

HEARING HEARD IN PUBLIC

CHERRY, Denise

Registration No: 128118

PROFESSIONAL CONDUCT COMMITTEE

OCTOBER 2018 – OCTOBER 2020

Most recent outcome: Suspended indefinitely **

** See page 14 for the latest determination.

Denise CHERRY, a dental nurse, Verified competency in Dental Nursing was summoned to appear before the Professional Conduct Committee on 3 October 2018 for an inquiry into the following charge:

Charge (as amended on 3 October 2018)

“That being registered as a dental care professional:

1. Between April 2008 and November 2015, you amended Patient A’s records without noting that the amendments were retrospective;
2. Your conduct at charge 1 was: -
 - a. Misleading;
 - b. Lacking integrity;
 - c. Dishonest, in that you knew that the amendments should have been clearly marked up and dated; and/or amended the records, in order for a claim to be inappropriately made.

AND, that by reason of the above, your fitness to practise is impaired by reason of your misconduct.”

Ms Cherry was not present and was not represented. On 3 October 2018 the Chairman announced the findings of fact to the Counsel for the GDC:

“Service

Ms Headley appears on behalf of the General Dental Council (GDC) at this Professional Conduct Committee (PCC) hearing of Miss Cherry’s case. Miss Cherry is neither present nor represented at today’s hearing. In her absence the Committee first considered whether the

GDC had complied with service of the Notice of Hearing in accordance with Rules 13 and 65 of the GDC (Fitness to Practise) Rules Order of Council 2006 (the Rules). In so doing, it has taken into account the submissions made by Ms Headley. It accepted the advice of the Legal Adviser.

The Committee has received a copy of the Notice of Hearing, dated 31 August 2018, which was sent to Miss Cherry's registered address by way of special delivery. The Committee is satisfied that the letter contains proper notification of today's hearing, including its time, date and location, as well as the charges against Miss Cherry. Further, the letter was sent more than 28 days in advance of today's hearing. The Committee has seen a copy of a Royal Mail Track and Trace receipt which confirms that it attempted to deliver the item to Miss Cherry's registered address on 3 September 2018 but it was not able to deliver it because no one was in. The updated Track and Trace receipt confirms that the item was collected and signed for on 11 September 2018. Taking all this information into account, the Committee is satisfied that Notice of this hearing had been served on Miss Cherry in compliance with the Rules.

Proceeding in the absence of Miss Cherry

The Committee then considered whether to exercise its discretion under Rule 54 to proceed in Miss Cherry's absence. Ms Headley invited the Committee to do so on the basis that Miss Cherry is aware of today's hearing and she has informed the GDC on several occasions that she will not be attending or participating in the hearing. In these circumstances, Ms Headley submits that it would be appropriate to proceed in her absence. The Committee has considered the submissions made. It has accepted the advice of the Legal Adviser.

The Committee is aware that its discretion to proceed in the absence of Miss Cherry 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.

The Committee notes from Miss Cherry's correspondence to the GDC her position that she will not be attending today's hearing, either by attending in person or by participating via Skype. She has not sought an adjournment to this hearing and there is nothing to suggest that Miss Cherry would attend a hearing, were the Committee minded to adjourn. The Committee has received no compelling reasons as to why it should not proceed with today's hearing. The Committee has concluded that Miss Cherry is aware of today's hearing and that she has chosen not to attend these proceedings for the reasons set out in her letters to the GDC.

The Committee considers that it is in the public interest, as well as in Miss Cherry's own interests to deal with this case expeditiously. Accordingly, the Committee has decided that it is fair and appropriate to proceed in the absence of Miss Cherry in accordance with Rule 54.

The GDC's Case

The GDC's case against Miss Cherry is that between April 2008 and November 2015, she amended Patient A's records without noting that the amendments were retrospective (charge 1). It is said that her conduct in this regard was misleading (charge 2(a)), lacking integrity (charge 2(b)) and dishonest in that she knew that the amendments should have been clearly marked up and dated; and/or amended the records, in order for a claim to be

inappropriately made ((charge 2(c)). The GDC's position is that Miss Cherry's fitness to practise is impaired by reason of her misconduct.

In considering whether the charges have been found proved, the Committee has had regard to all of the evidence. This comprises the witness statements of Witness 1 (an employee of Denplan) and her exhibits as well as the two witness statements of Witness 2 (an employee of the GDC). The Committee, having accepted the advice of the Legal Adviser, decided to admit their evidence in accordance with Rule 57. These statements were served on Miss Cherry in advance of the hearing and she was offered the opportunity to state in advance of the hearing whether she had any objections to their evidence. No response has been received by Miss Cherry. Ms Headley indicated that these witnesses were available to give evidence, should the Committee wish to hear from them. The Committee decided not to hear from these witnesses and the contents of their statements stood as their evidence in chief.

Witness 1 provided information relating to Miss Cherry's employer's (a registered dentist) claims that were being submitted to Denplan. This includes concerns relating to the submission of Patient A's claim form. In view of the concerns raised, Denplan requested full notes for Patient A. On receipt of the notes, Denplan identified that one of the inserted sheets had been duplicated with dated entries at the notes section having been omitted.

In due course, as a result of these concerns, the GDC carried out an inquiry into Miss Cherry's employer. As part of that enquiry the GDC asked Miss Cherry to provide a statement as it was said by her employer that she had assisted him in writing the patient notes.

Witness 2 provided information relating to Miss Cherry's involvement in the GDC's investigation. As part of that investigation Miss Cherry provided the GDC with a witness statement dated 21 July 2017. In requesting that Miss Cherry provide the GDC with a statement, the GDC notified Miss Cherry by letter dated 5 July 2017, advising her that as a GDC registrant, she may wish to obtain advice about her own position before she provides a witness statement. It warns her about the possibility of self-incrimination as a GDC registrant speaking to their Regulator.

