Dental Professionals Hearings Service

Professional Conduct Committee

Initial Hearing

14 – 18 July 2025

Name:	LOCKHART, Kerry
Registration number:	118295
Case number:	CAS-208807-G4P5L5

General Dental Council:	Ashraf Khan, Counsel Instructed by IHLPS
Registrant:	Present Represented by Kyra Steel, Counsel Instructed by Beltrami & Co

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Fitness to practise:	Impaired by reason of misconduct
Outcome:	Suspension (with a review)
Duration:	12 months
Immediate order:	Immediate suspension order

Committee members:	Edythe Murie	(Chair, lay member)
	Samantha Vowles	(Dental Care Professional member)
	Vatsal Amin	(Dentist member)
Legal adviser:	Lucia Whittle-Martin	
Committee Secretary:	Sara Page	

1. This is a Professional Conduct Committee (PCC) hearing. The members of the Committee, as well as the Legal Adviser and the Committee Secretary, conducted the hearing remotely via Microsoft Teams in line with current General Dental Council (GDC) practice.

2. You were present at the hearing and represented by Ms Kyra Steel, Counsel, instructed by Beltrami & Co.

3. Mr Ashraf Khan, Counsel, appeared as Case Presenter on behalf of the GDC.

Charges

4. The charges being considered by the Committee, as detailed in the Notice of Hearing, dated 11 June 2025, are as follows:

'That being a registered dental care professional:

1. On one or more occasions between 13 December 2013 and 16 December 2021:

a) You failed to ensure that you had adequate indemnity insurance in place;
b) You failed to ensure that staff at [the Practice] had adequate indemnity insurance in place.

2. On 15 June 2022 you informed the General Dental Council in a response to a request for details of your indemnity cover from 1 July 2021 that 'your previous cover was with principle dentist indemnity' *or words to that effect.* [sic]

3. Your conduct in relation to allegation 2 above was:

a) Misleading; and/or
b) Lacking integrity; and/or
c) Dishonest – in that you knew from at least 16 December 2021 that this was not the case.

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

Admissions

5. At the outset of the hearing, Ms Steel, on your behalf, informed the Committee that you made a full admission to Charge 2. She confirmed that you deny Charge 1 and Charge 3 in their entirety.

6. Having carefully considered the admission detailed by Ms Steel on your behalf, the Committee was unable to identify any discrepancies that would require further exploration of the admitted allegation and acknowledged supporting evidence.

7. Accordingly, the Committee accepted your admission in relation to Charge 2 and therefore found Charge 2 proved.

Finding of facts

8. In its consideration of the remaining disputed allegations, the Committee had regard to the background of this case and the evidence adduced.

Evidence

9. The Committee had regard to a number of documents included within the GDC hearing bundle, referred to as Exhibit 1. This bundle included, but was not limited to, the following documents:

- Written statements and supporting documents of the following GDC witnesses:
  - Witness 1 — Previous owner of the Practice
  - Witness 2 — Owner and Operations Manager at the Practice
  - Witness 5 — GDC Operations Officer, Registrations Team
  - Witness 6 — GDC Paralegal, In-House Legal Presentation Service
  - Witness 7 — GDC Case Worker Manager, Conduct Team
  - Witness 8 — GDC Senior Customer Advice and Information Team (CAIT) Officer
  - Witness 9 — GDC Interim Casework Manager, Initial Assessment Team (IAT)

- Written statements and supporting documents of the following defence witnesses:
  - Witness 3 — Dental nurse, formally a receptionist and cleaner, who worked at the Practice between 2008 and 2024
  - Witness 4 — Dental nurse who worked at the Practice between 2018 and 2020

10. The Committee also heard oral evidence under affirmation from the following attendees:

  - Witness 1
  - Witness 2
  - Witness 5

11. Further, the Committee heard oral evidence under affirmation from you.

Background

12. You began your training as a dental nurse at the Practice in 1996, registering with the GDC in October 2007 under the grandparent scheme. You have remained with the Practice throughout your professional life.

13. The Practice was previously owned by Witness 1, having purchased the business around January 2014. Since that time, you remained employed as a dental nurse and then, in May 2015, additionally as Deputy Practice Manager.

14. Principal dentist's indemnity cover can include vicarious indemnity cover for dental nurses. This only applies in situations where the principal dentist is also an owner of the practice. The situation

at the Practice is that since 2014, when Witness 1 purchased the Practice, the principal dentists were not in fact owners or shareholders of the Practice.

15. Upon his retirement in September 2019, Witness 1 sold the Practice to you and Witness 2, and two other director/owners.

