

**HEARING HEARD IN PUBLIC**

**UPTON, Natalie Jane**

**Registration No: 110087**

**PROFESSIONAL CONDUCT COMMITTEE**

**JULY 2018-JULY 2020\***

**Most recent outcome: Suspended indefinitely**

**\*See page 11 for the latest determination**

Natalie UPTON, a dental nurse, Verified experience in Dental Nursing, was summoned to appear before the Professional Conduct Committee on 2 July 2018 for an inquiry into the following charge:

**Charge**

“That, being a registered dental nurse:

1. Whilst being employed at C.C.Dowdeswell & Associates on several occasions between May 2015 and October 2015 you inappropriately ordered and obtained large quantities of Co-codamol tablets from the practice's dental supplier for personal use without the knowledge of your employer.
2. Your conduct at 1 above was;
  - a. Misleading
  - b. Dishonest.

And in relation to the facts alleged your fitness to practise is impaired by reason of your misconduct.”

Ms Upton was not present and was not represented. On 2 July 2018 the Chairman announced the findings of fact to the Counsel for the GDC:

“This is the Professional Conduct Committee’s inquiry into the facts which form the basis of the allegation against Ms Upton that her fitness to practise is impaired by reason of misconduct.

**Preliminary Matters**

Ms Upton was neither present nor represented in this hearing. Ms Whyment, Counsel and Case Presenter for the General Dental Council (GDC), made an application under Rule 54 of the General Dental Council (Fitness to Practise) Rules 2006 (“the Rules”) that the hearing should proceed in Ms Upton’s absence. She submitted that the notification of hearing had been served on Ms Upton in accordance with Rules 13 and 65.

**Decision on whether the notification of hearing has been sent to Ms Upton**

The Committee had before it a copy of the notification of hearing letter dated 2 May 2018 which was sent by special delivery and first-class post to Ms Upton’s registered address. It

was satisfied that the letter contained all the components necessary for a notice of hearing to be valid in accordance with Rule 13. The Committee noted the Royal Mail track and trace proof of delivery which showed that delivery was attempted on 3 May 2018 but the letter was returned to sender. The notification of hearing letter was also sent to Ms Upton's legal representatives, RadcliffesLeBrasseur. Having heard the advice of the Legal Adviser, the Committee was satisfied that the notification of hearing had been sent to Ms Upton in accordance with Rules 13 and 65.

#### Decision on proceeding in the Registrant's absence

Ms Whyment then made an application under Rule 54 that the hearing should proceed in Ms Upton's absence. The Committee bore in mind that its discretion to proceed with a hearing in these circumstances should be exercised with the utmost care and caution. It took account of Ms Whyment's submissions and it accepted the advice of the Legal Adviser.

The Committee noted the letter dated 5 June 2018 from Ms Upton's previous legal representatives, RadcliffesLeBrasseur. They stated that "Ms Upton has confirmed that after careful consideration, she will not be attending the Professional Conduct Committee hearing starting on 2 July." They stated further "I can confirm that Ms Upton is aware of this hearing date, and that to date I have forwarded to her copies of all documentation that I have received from the GDC concerning her case." RadcliffesLeBrasseur provided the GDC with an alternative address and email address for Ms Upton. Given the information received from RadcliffesLeBrasseur the Committee concluded that Ms Upton was aware of this hearing and had voluntarily waived her right to attend. Ms Upton has not made an application for an adjournment and the Committee concluded from the available information that an adjournment would not secure her attendance at a future date. The Committee noted that the complaint against Ms Upton which led to this hearing was made in 2015. It was of the view that there is a public interest in the expeditious disposal of the case. The Committee therefore determined to proceed with the hearing in the absence of Ms Upton.

#### **Background**

This case relates to a complaint made against Ms Upton that she had inappropriately ordered and obtained large quantities of Co-codamol tablets for her personal use, from the practice where she worked and without the knowledge of her employer. It is alleged that Ms Upton abused her position as Practice Manager to place these orders.

#### **Witness Statements**

The Committee received a witness statement dated 15 February 2018 from Witness 1, the complainant in this case. It did not hear oral evidence from him. The complainant is the Registrant's ex-husband. The Committee noted from the information before it that the marriage ended acrimoniously. This history was confirmed in the witness statements received from Ms Upton's previous employer, Witness 2. The Committee carefully considered what weight, if any, to attach to the evidence of Witness 1. It noted a number of inconsistencies in his evidence when compared to the available evidence from other witnesses. For instance, whereas Witness 1 stated that the registrant had "lost a considerable amount of weight and her health had suffered with all the side effects associated with prolonged painkiller use", the information from Ms Upton's General Medical Practitioner (GP) did not support this statement. The Committee therefore took a cautious approach to the evidence of Witness 1.

The Committee received a witness statement dated 23 February 2018 from Witness 2, an Associate Dentist at the practice where Ms Upton worked. It did not hear oral evidence from Witness 2.