In Miss Cherry's witness statement to the GDC she accepted that she had written Patient A's notes, including on the top part of the notes the words "if the bridge breaks, claim on Denplan". She stated that some eight or nine years later, Patient A broke her bridge through external trauma and that in order to submit a claim through Denplan her employer reviewed the notes and saw what she had written. Miss Cherry stated that her employer asked her to re-write the notes and that she usually does what he asks her to do. She also recollected that the claim was submitted and went through to Deplan as Patient A had the bridge work repaired.

Miss Cherry gave live evidence on 14 November 2017 under oath as a witness in the PCC hearing in respect of her employer. The Committee's attention has been drawn to the transcripts of Miss Cherry's evidence in which she confirmed that she wrote the original notes relating to Patient A and that she had re-written one of the cards because a claim on Denplan was to be made and so as to make "it sound as if she was going to claim on the insurance, but that was always written on there, anyway, so he just said it would interfere with the insurance because I had written that on there."

Witness 2 also provided, as exhibits, Miss Cherry's observations to the GDC in relation to her involvement in writing Patient A's notes. These are dated 18 April 2018, in which she states that she was asked to re-write the patient's notes because the way in which the notes had been initially recorded meant that he would not be able to make a claim on Denplan if needed. She explains that she was not happy about amending the notes but that she did so because she was in fear of losing her job that she held for some 25 years. In her letter to the GDC dated 1 June 2018 Miss Cherry states that she had "no choice but to re-write the 'said notes'" otherwise her job would have been at risk. She also states that she knew it was wrong.

The Committee has borne in mind that it has not had the benefit of hearing evidence from Miss Cherry as to her account of events that took place in relation to the amendment of Patient A's records. It has also had regard to the fact that a substantial part of the GDC's case relies on Miss Cherry's evidence before the PCC in November 2017. Nevertheless, it has given weight to Miss Cherry's evidence before the PCC, which it notes that she gave under oath, and having been warned by the GDC by letter dated 5 July 2017 of the possibility of self-incrimination.

The Committee has accepted the advice of the Legal Adviser. It has borne in mind that the burden of proof is on the GDC and that it must decide the facts according to the civil standard of proof, namely on the balance of probabilities. Miss Cherry need not prove anything. The Committee received advice from the Legal Adviser as to the common meaning of the word misleading it should adopt in considering whether the conduct was misleading. It was also advised of recent case law as to the meaning of lacking integrity, the case of *Wingate & Evans v Solicitors Regulation Authority* [2018] EWCA Civ 366. The Committee also received advice from the Legal Adviser as to the case of *Sharma v General Medical Council* [2014] EWHC 1471 (Admin), where, following earlier authority, it was said the more serious the allegation, the less likely it is to have occurred and the more cogent the evidence it should be. The Committee was also reminded of the test it must apply on the matter of dishonesty, as set out in the Supreme Court judgment in the case of *Ivey v Genting Casinos (UK) Ltd t/a Crockfords* [2017] UKSC 67. This was as follows:

"... When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence going to whether he genuinely held the belief, but it is not a requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established by the fact-finder the tribunal must then consider whether that conduct was dishonest by the standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."

The Committee noted that charge 2(c) contained a typographical error in that it contained the words "that that" whereas in fact it should be just one "that". The Committee received advice from the Legal Adviser as to its powers under Rule 18(1) to amend the allegation. Ms Headley accepted that this amounted to a typographical error. The Committee, of its own volition, has decided to amend charge 2(c) by deleting reference to the second "that" so that it now reads: "dishonest in that she knew that the amendments should have been clearly marked up and dated; and/or amended the records, in order for a claim to be inappropriately made."

The Committee has considered each charge separately. I will now announce its findings as follows:

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| 1. | <p>Found proved</p> <p>In Miss Cherry's statement to the GDC dated 21 July 2017, which was made in connection with GDC proceedings against her employer, she accepts that she had written on Patient A's notes "if the bridge breaks, claim on Denplan". Her evidence was that about eight or nine years later, Patient A broke her bridge and that in order to submit a claim through Denplan, her employer had reviewed the notes that she (Miss Cherry) had written. She further explained that her employer told her that she should have written that "patient is to pay laboratory fee" as the notes looked as though they were saying that the patient would claim through Denplan if the bridge were to break in the future due to external trauma. Miss Cherry's recollection was that she was not sure if she re-wrote the note but that she thought that her employer had asked her to do so. She was clear in her recollection that this was the only time when her employer asked her to amend patient records. In her oral evidence before the PCC on 14 November 2017, Miss Cherry accepted that her employer had asked her to rewrite one of the cards as it related to the claim being made on Denplan and the entry that she had recorded on the original notes, "if the bridge breaks claim on Denplan" would have interfered with that claim. In correspondence to the GDC, which post-dates Miss Cherry giving evidence before the PCC, she accepts that she amended Patient A's records even though she was not happy about doing so. The Committee, having seen the original notes, recorded on NHS paper FP25 (dated 02/03) which cover the period from 10.7.07 to 11.9.09 and with the entry "21.11.07 If [bridge at UL1P3] comes off again, remake on D-plan. (Claim blow to face.)" That information does not appear on the re-written set of notes, which are recorded on NHS paper (revised April 2008). The Committee notes that entries on this card (page 19 of exhibit 1) pre-date the production and availability of that stationery. There is no annotation in the re-written set of notes to them having been amended retrospectively, the date on which they were amended, or any reference to the deletion of the entry in the notes section. Accordingly, the Committee finds this charge proved.</p> |
| 2.(a) | <p>Found proved</p> <p>The Committee considers that a third party, such as Denplan, would have been misled into believing that the records were accurate and contemporaneous when this was not the case.</p> |
| 2.(b) | <p>Found proved</p> <p>Standard 4.1 of the GDC's "Standards for the Dental Team" refers to making and keeping complete and accurate patient records. Standard 4.1.5 states: "If you need to make any amendments to a patient's records you must make sure that the changes are clearly marked up and dated." The Committee considers that given that Miss Cherry had been a dental nurse for a number of years, having worked with her employer for some 25 years, she would have been</p> |