16. It is the GDC's case that, as the registrant co-owner, director and Deputy Manager of the Practice, you were responsible for ensuring that all employees, including yourself, had adequate indemnity insurance in place and that you had failed to do so. It is further alleged that when you communicated with the GDC on 15 June 2022, you deliberately misled the GDC by expressly suggesting that your indemnity insurance was with your principal dentist, when you knew at that time that this was not the case and therefore you were being dishonest and/or lacking in integrity when you made that assertion to the GDC.

Submissions

17. Mr Khan, on behalf of the GDC, reminded the Committee that, in line with Standard 1.8 of the GDC document, *'Standards for the Dental Team (effective from 30 September 2013)*', referred to hereafter as 'the Standards', all registrants have a personal responsibility to ensure that they have adequate indemnity cover in place as a dental professional. He stated that the GDC document, '*Guidance on professional indemnity and insurance cover',* referred to hereafter as 'the Guidance', makes it clear that registrants should not make assumptions and must always personally check indemnity documents to ensure relevant indemnity is in place. Mr Khan accepted that there was a change in process during November 2015 that required registrants to make a declaration regarding their indemnity cover rather than just trusting that registrants had this arranged. However, he submitted that the necessity for it to be in place since 2013 had not changed, simply the need to declare it to the GDC.

18. Although there appeared to have been some confusion over the specific responsibilities of your role whilst working at the Practice, Mr Khan submitted that as a director and manager, you were under an additional responsibility to ensure that dental team members at the Practice were covered by the relevant indemnity, in line with Standard 6.6.2. He submitted that it was insufficient to say that you were a director on paper only, or that you did not have responsibility for those parts of the business, and that it was non-negotiable for you as a director and manager to ensure that all dental team members were indemnified.

19. Mr Khan reminded the Committee that you admitted Charge 2 and that it was for the Committee to decide whether that statement was deliberately and intentionally misleading or an innocent error. He stated that following the complaint raised against the Practice in December 2021, you arranged your own indemnity cover and texted your colleagues to do the same, only a matter of weeks after the complaint was raised. In this regard, Mr Khan submitted that by 16 December 2021, you were aware that your previous indemnity arrangement was invalid. When the GDC contacted you in June 2022 regarding your indemnity arrangements (and its enquiries had to be made over and over again) you must have known that your responses were misleading. Mr Khan submitted that your responses under cross-examination were evasive. He submitted that you knew when answering questions, it was obvious that your statement at Charge 2 was deliberate and misleading. He submitted that you kept repeating that you had spoken to someone at the GDC, or someone had on your behalf, but there was no evidence from the GDC that these communications were made regarding these issues.

20. Ms Steel, on your behalf, drew to the Committee's attention, the contradiction within the Guidance and the Standards regarding responsibility for ensuring registrants have adequate indemnity cover. She stated that the GDC has lodged documentary evidence from February 2024, June 2016 and November 2013, that each individual registrant is responsible for ensuring that they are personally indemnified. Ms Steel stated that the GDC relies on Standard 6.6.2 that you were under a duty to ensure your staff were adequately indemnified and referred to the evidence of Witness 3, who stated that her interpretation of the GDC's guidance was that it was the sole responsibility of the individual registrant that they have the correct indemnity in place. In assessing the evidence, Ms Steel submitted that the Committee cannot seek to hold you responsible for other registrants' failures and then to say that a registrant is solely responsible for ensuring they are adequately indemnified. If Standard 1.8 is to be followed, she invited the Committee to conclude that you cannot be held responsible for the failures of other nurses to be indemnified. Notwithstanding the contradictory approach of the GDC on this matter, Ms Steel referred to the evidence of Witness 2 which supported your evidence that it was not until May 2015 that you came to hold the title of deputy manager and prior to this, you were employed as a dental nurse. Regardless of the interpretation of the Standards, she submitted that you cannot be held responsible for ensuring other nurses had indemnity prior to you becoming a director. Further, even at the stage of holding the title of director, she stated that you continued to be employed below the practice manager when Witness 1 took over the business, remaining subsidiary to the practice manager. Ms Steel submitted that at no point during the relevant period were you responsible for other staff members' indemnity.

21. Ms Steel reminded the Committee that this issue arose as a result of the bogus complaint from Witness 1 against you and other staff at the Practice, a complaint that was ultimately quashed by the GDC but highlighted this issue regarding indemnity cover. She submitted that it was clear that Witness 1 had an 'axe to grind' against you and that this ought to be taken into account when assessing his evidence. Ms Steel submitted that Witness 1 was failing to execute his duty of care at the Practice, and you were simply a nurse who was being leaned on as neither manager was running the Practice as required. She stated that making you a director was a 'tick box exercise' undertaken by Witness 1 to cover his own back. Ms Steel submitted that you cannot be held responsible for Witness 1's failings, and that he was not a credible or reliable witness. Ms Steel reminded the Committee that Witness 2 continued in his role as operational manager with you as deputy manager and stated that, during this time, you remained in charge of clerical tasks as well as working as a dental nurse. She stated that the responsibility of ensuring staff indemnity for the Practice fell squarely in Witness 2's remit and that it was Witness 2 who contacted the MDDUS to clarify the indemnity cover for the dental nurses.