The Committee received witness statements dated 28 February 2018 from Witness 3 and 2 March 2018 from Witness 4, trainee dental nurses at the practice where Ms Upton worked. It did not hear oral evidence from them.

The Committee accepted the evidence of Witness 2, 3 and 4.

The Committee also received a number of letters from Ms Upton's previous employer and practice principal to the GDC. There was no witness statement from him. The Committee was told that he passed away during the GDC's investigations. The Committee carefully considered what weight to attach to his evidence. It noted that when he was first contacted by the GDC regarding the allegations against Ms Upton, he expressed surprise because Ms Upton was a long-standing member of staff having worked with him for 28 years. Following his investigations, he discovered anomalies in the ordering of Co-codamol. The Committee noted from the correspondence that he was candid and supportive of Ms Upton. It attached a high degree of weight to his evidence.

The Committee accepted the advice of the Legal Adviser. In relation to the allegation on dishonesty the Committee was referred to the recent Supreme Court judgment in the case of *Ivey v Genting Casinos (UK) Ltd t/a Crockfords* [2017] UKSC 67 where the test for dishonesty was revisited.

*"The test of dishonesty is as set out by Lord Nicholls in Royal Brunei Airlines Sdn Bhd v Tan and by Lord Hoffmann in Barlow Clowes: When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."*

The burden of proving the facts alleged is on the GDC and the standard of proof is the civil standard which is "on the balance of probabilities". Ms Upton is not required to prove anything.

The Committee's findings in relation to each charge is as follows:

1.	<p>Whilst being employed at C.C.Dowdeswell &amp; Associates on several occasions between May 2015 and October 2015 you inappropriately ordered and obtained large quantities of Co-codamol tablets from the practice's dental supplier for personal use without the knowledge of your employer.</p> <p>Proved</p> <p>The Committee noted the letter dated 6 January 2016 from Ms Upton's previous employer and practice principal where Ms Upton worked at the material times. He conducted an internal investigation once the allegations were brought to his attention by the GDC. In that letter he stated:</p>
----	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

	<p>"I can confirm that following my enquiries the amount of Co-codamol ordered was an average of 7.533333 boxes (100 tablets per box) per month, up to and including September 2016 when the GDC investigation began. There has been no Co-codamol ordered since...There are anomalies for 3 months May 2015, August 2015, October 2015 where there appears to be statement accounts (which I have paid) for an additional 20 boxes but I have no delivery notes or invoices for these."</p> <p>The Committee also noted the email from Ms Upton's previous employer dated 16 March 2017 in which he wrote "I have received copies of the appropriate invoices from the supplier and can confirm that an extra 20 Boxes were ordered in these months."</p> <p>It also noted the letter dated 25 November 2016 from Ms Upton's previous employer in which he stated:</p> <p>"Following my investigations, I have interviewed Ms Upton and she has admitted to ordering quantities of Co-codamol tablets. The Co-codamol tablets were of the strength 8mg codeine/500mg paracetamol, which is not a prescription only medicine, but can be purchased over the counter at any pharmacist. The tablets were ordered through our normal dental supply company (Henry Schein), without my knowledge..."</p> <p>The Committee noted from the information provided to the GDC by Ms Upton's GP that Ms Upton "reported previous over use of Co-codamol medication ..."</p> <p>The Committee noted from the witness statement of Witness 3 and 4 that they observed Ms Upton taking Co-codamol at work. It also noted from their evidence that the medication was available to members of staff and there was no means by which staff use was monitored by the practice.</p>
2.	Your conduct at 1 above was;
2. (a)	<p>Misleading</p> <p><b>Proved</b></p> <p>Ms Upton inappropriately ordered large quantities of Co-codamol without the knowledge of her employer. By so doing she misled her employer into paying for extra amounts of medication.</p>
2. (b)	<p>Dishonest.</p> <p><b>Proved</b></p> <p>Ms Upton was the Practice Manager at the practice where she worked. She and the practice principal were the only people responsible for ordering medication for the practice.</p> <p>When investigated by her employer Ms Upton admitted to ordering large quantities of Co-codamol tablets which was for her personal use. Ms Upton actively ordered large quantities of Co-codamol. Her employer was unaware of Ms Upton's actions. Ms Upton was in a position of trust and she abused that position.</p>

	<p>Whilst the number of tablets or boxes was not clear from the evidence, it was a minimum of 20 boxes which equates to 2000 tablets. The Committee noted that it could have been more and it accepted the evidence that Ms Upton's actions took place on more than one occasion showing a degree of repetition.</p> <p>The Committee therefore found that Ms Upton's conduct was dishonest.</p>
--	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

We move to Stage Two."

On 3 July 2018 the Chairman announced the determination as follows:

"The Committee has had regard to the submissions made by Ms Whyment, on behalf of the General Dental Council (GDC), in accordance with Rule 20 of the Fitness to Practise Rules 2006. It has accepted the advice of the Legal Adviser.