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| | <p>aware of the importance of ensuring that any amendments to a patient's records are clearly marked up. This was irrespective of the fact that she was told by her employer to make the necessary amendments. It considers that Miss Cherry had a professional and ethical duty to ensure that her record keeping was accurate. Further, she was aware that the amendment to the patient's records was in connection with a Denplan claim and therefore it was important to ensure that it contained accurate information. It finds that her conduct in amending the patient's records without noting that the amendments were made retrospectively in these circumstances does not adhere to the ethical standards of the dental profession and therefore lacked integrity.</p> |
| <p>2.(c)</p> | <p>Found proved</p> <p>The facts of this case are that Miss Cherry, on the instruction of her employer, made amendments to Patient A's records in that she re-wrote a page of Patient A's records in order for a claim to be made to Denplan. The original set of notes contained information that would have made the claim not payable. A second set of patient records were written by Miss Cherry in order for a claim to be made inappropriately. In her email to the GDC dated 18 April 2018 Miss Cherry accepted that the original wording recorded on the notes meant that her employer would not be able to make a claim on Denplan and that she told him that she was not happy about making the amendment to the records because she knew that it was wrong. Notwithstanding Miss Cherry's assertions that she was forced to make the amendments by her employer, the Committee considers that she knew that by not clearly marking up and dating the amendments she was acting dishonestly. The Committee also finds on the balance of probabilities that Miss Cherry knew at the time that her actions in amending the records in order for a claim to be inappropriately made were dishonest. The Committee is satisfied that Miss Cherry's conduct in this regard to be dishonest by the standards of ordinary decent people.</p> |

We move to Stage Two.”

On 4 October 2018 the Chairman announced the determination as follows:

“Having announced its findings on the facts, the Committee has had regard to the submissions made by Ms Headley, on behalf of the General Dental Council (GDC). It has accepted the advice of the Legal Adviser.

Ms Headley confirmed that Miss Cherry has no previous fitness to practise history. She submitted that the findings against Miss Cherry, which concern dishonest conduct, are serious. Ms Headley invited the Committee to conclude that the findings against Miss Cherry amount to misconduct and that her fitness to practise is impaired by reason of that misconduct. This was, she said, a case where Miss Cherry has breached one of the fundamental tenets of the profession – namely to act with honesty and integrity and that there was a strong public interest in reaching a finding of current impairment. She also said that Miss Cherry has shown limited insight into the seriousness of her actions. Ms Headley submitted that the appropriate sanction in this case is a direction suspending Miss Cherry's

registration for a period of 12 months, with a review hearing to take place before the expiry of the order.

The Committee has taken into account Miss Cherry's written representations made to the GDC throughout the course of its investigations. In a letter to the GDC dated 1 June 2018 Miss Cherry advised the GDC that she had "no choice" but to rewrite the said notes otherwise her job would have been at risk. She describes herself as being in a stressful situation and said that her employer made her time at work "very upsetting and basically said I had to do it." She further states that there was no financial gain to her by rewriting the notes as the only person who would gain was her employer (a registered dentist). Later on in that letter, Miss Cherry states that she does not feel that she has done anything wrong because she was in a "no win" situation and it resulted in her losing her job as well. She stated that she did not wish to return to practise nursing again. Miss Cherry broadly reiterated a number of these points in her letter to the GDC dated 26 June 2018 and concluded by saying that she has not done "anything wrong."

Misconduct

The Committee has first considered whether the facts found proved amount to misconduct. In so doing, it has had regard to all the evidence before it. Throughout its considerations the Committee has kept in mind the relevant case law regarding the meaning of 'misconduct' within the context of regulatory proceedings. It has also had regard to the GDC's "Standards for the Dental Team" (September 2013).

The Committee has found that between April 2008 and November 2015, Miss Cherry amended one of the cards on Patient A's records without noting that the amendments were retrospective. The amended notes were submitted by Miss Cherry's employer (a registered dentist) in order for an inappropriate claim be made to Denplan (a dental payment plan for patients). Denplan raised concerns relating to the notes provided by Miss Cherry's employer. In due course, as a result of these concerns, the GDC carried out an inquiry into Miss Cherry's employer. Miss Cherry was called as a witness in that case and gave evidence before a Professional Conduct Committee (PCC) on 14 November 2017. At that PCC hearing Miss Cherry accepted that her employer had asked her to rewrite one of the cards on Patient A's notes. The amendments were in connection with a claim being submitted by her employer to Denplan in respect of Patient A. Miss Cherry accepted in subsequent correspondence to the GDC that she had amended Patient A's records even though she was not happy about doing so.

