

**HEARING HEARD IN PUBLIC**

**THOMSON, John Nicholas**

**Registration No: 151245**

**PROFESSIONAL CONDUCT COMMITTEE**

**JUNE 2016– JULY 2018**

**Most recent outcome: Suspended indefinitely \***

**\* See page 14 for the latest determination**

John Nicholas THOMSON, a dental technician, Verified experience in Dental Technology, was summoned to appear before the Professional Conduct Committee on 21 June 2016 for an inquiry into the following charge:

**Charge**

“That, being a registered dental technician:

1. At all material times you practised at [REDACTED]
2. On 27 July 2015 you offered to provide:
  - (a) a partial denture without the prescription of a dentist, and
  - (b) a complete denture without the prescription of a dentist or clinical dental technician.
3. In respect of allegation 2 you have offered to work beyond the scope of your practice.
4. On 27 July 2015, when asked whether the patient should be taken to a dentist before coming in, you said words to the effect of: “No, shouldn’t need to unless there’s a problem.”
5. Your conduct in relation to allegation 2 was:
  - a) Misleading;
  - b) Dishonest, in that you knew that the patient required the prescription of a dentist.

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

Mr Thomson was not present and was not represented. On 22 June 2016 the Chairman announced the findings of fact to the Counsel for the GDC:

“Ms Power

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.

**Service of notice**

On behalf of the GDC you submitted that service had been properly effected in accordance with the General Dental Council (Fitness to Practise) Rules 2006 ('the Rules'). You stated that as required by Rule 13 a notice of hearing dated 20 May 2016 was sent to the address that the registrant has registered with the GDC. The notice set out the date, time and location of this hearing. You submitted that the notice was sent in accordance with Rule 65 of the Rules, having been sent to the registrant's registered address using the Royal Mail's Recorded Delivery postal service. You drew the Committee's attention to a copy of the Royal Mail's Track and Trace service which records that the notice, had been posted on 23 May 2016. You further submitted that copies of the notice were also sent by first class post and to the registrant's known email address.

The Committee accepted the advice of the Legal Adviser. Having regard to the evidence put before it the Committee was satisfied that service has been properly effected in accordance with the Rules and that all reasonable efforts have been made to inform the registrant of this hearing.

**Proceeding in absence**

The Committee then went on to consider whether to exercise its discretion to proceed in the absence of the registrant in accordance with Rule 54 of the Rules. You invited the Committee to do so on the basis that the GDC had made all reasonable efforts to notify the registrant and that he has voluntarily absented himself from today's hearing. You referred in particular to the registrant's email to the GDC on 20 May and 13 June 2016 in which he stated that he does not wish to attend or participate in the hearing or with these proceedings.

The Committee accepted the advice provided by the Legal Adviser and is mindful that its discretion to proceed in the absence of the registrant must be exercised with the utmost care and caution. The Committee was satisfied that the registrant has voluntarily absented himself in full knowledge of the fact of these proceedings, and in the circumstances it would be appropriate and fair to proceed in his absence. It considered that an adjournment would serve no purpose as it would be unlikely to secure the registrant's attendance given his clear and consistent statements that he wishes to take no part in the proceedings. The Committee also considered that there is a clear public interest in proceeding with today's hearing so that there might be an expeditious disposal of this matter. The Committee has also borne in mind the potential inconvenience to the GDC, and to those witnesses whom the GDC will call to give evidence, that would arise from a postponement of this hearing.

**Background to the case and summary of allegations**

The case giving rise to these proceedings relates to allegations that Mr Thomson has offered to work outside of his scope of practice as a dental technician. The GDC alleges that such behaviour is misleading and dishonest.

The GDC's *Scope of Practice* guidance (September 2013) states that a dental technician may make dental devices such as dentures only according to a prescription from a dentist or a clinical dental technician (CDT). The document further states that dental technicians may also repair dentures direct to members of the public. Dental technicians are not entitled to fit removable appliances, carry out independent clinical examinations or perform clinical procedures related to providing removable dental appliances. They may not help to fit appliances unless working alongside a dentist in the clinic, or take impressions unless fully trained to do so and working with a dentist or CDT in the clinic.