22. In relation to your own indemnity cover, Ms Steel submitted that you took reasonable steps to ensure you were identified during the relevant period. You do not dispute that neither you or other nurses had adequate indemnity and Ms Steel submitted that this was due to an administrative oversight or misunderstanding regarding the requirements which came to light as a result of Witness 1's complaint. She reminded the Committee that you are not facing a charge for not being indemnified, but for failing to ensure you were indemnified. Ms Steel told the Committee that your position is that you did take adequate steps and as soon as you found out, you took immediate action to rectify the situation. She stated that on various occasions you sought the guidance of the MDDUS, one of the largest medical defence unions in Scotland, to ensure you were indemnified and were party to the discussions between the MDDUS and the operations manager that left you assured you had adequate cover. To this end, Ms Steel referred to the email from Witness 2 to the GDC in March 2021 advising that dental nurses at the Practice were covered under the dentist's policy, the GDC accepted this explanation, and no issues were raised regarding the cover. This, she submitted, was another way you satisfied yourself that you were covered under the principal dentist. As the policy was not in your name, you were unable to

access the documents yourself but on each occasion a query was made, the MDDUS stated that dental nurses were covered. Therefore, Ms Steel submitted that on this basis, you had taken reasonable steps within the relevant period to ensure you were covered, that it resulted from a genuine mistake, one which you recognise was serious and you took immediate steps to rectify the situation upon discovery.

23. In relation to the completion of section 4 of the GDC form entitled *'Working Arrangements and Indemnity Insurance',* Ms Steel submitted that this was not a deliberate attempt to mislead the GDC and that you immediately contacted the GDC following your discovery that dental nurses were not in fact covered by the dentist's indemnity insurance, as described in your oral evidence. She stated that you had completed the form on the basis that you had already reported the matter at the earliest opportunity and were brief in your response as you genuinely believed the GDC was aware of the matter. Ms Steel invited the Committee to consider that if it was your intention to deliberately mislead, you would not have completed the box at all – you had accepted you were not indemnified, that the GDC was aware of the reason for this and therefore completed the box in good faith.

24. Ms Steel referred the Committee to Witness 2's evidence which she submitted corroborated your description of the events at that time, including that the GDC had been contacted upon noting the error in vicarious indemnity cover, and this was supported by the emails between Witness 2 and the GDC in the bundle. On this basis, Ms Steel invited the Committee to find you are a credible and reliable witness who gave lengthy evidence, who has been honest and has advised that this was a genuine mistake that you rectified at the earliest opportunity.

Committee's findings

25. The Committee considered all the evidence presented to it and took account of the closing submissions made by Mr Khan, on behalf of the GDC, and by Ms Steel, on your behalf. The Committee accepted the advice of the Legal Adviser which included reference to relevant case law. It 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 facts are proved on the balance of probabilities.

Charge 1

'On one or more occasions between 13 December 2013 and 16 December 2021:

a) *You failed to ensure that you had adequate indemnity insurance in place;*
   PROVED
b) *You failed to ensure that staff at [the Practice] had adequate indemnity insurance in place.'*
   NOT PROVED

26. In relation to Charge 1a), you told the Committee that you accepted that there was a responsibility on you as a registrant to ensure that you had indemnity cover, as detailed in Standard 1.8, *'You must have appropriate arrangements in place for patients to seek compensation if they suffer harm'.*

27. You told the Committee that you previously believed you had indemnity cover. You said you have been privy to conversations between the MDDUS and Witness 2 during which it was confirmed

that dental nurses were covered by the dentist's cover. You stated that as the policy was not in your name, you were not able to access the policy details yourself. However, you confirmed that a copy of the policy for the dentist was available in the Practice.

28. Given the varied history of ownership at the Practice and the apparent difficult circumstances between approximately 2012 and the complaint raised in 2021, the Committee found it very surprising that you had not taken additional steps to ensure that you had adequate indemnity in place. Further steps you could have taken included: viewing the policy document available at the Practice; speaking to the policy holder and directly asking whether you could confirm that dental nurses were covered; speaking directly to the MDDUS yourself.

29. The Committee noted that between 2016 and 2021, you would have been required to declare your indemnity cover for each yearly renewal of your registration. The Guidance, under the heading *'Employer-based schemes'*, confirms the following:

> *'Your employer may have a policy which provides you with cover, but it is your responsibility to make sure you are covered for all the tasks that you do, the locations where you work and the hours that you work. Make sure you ask your employer for a copy of the policy and keep it for your records. Do not assume that you're covered.'*

30. In this regard, the Committee did not consider that you had checked the policy to confirm that it covered you for all tasks undertaken, all locations you worked, and the hours you practised as you had never seen the policy document itself. You did not have a copy of the indemnity policy for your own records, as advised, in the event you were required to provide evidence of your cover to the GDC. Moreover, the Committee was not provided with any evidence that you had checked any of these points with the policy holder before making yearly declarations to that effect.

