

HEARING HEARD IN PUBLIC

PIETRZENIAK, Kinga Anna

Registration No: 256755

PROFESSIONAL CONDUCT COMMITTEE

NOVEMBER 2017 - SEPTEMBER 2018*

Most recent outcome: Suspension extended for 12 months (with a review)

*See page 13 for the latest determination

Kinga Anna PIETRZENIAK, a dental nurse, registered under s36C of the Dentists Act 1984 2015 was summoned to appear before the Professional Conduct Committee on 6 November 2017 for an inquiry into the following charge:

Charge

“That, being a registered dental nurse:

- 1) For a period of time from on or about 10 April 2013 to on or about 5 June 2013, you worked as a dental nurse at My Medyk Dental and Medical Centre whilst not registered with the General Dental Council.
- 2) For a period of time from on or about 1 May 2015 to 11 June 2015, you:
 - a) failed to hold adequate indemnity insurance;
 - b) provided dental services when not holding adequate indemnity insurance.

And that by reason of the facts alleged, your fitness to practice as a dental nurse is impaired by reason of your misconduct.”

As Ms Pietrzeniak did not attend and was not represented at the hearing, the Chairman made the following statement regarding proof of service and proceeding in absence. He addressed this to the Counsel for the GDC.

“Service and proceeding in the absence of Ms Pietrzeniak

Ms Pietrzeniak was neither present nor represented at this Professional Conduct Committee (PCC) hearing of her case. Mr Matthew Corrie of Counsel appeared on behalf of the General Dental Council (GDC). In Ms Pietrzeniak’s absence, the Committee first considered whether notice of this hearing had been served on her in accordance with Rules 13 and 65 of the *General Dental Council (Fitness to Practise) Rules Order of Council 2006* (the Rules).

The Committee took into account all of the information before it. It bore in mind the submissions of Mr Corrie on behalf of the GDC.

The Committee accepted the advice of the Legal Adviser in relation to the matters of service and proceeding in the absence.

The Committee received a copy of the Notification of Hearing, dated 21 September 2017, which was sent to Ms Pietrzeniak’s registered address by way of Special Delivery. The

Committee was satisfied that the letters contained proper notification of today's hearing, including its time, date and location, as well as notification that the Committee has the power to proceed with this PCC hearing in Ms Pietrzeniak's absence. It also contained a copy of the charge against her.

The Committee had sight of a Royal Mail Track and Trace Receipt which confirmed the item was delivered on 22 September 2017 and was signed for in the printed name 'KINGA'.

The Committee was satisfied that the notice of this PCC hearing was served on Ms Pietrzeniak in compliance with the Rules.

The Committee then went on to consider whether to exercise its discretion under Rule 54 to proceed with the hearing in Ms Pietrzeniak's absence.

In considering this, the Committee had regard to the correspondence bundle, provided by Mr Corrie on behalf of the GDC. The correspondence bundle contained various attempts made by the GDC to contact Ms Pietrzeniak to encourage her to engage in these proceedings.

Ms Pietrzeniak had been sent notification of this hearing and the Committee was therefore satisfied that she had been provided with the means to be aware of this hearing. The Committee was informed by Mr Corrie that Ms Pietrzeniak has not responded to the notification of hearing and that there has been little engagement from Ms Pietrzeniak during the GDC's investigation. The Committee had no request from Ms Pietrzeniak for an adjournment of this hearing, on the basis of ill-health or any other reason and it therefore concluded that an adjournment would be unlikely to result in Ms Pietrzeniak's attendance at a future date. On the information before it, the Committee concluded that Ms Pietrzeniak has chosen voluntarily to absent herself from this hearing.

The Committee was fully aware that Ms Pietrzeniak was not represented today but having weighed the interests of Ms Pietrzeniak with those of the GDC and the public interest in an expeditious disposal of this hearing the Committee determined that it was fair to proceed in Ms Pietrzeniak's absence.

Preliminary matters – Rule 18 application

On behalf of the GDC and pursuant to Rule 18 of 'the Rules', Mr Corrie made an application to amend the charge. He informed the Committee that currently it is alleged that Ms Pietrzeniak practised as a dental nurse whilst not being registered with the GDC from on or around 10 April 2013 to on or around 5 June 2013. He submitted that there is evidence before the Committee to suggest that Ms Pietrzeniak was practising as a dental nurse for an unknown period of time between 10 April 2013 to November 2014. He submitted that the charge should be amended to reflect the accurate period of time as suggested by the evidence in this case. He submitted that if the Committee did not accede to the application then there could be a serious risk of prejudice to the GDC and to the wider public interest as the gravity of the alleged conduct could not be properly pursued.

Mr Corrie informed the Committee that Ms Pietrzeniak was informed of the proposed amendment this morning and that so far there had been no response from Ms Pietrzeniak. He submitted that Ms Pietrzeniak has continually not engaged in these proceedings and has had the opportunity to make any representations on the documentation relied on by the GDC, which she has not.

In considering this application, the Committee took into account all the information before it. The Committee accepted the advice of the Legal Adviser.

The Committee bore in mind fairness to both parties when considering this application. It also bore in mind the advice of the Legal Adviser that the later the stage in the proceedings when the amendment is sought as well as the more substantial the proposed amendment the more likely there could be injustice to a registrant.

The Committee found it unsatisfactory that the amendment was not proposed at a much earlier stage in the proceedings so as to give Ms Pietrzeniak, if she choose to take it, a fair opportunity to defend the charges against her. The Committee noted that this application has been made at a very late stage in these proceedings, namely the morning of the hearing. It also noted that notification of the proposed amendment has only been sent to Ms Pietrzeniak this morning and therefore she would not have had the opportunity to consider the amendment, make representations or seek legal advice on the amendment and the potential consequences, should she wish to do so.