The concerns relating to Mr Thomson arose from an anonymous complaint made to the GDC in 18 March 2015. That complaint led to the GDC instructing two independent investigators to look into the concerns that had been raised. One of the two investigators, who is referred to as Witness 1 for the purposes of these proceedings, conducted preliminary research on the internet before attending under guise at the registrant's premises. That research suggested that the registrant was the only registrant working at the premises, namely J N Thomson Dental Laboratory in Bradford, West Yorkshire.

Witness 1 and his colleague, referred to for the purposes of these proceedings as Witness 2 attended at the registrant's premises on 29 July 2015. They conducted a joint undercover investigation, stating that they would like to obtain new dentures for a fictitious elderly relative whose existing dentures were very old, ill-fitting and discoloured. It is alleged that the registrant offered to provide a partial denture and a complete denture without a prescription. It is further alleged that by providing such dentures without a prescription was outside the registrant's scope of practice and was dishonest.

The registrant is alleged to have quoted the total sum of £380.00 for the cost of a partial and a full denture. A laboratory business card was also provided, on the back of which the Registrant wrote estimate prices for partial and full dentures.

The GDC alleges that, by agreeing to make a partial and a complete denture without a prescription, the registrant offered to work beyond the scope of his practice as a dental technician. The GDC alleges that this conduct was misleading and dishonest.

In previous correspondence to the GDC, the registrant stated that he had admitted to working outside the scope of his practice, and that he concurred that he had been misleading but had not acted dishonestly.

As part of the GDC's investigation an expert witness was instructed to report on the registrant's alleged conduct, namely Adrian Feldman. Mr Feldman is a General Dental Practitioner. Within his practice setting he is also an Educational Supervisor, as well as working as a Clinical Tutor at Manchester Dental School. In his report Mr Feldman stated that providing partial or complete dentures is outside the scope of practice of a dental technician, and if developed as an additional skill it can only be done when working alongside a dentist in the clinic. He stated that dental technicians may see patients directly to repair existing dentures, but are not entitled to fit repaired dentures. Mr Feldman stated that although the making of copy dentures is not mentioned in the GDC's *Scope of Practice*, it would fall outside of a dental technician's scope of practice if the process involved having access to the patient's mouth. Mr Feldman also stated that new dentures involve clinical and laboratory stages, and that an aged person such as the relative mentioned by the two investigators would need a full clinical examination prior to the provision of duplicate dentures.

## **Evidence**

The Committee heard oral evidence from the two independent investigators who conducted an undercover visit at Mr Thomson's premises, referred to for the purposes of these proceedings as Witness 1 and Witness 2. The Committee also heard oral evidence from the GDC's expert witness Mr Feldman.

The Committee was provided with a number of documents submitted by the GDC, including the witness statements and documentary exhibits of Witness 1 and Witness 2; the witness statement and documentary exhibits of the GDC's investigation; the reports of the expert

witness instructed by the GDC, namely Mr Feldman; and correspondence between the registrant and the GDC.

**Committee’s findings of fact**

The Committee has taken into account all of the evidence presented to it, both written and oral. It has also considered the submissions made by you on behalf of the GDC.

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

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

1.	<p>Proved.</p> <p>The report from the investigators confirms that they visited the John Thomson Dental Laboratory on 27 July 2015, where they identified the registrant as John Thomson, and saw his business card. The Committee therefore finds this charge proved.</p>
2. (a)	<p>Proved</p>
2. (b)	<p>Proved</p> <p>The Committee finds the facts alleged at head of charge 2 (a) and 2(b) proved. In reaching this decision the Committee accepts the clear, consistent and corroborated evidence of Witness 1 and Witness 2. Both witnesses have provided evidence to this Committee that the registrant offered to make a new partial and complete denture for their fictitious elderly relative. The Committee found Witness 1 and Witness 2 to be credible witnesses on whose evidence this Committee is able to rely upon. They are experienced investigators who made a detailed account of the conversation that they had had with the registrant shortly after that discussion had taken place. The Committee notes that in previous written responses to the GDC, the registrant has not denied offering to provide the dentures. The Committee is satisfied from the witness statements and oral evidence of Witnesses 1 and 2 that the registrant offered to make a new partial and complete denture for the elderly relative in question, and that accordingly the facts alleged at head of charge 2 (a) and 2(b) are proved.</p>
3.	<p>Proved.</p> <p>The Committee finds the facts alleged at head of charge 3 proved on the basis of the expert evidence provided by Mr Feldman. The Committee has paid careful regard to the GDC’s <i>Scope of Practice</i> guidance, a copy of which has been exhibited by Mr Feldman. This guidance makes it clear that offering to make a new partial and complete denture in the absence of a prescription from a dentist is outside of that guidance. The Committee further accepts Mr Feldman’s expert evidence that to offer to make a new partial or complete denture without a dentist’s prescription is outside of a dental technician’s <i>Scope of Practice</i> and accordingly it finds the facts alleged at head of charge 3 proved.</p>

