

PRIVATE (IN PART) HEARING

Professional Conduct Committee Initial Hearing

23 September 2023 - 3 October 2024

Name: VYAS, NICKY

Registration number: 66111

Case number: CAS-200433

General Dental Council: Mr Christopher Sykes, Counsel.
Instructed by Amy Jones, IHLPS

Registrant: Present
Represented by Mr Daniel Brown, Counsel.
Instructed by Buxton Coates Solicitors

Fitness to practise: Impaired by reason of misconduct

Outcome: Fitness to Practise Impaired. Reprimand Issued

Committee members: Diane Meikle (Lay) (Chair)
Melissa Oura (Dentist)
Victoria Hewson (Dental Care Professional)

Legal adviser: Alice Moller

Committee Secretary: Andrew Keeling

At this hearing the Committee made a determination that includes some private information. That information shall be omitted from any public version of this determination and the document marked to show where private material is removed.

Mr Vyas,

1. This was a Professional Conduct Committee (PCC) inquiry into the facts which formed the basis of the allegation against you that your fitness to practise was impaired by reason of misconduct. You attended the hearing and were represented by Mr Daniel Brown, Counsel. Mr Christopher Sykes, Counsel, presented the General Dental Council's (GDC) case. Stage 1 of the hearing (the factual inquiry) took place remotely on Microsoft Teams on 23 September 2024, and, thereafter, in person at the hearing suite of the Dental Professionals Hearing Service in Wimpole Street, London between 24 and 30 September 2024. Stage 2 of the hearing took place remotely on Microsoft Teams between 1 and 3 October 2024.

Preliminary Matters

Applications under Rule 57 to adduce evidence and to Amend the Charge (23 September 2024)

2. On the first day of the hearing, Mr Sykes addressed the Committee on two preliminary matters. Firstly, he invited the Committee to make a decision on the admissibility of evidence subject to Rule 57 of the General Dental Council (Fitness to Practise) Rules 2006 ("the Rules"). He submitted that there are contested redactions in respect of certain documents. Secondly, he made an application under Rule 18 to amend the charge.

Application under Rule 57 to adduce evidence

GDC Submissions

3. Mr Sykes referred the Committee to his written submissions, dated 4 September 2024, and his supplementary written submissions, dated 13 September 2024. Within his initial submissions he referred the Committee to Annex A in which he set out Mr Brown's proposed redactions to the GDC's evidence and whether or not these were agreed. Annex B set out the GDC's proposed redactions to evidence presented on your behalf and whether these were agreed. He submitted that the allegations you face at this hearing relate to dishonesty and he referred the Committee to the test for dishonesty as set out in *Ivey V Genting Casinos [2017] UKSC 67*. In summary, he submitted that the reason for his objections to this evidence was that it was not relevant as it did not fit into this test.
4. Mr Sykes' supplementary written submissions were made in respect of a psychological report. He submitted that the GDC objected to this report being admitted into evidence as it would not assist the Committee in resolving the *Ivey* test.

5. After hearing submissions from Mr Brown, Mr Sykes conceded that you were entitled to rely on evidence about your good character at Stage 1 of the hearing as set out in the case of *Sawati v GMC [2022] EWHC 283 (Admin)*.

Your Submissions

6. Mr Brown, on your behalf, referred the Committee to his written skeleton argument, dated 19 September 2024. He submitted that your state of mind at the time, as informed by your own experience as a dentist, was relevant to Stage 1 of the *Ivey* test. He referred to your evidence that it was common practice to share resources with colleagues, which is corroborated by witnesses, and that you must be entitled to explain what you were thinking at the time.
7. In respect of the psychological report, Mr Brown submitted that this should be admitted as any evidence that could shed light on your state of mind at the time was relevant.
8. Mr Brown then took the Committee through the relevant disputed redactions and made submissions on each point.