This Committee has found that Miss Cherry's conduct was misleading, lacking integrity and dishonest, in that she knew that the amendments should have been clearly marked up and dated in the records, and that the amendments were made in order for an inappropriate claim to be made. It considered that Miss Cherry's dishonest conduct, albeit relating to one episode, was serious and an abuse of her position of trust as a registered dental nurse. It notes Miss Cherry's contention that that she was forced into rewriting the notes by her employer. Nevertheless, the Committee considers that as an experienced dental nurse, and having worked with her employer for some 25 years, she had a duty to be honest and act with integrity and not to have facilitated him in submitting an inappropriate claim. Having regard to its findings, the Committee considered the GDC's "Standards for Dental Professionals" (May 2005) and the GDC's "Standards for the Dental Team" (September 2013). It notes that they cover broadly the same grounds. The Committee is satisfied that

Miss Cherry was in breach of them. In particular, the Committee notes the following paragraphs of the September 2013 which it considers are relevant:

- 1.3 Be honest and act with integrity.
- 1.7.1 You must always put your patients' interests before any financial, personal or other gain.
- 4.1.5 If you need to make any amendments to a patient's records you must make sure that the changes are clearly marked up and dated.
- 9.1 You must 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.

The Committee is satisfied that the findings against Miss Cherry are serious and amount to misconduct.

Current impairment

The Committee next considered whether Miss Cherry's fitness to practise is currently impaired by reason of her misconduct. In so doing, it has had regard to the submissions made and has accepted the advice of the Legal Adviser.

While noting Miss Cherry's acceptance of wrongdoing, in the Committee's judgement, Miss Cherry has not demonstrated any understanding as to the seriousness of making amendments to patient records without clearly annotating them as such, or indeed the impact of her dishonest conduct on the reputation of the profession. The Committee considers that Miss Cherry lacks insight into the underlying issues in this case. She has provided no assurances that she will not repeat this conduct again. In the Committee's view, there is a real risk of repetition of the behaviour were Miss Cherry to find herself in a similar situation.

The misconduct identified in this case, which involved dishonest conduct, was, in the Committee's view, serious. Such conduct undermines public confidence in the profession and amounts to a breach of one of the fundamental standards required of a registered dental care professional. It considers that public confidence would be undermined if a finding of impairment were not made, given the findings against Miss Cherry.

Having regard to all of these matters, the Committee has determined that Miss Cherry's fitness to practise is currently impaired by reason of her misconduct.

Sanction

The Committee next considered what sanction, if any, to impose on Miss Cherry's registration. It recognises that the purpose of a sanction is not to be punitive, although it may have that effect, but to protect patients and the wider public interest. The Committee has taken into account the GDC's "Guidance for the Practice Committees, including Indicative Sanctions Guidance" (October 2016). It has applied the principle of proportionality, balancing the public interest with Miss Cherry's own interests.

The Committee has had regard to the aggravating and mitigating factors in this case. The aggravating factors identified by the Committee include:

- A finding of dishonesty in this case, which took place in the context of Miss Cherry's professional practice.

- Her breach of professional trust
- Her limited insight and lack of remorse.

In mitigation, the Committee has noted:

- No previous fitness to practise history
- This was a single incident of dishonest conduct where there was an element that she acted under duress.
- No evidence of repetition of the misconduct.
- Evidence of her co-operation with the GDC in relation to the conduct of her employer as well as in relation to proceedings against her.

The Committee has considered the range of sanctions available to it, starting with the least restrictive. It has determined that to conclude the case with no further action or with a reprimand would not be sufficient in the light of the gravity of the misconduct found proved and the risk of repetition identified.

The Committee then considered whether a period of conditional registration would be sufficient. In the Committee's judgement, conditions would not be sufficient to mark the seriousness with which it views Miss Cherry's departure from acceptable standards of behaviour. Further, the Committee concluded that there are no workable or measurable conditions that could be formulated which would address the underlying issue of dishonesty in this case.

The Committee has given careful consideration as to whether it is sufficient to direct that Miss Cherry's registration be suspended or whether this is a case where an order of erasure is necessary in the wider public interest. It is in no doubt that the findings against Miss Cherry are serious. The Committee also has concerns about Miss Cherry's limited insight into the consequences of her conduct and how it impacts on public confidence in the dental profession. However, there is no evidence of any dishonest behaviour prior to or since the events in question. Further, the Committee has borne in mind that Miss Cherry's dishonest conduct was limited to a one-off incident. The Committee has also had regard to Miss Cherry's previously unblemished career of some 25 years.

This is not, in the Committee's opinion, a case where there is evidence of a harmful deep-seated professional attitudinal problem which is fundamentally incompatible with Miss Cherry remaining on the Dental Care Professionals' Register. Consequently, the Committee concluded that the sanction of erasure would not be appropriate or proportionate in this case. Taking all these factors into account, the Committee is satisfied that the public interest concerns in this case are sufficiently met by a period of suspension.

Accordingly, the Committee directs that Miss Cherry's registration in the Dental Care Professionals' Register be suspended for a period of 12 months. The Committee is satisfied that this period of time is appropriate to mark the seriousness of Miss Cherry's dishonest conduct and to send a message to the profession and the public that this type of conduct is not acceptable.

The Committee considers that Miss Cherry's case should be reviewed at a resumed hearing to be held shortly before the end of the period of suspension. That Committee will consider

what action it should take in relation to Miss Cherry's registration. It notes Miss Cherry's indication that she no longer wishes to practise as a dental nurse. However, this Committee considers that a future Committee reviewing Miss Cherry's case may be assisted by receiving information from her as to whether she maintains her position that she no longer wishes to practise as a dental nurse or alternatively, evidence of her future plans and how she wishes to demonstrate that she is now fit to practise.

The Committee now invites submissions from Ms Headley as to whether Miss Cherry's registration should be suspended immediately.

Decision on immediate order

The Committee has considered whether to make an order for the immediate suspension of Miss Cherry's registration. Ms Headley, on behalf of the GDC, made an application for an immediate order. The Committee has considered the submissions made by Ms Headley. It has accepted the advice of the Legal Adviser.