4.	<p>Proved.</p> <p>The Committee noted the contemporaneous notes made by Witness 1 and 2 after their visit on 27 July 2016 that the registrant had stated this to them.</p>
5. a)	<p>Proved.</p> <p>The Committee has noted that in previous correspondence to the GDC the registrant has admitted that his actions in offering to provide a partial/full denture was misleading. The registrant also explained that he had thought that if the relative had lost his dentures that he would be able to recommend that a new set could be made for him by “one of the dentists who prescribe dentures for me”. He also explained “I was keen to be accommodating and therefore omitted to mention at this point about the need to see a dentist when asked. I hoped to put them in touch with one of my dentists when they confirmed they wanted to go ahead, at which point I would have done”. He also goes on to say “I soon realised that I had given the wrong idea about being able to assist...”.</p> <p>The Committee is satisfied that the facts that it has found proved at heads of charge 2 constitute conduct that was misleading. The Committee considers that, because of his proven actions, members of the public may have been misled into believing that the registrant could indeed make new partial and complete dentures without a dentist’s prescription when he was not in fact permitted to do so. The Committee has noted that the registrant has admitted his actions to being misleading. Accordingly, it finds the facts alleged at the corresponding head of charge, namely 5 (a) proved.</p>
5. b)	<p>Not proved.</p> <p>The Committee considers that the GDC has not presented adequate evidence to find this charge proved. The registrant has admitted in previous correspondence “I concur that I have been misleading but I do not agree that I had any intention to be dishonest. My intention was to be accommodating”.</p> <p>The Committee had regard to the fact that the registrant has been a dental technician of 38 years’ experience in the profession without incident. Further, there is no suggestion that he was doing this for financial gain. The Committee also had regard to the reference provided by the registrant which confirms that he is a competent dental technician, and there was no indication that he was looking for further business. The Committee considers that although his actions were misleading they were not dishonest.</p> <p>The Committee considered that the offer to make the dentures must be seen in light of the registrant’s explanation that he wished to be accommodating rather than a clear statement that he would make the dentures without a prescription. Further the Committee also considered the comment “no shouldn’t need to unless there’s a problem”, when asked whether the patient should be taken to a dentist first. It concluded that that comment alone is insufficient to conclude that the registrant was acting dishonestly. In those circumstances the Committee considered that by the standards of ordinary reasonable and honest dental technicians and ordinary people, his actions</p>

	would not be considered dishonest. Accordingly, the Committee finds the facts alleged in charge 5(b) not proved.
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We move to Stage Two.”

On 22 June 2015 the Chairman announced the determination as follows:

“Ms Power,

The Committee has taken account of your submissions on behalf of the General Dental Council (GDC). It has accepted the advice of the Legal Adviser. The Committee has drawn no adverse inference from Mr Thomson’s absence.

Background

This case concerns Mr Thomson’s practice as a Dental Technician. The GDC instructed Investigator One and Investigator Two to carry out an undercover visit to Mr Thomson’s dental laboratory in order to establish whether he was working outside his scope of practice as a Dental Technician by offering to provide a partial and complete denture. An undercover telephone call was made to Mr Thomson, and arrangements were put in place for the investigators to visit Mr Thomson’s dental laboratory to discuss provision of new dentures which a fictitious relative was experiencing. Both investigators visited Mr Thomson’s dental laboratory on 27 July 2015. Following their visit, both investigators prepared attendance notes of their conversation with Mr Thomson. The Committee considered that the attendance notes prepared by both investigators reflected the conversations that took place when they visited Mr Thomson’s dental laboratory. On the basis of the recollection of both investigators and their attendance notes, the Committee found proved that, in relation to a fictitious patient, Mr Thomson offered to make a new partial and complete denture without requiring a prescription from a dentist.

