

**HEARING HEARD IN PUBLIC**

**MAJKUT, Marta Anna**

**Registration No: 236062**

**PROFESSIONAL CONDUCT COMMITTEE**

**FEBRUARY 2017**

**Outcome: Erased with Immediate Suspension**

Marta Anna MAJKUT, a dental nurse, National Diploma in Dental Nursing NEBDN 2012, was summoned to appear before the Professional Conduct Committee on 27 February 2017 for an inquiry into the following charge:

**Charge**

“That being registered as a dental nurse:

1. On 9 November 2015, at Hendon Magistrates Court, you were convicted of Theft by an Employee, committed on 8 September 2015 at Dental Practice, 61 Market Square, N9 OTX, having stolen two prescriptions pads and dental x-rays, contrary to section 1(1) and 7 of the Theft Act 1968.
2. In respect of the conviction at paragraph 1 you were:
  - a. Sentenced to a 12 month Community Order with an Unpaid Work Requirement (100 hours); and
  - b. Ordered to pay a fine of £60; prosecution costs of £85; and a criminal court surcharge of £180.
3. You failed to inform the General Dental Council (GDC) that;
  - a. on 9 October 2015 you were charged with Theft by Employee contrary to section 1(1) and 7 of the Theft Act 1968; and
  - b. on 9 November 2015, you were convicted at Hendon Magistrates Court of Theft by Employee contrary to section 1(1) and 7 of the Theft Act 1968.
4. On 18 October 2016, at Willesden Magistrates’ Court, you were convicted of failing without reasonable excuse to comply with the requirements of a community order made by Hendon Magistrates Court on 3 December 2015.
5. You failed to fully comply with the court order in relation to the payment of the fine, the prosecution costs and the criminal court surcharge in that by 22 March 2016 you had failed to pay £225 of the order.
6. Between 2 November 2015 and 11 November 2016 you failed to hold adequate indemnity insurance.
7. Between 2 November 2015 and 31 March 2016, you were employed as a receptionist and dental nurse at Private Medical Centre Ltd, where you provided dental services without adequate indemnity insurance.

8. You failed to adequately co-operate with the GDC's investigation into your fitness to practise in that you:
  - a. failed to provide proof of indemnity cover after 1 November 2015; and/or
  - b. failed to maintain proper contact with the GDC.

And that, in consequence of the matters set out above, your fitness to practise is impaired by reason of your Conviction and/or Misconduct.”

As Ms Majkut did not attend and was not represented at the hearing, the Chairman made the following statement regarding proof of service, and announced the findings of fact. He addressed this to the Counsel for the GDC.

“Ms Majkut is neither present nor represented at this hearing.

On behalf of the General Dental Council (GDC), Mr Thomas, Counsel, made an application to proceed with the hearing in Ms Majkut's absence, pursuant to Rule 54 of the '*GDC (Fitness to Practise) Rules Order of Council 2006*' ('the Rules').

The Committee took into account Mr Thomas' submissions in respect of the application. It accepted the advice of the Legal Adviser.

#### **Decision on service of the Notification of Hearing**

The Committee first considered whether Ms Majkut had been sent notification of the hearing in accordance with Rules 13 and 65. It saw a copy of the Notification of Hearing letter, dated 24 January 2017, which was sent to Ms Majkut's registered address by Special Delivery. The Committee noted that when the letter was returned 'addressee gone away', the GDC sent a further copy, also by Special Delivery, to a known alternative address for Ms Majkut. The Committee had regard to the relevant Royal Mail 'track and trace' receipt confirming that this second letter was delivered and signed for at Ms Majkut's alternative address. A copy of the letter was also sent successfully to Ms Majkut by email. The Committee was satisfied that the letter contained proper notification of today's hearing, including its date, time and location, as well as notification that the Committee had the power to proceed with the hearing in Ms Majkut's absence. The Committee was satisfied on the basis of the information provided that the GDC had made efforts above and beyond the requirement of the Rules to serve notification of the hearing upon Ms Majkut.

#### **Decision on proceeding in the absence of Ms Majkut**

The Committee next considered whether to exercise its discretion under Rule 54 to proceed with the hearing in the absence of Ms Majkut. It approached this issue with the utmost care and caution. The Committee took into account the need to be fair to both parties and it had regard to the public interest in dealing with the matters in this case expeditiously.