The Committee has borne in mind that its decisions on misconduct and impairment are matters for its own independent judgement. There is no burden or standard of proof at this stage of the proceedings. It had regard to the GDC's "Standards for the Dental Team" (September 2013). The Committee was referred to the cases of *Remedy (UK) v GMC* [2010] EWHC 1245 (Admin); *Roylance (no 2) v GMC* [2000] AC 311; and *Nandi v GMC* [2004] EWHC 2317 (Admin).

### **Misconduct**

The Committee first considered whether the facts found proved amount to misconduct. It found that Ms Upton inappropriately ordered and obtained large quantities of Co-codamol tablets from her employer's dental supplier for her personal use without her employer's knowledge and permission. Ms Upton ordered at least 2000 tablets in a 90-day period. Ms Upton misled her employer. The Committee found that her actions were dishonest.

Ms Upton was the Practice Manager and the only other person responsible for ordering medication in the practice, in addition to the Practice Principal. She breached the trust placed in her by her employer by ordering excessive amounts of Co-Codamol without her employer's knowledge. The Committee concluded that Ms Upton's actions were a serious departure from the standards of conduct expected of registrants. Her actions breached the standards of the profession as set out in the *Standards for the Dental Team (September 2013)*:

Standard 1.3

You must be honest and act with integrity.

Standard 9.1

Ensure that your conduct, both at work and in your personal life, justifies patients' trust in you and the public's trust in the dental profession.

The Committee heard evidence of Ms Upton's personal circumstances at the time. However, it was of the view that honesty and integrity are fundamental requirements of the dental profession which must be maintained regardless of the circumstances. Ms Upton's dishonest behaviour was serious and an abuse of her position as the Practice Manager. The Committee was in no doubt that the facts found proved amount to misconduct.

### **Current impairment**

The Committee next considered whether Ms Upton's fitness to practise is currently impaired by reason of her misconduct. It was referred to the cases of *Cohen v General Medical Council* [2008] EWHC 581 (Admin) and *Council for Healthcare Regulatory Excellence v Nursing and Midwifery Council and Paula Grant* [2011] EWHC 927 (Admin).

The Committee adopted the approach formulated by Dame Janet Smith in her Fifth Report from the Shipman case; that is, the PCC should ask itself:

'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.'

The Committee noted that this case does not involve patients and no findings have been made in relation to Ms Upton's practice as a Dental Nurse. It noted from her previous employer's letter dated 25 November 2016 that Ms Upton had had no clinical contact with patients in the previous 5 years. Ms Whyment submitted that the submissions on impairment were made solely on the grounds of public interest.

In relation to the findings made in this case, the Committee concluded that Ms Upton's actions brought the profession into disrepute, she breached fundamental tenets of the [dental] profession and she acted dishonestly.

In considering remediation the Committee acknowledged that matters relating to dishonest conduct are often difficult to remediate. Ms Upton has not engaged with these proceedings. Her previous legal representatives, RadcliffesLeBrasseur confirmed in their letter of 5 June 2018 that "after careful consideration, she will not be attending the Professional Conduct Committee hearing starting on 2 July." There was no evidence from Ms Upton before this Committee by way of an acknowledgement of her wrongdoing, apology for her actions or steps taken towards addressing her dishonest conduct. In the absence of any evidence of remediation and insight from Ms Upton, the Committee concluded that she may be liable to act in the same manner in the future and therefore there was a risk of repetition of similar conduct.

The Committee then considered whether a finding of impairment was required in the public interest to maintain public confidence in the profession and declare and uphold proper standards. The facts found proved were serious, involving misleading and dishonest behaviour. Ms Upton inappropriately ordered excessive quantities of Co-codamol tablets from the practice's dental supplier for her personal use without the knowledge or permission of her employer. The Committee concluded that a reasonable and informed member of the public, fully aware of these serious findings, would lose confidence in the profession and the dental regulator if a finding of impairment were not made in the circumstances of this case.



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

### **Sanction**

The Committee next considered what sanction, if any, to impose on Ms Upton's registration. It recognised that the purpose of a sanction was not to be punitive although it may have that effect. The Committee applied the principle of proportionality. It also took account of the *Guidance for the Practice Committees including Indicative Sanctions Guidance, October 2016, ("PCC Guidance")*.

The Committee considered the mitigating and aggravating factors in this case. It took account of Ms Upton's previous good character; her circumstances in the period when these large amounts of Co-codamol were ordered from her practice, her immediate admission once questioned by the Practice Principal following internal investigations and the time that had lapsed since the incident occurred. Conversely Ms Upton's conduct was found to be misleading and dishonest, she breached the trust placed in her as a Practice Manager and there was no evidence of remorse, apology or insight into her dishonest conduct.

The Committee was of the view that to conclude this case with no further action would be inappropriate and insufficient to satisfy the public interest and mark the seriousness of Ms Upton's misconduct.