The Committee found that these activities which Mr Thomson offered to carry out fall outside the scope of practice for dental technicians, set out in the GDC’s Scope of Practice (September 2013) as they must not be carried out independently by a dental technician. When Mr Thomson was asked if the prospective patient needed to see a dentist before a new set of dentures could be made, he replied “No, shouldn’t need to unless there’s a problem”. The Committee found that in offering to carry out the activities set out above, Mr Thomson presented himself as entitled to do work which his registration did not allow him to do. It found that it was misleading for Mr Thomson to present himself as being able to carry out this work.

Misconduct

The Committee is of the view that Mr Thomson’s conduct, in offering to work outside his scope of practice and providing misleading information is a serious departure from the GDC’s Standards for the Dental Team (September 2013). In particular:

- Principle 1** Put patients’ interests first
- Standard 1.9 You must find out about laws and regulations that affect your work and follow them
- Principle 6** Work with colleagues in a way that is in the patients’ best interests

- Standard 6.4 Only accept a referral or delegation if you are trained and competent to carry out the treatment and you believe that what you are being asked to do is appropriate for the patient.
- Principle 7** Maintain, develop and work within your professional knowledge and skills
- Standard 7.2 Work within your knowledge, skills, professional competence and abilities
- Principle 9** Make sure your personal behaviour maintains patients' confidence in you and the dental profession
- Standard 9.1 Ensure that your conduct, both at work and in your personal life, justifies patients' trust in you and the public's trust in the profession.

The Committee has found that Mr Thomson offered to provide dental services outside of his scope of practice as a dental technician. The Committee has found that these actions demonstrate that Mr Thomson was presenting as willing to act outside of his scope of practice as a dental technician. The Committee considers that Mr Thomson's misleading offer had the potential to put patients at risk of harm and undermined confidence in the profession.

The Committee was of the view that Mr Thomson's actions taken in all amount to breaches of the standards of the profession. It determined that the facts found proved amount to misconduct.

#### Impairment

The Committee next considered whether Mr Thomson's fitness to practise is currently impaired by reason of his misconduct. In reaching its decision, the Committee exercised its own independent judgement.

The Committee considered that Mr Thomson's fitness to practise was impaired at the time of these events. In considering current impairment, the Committee applied the formulation by Dame Janet Smith in her Fifth Report from the Shipman case and cited with approval in the case of CHRE v NMC and Grant [2011] EWHC 927 (Admin). Mr Thomson's conduct could have placed a prospective patient at an unwarranted risk of harm. The Committee considered that the registrant was not being clear as to his scope of practice when he spoke to investigators 1 and 2. In so doing he misled them and thereby brought the profession into disrepute. The Committee noted that Mr Thomson has admitted in previous correspondence to the GDC that he acted outside of his scope of practice.

The Committee noted that although Mr Thomson's misleading conduct occurred within the professional setting, there is no criticism of his clinical competence as a dental technician. Mr Thomson has not really engaged with these proceedings or with the GDC. There is limited evidence of remediation and some insight into the allegations which have now been found proved. In the absence of evidence of remediation, the Committee concluded that there is a risk of repetition of the behaviour being repeated in the future. In addition, it concluded that given the seriousness of the misconduct, the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made. The Committee determined that Mr Thomson's fitness to practise as a dental technician is currently impaired.

#### Sanction

The Committee then considered what sanction, if any, to impose on Mr Thomson's registration. It reminded itself that the purpose of a sanction is not to be punitive although it may have that effect. The Committee bore in mind the principle of proportionality and its duty to protect the public and declare and uphold proper standards of conduct and behaviour so as to maintain public confidence in the profession. It carefully considered the GDC's Guidance for the Professional Conduct Committee, including Indicative Sanctions Guidance (October 2015).

In considering the issue of sanction, the Committee took account of mitigating and aggravating factors in this case. In mitigation the Committee noted that:

- Prior to this hearing, Mr Thomson was a person of good character having practised as a dental technician for over 38 years;
- There is no evidence of actual harm to a patient;
- The evidence before the Committee is that this was a single and isolated incident.

