track and trace. This was signed for by him. On the 2 October 2018 Mr Badenhaupt-Bencsik responded to the GDC via email which enclosed details of his employment and his indemnity insurance certificate. However, on the 5 October 2018 the GDC replied to Mr Badenhaupt-Bencsik explaining that the indemnity certificate that he had provided expired in July 2018 and requested a copy of his current indemnity certificate by the 12 October 2018. No further correspondence was received from Mr Badenhaupt-Bencsik.

The Committee accepted the evidence before it and was satisfied on the balance of probabilities that Mr Badenhaupt-Bencsik failed to cooperate with the GDC in relation to providing proof of his indemnity insurance between 22 August 2018 and 12 October 2018. The Committee considered that it was more likely than not that Mr Badenhaupt-Bencsik was working between these dates in the UK.

ii. 08 February 2021 and 03 March 2021

Found Proved

The Committee noted that on the 08 February 2021 the GDC sent a letter by track and trace and also emailed Mr Badenhaupt-Bencsik requesting the following information:

“What we need from you

We need the following information from you before we decide whether to take any further action or to close the concern:

• Working arrangements

Details of both where you are working now and where you were working at the time that the concern relates to.

We will write to these organisations and ask for information about your practice then and now. We will make clear that we have reached no decision about the concern raised. We will ask about your performance, conduct and/or health while you have been working there.

	<p>• Memorandum of conviction</p> <p><i>Provide an account of events in relation to the conviction, the contact details for the court where the hearing was held together with any references and, or court case number(s), court documentation etc.</i></p> <p>• Proof of indemnity</p> <p><i>Proof that you have indemnity arrangements in place both now and at the time the concern relates to.</i></p> <p>On that same day Mr Badenhaupt-Bencsik responded that he no longer wished to be contacted by the GDC. The response from him did not contain the details sought by the GDC. The GDC sent a chaser email on 1 March 2021 and asked Mr Badenhaupt-Bencsik to respond by close of business on 3 March 2021.</p> <p>The Committee accepted the evidence before it and was satisfied on the balance of probabilities that Mr Badenhaupt-Bencsik failed to cooperate with the GDC in relation to providing proof of his indemnity insurance between those dates, although it was unclear whether he was working in the UK between the 8 February 2021 and 3 March 2021.</p>
5.b	<p>You did not provide any, or any sufficient, information concerning your working arrangements when requested to do so between 08 February 2021 and 03 March 2021</p> <p>Found Proved</p> <p>The Committee considered this charge separately and reached the same finding as in charge 5.a (ii) above.</p>
5.c	<p>You did not provide any, or any sufficient, information about your account of events in relation to your conviction as set out in Charge 1, the contact details for the court, the court case numbers, and/or any court documentation when requested to do so between 08 February 2021 and 03 March 2021.</p> <p>Found Proved</p> <p>The Committee considered this charge separately and reached the same finding as in charge 5.a (ii) above.</p>

We move to Stage Two.”

On 1 March 2023 the Chairman announced the determination as follows:

“Mr Badenhaupt-Bencsik is not present or represented at this hearing. The Committee has had regard to the submissions made by Mr Sykes, and it accepted the advice of the Legal Adviser.

Mr Sykes began by addressing the Committee on separate ongoing fitness to practise matters in relation to Mr Badenhaupt-Bencsik's registration. He submitted that Mr Badenhaupt-Bencsik is currently suspended on the basis of two separate interim orders. The first interim order is in relation to the sexual assault referred to in this case by way of Mr Badenhaupt-Bencsik's conviction, which the Committee has now found proven.

The second suspension arises in a separate IOC case and the allegations concern the manner in which Mr Badenhaupt-Bencsik left Practice B. The landlady of Practice B raised concerns that Mr Badenhaupt-Bencsik had vacated the premises suddenly and vandalised the property by writing racially aggravated words on the windows and had not registered with the CQC. The matters in this case are still under investigation.

In addition, there is a further case currently under investigation, where it is alleged that Mr Badenhaupt-Bencsik provided inadequate care between 2015 and 2016. Two of the allegations involve misleading and dishonest conduct is also alleged. The matters in this case are still under investigation.

Mr Sykes went on to address the Committee about misconduct, impairment and sanction. In relation to misconduct, he submitted that Mr Badenhaupt-Bencsik's conduct in relation to failing to inform the GDC of his conviction, failing to cooperate with the GDC and retrieving/using patient data without obtaining permission, is serious. Mr Sykes set out a number of the GDC's "Standards for the Dental Team" (September 2013) which he submitted Mr Badenhaupt-Bencsik has breached.

