

HEARING HEARD IN PUBLIC**NIEDOBECKA, Monika****Registration No: 105745****PROFESSIONAL CONDUCT COMMITTEE****MARCH 2023****Outcome: Erased with Immediate Suspension**

NIEDOBECKA, Monika, a dentist, Lek Stom Wroclaw 2003, was summoned to appear before the Professional Conduct Committee on 20 March 2023 for an inquiry into the following charge:

Charge (as amended on 20 March 2023)

“That being registered as a dentist:

1. Between 10 February 2017 and 13 March 2019, you submitted claims for Band 3 NHS treatment that you had not provided, in respect of the patients and dates listed in Schedule 1¹.
2. Between 15 August 2017 and 14 September 2017 you manipulated the dates on two Band 3 claims you submitted in respect of Patient 29 for a single Band 3 NHS course of treatment, in order to claim for an additional Band 3 payment to which you were not entitled.
3. Your conduct in respect of allegations 1 and/or 2 above was:
 - (a) misleading;
 - (b) dishonest

And that, by reasons of the facts alleged, your fitness to practice is impaired by reason of misconduct.”

Ms Niedobeka was not present and was not represented. On 20 March 2023, the Chairman made a statement regarding the preliminary applications and on 24 March 2023, announced the findings of fact to the Counsel for the GDC:

“This is a Professional Conduct Committee hearing in respect of a charge brought against Ms Niedobeka by the General Dental Council (GDC).

The hearing is being conducted remotely by Microsoft Teams video-link. Ms Niedobeka is not present, and she is not represented in her absence. The Case Presenter for the GDC is Ms Natasha Tahta, Counsel.

¹ Schedule 1 is a private document which cannot be disclosed.

PRELIMINARY MATTERS – 20 March 2023

Application to proceed with the hearing in the absence of the registrant

At the outset of the proceedings, Ms Tahta 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 Ms Niedobecka's absence. The Committee took account of Ms Tahta's submissions in respect of the application, and it considered the supporting documentation provided. The Committee accepted the advice of the Legal Adviser in relation to service and proceeding in the absence of Ms Niedobecka.

Decision on service

The Committee first considered whether notice of the hearing had been served on Ms Niedobecka in accordance with Rules 13 and 65, and section 50A of the *Dentists Act 1984 (as amended)* ('the Act'). It had sight of the Notice of Hearing dated 1 February 2023 ('the notice'), which was sent to Ms Niedobecka's registered address by 'International Track and Signed For' post and by First Class post. 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 had regard to the Royal Mail 'Track and Trace' receipt provided, which confirmed that the copy of the notice sent by international post was delivered on 1 March 2023.

In addition, the Committee noted that copies of the notice were sent by email on 1 February 2023 to Ms Niedobecka and to her solicitor at Weightmans LLP. In an email sent to the GDC's solicitor dated 21 February 2023, Ms Niedobecka's solicitor confirmed that both they and Ms Niedobecka had received a copy of the notice.

The Committee was satisfied that the notice of 1 February 2023, which was sent to Ms Niedobecka and to her solicitor, complied with the 28-day notice period required by the Rules. It was also satisfied that the notice contained all the required particulars, including the date and time of the hearing, confirmation that it would be held remotely by video-link on Microsoft Teams, and that the Committee had the power to proceed with the hearing in Ms Niedobecka's absence.

On the basis of all the information before it, the Committee was satisfied that notice of the hearing had been served on Ms Niedobecka 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 Ms Niedobecka. It approached this issue with the utmost care and caution. It 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 affirmed in subsequent regulatory cases including *General Medical Council v Adeogba* [2016] EWCA Civ 162. The Committee remained mindful that fairness to Ms Niedobecka was an important consideration, however,

it also bore in mind the need to be fair to the GDC. The Committee further took into account the public interest in the expeditious disposal of the allegations in this case.

In reaching its decision, the Committee had regard to an email dated 14 March 2023 from Ms Niedobecka's solicitor to the solicitor for the GDC and the Dental Professionals Hearings Service. Ms Niedobecka's solicitor stated that *"I can now confirm that we have no comment to make on the hearing bundles and are not instructed to attend the hearing scheduled to begin on Monday 20th March. We understand that Ms Niedobeka also will not be attending and means no disrespect to the Committee"*.

Having considered the evidence before it, the Committee was satisfied that all reasonable efforts had been made by the GDC to notify Ms Niedobecka of this hearing. It considered it clear from her solicitor's email of 14 March 2023, that Ms Niedobecka does not wish to attend these proceedings or be represented. Ms Niedobecka did not request an adjournment, and the Committee received no information to suggest that deferring the hearing would secure her attendance on a future date. The Committee also had regard to the public interest in expeditiously dealing with the serious allegations against Ms Niedobecka which concern alleged fraud on the NHS.

In all the circumstances, the Committee concluded that, in the absence of a good reason to either adjourn or postpone, the hearing should take place as scheduled. It was satisfied that it was fair, reasonable and in the public interest to proceed in the absence of Ms Niedobecka.

Decision on application to amend the charge

Ms Tahta made a further application, pursuant to Rule 18 of the Rules, to amend the charge against Ms Niedobecka. Ms Tahta applied to amend the date range at allegation 1.