The Committee's Decision

9. The Committee took into account the submissions, written and oral, made by both parties and accepted the advice of the Legal Adviser. The Committee first considered whether the evidence was relevant and, if so, whether it was fair for it to be admitted. It balanced the interests of the GDC with your interests.
10. The Committee noted its powers under Rules 57(1) and 57(2), which are as follows:
 - (1) *A Practice Committee may in the course of the proceedings receive oral, documentary or other evidence that is admissible in civil proceedings in the appropriate court in that part of the United Kingdom in which the hearing takes place.*
 - (2) *A Practice Committee may also, at their discretion, treat other evidence as admissible if, after consultation with the legal adviser, they consider that it would be helpful to the Practice Committee, and in the interests of justice, for that evidence to be heard.*
11. The Committee first considered whether the psychological report should be admitted into evidence. It noted that as part of its deliberations on dishonesty at the findings of fact stage, it would need to consider the *Ivey* test and determine subjectively what your state of mind was at the time of the events in question. The Committee considered that the report may contribute to its understanding of your state of mind at the time. The Committee considered that the contents of the report were relevant to its deliberations and that it would not be unfair to the GDC to allow you to rely on it. Once admitted, the

Committee can then determine what weight to give it when making its decision on the facts.

12. The Committee then considered your proposed redactions to the GDC's evidence, as set out in Annex A of Mr Sykes' written submissions. The Committee noted that only matters numbered 4 and 6 in Annex A remained in contention as the other matters had now been agreed. The Committee noted the proposed redactions were contained in paragraphs 16 and 18 of Witness A's statement, dated 18 September 2023. The Committee considered them to be relevant as they directly related to the allegations in this case. The Committee determined, therefore, that it would be fair and in the interests of justice for paragraphs 16 and 18 not to be redacted and to be admitted into evidence.
13. The Committee then considered the GDC's proposed redactions to your evidence, as set out in Annex B of Mr Sykes' written submissions. The Committee noted that only matters numbered 17, 21, 24, 26 and 27 remained in contention as the other matters had now been agreed. The Committee noted that the proposed redactions related to various paragraphs in witness statements submitted on your behalf and a character reference.
14. The Committee considered that all these matters would be relevant to its deliberations in this case. It noted the GDC's objections that the witnesses '*were giving expert evidence when not qualified*' and evidence that was '*not probative*'. However, the Committee did not accept this. The Committee considered that the witnesses could give evidence of their experience, which was relevant to the issues in this case. Furthermore, the Committee noted that their evidence could be tested through questioning during oral evidence. The Committee determined, therefore that it would be fair and in the interests of justice for matters 17, 21, 24, 26 and 27 not to be redacted and to be admitted into evidence.

Rule 18 Application to Amend the Charge (23 September 2024)

15. Mr Sykes made an application under Rule 18 to amend heads of charge 5, 6, 7(c), 11 and 13 as follows:
 - In respect of head of charge 5, the date should be amended to 19 October 2021;
 - Reference to Items 1 and 2 should be included in heads of charge 5 and 6;
 - Head of charge 7(c) should be deleted as it is duplicated in head of charge 5;
 - The reference to '*Witness E*' in head of charge 11 should be amended to '*Witness B*';
 - Head of charge 13 should now read '*On or around 21 October 2021*', rather than '*on 21 October 2021*'.
16. Mr Brown, on your behalf, submitted that he had no objection to the application.

The Committee's decision on the Rule 18 application

17. The Committee accepted the advice of the Legal Adviser on the Rule 18 application. The Committee took account of the fact that there was no objection to the application. It was therefore satisfied that the amendments could be made without injustice to either party and that these heads of charge should be amended.
18. The Committee, therefore, acceded to Mr Sykes' application to amend the charge.

Summary of Allegations

19. The allegations at this hearing include your alleged dishonest conduct in taking various dental items from Practice A from a date before 26 June 2021 to a date before 22 October 2021, whilst knowing that Practice A had not given you permission to do so. The remaining allegations were in respect of your alleged misleading and dishonest comments regarding the taking of those items.

Your Admissions

20. Mr Brown, on your behalf, informed the Committee that you admitted the following heads of charge: 1(a), 1(b), 3(a), 3(b), 5, 6, 7(a), 7(b), 8, 9, 10, 11, 12, 13 (a), 13(b), 14, 15(a), 15(b), 15(c), 15(d), 16(a) and 16(b).
21. The Committee accepted your admissions and announced all the admitted factual allegations as found proved.

Evidence

22. By way of factual evidence from the GDC, the Committee was provided with the following signed witness statements:

- Witness A, dated 18 September 2023;
- Supplementary Statement from Witness A, dated 22 August 2024;
- Witness B, dated 1 September 2023;
- Witness C, dated 6 September 2023;
- Witness D, dated 17 September 2023;
- Witness E, dated 1 September 2023;
- Witness F, dated 4 September 2023;
- Witness K, dated 15 September 2023.