Mr Sykes invited the Committee to conclude that Mr Badenhaupt-Bencsik's fitness to practise is currently impaired by reason of his conviction and misconduct. He submitted that Mr Badenhaupt-Bencsik's conviction for sexual assault and his misconduct are unbecoming of a dentist and amounted to a fundamental breach of the standards expected of a registered dentist. Mr Sykes submitted that a finding of current impairment is necessary, given the lack of insight, remediation and the risk of repetition of the matters identified in this case. In these circumstances, the GDC's position is that this Committee cannot be satisfied that Mr Badenhaupt-Bencsik has reflected on his conviction and misconduct or that he would not repeat it. Mr Sykes also submitted that a finding of current impairment is necessary in the wider public interest so as to uphold the reputation of the dental profession and declare and uphold appropriate standards of conduct.

Mr Sykes invited the Committee to consider concluding this case by directing that Mr Badenhaupt-Bencsik's registration be erased given the seriousness of the Committee's findings.

Misconduct

The Committee first considered the matter of misconduct in relation to charges 2-5 only. The facts found proved by the Committee during stage one are that Mr Badenhaupt-Bencsik:

- Failed to notify the General Dental Council of his conviction.
- Processed patient data by retrieving and using the contact details of Patient A without the permission of the data controller and Patient A.
- Failed to cooperate with the Council's investigation.

The Committee had regard to the GDC Standards, as set out in its publication '*Standards for the Dental Team (September 2013)*'. In its view the following standards were breached:

- 1.7 *Put patients' interests before your own or those of any colleague, business or organisation.*
- 1.9.1 *You must find out about, and follow, laws and regulations affecting your work. This includes, but is not limited to, those relating to: • data protection • employment • human rights and equality • registration with other regulatory bodies*
- 4.2 *Protect the confidentiality of patients' information and only use it for the purpose for which it was given.*
- 6 *Work with colleagues in a way that is in patients' best interest.*
- 9.1 *Ensure that your conduct, both at work and in your personal life, justifies patients' trust in you and the public's trust in the dental profession.*
- 9.3.1 *You must inform the GDC immediately if you are subject to any criminal proceedings anywhere in the world. See our guidance on reporting criminal proceedings for more information.*
- 9.4.1 *If you receive a letter from the GDC in connection with concerns about your fitness to practise, you must respond fully within the time specified in the letter. You should also seek advice from your indemnity provider or professional association.*

In relation to charges 4 and 5 the Committee was of the view that confidentiality is a fundamental and underlying tenet of the profession. In retrieving and using Patient A's data, there was no benefit for Practice A or Patient A, it was for the intended personal gain of Mr Badenhaupt-Bencsik. Patient A is a vulnerable patient and Mr Badenhaupt-Bencsik's actions caused distress to him and Witness 1. Practice A also had to report Mr Badenhaupt-Bencsik's breach to the ICO.

Further, the Committee considered that maintenance of public confidence in the dental register is essential. The Committee was satisfied that Mr Badenhaupt-Bencsik had an unequivocal duty to co-operate with the investigation being conducted by the GDC. Over a prolonged period of time he failed to respond meaningfully to communications from his regulatory body and failed to provide information relating to his indemnity insurance, his conviction and his working arrangements. The Committee considered that this conduct frustrated the GDC

investigation into concerns relating to his conduct and undermined the effectiveness of the GDC's role in professional regulation. The Committee had no doubt that this would be seen as deplorable conduct by fellow registrants and the public.

In the Committee's view, Mr Badenhaupt-Bencsik breached fundamental duties of his registration. It was satisfied that his conduct is serious and that it amounts to misconduct.

Current impairment

The Committee next considered whether Mr Badenhaupt-Bencsik's fitness to practise is currently impaired by reason of his conviction and/or misconduct.

Mr Badenhaupt-Bencsik's conviction by the Correctional Court of Fort-de-France in Martinique was in respect of a sexual assault where Mr Badenhaupt-Bencsik intentionally touched a male victim in a sexual way without their consent. He pleaded guilty to the offence and received a substantial fine. The Committee heard from a constable at Hampshire Constabulary that this offence is analogous to a s.3 offence under the Sexual Offences Act 2003 in the UK, which is a serious offence and would involve Mr Badenhaupt-Bencsik's name being placed on the Sex Offenders Register.

The Committee considered that it would be very difficult to provide any evidence of remediation that could address this conviction. The Committee noted that Mr Badenhaupt-Bencsik has not engaged with these proceedings in any event so there has been no evidence from him regarding any remedial steps taken.