The Committee considered the available sanctions in ascending order starting with the least serious. The Committee first considered a reprimand. It considered that she has shown limited insight into her dishonest conduct, she has not expressed remorse to this Committee and there is no evidence of any rehabilitative or corrective steps taken to address her behaviour. It therefore determined that a reprimand would be inappropriate and inadequate in light of the seriousness of the matters found proved.

The Committee then considered whether a conditions of practice order would be appropriate. The Committee noted that this case does not involve clinical matters and Ms Upton's clinical work has not been called into question. The facts found proved involve misleading and dishonest behaviour which could not be addressed by the imposition of workable and practicable conditions. Furthermore, conditions are insufficient to mark the seriousness of Ms Upton's misleading and dishonest conduct and to safeguard the wider public interest.

The Committee next considered whether suspension would be sufficient to mark the serious nature of Ms Upton's behaviour. Dishonesty is serious, but the Committee is aware that these dishonest acts occurred in a particular context and in an otherwise unblemished career. Ms Upton immediately admitted her actions when challenged. Whilst the Committee has no evidence of insight or remediation, it concluded that, taking these factors into account, a period of suspension would be adequate to mark the serious findings made and sufficient to safeguard the wider public interest.

In considering the period of the suspension, the Committee noted that Ms Upton is currently not engaging with the Council. It was of the view that the maximum period of suspension was necessary to protect the wider public interest in light of the serious dishonest behaviour and to allow Ms Upton sufficient time to re-engage with the Council, should she wish to do so.

The Committee considered whether erasure was the appropriate sanction to impose in this case. It has not identified any evidence of a harmful, deep-seated personality or professional

attitudinal problem. The Committee determined that erasure would be disproportionate in this case.

The Committee therefore determined, pursuant to Section 36P (7)(b) of the Dentists Act 1984, as amended, that Ms Upton's registration as a Dental Nurse be suspended for a period of 12 months. This order will be reviewed prior to the expiry of the period of suspension.

A reviewing Committee may be assisted by receiving:

- Testimonials on Ms Upton's behalf; and
- A reflective piece demonstrating her insight into the matters found proved.

The Committee now invites submissions as to whether Ms Upton's registration should be suspended immediately.

---

### **Decision on immediate order of suspension**

The Committee took account of the submissions made by Ms Scarbrough on behalf of the GDC that an immediate order should be imposed on Ms Upton's registration to cover the intervening appeal period. She submitted that it would be consistent with the Committee's findings to make such an order. The Committee accepted the advice of the Legal Adviser.

The Committee considered the Practice Committee Guidance including Indicative Sanctions Guidance at para 7.38 which states:

"An immediate order might be appropriate where:

- the registrant's behaviour is considered to pose a risk;
- the registrant has placed patients at risk through poor clinical care; or
- immediate action is required to protect public confidence in the profession."

The Committee has made findings of dishonesty and that there had been a breach of trust. It concluded that in the absence of any material information from Ms Upton she may be liable to repeat this misconduct. It follows that an immediate order is required to protect public confidence in the profession in all the circumstances of the case. It therefore determined to impose an immediate order pursuant to Section 36U(1) of the Dentists Act 1984, as amended.

The effect of the foregoing direction and this order is that Ms Upton's registration will be suspended with immediate effect and unless she exercises her right to appeal, the substantive direction of suspension will take effect 28 days from when notice is deemed served on her. Should she exercise her right to appeal, this order for immediate suspension will remain in place pending the resolution of any appeal proceedings.

That concludes the case."



At a review hearing on 12 July 2019 the Chairman announced the determination as follows:

“This is a resumed hearing pursuant to Section 36(Q) of the *Dentists Act 1984* (as amended). The hearing is being held on the papers in the absence of both parties.

**Preliminary Matters**

Proof of Service

The Committee noted neither party was present at today’s hearing following the Council’s request for this hearing to be held on the papers alone. Therefore, the Committee first sought to determine whether notice had been served on the Registrant in accordance with Rules 35 and 65 of the *General Dental Council (GDC) (Fitness to Practise) Rules 2006* (“the Rules”).

In reaching its decision, the Committee considered the documentation before it, which included a copy of the notification of today’s hearing sent to Ms Upton. Notice was served on the Registrant at her registered address by Royal Mail Special Delivery and by email on 12 June 2019. The notice outlined the date, time, location and purpose of today’s hearing. The notice also informed the Registrant of the Committee’s power to proceed with today’s interim order review hearing in her absence.

The Committee heard and accepted the advice of the Legal Adviser. On the basis of the information before it, the Committee concluded that service of the notice of today’s hearing had been properly effected in accordance with the Rules.

Proceeding in the absence of the Registrant and on the papers alone

As the Committee found that the notice had been properly served, it went on to consider whether to exercise its discretion under Rule 54 to proceed with the hearing in the Registrant’s absence and on the papers alone, as was the request of the Council. The Committee remained mindful of the need to approach this issue with the utmost care and caution.