23. The Committee also heard oral evidence from these witnesses. Witness F gave evidence both for the GDC and for you.

24. The Committee was provided with further evidence, which included a copy of the Associate Agreement, which was signed by you and Witness A on 23 May 2019.

25. As part of your case, the Committee was provided with the following signed witness statements:

- Your witness statement, dated 10 June 2024;
- Witness H, dated 3 April 2024;
- Witness I, dated 6 July 2024;
- Witness J, dated 11 June 2024

26. The Committee also heard oral evidence from these witnesses, and from Witness G, who provided a testimonial, dated 6 June 2024. The other witness statements provided for your case were admitted into evidence without the need for the witnesses to attend the hearing to give oral evidence.

27. [IN PRIVATE: Text omitted.]

Decision on Rule 53 Application for Hearing to be Part-held in Private (24 September 2024)

28. Before [IN PRIVATE: Text omitted] gave her oral evidence, Mr Brown made an application, pursuant to Rule 53 of the GDC (*Fitness to Practise*) Rules Order of Council 2006 ('the Rules'), to hear her evidence in private as the matters to be discussed related to your health. Mr Sykes had no objections to the application. The Committee heard and accepted the advice of the Legal Adviser.

29. The starting point for the Committee was that all hearings should be held in public as it is in the interests of justice to do so. However, a hearing may be heard in private where it concerns matters that are inextricably linked to the health or private and family life of the Registrant or any other person concerned, under Rule 53(2) (a) of the Rules. The Committee agreed that [IN PRIVATE: Text omitted] evidence should be heard entirely in private and any subsequent references to your health should be heard in private as and when they were discussed during the hearing. The Committee therefore acceded to the application.

Application for No Case to Answer under Rule 19(3) (26 September 2024)

30. At the conclusion of the GDC's case, Mr Brown made a submission, on your behalf, that pursuant to Rule 19(3) of the Rules, there was no case for you to answer in respect of heads of charge 3(c) and 3(d).

31. Mr Brown submitted that the evidence in respect of heads of charge 3(c) and 3(d) is so weak, tenuous and vague that the Committee could not find the matters proved. He submitted that the key witness for the GDC, Witness E, said in cross-examination that she could not recall what she had seen, or confirm the accuracy of the notes taken of the practice meetings. Therefore, he submitted that the matters should be dismissed.

32. Mr Sykes, on behalf of the GDC, submitted that heads of charge 3(c) and 3(d) were supported by evidence that was not weak or tenuous.
33. In respect of head of charge 3(c), Mr Sykes referred the Committee to the evidence of Witness B and the note of the practice meeting, dated 22 October 2021, where it mentions that 'impression copings' were found in your bag. He also referred to statements, which you have already admitted as being dishonest, where you mentioned 'impression copings'. He submitted that the Committee could infer from these statements that the 'impression copings' formed part of your wider dishonest behaviour.
34. In respect of head of charge 3(d), Mr Sykes referred the Committee to Witness E's evidence, who stated that some screws were missing. He also referred to the evidence of Witness B, which was that she was sure there was a screw in your bag. He submitted that it was specifically mentioned in the note of the practice meeting, dated 22 October 2021, that you returned a 'conical screw' to the practice. He submitted that there was also a specific reference in Witness D's statement that you returned a conical screw to the practice. Furthermore, he referred the Committee to a letter, dated 4 November 2021, which included a reference to a general admission that you had taken items.
35. In conclusion, Mr Sykes submitted that there was a prima facie case to support heads of charge 3(c) and 3(d). He submitted that it would be premature to dispose of these allegations at this point in the proceedings.

Committee's Decision

36. The Committee accepted the advice of the Legal Adviser and it applied the direction and test set out in the case of *R V Galbraith (1981) 1 WLR 1039*. The Committee had regard to all the evidence thus far adduced. It took account of the submissions made by Mr Brown, on your behalf, and those made by Mr Sykes on behalf of the GDC.
37. In respect of head of charge 3(c) and the 'impression copings', the Committee considered Witness B's evidence. The Committee noted from the practice meeting note, dated 22 October 2021, that impression copings were listed as one of the items that Witness B had found in your laptop bag. However, the Committee noted that this evidence was inconsistent with Witness B's statement and oral evidence. In her statement and oral evidence, the Committee noted that Witness B did not mention impression copings at all.
38. In conclusion, the Committee determined that the GDC had not adduced sufficient evidence on which a reasonable Committee, properly directed as to relevant law, could find head of charge 3(c) proved to the civil standard.

