

HEARING HEARD IN PUBLIC
ABUSARA DARWICH, Nidal
Registration No: 182209
PROFESSIONAL CONDUCT COMMITTEE
FEBRUARY 2016 – MARCH 2017
Outcome: Erased with Immediate Suspension

Nidal ABUSARA DARWICH, Lic Odont Complutense Madrid 2009, was summoned to appear before the Professional Conduct Committee on 11 February 2016 for an inquiry into the following charge:

Charge (as amended on 11 February 2016)

PART A – Conviction

“That, being a registered dentist:

1. On 28 March 2011, you were convicted at the County Court Division of Fermanagh and Tyrone of driving a motor vehicle after consuming so much alcohol that the proportion of it in your blood exceeded the prescribed limit contrary to Article 16(1)(a) of the Road Traffic (Northern Ireland) order 1995.
2. On 18 September 2012, you were convicted at the Court of Summary Jurisdiction sitting at Douglas in the Isle of Man of driving a mechanically propelled vehicle on a road after consuming so much alcohol that the proportion of it in your breath exceeded the prescribed limited contrary to Section 5A(1)(a) and 53 of the Road Traffic Act 1985 as amended.

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

PART B – Misconduct

“That, being a registered dentist:

3. Between around 6 January 2014 and 7 February 2014 you practised dentistry at Cosmetic Medical Centre in Douglas, Isle of Man (‘Cosmetic Medical’), whilst not being registered with the General Dental Council (‘GDC’).
4. Your conduct at 3 above was dishonest in that you knew that you:
 - a. had been removed from the Register for not paying your Annual Retention Fee; and
 - b. were not entitled to practise dentistry whilst unregistered.
5. On or about 10 January 2014 you completed and caused to be submitted to the GDC an Application Form to be restored to the Register (‘the Application Form’) and:
 - a. placed a tick in the box marked “No” in response to the questions at Section 1 which read:

- i. *“Have you been working as a dentist in the UK during the time you were not registered with the GDC?”*;
 - ii. *“Have you been working as a dentist abroad during the time you were not registered with the GDC?”*
 - b. placed a tick in the box marked “No” in response to the question at Section 4 which reads: *“Have you been convicted of a criminal offence or cautioned or are you currently the subject of any police investigations which might lead to a conviction or a caution in the UK or any other country?”*;
 - c. signed the declarations at:
 - i. Section 1 which reads *“I confirm that the above details are correct”*;
 - ii. Section 4 which reads *“The information I have given here is true”*.
6. Your conduct at 5(a) above was:
 - a. misleading;
 - b. dishonest in that you knew when you completed and caused the Application Form to be submitted that you:
 - i. had been working as a dentist as set out at paragraph 3 above;
 - ii. were obliged to disclose the information at paragraph 3 above to the GDC.
7. Your conduct at 5(b) above was:
 - a. misleading;
 - b. dishonest in that you knew when you completed and caused the Application Form to be submitted that you:
 - i. had been convicted of the criminal offences set out at paragraphs 1 and 2 above;
 - ii. were obliged to disclosed the convictions at paragraphs 1 and 2 above to the GDC.
8. Your conduct at 5(c) above was dishonest in that you knew when you signed the declarations on the Application Form and caused the Application Form to be submitted that the information you had provided was incorrect in relation to:
 - a. your criminal convictions; and
 - b. your work as a dentist whilst unregistered.
9. On or about 29 September 2014 you replied to an email from the GDC that referred to your conviction at paragraph 2 above and asked you to *“...confirm if you have any other cautions or convictions...”* without informing the GDC of your conviction at 1 above.
10. Your conduct at 9 above was dishonest in that you knew when you replied to the GDC’s email that you:
 - a. had been convicted as set out at paragraph 1 above;
 - b. were obliged to disclose the conviction at 1 above to the GDC.

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

On 12 February 2016 the Chairman made the following statement regarding the finding of facts:

“Mr Abusara Darwich,

In reaching its decisions on the facts, the Committee considered all the evidence adduced in this case. The Committee had regard to the submissions made by Mr Collins on behalf of the General Dental Council (GDC) and those made by Mr Butler on your behalf. It accepted the advice of the Legal Adviser. In accordance with that advice, it has considered each charge separately.

The Committee was conscious that the burden of proof rests on the GDC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that the facts of a charge will only be proved if the Committee finds that it is more likely than not that the facts occurred as alleged. The Committee reminded itself that you were not required to prove or disprove anything.

The Committee considered your evidence and your credibility. The Committee did not find you to be a wholly credible witness. It considered that you gave conflicting evidence, both in your oral evidence and in your written statements of 3 June 2015 and 8 February 2016 and other documentation.

