

HEARING HEARD IN PUBLIC

HAY, Ronald

Registration No: 2805

PROFESSIONAL CONDUCT COMMITTEE

JULY 2015-AUGUST 2017

Most recent outcome: Suspended indefinitely

* See page 11 for the latest determination.

Ronald HAY, a Dental Hygienist, CEB Dip Dent Hygiene 1995, was summoned to appear before the Professional Conduct Committee on 14 July 2015 for an inquiry into the following charge:

Charge (as amended)

“That, being a registered Dental Care Professional:

1. At all material times you were a United Kingdom registered Dental Care Professional.
2. On 6 February 2014, you failed to protect patient confidentiality in that you published information on a social networking website identifying:
 - (a) Patient A's full name;
 - (b) details of Patient A's treatment.
3. Your conduct as set out at paragraph 2 above was:
 - (a) unprofessional;
 - (b) inappropriate.
4. On or around 6 February 2014, you failed to protect patient confidentiality in that you published information on a website (Schedule A¹) identifying:
 - (a) Patient A's full name;
 - (b) details of Patient A's treatment.
5. Your conduct as set out at paragraph 4 above was:
 - (a) unprofessional;
 - (b) inappropriate.
6. In or around July 2014, you failed to treat Dental Care Professional A and/or Dr B with respect in that you published derogatory information on a website (Schedule A).
7. Your conduct as set out at paragraph 6 above was:
 - (a) unprofessional;
 - (b) inappropriate.

¹ Please note that Schedule A is a private document and is not disclosed to the Public

8. On or around 31 July 2014, you failed to protect patient confidentiality in that you sent a letter to a number of persons disclosing:
 - (a) Patient A's full name;
 - (b) details of Patient A's treatment.
9. Your conduct as set out at paragraph 8 above was:
 - (a) unprofessional;
 - (b) inappropriate.
10. On or around 31 July 2014, you failed to treat Dental Care Professional A with respect in that you sent a letter to a number of persons disclosing:
 - (a) photographs of Dental Care Professional A;
 - (b) a copy of Dental Care Professional A's driving licence.
11. Your conduct as set out at paragraph 10 above was:
 - (a) unprofessional;
 - (b) inappropriate.
12. On 27 January 2015, you failed to treat Dental Care Professional A with respect in that you published derogatory information on a website (Schedule A*).
13. Your conduct as set out at paragraph 12 above was:
 - (a) unprofessional;
 - (b) inappropriate.
14. Between 5 November 2014 and 28 November 2014, you failed to cooperate with an investigation conducted by the General Dental Council in respect of your health.

AND, by reason of the facts stated, your fitness to practise as a dental care professional is impaired by reason of your misconduct.”

Mr Hay was not present and was not represented. On 15 July 2015 the Chairman announced the findings of fact to the Counsel for the GDC:

“Mr Hunt,

The Committee has taken into account all the evidence presented to it. It has accepted the advice of the Legal Adviser. In accordance with that advice it has considered each head of charge separately. The Committee took the word ‘unprofessional’ to mean failing to achieve the professional standard required by the GDC. Further, the Committee took the ordinary meaning of the word ‘inappropriate’. I will now announce the Committee’s findings in relation to each head of charge:

1.	Proved.
2.a	Not proved.
2.b	
3.a	The Committee noted that the published information identified by paragraph

3.b	2 of the charge contained a different surname than that of Patient A. The Committee was not satisfied that Patient A's confidentiality had been breached, as she was not identifiable from the text in question. Accordingly, the Committee found these heads of charge not proved.
4.a	Proved.
4.b	Not proved. On behalf of the GDC, you informed the Committee that the GDC did not put forward a positive case in respect of paragraph 4(b) of the charge. The Committee noted that details of Patient A's treatment were not included in the published information adduced in support of head of charge 4. Accordingly the Committee found this head of charge not proved.
5.a	Proved.
5.b	Proved.
6.	Proved as amended. The Committee examined the information which Mr Hay placed on the relevant website. In respect of Dental Care Professional A ('DCP A') there is no information before the Committee as to the veracity of the allegations Mr Hay published against DCP A. These concerned alleged forgery, fraud and illegal treatment of patients. In his oral evidence, DCP A informed the Committee that the allegations against him are false, and he described the detrimental impact that the statements have had upon him. In respect of Dr B, Mr Hay described him as an 'unauthorised' dentist. Having examined the postings made by Mr Hay, the Committee concluded that, by its nature, the information was derogatory.
7.a	Proved.
7.b	Proved.
8.a	Proved. It was clear from its content that the letter was written with the intention of sending it to a number of persons. Further, the Committee noted that around the same time, Mr Hay had published text on public websites, in pursuit of the same information which the letter sought to obtain. Taking these into consideration, the Committee was satisfied that Mr Hay failed to protect Patient A's confidentiality.
8.b	Proved. The Committee noted that Annex A to the letter contained details of Patient A's treatment.
9.a	Proved.
9.b	Proved.
10.a	Proved. The Committee was of the view that by sending out photographs of DCP A,