39. In respect of head of charge 3(d) and the ‘conical screw’, the Committee considered Witness E’s statement. It noted in respect of the practice meeting note, dated 22 October 2021, Witness E stated several times in her statement, that she was ‘unable to recall’ certain matters referred to in the note. She also confirmed this in her oral evidence. Furthermore, the Committee noted from the statement that Witness E could not recall what items were taken or returned to the practice.
40. The Committee considered the letter, dated 4 November 2021, which included a reference to a general acceptance you made of taking items. However, the Committee noted that the letter did not specify which items you had accepted having taken. In respect of Witness D’s witness statement, which mentioned that you returned a conical screw to the practice, the Committee took account of the fact that Witness D was not an eye-witness to the events she referred to in the statement; the Committee did not attach weight to this part of the evidence. The Committee then considered the evidence contained in the note of the practice meeting, dated 22 October 2021. The Committee did not attach weight to this note as the source of each piece of information was not identified.
41. The Committee noted Witness B’s evidence that you had returned the conical screw. However, it considered that this was not sufficient to find head of charge 3(d) proved on a balance of probabilities.
42. In conclusion, the Committee determined that the GDC had not adduced sufficient evidence on which a reasonable Committee, properly directed as to relevant law, could find head of charge 3(d) proved to the civil standard.
43. The Committee, therefore, acceded to the No Case to Answer application in respect of heads of charge 3(c) and 3(d).

The Committee’s Findings of Fact (2 October 2024)

44. The Committee has considered all the documentary evidence presented to it. It took account of the submissions made by Mr Sykes, on behalf of the GDC, and by Mr Brown, on your behalf. The Committee heard and accepted the advice of the Legal Adviser. In accordance with that advice, it has considered each head of charge separately, bearing in mind that the burden of proof rests with the GDC and that the standard of proof is the civil standard, that is, whether the alleged matters are found proved on the balance of probabilities.

45. The Committee's findings in relation to each head of charge are as follows:

<p>1.</p>	<p>You took the following Neodent items from Practice A:</p> <ul style="list-style-type: none"> a. A GM Helix Acqua implant (Lot EPZ37) ('Item 1') on a date before 26 June 2021; and/or b. A GM Helix implant (Lot ARF41) ('Item 2') on a date before 09 August 2021. <p>Admitted and Found Proved</p>
<p>2.</p>	<p>Your conduct as set out in HOC.1 was dishonest, in that you took Items 1 and/or 2 knowing that Practice A had not given you permission to do so.</p> <p>Found Not Proved</p> <p>When considering whether your conduct was dishonest, the Committee bore in mind the test for dishonesty as set out in <i>Ivey v Genting Casinos</i> [2017] UKSC 67:</p> <ul style="list-style-type: none"> a. <i>'The Tribunal of fact must first ascertain (subjectively) the state of the individual's knowledge or belief as to the facts. The reasonableness of the belief is a matter of evidence going to whether or not he genuinely held the belief, but it is not a requirement that the belief must be reasonable, and</i> b. <i>The Tribunal of fact must then consider whether that conduct was dishonest by the (objective) standards of ordinary decent people. There is no requirement that the individual must appreciate that what they have done was, by those standards, dishonest.'</i> <p>The Committee, therefore, considered the state of your knowledge or belief as to the facts at the time you took Items 1 and/or 2 from Practice A. In its analysis, the Committee considered the context to these events, including whether Practice A had in fact given you permission to take the items.</p> <p>You denied this head of charge. You accepted that you took the items. However, you stated that your actions were not dishonest as you believed that you had permission to do so.</p> <p>The Committee noted your acknowledgement that you took the items. Furthermore, the Committee noted that it was accepted by all parties that you did not have explicit permission to take each item. The Committee therefore considered whether you had implicit permission to do.</p>



The Committee considered paragraph 1.5 of *Schedule 5 – Code of Practice* of the ‘Associate Agreement’, which was signed by you and Witness A, the practice owner of Practice A, on 23 May 2019.

Schedule 5 – Code of Practice paragraph 1.5 stated:

‘The Associate is only permitted to take instruments, materials or Records away from the Premises if incidental to the practice of dentistry under this Agreement. The Associate shall return all such instruments, materials or Records without fail to the Premises on the next working day’.