The Committee noted that the notice of hearing dated 12 June 2019 indicated that the GDC proposed the hearing should be considered on the papers. It had regard to an email dated 17 June 2019 from the Registrant in which she stated that she would not be attending the hearing. Accordingly, the Committee determined to review the interim order on the basis of the papers before it and in the absence of both parties.

GDC’s submission for hearing to be held partly in private

The Committee considered the Council’s submission pursuant to Rule 53 that matters relating to the private and family life of the Registrant may be held in private. The Committee heard and accepted the advice of the Legal Adviser.

The starting point for the Committee is for all hearings to be held in public as it is in the interests of justice to do so. However, a hearing may be heard in private where matters that are inextricably linked to the health or private and family life of the Registrant concerned, under Rule 53(2) of the Rules. The Committee agreed that it was in the Registrant’s interests that matters relating to her private and family life should be heard in private.

**Background**

In July 2018, a Professional Conduct Committee (PCC) found that Ms Upton inappropriately ordered and obtained large quantities of Co-codamol tablets from her employer’s dental

supplier for her personal use without her employer's knowledge and permission. Ms Upton ordered at least 2000 tablets in a 90-day period. The Committee found that her actions were misleading and dishonest. The PCC determined that the facts found proved amounted to misconduct and that the Registrant's fitness to practise was impaired by reason of her misconduct. The committee directed that her registration be placed under suspension for a period of 12 months with a review. That committee made the following remarks in regard to the evidence that today's Committee may be assisted by:

A reviewing Committee may be assisted by receiving:

- Testimonials on Ms Upton's behalf; and
- A reflective piece demonstrating her insight into the matters found proved.

### **GDC Submissions**

It was the Council's submission that the information the Registrant has provided does not discharge the persuasive burden required for a lack of current impairment and there is a insufficient evidence of insight into the seriousness of her behaviour and the impact it has had on her as a dental professional. The Council submitted that if the Committee were to determine that the Registrant's fitness to practise remains impaired, it should consider extending the period of suspension for 12 months with a review to take place prior to its expiry.

### **Decision on current impairment**

It is the role of the Committee today to undertake the review directed by the July 2018 PCC. In so doing, the Committee took account of the written submissions made by the GDC and the Registrant's reflective statement. It also had regard to the GDC's *Guidance for the Practice Committees, including Indicative Sanctions Guidance* (October 2016) and the *Standards for the Dental Team* (2013)

In making its decision, the Committee first sought to determine whether the Registrant's fitness to practise is currently impaired by reason of her misconduct. It exercised its independent judgement and was not bound by the decision of the previous committee. It balanced the interests of Ms Upton with those of the public and bore in mind that its primary duty is to protect the public, including maintaining public confidence in the profession and declaring and upholding proper standards and behaviour.

The Committee considered Ms Upton's order of suspension and was satisfied that there was no evidence that she has breached the terms of the order. The Committee noted that the previous committee identified that Ms Upton had failed to demonstrate evidence of full insight and remediation. It had regard to the Registrant's evidence and information regarding her background and circumstances. The Committee considered that whilst it demonstrates some evidence of remorse for her actions and seeks to explain them, there has been little change since the substantive hearing in July 2018, and Ms Upton has not provided sufficient evidence of any insight and remediation into her failings. The Committee was not reassured that the issues identified by the previous committee would not be repeated.

The Committee is therefore satisfied that Ms Upton's fitness to practise remains impaired. It also considered that a finding of impairment is required for wider public interest reasons, namely, to declare and uphold proper professional standards of conduct and behaviour and to maintain public trust and confidence in the profession.

### **Decision on sanction**

The Committee considered which sanction, if any, would be appropriate and proportionate to impose in the circumstances. It bore in mind that the purpose of a sanction is not to be punitive, although it may have that effect, but to protect patients and the wider public interest.

It first considered whether to revoke the order of suspension and take no further action. In light of the seriousness of the findings made against the Registrant and a lack of fully developed insight, the Committee determined that it would be inappropriate to revoke the order and conclude the case with no further action.

The Committee next considered whether an order of conditional registration would be appropriate. It took account of the nature of the misconduct and Ms Upton's assertion that she is not currently practising as a dental nurse. In all the circumstances, the Committee was satisfied that no conditions could be formulated to address the issues identified in this case. It considered that conditions would not be workable or practicable in the circumstances. The Committee therefore determined that extending the period of suspension for a period of 12 months with a review was only appropriate and proportionate sanction in this case.

The Committee considered that an extended period of suspension would give Ms Upton a further opportunity to demonstrate sufficient insight into, and remediation of, the matters that have precipitated these proceedings, and is commensurate with the serious nature of this case and the attendant risks to public confidence.

In accordance with section 27C of the Act this extended period of suspended registration will take effect from the date on which the existing period of suspension would otherwise expire.