	Mr Hay did not treat him with respect. The purpose of the letter and its enclosures was in pursuit of Mr Hay's allegations of illegal 'out of hours' dental treatment, directed at DCP A.
10.b	Proved.
11.a	Proved.
11.b	Proved.
12.	Proved. The Committee noted that, whilst the website omitted to name DCP A, Mr Hay's posting was aimed at his " <i>colleague and business partner and fellow hygienist</i> ". This statement, in its view, would enable any reader who knew DCP A to identify the person referred to. This was combined with a number of derogatory allegations including forgery, counterfeiting, embezzlement and identity theft.
13.a	Proved.
13.b	Proved.
14.	Proved. The Committee accepted the evidence of Witness 1.

We move to Stage Two."

On 16 July 2015 the Chairman announced the determination as follows:

"Mr Hunt,

The Committee has considered your submissions on behalf of the General Dental Council ('GDC') and those from Mr Hay, who attended at the outset of the hearing before withdrawing after approximately 15 minutes. Mr Hay's behaviour was disruptive and he asserted that the GDC has no legal competence to deal with his case, and he would only accept a trial under 'common law'. Mr Hay provided a bundle of papers which the Committee has read, and it has taken into account those parts which were relevant to this case. The Committee has accepted the advice of the Legal Adviser in reaching its decisions.

Proceeding in Absence

Mr Hay withdrew from the hearing, having stated that he had no intention to participate now or in the future. The Committee considered whether it was fair to proceed in Mr Hay's absence. The Committee bore in mind that it must exercise the utmost care and caution when considering whether to exercise its discretion to proceed. It also had regard to the need for fairness to both parties, as well as the public interest in the expeditious disposal of the case.

The Committee noted that Mr Hay has not requested an adjournment or a postponement of these proceedings. It concluded that an adjournment would be unlikely to result in Mr Hay attending a future hearing. Mr Hay has voluntarily waived his right to be present. In the circumstances and taking into account the public interest, the Committee directed that the hearing shall proceed in Mr Hay's absence.

Amendment to the Charge

In the light of the oral evidence of Dental Care Professional A ('DCP A'), you applied under paragraph 18 of *The GDC (Fitness to Practise) Rules 2006* ('Rules') to amend the head of charge 6. You proposed to replace 'On or around 6 February 2014' with 'In or around July 2014'. The Committee noted that, were the amendment granted, the gravity of the head of charge would not be materially changed. The Committee determined that the proposed amendment did not cause unfairness to either party, nor would it result in any injustice. Accordingly, the Committee granted the application to amend.

Background

The Committee was informed that Mr Hay first registered as a dental hygienist on 12 July 1984, having qualified during his army service. After a number of years in practice, Mr Hay became a partner with DCP A in a business. Together, Mr Hay and DCP A operated a number of dental practices in Scotland and Manchester. In due course, their partnership encountered some financial difficulties. A falling out occurred between Mr Hay and DCP A, and Mr Hay ceased to be involved in the partnership business. It was not the task of this Committee to inquire into or consider the merits of the dispute with Mr Hay and DCP A. Mr Hay, however, went on to place a number of allegations about DCP A into the public domain, including alleged illegal practice amongst other things.