The evidence put before the Committee consisted of a number of documents, including a certificates of conviction, a number of written statements and attached exhibits and correspondence between the GDC and yourself or your representatives.

| | <u>PART A – Conviction</u> |
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| 1. | On 28 March 2011, you were convicted at the County Court Division of Fermanagh and Tyrone of driving a motor vehicle after consuming so much alcohol that the proportion of it in your blood exceeded the prescribed limit contrary to Article 16(1)(a) of the Road Traffic (Northern Ireland) order 1995. Admitted and Found Proved |
| 2. | On 18 September 2012, you were convicted at the Court of Summary Jurisdiction sitting at Douglas in the Isle of Man of driving a mechanically propelled vehicle on a road after consuming so much alcohol that the proportion of it in your breath exceeded the prescribed limited contrary to Section 5A(1)(a) and 53 of the Road Traffic Act 1985 as amended. Admitted and Found Proved |
| | <u>PART B – Misconduct</u> |
| 3. | Between around 6 January 2014 and 7 February 2014 you practised dentistry at Cosmetic Medical Centre in Douglas, Isle of Man (‘Cosmetic Medical’), whilst not being registered with the General Dental Council (“GDC”). Admitted and Found Proved |
| 4. | Your conduct at 3 above was dishonest in that you knew that you: |

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| 4.(a) | had been removed from the Register for not paying your Annual Retention Fee; and Admitted and Found Proved |
| 4.(b) | were not entitled to practise dentistry whilst unregistered. Admitted and Found Proved |
| 5. | On or about 10 January 2014 you completed and caused to be submitted to the GDC an Application Form to be restored to the Register ('the Application Form') and: |
| 5.(a) | placed a tick in the box marked "No" in response to the questions at Section 1 which read: |
| 5. (a)(i) | <i>"Have you been working as a dentist in the UK during the time you were not registered with the GDC?"</i> ; Admitted and Found Proved |
| 5.(a)(ii) | <i>"Have you been working as a dentist abroad during the time you were not registered with the GDC?"</i> Admitted and Found Proved |
| 5.(b) | placed a tick in the box marked "No" in response to the question at Section 4 which reads: <i>"Have you been convicted of a criminal offence or cautioned or are you currently the subject of any police investigations which might lead to a conviction or a caution in the UK or any other country?"</i> ; Admitted and Found Proved |
| 5.(c) | signed the declarations at: |
| 5.(c)(i) | Section 1 which reads <i>"I confirm that the above details are correct"</i> ; Admitted and Found Proved |
| 5.(c)(ii) | Section 4 which reads <i>"The information I have given here is true"</i> . Admitted and Found Proved |
| 6. | Your conduct at 5(a) above was: |
| 6.(a) | misleading; Found Proved You accepted that you had ticked both the boxes marked 'No' on the form. The Committee considered that your conduct in ticking the boxes marked 'No' was misleading. The Committee considered that by ticking both boxes indicating that you had not worked as a dentist either in the UK or abroad, it is more likely than not that the person processing the form would be led to believe that you had not worked anywhere as a dentist whilst unregistered. |
| 6.(b) | dishonest in that you knew when you completed and caused the Application Form to be submitted that you: |

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| 6.(b)(i) | <p>had been working as a dentist as set out at paragraph 3 above; were obliged to disclose the information at paragraph 3 above to the GDC.</p> |
| 6(b)(ii) | <p>Found Proved in its entirety</p> <p>The Committee was given the following direction in relation to its considerations on dishonesty:</p> <p><i>You should first determine whether on the balance of probabilities, the Registrant acted dishonestly by the standards of ordinary and honest members of the dental profession; and, if you find that he did so, you must go on to determine whether it is more likely than not that the Registrant realised that what he was doing was by those standards, dishonest.</i></p> <p>The Committee had already determined that your conduct was misleading.</p> <p>You accepted that you saw a number of patients between 6 January and 7 February 2014. You also accepted that you were aware that your registration had lapsed due to non-payment of your annual retention fee and that you were seeing patients when unregistered. You told the Committee that you were not comfortable with seeing patients during the period that you were not registered but that you felt pressured by your employer to continue working and you wanted to protect the patients. However, you also said in your oral evidence that you did not tell your employer that your registration had lapsed, as you did not want to lose your job.</p> <p>You said that completing and submitting the form as you did was an error of judgement and that you acted inappropriately but you maintained that you were not dishonest. You accepted that you knew that you needed to be registered with the GDC in order to work as a dentist in the Isle of Man. You said that you did not feel able to stop treating patients due to the pressure from your employer and said in both your written statements that you were ‘threatened with dismissal’ if you did not continue to work.</p> <p>In response to questions from the Committee you stated that when filling out the form for restoration to the register you did not believe that the Isle of Man was part of the UK, but an independent island. You explained that you knew that you had to be a GDC registrant to work as a dentist in the Isle of Man as, although not part of the UK it does form part of the British Isles. You also stated that the Isle of Man is not abroad. You said that you believed that the GDC knew you were working in the Isle of Man.</p> <p>The Committee had regard to the application form. The boxes that you ticked in respect of both questions came under the heading ‘Occupation since you have been off the register’. The Committee was of the view that any reasonable person reading the passage on the form would see that the purpose of the question was an enquiry as to whether you had worked as a dentist, at all, whilst unregistered. The importance of the question is highlighted in the final statement on the form which refers to the possibility of fitness to practise or criminal proceedings if the answer to the question was ‘Yes’. You knew that you had treated patients whilst unregistered but the effect of your response to the questions would be that the GDC would be under the impression that you had not worked as a dentist. The Committee</p> |