The aggravating factors identified by the Committee include:

- There is limited evidence of remorse or insight from Mr Thomson;
- The Committee found that Mr Thomson's conduct was misleading
- There is no evidence of what steps Mr Thomson has now taken or would take in the future to avoid repetition of the misconduct identified;

The Committee determined that in the light of the gravity of the misconduct found, to conclude the case with no further action would undermine public confidence in the profession. It considered that a reprimand is inappropriate in the circumstances where misleading conduct is found proved and there is an absence of full engagement, remediation and insight by the respondent. It determined that a reprimand would not be appropriate in this case.

The Committee then considered whether a period of conditional registration would adequately protect patients and uphold confidence in the profession. The registrant has not provided sufficient evidence of remediation or insight into his misconduct. The Committee was of the view that it could not impose conditions which adequately address the shortcomings found proved in this case. It determined that conditions would be neither workable nor appropriate.

The Committee next considered whether a period of suspension would be sufficient to mark the seriousness of the misconduct. The Committee was of the view that by offering to provide dentures without a dental prescription in a professional setting is serious and undermines confidence in the profession. The failures in this case related to one incident and involved a prospective patient, and in the absence of any evidence of actual patient harm, the Committee concluded that a short period of suspension would be sufficient to meet the seriousness of the misconduct and that erasure would be disproportionate given that there was no actual harm and that the practitioner has engaged to an extent with the GDC and he has some insight.

As a consequence, the Committee has determined to direct that Mr Thomson's registration in the dental care professionals register be suspended for a period of 3 months pursuant to section 36P(7)(b) of the Dentists Act 1984, as amended.



This direction for suspension will be reviewed prior to the end of the 3-month period. A Committee reviewing the order in the future maybe assisted by receiving the following from Mr Thomson:

- Reflections on the misconduct and steps taken to address it; and
  - A demonstration of his understanding of the GDC's Standards and the limitations on a dental technician within the GDC's Scope of Practice.
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The Committee will now hear submission on whether to impose an immediate order.”

“Ms Power,

The Committee has considered your application for an immediate order of suspension of Mr Thomson's registration. It has accepted the advice of the Legal Adviser.

The misconduct found proved is serious and in the absence of any evidence of remediation, insight and the lack of engagement by Mr Thomson, the Committee determined that an immediate order of suspension is necessary for the protection of the public and is otherwise in the public interest.

The effect of the foregoing direction and this order is that Mr Thomson's registration will be suspended forthwith and unless he exercises his right to appeal, the substantive direction of suspension will take effect 28 days from when notice is deemed served on him. Should Mr Thomson exercise his right to appeal, this order for immediate suspension may remain in place pending the resolution of any appeal proceedings.

The interim order of suspension currently on Mr Thomson's registration is hereby revoked.

That concludes this case.”

At a review hearing on 5 October the Chairman announced the determination as follows:

“Mr Round

Mr Thomson was neither present nor represented at this hearing. You made an application under Rule 54 of the General Dental Council (GDC) (Fitness to Practise) Rules Order of Council 2006 (the Rules) that this hearing should proceed in his absence. The Committee accepted the advice of the Legal Adviser.

The Committee first considered whether service of the notice of hearing has been duly effected in accordance with rules 28 and 65 of the Rules. It saw a copy of the notice of hearing letter dated 6 September 2016 sent to Mr Thomson's registered address by way of recorded delivery. It also saw the Royal Mail track and trace document confirming that the letter was delivered. The Committee was satisfied that all reasonable efforts had been made, in accordance with the Rules, to send notification of this hearing to Mr Thomson.

The Committee next considered whether to proceed with this hearing in Mr Thomson's absence in accordance with Rule 54 of the Rules. In accordance with the legal advice, the Committee bore in mind that its discretion to proceed with a hearing in the absence of a registrant must be exercised with the utmost care and caution. The Committee noted the email dated 30<sup>th</sup> September 2016 from Mr Thomson in which he confirms he will not be

attending today's hearing. In light of the above information, the Committee was satisfied that Mr Thomson is aware of this hearing and has deliberately and voluntarily waived his right to attend and to be legally represented. The Committee has therefore determined to proceed with the hearing notwithstanding Mr Thomson's absence.

This is the first review of a suspension order initially imposed on Mr Thomson's registration for a period of 3 months, following the decision by the Professional Conduct Committee (PCC) on 22 June 2016.