The GDC case against Mr Hay arose from two separate referrals to the GDC, and this resulted in two sets of allegations against him. During its investigation into the allegations, the two cases were joined under the GDC's joinder provisions, resulting in the case before the Committee today. During this hearing, the Committee has found proved that Mr Hay:

- failed to protect Patient A's confidentiality by disclosing the patient's full name on a website;
- failed to protect Patient A's confidentiality by disclosing the patient's name and details of treatment in letters sent to a number of persons;
- published derogatory information concerning DCP A and Dr B (a dentist);
- failed to treat DCP A with respect by sending photographs and a copy of his driving licence to a number of persons and publishing derogatory information about him on a website;
- in respect of the above, behaved in an unprofessional and inappropriate manner; and
- failed to cooperate with the GDC in its investigation in respect of his health.

Misconduct

The Committee first considered whether the facts found proved amount to misconduct. In order to make a finding of misconduct the Committee must be satisfied that Mr Hay's actions fell below the appropriate standard and that the falling short must be serious. In reaching its decision the Committee considered the GDC publication *Standards for the Dental Team* dated September 2013, which provides ethical guidance for the dental profession. The facts found proved concern the following paragraphs:

"4.2 You must protect the confidentiality of patients' information and only use it for the purpose for which it was given.

4.2.1 Confidentiality is central to the relationship and trust between you and your patients. You must keep patient information confidential. This applies to all the

information about patients that you have learnt in your professional role including personal details, medical history, what treatment they are having and how much it costs.

4.2.3 You must not post any information or comments about patients on social networking or blogging sites. If you use professional social media to discuss anonymised cases for the purpose of discussing best practice you must be careful that the patient or patients cannot be identified. See our website for further guidance on social networking.

6.1.2 You must treat colleagues fairly and with respect, in all situations and all forms of interaction and communication. You must not bully, harass, or unfairly discriminate against them.

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.

9.1.3 You should not publish anything that could affect patients' and the public's confidence in you, or the dental profession, in any public media, unless this is done as part of raising a concern.

Public media includes social networking sites, blogs and other social media. In particular, you must not make personal, inaccurate or derogatory comments about patients or colleagues. See our guidance on social networking for more information.

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 was of the view that Mr Hay's conduct had breached the above standards. There were numerous incidences of Mr Hay's campaign to discredit DCP A directly and, through criticism of DCP A's involvement with Dr B, indirectly. The Committee noted that Mr Hay, despite having briefly attended the hearing and submitted a number of documents to the Committee, has at no time denied or sought to excuse himself from the serious implications of his behaviour as described in the facts found proved.

The Committee observed that Mr Hay had breached his duty of confidentiality repeatedly by disclosing Patient A's full name across a number of media, as well as sending letters to a number of persons which contain details of her dental treatment. It was of the view that patient confidentiality is a matter of paramount importance because it is fundamental to all dental practice. Breaching the trust which patients place in dental professionals is, in itself, 'deplorable' behaviour. Given that Mr Hay has not denied his behaviour, and instead has chosen to distance himself from any meaningful cooperation with the GDC, this increases the gravity of his behaviour. The Committee determined that Mr Hay has completely disregarded his responsibility to account for his personal and professional conduct.

The Committee considered that each individual proven allegation in this case constituted a falling far below the standards of professional behaviour expected of a registered dental hygienist. Taken cumulatively however, Mr Hay has displayed a pattern of reprehensible behaviour over a period of time. Accordingly, the Committee determined that the facts found proved do amount to misconduct which was serious.

Impairment

Having found misconduct, the Committee next considered whether Mr Hay's fitness to practise is currently impaired. The Committee was referred to the guidance set out by Dame Janet (Lady Justice) Smith in the '5th Report to the Shipman Inquiry' which, at paragraph 25.50, set out the relevant considerations when determining whether a registrant's fitness to practise is impaired:

"Do our findings of fact in respect of the [dentist's] misconduct show that his/her fitness to practise is impaired in the sense that s/he:

- (b) has in the past brought and/or is liable in the future to bring the [dental] profession into disrepute; and/or*
- (c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the [dental] profession".*

The Committee was of the view that the misconduct in this case falls within the scope of this test, in that Mr Hay repeatedly published confidential patient details and derogatory statements concerning colleagues into the public domain. His misconduct is of a kind which damages the trust that patients place in dental professionals. Further, fundamental principles of the dental profession, such as patient confidentiality and accountability before one's professional regulator, have been breached in this case. Mr Hay has at no time provided the Committee with any evidence of his insight into the impact of his misconduct upon patients, fellow professionals and the wider profession. Likewise, he has at no time expressed remorse, contrition or a willingness to take remedial steps in response to the allegations.