The Committee was satisfied from the evidence before it, that Ms Majkut is aware of this hearing today. It had regard to her emails to the GDC, dated 18 and 20 February 2017. Ms Majkut informed the GDC that she would be out of the country at the time of this hearing. She also stated that she was happy for the hearing to proceed in her absence. The Committee considered that it was unclear from Ms Majkut's correspondence when she would be returning from abroad. It further noted that Ms Majkut did not elaborate on the reason for her need to travel at this particular time, nor did she request an adjournment of these proceedings in order to enable her to obtain representation. In the circumstances, the

Committee concluded that Ms Majkut had voluntarily absented herself from the hearing. It received no information to suggest that an adjournment today would make Ms Majkut's attendance on another occasion any more likely. The Committee had regard to the public interest and its duty to act expeditiously in considering the allegations against Ms Majkut. Taking all of this into account, the Committee determined that it was fair and reasonable to proceed with the hearing in the absence of Ms Majkut and without any representative present on her behalf.

**The charge against Ms Majkut**

The matters in Ms Majkut's case cover two broad areas. The first area relates to the criminal convictions she received on 9 November 2015 and 18 October 2016. The second area concerns Ms Majkut's alleged failure to hold adequate indemnity insurance.

**Evidence**

The Committee received documentary evidence, including copies of the Memoranda of Conviction in respect of Ms Majkut's convictions on 9 November 2015 and 18 October 2016. The Committee was also provided with documents relating to the police investigation in respect of Ms Majkut's conviction on 9 November 2015. The Committee further received the witness statement of A C, a Caseworker at the GDC, dated 27 September 2016 and the witness statement of S P, Ms Majkut's former employer, dated 10 October 2016.

The Committee was aware that Ms Majkut had indicated that she might send a letter for its consideration, however, no such letter was received.

No oral evidence was heard.

**The Committee's findings of fact**

The Committee considered all of the evidence presented to it and accepted the advice of the Legal Adviser. The Committee considered each head of charge separately, bearing in mind that the burden of proof rests with the GDC and that the standard of proof is the civil standard, that is, whether the alleged matters are proved on the balance of probabilities. The Committee drew no adverse inferences from Ms Majkut's absence from this hearing.

I will now announce the Committee's findings in relation to each head of charge:

1.	<p><i>On 9 November 2015, at Hendon Magistrates Court, you were convicted of Theft by an Employee, committed on 8 September 2015 at Dental Practice, 61 Market Square, N9 OTX, having stolen two prescriptions pads and dental x-rays, contrary to section 1(1) and 7 of the Theft Act 1968.</i></p> <p><b>Proved.</b></p> <p>This head of charge is supported by the relevant Memorandum of Conviction.</p>
2.	<p><i>In respect of the conviction at paragraph 1 you were:</i></p>
2.(a)	<p><i>Sentenced to a 12 month Community Order with an Unpaid Work Requirement (100 hours);</i></p> <p><b>Proved.</b></p>

	This head of charge is supported by the information in the relevant Memorandum of Conviction.
2.(b)	<i>Ordered to pay a fine of £60; prosecution costs of £85; and a criminal court surcharge of £180.</i>  <b>Proved.</b>  This head of charge is supported by the information in the relevant Memorandum of Conviction.
3.	<i>You failed to inform the General Dental Council (GDC) that;</i>
3.(a)	<i>on 9 October 2015 you were charged with Theft by Employee contrary to section 1(1) and 7 of the Theft Act 1968;</i>  <b>Not proved.</b>  The Committee considered all of the evidence provided to it, including the witness statement of A C and the associated exhibits. It found, however, that Ms Majkut's alleged failure to inform the GDC that she had been charged with this offence was not referenced, either explicitly or implicitly in the evidence before it. In the absence of specific evidence to demonstrate that Ms Majkut failed to inform the GDC of the matter in question, the Committee found this head of charge not proved.
3.(b)	<i>on 9 November 2015, you were convicted at Hendon Magistrates Court of Theft by Employee contrary to section 1(1) and 7 of the Theft Act 1968.</i>  <b>Proved.</b>  In reaching its decision, the Committee took into account the letter sent to Ms Majkut by A C regarding an 'Interim orders committee referral', dated 20 April 2016. The Committee noted from this letter that AC made reference to "...information we received about your conviction from the police...". The Committee was satisfied that Ms Majkut had a duty to advise the GDC of this conviction. The Committee was satisfied on the basis of this evidence, which refers directly to the conviction in question, that it was more likely than not that Ms Majkut had failed to inform the GDC about the conviction and that the information provided to the GDC had originated from the police.
4.	<i>On 18 October 2016, at Willesden Magistrates' Court, you were convicted of failing without reasonable excuse to comply with the requirements of a community order made by Hendon Magistrates Court on 3 December 2015.</i>  <b>Proved.</b>  This head of charge is supported by the relevant Memorandum of Conviction.
5.	<i>You failed to fully comply with the court order in relation to the payment of the fine, the prosecution costs and the criminal court surcharge in</i>