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| | <p>considered that your conduct was dishonest by the standards of the reasonable and honest dentist.</p> <p>The Committee was also satisfied that you must have known that what you were doing was dishonest by those standards. The Committee had regard to your own admission that you had worked whilst unregistered and you knew that you were working in a location that required GDC registration. The Committee did not accept your evidence that you thought that the Isle of Man was neither in the UK nor abroad and as such ticked both 'No' boxes. The Committee was satisfied that you must have known that ticking the 'No' boxes in answer to both questions, in full knowledge that that you had worked whilst unregistered, was dishonest.</p> |
| 7. | Your conduct at 5(b) above was: |
| 7.(a) | <p>misleading;</p> <p>Admitted and Found Proved</p> |
| | dishonest in that you knew when you completed and caused the Application Form to be submitted that you: |
| 7.(b)(i) | <p>had been convicted of the criminal offences set out at paragraphs 1 and 2 above;</p> <p>Admitted and Found Proved</p> |
| 7.(b)(ii) | <p>were obliged to disclose the convictions at paragraphs 1 and 2 above to the GDC.</p> <p>Admitted and Found Proved</p> |
| 8. | Your conduct at 5(c) above was dishonest in that you knew when you signed the declarations on the Application Form and caused the Application Form to be submitted that the information you had provided was incorrect in relation to: |
| 8.(a) | <p>your criminal convictions; and</p> <p>Admitted and Found Proved</p> |
| 8.(b) | <p>your work as a dentist whilst unregistered.</p> <p>Found Proved</p> <p>The Committee has found that the way you completed the form in respect of your work as a dentist whilst unregistered was dishonest. The Committee was also satisfied that signing the declaration stating that the information contained on the form was correct, was also dishonest.</p> |
| 9. | <p>On or about 29 September 2014 you replied to an email from the GDC that referred to your conviction at paragraph 2 above and asked you to "...confirm if you have any other cautions or convictions..." without informing the GDC of your conviction at 1 above.</p> <p>Admitted and Found Proved</p> |
| 10. | Your conduct at 9 above was dishonest in that you knew when you replied to |

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| | the GDC's email that you: |
| 10.(a) | had been convicted as set out at paragraph 1 above; were obliged to disclose the conviction at 1 above to the GDC. |
| 10.(b) | <p>Found Proved</p> <p>You confirmed that you received the email from the GDC caseworker which asked you for details of your 2012 convictions and of any other convictions. You explained that you responded in the manner that you did as you were trying to clarify the answers you had previously given but you did not answer the second question asked. You stated that this was an oversight and was not done with the intention to mislead. You said that the GDC could easily have asked you again and you would have answered. You told the Committee that you had informed your employers of your criminal convictions and your history.</p> <p>You told the Committee that it was not a conscious decision to leave out information and not disclose your convictions. You said that the GDC was already aware of your convictions as you thought that they had access to your criminal record through legal databases or they could ask for a copy of them. You accept that by lying on the form you were restored to the register in February 2014. However you stated that now you know that even if you had not lied you would have been restored.</p> <p>The Committee had regard to the form that you completed in respect of restoring your name to the register. It was clear on this form that dentists are exempt from the Rehabilitation of Offenders Act 1974 and as such must tell the GDC about any convictions, including those considered 'spent' under the Act. Further it is a requirement under the Standards for the Dental Team (2013) (the standards) to inform the GDC of any criminal proceedings anywhere in the world. You told the Committee that you were aware of the standards. Further, in your own written statement, dated 8 February 2016, you accepted that you knew at the time of completing the form, in January 2014, that driving offences need to be disclosed. Given that, you must have been aware in September 2014 that you were obliged to disclose the conviction at charge 1. Therefore the Committee considered that you were obliged to disclose the conviction at charge 1.</p> <p>The Committee had sight of the email and your response. It noted that you answered all questions with the exception of the question asking whether you have any other cautions or convictions and asking for any details of the same. The Committee considered that by not answering this specific question but answering the others your email was misleading. The Committee was satisfied on the balance of probabilities that not responding to the specific question asked was deliberate rather than an oversight. Further, the Committee was of the view that the obligation was on you throughout to disclose your convictions and not for the GDC to make repeated requests for information. The Committee did not accept the submission made on your behalf that there could be no motive for you not answering this question. Particularly given the statement contained within</p> |

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| | <p>the application form which states:</p> <p><i>I know that if I make a false declaration in this application</i></p> <ul style="list-style-type: none">• <i>My registration may be refused and/or</i>• <i>I may be referred to the appropriate authority who may prosecute</i>• <i>I may be charged with professional misconduct</i> <p>The Committee considered, based on all of the above, that your conduct was dishonest by the standards of the reasonable and honest dentist and you knew your conduct was dishonest by those standards.</p> |
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We move to Stage Two.”