In the limited exposure that the Committee had to Mr Hay during his brief appearance in person at the outset of this hearing, he demonstrated an attitudinal problem towards his professional duties and the GDC's role as a professional regulatory body. Amongst the documents he provided to the Committee, there was an undated but substantial statement from Mr Hay in which he submitted that,

"I have NOT WORKED as a Dental Hygienist for over three years now. I have instructed my Bank Manager to recall my Direct Debits to the GDC for this period, SO CAN NOT BE CONSIDERED AS A REGISTRANT."

The statement also contained a number of details concerning his dispute with DCP A which were not relevant to these proceedings and did not assist the Committee with the decisions to be made in this case. Mr Hay went on to state that,

"MY ACTIONS HAVE ONLY BEEN IN THE INTEREST OF PROTECTING MEMBERS OF THE PUBLIC; TO HAVE THEM PROTECTED AGAINST THE CRIMINAL ACTIONS OF [DCP A]"

Mr Hay has not attempted to explain or mitigate his misconduct and he has not acknowledged the serious implications of a dental health professional behaving as he has. The Committee could not be satisfied that Mr Hay would not repeat his misconduct in the future.

In considering the public interest, the Committee was referred to the case of *CHRE v NMC and Grant [2011] EWHC 927 (Admin)* where Cox J stated at paragraph 74,

"In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public

confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.”

Taking into account Mr Hay’s misconduct, lack of remedial steps and high risk of repetition, and the need for the Committee to declare and uphold proper standards of conduct and behaviour, it concluded that it would undermine public confidence in the dental profession, and in the regulatory process, if a finding of current impairment were not made in this case. For all the reasons set out above, the Committee has determined that Mr Hay’s fitness to practise is currently impaired.

Sanction

The Committee next considered which sanction, if any, was applicable in this case. The Committee has minded that the purpose of a sanction is not to be punitive, although this may be its effect. The Committee has borne in mind the principle of proportionality, and the need to balance the public interest with Mr Hay’s own interests in the outcome of this case.

The Committee first considered concluding this case with no further action. This case concerns Mr Hay’s use of social networking websites, other websites and letters, to place patient details in the public domain, as well as to publish derogatory remarks about fellow professionals. The Committee was of the view that, given the serious nature of these matters, concluding the matter with no further action would not be sufficient or proportionate to satisfy the wider public interest.

The Committee next considered issuing a reprimand to Mr Hay. It noted that this would remain on Mr Hay’s regulatory record, although there would be nothing to prevent Mr Hay from practising as a dental hygienist in the future. The Committee considered the deliberate nature of Mr Hay’s misconduct. Despite that the allegations stem from Mr Hay’s grievances against DCP A, Mr Hay has not shown a willingness to acknowledge or remedy his attitudinal failings. There is nothing to reassure the Committee that Mr Hay would take note of a reprimand and develop insight into his professional failings. Further, a reprimand would not be consistent with the Committee’s role in declaring and upholding standards of professional behaviour.

The Committee then considered imposing conditions of practice upon Mr Hay’s registration. It was of the view that no conditions could be formulated which could be workable, practicable and measurable in all the circumstances of this case. Mr Hay would need to be fully participating in the regulatory process for conditions to have any substantive effect. Further, it is difficult to comprehend what conditions would sufficiently assist Mr Hay to develop insight, and reflect upon his attitude towards the responsibilities incumbent upon him as a dental hygienist.

The Committee next considered suspending Mr Hay’s registration for a prescribed period of time. It noted that there was no direct indication of patient harm, and there is no evidence to suggest that Mr Hay is liable to pose a risk of harm to patients in the future. Likewise, Mr Hay has no fitness to practise history; he has maintained his career as a registered dental care professional for more than 30 years with no prior reported problems requiring GDC intervention.