The Committee inferred that this allowed you (as an Associate) to take instruments and materials, including implants, from Practice A. As the ‘Associate Agreement’ did not explicitly state that you needed to ask permission before taking the instruments or materials, the Committee considered it plausible that you did not believe that it was necessary to obtain prior consent before taking or using each instrument or material.

The Committee carefully considered Witness A’s written and oral evidence. It noted from his evidence that he also did not explicitly state that dental items could not be borrowed, or that you needed to ask his permission before taking any items.

In oral evidence, Witness A was asked whether it was common practice for Associates to borrow instruments for use. He replied, “*It was allowed but it was not common practice*”.

Witness A stated that prior to the incident, he had given you permission to borrow instruments, including a surgical drill. The Committee concluded from Witness A’s evidence and your evidence that there was some ambiguity about Associates’ use of items and materials from Practice A. The Committee did not consider that the *Associates Agreement* set out a clear procedure for obtaining permission to borrow items or any other requirements, except that items taken should be returned within a day.

However, Witness A gave evidence that he would expect items to be returned within 48 hours. The Committee considered Witness A’s evidence about the practice of taking items to be unclear and, at times, inconsistent.

At the time of the incident, the Committee also noted that you had a longstanding personal and professional relationship with Witness A, which implied that there was a high level of trust between you. You had

	<p>worked at Practice A since 2007 and you were a well-established member of staff.</p> <p>The Committee also took account of the fact that, prior to your admissions at this hearing, you had no adverse regulatory findings against you and good testimonials provided for this hearing.</p> <p>The Committee concluded that the GDC had not proved, to the civil standard, that you took the items in question knowing that Practice A had not given you permission to do so.</p> <p>In conclusion, the Committee determined that the GDC had not discharged the burden on it to show that it was more likely than not that, at the relevant time, you were dishonest.</p> <p>Accordingly, the Committee found this head of charge not proved.</p>
3.	<p>On a date before 22 October 2021, you took the following Neodent items from Practice A:</p> <ul style="list-style-type: none"> a. Up to three screwdrivers ('Item 3'); b. Up to three torque wrenches ('Item 4'); c. WITHDRAWN; d. WITHDRAWN; <p>All Admitted and Found Proved</p>
4.	<p>Your conduct as set out in HOC.3 was dishonest, in that you took Items 3 and 4, knowing that Practice A had not given you permission to do so;</p> <p>Found Not Proved</p> <p>The Committee determined that his head of charge was not proved for the same reasons as set out above for head of charge 2.</p>
5.	<p>On 19 October 2021, you said the following to Witness A about Items 1, 2, 3, 4, and/or 5:</p> <ul style="list-style-type: none"> a. You had bought them yourself; b. Practice B had bought them for you; and/or c. They were from Practice C. <p>All Admitted and Found Proved</p>



6.	<p>Your comments as set out in HOC.5 were misleading and/or dishonest, in that you knew you had taken Items 1, 2, 3, 4, and/or 5 from Practice A.</p> <p>Admitted and Found Proved</p>
7.	<p>On 19 October 2021, you said the following to colleagues at Practice A about Items 3, 4, and/or 5:</p> <ul style="list-style-type: none">a. After Witness B asked if you had borrowed them without permission, you replied ‘absolutely categorically not. I would never just take something without asking’, or words to that effect;b. After Witness C had asked if you had mistakenly taken them, you replied ‘no! Absolutely not. If I needed to borrow anything from the practice, I would always ask [Witness A’s] permission’, or words to that effect; and/orc. DELETED. <p>All Admitted and Found Proved</p>
8.	<p>Your comments as set out in HOC.7 were misleading and/or dishonest, in that you knew you had taken Items 3, 4, and/or 5 from Practice A without permission.</p> <p>Admitted and Found Proved</p>
9.	<p>On 21 October 2021, you sent a WhatsApp message to Witness B stating ‘I’m just waiting on a call from the manager at my other practice regarding the instruments.’</p> <p>Admitted and Found Proved</p>
10.	<p>Your comment as set out in HOC.9 was misleading, in that you led Witness B to believe the manager of Practice C could explain why you held Items 3, 4, and/or 5.</p> <p>Admitted and Found Proved</p>
11.	<p>On 21 October 2021, you told Witness B and Witness E that you categorically thought you had taken Item 3 from a practice other than Practice A, or words to that effect.</p> <p>Admitted and Found Proved</p>