The Committee considered that the proposed amendment substantially changes the period in which one of the allegations is alleged. The proposal is to extend the period alleged from 3 months to 17 months. It bore in mind that if the allegations were to be found proved, this amendment could have an impact on the severity of the charges and the outcome in this case. It concluded that the proposed amendment could not be made without potential injustice to Ms Pietrzeniak. Accordingly, the Committee did not accede to Mr Corrie's application to amend the charge."

On 7 November 2017 Chairman made the following statement regarding the finding of facts:

"Preliminary matters - Rule 57 application

Following the Committee's determination on the Rule 54 and Rule 18 applications, Mr Corrie made a further application pursuant to Rule 57 of 'the Rules'. He submitted a copy of the insurance policy for the practice at which Ms Pietrzeniak worked should have been included with the material provided to the Committee. He submitted that Ms Pietrzeniak has been provided with a copy of this document and has made no representations. He submitted that the document is relevant to the Committee's consideration of charge 2. He submitted that it would be in the interests of justice to accede to his application and admit the document.

The Committee accepted the advice of the Legal Adviser.

The Committee concluded that the proposed document is helpful and relevant to its consideration of charge 2. It determined that it would be in the interests of justice for this document to be admitted as evidence. Accordingly, the Committee acceded to Mr Corrie's application.

Background to the case and summary of allegations

The allegations against Ms Pietrzeniak are that for the period of time from on or about 10 April 2013 to on or about 5 June 2013 she worked as a dental nurse whilst not being registered with the GDC. It is also alleged that for a period of time from on or about 1 May 2015 to 11 June 2015, Ms Pietrzeniak failed to hold adequate indemnity insurance and provided dental services whilst not holding adequate indemnity insurance.

Evidence

The Committee heard oral evidence from Witness 2. It considered that Witness 2 provided her evidence in a reliable, fair and credible manner.

The Committee was also provided with documentary material in relation to the heads of charge, including: a witness statement from a Casework Manager at the GDC, a witness statement from Witness 2, Ms Pietrzeniak's application form for registration with the GDC, an assessment of learning outcome form for dental nurses, correspondence from the previous and current Practice Manager at the practice where Ms Pietrzeniak worked, an insurance policy for the practice at which Ms Pietrzeniak previously worked, Ms Pietrzeniak's response to the allegations at the Investigating Committee (IC) stage, Ms Pietrzeniak indemnity insurance documents and Ms Pietrzeniak's certificate of registration.

Committee's findings of fact

The Committee took into account all the information before it. It considered the submissions made by Mr Corrie on behalf of the GDC.

The Committee accepted the advice of the Legal Adviser.

The Committee reminded itself that the burden of proof lies with the GDC, and considered the heads of charge against the civil standard of proof, that is to say, on the balance of probabilities. In accordance with that advice it has considered each head of charge separately.

The Committee's findings of fact in relation to each head of charge are as follows:

1.	<p><i>For a period of time from on or about 10 April 2013 to on or about 5 June 2013, you worked as a dental nurse at My Medyk Dental and Medical Centre whilst not registered with the General Dental Council.</i></p> <p>Found proved.</p> <p>The Committee had before it a letter from the GDC which confirmed that Ms Pietrzeniak was first registered as a dental nurse with the GDC on 1 May 2015.</p> <p>The Committee noted that in the documentation before it, Ms Pietrzeniak denies that she was working as a dental nurse during the alleged period.</p> <p>The Committee heard oral evidence from Witness 2 who initially had worked at the Practice from May 2011 to November 2014. The Committee found Witness 2 to be credible. She gave clear and helpful evidence. Witness 2 stated that she worked directly with Ms Pietrzeniak as a dental nurse. Witness 2 stated that she was unable to recall the exact date when Ms Pietrzeniak started at the practice but confirmed that from the first day when Ms Pietrzeniak started she was working as a dental nurse. Witness 2 further stated that Ms Pietrzeniak was providing chair side assistance as a dental nurse to her and other dentists at the practice during the alleged period.</p> <p>Taking all this into account the Committee concluded that it was more likely than not that for the period of time on or about 10 April 2013 to on or about 5 June 2013, Ms Pietrzeniak worked as a dental nurse at My Medyk Dental and Medical Centre. It noted that she was not registered with the GDC during this period and it therefore found this charge proved.</p>
2.	<p><i>For a period of time from on or about 1 May 2015 to 11 June 2015, you:</i></p>
2(a).	<p><i>failed to hold adequate indemnity insurance;</i></p> <p>Found proved.</p>

	<p>The Committee noted Standard 1.8 of the GDC’s Standards for the Dental Team 2013:</p> <p><i>‘Standard 1.8 Have appropriate arrangements in place for patients to seek compensation if they suffer harm’.</i></p> <p>The Committee also took into account the applicable GDC’s guidance on indemnity which was effective from 30 September 2013. The guidance states ‘The only situation where it would be acceptable for you not to have any cover would be if the risk of a patient making a claim against you is absolutely zero...’.</p> <p>The Committee noted that in Ms Pietrzeniak’s first response to the allegations she stated that she was only working as a dental nurse during ‘...01/05/2015 to 05/09/2015 at My Medyk’.</p> <p>In a subsequent response to the IC Ms Pietrzeniak stated that she had accepted an offer from My Medyk to work as a dental nurse but that she did not perform any dental nurse duties until her indemnity insurance was active on 12 June 2015. She further states that ‘the only time I was working in the United Kingdom as a dental nurse was between 01/05/2015 to 01/10/2015 at My Medyk’.</p> <p>The Committee considered there to be inherent inconsistencies in Ms Pietrzeniak’s responses to the allegations.</p> <p>The Committee also had sight of an email, dated 9 February 2016, from the Practice Manager of My Medyk at the time. In the email he stated that Ms Pietrzeniak ‘accepted a position as a dental nurse on 3 June 2015 and was self-employed providing services until 1 September 2015’. He further stated that as far as he was aware Ms Pietrzeniak ‘...was working as a dental nurse from 1 May 2015 at My Medyk Dental and Medical Centre (for the previous owner) and then accepted a position as a dental nurse on 3 June 2015 for My Medyk Dental and Medical Centre (for the new owner) and was working until 1 September 2015...’.</p> <p>The Committee concluded that given the inconsistencies in Ms Pietrzeniak’s responses to the allegations and the email from the Practice Manager, as of 9 February 2016, it is more likely than not that for the period of 1 May 2015 to 11 June 2015, Ms Pietrzeniak was providing services as a dental nurse, therefore requiring indemnity insurance, which she did not have till 12 June 2015. Accordingly, the Committee found this charge proved.</p>
2(b).	<p><i>provided dental services when not holding adequate indemnity insurance.</i></p> <p>Found proved.</p> <p>The Committee found this charge proved for the same reasons as outlined in charge 2.a.</p>

The hearing will now proceed to stage 2.”