On behalf of the GDC, you submitted that a suspension order of 12 months was the appropriate sanction in this case. The Committee acknowledged however, that Mr Hay has instigated a campaign to bring his former colleague into disrepute, even at the expense of his duty of confidentiality towards Patient A. The Committee was of the view that this is a sufficiently serious matter to invoke the public interest, and the Committee decided to consider whether an order for erasure was proportionate in this case.

The Committee had regard to the GDC publication *Guidance for the Professional Conduct Committee, including Indicative Sanctions Guidance* dated April 2015, paragraph 7.29 of which states that,

“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.”

In considering erasure, the Committee noted that paragraph 14 of the charge concerned an attempt by the GDC to investigate Mr Hay’s health. In due course, however, Mr Hay’s case was referred to the Professional Conduct Committee instead of the Health Committee. The Committee considered that Mr Hay’s lack of willingness to engage with his regulator rendered any investigations into his health impossible, since the GDC relies on registrant’s giving their consent to gather evidence in relation to physical and / or mental health.

Whilst Mr Hay has displayed a deep-seated attitudinal problem, he has remained out of practice for some three years. No concerns have been raised regarding Mr Hay’s competence as a dental hygienist, or his past commitment to the dental profession. The Committee was of the view that, if Mr Hay gains insight into his previous actions and attitudinal problems, and develops a positive relationship with the GDC as his regulatory body, he may begin the process of remedying his misconduct.

In light of the above, the Committee has concluded that an order for erasure would be disproportionate in the circumstances, since a period of suspension would adequately meet the public interest in this case, and provide Mr Hay with an opportunity to reflect on his long career within the dental profession. This is in Mr Hay’s own interest also, as he may then consider whether he wishes to initiate a return to practice. At the end of the suspension, the order shall be reviewed by the Professional Conduct Committee. Mr Hay may wish to present evidence of his remedial steps, any relevant continuing professional development he has achieved, and provide some form of reflective account. Mr Hay will need to provide evidence to satisfy the reviewing Committee that, given similar circumstances, his misconduct will not be repeated.

Accordingly, the Committee directs that Mr Hay’s registration be suspended for 12 months, with a review prior to its expiry.

Immediate Order

Mr Hay has 28 days during which he can appeal against the order for suspension. On behalf of the GDC, you submitted that an immediate suspension should be imposed for the protection of the public and is otherwise in the public interest in this case.

The Committee was of the view that the misconduct in this case is serious, and that a finding of current impairment has been made in relation to Mr Hay’s fitness to practice. The Committee has determined that Mr Hay’s registration should be subjected to immediate suspension, and this decision is necessary for the protection of the public and is in the public interest, for the same reasons as set out previously.

Unless Mr Hay exercises his right of appeal, the substantive suspension of his registration shall come into effect as soon as the period of appeal expires.

The Committee direct that, pursuant to section 27B(9) of the Dentists Act 1984 (as amended), any interim order currently in place upon Mr Hay’s registration is hereby revoked.

That concludes this hearing.”

At a review hearing on 4 August 2016 the Chairman announced the determination as follows:

“Mr Round,

The Committee has considered your submissions and read all the papers placed before it. It has accepted the advice of the Legal Adviser.

Mr Hay was not present and not represented. The Committee first considered whether service of the notification of this hearing had been effective and in accordance with the relevant rules. It was referred to the letter of notification dated 6 July 2016 sent to Mr Hay’s registered address by recorded mail. There was evidence that the GDC had also attempted to achieve service by email to an email address provided by Mr Hay and, the Committee was informed, this email had been opened and the documents downloaded. The Committee determined that the notification had been served in accordance with the rules. Given that Mr Hay has not engaged with the GDC during the period since the last hearing, when his registration was suspended for 12 months, for the protection of the public and in the public interest, the Committee concluded that any adjournment of this hearing would be unlikely to result in his attending a future hearing. Accordingly, it determined that this hearing should proceed in Mr Hay’s absence.

Background

On 16 July 2015, the Professional Conduct Committee (‘PCC’) found Mr Hay’s fitness to practise impaired at that time because of his misconduct. It suspended his registration for a period of 12 months. This is a resumed hearing to review the order for suspension which is currently due to expire on 18 August 2016.