The Committee has had regard to its reasons for finding that Miss Cherry's fitness to practise is impaired, including its view that there remains a real risk of repetition, as well as its consideration that public confidence would be undermined if a finding of current impairment were not made. It has also had regard to its reasons for directing that Miss Cherry's registration be suspended. In these circumstances, the Committee has concluded that not imposing an immediate order and allowing Miss Cherry to practise during the period before the substantive order takes effect would place the public at risk. It was also satisfied that it would be contrary to the public interest and inconsistent with its findings not to impose an immediate order to cover the appeal period or, if an appeal is lodged, until it has been disposed of.

In accordance with Section 36(U) of the Dentists Act 1984 (as amended) the Committee has determined that it is necessary for the protection of the public and is otherwise in the public interest that Miss Cherry's registration be suspended forthwith.

The effect of this direction is that Miss Cherry's registration will be suspended immediately. Unless Miss Cherry exercises her right of appeal, the substantive order of suspension will come into effect 28 days from the date on which notice of this decision is deemed to have been served on her. Should Miss Cherry exercise her right of appeal, this immediate order for suspension will remain in place until the resolution of any appeal.

That concludes the hearing of Miss Cherry's case."

At the review hearing on 14 October 2019 the Chairman announced the determination as follows:

"This is a resumed hearing pursuant to s 36Q of the Dentists Act 1984 (the "Act").

On 4 October 2018 the Professional Conduct Committee (the "initial PCC") found Miss Cherry's fitness to practise to be impaired by reason of her misconduct, summarising its findings of fact as follows:

The Committee has found that between April 2008 and November 2015, Miss Cherry amended one of the cards on Patient A's records without noting that the amendments

were retrospective. The amended notes were submitted by Miss Cherry's employer (a registered dentist) in order for an inappropriate claim be made to Denplan (a dental payment plan for patients). Denplan raised concerns relating to the notes provided by Miss Cherry's employer. In due course, as a result of these concerns, the GDC carried out an inquiry into Miss Cherry's employer. Miss Cherry was called as a witness in that case and gave evidence before a Professional Conduct Committee (PCC) on 14 November 2017. At that PCC hearing Miss Cherry accepted that her employer had asked her to rewrite one of the cards on Patient A's notes. The amendments were in connection with a claim being submitted by her employer to Denplan in respect of Patient A. Miss Cherry accepted in subsequent correspondence to the GDC that she had amended Patient A's records even though she was not happy about doing so.

This Committee has found that Miss Cherry's conduct was misleading, lacking integrity and dishonest, in that she knew that the amendments should have been clearly marked up and dated in the records, and that the amendments were made in order for an inappropriate claim to be made. It considered that Miss Cherry's dishonest conduct, albeit relating to one episode, was serious and an abuse of her position of trust as a registered dental nurse. It notes Miss Cherry's contention that that she was forced into rewriting the notes by her employer. Nevertheless, the Committee considers that as an experienced dental nurse, and having worked with her employer for some 25 years, she had a duty to be honest and act with integrity and not to have facilitated him in submitting an inappropriate claim...

In finding current impairment, the initial PCC stated:

While noting Miss Cherry's acceptance of wrongdoing, in the Committee's judgement, Miss Cherry has not demonstrated any understanding as to the seriousness of making amendments to patient records without clearly annotating them as such, or indeed the impact of her dishonest conduct on the reputation of the profession. The Committee considers that Miss Cherry lacks insight into the underlying issues in this case. She has provided no assurances that she will not repeat this conduct again. In the Committee's view, there is a real risk of repetition of the behaviour were Miss Cherry to find herself in a similar situation.

The misconduct identified in this case, which involved dishonest conduct, was, in the Committee's view, serious. Such conduct undermines public confidence in the profession and amounts to a breach of one of the fundamental standards required of a registered dental care professional. It considers that public confidence would be undermined if a finding of impairment were not made, given the findings against Miss Cherry...

The initial PCC directed that Miss Cherry's registration be suspended for a period of 12 months with a review, stating that:

...It notes Miss Cherry's indication that she no longer wishes to practise as a dental nurse. However, this Committee considers that a future Committee reviewing Miss Cherry's case may be assisted by receiving information from her as to whether she maintains her position that she no longer wishes to practise as a dental nurse or alternatively, evidence of her future plans and how she wishes to demonstrate that she is now fit to practise.

It is the role of the Committee today to undertake that review. Miss Cherry is neither present nor represented. Mr Middleton, for the General Dental Council, submitted that the notification of hearing had been served on her in accordance with the General Dental Council (Fitness to Practise) Rules 2006 (the “Rules”) and that the hearing should proceed in her absence.

Service and absence

In reaching its decision on service and absence, the Committee accepted the advice of the Legal Adviser.

The notification of hearing was sent to Miss Cherry at her registered address on 3 September 2019 by Special Delivery. Tracking information from Royal Mail records that the item was collected on 5 September 2019, signed “PP D CHERRY” [sic].

The Committee was satisfied that the notification had been sent with at least 28 days’ notice and that it contained the information required under Rule 28 of the Rules, including the time, date and venue of this hearing. The Committee was satisfied that the notification had been served on Miss Cherry in accordance with the requirements of Rule 65 and s 50A of the Act by virtue of it being sent to her registered address by Special Delivery.

The Committee next considered whether to exercise its discretion to proceed in the absence of Miss Cherry. This is a discretion which must be exercised with the utmost care and caution. There is no evidence before the Committee of any previous attendance or engagement from Miss Cherry since the initial PCC. Miss Cherry has not applied for a postponement or adjournment of this hearing. There is nothing to suggest to the Committee that an adjournment would make her attendance any more likely in the future, as Miss Cherry has given no indication that she wishes to engage in these proceedings. The Committee determined that Miss Cherry had voluntarily absented herself from the hearing.