On 7 November 2017 the Chairman announced the determination as follows:

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

Submissions

In accordance with Rule 20 (1) (a) Mr Corrie informed the Committee that Ms Pietrzeniak does not have any previous fitness to practise history.

In his submissions, Mr Corrie, on behalf of the GDC, 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. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed...'. He also referred the Committee to the cases of *Remedy UK Limited v GMC* [2010] EWHC 1245 (Admin) and *Nandi v General Medical Council* [2004] EWHC 2317 (Admin). He outlined the specific issues identified in line with the standards, which in his submission, have been breached.

Mr Corrie submitted that Ms Pietrzeniak's conduct in working as a dental nurse whilst not being registered with the GDC for a period of nearly two months is serious as she would not have been regulated during this period which could have resulted in harm. In respect of Ms Pietrzeniak's conduct in failing to hold adequate indemnity insurance for a period of six weeks and providing dental services during this period, Mr Corrie submitted this is serious because patients were not afforded the necessary protections by such arrangements. He submitted that the facts found proved are serious and do amount to misconduct.

Mr Corrie next addressed the issue of current impairment. He referred the Committee to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin). He addressed the Committee on the factors that it must consider, including Ms Pietrzeniak's level of insight, whether the failings are remediable and whether they have been remedied. He submitted that Ms Pietrzeniak has not engaged in this process and that because of this the Committee is unaware if she has obtained retrospective cover in respect of her indemnity. He submitted that there is no evidence before this Committee of any remediation or insight. Further, he submitted that the Committee may consider there to be a risk of repetition in this case.

Mr Corrie also addressed the Committee on the need to have regard to protecting the public and the wider public interest. This includes the need to declare and maintain proper standards and maintain public confidence in the profession and in the GDC as a regulatory body. He submitted that Ms Pietrzeniak's fitness to practise is currently impaired.

Mr Corrie then addressed the Committee on the matter of sanction. He referred it to the GDC's Guidance for the Practice Committees, including Indicative Sanctions Guidance (October 2016) (the GDC's sanctions guidance). He submitted that the appropriate and proportionate sanction is one of erasure. He submitted that practising as a dental nurse whilst not being registered and then once registered to practice without indemnity insurance is conduct that is fundamentally incompatible with being a registered dental care professional.

Committee's considerations

The Committee carefully considered all of the information before it. It bore in mind the submissions from Mr Corrie on behalf of the GDC.

The Committee accepted the advice of the Legal Adviser.

In its deliberations, the Committee had regard to 'the GDC's sanctions guidance'.

Decision on misconduct

The Committee first considered whether the facts found proved amount to misconduct. In considering the matter, the Committee exercised its own independent judgement. The Committee reminded itself of the extent and nature of the findings made against Ms Pietrzeniak. The Committee's reasons for its findings have been set out in full in its determination on the facts.

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

The Committee concluded that Ms Pietrzeniak's conduct was in breach of the Standards for the Dental Team (2013) as set out below:

- 1.8 Have appropriate arrangements in place for patients to seek compensation if they suffer harm.
 - 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).

The Committee appreciated that the above breaches do not automatically result in a finding of misconduct. However, it considered the failings in this case to be serious, fundamental to the integrity of the profession and capable of seriously undermining public confidence in the profession.

The Committee found that Ms Pietrzeniak failed to hold any indemnity cover whilst providing dental services. The Committee considered that her actions presented a potential risk of harm to patients because of the absence of the necessary protections afforded to patients by such arrangements. It also considered that Ms Pietrzeniak's conduct in practising as a dental nurse whilst not being registered with the GDC presented a potential risk of harm to patients as well as having the potential to cause damage to the reputation of the profession.

Taking all this into account, the Committee concluded that the facts found proved against Ms Pietrzeniak are serious and amount to misconduct.

Decision on impairment

The Committee next considered whether Ms Pietrzeniak's fitness to practise is currently impaired by reason of misconduct. In reaching its decision on impairment, the Committee exercised its own independent judgement. It bore in mind that its duty was to consider the public interest, which includes the protection of patients, the maintenance of public confidence in the profession and the declaring and upholding of proper standards of conduct and behaviour.

The Committee noted that there was no evidence that there had been actual harm to patients in this case. It also noted Ms Pietrzeniak's failings occurred over a short period of time. However, in the absence of indemnity cover there was the risk that patients may not be able to claim compensation. There is also a potential risk to patients for the period where Ms Pietrzeniak was practising unregistered as she would not have been regulated. The Committee considered that Ms Pietrzeniak's failings were capable of being remedied. It noted that she did obtain registration in 2015 and that she is now registered. In relation to indemnity insurance, the Committee has no evidence to suggest that Ms Pietrzeniak has

obtained retrospective cover, which it considered would have gone some way to remediating her conduct. It had no evidence that Ms Pietrzeniak currently has indemnity insurance.

In considering Ms Pietrzeniak's level of insight, the Committee had little before it to demonstrate that she understands the effect her failings had on patients or the reputation of the profession. The Committee has no evidence of remorse from Ms Pietrzeniak who has failed to engage at all with these proceedings. It noted that in Ms Pietrzeniak's response to the allegations she does not accept that it is her responsibility to ensure she holds adequate indemnity insurance and instead attempts to pass the blame onto others. It also noted that Ms Pietrzeniak has no previous fitness to practise history.