During the hearing in July 2015, it was found that Mr Hay had failed to protect patient confidentiality on three occasions; had published confidential and derogatory information concerning two other dental professionals; and, in respect of these actions, behaved in an unprofessional and inappropriate manner.

Impairment

The Committee first considered whether Mr Hay’s fitness to practise remains currently impaired. Mr Hay attended at the outset of the previous hearing; however, he withdrew from the hearing after 15 minutes, declaring that the GDC had no legal competence to proceed. Thereafter, Mr Hay was neither present nor represented. He has not engaged with his regulator since then, despite several communications from the GDC attempting to procure his participation in these regulatory proceedings.

It is incumbent upon all dental professionals to engage with the GDC as their professional regulator and to account for their practice. Mr Hay appears to have ignored these fundamental duties. His failure to respond to the GDC over a protracted period of time underlines the seriousness of his misconduct and the need to protect patients and the public. He has disregarded the GDC’s role in protecting the public and maintaining confidence, both in the regulatory process as well as in the wider dental profession. The Committee has drawn no adverse inference from Mr Hay’s non-attendance; however, there is nothing before the Committee to establish any positive change in the circumstances that led to the finding of impairment in July 2015. This Committee is in a similar position to that of the previous PCC; there is no evidence before it to demonstrate any remediation of Mr Hay’s misconduct, any apology to the people affected by his misconduct and / or any insight into his misconduct in order to enable to the Committee to ascertain the risk of repetition.

The risk which Mr Hay's misconduct presents to patients and other dental professionals, and the risk that he will again exhibit behaviour which is capable of damaging the reputation of the wider profession remains unchanged. Accordingly, the Committee has determined that Mr Hay's fitness to practise remains impaired.

Sanction

The Committee considered whether to impose conditions on Mr Hay's registration. It determined that, given the circumstances of continued non-engagement, it would not be possible to construct conditions that are sufficiently workable, practicable and measurable to protect the public and uphold public confidence in the wider profession. Moreover, there was no evidence to suggest Mr Hay would comply with any conditions imposed.

The Committee next considered whether to extend the current period of suspension of Mr Hay's registration for a further specified period. Mr Hay has continued to fail to engage with the GDC as the statutory regulator of his profession. There is no evidence of remediation undertaken or of any insight into the misconduct found or the important role of these regulatory proceedings.

Accordingly, the Committee directs that it is proportionate and appropriate to extend the suspension upon Mr Hay's registration for a further 12 months. This decision is for the protection of the public and otherwise in the public interest, including the need to maintain confidence in the GDC as the regulator of dental care professionals in the UK.

The suspension shall be reviewed once again prior to its expiry. Once Mr Hay has been suspended for a period of 24 months, it will of course be open to the Committee to suspend his registration indefinitely. The Committee reminds Mr Hay of the helpful directions provided by the previous PCC which provide him with an indication of the scope and type of remedial steps to undertake, should he decide to request revocation of the suspension. This, however, is solely a matter for the next reviewing Committee depending on its consideration of the case before it."

At a review hearing on 2 August 2017 the Chairman announced the determination as follows:

"This is a resumed hearing of the Professional Conduct Committee (PCC) pursuant to section 36Q of the *Dentists Act 1984 (as amended)* (the Act). Mr Hay is neither present nor represented today. Mr Middleton represents the General Dental Council (GDC).

At the outset, Mr Middleton made an application under Rule 54 of *The General Dental Council (Fitness to Practise) Rules Order of Council 2006* (the Rules), to proceed with the hearing in the absence of Mr Hay. The Committee took account of Mr Middleton's submissions in support of the application and accepted the advice of the Legal Adviser.

Decision on service of the Notification of Hearing

The Committee first considered whether Mr Hay had been notified of the hearing in accordance with Rules 28 and 65. It received a bundle of documents containing a copy of the Notification of Hearing letter, dated 3 July 2017 and a Royal Mail 'Track and Trace' receipt confirming that the letter was sent to Mr Hay's registered address by Special Delivery. A copy of the letter was also sent to him 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 Mr Hay's absence. Whilst the Committee took into account that the GDC is not required by the Rules to prove receipt, it noted that the letter was

delivered on 4 July 2017 and signed for in the printed name of 'HAY'. It also noted the confirmation provided by the GDC that the email attachment sent to Mr Hay was downloaded.