In the Notice of Hearing, allegation 1 originally read as follows:

"Between 10 February 2019 and 3 March 2019, you submitted claims for Band 3 NHS treatment that you had not provided, in respect of the patients and dates listed in Schedule 1".

Ms Tahta told the Committee that the date '3 March 2019' was a typographical error, and that the correct date is '13 March 2019'. She referred the Committee to the dates listed in Schedule 1 which, she said, clearly cover a period up to 13 March 2019. Further, that Ms Niedobecka and her legal representatives had known about the details of the claims in Schedule 1 and of the GDC expert's report, which references those same details, since November 2022. It was Ms Tahta's submission that, in the circumstances, there would be no unfairness to Ms Niedobecka by amending what was a typographical error.

In reaching its decision, the Committee had regard to Ms Tahta's submissions. It accepted the advice of the Legal Adviser.

The Committee took into account that Ms Niedobecka is absent from these proceedings, and therefore would not be aware of the application to amend the charge against her. The Committee had regard to the merits of the case and the fairness of the proceedings, and it considered whether any injustice would be caused by amending the date range at allegation 1 as proposed by the GDC.

The Committee noted from Schedule 1 that the last date within the range of dates listed was 13 March 2019. It took into account the information that Ms Niedobecka and her legal representatives had been aware of the specific details of Schedule 1 for a considerable period of time. The Committee considered that, in the context of a large number of allegations, all of which are similar in nature, and of which Ms Niedobecka is aware, there would be no injustice in amending the date range at allegation 1. The Committee was satisfied that the date ‘3 March 2019’ was a typographical error and that it should be amended to ‘13 March 2019’. It considered that this amendment would accurately reflect the claims data notified to Ms Niedobecka, and as included in the GDC’s expert evidence.

FINDINGS OF FACT – 24 March 2023

The allegations set out in the amended charge against Ms Niedobecka relate to the submission of a number of NHS claims for dental treatment. It is alleged by the GDC that between 10 February 2017 and 13 March 2019, Ms Niedobecka submitted claims for Band 3 NHS treatment that she had not provided, in respect of the patients and dates listed in Schedule 1 to the charge.

There is also an allegation that, between 15 August 2017 and 14 September 2017, Ms Niedobecka manipulated the dates on two Band 3 claims that she submitted in respect of Patient 29 for a single Band 3 NHS course of treatment, in order to claim for an additional Band 3 payment to which she was not entitled.

It is alleged that Ms Niedobecka’s conduct was misleading and dishonest.

Background

In her opening submissions, Ms Tahta outlined the background to the charge against Ms Niedobecka with reference to the factual and expert evidence relied upon by the GDC.

The Committee heard by way of background that NHS courses of treatment are categorised into the three main charging Bands (Band 1, Band 2, and Band 3), and that each of the Bands is attributed with associated Units of Dental Activity (UDAs). The attributed UDAs form the basis for remuneration of the dental contractor. There is also an additional Band for Band 1 Urgent Treatment.

In terms of the three main charging Bands, Band 1 treatment, which includes examination, diagnosis and preventative care, is attributed 1 UDA; Band 2 treatment, which includes treatment covered by Band 1, plus treatment such as fillings, simple root canal treatment or extractions, is attributed 3 UDAs; and Band 3 treatment, which includes treatment covered

by Bands 1 and 2 plus more complex procedures such as crowns and dentures, and usually involves dental laboratory services, is attributed 12 UDAs.

Ms Niedobecka was an associate dentist who worked for a company providing dental care. She started working at one of the company's dental practices in Torquay in 2007 and remained with the company until 2019, when the matters in this case arose. It is understood from the evidence that Ms Niedobecka was contracted to provide UDAs for which she received 50% of the UDA rate (as paid to the practice by the NHS) per UDA achieved. In the cases of claims for Band 3 treatment, a deduction equal to 50% of any laboratory fees incurred was said to be made against Ms Niedobecka's account.

It was said that the concerns regarding Ms Niedobecka's NHS claims for dental treatment came to light when one of the patients featured in this case, Patient 37, received a penalty notice letter from the NHS. The patient was informed in the letter that they were subject to a £100 fine for wrongly claiming an exemption. An exempt patient is someone who is not required to pay the NHS charge for dental treatment. Patient 37 was also asked to pay a contribution towards the Band 3 dental treatment said to have been undertaken. It was stated that whilst Patient 37 accepted wrongly claiming an exemption and the fine of £100, the patient disputed receiving Band 3 dental treatment. Patient 37 maintained that they had only attended for an examination, and this was confirmed by the practice.

The issue involving Patient 37 led to a review of all Band 3 claims made by Ms Niedobecka for exempt patients. The outcome of that review was that there were concerns arising from other Band 3 claims having been made by Ms Niedobecka. As a result, the matter was referred for investigation by the NHS England (NHSE) Counter Fraud Service.

Evidence

The factual evidence provided by the GDC in support of the allegations against Ms Niedobecka comprised the clinical records for all the patients referred to in Schedule 1 to the charge. Also provided to the Committee was the NHS Business Services Authority (NHS BSA) claims data for the practice where Ms Niedobecka worked, which included the NHS claims that were made by her over the periods in question.