The Committee concluded that, in light of the lack of evidence of any remediation, insight or remorse from Ms Pietrzeniak, there is a risk of repetition present in this case.

The Committee bore in mind that its primary function is to protect patients. It also took into account the wider public interest. The Committee concluded that to make a finding of no current impairment would send a message to the public and the profession that Ms Pietrzeniak's conduct was acceptable. It concluded that trust and confidence in the profession and in the GDC as the regulator would be seriously undermined if a finding of impairment was not made. It considered Ms Pietrzeniak's conduct to be a serious departure from the expected standard of a registered dental care professional.

Taking all this into account, the Committee determined that Ms Pietrzeniak's fitness to practise is currently impaired.

Decision on sanction

Having determined that Ms Pietrzeniak's fitness to practise is currently impaired by reason of misconduct, the Committee considered what sanction, if any, to impose on her registration. It reminded itself that the purpose of a sanction is not to be punitive, but to protect patients and the wider public interest.

In reaching its decision the Committee again took into account 'the GDC's sanctions guidance'. The Committee considered the range of sanctions available to it, starting with the least restrictive. It applied the principle of proportionality, balancing the public interest with Ms Pietrzeniak's own interests.

In light of its findings, the Committee determined that despite her previous good character it would be wholly inappropriate to conclude this case without taking any action in respect of Ms Pietrzeniak's registration, given the serious departures from the standard expected of a registered dental care professional and the risk of repetition identified.

The Committee reached the same conclusion in respect of a reprimand. Whilst the Committee noted that Ms Pietrzeniak's failings occurred over a relatively short period of time, there is little, if any, evidence before this Committee by way of remediation, insight or remorse. Given this and the serious nature of the conduct that it has found, raising as it does significant concerns about public trust and confidence, as well as the standing and reputation of the profession and the regulatory process, means that some form of restriction is required.

The Committee next considered whether a period of conditional registration would be appropriate. The Committee determined that, given the serious findings that it has made in respect of allegations which are not clinical in nature, there are no conditions that could be formulated which would prove to be workable, measurable or enforceable, or which would

adequately address the public interest concerns engaged in this case. It noted that the failings in this case relate to requirements that Ms Pietrzeniak should have already been following. It also noted that by their nature conditions of practice require a strong degree of engagement from the registrant which is not present in this case. Given the lack of insight the Committee could not be confident that Ms Pietrzeniak would abide by any conditions imposed.

The Committee next considered whether a period of suspension would be appropriate and proportionate in this case. Whilst the Committee noted that Ms Pietrzeniak does not have any previous fitness to practise history and that the failings occurred over a relatively short period of time, they represent serious departures from the expected standard of a registered dental care professional. It concluded that given the lack of remediation, insight and remorse, no lesser sanction than one of suspension would be sufficient to protect patients' interests or the wider public interest.

The Committee did consider erasure but concluded that it would be disproportionate in the circumstances of this case. It considered that a period of suspension would be the appropriate and proportionate sanction in the circumstances of this case.

The Committee determined that Ms Pietrzeniak's registration should be suspended for a period of six months. It considered that this period of time is necessary in view of the gravity of the matters identified in this case and to mark the importance of maintaining the standards expected of a registered dental care professional and to send a message to the profession that Ms Pietrzeniak's conduct is not acceptable. It also concluded that this period of time would be sufficient to provide Ms Pietrzeniak with an opportunity to engage in this process and to show any evidence of remediation, insight and remorse.

The Committee was aware that the effect of this order is that Ms Pietrzeniak will be prevented from working as a registered dental nurse and that this could result in financial hardship. However, in applying the principle of proportionality, the Committee determined that Ms Pietrzeniak's interests in this regard were outweighed by that of patients' interests and the wider public interest.

The Committee further directs that Ms Pietrzeniak's suspension order should be reviewed prior to its expiry.

Accordingly, the Committee determined that Ms Pietrzeniak's registration should be suspended for a period of six months with a review.

The Committee now invites submissions on whether an immediate order should be imposed."

"Having directed that Ms Pietrzeniak be suspended from the register, the Committee considered whether to impose an order for her immediate suspension in accordance with section 36U of the Dentists Act 1984 (as amended).

The Committee took into account the submissions of Mr Corrie on behalf of the GDC. It accepted the advice of the Legal Adviser.

In its deliberations, the Committee had regard to 'the GDC's sanctions guidance'.

The Committee bore in mind its reasons for making an order suspending Ms Pietrzeniak's registration. For those same reasons the Committee determined that an immediate order

was required in order to protect the public and to uphold and maintain public confidence in the profession and the GDC as its regulator. The Committee was satisfied that it would be inconsistent with its reasons as to why a suspension order was the only appropriate and proportionate sanction in this case not to make an immediate order.

If, at the end of the appeal period of 28 days, Ms Pietrzeniak has not lodged an appeal, this immediate order will lapse and will be replaced by the substantive direction of suspension for a period of six months. If Ms Pietrzeniak does lodge an appeal, this immediate order will continue in effect until that appeal is determined.

That concludes this determination.”

At a review hearing on 18 May 2018 the Chairman announced the determination as follows:

“This is the resumed Professional Conduct Committee (PCC) hearing of Ms Pietrzeniak’s case. Ms Pietrzeniak is neither present nor represented at these proceedings. Ms Holmes is the Case Presenter for the General Dental Council (GDC).