On the basis of the information provided, the Committee was satisfied that Mr Hay had been sent notification of the hearing in accordance with the Rules.

Decision on proceeding in the absence of Mr Hay

The Committee next considered whether to exercise its discretion under Rule 54 to proceed with the hearing in the absence of Mr Hay. 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 the expeditious review of Mr Hay's case. It noted that the current suspension order is due to expire on 18 August 2017.

The Committee was satisfied from the information before it that Mr Hay is aware of today's hearing. It took into account that he has not provided a reason for his absence, nor has he requested an adjournment. The Committee noted that whilst Mr Hay briefly attended his initial PCC hearing in July 2015, he withdrew from those proceedings having stated that he had no intention of participating then or in the future. Mr Hay did not attend the last resumed hearing of his case in August 2016. Taking all these factors into account, the Committee was satisfied that Mr Hay's absence on this occasion is voluntary. It decided that it was highly unlikely that an adjournment would secure his attendance on a future date. In all the circumstances, the Committee determined that no meaningful purpose would be served by delaying and that it was fair and in the public interest to proceed with the hearing notwithstanding Mr Hay's absence.

Background to Mr Hay's case

Mr Hay's case was first considered by the PCC at a hearing in July 2015. That Committee found proved allegations relating to Mr Hay's conduct and behaviour. In particular, it was found that Mr Hay had failed to protect patient confidentiality on three occasions; had published confidential and derogatory information in respect of one dental professional and derogatory information in respect of a second; and in respect of these actions, had behaved in an unprofessional and inappropriate manner. It was also found that Mr Hay had failed to cooperate with the GDC in its investigation in respect of his health.

That initial Committee found that Mr Hay had displayed a pattern of deplorable behaviour over a period of time. It determined that the facts found proved amounted to misconduct and also that Mr Hay's fitness to practise was impaired by reason of his misconduct. In its determination on impairment, the Committee in July 2015 highlighted that during his brief appearance at that hearing, Mr Hay had demonstrated attitudinal problems towards his professional duties and the GDC's role as a professional regulatory body.

The Committee in July 2015 decided to suspend Mr Hay's registration for a period of 12 months with an immediate order of suspension. In directing a review of Mr Hay's case prior to the expiry of the 12-month period, that Committee stated the following:

"Mr Hay may wish to present evidence of his remedial steps, any relevant continuing professional development he has achieved, and provide some form of reflective account. Mr Hay will need to provide evidence to satisfy the reviewing Committee that, given similar circumstances, his misconduct will not be repeated."

The first review of Mr Hay's case took place in August 2016. That Committee noted that Mr Hay had only attended the previous hearing in July 2015 for 15 minutes, after which he had withdrawn having declared that the GDC had no legal competence to proceed. The

Committee in 2016 further noted that Mr Hay had not engaged with the GDC since then, despite several communications from the Council attempting to procure his participation in its regulatory proceedings.

Consequently, the Committee in 2016 found that there was nothing before it to establish any positive change in the circumstances that led to the finding of impairment in July 2015. It considered that it was in a similar position to the previous Committee with no evidence to demonstrate any remediation of Mr Hay's misconduct, any apology to the people affected by his misconduct and/or any evidence of his insight. Accordingly, it determined that Mr Hay's fitness to practise remained impaired. That Committee further determined that it was appropriate and proportionate to extend the suspension order on Mr Hay's registration by a period of 12 months. It directed a review of his case shortly before the expiry of the order and in its determination it reminded Mr Hay of the recommendations of the previous Committee in relation to the scope and type of remedial steps he might wish to undertake.

Decision on today's review

Today has been the second resumed hearing in respect of Mr Hay's case. In comprehensively reviewing the case today, the Committee considered all the evidence before it. It took account of the submissions made by Mr Middleton on behalf of the GDC and accepted the advice of the Legal Adviser.

In summary, Mr Middleton submitted that Mr Hay's fitness to practise remains impaired. He highlighted the continued lack of engagement on Mr Hay's part and invited the Committee to consider directing, at the very least, an extension of the current period of suspension by 12 months. Mr Middleton also stated that it was open to this Committee, if it saw fit, to indefinitely suspend Mr Hay's registration.