31. The Committee considered indemnity insurance to be a cornerstone of professional practice and that it was not sufficient to take other people's assurances without having taken the additional steps outlined above. Whilst the Committee accepted that you did take some steps regarding your indemnity, these were not sufficient in the circumstances, and this resulted in your practising without adequate indemnity for at least six years.

32. For those reasons, the Committee concluded that you failed to ensure that you had adequate indemnity insurance in place during the relevant time.

33. Accordingly, the Committee found **Charge 1a) proved.**

34. In relation to Charge 1b), the Committee had careful regard to the Standards, in particular Standard 6.6, which states:

Standard 6.6:	*You must demonstrate effective management and leadership skills if you manage a team*
6.6.2	*You should make sure that relevant team members are appropriately registered with the GDC or another healthcare regulator, appropriately in-training to be registered with the GDC or another healthcare regulator and that those who are registered with the GDC are also indemnified.*

35. In this regard, the Committee first had to consider whether you managed and led a team.

36. Although there has been some discussion regarding your role as a director, the Committee did not consider this title relevant to this particular charge as being a director did not automatically mean that your role within the Practice was one of a team leader.

37. In his oral evidence, Witness 2 stated that in your role as deputy manager, you were not responsible for managing teams or team members but for the clinical duties at the Practice including preparing for inspections and ordering stock. There was no evidence before the Committee that your role as deputy manager included any human resources responsibilities.

38. The Committee noted that there is no requirement for a manager of a dental practice to be GDC-registered. It would be incorrect to assume that as the only GDC-registered member of the management team, you automatically held the position of managing staff and/or being a team leader. The Committee bore in mind that both you and Witness 2 confirmed this was not a responsibility of your role. Further, the Committee noted that Witness 1 did not state that you were responsible for leading the team. Having carefully considered all the evidence adduced, the Committee concluded that your role as deputy manager involved the clinical compliance of the Practice and any administrative tasks that were related to this responsibility and that there were no human resources aspects to your role. This was the responsibility of the Practice Manager or Operational Manager.

39. The Committee was not satisfied that the GDC has sufficiently proven that you were managing a team. Therefore, there was no duty on you to comply with Standard 6.6.2 by ensuring staff at the Practice were adequately indemnified. Consequently, the GDC has not discharged its burden of proof in relation to this allegation.

40. Accordingly, the Committee found **Charge 1b) NOT proved.**

Charge 2

> *'On 15 June 2022 you informed the General Dental Council in a response to a request for details of your indemnity cover from 1 July 2021 that* 'your previous cover was with principle dentist indemnity' *or words to that effect.'* [sic]

41. The Committee noted your admissions in relation to this charge. The Committee had regard to the GDC bundle which contained a copy of the document entitled, *'Working Arrangements and Indemnity Insurance'.* At section 4 of the document, entitled, *'Previous indemnity arrangements',* you had handwritten *'PREVIOUS COVER WAS WITH PRINCIPLE DENTIST INDEMNITY'* [sic].

42. Having had sight of this document and in light of your admission, the Committee found **Charge 2 proved.**

Charge 3

> *'Your conduct in relation to allegation 2 above was:*
>
> *a) Misleading; and/or*
> ***PROVED***
> *b) Lacking integrity; and/or*
> ***PROVED***

c) *Dishonest – in that you knew from at least 16 December 2021 that this was not the case.'*
PROVED

43. In its consideration of Charge 3a), the Committee considered whether your response at Charge 2 was deliberately and intentionally misleading.

44. The Committee noted that your handwritten response in the Section 4 box is a direct response to the question asked above it, which reads, *'If you were not indemnified, please provide reasons below'.* You told the Committee that you considered this explanation to be sufficient as you had already disclosed to the GDC the issue regarding the dental nurses at the Practice not having been covered as a result of a misunderstanding which you immediately rectified. You told the Committee that you had discussed this in a telephone call with the GDC on 16 December 2021

45. However, Witness 8, Senior CAIT Officer, had been tasked to locate a record of the call and confirmed that, having checked the records, he could find *'…no call records of calls from the Registrant on 16 December 2021 or any other time'*.