Additionally, the Committee received the following signed witness statements, along with associated exhibits:

- The witness statement of Witness A dated 24 November 2022. Witness A is an accredited Counter Fraud Specialist employed by the NHSE Counter Fraud Team. Exhibited to Witness A's witness statement is a record of Ms Niedobecka's interview as part of the NHSE investigation and Ms Niedobecka's signed witness statement for the purposes of that investigation, which is dated 17 July 2020 and includes a declaration of truth.

- The witness statement of Witness B dated 11 November 2022. Witness B was the Clinical Support Manager for the dental provider that owned the practice where Ms Niedobecka worked at the material time.
- The witness statement of Witness C dated 29 November 2022. Witness C is the Practice Manager at the practice where Ms Niedobecka worked at the material time.

The Committee was given the opportunity to consider whether it wished to hear oral evidence from Witnesses A, B and C. It decided however, that it did not have any questions to ask the witnesses that would provide assistance beyond what was included in their written accounts and exhibits.

By way of expert evidence, the Committee received a report dated 14 November 2022, from Mr Julian Scott, an expert in the probity of general dental practice. Mr Scott exhibited to his report his schedule, 'Schedule JS1', in which he set out his analysis of the NHS BSA claims data in relation to the claims made by Ms Niedobecka in conjunction with the patients' clinical records.

The Committee also heard comprehensive oral evidence from Mr Scott, during which he took the Committee through the clinical records for each of the patients concerned in this case and explained the basis for his conclusions.

Ms Niedobecka is neither present nor represented at this hearing. However, the indication is that she has had the benefit of legal representation up to the commencement of this hearing. In an email dated 23 February 2023, Ms Niedobecka's solicitor provided the GDC with a witness statement prepared by Ms Niedobecka for consideration at this hearing. The Committee noted that this witness statement is not signed or dated by Niedobecka, nor does it include a declaration of truth.

The Committee's findings

The Committee considered all the evidence presented to it. It took account of the closing submissions made by Ms Tahta on behalf of the GDC.

The Committee accepted the advice of the Legal Adviser. It considered each allegation separately (including all the details of Schedule 1 in relation to allegation 1), 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.

Prior to reaching its findings on the alleged facts, the Committee considered Mr Scott's analysis of the matters in this case. In summary, Mr Scott's evidence was that Band 3 claims for NHS dental treatment usually require two dental appointments, with very few exceptions, and invariably involve some form of laboratory work. He stated that the 12 UDAs attributed to Band 3 claims for treatment took into account the need to pay laboratory costs. Mr Scott highlighted to the Committee that, in respect of the majority of the Band 3 claims for

treatment made by Ms Niedobecka in this case, there was an absence of evidence in the clinical records of Band 3 treatment having been needed or provided to the patients.

In addition, Mr Scott drew the Committee's attention to the absence of significant documentation from the clinical records, such as 'FP17DC Personal Dental Treatment Plan' forms which, he explained, are usually provided to patients for each course of NHS banded treatment. He also noted the absence of laboratory dockets. Mr Scott told the Committee that he would have expected to see such documentation in support of Band 3 claims, and in contrast, he referred the Committee to other clinical records where Ms Niedobecka had made claims for Band 3 treatment and all the relevant information and documentation was present.

Mr Scott also told the Committee that he had identified a number of the Band 3 claims made by Ms Niedobecka, where the 'acceptance dates' recorded on the claims differed from the dates that appeared in the clinical records. He explained that the 'acceptance date' was the date on which the patient would have first attended the practice to start a course of treatment. He highlighted that the NHS claims data for a number of the claims showed an earlier date for the acceptance of treatment and a later date for the completion of treatment, suggesting that two separate appointments took place. However, the practice appointment histories for the relevant patients and their clinical records indicated that their treatment had taken place at single appointments, which is inconsistent with the provision of Band 3 treatment. It was Mr Scott's opinion that the earlier acceptance dates recorded on the claims were "*fictitious*". He considered that these dates had been invented to make it appear as if courses of Band 3 treatment had been provided, when in fact a lower band of treatment had been provided.

The inference drawn by Mr Scott from his analysis of the NHS claims data and the clinical records was that there was a pattern of overclaiming for treatment from the NHS by Ms Niedobecka. Mr Scott stated that in his experience, inappropriate claims are generally associated with patients exempt from NHS charges, as they are not required to make any payment and therefore are unlikely to be aware of the charges claimed from the NHS.

Having considered Mr Scott's evidence, the Committee accepted his inference as reasonable. It took into account that Ms Niedobecka had been investigated at length by the NHSE Counter Fraud Service, and that in her witness statement provided as part of that investigation, dated 20 July 2020, she admitted that a number of the identified claims were made by her "*fraudulently*". The Committee considered that Ms Niedobecka's admissions to NHSE served to underpin the inference of a pattern of conduct.

Having taken all the evidence into account, the Committee made the following findings:

1.	<i>Between 10 February 2017 and 13 March 2019, you submitted claims for Band 3 NHS treatment that you had not provided, in respect of the patients and dates listed in Schedule 1.</i>
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Found proved (as amended) in respect of all the patients and dates listed in Schedule 1.