Impairment

The Committee considered whether Mr Hay's fitness to practise remains currently impaired by reason of his 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 Mr Hay has not engaged meaningfully with the GDC since his brief appearance at the substantive hearing in July 2015. The only contact he has made, as highlighted by Mr Middleton in his submissions, has been to make a complaint about the credibility of the evidence given against him by a witness at the initial hearing. The Committee noted the record of his telephone call to the GDC and his email in this regard on 23 December 2016. There is no evidence to demonstrate to the Committee Mr Hay's acceptance of the findings that have been made against him.

In view of Mr Hay's ongoing lack of engagement with this regulatory process, there is no evidence before this Committee today of any remediation he may have undertaken. Nor is there any evidence to suggest that he has any insight into the concerns highlighted by the two previous Committees. The Committee also noted that there is nothing to indicate that Mr Hay has apologised to the people that were affected by his behaviour. In the absence of such evidence, this Committee has concluded that the concerns raised in 2015 and 2016 remain today and that the risk of Mr Hay repeating his misconduct continues to be high.

In all the circumstances, the Committee is of the view that the same risks to patient confidentiality and public confidence in the dental profession and the regulatory process are ongoing in this case. Accordingly, it has determined that Mr Hay's fitness to practise remains impaired by reason of his misconduct.

Sanction

The Committee next considered what action to take in respect of Mr Hay's registration. It had regard to section 36Q(1) of the Act, which sets out the options available to it.

In reaching its decision, the Committee took into account the '*Guidance for the Practice Committees including Indicative Sanctions Guidance (effective from October 2016)*'. It noted that the purpose of any sanction is not to be punitive, although it may have that effect, but to protect the public and the wider public interest. The Committee applied the principle of proportionality, balancing the public interest with Mr Hay's own interests. It considered the sanction options starting with the least restrictive.

There is no evidence before the Committee to indicate that the serious concerns about Mr Hay's attitude, conduct and behaviour have been addressed. The Committee therefore determined that it would be wholly inappropriate to terminate the current suspension order and take no further action or to allow the order to lapse.

The Committee considered whether to impose a period of conditional registration. It concluded that conditions would not be appropriate or proportionate in this case. Mr Hay has not engaged meaningfully with the GDC since he withdrew from the PCC proceedings in July 2015. Further, the majority of the allegations found proved against him relate to his conduct and behaviour, which, in the Committee's view, would be difficult to address by way of conditions. For these reasons, the Committee decided that conditional registration would not serve to protect the public, nor would such an outcome satisfy the public interest.

The Committee next considered whether to suspend Mr Hay's registration for a further specified period. In doing so, the Committee took into account that an extension of the current suspension order would safeguard patients from any repetition of the kind of misconduct found by the Committee in July 2015. However, this Committee considered the public interest in these matters, in particular the expense that is incurred by continued review hearings and the public's confidence in the regulatory process. Mr Hay has failed to engage meaningfully with any of the fitness to practise hearings to date and there is nothing to indicate any future engagement on his part. There has been no evidence to suggest that he has even acknowledged the serious findings made against him, which has included his apparent failure to apologise to those affected by his behaviour. In these circumstances, the Committee determined that a further determinate extension of the suspension order would serve no meaningful purpose.

In reaching its conclusion, the Committee considered Mr Hay's interests and the severe consequences that an ongoing suspension may have for him. However, it decided that the public interest outweighs Mr Hay's own interests in this particular instance. The evidence of Mr Hay's lack of engagement is clear and the Committee has decided that the onus should now rest with him to contact the GDC if and when he is willing to engage with its processes.

Accordingly, the Committee directs the indefinite suspension of Mr Hay's registration in accordance with section 36Q(1)(d) of the Act. It considers this course of action to be proportionate in all the circumstances. In making this direction, the Committee was satisfied that the criteria for imposing an indefinite suspension are met.

Unless Mr Hay exercises his right of appeal, his registration will be suspended indefinitely, 28 days from the date that notice of this direction is deemed to have been served upon him. In the event that he does exercise his right of appeal, the suspension order currently on his registration will remain in force until the resolution of the appeal. For the avoidance of doubt, Mr Hay's registration continues to be suspended from this point forward.

That concludes this determination.”