On 12 February 2016 the Chairman announced the determination as follows:

“Mr Abusara Darwich,

Having announced its finding on all the facts, the Committee heard submissions on the matters of misconduct, impairment and sanction.

Mr Collins referred the Committee to the case of Roylance v GMC (no. 2) [2000] 1 AC 311 which defines misconduct as ‘a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances’. He outlined the specific issues identified in respect of the facts in line with the standards, which in his submission, have been breached. Mr Collins submitted that the facts found proved by the Committee would be considered deplorable and do amount to misconduct that is serious.

Mr Collins then moved on to the issue of current impairment, and addressed the Committee on the factors that it must consider, including your level of insight and any remediation. He submitted that there is a risk of repetition in this case. He also addressed the Committee on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the GDC as a regulatory body. Mr Collins referred the Committee to the case of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin). Mr Collins submitted that you are currently impaired by reason of your misconduct and your convictions.

Mr Collins addressed the Committee on the matter of sanction and invited the Committee to consider whether this is a case where nothing short of erasure would be appropriate. He referred the Committee to the specific matters for consideration as set out in the ‘*Guidance for the Practice Committees*’ as published by the GDC in October 2015.

Mr Butler informed the Committee that you accept that the facts found proved against you do amount to misconduct and that, in the circumstances, you also accept that your fitness to practise is currently impaired by reason of misconduct and your convictions.

Mr Butler referred the Committee to the documentation provided in respect of the Committee’s considerations on sanction. These included a copy of your curriculum vitae (CV), your personal development plan (PDP) and a number of references and testimonials.

Mr Butler submitted that this case only came about as a result of a complaint from your previous employer following you making a complaint to the GDC regarding the standards at

the practice. He submitted that you have accepted from the outset that the application form submitted by you was incorrect and that you worked whilst unregistered for a period of approximately three weeks. Mr Butler submitted that the findings against you are isolated incidents and the result of your circumstances at that time. He submitted that the facts relate to two areas, your convictions and you not being full and frank with your regulator.

Mr Butler submitted that there is no evidence of deep seated personality issues in your case. He also submitted that there was no evidence of repeated behaviour which would lead to a risk of repetition. Further, there is no suggestion of risk to patients or any financial motivation. Mr Butler submitted that this was a mistake that you have to live with, but this is not conduct that is incompatible with remaining on the register.

In respect of an appropriate sanction Mr Butler submitted that a reprimand may be suitable in your case. He referred the Committee to the considerations it must have, as outlined in the guidance material, when considering whether a reprimand may be appropriate. However, were the Committee not with him on that, he submitted that a suspension order may be considered appropriate. Mr Butler submitted that erasure would be wholly inappropriate in your case.

The Committee fully considered all the evidence in this case as well as the submissions made by Mr Collins and those made by Mr Butler. It accepted the advice of the Legal Adviser, which included the factors relevant to the considerations of the Committee.

Decision on whether the facts found proved amount to misconduct:

When determining whether the facts found proved at charges 3 to 10 amount to misconduct the Committee had regard to the terms of the relevant professional standards in force at the time of the incidents.

The Committee, in reaching its decision, had regard to the public interest and accepted that there was no burden or standard of proof at this stage. The Committee had regard to your acceptance that the facts found proved amount to misconduct. However, the Committee used its professional judgement when reaching its decision.

The Committee has concluded that your conduct was in breach of each of the sections of the *Standards for the Dental Team* (2013) as set out below.

Standard 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.*

Standard 1.7

You must put patients' interests before your own or those of any colleague, business or organisation

1.7.1 *You must always put your patients' interests before any financial, personal or other gain.*

Standard 1.9

You must find out about laws and regulations that affect your work and follow them

Standard 9.1

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

Standard 9.3

You must inform the GDC if you are subject to criminal proceedings or a regulatory finding is made against you, anywhere in the world

Standard 9.4

You must co-operate with any relevant formal or informal inquiry and give full and truthful information

9.4.1 *If you receive a letter from the GDC in connection with concerns about your fitness to practise, you must respond fully within the time specified in the letter. You should also seek advice from your indemnity provider or professional association.*

The Committee appreciated that the above breaches do not automatically result in a finding of misconduct. However, the Committee was of the view that the breaches in this case are serious.