46. Witness 9, Interim Manager in IAT, stated that:

> *'If a case is created, the telephone note would be included in SharePoint on that case. If a case is not created, then the note would be stored in SharePoint on the registrant's contact card…*
>
> *In relation to specific calls from the Registrant on 16 December 2021, I cannot see any record of a call from the Registrant on CRM. I have checked for a record of the call on the contact card including the notes and activities section and SharePoint.'*

47. Further, Witness 5 was also confirmed that she had checked the records and stated that:

> *'There is no record of a call from the Registrant in December 2021 on CRM. CRM is the GDC's online case management system which holds information about Registrants and ongoing GDC matters.*
>
> *I have reviewed CRM, and I am unable to locate any incoming or outgoing call between the Registrant and the GDC in December 2021.'*

48. In addition, there appeared to be a number of inconsistencies in Witness 2's evidence when compared with yours regarding who had been contacted, by whom, and when.

49. The Committee took account of your previous good character. However, the Committee concluded on the balance of probabilities that the telephone call on 16 December 2021 was not made.

50. In those circumstances, the Committee determined that the wording you recorded in Section 4 was deliberately misleading. This conclusion was supported by evidence of subsequent repetition of the same point throughout the GDC's attempts to obtain information from you regarding your indemnity.

51. Therefore, the Committee found **Charge 3a) proved.**

52. In relation to Charge 3b), the Committee bore in mind that as a professional, registrants must be held to a higher degree of accountability and having found that you intentionally misled the GDC, the Committee determined that this lacked integrity.

53. Accordingly, the Committee found **Charge 3b) proved.**

54. Having found that you deliberately misled the GDC, the Committee decided whether you had acted dishonestly. The Committee was satisfied that applying the objective standards of ordinary decent people, a fair-minded member of the public would consider deliberately misleading the GDC regarding the status of your indemnity cover would be dishonest in the circumstances.

55. Accordingly, the Committee found **Charge 3c) proved.**

<u>Fitness to practise and sanction</u>

56. Having announced its decision on the facts, the Committee then moved on to consider whether the facts found proved amount to misconduct and, if so, whether your practice is currently impaired. The Committee heard submissions from Mr Khan, on behalf of the GDC and Ms Steel's submissions, on your behalf, in relation to the matters of misconduct, impairment and sanction. The Committee accepted the advice of the Legal Adviser.

Evidence

57. The Committee also had regard to a further defence document, which consisted of the following:

- Character reference, dated 14 June 2025.

58. The Committee also heard further oral evidence from you under affirmation. You continued to deny the charges but said that you accepted the findings of the Committee and expressed remorse that patients had been put at risk of harm through your lack of indemnity cover.

Submissions

59. Mr Khan invited the Committee to consider whether the conduct found proved amounted to misconduct and current impairment and referred to relevant case law to assist in its decision-making.

60. In relation to misconduct, Mr Khan referred the Committee to the case of *Roylance v General Medical Council* (No. 2) [2000] 1 AC 311 in which misconduct was defined as a *'word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.'* Mr Khan invited the Committee to find that your conduct had breached a number of the Standards, including Standard 1.3, Standard 1.3.2, Standard 1.8, Standard 9.1 and Standard 9.4. He invited the Committee to find that in consideration of this case, the charges found proved, both individually and collectively, were sufficiently serious breaches of the Standards and amounted to misconduct.

61. In relation to impairment, Mr Khan submitted your fitness to practise is currently impaired on both public protection and public interest grounds. On the matter of public protection, he submitted that by you not having indemnity in place, patients were placed at risk of harm over a prolonged period. He submitted that you lied to your regulator during the investigation and lied to the Committee under affirmation which would no doubt bring the profession into disrepute. Mr Khan submitted that all registrants have a duty of candour to be upfront and honest about faults in their

practice and that you should have been open and honest with the GDC from the outset as soon as you discovered that you did not have indemnity and that such dishonesty breached a fundamental tenet of the profession. He stated that in the absence of any insight, remediation, or reflection into your misconduct, it is likely that you would act dishonestly in the future. In addition, Mr Khan submitted that public interest would also be undermined if a finding of impairment were not made in the circumstances of this case.

62. On the matter of sanction, Mr Khan invited the Committee to consider a number of aggravating and mitigating factors that the GDC considers to be present in this case. In having considered those factors, Mr Khan submitted that the only appropriate and proportionate sanction in this case was one of erasure.

63. Ms Steel, on your behalf, submitted that, notwithstanding the Committee's findings at the facts stage, the Committee must now undertake the distinct and separate exercise of considering current impairment. Whilst she confirmed that it was not disputed the findings against you are of a serious nature, she submitted that your fitness is not currently impaired and referred to relevant case law to support her submissions.

64. Ms Steel stated that the conduct being considered by the Committee took place between 2013 and 2021, which is now more than three and a half years ago. Further, she submitted that although Charge 3 relates to dishonest conduct, the Committee must approach it with caution and this finding does not necessarily amount to a finding of current impairment.

65. Ms Steel reminded the Committee that you have worked at the Practice since you were 16 years old and as a registrant since 2007. During this time, you were of good character and there are no other incidences of dishonesty or misconduct. She submitted that you have dedicated your life to the Practice and have worked your way up to co-owning the Practice. She submitted that the misconduct in this case related to an isolated incident that is unlikely to reoccur.