In relation to Mr Badenhaupt-Bencsik's misconduct the Committee was of the view that this too is difficult to remedy. It considered that Mr Badenhaupt-Bencsik would need to embark on meaningful engagement with the GDC, which would include an explanation for his sporadic engagement to date and show evidence of insight, remorse, an apology and steps taken to prevent recurrence.

However, the Committee has received no information on Mr Badenhaupt-Bencsik's current circumstances and importantly no evidence of insight on Mr Badenhaupt-Bencsik's part. There is nothing before the Committee to suggest that he has any understanding of his duty to declare his conviction to the GDC, respect patient confidentiality and co-operate with the GDC, nor has he provided any reason for his failure to co-operate with his regulatory body in matters of significant importance. Whilst the Committee has not drawn any adverse inference from Mr Badenhaupt-Bencsik's absence from this hearing, the current factual position is that Mr Badenhaupt-Bencsik's lack of engagement is ongoing.

In the absence of any evidence of insight or remediation in relation to both Mr Badenhaupt-Bencsik's conviction and misconduct, the Committee considered that there is a likelihood of a risk of repetition. Given that Mr Badenhaupt-Bencsik's conviction and misconduct are of the kind that could potentially undermine the GDC's ability to effectively regulate the profession, the Committee considered that public safety concerns do arise from the matters in this case. The Committee also

considered the risk to the public in the broader sense given his conviction for sexual assault.

In the Committee's view, Mr Badenhaupt-Bencsik has demonstrated a disregard for the GDC's important role in the protection of the public. It therefore considered that a finding of impairment is necessary in the interest of public protection in relation to his conviction and misconduct. The Committee also decided that a finding of impairment is in the wider public interest to maintain public confidence and uphold proper standards of conduct and behaviour. Mr Badenhaupt-Bencsik has breached fundamental standards required by his regulator and has to date shown no insight into these serious matters. The Committee considered that public confidence in the dental profession would be undermined if a finding of impairment were not made in the circumstances of this case.

Accordingly, the Committee has determined that Mr Badenhaupt-Bencsik's fitness to practise is currently impaired by reason of his conviction and misconduct.

Sanction

The Committee considered what sanction, if any, to impose on Mr Badenhaupt-Bencsik's registration. It noted that the purpose of any sanction is not to be punitive, although it may have that effect, but to protect patients and the wider public interest. In reaching its decision, the Committee had regard to the GDC's '*Guidance for the Practice Committees including Indicative Sanctions Guidance*' (Effective from October 2016; last revised in December 2020). It applied the principle of proportionality, balancing the public interest with Mr Badenhaupt-Bencsik's interests.

In deciding on the appropriate sanction, the Committee first considered the issue of mitigating and aggravating factors. The Committee considered that it was difficult to identify any mitigating factors in this case, and it noted that it did not receive any evidence in this regard from Mr Badenhaupt-Bencsik. It did take into account that Mr Badenhaupt-Bencsik has no fitness to practise history before the GDC, however, the Committee notes that there are separate ongoing fitness to practise concerns that are currently under investigation at the GDC.

The Committee identified the following aggravating features:

- actual harm or risk of harm to a patient or another;
- his conviction for assault was of a sexual nature;
- attempt to cover up wrongdoing by not disclosing his conviction to the GDC;
- that his misconduct regarding patient data was premediated;
- potential financial gain;
- his actions involved a breach of the trust placed in the dental profession and in him as a dental professional;
- there was involvement of a vulnerable individual, namely Patient A;

- the misconduct was sustained or repeated over a period of time;
- Mr Badenhaupt-Bencsik's lack of insight, remorse and remediation.

Taking all of these factors into account the Committee considered the available sanctions, starting with the least restrictive, as it is required to do. The Committee first considered whether to conclude this case without taking any action in relation to Mr Badenhaupt-Bencsik's registration. It decided, however, that such a course would be wholly inappropriate, would not serve to protect the public, nor would it satisfy the wider public interest.

The Committee considered whether to issue Mr Badenhaupt-Bencsik with a reprimand. However, it similarly concluded that a reprimand would be insufficient to protect the public and the wider public interest, and would be disproportionate in all the circumstances. A reprimand is the lowest sanction which can be applied, and it would not impose any restriction on Mr Badenhaupt-Bencsik's practice. A reprimand is usually considered to be appropriate where there is no identified risk to patients or the public, and the misconduct/conviction is at the lower end of the spectrum. This is not such a case.

The Committee next considered whether to impose conditions on Mr Badenhaupt-Bencsik's registration. However, it decided that conditional registration would not address all of the concerns raised by the Committee in terms of public protection, or manage the wider public interest, particularly public confidence in the dental profession. Mr Badenhaupt-Bencsik has not engaged with the fitness to practise process, so conditions of practice would not be workable in any event, even if it was considered that they could be imposed.