Service and proceeding in the absence of Ms Pietrzeniak

In Ms Pietrzeniak’s absence, the Committee first considered whether the Notice of Resumed Hearing had been served on Ms Pietrzeniak in accordance with Rule 28 of the General Dental Council (Fitness to Practise) (GDC) Rules Order of Council 2006 (the Rules). The Committee has accepted the advice of the Legal Adviser. The Committee saw a copy of the Notice of Resumed Hearing letter dated 19 April 2018 which was sent to Ms Pietrzeniak’s registered address by special delivery. The letter confirms the date, time and venue of today’s hearing as well as the grounds for holding this resumed hearing. The Royal Mail track and trace receipt confirms that the item was delivered to Ms Pietrzeniak’s registered address on 21 April 2018 and was signed for on that day. The Committee is satisfied the letter was sent to Ms Pietrzeniak’s registered address more than 28 days in advance of today’s hearing, in accordance with Rule 28. In addition, the Committee had regard to a copy of an email dated 3 May 2018 from Ms Pietrzeniak to the GDC and addressed to this Committee. Although Ms Pietrzeniak does not specifically refer to today’s hearing, it is clear from the email that she wishes the Committee to have regard to her observations. Having regard to all of these documents, the Committee is satisfied that the GDC has complied with the requirements of service in accordance with Rule 28.

The Committee then went on to consider whether to proceed in the absence of Ms Pietrzeniak, in accordance with Rule 54. Ms Holmes applied for the hearing to proceed in Ms Pietrzeniak’s absence. She referred to the documentation provided which shows that the GDC had served the Notice of Resumed Hearing on Ms Pietrzeniak in accordance with its statutory provisions, as well as her email dated 3 May 2018 addressed to this Committee in which she sets out her observations. Ms Holmes also said that there is a clear public interest in proceeding with today’s review hearing given that the current order of suspension expires on 7 June 2018.

The Committee has considered the submissions made. It has borne in mind that its discretion to proceed in the absence of the Registrant must be exercised with the utmost care and caution. The Committee has accepted the advice of the Legal Adviser. The Committee is satisfied that GDC has served the Notice of Resumed Hearing on Ms Pietrzeniak and has drawn the inference that she is aware of today’s hearing, given that she has provided written representations addressed to this Committee dated 3 May 2018, which

post-date the receipt of that Notice. The Committee notes the absence of any request for an adjournment in Ms Pietrzeniak's email dated 3 May 2018 or indeed any indication as to whether she will be attending the hearing. In the Committee's view, Ms Pietrzeniak has voluntarily absented herself from today's hearing. Further, there is nothing before the Committee today to suggest that Ms Pietrzeniak might attend the hearing on a future occasion, were it to adjourn. Indeed, she did not attend the initial PCC hearing of her case in November 2017. In addition, the Committee considered that there is a clear public interest in reviewing Ms Pietrzeniak's case before the expiry of the current order. Accordingly, the Committee determined that it is fair to proceed with today's review hearing in the absence of Ms Pietrzeniak.

Background

This is a resumed hearing of Ms Pietrzeniak's case, which is being convened pursuant to Section 36(Q) of the Dentists Act 1984. Ms Pietrzeniak's case was considered by the PCC at a hearing in November 2017. The PCC found proved that for a period of time from on or about 10 April 2013 to on or about 5 June 2013, Ms Pietrzeniak worked as a dental nurse at a dental practice and medical centre whilst not registered with the GDC. Ms Pietrzeniak first registered as a dental nurse with the GDC on 1 May 2015. The PCC also found proved that from on or about 1 May 2015 to 11 June 2015, Ms Pietrzeniak was providing services as a dental nurse and therefore required indemnity insurance. During that time Ms Pietrzeniak failed to hold adequate indemnity insurance. She did not have indemnity insurance until 12 June 2015.

The PCC took a serious view of the findings against Ms Pietrzeniak. It concluded that she had breached the following "Standards for the Dental Team" (September 2013):

- 1.8 Have appropriate arrangements in place for patients to seek compensation if they suffer harm.
 - 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).

The PCC considered that Ms Pietrzeniak's failure to hold indemnity cover whilst providing dental services presented a potential risk of harm to patients because of the absence of the necessary protections afforded to patients by such arrangements. It also considered that Ms Pietrzeniak's conduct in practising as a dental nurse whilst not being registered with the GDC presented a potential risk of harm to patients as well as having the potential to cause damage to the reputation of the profession. Accordingly, the PCC concluded that the facts found proved against Ms Pietrzeniak are serious and amount to misconduct.

The PCC considered that Ms Pietrzeniak's failings were capable of being remedied. It noted that she obtained registration in 2015 and was currently registered. In relation to indemnity insurance, the PCC had no evidence to suggest that Ms Pietrzeniak has obtained retrospective or current cover, which it considered would have gone some way to remediating her conduct. The PCC was also concerned that it had little information before it to satisfy it that Ms Pietrzeniak understood the effect that her failings had on patients or the reputation of the profession. Further, there was no evidence of remorse. In these circumstances, the Committee considered the risk of repetition remained. It determined that Ms Pietrzeniak's fitness to practise was impaired.

The PCC directed that Ms Pietrzeniak's registration be subject to a suspension order. It concluded that given the lack of remediation, insight and remorse, no lesser sanction than one of suspension would be sufficient to protect patients' interests or the wider public interest. The PCC also considered that an order should be for six months in view of the gravity of the matters identified in this case and to mark the importance of maintaining the standards expected of a registered dental care professional and to send a message to the profession that Ms Pietrzeniak's conduct is not acceptable. It also concluded that this period of time would be sufficient to provide Ms Pietrzeniak with an opportunity to engage in this process and for her to show any evidence of remediation, insight and remorse. The PCC also directed a review of the order of suspension prior to its expiry.

Today's review

At today's hearing this Committee has comprehensively reviewed the current order. In so doing, the Committee has had regard to the GDC prosecution bundle, which contains copies of letters from the GDC's Case Review Team to Ms Pietrzeniak, reminding her of the recommendations made by the PCC in November 2017. Ms Pietrzeniak had not replied to the GDC's repeated requests for information until 3 May 2018, when she sent the GDC an email. In that email Ms Pietrzeniak apologised for the matters in relation to her working as a dental nurse when not registered with the GDC and her failure to hold adequate indemnity insurance while providing dental services. She also explained that it was not her intention to put patients at risk and that she believed that the situation arose as a result of her "poor command of English at that time and wrong advice from [her] employer." She reiterated her apologies and advised that despite being on maternity leave, she has kept her CPD up to date and hopes to return to work as soon as she is able to.