That concludes this case for today."

At a review hearing on 6 July 2020 the Charman announced the determination as follows:

"This is a resumed hearing pursuant to section 36Q of the *Dentists Act 1984 (as amended)* ('the Act'). Members of this Committee, as well as the Legal Adviser and the Committee Secretary, are participating via Skype in line with Her Majesty's Government's current advice concerning COVID-19.

The purpose of this hearing has been for this Committee to review Ms Upton's case and determine what action should be taken in relation to her registration. Neither party is participating in the proceedings today. The Committee received a request from the General Dental Council (GDC) for the review of Ms Upton's case to be conducted on the papers.

In the circumstances, the Committee first considered the issues of service and whether to exercise its discretion to proceed with the hearing in the absence of Ms Upton and any representative for either party. In deciding on these issues, the Committee had regard to the written submissions provided by the GDC in respect of this hearing. It accepted the advice of the Legal Adviser.

### **Decision on service**

The Committee considered whether notice of the hearing had been served on Ms Upton in accordance with Rules 28 and 65 of the *GDC (Fitness to Practise) Rules 2006 Order of*

*Council* ('the Rules') and section 50A of the Act. The Committee received from the GDC an indexed 'Professional Conduct Committee Review Bundle' of 36 pages. The bundle contained a copy of the Notice of Hearing, dated 2 June 2020 ('the notice'), which was sent to Ms Upton's registered address by Special Delivery and First Class post. A copy of the notice was also sent to her by email. The Committee took into account that there is no requirement within the Rules for the GDC to prove delivery of the notice, only that it was sent. However, it noted from the Royal Mail 'Track and Trace' receipt, also included in the bundle, that the copy of the notice sent by Special Delivery was delivered on 3 June 2020, and signed for in the printed name of 'UPTON'. Ms Upton also confirmed in an email dated 2 June 2020 that she had received the notice.

The Committee was satisfied that the notice sent to Ms Upton complied with the required 28-day notice period. It was also satisfied that it contained proper notification of today's hearing, including its date and time, as well as confirmation that the hearing would be held remotely via Skype. Ms Upton was also notified that the Committee had the power to proceed with the hearing in her absence.

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

**Decision on whether to proceed with the hearing in the absence of the registrant and on the papers.**

The Committee next considered whether to exercise its discretion under Rule 54 of the Rules to proceed with the hearing in the absence of Ms Upton, and any representative for either party. It approached this issue with the utmost care and caution. The Committee took into account the factors to be considered in reaching its decision, as set out in the case of *R v Jones [2003] 1 AC 1HL* and as explained in the cases of *General Medical Council v Adeogba* and *General Medical Council v Visvardis [2016] EWCA Civ 162*. The Committee remained mindful of the need to be fair to both Ms Upton and the GDC, taking into account the public interest in the expeditious review of Ms Upton's case.

The Committee had regard to Ms Upton's email to the GDC, dated 2 June 2020, in which she confirmed that she would not be attending this hearing due to having a prior commitment. In a further email, dated 16 June 2020, Ms Upton again confirmed to the GDC, "*I have read and understand what could be the possible outcome of the hearing and I give full consent for it to proceed as explained*". Ms Upton also provided written submissions in both emails for this Committee's consideration.

The Committee also took into account the written submissions of the GDC inviting it to exercise its discretion to proceed with the hearing on the papers.

The Committee took into account the indications given by both parties, particularly the confirmation from Ms Upton that she was content for the hearing to proceed in her absence and on the papers. The Committee noted that she did not request a postponement of the hearing today, and it received no information to suggest that delaying the hearing would secure her participation on a future date. The Committee therefore concluded that an adjournment would serve no useful purpose. It was satisfied that Ms Upton had voluntarily absented herself and it considered that it was fair for the hearing to proceed. The Committee also took into account the serious nature of the matters in this case and was satisfied that it was in the public interest to act expeditiously in conducting a review.

In all the circumstances, the Committee determined to proceed with the hearing in the absence of Ms Upton and on the papers.

### **Decision on application for privacy under Rule 53**

The Committee next considered the GDC's application under Rule 53, as contained in its written submissions.

The GDC drew the Committee's attention to Rule 53(1) of the Rules, which provides that a hearing before any Committee should be in public unless an exception listed in Rule 53(2) applies. It was the GDC's submission that the matters to be considered in this case may fall within the exception contained in Rule 53(2)(a), as aspects of Ms Upton's private and family life are involved. Therefore, the GDC's application was that any reference to such aspects be in private only and for as long as is necessary.

Having accepted the advice of the Legal Adviser, the Committee acceded to the GDC's application. In doing so, it took into account that its review of Ms Upton's case would be conducted on the papers in the absence of any public observers and the parties. However, it agreed that should it be necessary to refer to any information relating to Ms Upton's private and family life, it would only do so in a private determination. If such circumstances did arise, a separate public determination would be prepared with any private information suitably redacted.