The Committee was of the view that acting in a manner that was misleading and dishonest in respect of your dealings with your regulator was a very serious departure from the standards expected of a registered professional and would be considered deplorable by fellow professionals. The Committee considered that the ongoing dishonesty found proved, both in relation to your non-disclosure of your conviction and continuing to work as a dentist whilst unregistered, was demonstrative of a flagrant disregard for the expectations and authority of your regulator. It also considered that treating patients in the full knowledge that you were not registered demonstrated a wilful disregard for your obligations. Further, making false statements on an application form in order to obtain registration was egregious conduct that is unbecoming of a registered dentist.

The Committee considered that your conduct as found proved at charges 3 to 10, individually and collectively, fell significantly below the standards expected of a registered dental professional and amounted to misconduct.

Decision on impairment:

The Committee proceeded to decide if, as a result of this misconduct and your convictions, your fitness to practise is currently impaired.

The Committee has borne in mind that its primary function is not only to protect patients but also to take account of the wider public interest, which includes maintaining confidence in the dental profession and the GDC as a regulator, and upholding proper standards and behaviour.

Dental professionals occupy a position of privilege and trust in society and must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession. In this regard the Committee considered the judgment in the case of Grant in which it was made clear that the Committee's considerations should include whether public

confidence would be undermined if current impairment not found in the particular circumstances of the case.

The Committee accepted that there was no suggestion that you had put patients at risk of harm and the testimonials put before the Committee demonstrate that they were satisfied with the care you provided.

Regarding insight and remediation, the Committee considered that you do not have a full appreciation of the seriousness of your wilful disregard of the standards placed upon you by your regulator. Additionally, the Committee considered that the insight that you have demonstrated is primarily in respect of the impact of your misconduct on you and does not demonstrate a full appreciation of the impact on the reputation of the profession. The Committee considered that your evidence that you continued to work while unregistered as you 'wanted to protect [your] patients' demonstrated an ongoing lack of insight and on the impact of the integrity of the register. The Committee was of the view that, the findings in this case of dishonest conduct, and disregard for the authority of your profession, is behaviour related to character and is difficult to remedy and hence the Committee cannot be satisfied that the risk of repetition is highly unlikely.

The Committee had regard to the CPD certificates and your PDP. However, it noted that this was only completed very recently and although you asserted that you have developed another PDP, which was unrelated to the matters contained within this hearing, the Committee had no evidence before it to support this. Further, there was limited information that you took any action to demonstrate remediation prior to the development of this PDP, which is signed as completed on 10 February 2016.

The Committee considered that receiving two convictions for alcohol related driving offences in the space of 18 months, was serious. The Committee was surprised that more material was not put before it to evidence that you, as a young professional, have addressed the issues relating to these two convictions. The Committee was satisfied, based on the information before it, that there remains a risk of repetition of the behaviour that led to the two convictions.

The misconduct identified in this case was, in the view of the Committee, sufficiently serious that it would be incompatible not to make a finding of current impairment. Further, public confidence in the profession would be significantly undermined were the Committee not to make a finding of current impairment, which would effectively amount to a full acquittal.

Having regard to all of this, the Committee has concluded that your fitness to practise is currently impaired by reason of misconduct and conviction.

Decision on sanction

The Committee next considered what sanction, if any, to impose on your registration. It recognised that the purpose of a sanction is not to be punitive, although it may have that effect, but rather to protect patients and the wider public interest.

The Committee has taken into account the GDC's '*Guidance for the Practice Committees*'. The Committee applied the principle of proportionality, balancing the public interest with your own interests. The Committee has considered the range of sanctions available to it, starting with the least serious.

In the light of the findings against you, the Committee has determined that it would be wholly inappropriate and irresponsible to conclude this case without taking any action or with a

reprimand, as neither would address the lack of insight and the flagrant disregard for the expectations and authority of your regulator. The Committee concluded that there is evidence that you pose a risk to the wider public given that the public is entitled to believe that any dentist treating them has met the standards and requirements for registration through honest means. The Committee did not consider that the findings against you are at the lower end of the spectrum. The Committee considered that persistent dishonesty towards your regulator is a very serious matter.

The Committee next considered whether a period of conditional registration would be appropriate in this case. The Committee was mindful that any conditions imposed must be proportionate, measurable and workable. The Committee determined that it would not be possible to formulate appropriate, practical and workable conditions which would address the dishonesty in this case and the wilful disregard of the requirements placed on your registration by your regulator. The Committee concluded that it would not be sufficient to conclude this case with conditions.

The Committee then considered whether a suspension order would be proportionate and appropriate in this case. The Committee is in no doubt that your persistent dishonesty was wholly unacceptable and, in its view, seriously damaging to the reputation of the profession and to the public's confidence in the dental profession. The Committee had regard to the guidance in respect of imposing a suspension order.