Ms Holmes submitted that Ms Pietrzeniak's fitness to practise remains impaired. She referred to Ms Pietrzeniak's limited engagement with the GDC, her limited, though developing, insight and her remorse into the matters identified by the PCC, as well as the absence of any remediation in respect of the holding of indemnity insurance. She invited the Committee to direct that Ms Pietrzeniak's registration be suspended for a period of 12 months.

The Committee has considered carefully the submissions made. Throughout its deliberations, it has borne in mind that its primary duty is to address the public interest, which includes the protection of patients, the maintenance of public confidence in the profession and in the regulatory process, and the declaring and upholding of proper standards of conduct and behaviour. The Committee has accepted the advice of the Legal Adviser.

The Committee notes from the information contained in Ms Pietrzeniak's email dated 3 May 2018 that she has expressed some remorse and acceptance of wrong-doing into the matters found proved by the PCC in November 2017. However, the Committee considers that she does not appear to have any real understanding as to the risks posed to patients by not holding adequate indemnity insurance or her responsibilities as a registered dental nurse in ensuring that such arrangements are in place when treating patients or the impact of her failure to do so on the wider public confidence in the profession. It also considers that Ms Pietrzeniak has, in part, blamed her employers for the situation, albeit there is some acknowledgement of fault on her side. The Committee considers that Ms Pietrzeniak is starting to show some insight into the matters found proved by the PCC, but that her insight is not yet complete. The Committee has no information as to whether Ms Pietrzeniak currently holds adequate indemnity insurance. Given these factors, the Committee considers

that Ms Pietrzeniak remains a risk to the public. Accordingly, the Committee has determined that Ms Pietrzeniak's fitness to practise is currently impaired.

The Committee next considered what direction to give, bearing in mind its powers in accordance with Section 36Q of the Dentists Act 1984. In so doing, it has had regard to the GDC's "Guidance for the Practice Committees including Indicative Sanctions Guidance" (October 2016).

In the Committee's judgement, Ms Pietrzeniak has not provided sufficient evidence to demonstrate that she has remediated the concerns identified by the PCC in November 2017, despite being given the opportunity to do so. Moreover, the Committee has no information as to whether Ms Pietrzeniak currently holds adequate indemnity insurance. In the absence of such information, the Committee has concluded that terminating the current suspension order would not be appropriate or sufficient for the protection of the public.

The Committee considered whether to replace the current suspension order with one of conditions. In so doing, it has had regard to the fact that this case relates to Ms Pietrzeniak's previous failure to have indemnity arrangements in place. Dental nurses are required to indemnify in order to practice and therefore a condition requiring this is superfluous. It has also had regard to Ms Pietrzeniak's limited engagement with her regulator over the last six months, which effectively amounts to one email sent shortly before today's hearing. In these circumstances, the Committee is not satisfied that conditions are workable or appropriate for the protection of the public.

The Committee therefore directs that the current period of suspension on Ms Pietrzeniak's registration be extended for a period of 4 months. While noting the GDC's invitation that the order should be extended for the maximum period of 12 months, the Committee has had regard to the fact that the failings identified in this case primarily concern a failure to hold adequate indemnity insurance for a period of approximately six weeks in 2015. It considers that 4 months is sufficient time for Ms Pietrzeniak to address this issue. It also considers that a longer period of suspension would be unduly punitive, given the nature of the findings against Ms Pietrzeniak.

The order of suspension will be reviewed shortly prior to the end of the 4 month period. That Committee will consider what action it should take in relation to Ms Pietrzeniak's registration. It recommends that a Committee reviewing Ms Pietrzeniak's case may be assisted by

- hearing from her directly as to her understanding as to why it is important to have adequate indemnity insurance. This could be provided either by attending in person, or participating by telephone/Skype or alternatively, providing this in writing.
- evidence that Ms Pietrzeniak currently has adequate indemnity insurance or has such arrangements in place prior to her return to dental nursing, and that her employers are aware of these arrangements. Alternatively, if she does not need indemnity, then a statement to that effect.

That concludes today's case."

At a review hearing on 13 September 2018 the Chairman announced the determination as follows:

"Ms Pietrzeniak is neither present nor represented at this resumed hearing of the Professional Conduct Committee (PCC). Mr Ahmed is the Case Presenter for the General Dental Council (GDC).

At the outset, Mr Ahmed made an application under Rule 54 of the GDC (Fitness to Practise) Rules 2006 Order of Council (the Rules), to proceed with the hearing notwithstanding Ms Pietrzeniak's absence. The Committee took account of Mr Ahmed's submissions in respect of the application and had regard to the supporting documentation provided. It accepted the advice of the Legal Adviser.

Decision on service of the Notification of Hearing

The Committee considered whether notice of the hearing had been served on Ms Pietrzeniak in accordance with Rules 28 and 65 of the Rules. It received a bundle of documents containing a copy of the Notification of Hearing letter, dated 14 August 2018, and a Royal Mail 'Track and Trace' receipt confirming that the letter was sent to Ms Pietrzeniak's registered address by Special Delivery. A copy of the letter was also sent to her by email.

The Committee was satisfied that the letter contained proper notification of today's review hearing, including its time, date and venue, as well as notification that the Committee had the power to proceed with the hearing in Ms Pietrzeniak's absence. On the basis of the information provided, the Committee was satisfied that notice of the hearing had been served on Ms Pietrzeniak in accordance with the Rules.

Decision on proceeding with the hearing in the absence of Ms Pietrzeniak

The Committee next considered whether to exercise its discretion under Rule 54 of the Rules to proceed with the hearing in the absence of Ms Pietrzeniak. It approached this issue with the utmost care and caution. The Committee took into account the factors to be considered in reaching its decision as set out in the case of *R v Jones [2003] 1 AC 1HL*. It remained mindful of the need to be fair to both Ms Pietrzeniak and the GDC, and it had regard to the public interest in the expeditious review of the suspension order in place on Ms Pietrzeniak's registration.