Further, the period of suspension is currently due to expire on 6 November 2019 and so the Committee risks losing jurisdiction over the case if it does not proceed today, as Miss Cherry is to be given at least 28 days’ notice of any relisted hearing.

Accordingly, having regard to all the circumstances, the Committee was satisfied that it would be fair and in the public interest to proceed with the hearing, notwithstanding the absence of Miss Cherry.

The resumed hearing

Mr Middleton submitted that Miss Cherry’s fitness to practise continues to be impaired owing to her lack of engagement. He referred the Committee to *Abrahaem v General Medical Council* [2008] EWHC 183 Admin as authority for the proposition that there is a persuasive burden on Miss Cherry to demonstrate to this reviewing Committee that she acknowledges and has sufficiently addressed the past finding of impairment.

Mr Middleton also referred the Committee to *Khan v General Pharmaceutical Council* [2016] UKSC 64, at para 27:

...the focus of a review is upon the current fitness of the registrant to resume practice, judged in the light of what he has, or has not, achieved since the date of the suspension. The review committee will note the particular concerns articulated by the original committee and seek to discern what steps, if any, the registrant has taken to allay them during the period of his suspension. The original committee will have found

that his fitness to practise was impaired. The review committee asks: does his fitness to practise *remain* impaired?

And to *Kimmance v General Medical Council* [2016] EWHC 1808 (Admin), at para 66:

There was indeed no evidence of insight and remediation in this case. I do not much like those jargon words. They do not do much to illuminate the reality, which is that a doctor or other professional who has done wrong has to look at his or her conduct with a self-critical eye, acknowledge fault, say sorry and convince a panel that there is real reason to believe he or she has learned a lesson from the experience. Nine times out of ten, you cannot do that if you do not turn up to the hearing. The panel will want to ask questions.

Mr Middleton submitted that the period of suspension should be extended for a period of 12 months with a review.

The Committee accepted the advice of the Legal Adviser. The Committee had regard to the *Guidance for the Practice Committees, including Indicative Sanctions Guidance* (October 2016).

The first matter for consideration by the Committee is whether Miss Cherry's fitness to practise continues to be impaired. There is a persuasive burden on her to satisfy this Committee that she acknowledges why her fitness to practise was found to be impaired and that she has, through insight, application, education, supervision or other achievement, sufficiently addressed the past impairment.

There has been no engagement from Miss Cherry at all since the initial PCC. There is therefore no evidence whatsoever before the Committee of any insight, remediation or reflection. The Committee today is in the same position in respect of these matters at the initial PCC. The Committee cannot be satisfied that the risk of repetition is low and the finding of impairment remains wholly unaddressed by her.

Miss Cherry's misconduct is remediable but there has been no engagement from her. The reason for her complete non-engagement may be that she no longer wishes to practise as a dental nurse again but she has given no indication to this Committee on whether this is the case. She has not discharged the persuasive burden on her to demonstrate that she addressed her past finding of impairment. There is nothing to indicate to the Committee that Miss Cherry even appreciates the seriousness of her misconduct. The Committee finds that Miss Cherry's fitness to practise continues to be impaired by reason of her misconduct.

The next consideration for the Committee is what sanction, if any, to impose. The purpose of a sanction is to protect the public and the wider public interest. The Committee was satisfied that a sanction on Miss Cherry's registration remains necessary for the protection of the public and to maintain public confidence in the profession and this regulatory process.

The Committee next considered whether to direct that Miss Cherry's registration be made subject to her compliance with conditions. There is nothing to suggest that conditions could be formulated to be workable, measurable or proportionate. There has been no engagement from Miss Cherry and therefore nothing to assure the Committee that she will comply with conditions on her registration. Further, in the Committee's judgment, conditions could not in any event be formulated to address the dishonesty in this case.

The Committee therefore determined that a further period of suspension remains necessary and proportionate for the protection for the public and that it is otherwise in the public interest. Owing to Miss Cherry's lack of engagement, the Committee determined that the period of suspension should be extended for the maximum period of 12 months, with a review to take place before the expiry of that period.

Accordingly, the Committee directs that the period of suspension be extended for a further period of 12 months with a review. The reviewing Committee may be assisted by engagement with the GDC by Miss Cherry and from any evidence of her insight or reflection into why she is now fit to practise.

That concludes the hearing today."

At the review hearing on 16 October 2020 the Chairman announced the determination as follows:

"This is a resumed hearing before the Professional Conduct Committee (PCC) pursuant to Section 36Q of the *Dentists Act 1984 (as amended)* ('the Act'). The hearing is being conducted remotely via Microsoft Teams video link.

The purpose of this hearing has been to review Miss Cherry's case. Her registration is currently subject to an order of suspension. Miss Cherry is not participating in the hearing today and she is not represented in her absence. The Case Presenter for the General Dental Council (GDC) is Mr Christopher Saad, Counsel.

At the outset, Mr Saad made an application under Rule 54 of the *GDC (Fitness to Practise) Rules Order of Council 2006* ('the Rules'), to proceed with the hearing notwithstanding Miss Cherry's absence. The Committee took into account Mr Saad's submissions in respect of the application and the supporting documentation provided to it. The Committee accepted the advice of the Legal Adviser.

Decision on service

The Committee considered whether notice of the hearing had been served on Miss Cherry in accordance with Rules 28 and 65, and section 50A of the Act.

The Committee received a copy of the Notice of Hearing, dated 8 September 2020 ('the notice'), which was sent to Miss Cherry's registered address by Special Delivery. The Committee took into account that there is no requirement within the Rules for the GDC to prove delivery of the notice, only that it was sent. However, it noted from the 'Track and Trace' receipt provided to it, that the notice was signed for and collected from a local delivery office on 10 September 2020.