The Committee considered separately the evidence in respect of each of the patients and dates listed in Schedule 1 to the charge. It found that in all instances the corresponding claims for Band 3 NHS treatment submitted by Ms Niedobecka followed the pattern of overclaiming identified by Mr Scott in his evidence. In particular, the Committee noted the following:

- For the majority of the claims, there was no information in the clinical records to indicate that Band 3 treatment was needed by the patients or that it was provided to them. The Committee noted that in a large number of the cases, Ms Niedobecka had entered into patients' clinical charting "*Appliances – Other*", but there was no other information in the clinical records to suggest a need for a bite raising appliance, or any information to indicate that impressions of the patients' mouths had been taken which would have been expected. Furthermore, there was an absence of relevant documentation within the clinical records in question, such as FP17DC forms and laboratory dockets. The Committee accepted the opinion of Mr Scott that one would expect to see such documentation, particularly laboratory receipts, in support of Band 3 courses of treatment. The Committee found similarly that where Ms Niedobecka recorded having provided crowns and inlays to certain patients, there was no objective evidence to support the necessity for such treatment or that it was carried out. In all but one case, the clinical records indicated that the treatment provided by Ms Niedobecka was Band 1 or Band 2 treatment. In the remaining one, it appeared that the patient had not attended, and no treatment had been provided at all.
- The Committee noted that Ms Niedobecka submitted claims in respect of a number of the patients for the provision of sports guards. It heard from Mr Scott that sports guards are excluded by NHS Regulations, as they are not considered to be therapeutic. He stated, however, that he was not able to detect any evidence that Ms Niedobecka was aware that sports guards were not available as Band 3 NHS treatment. Having considered the evidence, the Committee was satisfied that it was more likely that Ms Niedobecka was mistaken in her belief that she could provide sports guards on the NHS. It also took into account that there is no specific allegation against her in this regard. Notwithstanding this, on considering the claims made by Ms Niedobecka for the provision of sports guards to patients, the Committee found a number of instances where there was no evidence to show that sports guards were actually provided. Whilst on some occasions she indicated in the clinical records that impressions were taken for the proposed sports guards, there were no FP17DC forms present, or laboratory dockets to support the making of the appliances.
- The Committee noted that in instances where FP17DC forms were present in the clinical records, those forms indicated that a lower band of

treatment had been proposed and signed for by the patients.

- The Committee also saw from the clinical records that most of the treatment that was provided to the patients listed in Schedule 1 took place at a single appointment. Whilst the NHS claims data indicated that Ms Niedobecka had often entered earlier acceptance dates on the claims that she submitted to the NHS, there was nothing in the clinical records to corroborate the patients having attended the practice on those earlier dates. Having compared the clinical records with the NHS claims data and having considered the opinion of Mr Scott on this issue, the Committee was satisfied on the balance of probabilities that the earlier dates featured on the claim were fictitious dates. It was satisfied that these fictitious dates were entered to conceal that all of the treatment was provided at single appointments, and therefore highly unlikely to have been Band 3 treatment.
- In relation to one patient, Patient 36, the Committee found no evidence in the clinical records to indicate that the patient had attended the practice for treatment on the date specified on the Band 3 claim submitted by Ms Niedobecka. The Committee noted that Patient 36 was said to be a child of a friend of Ms Niedobecka.
- For two of the patients, subsequent information confirmed that they had not been provided with the Band 3 treatment claimed by Ms Niedobecka. In respect of Patient 33, subsequent clinical charting showed no restoration present on a tooth that Ms Niedobecka had claimed she had crowned. Also, in respect of Patient 53, x-rays showed that the patient had a composite restoration on a tooth that Ms Niedobecka claims she had crowned.
- The Committee noted that a number of the claims in question were subsequently deleted, and replacement claim requests were made. Whilst it did not receive any evidence as to who it was that deleted or requested the deletion of the claims, the Committee considered this to be an indication of a lack of confidence in the appropriateness of the original claims submitted by Ms Niedobecka.
- Finally, the Committee took into account that Ms Niedobecka made admissions to certain claims that she made in respect of specific patients, namely Patients 15, 16, 37, 44, 45, 50, 54 and 61. It noted that on a number of occasions within her witness statement prepared for the NHSE Counter Fraud Service investigation, she stated that *"I am ashamed to confirm that the identified claims were fraudulent, as no band 3 treatment was provided to these patients"*.

Having considered all of the above, including Ms Niedobecka's admissions, the Committee was satisfied on the balance of probabilities, that this allegation is proved in respect of all the patients and dates listed in Schedule 1. It was satisfied that it was more likely than not that Ms Niedobecka submitted claims for