The Committee noted from the Notification of Hearing letter of 14 August 2018 that Ms Pietrzeniak was asked to confirm by 22 August 2018, whether she would be attending today's hearing and/or whether she would be represented. The information before the Committee indicates that there has been no response from Ms Pietrzeniak. She has not provided a reason for her non-attendance, either in person or remotely, nor has she requested an adjournment. The Committee therefore concluded that Ms Pietrzeniak had voluntarily absented herself from today's proceedings. It decided that an adjournment was unlikely to secure her attendance on a future date. The Committee also noted that Ms Pietrzeniak did not attend and was not represented at the initial PCC hearing of her case in November 2017. Although Ms Pietrzeniak sent an email prior to the review hearing, she did not attend. Ms Pietrzeniak has not engaged since the last review hearing in May 2018.

In all the circumstances, the Committee determined that it was fair for both parties and in the public interest to proceed with the hearing in the absence of Ms Pietrzeniak and/or any representative on her behalf.

Background to Ms Pietrzeniak's case

Ms Pietrzeniak's case was first considered by the PCC at a hearing in November 2017. The allegations that were found proved against Ms Pietrzeniak were that for the period of time from on or about 10 April 2013 to on or about 5 June 2013 she worked as a dental nurse whilst not being registered with the GDC. It is also found that for a period of time from on or

about 1 May 2015 to 11 June 2015, Ms Pietrzeniak failed to hold adequate indemnity insurance and provided dental services whilst not holding adequate indemnity insurance. That Committee further determined:

“The Committee concluded that Ms Pietrzeniak’s conduct was in breach of the Standards for the Dental Team (2013) as set out below:

1.8 Have appropriate arrangements in place for patients to seek compensation if they suffer harm.

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).

The Committee appreciated that the above breaches do not automatically result in a finding of misconduct. However, it considered the failings in this case to be serious, fundamental to the integrity of the profession and capable of seriously undermining public confidence in the profession.

The Committee found that Ms Pietrzeniak failed to hold any indemnity cover whilst providing dental services. The Committee considered that her actions presented a potential risk of harm to patients because of the absence of the necessary protections afforded to patients by such arrangements. It also considered that Ms Pietrzeniak’s conduct in practising as a dental nurse whilst not being registered with the GDC presented a potential risk of harm to patients as well as having the potential to cause damage to the reputation of the profession.

Taking all this into account, the Committee concluded that the facts found proved against Ms Pietrzeniak are serious and amount to misconduct.”

That Committee found that the facts found proved against Ms Pietrzeniak amounted to misconduct and it determined that her fitness to practise was impaired by reason of that misconduct. In its determination on impairment, that Committee stated as follows:

“The Committee noted that there was no evidence that there had been actual harm to patients in this case. It also noted Ms Pietrzeniak’s failings occurred over a short period of time. However, in the absence of indemnity cover there was the risk that patients may not be able to claim compensation. There is also a potential risk to patients for the period where Ms Pietrzeniak was practising unregistered as she would not have been regulated. The Committee considered that Ms Pietrzeniak’s failings were capable of being remedied. It noted that she did obtain registration in 2015 and that she is now registered. In relation to indemnity insurance, the Committee has no evidence to suggest that Ms Pietrzeniak has obtained retrospective cover, which it considered would have gone some way to remediating her conduct. It had no evidence that Ms Pietrzeniak currently has indemnity insurance.

In considering Ms Pietrzeniak’s level of insight, the Committee had little before it to demonstrate that she understands the effect her failings had on patients or the reputation of the profession. The Committee has no evidence of remorse from Ms Pietrzeniak who has failed to engage at all with these proceedings. It noted that in Ms Pietrzeniak’s response to the allegations she does not accept that it is her responsibility to ensure she holds adequate indemnity insurance and instead attempts

to pass the blame onto others. It also noted that Ms Pietrzeniak has no previous fitness to practise history.

The Committee concluded that, in light of the lack of evidence of any remediation, insight or remorse from Ms Pietrzeniak, there is a risk of repetition present in this case.”

That Committee also took into account the wider public interest and it concluded that to make a finding of no current impairment would send a message to the public and the profession that Ms Pietrzeniak’s conduct was acceptable.

The Committee in November 2017 determined to suspend Ms Pietrzeniak’s registration for a period of 6 months and imposed an immediate order of suspension. It directed a review of her case prior to the end of the 6 month period. In doing so, it stated that:

“This period of time would be sufficient to provide Ms Pietrzeniak with an opportunity to engage in this process and to show any evidence of remediation, insight and remorse.”

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The Committee had regard to Ms Pietrzeniak’s email dated 3 May 2018, in which she demonstrated some remorse and acceptance of her misconduct. However, the Committee was concerned with Ms Pietrzeniak’s level of insight and understanding as to the risks posed. The Committee also had no information as to whether Ms Pietrzeniak held adequate indemnity insurance or had made attempts to obtain it. The Committee found that Ms Pietrzeniak’s fitness to practise remained impaired. It extended the order of suspension for a further period of 4 months with a review to take place prior to the expiry of the order. In doing so, it stated that:

“A Committee reviewing Ms Pietrzeniak’s case may be assisted by:

- *hearing from her directly as to her understanding as to why it is important to have adequate indemnity insurance. This could be provided either by attending in person, or participating by telephone/Skype or alternatively, providing this in writing.*
- *evidence that Ms Pietrzeniak currently has adequate indemnity insurance or has such arrangements in place prior to her return to dental nursing, and that her employers are aware of these arrangements. Alternatively, if she does not need indemnity, then a statement to that effect.”*

Today’s review

In comprehensively reviewing Ms Pietrzeniak’s case today, the Committee considered all the evidence before it. It took account of the submissions made by Mr Ahmed on behalf of the GDC and accepted the advice of the Legal Adviser. No material or written submissions were received from, or on behalf of, Ms Pietrzeniak.