The Committee was of the view that whilst the dishonesty in this case was the result of a single act of completing and submitting the application form, the dishonest conduct was not isolated. You answered three questions and signed two declarations of truth on the application form with the intention to mislead the GDC and then some nine months later you compounded your dishonesty through omitting the answer to a specific question asked of you by the GDC. The Committee concluded that your dishonesty was persistent and you attempted to cover up your initial dishonesty with a further act of dishonesty. The Committee already determined that you lack sufficient insight and there remains a risk of repetition.

The Committee was of the view that, based on all the evidence before it, both oral and documentary, the misconduct identified was indicative of a deep seated attitudinal problem. The Committee did not accept that your misconduct was the result of being under duress.

The Committee then considered whether the issues identified are fundamentally incompatible with you remaining on the Register.

The Committee had regard to the guidance in relation to considering imposing a sanction of erasure. In particular:

The ability to erase exists because certain behaviours are so damaging to a registrant's fitness to practise and to public confidence in the dental profession that removal of their professional status is the only appropriate outcome. Erasure is the most severe sanction that can be applied by the PCC and should be used only where there is no other means of protecting the public and/or maintaining confidence in the profession.

Erasure will be appropriate when the behaviour is fundamentally incompatible with being a dental professional: any of the following factors, or a combination of them, may point to such a conclusion:

- *serious departure(s) from the relevant professional standards;*

- *serious dishonesty, particularly where persistent or covered up;*
- *a persistent lack of insight into the seriousness of actions or their consequences.*

You were given the opportunity to correct your initial dishonesty but instead chose to be dishonest again in order to cover up your initial dishonesty. The Committee was not assured that you have insight into the seriousness of your dishonesty and the need to maintain the integrity of the register. Further, it was of the view that you have not demonstrated genuine remorse or made an adequate apology for your actions. The Committee was of the view that public confidence would be significantly undermined were you allowed to continue to remain on the register. In all the circumstances of this case, the Committee concluded that your behaviour is fundamentally incompatible with you being a registered dental professional. The Committee was of the view that your sustained and compounded dishonesty was so serious that nothing short of erasure would be appropriate.

The Committee considered that this order is necessary to mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standards of conduct required of a registered dental professional at all times.

The Committee was aware that the effect of this order is that you will be prevented from working as a registered dental professional using a GDC registration. This could result in financial hardship, though the Committee received no direct information about that matter. However, in applying the principle of proportionality, the Committee determined that your interests in this regard are outweighed by the need for protection of the wider public interest.

Immediate Order:

Having directed that your name be erased from the register, the Committee had to consider, in accordance with rule 22(2), whether to impose an immediate order to cover the appeal period, or until any appeal against the outcome is heard.

The Committee has considered the submissions made by Mr Collins that an immediate order should be made on the grounds that it is otherwise in the public interest. He applied for this order to cover any possible appeal period and submitted that this would be compatible with the Committee's findings.

Mr Butler submitted that were you to appeal the Committee's decision on the facts in relation to the dishonesty of your conduct in replying to an email from the GDC then it would follow that the decision on sanction would also fall. He submitted that you have continued to work in the interim and, as you have the right of appeal, it would be unduly harsh to impose an immediate order. He submitted that the public would not be surprised that you were allowed to continue to work pending any appeal.

The Committee accepted the advice of the Legal Adviser.

The Committee was satisfied that, while an immediate order of suspension was not necessary for the protection of the public, it was otherwise in the public interest. The Committee concluded that given the seriousness and the nature of its findings and its reasons for the substantive order of erasure, including your lack of insight and the identified risk of repetition, to direct otherwise would be wholly inappropriate. The Committee considered that, given its findings, a properly informed member of the public would be

surprised if an immediate order were not made in the circumstances and public confidence in the profession and in the GDC as its regulator would be undermined.

If, at the end of the appeal period of 28 days, you have not lodged an appeal, this immediate order will lapse and will be replaced by the substantive direction of erasure. If you do lodge an appeal, this immediate order will continue in effect until that appeal is determined.

Unless you exercise your right of appeal, your name will be erased from the register 28 days from today.

That concludes this case.”

Mr Abusara Darwich appealed the above decision under Sections 29 and 44 of the Dentists Act 1984 against the order of erasure.

On 7 July 2016, the High Court London:

- a) Dismissed the appeal against the findings made on 12 February 2016.**
- b) Ordered that the matter be remitted to the Professional Conduct Committee for a further sanction hearing.**

Mr Absuara Darwich was summoned to appear the Professional Conduct Committee on 21 March 2017. On 22 March 2017 the Chairman announced the determination as follows:

“Mr Abusara Darwich,

On 12 February 2016 the Professional Conduct Committee made a number of findings of fact in respect of you working whilst unregistered, submitting a registration form which contained false information, and dishonesty. It found that the facts amounted to misconduct. Your fitness to practise was found to be impaired at that time, and your name was erased from the dentists’ register.