### **Background**

Ms Upton's case was first considered by a Professional Conduct Committee (PCC) in July 2018. She did not attend that hearing and she was not represented in her absence. That PCC found proved that Ms Upton had inappropriately ordered and obtained large quantities of Co-codamol tablets from her employer's dental supplier for her personal use without her employer's knowledge and permission. Ms Upton ordered tablets on several occasions during a 90-day period – totalling at least 2000 tablets. At the material time Ms Upton worked as the Practice Manager. The Committee found that her actions were misleading and dishonest.

The PCC in July 2018 determined that the facts found proved against Ms Upton amounted to misconduct and that her fitness to practise was impaired by reason of her misconduct. In finding impairment on public interest grounds alone, that Committee noted that Ms Upton's case did not involve any patients and that no concerns had been raised regarding her practice as a dental nurse. In fact, there was evidence that Ms Upton had not had any clinical contact with patients in the previous five years. The Committee in July 2018 imposed a suspension order on Ms Upton's registration for a period of 12 months and directed a review of her case shortly before the end of the period of suspension. An immediate order was also imposed. That initial Committee considered that the reviewing Committee might be assisted by receiving:

- Testimonials on Ms Upton's behalf; and
- A reflective piece demonstrating her insight into the matters found proved.

Ms Upton's case was reviewed on 12 July 2019, at a hearing that was held on the papers, in the absence of both parties. In its determination on current impairment, that Committee stated the following:

*"The Committee noted that the previous Committee identified that Ms Upton had failed to demonstrate evidence of full insight and remediation. It had regard to the*



*Registrant's evidence and information regarding her background and circumstances. The Committee considered that whilst it demonstrates some evidence of remorse for her actions and seeks to explain them, there has been little change since the substantive hearing in July 2018, and Ms Upton has not provided sufficient evidence of any insight and remediation into her failings. The Committee was not reassured that the issues identified by the previous committee would not be repeated."*

Accordingly, the Committee in July 2019 determined that Ms Upton's fitness to practise remained impaired by reason of misconduct. It considered that a finding of impairment was required for wider public interest reasons, namely, to declare and uphold proper professional standards of conduct and behaviour, and to maintain public trust and confidence in the dental profession. That Committee directed the extension of the suspension order on her registration by a period of 12 months, with a further review of her case shortly before the end of that period. In directing a further review, that Committee reiterated that a reviewing Committee may be assisted by:

- Testimonials on Ms Upton's behalf; and
- A reflective piece demonstrating her insight into the matters found proved.

### **Today's review**

This has been the second review of Ms Upton's case since the imposition of the suspension order in July 2018. In comprehensively reviewing her case today, the Committee considered all the evidence provided to it, as included in the indexed 'Professional Conduct Committee Review Bundle' of 36 pages. The Committee also received an 'Addendum Review Bundle' of 2 pages, which contained an additional email from Ms Upton, dated 30 June 2020. The Committee also took into account the written submissions of the GDC and the written submissions of Ms Upton, as set out in her emails of 2 and 16 June 2020. The Committee accepted the advice of the Legal Adviser.

### **The written submissions of the parties**

In its written submissions for the purpose of this hearing, the GDC stated that, to the best of the Council's knowledge, Ms Upton has complied with the suspension order imposed on her registration.

In relation to current impairment, the GDC submitted that the persuasive burden lies with Ms Upton to demonstrate that her fitness to practise is no longer impaired. In this regard, the GDC referred the Committee to the legal authority of *Abrahaem v General Medical Council [2008] EWHC 183 (Admin)*. The GDC drew the Committee's attention to the correspondence before it from Ms Upton as contained in the main hearing bundle. It was the GDC's submission that, whilst it is promising to see that Ms Upton continues to engage with the Council and has expressed remorse for her actions, she has not provided any evidence of remediation or testimonials to demonstrate what she has learnt and how she will work differently. Therefore, it was the GDC's submission that Ms Upton's fitness to practise remains impaired by reason of misconduct.

The GDC invited the Committee to consider extending the current suspension order by a further period of 12 months, although it noted that it was open to the Committee to consider the indefinite suspension of Ms Upton's registration on this occasion.

In her written submissions, set out in her email of 2 June 2020, Ms Upton stated "*I understand that through my actions I indirectly and unknowingly made mistakes. For which I*



*am extremely sorry...". Ms Upton further stated, "I have been open and honest throughout this and have never denied my mistakes...Due to the allegation and case against me I have changed and learnt from this..."*. Ms Upton also made reference to the lack of support she considered she had received in relation to her case.

In her email of 16 June 2020, Ms Upton reiterated her apology and stated, *"Only I can make the changes and accept my mistakes are a result of my lapse of judgement"*.