Mr Ahmed submitted that there is no evidence that Ms Pietrzeniak has breached her current order of suspension. He stated, however, that to date, there is no evidence that Ms Pietrzeniak has remedied any of the failings identified by the previous Committee, or any evidence of insight and remorse. Mr Ahmed submitted that Ms Pietrzeniak has not engaged at all with the GDC, save for her email of 3 May 2018.

In relation to the matters before the Committee today, Mr Ahmed’s submission was that the position is no different than it was at the time of Ms Pietrzeniak’s PCC review hearing in May

2018. He stated that in the circumstances, the GDC invites the Committee to find that Ms Pietrzeniak's fitness to practise remains impaired. Mr Ahmed further invited the Committee, if it found current impairment, to extend the period of Ms Pietrzeniak's suspension order by a period of 6 to 12 months.

Decision on impairment

In reaching its decision on whether Ms Pietrzeniak's fitness to practise remains impaired, the Committee exercised its own 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.

Ms Pietrzeniak's misconduct, as found by the initial PCC, was serious and capable of undermining public confidence in the dental profession. Whilst that Committee found that no evidence of harm had been caused to patients, it considered that failing to hold any indemnity cover whilst providing dental services, presented a potential risk of harm to patients. It also considered that Ms Pietrzeniak's conduct in practising as a dental nurse whilst not being registered with the GDC presented a risk of harm to patients as well as having the potential to cause damage to the reputation of the profession.

This Committee accepted the submissions of Mr Ahmed and the advice of the Legal Adviser. It noted that there is a persuasive burden on Ms Pietrzeniak to demonstrate that she has addressed her impairment.

The information before this reviewing Committee today indicates that Ms Pietrzeniak has failed to engage meaningfully in any way with the GDC. Consequently, it has received no evidence to indicate that she has made any efforts to fulfil the recommendations made by the previous Committees in 2017 and 2018. In this Committee's view, Ms Pietrzeniak's ongoing failure to engage effectively with the GDC demonstrates that she has not developed any insight into the concerns identified at previous hearings.

Having taken all the information before it into account, the Committee continues to be concerned about the serious risk of repetition. In all the circumstances, the Committee decided that a finding of current impairment is necessary for the protection of the public. The Committee also decided that public confidence in the dental profession would be undermined if such a finding were not made in the circumstances of this case.

Accordingly, the Committee has determined that Ms Pietrzeniak's fitness to practise remains impaired by reason of her misconduct.

Decision on Sanction

The Committee considered what action, if any, to take in respect of Ms Pietrzeniak's registration. It had regard to its powers under Section 36Q(1) of the *Dentists Act 1984 (as amended)*, which sets out the options available to it. The Committee took into account that the purpose of any sanction is not to be punitive, although it may have that effect, but to protect patients and the wider public interest.

The Committee had regard to the '*Guidance for the Practice Committees including Indicative Sanctions Guidance (effective from October 2016)*'. It applied the principle of proportionality, balancing the public interest with Ms Pietrzeniak's own interests. It considered the available sanctions in ascending order.

In the light of the Committee's outstanding concerns about public safety, it determined that it would be wholly inappropriate to terminate the current suspension order or to allow it to lapse. It decided that some ongoing restriction of Ms Pietrzeniak's registration is necessary to safeguard the public and to uphold the wider public interest.

The Committee next considered whether to terminate Ms Pietrzeniak's suspension order and replace it with an order of conditions. However, the Committee concluded that conditional registration would not be suitable in this case, where the registrant has failed to engage meaningfully in the regulatory process in any way. It also took into account the serious nature of Ms Pietrzeniak's misconduct, which has yet to be addressed. It therefore determined that the imposition of conditions would not be appropriate, workable or proportionate.

In all the circumstances, the Committee determined to extend the period of the suspension order on Ms Pietrzeniak's registration. This Committee has found that she has failed to engage meaningfully with the GDC and the remedial process. As a result, the failings identified remain a real concern. In view of this, the Committee concluded that members of the public and the wider public interest would not be sufficiently protected by a lesser sanction than suspension.

The Committee has decided to extend the suspension order by a period of 12 months. In deciding on this period, the Committee took into account the absence of any evidence of progress made by Ms Pietrzeniak since the findings made against her in November 2017. It considered that evidence of engagement and remediation will now be required by Ms Pietrzeniak to demonstrate to a reviewing Committee that she has addressed the identified failings. The Committee concluded that a 12 month suspension would afford her such an opportunity, whilst ensuring that members of the public and the wider public interest remain protected adequately. The Committee noted that Ms Pietrzeniak has had in effect a ten month period since the initial PCC in November 2017, to engage with the GDC and demonstrate that she has fully remediated her misconduct. In the light of this history of non-engagement it is proportionate to extend the order of suspension for a further 12 months.

A Committee will review Ms Pietrzeniak's case at a resumed hearing to be held shortly before the end of the extended period of suspension. The next reviewing Committee may be assisted by:

- hearing from her directly as to her understanding as to why it is important to have adequate indemnity insurance. This could be provided either by attending in person, or participating by telephone/Skype or alternatively, providing this in writing.
- evidence of insight and remorse in relation to the importance of being registered with the GDC. This could be provided either by attending in person, or participating by telephone/Skype or alternatively, providing this in writing.
- evidence that Ms Pietrzeniak currently has adequate indemnity insurance or has such arrangements in place prior to her return to dental nursing, and that her employers are aware of these arrangements. Alternatively, if she does not need indemnity, then a statement to that effect.

Unless Ms Pietrzeniak exercises her right of appeal, her current suspension order will be extended by a period of 12 months, 28 days from the date when notice of this Committee's direction is deemed to have been served upon her. In the event that Ms Pietrzeniak does

lodge an appeal against this decision, the current suspension order will continue to remain in force until the appeal has been decided.

That concludes this determination.”