	Band 3 NHS treatment that she had not provided.
2.	<p><i>Between 15 August 2017 and 14 September 2017, you manipulated the dates on two Band 3 claims you submitted in respect of Patient 29 for a single Band 3 NHS course of treatment, in order to claim for an additional Band 3 payment to which you were not entitled.</i></p> <p>Found proved.</p> <p>The evidence was that the treatment provided to Patient 29 involved two aspects: the provision of a bite raising appliance and a denture. It was Mr Scott's opinion, based on the clinical records, that the treatment Ms Niedobecka provided to Patient 29 represented one course of Band 3 treatment, starting from 17 August 2017 to 14 September 2017. Mr Scott highlighted that the clinical records showed that the provision of the bite raising appliance took place between 17 August 2017 and 21 August 2017, and not between 16 August 2017 and 17 August 2017, as declared on the claim. The clinical records further indicated that the provision of the denture overlapped with the provision of the bite raising appliance, taking place between 21 August 2017 and 14 September 2017, and not between 7 September 2017 and 14 September 2017, as declared on the claim.</p> <p>It was Mr Scott's opinion that the dates entered on the submitted claims were fictitious. He considered that the intention was to give the impression that the bite raising appliance and the denture were two distinct courses of Band 3 treatment. Mr Scott's evidence was that 'splitting' a single course of treatment into two claims was inappropriate, as it is not permitted by the NHS Regulations.</p> <p>In considering Mr Scott's opinion, the Committee had regard to Ms Niedobecka's response to this particular matter, as contained in her witness statement prepared for the NHSE Counter Fraud Service investigation. She stated that she found it difficult providing treatment to Patient 29 as she found the patient's expectations challenging. However, Ms Niedobecka maintained that she had made the claims for the bite raising appliance and the denture "<i>in the honest belief that they were compliant with the NHS Rules and regulations</i>".</p> <p>The Committee considered the possibility that the apparent splitting of the course of treatment by Ms Niedobecka was a genuine misunderstanding of the NHS Regulations, particularly given her mistaken belief in relation to the provision of sports guards. It concluded however, that had there been a genuine mistake on the part of Ms Niedobecka in respect of Patient 29's course of treatment, there would have been no reason for the dates she entered on the claims to differ from the dates recorded in the clinical records.</p> <p>The Committee took into account its finding at allegation 1, which included its conclusion that Ms Niedobecka had entered a number of fictitious acceptance dates for the claims she submitted in respect of a number of those patients. It was satisfied, having considered all the evidence, that it was more likely than not that Ms Niedobecka manipulated the dates on the Band 3 claims that she</p>

	submitted in respect Patient 29's treatment. It was satisfied that she did this to make it appear as if the provision of the bite raising appliance was a separate course of treatment to the denture, and this allowed her to claim for an additional Band 3 payment to which she was not entitled. Accordingly, this allegation is proved.
3.	<i>Your conduct in respect of allegations 1 and/or 2 above was:</i>
3.a	<p><i>Misleading;</i></p> <p>Found proved in respect of allegations 1 and 2.</p> <p>In relation to allegation 1, the Committee considered that it was misleading conduct to submit claims for Band 3 NHS treatment that had not been provided. Ms Niedobecka's conduct gave the impression that Band 3 treatment had been provided to the patients in Schedule 1, when it had not. This misled the NHS into making larger payments from public funds than it otherwise would have done.</p> <p>The Committee reached the same conclusion in relation to Ms Niedobecka's conduct found proved at allegation 2. The splitting of a single course of treatment into two claims misled the NHS into making an additional payment from public funds to which Ms Niedobecka was not entitled.</p>
3.b	<p><i>Dishonest</i></p> <p>Found proved in respect of allegations 1 and 2.</p> <p>In finding dishonesty proved in relation to both allegations 1 and 2, the Committee took into account that Ms Niedobecka admitted her conduct in respect of certain claims that she submitted, accepting that they were made "<i>fraudulently</i>".</p> <p>In her undated witness statement provided for this hearing, Ms Niedobecka makes reference to the financial pressure that she was under at the time. She stated that "<i>My pay had never been reviewed since I had started at the practice in 2007 but my expenses had increased. I asked for a pay review on several occasions but I was always told that there was no money for a pay rise. I was told that if I exceeded my targets then the company might consider a pay increase or an increase in the rate that I was paid for each UDA. I felt very frustrated and under pressure at this time</i>".</p> <p>The Committee considered that the implication of Ms Niedobecka's explanation was that she believed she could not earn enough money providing NHS dental services, and that her state of mind was how she could earn more money from her work. It was the view of the Committee that she embarked on a pattern of overclaiming from the NHS, which included the splitting of Patient 29's course of treatment, in order to achieve her objective. The Committee was satisfied that ordinary decent people would regard what Ms Niedobecka did as dishonest. It was therefore satisfied that this allegation is proved.</p>

We move to Stage Two.”

On 24 March 2023, the Chairman announced the determination as follows:

“This is a Professional Conduct Committee hearing in respect of a case brought against Ms Niedobecka by the General Dental Council (GDC).

The hearing is being conducted remotely by Microsoft Teams video-link. Ms Niedobecka is neither present nor represented at the hearing. The Case Presenter for the GDC is Ms Natasha Tahta, Counsel.

The facts found proved

The Committee’s findings at the first stage of this hearing were that, between 10 February 2017 and 13 March 2019, Ms Niedobecka submitted claims for Band 3 NHS treatment that she had not provided, in respect of the 43 patients and dates listed in Schedule 1 to the charge.

Further, that between 15 August 2017 and 14 September 2017 Ms Niedobecka manipulated the dates on two Band 3 claims she submitted in respect of one patient, for a single Band 3 NHS course of treatment, in order to claim for an additional Band 3 payment to which she was not entitled.