12.	<p>Your comment as set out in HOC.11 was misleading and/or dishonest, in that you knew you had taken Item 3 from Practice A;</p> <p>Admitted and Found Proved</p>
13.	<p>On or around 21 October 2021, you sent WhatsApp messages to Witness A that stated:</p> <p>a. 'I honestly did think they were mine from the town practice'; and b. 'I was genuinely convinced they were the ones from town...'</p> <p>All Admitted and Found Proved</p>
14.	<p>Your comments as set out in HOC.13 were misleading and/or dishonest, in that you knew you had taken the items from Practice A.</p> <p>Admitted and Found Proved</p>
15.	<p>On 02 November 2021, you said the following to Witness A about Items 1, 2, 3, 4, 5, and/or 6:</p> <p>a. You had obtained them from Practice B and/or Practice C; b. You had obtained them 'In town, I negotiated a deal with the nurse saying that I would replace them', or words to that effect; c. 'The most important thing is that the implants weren't from here. The other bits were from town', or words to that effect; and/or d. The serial numbers for Item 1 and Item 2 had not been logged at Practice B.</p> <p>All Admitted and Found Proved</p>
16.	<p>Your comments as set out in HOC.15 were misleading and/or dishonest, in that:</p> <p>a. Regarding HOC.15(a-c), you knew you had taken the items from Practice A without permission; b. Regarding HOC.15(d), you knew that you had recorded the serial numbers in the relevant patient records held by Practice B.</p> <p>All Admitted and Found Proved</p>

Stage 2

46. Having announced its decision on the facts, in accordance with Rule 20 of the *GDC (Fitness to Practise) Rules Order of Council 2006* ('the Rules'), the Committee heard submissions from Mr Sykes, on behalf of the GDC, and from Mr Brown, on your behalf, in relation to the matters of misconduct, impairment and sanction. The Committee also received advice from the Legal Adviser, which it accepted.
47. The Committee reminded itself that its decisions on misconduct, impairment and sanction are matters for its own independent judgement. There is no burden or standard of proof at this stage of the proceedings. It had regard to its duty to protect the public, declare and uphold proper standards of conduct and competence and maintain public confidence in the profession. Where applicable, the Committee took into consideration the GDC's "*Standards for the Dental Team*" (September 2013) and the Guidance for the Practice Committees, including Indicative Sanctions Guidance, (October 2016, revised December 2020) ("*the GDC's Guidance*"). The Committee also had regard to relevant case law.

Summary of Committee's Findings

48. The Committee found proved that you took various dental items from Practice A from a date before 26 June 2021 to a date before 22 October 2021. However, the Committee did not find that your actions were dishonest. The remaining allegations that you made misleading and dishonest comments regarding the taking of those items were found proved following your admissions at the start of the hearing.

Submissions

49. Mr Sykes first addressed the Committee on the matter of misconduct. He submitted that dishonest conduct is always considered to be serious as it undermines public confidence in the profession. He submitted that your actions were pre-meditated and involved repeated dishonesty and misleading comments to several of your colleagues over a period of two weeks. He invited the Committee therefore to conclude that the facts found proved amounted to misconduct.
50. In relation to the matter of impairment, Mr Sykes submitted that this was a matter for the Committee's judgement. He referred the Committee to the test for impairment as set out in *Grant* [2011] EWHC 927, citing the *Fifth Shipman Report* by Dame Janet Smith and submitted that limbs (b), (c) and (d) of the test were met.
51. Mr Sykes submitted that insight was relevant to determining impairment and your admissions were to your credit. However, he submitted that the Committee may find that you had little option but to admit to the charges owing to the evidence in this case. He referred the Committee to your witness statement, and submitted that this indicated

only partial insight, as there was a lot of focus on the wrongs done to you by Witness A rather than the impact your actions had on your colleagues and the dental profession.