66. Ms Steel submitted that your conduct is not an accurate reflection of your character or your fitness to practise, that you have always put honesty and integrity at the forefront of your practice, and that your actions were borne out of panic and distress at the discovery that you did not have indemnity cover. She invited the Committee to find that the dishonesty in this case is at the lower end of the spectrum and that, whilst the GDC has submitted this involved a prolonged and persistent lie and that you did not confess until October 2022, this was inaccurate. She referred the Committee to the email sent by you to the GDC on 3 August 2022 (one month after the submission of the *'Working Arrangements and Indemnity Insurance'* form), in which you clearly indicated that as soon as you discovered you did not have indemnity cover, you obtained your own and advised colleagues to do the same. Accordingly, although Charge 3 has been found proven by the Committee, Ms Steel submitted that one month after submitting the form, you put your position in 'black and white' and therefore the dishonesty is limited to a one month period.

67. In relation to current risk, Ms Steel submitted that you do not pose a current risk to the public or to the reputation of the profession and to make a finding on either ground would be disproportionate in a case that does not involve clinical malpractice but an administrative error. In respect of the indemnity cover, she told the Committee that you have reflected on your previous actions and are acutely aware of your shortcomings and would now take a different course of action. In that regard, Ms Steel submitted that you have shown a significant degree of remorse and insight and that this process has served as a significant learning opportunity to you and one which will lead you to taking greater care in the future. She reminded the Committee that you have never been subject to any other complaints and were not made subject of any interim restrictions during the course of the GDC's investigation. As a result, Ms Steel submitted that

there is a negligible risk of repetition and therefore no present risk to the public. Following from this, Ms Steel submitted that it would be in the public interest to return a competent and experienced dental nurse to practice.

68. In relation to remediation, Ms Steel submitted that you advocate to trainees the importance of securing appropriate indemnity cover and have researched what information is provided to dental nurses regarding the necessity of indemnity cover.

69. Ms Steel informed the Committee that these proceedings have led to a considerable amount of personal stress but that your overall attitude is that you are thankful that the initial bogus complaint that prompted these proceedings highlighted an issue which you were then able to rectify. Ms Steel told the Committee that a finding of current impairment would have a detrimental impact on your life going forward and a substantial impact on the reputation of your business, which will ultimately negatively impact the other owners of the business and that it would be disproportionate to make a finding of current impairment in the circumstances.

70. Should the Committee find that the misconduct must be marked by a finding of current impairment, Ms Steel submitted that a sanction of erasure would be disproportionate in the circumstances and would go beyond the overall objective of these proceedings. Ms Steel therefore invited the Committee to impose a lesser sanction, for example a reprimand or short period of suspension, which would adequately address the public interest considerations.

Decision and reasons on misconduct

71. The Committee acknowledged that misconduct can be described as *'a serious falling short of the standards reasonably expected of a dental professional'*. In considering whether any or all of the facts found proved amount to misconduct, the Committee had regard to the following principles from the Standards, in particular:

> *Standard 1.3:* *You must be honest and act with integrity*
>
> *1.3.2* *You must make sure that you do not bring the profession into disrepute.*
>
> *Standard 1.8:* *You must have appropriate arrangements in place for patients to seek compensation if they have suffered harm*
>
> *Standard 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*
>
> *Standard 9.4:* *You must co-operate with any relevant formal or informal inquiry and give full and truthful information*

72. In its consideration of Charge 1a), the Committee noted that there was a period of eight years during which you did not have indemnity cover. Whilst it noted that there was an unusual set of circumstances regarding the change of ownership of the Practice a number of times during this period, you had personally failed to ensure that you held adequate indemnity cover for that time, which is a direct breach of Standard 1.8, which fell below the standard expected to maintain public safety. Accordingly, the Committee considered this to be so serious as to amount to misconduct.

73. In its consideration of Charge 3, the Committee noted that your dishonest conduct directly breached Standard 1.3, Standard 1.3.2, Standard 9.1 and Standard 9.4. The Committee considered such breaches to be a serious departure from the conduct expected and amounted to serious professional misconduct

Decision and reasons on impairment

74. The Committee next considered whether the misconduct in this case is remediable, whether it had been remedied, and the risk of repetition, and had regard to the case of *Cohen v General Medical Council* [2008] EWHC 581 (Admin). The Committee also had regard to the wider public interest, which includes the need to uphold and declare proper standards of conduct and behaviour to maintain public confidence in the profession and this regulatory process.