The Committee found proved that Ms Niedobecka’s conduct in all regards was misleading and dishonest.

This second stage of the hearing

The Committee’s task at this second stage of the hearing has been to consider whether the facts found proved against Ms Niedobecka amount to misconduct, and if so, whether her fitness to practise as a dentist is currently impaired by reason of that misconduct. The Committee took into account that if it found current impairment, it would need to consider the issue of sanction.

The Committee considered all the evidence presented to it at the fact-finding stage. It received no further evidence at this second stage of the hearing. The Committee took account of the submissions made by Ms Tahta in relation to misconduct, impairment, and sanction.

The Committee accepted the advice of the Legal Adviser. It noted that there is no burden or standard of proof at this stage of the proceedings, and that its decisions were for its independent judgement.

Summary of the GDC’s submissions

In accordance with Rule 20(1)(a) of the *GDC (Fitness to Practise) Rules 2006 Order of Council*, Ms Tahta confirmed that Ms Niedobecka has no fitness to practise history.

Ms Tahta submitted that in its consideration of the issue of misconduct in this case, the Committee may wish to consider the professional standards in place at the time, as contained in the GDC's '*Standards for the Dental Team*' (Effective from September 2013) ('the GDC Standards'). It was Ms Tahta's submission that Ms Niedobecka had seriously departed from a number of the GDC Standards, namely Standards 1.3, 1.3.1, 1.3.2 and 4.1.1. Ms Tahta submitted that Ms Niedobecka had clearly committed serious professional misconduct.

Ms Tahta also submitted that Ms Niedobecka's fitness to practise is currently impaired by reason of misconduct. She stated that it was to Ms Niedobecka's credit that she had admitted in her interview with the NHS England (NHSE) Counter Fraud Service, and to her employer, that she had acted fraudulently. Ms Tahta submitted, however, that Ms Niedobecka did not admit the full extent of her fraudulent activity. Further, Ms Tahta submitted, Ms Niedobecka has not attended this hearing, nor has she produced any evidence of remediation. Ms Tahta asked the Committee to note that the witness statement produced by Ms Niedobecka for these proceedings does not address the allegations found proved or include an admission to dishonesty.

Ms Tahta told the Committee that even if Ms Niedobecka had been in attendance, had made full admissions and had provided evidence of remorse and remediation, the GDC's submission would have remained that her fitness to practise is impaired. Ms Tahta stated that this was because the behaviour found proved is so undermining of public confidence in the dental profession, that a finding of impaired fitness to practise is required.

In addressing the Committee on sanction, Ms Tahta submitted that this is a case of serious and persistent dishonesty, which also involves the falsifying of patients' clinical records. Ms Tahta further submitted that Ms Niedobecka had escaped any potential criminal proceedings in relation to this matter, having left the UK. Ms Tahta stated that the GDC's submission was that the only appropriate and proportionate sanction is that of erasure.

Decision on misconduct

The Committee considered whether the facts found proved amount to misconduct. It took into account that a finding of misconduct in the regulatory context requires a serious departure from the professional standards expected of a registered dental professional. The Committee had regard to the GDC Standards, and it considered the following Standards are engaged in this case:

1.3 You must be honest and act with integrity.

1.3.1 You must justify the trust that patients, the public and your colleagues place in you by always acting honestly and fairly in your dealings with them. This applies to any business or education activities in which you are involved as well as to your professional dealings.

1.3.2 You must make sure you do not bring the profession into disrepute.

4.1.1 You must make and keep complete and accurate patient records, including an up-to-date medical history, each time that you treat patients.

Radiographs, consent forms, photographs, models, audio or visual recordings of consultations, laboratory prescriptions, statements of conformity and referral letters all form part of patients records where they are available.

It is clear from the Committee's findings that Ms Niedobecka failed to adhere to a fundamental tenet of the dental profession, namely, to be honest and act with integrity. Her dishonesty, as found proved, was persistent, repeated over a period of two years, and included falsifying clinical records, as well inventing fictitious dates for the purpose of overclaiming payments from the NHS. In relation to the falsifying of clinical records, the Committee considered the implications for the patients concerned, and noted the potential risk of harm arising from having inaccurate information in dental records.

The Committee was in no doubt that Ms Niedobecka's behaviour in defrauding the NHS brought the dental profession into disrepute. It accepted the evidence and opinion of Mr Julian Scott, the expert witness instructed by the GDC in this case, who identified over 40 instances in which Ms Niedobecka's conduct fell far below what was expected.

The Committee was satisfied on the basis of all the evidence that Ms Niedobecka's breach of the above GDC Standards was serious and would be regarded as deplorable by fellow dental practitioners. In all the circumstances, the Committee determined that the facts found proved amount to misconduct.

Decision on impairment

The Committee next considered whether Ms Niedobecka's fitness to practise is currently impaired by reason of her misconduct. 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.

In reaching its decision, the Committee considered the questions on impairment posed by Dame Janet Smith in her fifth Shipman report, as included in the case of *Council for Healthcare Regulatory Excellence v Nursing and Midwifery Council and Paula Grant* [2011] EWHC 927 (Admin). The Committee considered whether Ms Niedobecka:

- 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 dental 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 dental profession; and/or
- d. has in the past acted dishonestly and/or is liable to act dishonestly in the future.