52. In conclusion, Mr Sykes submitted that your dishonest and misleading behaviour was plainly serious and made even more so by aggravating factors. He also submitted that the Committee may find that dishonesty is difficult to remediate, especially where the insight is only partial. Therefore, he invited the Committee to conclude that your fitness to practise is currently impaired by reason of your misconduct.
53. Lastly, Mr Sykes addressed the Committee on the matter of sanction. He submitted that the most appropriate and proportionate sanction was one of suspension for about four to six months.
54. Mr Brown, on your behalf, firstly addressed the Committee on the matter of misconduct. He submitted that this should be looked at by the Committee in two parts. Firstly, he submitted that heads of charge 1 and 3 should be considered together, but separate from heads of charge 5 to 16. In respect of heads of charge 1 and 3, he submitted that as the Committee has not found dishonesty, then the level of seriousness for misconduct has not been met. However, in respect of heads of charge 5 to 16, he submitted that there is no question that misconduct has been established and that you do not dispute this.
55. In respect of impairment, Mr Brown submitted that there is no concern that you pose a risk to patient safety. Therefore, the only matter for the Committee to consider is the public interest.
56. Mr Brown submitted that you accept that at the time of the incidents your fitness to practise was impaired. However, he submitted that your fitness to practise is not currently impaired. He submitted that a finding of dishonesty does not automatically lead to a finding of current impairment and invited the Committee to consider all the circumstances of the case and everything that has happened since the incidents.
57. Mr Brown submitted that the dishonesty findings should be considered as one episode, which lasted for two weeks. However, he added that this should be considered in its proper context as you were on leave for one of those weeks. [IN PRIVATE: Text omitted.]
58. In respect of your insight, Mr Brown submitted that your admissions to the charges showed that you possessed insight into your actions. He also referred the Committee to your witness statement and oral evidence, which showed that you were clearly remorseful and that you accepted accountability and responsibility for your conduct. He also referred the Committee to the Continuing Professional Development (CPD) courses you have undertaken, including courses in Dental Ethics and Duty of Candour. Furthermore, he referred the Committee to the letters of apology you have written.

59. Mr Brown submitted that the dishonesty was totally out of character and there was no risk of repetition. He referred the Committee to the numerous character references, testimonials and witness statements submitted on your behalf, which were wholly positive. He submitted that you have had an otherwise unblemished 34-year career. He submitted that a finding of misconduct was sufficient to deal with the public interest concerns in this case and invited the Committee to conclude that your fitness to practice is not currently impaired.
60. However, if the Committee does find impairment, Mr Brown invited the Committee to consider issuing you with a reprimand. He submitted that the most restrictive sanction that could properly be considered was a short suspension order (about two months) with no review.

Misconduct

61. The Committee first considered whether the facts admitted and found proved amounted to misconduct.
62. In respect of heads of charge 1 and 3 (took various dental items from Practice A between 26 June 2021 and 22 October 2021) the Committee did not consider that this met the threshold for misconduct as it had not found that your actions were dishonest.
63. The Committee went on to consider the matters admitted and found proved in respect of your misleading and dishonest comments regarding the taking of those items. In doing so, it had regard to the GDC publication *Standards for the Dental Team (2013)* and the following sections in particular:
- 1.3.1 You must justify the trust that patients, the public and your colleagues place in you by always acting honestly and fairly in your dealings with them. This applies to any business or education activities in which you are involved as well as to your professional dealings.*
- 1.3.2 You must make sure you do not bring the profession into disrepute.*
- 6.1.2 You must treat colleagues fairly and with respect, in all situations and all forms of interaction and communication. You must not bully, harass, or unfairly discriminate against them.*
- 9.1.1 You must treat all team members, other colleagues and members of the public fairly, with dignity and in line with the law.*
64. The Committee considered that your misleading and dishonest conduct was a serious departure from, and a breach of, these GDC standards. The Committee concluded that your actions in this case amounted to misconduct which was serious.

Impairment

65. The Committee then considered whether your fitness to practise is currently impaired by reason of your misconduct.

66. The Committee was aware that the GDC raised no concerns about patient safety. The Committee focused on whether your fitness to practise was impaired on wider public interest grounds.

67. The Committee was mindful of its role to protect the public interest, which includes:

- The protection of patients, colleagues and the wider public from the risk of harm;
- Maintaining public confidence in the dental professions;
- Upholding the reputation of the dental professions; and
- Declaring and upholding appropriate standards of conduct and competence among dental professionals.

68. The Committee took account of the remediation work you have undertaken since the incidents. It noted from your witness statement and oral evidence at this hearing that you were remorseful for your actions and you had sent letters of apology to Witness A and others affected by your behaviour. It also noted that your witness statement provides evidence of significant reflection on your misconduct and the impact of this on your colleagues and the wider public. You have also undertaken CPD courses relevant to the concerns in this case, such as courses on Dental Ethics and Duty of Candour. The Committee considered that you had shown insight into your misconduct and found any risk of repetition to be very low. The Committee further noted that you have had an otherwise unblemished 34-year career in dentistry.