The Committee went on to consider whether to suspend Mr Badenhaupt-Bencsik's registration for a specified period. In doing so, it had regard to the Guidance at paragraph 6.28, which outlines factors to be considered when deciding whether the sanction of suspension would be appropriate. The Committee considered that a number of the factors set out in this paragraph applied in this case, namely that:

- there is evidence of repetition of the behaviour, in that Mr Badenhaupt-Bencsik's misconduct was sustained and repeated over the material time;
- patients' interests would be insufficiently protected by a lesser sanction; and
- public confidence in the profession would be insufficiently protected by a lesser sanction.

The Committee considered however, that whilst the suspension of Mr Badenhaupt-Bencsik's registration would provide a measure of protection in terms of the potential risk to patients, the wider public interest would not be safeguarded. The Committee considered the wider public interest to be fundamental in a case such as this, involving sustained and repeated misconduct, a lack of insight, a blatant disregard for the GDC standards, a confidentiality breach and a serious conviction of a sexual

nature. Given the Committee's concerns about the risk of harm posed by Mr Badenhaupt-Bencsik and given the Committee's duty to promote and maintain public confidence and proper standards in the dental profession, it considered whether the highest sanction of erasure would be a more appropriate and proportionate outcome.

The Committee had regard to paragraph 6.34 of the Guidance which deals with erasure. This paragraph states that, "*Erasure will be appropriate when the behaviour is fundamentally incompatible with being a dental professional: any of the following factors, or a combination of them, may point to such a conclusion:*

- *serious departure(s) from the relevant professional standards;*
- *where serious harm to patients or other persons has occurred, either deliberately or through incompetence;*
- *where a continuing risk of serious harm to patients or other persons is identified;*
- *the abuse of a position of trust or violation of the rights of patients, particularly if involving vulnerable persons;*
- *convictions or findings of a sexual nature...;*
- *...;*
- *a persistent lack of insight into the seriousness of actions or their consequences.*

The Committee noted that all but one of the factors from paragraph 6.34 apply in this case, which, in its view, demonstrates the seriousness of the matters concerning Mr Badenhaupt-Bencsik. Taking this into account, the Committee was satisfied that his behaviour is conduct that is fundamentally incompatible with continued registration as a dental professional. The Committee considered that there would be a real loss of public confidence in the dental profession, and in the GDC as a regulator, if a lesser sanction than erasure was imposed in this case. The Committee was satisfied that a reasonable and informed member of the public would expect an outcome of erasure.

In all the circumstances, the Committee determined to erase Mr Badenhaupt-Bencsik's name from the Dentists Register.

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

The Committee now invites submissions from Mr Sykes, as to whether an immediate order of suspension should be imposed on Mr Badenhaupt-Bencsik's registration to cover the appeal period, pending this substantive determination taking effect.

In reaching its decision on whether to impose an immediate order of suspension on Mr Badenhaupt-Bencsik's registration, the Committee took account of Mr Sykes' submission that such an order should be imposed. He submitted that in circumstances where public protection and public interest issues are so fundamentally engaged, an immediate order is necessary on both grounds.

The Committee accepted the advice of the Legal Adviser.

The Committee determined that it is necessary for the protection of the public, and is otherwise in the public interest to impose an immediate order of suspension on Mr Badenhaupt-Bencsik's registration.

Mr Badenhaupt-Bencsik has not engaged with the fitness to practise process, and there has been no evidence of his insight into the gravity of his behaviour. In all the circumstances, the Committee has identified a risk of harm to the public, and it is satisfied that an immediate order is necessary for the protection of the public.

The Committee also considered that the imposition of an immediate order is in the wider public interest. It has determined that Mr Badenhaupt-Bencsik is not fit to remain on the Dentists' Register. The Committee considered that public confidence in the dental profession and the regulatory process would be seriously undermined in the absence of an order suspending Mr Badenhaupt-Bencsik's registration immediately. It considered that it would be inconsistent not to impose an immediate order following its substantive decision of erasure.

The effect of the foregoing determination and this order is that Mr Badenhaupt-Bencsik's registration will be suspended from the date on which notice is deemed to have been served upon him. Unless he exercises his right of appeal, the substantive direction for erasure, as already announced, will take effect 28 days from the date of deemed service.

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

The interim order currently in place on Mr Badenhaupt-Bencsik's registration in relation to the matters in this case is hereby revoked under Section 27B(9) of the Dentists Act 1984 (as amended).

That concludes this determination."