Ms Upton did not make any explicit submissions regarding current impairment or sanction. However, in her email of 30 June 2020, Ms Upton stated, *"I can confirm I will not be returning to work in the dental field"* and she offered a further apology in respect of the matters in this case.

### **Decision on impairment**

The Committee considered whether Ms Upton's fitness to practise remains impaired by reason of her misconduct. In doing so, it exercised its own independent judgement. It had regard to the over-arching objective of the GDC, which involves 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.

The Committee noted that since the last hearing of Ms Upton's case, the only evidence of engagement received has been her three email communications dated 2 June, 16 June and 30 June 2020. In considering the contents of these emails, the Committee took into account the distinct lack of any evidence of insight or remediation. Whilst it took into account her expressions of remorse and her apologies for her actions, it noted that for the purposes of this review, Ms Upton has provided no information regarding any steps she has taken to address the matters that brought her before her regulatory body. The Committee considered Ms Upton's submissions regarding what she regarded as a lack of effective support in dealing with her case, but concluded that, ultimately, it was her responsibility to engage with the process of remediation had she wished to do so.

The Committee took into account that in her most recent email, Ms Upton stated that she had no intention of returning to work in the dental field. It accepted that this may be her current intention and that her decision in this regard may be the reason that she has not provided any of the evidence recommended for this review, namely evidence of her reflection and testimonial evidence. However, the Committee reminded itself of the over-arching objective of the GDC, in particular the promotion and maintenance of public confidence in the dental profession and the upholding of proper professional standards. The Committee took into account that there are no patient safety concerns arising from the matters in this case. Nevertheless, the allegations found proved against Ms Upton were serious and involved repeated acts of dishonesty. In the absence of any evidence to indicate that Ms Upton has remedied the grave concerns identified by the first Committee, now over two years ago, the Committee considered that public confidence in the dental profession and this regulatory process would be undermined if a finding of impairment were not made.

In all the circumstances, the Committee determined that Ms Upton's fitness to practise remains impaired by reason of misconduct.

### **Decision on sanction**

The Committee next considered the issue of sanction. In doing so, it had regard to section 36Q(1) of the Act, which sets out the directions it may make at this review. The Committee reminded itself that the purpose of any sanction is not to be punitive, although it may have that effect, but to address the wider public interest concerns in this case. In reaching its decision, the Committee took into account the *'Guidance for Practice Committees, including Indicative Sanctions Guidance (October 2016; revised May 2019)'*. It applied the principle of proportionality, balancing the public interest with Ms Upton's own interests.

Having received little evidence of any insight and no evidence of remediation from Ms Upton, the Committee was satisfied that some restriction of her registration remained necessary to uphold the public interest. It therefore concluded that it would not be appropriate to terminate the current suspension order with no further action.

The Committee next considered whether to replace the current suspension order with one of conditions. It decided, however, that conditions of practice would not be workable or measurable, given Ms Upton's limited engagement to date and her stated intention not to return to work in the dental field. The Committee also took into account the serious nature of the allegations found proved against Ms Upton, which include dishonesty and it questioned whether conditions would be proportionate in any event.

The Committee went on to consider whether to extend further the current suspension order by a specified period. In doing so, it took into account its duty to act proportionately and impose the least restriction it considered necessary to satisfy the public interest. The Committee also took into account the GDC's written submissions inviting it to consider extending the current suspension order. The GDC cited Ms Upton's (ad-hoc) engagement and the evidence of some insight and remorse, albeit limited in nature, as reasons not to indefinitely suspend Ms Upton's registration on this occasion.

However, the Committee had regard to the fact has now been over two years since the matters concerning Ms Upton's conduct was brought before the PCC. In that time, Ms Upton has provided no evidence of any remediation and has demonstrated little insight into the seriousness of the findings in her case. In fact, Ms Upton has confirmed that she has no intention of returning to work in dentistry and has indicated that she sought to apply for voluntary removal from the register, albeit unsuccessfully. In these circumstances, this Committee considered that no meaningful purpose would be served by extending the current order.

In reaching its conclusion, the Committee took into account its duty to safeguard the public's confidence in the dental profession. Ms Upton was found to have ordered a significant quantity of medication said to be for her personal use without her employer's knowledge. The dental profession is a profession where medications are handled by registrants and the Committee considered that it was a very serious breach of the trust placed in Ms Upton by her employer. There has been no indication that she has satisfactorily addressed her wrongdoing nor is there any information to suggest that she intends to do so. Further, Ms Upton does not appear to have recognised the impact her dishonesty has had on the reputation of the profession. The Committee considered the resources incurred in conducting review hearings and it decided that it would not be in the public interest or in the interests of the parties concerned to direct the extension of the current suspension order with a review.

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

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

**Service and publication of this determination**

In the present circumstances arising out of Her Majesty's Government's COVID-19 measures, service of this determination will be provided by email only.

For the avoidance of doubt, as the Committee has not referred to any private information in its decisions, this determination is public. No private version has been produced.

That concludes this determination."