The Committee was satisfied, on the basis of its findings, that Ms Niedobecka had in the past acted in the ways set out at (a) to (d) above. She put a number patients at risk of harm by falsifying their clinical records, she brought the dental profession into disrepute by defrauding the NHS of public money, she breached a fundamental of the dental profession and she acted dishonestly.

In considering whether Ms Niedobecka was liable to act in these ways again in the future, the Committee had regard to the evidence before it, in particular her responses to the issues in this case. The Committee noted that in her witness statement of 17 July 2020 which was prepared as part of the NHSE Counter Fraud Service investigation, Ms Niedobecka admitted to making some fraudulent claims, and she offered an apology for her actions, including to the dental profession. The Committee considered that Ms Niedobecka had shown a degree of insight in her interactions with the NHSE Counter Fraud Service. The Committee also noted that the money overclaimed by her has been paid back to the NHS, although it received limited evidence about the circumstances of that repayment.

However, it was the view of the Committee that the level of Ms Niedobecka's insight, as demonstrated in the written evidence provided to it, is not sufficient to address the seriousness of the matters that have been found proved. Ms Niedobecka has not attended this hearing, and the Committee found that her witness statement provided for the purposes of these proceedings focuses mainly on the financial problems that she said she was experiencing at the time, as opposed to addressing the issue of her wrongdoing. The Committee concluded that there has been limited evidence of insight and remorse in this case and no evidence of remediation.

In the circumstances, the Committee considered that there was a risk of repetition. In identifying this risk, it took into account the issue regarding Ms Niedobecka's falsifying of clinical records, and acknowledged that because of that conduct, there could potentially be a risk to patients if such conduct was repeated. However, the Committee considered that there is a stronger wider public interest element in this case.

Whilst the Committee took into account that the overclaimed money has been repaid to the NHS, it did not consider that this resolved its concerns about public confidence in the dental profession. Ms Niedobecka's misconduct was serious, prolonged, and calculated in that she targeted her fraud to the treatment of exempt patients, and this enabled her dishonesty to go undetected for some time. Ms Niedobecka's fraud was only discovered because a patient made a mistake in claiming an exemption. It was the view of the Committee that an informed member of the public would expect a finding of impairment to be made in circumstances where a registrant has used their position of trust to serially defraud the public purse. It

considered that public confidence in the dental profession would be seriously undermined in the absence of such a finding.

The Committee therefore determined that Ms Niedobecka's fitness to practise is currently impaired by reason of her misconduct.

Decision on sanction

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

In deciding on the appropriate sanction, the Committee had regard to what it considered to be the mitigating and aggravating features in this case. In mitigation, the identified the following factors:

- That Ms Niedobecka has no adverse fitness to practise history.
- That she offered an apology in respect of those claims that she admitted making fraudulently.

Whilst the Committee took into account Ms Niedobecka's explanation of her financial circumstances at the time, as included in her witness statement for this hearing, the Committee did not regard this as mitigation. It considered her explanation as her own justification for her conduct.

The Committee identified the following aggravating factors:

- The possibility of a risk of harm to patients on account of the falsified clinical records.
- Ms Niedobecka's dishonesty.
- That Ms Niedobecka's dishonesty was premeditated, targeting exempt patients, involving the falsifying of documentation and the inventing of fictitious treatment dates.
- That there was financial gain on the part of Ms Niedobecka.
- Ms Niedobecka breached the trust placed in her by the NHS.
- The misconduct was sustained and repeated over a period of time.
- The insight shown by Ms Niedobecka has been limited and therefore insufficient to address the gravity of her misconduct.

Having considered all the above factors, the Committee noted that the aggravating features of this case far outweigh those in mitigation. The Committee bore in mind that dishonesty can take a number of forms. As stated in the Guidance it is for the Committee to determine where on the spectrum of dishonesty the misconduct lay. The aggravating features of this

case demonstrated to it the serious nature of Ms Niedobecka's dishonesty, which was sustained for two years and involved her financial enrichment from public funds. The Committee determined that the dishonesty was at the serious end of the spectrum.

Bearing this in mind, the Committee considered the sanctions available to it, starting with the least restrictive. The Committee noted that it was open to it to conclude this case without taking any action in relation to Ms Niedobecka's registration. It considered however, that this would be wholly inappropriate and disproportionate given the seriousness of its findings and the identified risk of repetition. Taking no action would not serve to protect the public or the wider public interest.

For the same reasons, the Committee decided against issuing Ms Niedobecka with a reprimand. The misconduct found in this case is at the high end of the spectrum, and the Committee determined that a reprimand would be insufficient for the protection of public protection and to uphold the wider public interest.

The Committee next considered whether to impose an order of conditions of Ms Niedobecka's registration. However, it took into account that any conditions imposed must be workable. It concluded that it could not formulate any workable conditions that would address the serious dishonesty found. Accordingly, the Committee determined that conditions of practice would not be an appropriate or proportionate outcome in the particular circumstances of this case.