75. In its consideration of public protection, the Committee considered the judgment of Mrs Justice Cox in the case of *Council for Healthcare Regulatory Excellence v Nursing and Midwifery Council and Grant* [2011] EWHC 927 (Admin) in reaching its decision. In paragraph 74, she said:

> *'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'*

76. In paragraph 76, Mrs Justice Cox referred to Dame Janet Smith's "test" which reads as follows:

> *'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:*
>
> *a) 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; and/or*
>
> *b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
>
> *c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
>
> *d) has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

77. In its consideration of whether your fitness is impaired today, the Committee carefully considered the submissions of Mr Khan and Ms Steel. The Committee also carefully took account of your oral evidence.

78. In its consideration of ongoing risk, the Committee noted that you took immediate steps to rectify your failings upon discovering that you were not indemnified and have demonstrated remorse for failing to ensure you had adequate indemnity cover. It was clear that these proceedings have served a salutary lesson regarding your requirements as a dental nurse. It noted that as a result, you have made it clear to colleagues and dental nursing trainees about the importance of getting

appropriate indemnity cover and, in this regard, the Committee considered that there was a negligible risk of repetition of you failing to ensure that you have appropriate indemnity cover in the future. No patients came to harm as a result of your failings and with the negligible risk of repetition, it was unlikely that patients would be exposed to harm in the future in this regard.

79. Therefore, the Committee determined that a finding of impairment is not necessary on the ground of public protection.

80. The Committee bore in mind its overarching objective to maintain public confidence in the profession and upholding standards. In this regard, the Committee considered that a fair-minded and fully informed member of the public would expect a finding of impairment in a case where there had been dishonesty and a lack of integrity until the email you sent to the GDC on 3 August 2022. The Committee found that you failed to demonstrate insight into the dishonesty findings. Further, this Committee has found that you perpetuated your dishonesty during your oral evidence by claiming that you telephoned the GDC on 16 December 2021 when you had not. The Committee had grave concerns about your conduct in the future as a registered professional should you find yourself in a similarly stressful situation. As a result, the public would be horrified if it were to learn that the Committee had not made a finding of impairment and allowed you to return to unrestricted practice.

81. Accordingly, the Committee concluded that public confidence would be undermined in the profession, and in the GDC as its regulator, if a finding of impairment were not made in a case where a registrant failed to hold adequate indemnity insurance for some eight years, where that registrant made a misleading and dishonest declaration to the GDC, which she perpetuated, and where she went on to give dishonest oral evidence before the PCC.

82. In this regard, the Committee determined that your fitness to practise is currently impaired on the ground of public interest.

Decision and reasons on sanction

83. In coming to its decision on sanction, the Committee considered what action, if any, to take in relation to your registration. It took into account the GDC's document *'Guidance for the Practice Committees, including Indicative Sanctions Guidance 2016* (ISG)' (revised December 2020). The Committee reminded itself that any sanction imposed must be proportionate and appropriate and, although not intended to be punitive, may have that effect.

84. The Committee took into account the following mitigating features:

- *evidence of the circumstances leading up to the incident in question*
- *evidence of good conduct following the incident in question, particularly any remedial action*
- *evidence of remorse shown/…apology given*
- *evidence of previous good character*

85. The Committee found that much of the mitigation in this case was directly linked to the indemnity issue in Charge 1. It has ongoing concerns regarding Charge 3 relating to dishonesty.

86. Due to the difficult circumstances regarding the ownership of the Practice, change in directorship, and various legal issues that were taking place at the time, the Committee accepted that there would have been a difficult and unusual working environment at the Practice at the relevant time. The Committee noted that you took immediate steps to obtain indemnity cover upon discovery of

the issue and that you have held appropriate cover since. The Committee also noted that you have apologised for failing to ensure you held adequate indemnity cover and there is evidence of remorse, demonstrating regret relating to any potential harm to patients and the impact your misconduct and these proceedings has had on you personally in light of the indemnity cover failings. However, your insight in relation to the dishonesty concerns is limited to stating that you accept the Committee's findings.

87. The Committee accepted the evidence that you are of previous good character and that you have practised without restriction since the allegations were raised.

88. The Committee took into account the following aggravating features:

- *premeditated misconduct*
- *misconduct sustained … over a period of time*
- *blatant or wilful disregard of the role of the GDC and the systems regulating the profession*
- *attempts to cover up wrongdoing*
- *lack of insight*

89. The Committee considered that your misconduct, in failing to ensure you had indemnity cover over a number of years and in your dishonest conduct, was sustained. The dishonesty in this case may not have been premeditated at the outset. However, the Committee found that you had persisted in the lie regarding the telephone call on 16 December 2021 and that this must have been a conscious decision on your part to cover up your previous misconduct. The Committee considered that there was evidence of lack of insight into your conduct as a result of the oral evidence you provided under affirmation, which the Committee concluded was dishonest.

90. In coming to its decision on the type of sanction, the Committee had regard to its previous findings on misconduct and impairment and considered each sanction in ascending order of severity.