You appealed against that order and on 7 July 2016 Mr Justice Holman handed down the judgment of the court. The Committee’s determination on the facts, that these amounted to misconduct, and that your fitness to practise is impaired, were not interfered with by the court. However, the case was remitted to the PCC for reconsideration with directions, which were to determine the truth or otherwise of your assertion that you had informed your employer about both convictions. If you did inform your employer of both convictions, the committee must reconsider (i) whether that impacts on the conclusion as to cover up; and (ii) in any event, whether it mitigates the sanction of erasure.

The Committee was provided with its previous determination, transcripts from the original hearing, and a transcript of the High Court judgment dated 7 July 2016 and the order of the high court along with the schedule setting out how this matter was to be approached. It also received 2 witness statements from the General Dental Council (GDC) and a bundle of documents from you, including character references.

Mr Collins, on behalf of the GDC outlined the specific issue identified in this case by Mr Justice Holman and referred to the relevant section of the evidence that went before the Committee in 2016 and the updated information following the High Court decision.

Witness 1, your former employer, told the Committee that he first became aware of your second conviction when he was informed by the GDC and he stated that you did not tell him about this conviction. Witness 1 denied having read about your conviction in the newspapers in Northern Ireland and knowing about your conviction.

You gave evidence to the Committee and stated that you are an honest person who has accepted your mistakes. You stated that Witness 1 is not an honest person and he has lied to this Committee in order to make you look bad. You stated that Witness 1 would have known about your conviction as he travels to Northern Ireland and is aware of the news there. You also stated that he directly asked you about the conviction prior to you commencing employment, and he was fully aware of it. You told the Committee that Witness 1 also knew about the 2012 conviction at the time that it happened. You told the Committee that Witness 1 has lied on many occasions in order to make things worse for you.

You told the Committee that you have always told your employers about your convictions and therefore you would have told Witness 1. You also stated that you had told the wife of Witness 1, who was also your employer at that time. You explained that you had told Witness 1 about your 2012 court hearing before you attended and then told him about the outcome immediately afterwards.

Witness 2, a former colleague and patient, gave evidence on your behalf. She told the Committee that she was aware of your convictions and she believed that Witness 1 and his wife were also aware. She confirmed that she became aware of your convictions and driving ban after you had been sentenced as she gave you lifts to and from work. Further, you told her that you had informed Witness 1 about your convictions, however she had never discussed this with Witness 1 or his wife. She stated that it was known by the staff at the practice that you had been banned from driving following a conviction and this was discussed openly after you stopped working there, but the first she heard about it was when you told her.

Witness 3, a former dental colleague, also gave evidence on your behalf. Witness 3 told the Committee that you made him aware of your first conviction the day after you received it. He confirmed that he had only worked with you in Northern Ireland and stated that it was his view that you would not be dishonest. Witness 3 stated that he was not fully aware of the matters before this Committee, but confirmed that he was aware that you were erased by the Professional Conduct Committee in 2016.

Witness 4, a former colleague, also gave evidence on your behalf. She told the Committee that she found you to be a pleasant and honest dentist and had a good relationship with you. Witness 4 confirmed that you had told her about your convictions and that it was discussed amongst the staff at the practice. She said that during the discussion where you told the staff about the 2012 conviction you also mentioned that you had received a fine for a similar matter the year before. From her memory, Witness 1's wife was present when you informed the staff about your previous conviction. She confirmed that she was unable to comment on Witness 1 and his wife's knowledge of your convictions or any possible motivation for making a complaint against you. She was also unable to comment on whether you formally reported your convictions.

Mr Collins submitted that it was clear from the evidence of Witness 1 that there was animosity between you, but reminded the Committee that this does not necessarily detract from the reliability of Witness 1's evidence. Mr Collins invited the Committee to accept the evidence of Witness 1 and submitted that this is corroborated by the referral to the GDC which does not make any mention of the 2011 conviction, which was also commented on by Mr Justice Holman during the appeal.

Mr Collins submitted that your assertion that your employer had informed the GDC of both convictions was an assumption by you and was not backed up by any of the evidence. Mr Collins also submitted that the evidence of your own witnesses corroborates the evidence of Witness 1 in that they were also not aware of your 2011 conviction until you informed them after the 2012 offence. Neither of the witnesses who worked with you at the time were able to confirm that they had direct knowledge of you telling your employers about your first conviction.

Mr Collins submitted that it was clear from the Committee's findings in February 2016 that you have demonstrated that you are willing to be flexible with the truth. He submitted that the evidence presented by you and your witnesses has been inconsistent and contradictory and he invited the Committee to reject your account and accept the evidence of Witness 1.