The Committee was satisfied that the notice sent to Miss Cherry complied with the 28-day notice period required by the Rules. It was further satisfied that the notice contained proper notification of today's hearing, including its date and time, as well as confirmation that the hearing would be held remotely via video-link on Microsoft Teams. Miss Cherry was also notified that the Committee had the power to proceed with the hearing in her absence.

On the basis of all the information provided, the Committee was satisfied that notice of the hearing had been served on Miss Cherry in accordance with the Rules and the Act.

Decision on whether to proceed with the hearing in the absence of the registrant

The Committee next considered whether to exercise its discretion under Rule 54 to proceed with the hearing in the absence of Miss Cherry. It approached this issue with the utmost care and caution. The Committee took into account the factors to be considered in reaching its decision, as set out in the case of *R v Jones [2003] 1 AC 1HL* and as explained in the cases of *General Medical Council v Adeogba* and *General Medical Council v Visvardis [2016] EWCA Civ 162*. The Committee remained mindful of the need to be fair to both Miss Cherry and the GDC, taking into account the public interest in the expeditious review of this case. It noted that the current suspension order is due to expire on 6 November 2020.

The information before the Committee was that Miss Cherry has not engaged with the GDC since her initial PCC hearing in October 2018. This included her non-attendance at the last review hearing of her case which took place in October 2019. The Committee received no information today to suggest that Miss Cherry now wished to engage with these proceedings. In the circumstances, the Committee was satisfied that Miss Cherry had voluntarily absented herself from this hearing. It was further satisfied that an adjournment would not make her attendance any more likely on a future occasion. Taking all of this into account, the Committee determined that it was fair and in the public interest to proceed with the hearing in the absence of Miss Cherry.

Background to Miss Cherry's case

The facts found proved against Miss Cherry were summarised by the initial PCC in October 2018 as follows:

The Committee has found that between April 2008 and November 2015, Miss Cherry amended one of the cards on Patient A's records without noting that the amendments were retrospective. The amended notes were submitted by Miss Cherry's employer (a registered dentist) in order for an inappropriate claim to be made to Denplan (a dental payment plan for patients). Denplan raised concerns relating to the notes provided by Miss Cherry's employer. In due course, as a result of these concerns, the GDC carried out an inquiry into Miss Cherry's employer. Miss Cherry was called as a witness in that case and gave evidence before a Professional Conduct Committee (PCC) on 14 November 2017. At that PCC hearing Miss Cherry accepted that her employer had asked her to rewrite one of the cards on Patient A's notes. The amendments were in connection with a claim being submitted by her employer to Denplan in respect of Patient A. Miss Cherry accepted in subsequent correspondence to the GDC that she had amended Patient A's records even though she was not happy about doing so.

This Committee has found that Miss Cherry's conduct was misleading, lacking integrity and dishonest, in that she knew that the amendments should have been clearly marked up and dated in the records, and that the amendments were made in order for an inappropriate claim to be made.

That initial Committee went on to determine that the facts found proved amounted to misconduct. It stated that:

... Miss Cherry's dishonest conduct, albeit relating to one episode, was serious and an abuse of her position of trust as a registered dental nurse. It notes Miss Cherry's contention that that she was forced into rewriting the notes by her employer. Nevertheless, the Committee considers that as an experienced dental nurse, and having worked with her

employer for some 25 years, she had a duty to be honest and act with integrity and not to have facilitated him in submitting an inappropriate claim...

In finding current impairment, the initial PCC stated:

While noting Miss Cherry's acceptance of wrongdoing, in the Committee's judgement, Miss Cherry has not demonstrated any understanding as to the seriousness of making amendments to patient records without clearly annotating them as such, or indeed the impact of her dishonest conduct on the reputation of the profession. The Committee considers that Miss Cherry lacks insight into the underlying issues in this case. She has provided no assurances that she will not repeat this conduct again. In the Committee's view, there is a real risk of repetition of the behaviour were Miss Cherry to find herself in a similar situation.

The misconduct identified in this case, which involved dishonest conduct, was, in the Committee's view, serious. Such conduct undermines public confidence in the profession and amounts to a breach of one of the fundamental standards required of a registered dental care professional. It considers that public confidence would be undermined if a finding of impairment were not made, given the findings against Miss Cherry...

The initial PCC directed that Miss Cherry's registration be suspended for a period of 12 months with a review, stating that:

...It notes Miss Cherry's indication that she no longer wishes to practise as a dental nurse. However, this Committee considers that a future Committee reviewing Miss Cherry's case may be assisted by receiving information from her as to whether she maintains her position that she no longer wishes to practise as a dental nurse or alternatively, evidence of her future plans and how she wishes to demonstrate that she is now fit to practise.

A review of Miss Cherry's case was conducted at a resumed hearing held in October 2019. That Committee considered whether her fitness to practise remained impaired by reason of her misconduct. It stated the following in its determination:

There has been no engagement from Miss Cherry at all since the initial PCC. There is therefore no evidence whatsoever before the Committee of any insight, remediation or reflection. The Committee today is in the same position in respect of these matters at the initial PCC. The Committee cannot be satisfied that the risk of repetition is low and the finding of impairment remains wholly unaddressed by her.

Miss Cherry's misconduct is remediable but there has been no engagement from her. The reason for her complete non-engagement may be that she no longer wishes to practise as a dental nurse again but she has given no indication to this Committee on whether this is the case. She has not discharged the persuasive burden on her to demonstrate that she addressed her past finding of impairment. There is nothing to indicate to the Committee that Miss Cherry even appreciates the seriousness of her misconduct. The Committee finds that Miss Cherry's fitness to practise continues to be impaired by reason of her misconduct.