91. The Committee first considered whether to take no action or to issue a reprimand but concluded that this would be inappropriate in view of the seriousness of the misconduct in this case. The Committee did not consider the conduct to be at the lower end of the spectrum and therefore it would be neither proportionate nor in the public interest to allow you to return to practice without some form of restriction in place.

92. The Committee next considered whether placing conditions on your registration would be a sufficient and appropriate response. The Committee considered the ISG, which states conditions may be suitable where most of the following factors are present:

- *there are discrete aspects of the Registrant's practice that are problematic*
- *any deficiencies are not so significant that patients will be put at risk directly or indirectly as a result of continued – albeit restricted – registration*
- *the Registrant has shown evidence of insight and willingness to respond positively to conditions*
- *it is possible to formulate conditions…*

93. The Committee was of the view that there are no practical or workable conditions that could be formulated given the nature of the behaviour. In addition, it did not consider that conditions would adequately address the public interest in this case due to the seriousness and nature of the misconduct

94. The Committee then went on to consider whether a suspension would be the appropriate sanction. The ISG states suspension may be suitable where most of the following factors are present:

- *there is evidence of repetition of the behaviour*
- *the Registrant has not shown insight and/or poses a significant risk of repeating the behaviour*
- *patients' interests would be insufficiently protected by a lesser sanction*
- *public confidence in the profession would be insufficiently protected by a lesser sanction*
- *there is no evidence of harmful deep-seated personality or professional attitudinal problems (which might make erasure the appropriate order)*

95. The Committee concluded that your insight is at a very early stage. It acknowledged that there is a negligible risk of you failing to ensure you have adequate indemnity cover in the future, however, it remained concerned that there is a risk of dishonesty when faced with a stressful or difficult situation in future. Whilst the Committee accepted the seriousness of the misconduct, it did not consider that you would be unable to develop your insight in the future.

96. The Committee did go on to consider erasure and the ISG which states that removal from the register <u>may</u> be suitable where the following factors are present:

- *serious departure(s) from the relevant professional standards*
- *serious dishonesty, particularly where persistent or covered up*
- *a persistent lack of insight into the seriousness of actions or their consequences*

97. In light of the seriousness of the misconduct and the lack of insight, the Committee carefully considered whether erasure is the most appropriate sanction in this case. However, taking into account all of the information before it, and the mitigation provided, the Committee decided that it would be disproportionate to erase you from the register. The misrepresentation you made on 15 June 2022 was serious in that it was made to your regulator, it concerned the issue of indemnity insurance, and you sustained your dishonesty when the GDC made further enquiries of you. Furthermore, you lied to the Committee when giving evidence. Nevertheless, the Committee determined that the public interest did not demand erasure in this instance. The dishonest misconduct of 15 June 2022 did not appear to be premeditated or motivated by financial gain. No harm to the public was incurred by reason of the dishonesty. There is evidence of a long and otherwise unblemished career in the profession. Despite the seriousness of the departure from the expected standards of a registered professional, the Committee was satisfied that the misconduct in this case was not fundamentally incompatible with remaining on the register. Whilst the Committee acknowledges that a suspension may have a punitive effect, it would be unduly punitive to direct erasure at this time.

98. Balancing all these factors, the Committee directs that your registration be suspended for a period of 12 months. This is necessary in order to maintain and uphold public confidence in the profession, whilst sending the public and the profession a clear message about the standards of practice required of a dental nurse.

99. The Committee noted the hardship the suspension may cause you, however this is outweighed by the public interest in this regard.

100. The Committee directs that this order be reviewed before its expiry, and you will be informed of the date and time in writing. The reviewing PCC will consider what action it should take in relation to your registration following an assessment of the concerns affecting your fitness to practise.

101. The reviewing PCC may be assisted to receive:

- *A reflective piece focusing on your dishonesty (including during the regulatory process and during these proceedings) and personal accountability.*

102. The Committee now invites submissions as to whether the suspension should take immediate effect to cover the 28-day appeal period.

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103. Mr Khan applied for an immediate suspension order to be made on public interest grounds. The application was unopposed by Ms Steele.

104. The Committee accepted the advice of the Legal Adviser on immediate orders.

105. The Committee determined that it is otherwise in the public interest to order that your registration be suspended immediately under section 36U(1) of the Dentists Act 1984. Whilst the Committee has not found your fitness to practise to be impaired on public safety grounds, the Committee concludes that an immediate order is necessary on public interest grounds for the same reasons as applied in its substantive decision.

106. The effect of this order is that your registration is now immediately suspended. Unless you exercise your right of appeal, the substantive 12-month period of suspension shall take effect upon the expiry of the 28-day appeal period. Should you exercise your right of appeal, this immediate order shall remain in force pending the disposal of the appeal.

107. That concludes the hearing.