The Committee went on to consider whether to suspend Ms Niedobecka's registration for a specified period of time. In doing so, it had regard to the Guidance at paragraph 6.28, which outlines factors to be considered when deciding whether the sanction of suspension in more serious cases may be appropriate. The Committee considered that the following factors from paragraph 6.28 applied in this case:

- there is evidence of repetition of the behaviour, in that Ms Niedobecka's dishonesty was repeated over a number of years.
- Ms Niedobecka has not shown sufficient insight and she poses a significant risk of repeating her behaviour.
- Patients' interests would be insufficiently protected by a lesser sanction.
- Public confidence in the profession would be insufficiently protected by a lesser sanction.

However, whilst the Committee noted the presence of the above factors, which are relevant to a suspension order, it also took into account that paragraph 6.28 requires consideration of whether there is evidence of "*harmful deep-seated personality or professional attitudinal problems*", as such evidence may make erasure the appropriate order.

The Committee was of the view that there is evidence to suggest that Ms Niedobecka has a professional attitudinal problem, in that her instinct, when she said she was faced with

financial pressures, was to embark on a pattern of dishonesty. The Committee considered that the evidence of her sustained efforts in choosing exempt patients, falsifying clinical notes, and inventing fictitious treatment dates for NHS claims, all raise serious concerns about her professional attitude. In its view, Ms Niedobecka was prioritising her own interests above the public interest, and this led to her breaking rules and failing to adhere to the standards of her profession.

The evidence is that Ms Niedobecka did not stop her fraud until she was discovered. Furthermore, there is little or no evidence before the Committee to demonstrate what Ms Niedobecka has done in the intervening years since the events to address her serious professional misconduct.

In the circumstances, the Committee had regard to paragraph 6.34 of the Guidance which deals with the sanction of erasure. It noted that a number of the factors for erasure are present in this case, namely that:

- There have been serious departure(s) from the relevant professional standards.
- There has been an abuse of trust.
- There has been serious dishonesty.
- Ms Niedobecka has demonstrated a persistent lack of insight into the seriousness of her actions or their consequences.

The Committee also had regard to paragraphs 60 and 63 of the Guidance. Paragraph 60 states that:

“Acting with honesty and integrity is a fundamental tenet of the dental profession. As such, dishonesty will always be serious, even when it does not involve direct harm to patients (for example defrauding the NHS or providing misleading information), because it can undermine public confidence in the profession. The Privy Council has emphasised that “Health Authorities must be able to place complete reliance on the integrity of practitioners and the Committee is entitled to regard conduct which undermines that confidence as calculated to reflect on the standards and reputation of the profession as a whole”.”

Whilst paragraph 63 states that:

“Where dishonesty is a central feature of a Committee’s decision, there will always be a severe risk of a registrant’s name being erased from the register. Where little remorse, regret or insight is demonstrated, or where a registrant fails to cooperate with an investigation, engage with the final hearing or persists in misconduct, then this may point to a more serious sanction needing to be imposed to ensure public confidence in the profession is not undermined and that proper professional standards of conduct are maintained.”

Having considered the above paragraphs, including the relevant factors from paragraph 6.28, it was the judgement of the Committee that erasure is necessary and proportionate to

protect members of the public and the wider public interest, and that the suspension of Ms Niedobecka's registration would not be sufficient in all the circumstances.

The Committee concluded that Ms Niedobecka's serious dishonesty, in the absence of meaningful reflection, insight or remediation, is conduct that is fundamentally incompatible with being a dental professional. It therefore directs the sanction of erasure.

The Committee now invites submissions from Ms Tahta as to whether an immediate order of suspension should be imposed on Ms Niedobecka's registration to cover the 28-day appeal period, pending its substantive determination for erasure taking effect."

Decision on an immediate order

"In reaching its decision on whether to impose an immediate order of suspension on Ms Niedobecka's registration until the substantive direction for erasure takes effect, the Committee took account of the submission made by Ms Tahta. She invited the Committee to impose an immediate order to maintain public confidence in the dental profession.

The Committee accepted the advice of the Legal Adviser.

The Committee determined that it is necessary for the protection of the public, and is otherwise in the public interest, to impose an immediate order of suspension on Ms Niedobecka's registration. In its substantive determination, the Committee has identified a risk of repetition which does, in its view, raise a concern about a potential risk to patients, if Ms Niedobecka is able to continue practising without restriction. In the circumstances, it considered that it would be inappropriate and inconsistent to allow Ms Niedobecka the opportunity to remain in unrestricted practice over the 28-day appeal period, or possibly longer, in the event of an appeal. An immediate order is therefore necessary for the protection of the public.

The Committee also considered that the imposition of an immediate order is in the wider public interest. It has determined that Ms Niedobecka's behaviour, as highlighted in this case, is fundamentally incompatible with continued GDC registration. The Committee considered that public confidence in the dental profession and this regulatory process would be seriously undermined in the absence of an order suspending Ms Niedobecka's registration immediately.

The effect of the foregoing substantive determination and this order is that Ms Niedobecka's registration will be suspended to cover the appeal period. Unless she exercises her right of appeal, the substantive direction for erasure will take effect 28 days from the date of deemed service.

Should Ms Niedobecka exercise her right of appeal, this immediate order will remain in place until the resolution of the appeal.

That concludes this determination.”