	<p><i>that by 22 March 2016 you had failed to pay £225 of the order.</i></p> <p><b>Proved.</b></p> <p>The Committee had regard to the letter of 22 March 2016 from the London Collection and Compliance Centre, requiring an attachment to Ms Majkut's earnings in respect of the outstanding sum of £225. The Committee also took into account the witness statement of S P, who confirmed receipt of this letter.</p>
6.	<p><i>Between 2 November 2015 and 11 November 2016 you failed to hold adequate indemnity insurance.</i></p> <p><b>Not proved.</b></p> <p>The Committee received clear evidence of the repeated requests made to Ms Majkut by the GDC for evidence of her indemnity insurance. The Committee was satisfied from the correspondence that it considered that Ms Majkut did not hold adequate indemnity insurance from 2 November 2015 until at least 22 April 2016, which is when the last request for evidence appears to have been made by the Council. The Committee noted that Ms Majkut was unable to provide any evidence of her indemnity insurance from 2 November 2015 until at least 22 April 2016.</p> <p>However, the Committee took into account that this head of charge relates to the period "between 2 November 2015 and 11 November 2016". The Committee received no evidence to suggest that Ms Majkut was asked about her indemnity insurance status after 22 April 2016, nor was there any evidence to infer or confirm that she did not hold adequate indemnity insurance after this date. The Committee therefore determined that it could not find this head of charge proved as worded.</p>
7.	<p><i>Between 2 November 2015 and 31 March 2016, you were employed as a receptionist and dental nurse at Private Medical Centre Ltd, where you provided dental services without adequate indemnity insurance.</i></p> <p><b>Proved.</b></p> <p>The Committee received copies of two contracts of employment for Ms Majkut, which cover the period in question and both of which include 'dental nurse' as being part of her job title. This evidence was supported by the evidence in the witness statement of S P, who provides details regarding Ms Majkut's employment at the material time. Having already been satisfied on the basis of the evidence that Ms Majkut did not hold adequate indemnity insurance from 2 November 2015 until at least 22 April 2016, the Committee found this allegation proved.</p>
8.	<p><i>You failed to adequately co-operate with the GDC's investigation into your fitness to practise in that you:</i></p>
8.(a)	<p><i>failed to provide proof of indemnity cover after 1 November 2015;</i></p> <p><b>Proved.</b></p>

	<p>The Committee was satisfied on the basis of the evidence that Ms Majkut failed to provide proof of indemnity cover between 2 November 2015 and 22 April 2016. Ms Majkut’s response given on a form received by the GDC on 10 February 2016 was that she was still waiting for approval of her indemnity from her indemnity providers. The Committee had regard to the witness statement of A C and noted that a number of subsequent requests for proof of indemnity were made of Ms Majkut, up until April 2016, but no such evidence was received.</p>
<p>8.(b)</p>	<p><i>failed to maintain proper contact with the GDC.</i></p> <p><b>Not proved.</b></p> <p>The Committee received evidence which suggests that Ms Majkut had been in reasonably regular contact with the GDC throughout its investigation. The Committee therefore decided that, in the absence of any explanation of what the GDC considers to be “proper contact” during an investigation, and credible evidence as to how Ms Majkut failed to maintain it, this head of charge has not been proved.</p>

We move to Stage Two.”

On 28 February 2017 the Chairman announced the determination as follows:

“Ms Majkut is neither present nor represented at this hearing.

The Committee considered all the evidence presented to it. It took account of the submissions made by Mr Thomas on behalf of the General Dental Council (GDC) and accepted the advice of the Legal Adviser. The Committee did not receive any formal submissions from Ms Majkut. However, it took into account her email to the GDC, dated 20 February 2017, in which she made some comments relevant to this stage of the proceedings. The Committee has drawn no adverse inferences from Ms Majkut’ absence from this hearing.

**The facts**

The facts found proved in this case are that, on 9 November 2015, at Hendon Magistrates Court, Ms Majkut was convicted, following a guilty plea, of the offence of Theft by an Employee, which she committed on 8 September 2015 at the dental practice where she worked. Ms Majkut stole two prescription pads and dental x-rays, contrary to section 1(1) and 7 of the Theft Act 1968. She was sentenced to a 12-month Community Order with an Unpaid Work Requirement of 100 hours and ordered to pay a fine of £60, prosecution costs of £85 and a criminal courts charge of £180. Initial payment terms were ordered at a rate of a lump sum of £100, followed by £100 per month, commencing on 31 December 2015.