You submitted that there is substantial evidence that Witness 1 has been dishonest in his evidence and that you did tell him about both of your convictions. You referred the Committee to the character references which attest to your honesty with your employers about your convictions and you stated that you are an honest person who simply made mistakes.

You told the Committee that Witness 1 knew about your 2011 conviction before you even met him as he has relatives in Northern Ireland and so would have been up to date with the news there. You submitted that he lied about this in order to make you look bad. You submitted that it was clear from the evidence that Witness 1 was trying to defame your character and that this was supported by the evidence of Witness 4.

The Committee accepted the advice of the Legal Adviser. It was advised that the standard of proof is the civil standard, namely that the fact will be found proved if it is more likely than not that it happened. It was also advised that the burden of proof lies with the GDC.

The Committee considered all the evidence before it, both oral and documentary. It heard from one witness called on behalf of the GDC and four witnesses called on your behalf. All witnesses gave evidence via telephone. It also heard oral evidence from you.

For the purpose of these proceedings, and based on the information presented by you, the Committee considered both Witness 1 and his wife as being your employer at The Cosmetic Medical Centre.

The Committee considered that it was clear that there was animosity between you and Witness 1 and this came across in both Witness 1's evidence and your own evidence. The Committee accepted that Witness 1 must have known about your 2012 conviction as it occurred at the time that you were employed by Witness 1. The Committee did not accept your evidence that you believed that Witness 1 must have known about your 2011 conviction as he travelled to Northern Ireland and would have seen it in the newspapers. It also did not accept your evidence that you discussed it with Witness 1 at your pre-employment interview as he already knew about it.

The Committee had regard to the fact that Witness 1 made a referral to the GDC which did not include information about the 2011 conviction, which did not fit with your assertion that he was aggravating matters to 'make you look bad'. The Committee considered that if Witness 1 was aware of the 2011 conviction he would have included this information in the GDC referral. The Committee was satisfied based on all the evidence that the GDC were not informed about the 2011 conviction.

The evidence of Witness 4 was that Witness 1's wife was present in the room when you told your colleagues about your 2011 conviction and the 2012 offence, and must have overheard the conversation. Because of this you assumed that she was aware of your 2011 conviction. The Committee accepted that this may have occurred. However, it did not consider that her being present at some point during a conversation where a comment about your previous conviction was made by you could be considered you informing your employer about your 2011 conviction. Further, both Witness 2 and Witness 4 stated that they were unable to comment on the knowledge of Witness 1 and his wife as they were not present at any point where you may have informed them of your 2011 conviction.

The Committee accept that Witness 1's wife may have been aware of some limited information regarding your convictions. However, it did not accept that she was fully aware of your 2011 conviction given that Witness 4's own evidence demonstrated only a general awareness as she stated that you had received a fine for a similar matter, when you had in fact also been disqualified from holding or obtaining a licence for a year.

Taking all the above into account the Committee considered that, on the balance of probabilities, you did not inform your employer about both of your convictions.

Given the Committee's finding that you did not inform your employer, and having regard to the direction of Mr Justice Holman, the question of reconsidering sanction does not arise. Further, the Committee is not entitled to revisit this. Accordingly, the Committee's original determination of erasure must stand."

Decision on Immediate Order:

"Having directed that the Committee's original determination of erasure be maintained, the Committee had to consider whether to impose an immediate order to cover the appeal period, or until any appeal against the outcome is heard.

The Committee heard submissions from Mr Collins regarding the imposition of an immediate order. The grounds for this application were that it is otherwise in the public interest. He applied for this order to cover any possible appeal period and submitted that this would be compatible with the Committee's findings.

You submitted that an immediate order should not be imposed. You told the Committee that an interim order was not imposed previously as there was no risk identified by the Interim Orders Committee. You asked the Committee to reconsider its decision as you maintained that Witness 1 was dishonest. You also asked that an immediate order was not imposed given the passage of time.

The Committee accepted the advice of the Legal Adviser.

The Committee considered the submissions made and reminded itself that it was solely considering whether to impose an immediate order, it would not be reconsidering its substantive decision. The Committee was satisfied that an immediate order of suspension was required in all the circumstances. Given both the findings of the Committee in 2016 and its decision today the Committee concluded that not to impose an immediate order of suspension would be considered perverse. The circumstances remain as they were when the original decision of erasure and immediate order was made in February 2016. The Committee directs that an immediate order of suspension be imposed on your registration on the ground that it is otherwise in the public interest.

If, at the end of the appeal period of 28 days, you have not lodged an appeal, this immediate order will lapse and will be replaced by the substantive direction of erasure. If you do lodge an appeal, this immediate order will continue in effect until that appeal is determined.

Unless you exercise your right of appeal, your name will be erased from the register 28 days from today.

That concludes this case.”