69. However, the Committee had regard to the seriousness of dishonesty. It noted that your dishonest conduct was sustained for two weeks and that you made dishonest comments to several of your colleagues. The Committee had regard to the particular circumstances at the time, **[IN PRIVATE: Text omitted.]**

70. In considering impairment, the Committee considered the principles articulated in *Grant* [2011]. This set out the questions to consider when determining whether current fitness to practise is impaired by reason of misconduct:

- a. He/she has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm;*
- b. He/she has in the past brought and/or is liable in the future to bring the profession into disrepute;*
- c. He/she has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the profession;*

d. *He/she has in the past acted dishonestly and/or is liable to act dishonestly in the future.*

71. The Committee determined that your misconduct, which was dishonest, had potential to bring the profession into disrepute and had breached a fundamental tenet of the dental profession. However, no patient had been put at any risk of harm.

72. The Committee determined, therefore, that owing to the seriousness of your misleading and dishonest conduct, a finding of impairment was required in the wider public interest, to maintain public confidence in the profession and to uphold appropriate standards of conduct among dental professionals.

Sanction

73. The Committee next considered what sanction, if any, to impose on your registration. It recognised that the purpose of a sanction was not to be punitive although it may have that effect. The Committee applied the principle of proportionality balancing your interest with the public interest. It also took account of the *GDC's Guidance*.

74. The Committee considered the mitigating and aggravating factors in this case as outlined in the *GDC's Guidance* at paragraphs 5.17 and 5.18.

75. The mitigating factors in this case include:

- Evidence of the circumstances leading up to the incident in question – [IN PRIVATE: Text omitted];
- Evidence of good conduct following the incident in question, particularly your remedial action;
- Evidence of previous good character;
- Evidence of apologies, remorse, insight, remediation and admissions to this Committee;
- Evidence of steps taken to avoid repetition of misconduct;
- Time elapsed since the incident.

76. The aggravating factor in this case was that your misconduct amounted to a breach of trust placed in you by your colleagues.

77. The Committee decided that it would be inappropriate to conclude this case with no further action. It would not satisfy the public interest given the serious nature of the dishonesty.

78. The Committee next considered whether it would be appropriate to conclude the case with a reprimand. The Committee had regard to the *GDC's Guidance* and noted the following:

“A reprimand does not impose requirements on a registrant’s practice and should therefore only be used in cases where he or she is fit to continue practising without restrictions. A reprimand might be appropriate if the circumstances do not pose a risk to patients or the public which requires rehabilitation or restriction of practice.”

79. Furthermore, the Committee noted from the GDC’s Guidance that a reprimand may be suitable where the following factors were present:

- There is no evidence to suggest that the dental professional poses any danger to the public;
- The dental professional has shown insight into his failings;
- The dental professional has genuinely expressed remorse;
- There is evidence that the dental professional has taken rehabilitative/corrective steps;
- The dental professional has no previous history.

80. The Committee considered that these factors were present in this case.

81. Having given the matter careful consideration, the Committee has determined that a reprimand is the appropriate sanction to impose in the particular circumstances of this case. The Committee noted that you did not pose a risk to patients, that you have no fitness to practise history and that you have also shown remorse for, and insight into, your dishonest behaviour.

82. In all the circumstances the Committee considered that the issuing of a reprimand was sufficient to mark the seriousness of the misconduct. A reprimand meets the public interest considerations to maintain trust and confidence in the profession and to declare and uphold proper professional standards. The Committee was satisfied that a reasonable informed observer would note the Committee’s findings of facts, misconduct and impairment, and would consider that the sanction of a reprimand represents a suitable and proportionate disposal.

83. In determining that a reprimand was the commensurate and appropriate sanction to impose, the Committee considered this was the least restrictive sanction that would satisfy the public interest. Therefore, to impose a more restrictive sanction would be disproportionate. A period of conditional registration would not be appropriate or workable given the matters in this case involve dishonesty. Furthermore, the Committee considered that a suspension order would be disproportionate because a reprimand is sufficient to uphold standards and maintain confidence in the dental profession.

84. The Committee has therefore determined that a reprimand should be recorded against your name in the Register. The fact of this reprimand, and a copy of this determination, will appear alongside your name in the Register for a period of 12 months. The

reprimand forms part of your fitness to practise history and is disclosable to prospective employers and prospective registrars in other jurisdictions.

85. The Committee also directed that the interim order currently in place on your registration should be revoked forthwith.

86. That concludes this case.