Despite her duty to do so, Ms Majkut failed to inform the GDC that she had been convicted of the offence of Theft by an Employee.

By 22 March 2016, Ms Majkut had not paid the monies owed to the Court and an Attachment of Earnings Order was made to deduct the outstanding sum of £225.

On 18 October 2016, at Willesden Magistrates' Court, Ms Majkut received a second conviction. It was for failing without reasonable excuse to comply with the requirements of the Community Order made by Hendon Magistrates Court on 3 December 2015. She received a further 10 hours of Unpaid Work and was required to pay costs of £85.

In addition to the criminal matters, the Committee found that, between 2 November 2015 and 31 March 2016, Ms Majkut was employed as a receptionist and dental nurse at a private medical centre, where she provided dental services without adequate indemnity insurance.

Furthermore, Ms Majkut failed to adequately co-operate with the GDC's investigation into her fitness to practise in that she failed to provide proof of her indemnity cover after 1 November 2015.

### **Decision on misconduct**

The Committee first considered whether the facts found proved amount to misconduct. It took into account that misconduct in the regulatory context requires a serious falling short of the expected professional standards. The Committee had regard to the GDC's Standards, as set out in the publication '*Standards for the Dental Team*' (September 2013). It considered that the following Standards were engaged in Ms Majkut's case:

- 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.
- 1.8.1 You must have appropriate insurance or indemnity in place to make sure your patients can claim any compensation to which they may be entitled (See our website for further guidance on what types of insurance or indemnity the GDC considers to be appropriate).
- 1.9 You must find out about laws and regulations that affect your work and follow them.

The Committee also had regard to Principle 9 in '*Standards for the Dental Team*', which states that you must:

"Make sure your personal behaviour maintains patients' confidence in you"

The Committee considered the nature of Ms Majkut's convictions. Her first conviction of Theft by an Employee, involved inherently dishonest behaviour and went to the heart of the fundamental principle of integrity. The Committee considered that Ms Majkut's wrongdoing was exacerbated by the fact that her theft was of items accessible by virtue of her employment as a dental professional. In its view, she clearly breached the position of trust that she was placed in as a dental nurse. The Committee noted that there is no evidence of any actual harm to patients in this case. However, it was satisfied that Ms Majkut's theft of prescription pads had the potential to cause patient harm and to damage public confidence in the profession in the event that the pads were misused. The Committee also considered the potential for breaches of patient confidentiality arising from Ms Majkut's stealing of dental x-rays.

The Committee considered Ms Majkut's second conviction for her breach of the Community Order imposed in relation to her first conviction, to be a clear indication of her disregard for

the law of the land. In breaching the Order, Ms Majkut demonstrated an apparent lack of willingness to comply with the sentence of a criminal court, which the Committee considered would be regarded as deplorable by other dental professionals and members of the public. The Committee was of the view that Ms Majkut's additional failure to pay the fine and other ancillary costs, as initially ordered, was further evidence of her behaviour to disregard requirements imposed on her by authorities.

Ms Majkut's disrespect for rules and regulations was again emphasised by her failure to hold adequate indemnity insurance whilst carrying out work that required her to hold such insurance. Ms Majkut's conduct in this regard was contrary to the law and the standards of her regulatory body. There were also serious potential consequences for her patients, who would be unable to seek compensation should anything go wrong with their dental treatment. Patients are entitled to expect that the dental professionals treating them are suitably insured.

The Committee was satisfied that Ms Majkut's misconduct was serious, as highlighted in this case, and falls far short of the standards expected of a dental professional; it is behaviour that would be regarded as totally unacceptable by her professional colleagues and the general public. The Committee also took into account that her misconduct was so serious it led to two convictions.

Taking all of its findings into account, the Committee was in no doubt that the facts found proved amount to misconduct.

**Decision on impairment by reason of misconduct and/or conviction.**

In relation to the issue of current impairment, the Committee considered the matters in this case in the round. It took into account that the proven facts include the linked matters of Ms Majkut's misconduct and her two criminal convictions.

In reaching its decision, the Committee exercised its 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 considered that there was no evidence before it to suggest that Ms Majkut had remedied any of the concerns raised in this case. It took into account her email of 20 February 2017 in which she stated that "*I am very remorseful for the mistake I have made and I can not [sic] imagine life not being able to work in dentistry as that is the only thing that makes me happy.*" The Committee noted, however, that there is no objective evidence to support Ms Majkut's expression of remorse. Further, although she stated that she had completed the Unpaid Work hours and had paid all outstanding financial penalties, she provided no independent evidence to support those assertions.