The Committee in October 2019 determined to extend the suspension order on Miss Cherry's registration by a period of 12 months. It directed a further review of her case prior to the end of that period of suspension. In doing so, it stated:

The reviewing Committee may be assisted by engagement with the GDC by Miss Cherry and from any evidence of her insight or reflection into why she is now fit to practise.

Today's review

This has been the second review of Miss Cherry's case since the initial hearing in October 2018. In comprehensively reviewing her case today, the Committee considered all the evidence presented to it. It took account of the submissions made by Mr Saad on behalf of the GDC. The Committee accepted the advice of the Legal Adviser. No material or written submissions were received from, or on behalf of, Miss Cherry.

Mr Saad submitted that the GDC has received no information to suggest that Miss Cherry has breached the current suspension order. However, she has not engaged with the GDC since her initial PCC hearing in October 2018. Therefore, Mr Saad submitted, there is no evidence before the Committee today to indicate that Miss Cherry has remedied any aspect of her misconduct, or that she is planning to do so. He submitted that there is no evidence that Miss Cherry has any insight into her past actions or that she has complied with the recommendations of the previous Committees. Mr Saad also told the Committee that Miss Cherry has not complied with her GDC Continuing Professional Development (GDC) requirements and that her Annual Retention Fee has been written off since 2018.

It was Mr Saad's submission that Miss Cherry's fitness to practise continues to be impaired on account of her non-engagement. He referred the Committee to relevant case law and submitted that there was a persuasive burden on Miss Cherry to demonstrate that she has addressed her misconduct.

Mr Saad drew the Committee's attention to its power under Section 36Q(1)(d) of the Act to suspend Miss Cherry's registration indefinitely at this review. He submitted that the criteria for an indefinite suspension were now met and that the power under Section 36Q(1)(d) was precisely for situations such as this one. He highlighted that serious findings had been made against Miss Cherry in October 2018, including dishonesty, and that two years on, there is still no evidence from her of any remediation, insight or remorse. Mr Saad stated that the last time Miss Cherry had attended a hearing at the GDC was in November 2017, when she attended a hearing in relation to her then employer. Further, Miss Cherry has not kept up with her CPD requirements. Mr Saad submitted that, in all the circumstances, it was fair and appropriate to suspend Miss Cherry's registration indefinitely. He submitted that an indefinite suspension would serve to protect the public and the public interest.

Decision on impairment

The Committee considered whether Miss Cherry's fitness to practise remains impaired by reason of her misconduct.

In reaching its decision, the Committee exercised its independent judgement. It had regard to the over-arching objective of the GDC, which is: the protection, promotion and maintenance of the health, safety and well-being of the public; the promotion and maintenance of public confidence in the dental profession; and the promotion and maintenance of proper professional standards and conduct for the members of the dental profession.

Serious findings of misconduct were made against Miss Cherry in October 2018, including a finding of dishonesty. It was considered that she had breached a fundamental tenet of the profession in amending the patient's records in the manner that she did. This Committee noted that Miss Cherry has not engaged with the GDC in any form since that initial hearing. Consequently, there is no evidence before it today of any remediation undertaken by her.

Nor is there any evidence to suggest that she has any insight into, or has reflected upon, her misconduct, or that she has any remorse. In the absence of such evidence, this Committee is in the same position as the previous two Committees in that there is nothing to indicate that Miss Cherry even appreciates the seriousness of her wrongdoing. As such, the view of the Committee is that there remains a risk of repetition. It considered that public confidence in the dental profession would be seriously undermined if a finding of impairment were not made in the circumstances.

Accordingly, the Committee determined that Miss Cherry's fitness to practise remains impaired by reason of her misconduct.

Decision on sanction

The Committee next considered what action to take in respect of Miss Cherry's registration. It had regard to section 36Q(1) of the Act, which sets out the directions it may make at this review.

In reaching its decision, the Committee took into account the '*Guidance for the Practice Committees including Indicative Sanctions Guidance (effective from October 2016; revised in May 2019)*'. It noted that the purpose of any sanction is not to be punitive, although it may have that effect, but to uphold the public interest. The Committee applied the principle of proportionality, balancing the public interest with Miss Cherry's own interests.

In the absence of any evidence to indicate that Miss Cherry has addressed the previous findings of misconduct and impairment, the Committee determined that it would be wholly inappropriate to terminate the current suspension and take no further action.

The Committee considered whether to impose a period of conditional registration. It concluded that conditions would not be suitable or proportionate in this case. Miss Cherry has not made any contact with the GDC throughout the history of these proceedings. Further, her misconduct involved dishonesty and the Committee considered that there were no conditions that could address the seriousness of her behaviour or satisfy the public interest.

The Committee next considered whether to suspend Miss Cherry's registration for a further specified period. In doing so, it took into account the public interest in these matters, in particular the expense incurred by continued review hearings. Miss Cherry has failed to engage with all of her fitness to practise hearings to date and there is nothing to indicate any future engagement on her part. There has been no evidence to suggest that she has even acknowledged the serious findings made against her. Further, the Committee took into account that Miss Cherry had previously expressed her wish to leave the dental profession. It noted that she has not kept up to date with her CPD, falling short by 12 hours in the last CPD cycle and having not submitted any CPD at all in the current cycle. In all the circumstances, the Committee determined that a further extension of the current suspension order would serve no meaningful purpose.

In reaching its conclusion, the Committee considered Miss Cherry's interests and the potential consequences that an indefinite suspension may have for her. However, it decided that the public interest outweighs Miss Cherry's own interests in this particular instance. The evidence of her non-engagement is clear and the Committee decided that the onus should now rest with her to contact the GDC if and when she is willing to engage with its processes.

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

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

That concludes this determination."