Despite indicating an intention to do so, Ms Majkut has not provided any submissions to the Committee. Further, the Committee has received no evidence to demonstrate any remediation or insight into the serious matters that have brought her before the GDC or the damage her behaviour may have caused to the profession. In the absence of such evidence, the Committee concluded that there is a likelihood that Ms Majkut could behave in a similar manner in future. The Committee considered that in these circumstances, there was a continued risk to the safety of patients and therefore a finding of impairment was necessary.

The Committee cannot be satisfied that the conduct which led to the findings of fact was easily remediable, has been remedied and is highly unlikely to be repeated.

The Committee also considered the wider public interest and it was satisfied that public confidence in the dental profession would be undermined, if a finding of impairment were not made. Ms Majkut has acted in a way that has potentially put patients at risk and has shown a complete disregard for the law and the GDC Standards. The Committee was of the view that members of the public would expect some action to be taken in the circumstances of this case.

Accordingly, the Committee has determined that Ms Majkut's fitness to practise is currently impaired by reason of her misconduct and by reason of her convictions.

### **Decision on sanction**

The Committee considered what sanction, if any, to impose on Ms Majkut's registration. It took into account 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.

In reaching its decision on sanction, the Committee had regard to the '*Guidance for the Practice Committees including Indicative Sanctions Guidance (effective from October 2016)*' (the Guidance). It considered the range of sanctions available to it, starting with the least serious. The Committee applied the principle of proportionality, balancing the public interest with Ms Majkut's own interests.

In view of the gravity of the matters in this case and its concerns about the ongoing risk to the safety of patients and the wider public interest, the Committee determined that it would be wholly inappropriate to conclude the case without taking any action in respect of Ms Majkut's registration.

The Committee considered the sanction of a reprimand. Given the severity of Ms Majkut's behaviour and given the absence of any evidence of remediation or insight on her part, the Committee concluded that a reprimand would not be a suitable or proportionate outcome.

Whilst the Committee considered whether to impose conditions on Ms Majkut's registration, it concluded that it could not formulate any conditions to address the concerns raised in this case. The Committee decided conditional registration would not address the seriousness of the matters. It also took into account Ms Majkut's history of failing to comply with rules and regulations, including orders of the court. The Committee was of the view that even if it could formulate conditions, it could not be confident that Ms Majkut would comply with them.

The Committee went on to consider whether to suspend Ms Majkut's registration. In doing so, it had regard to the relevant section of the Guidance. It noted, however, that almost all of the factors that would indicate that a suspension was appropriate were absent in this case. Furthermore, the Committee considered that Ms Majkut's behaviour, as demonstrated in its findings, was evidence of a professional attitudinal problem incompatible with continued registration. There has been no evidence of any insight on Ms Majkut's part into her serious departures from fundamental standards, her breaches of the criminal law and her abuse of her position as a dental nurse. For these reasons, the Committee has determined that the only appropriate and proportionate sanction to protect the public and to uphold the public interest is that of erasure.

Unless Ms Majkut exercises her right of appeal, her name will be erased from the Register of Dental Care Professionals, 28 days from the date when notice of this determination is deemed to have been served upon her.

The Committee now invites submissions from Mr Thomas, as to whether Ms Majkut's registration should be suspended immediately, pending its substantive determination for erasure taking effect."

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"In considering whether to impose an order for the immediate suspension of Ms Majkut's registration, the Committee took into account the submissions made by Mr Thomas on behalf of the GDC and accepted the advice of the Legal Adviser.

The Committee has determined that it is necessary for the protection of the public and is otherwise in the public interest to impose an order for the immediate suspension of Ms Majkut's registration. The Committee has identified ongoing risks to patients and also wider public interest concerns in its decisions on misconduct and impairment. It also decided that Ms Majkut has a professional attitudinal problem that is incompatible with continued registration. The Committee considered that it would be inconsistent not to impose an immediate order in the circumstances.

The effect of the foregoing determination and this order is that Ms Majkut's registration is suspended to cover the appeal period. If she does not appeal, the substantive direction for erasure, as already announced, will take effect 28 days from the date when notice is deemed to have been served upon her.

Should Ms Majkut exercise her right of appeal, this immediate order for suspension will remain in place until the resolution of any appeal.

The interim order currently on Ms Majkut's registration is hereby revoked.

That concludes this hearing."