This hearing was convened pursuant to Section 36 Q (1) of the Act to review the current suspension order. At the initial substantive hearing in June 2016 that Committee considered allegations relating to Mr Thomson offering to provide dental services outside of his scope of practice as a dental technician, by offering to make dentures without the prescription of a dentist. That Committee found that Mr Thomson had acted outside of his scope of practice as a dental technician, and his conduct had been misleading in respect of this. This had the potential to put patients at risk of harm and undermine confidence in the profession. That Committee determined that the facts found proved amounted to misconduct. It concluded that Mr Thomson's fitness to practise was impaired, given that he did not engage in the proceedings and provided no evidence of any insight or remediation. It further determined to suspend his registration for a period of 3 months and directed a review of this case before the end of the period of suspension.

Today you, on behalf of the GDC, referred the Committee to the documentation before it. You outlined the background of this case. You submitted that in the absence of any engagement from Mr Thomson, and in the absence of any evidence from him, Mr Thomson's fitness to practise remains impaired. You submitted that in the circumstances of this case the appropriate sanction would be an extension of the suspension order for a further period of nine to twelve months with a review.

The Committee accepted the advice of the Legal Adviser.

There has been no information before the Committee today to suggest that Mr Thomson has breached the order. Mr Thomson failed to respond to letters from the GDC Case Worker concerning his suspension.

The Committee considered that the misconduct identified was potentially remediable. The Committee was very concerned, however, regarding Mr Thomson's lack of engagement with the process, and the absence of any evidence of insight or remediation. The Committee had no new information before it since the previous Committee made its decisions. The Committee considered that the continued lack of engagement, the continued absence of any evidence of insight, and the continued absence of any evidence of remediation including continuing professional development indicates that there remains a risk of repetition in this case. The kind of misconduct in this case could pose a risk to patients.

Mr Thomson's lack of engagement with the regulatory process also means that a finding of impairment is required on public interest grounds so to maintain proper standards of behaviour and confidence in the profession.

The Committee therefore concluded that Mr Thomson's fitness to practise remains currently impaired.

The Committee then considered what action to take in accordance with its powers under Section 36 Q of the Dentists Act 1984 (as amended).

The Committee was aware that it should have regard to the principle of proportionality, balancing the public interest against Mr Thomson's own interests. The public interest includes the protection of the public, the maintenance of public confidence in the profession, and declaring and upholding proper standards of conduct and behaviour within the profession.

The Committee first considered whether to terminate the present order of suspension. It concluded that this would be inappropriate in view of the finding of continued impairment.

The Committee then considered whether a conditions of practice order would be appropriate in this case. It noted that the previous Committee did not consider that conditions of practice were appropriate. The Committee considered that there has been no material change since the last hearing. The Committee had regard to the information that Mr Thomson has not engaged with the GDC and so it was not satisfied that he would comply with any conditions that this Committee could impose.

The Committee determined that given the lack of engagement or remediation by Mr Thomson since the last hearing, the appropriate and proportionate sanction in this case is a further period of suspension of nine months with a review. In the absence of any remediation there remains a continuing risk to the public. This period of suspension will also be sufficient to declare and uphold proper standards of behaviour and maintain public confidence in the profession.

The Committee therefore directs that Mr Thomson's registration be suspended for a period of 9 months pursuant to Section 36Q of the Act, to take effect from the date when the present order would otherwise expire. This will be reviewed shortly before the end of the period.

Again, any reviewing Committee may well be assisted by the same information from Mr Thomson that was identified by the previous Committee:

- Reflections on his misconduct and steps taken to address it;
- A demonstration of his understanding of the GDC's Standards and the proper limits of practice of a dental technician within the GDC's Scope of Practice.

The Committee was aware that the effect of this order is that Mr Thomson will be prevented from working as a registered dental professional using his GDC registration. This could result in financial hardship, though the Committee received no information about that matter. However, in applying the principle of proportionality, the Committee determined that the need for public protection and the public interest outweighs Mr Thomson's interests in this regard.

That concludes this hearing."

At a review hearing on 7 July 2017 the Chairman announced the determination as follows:

"Ms Headley

Mr Thomson was neither present nor represented at this hearing. You made an application under Rule 54 of the General Dental Council (GDC) (Fitness to Practise) Rules Order of Council 2006 (the Rules) that this hearing should proceed in his absence. The Committee accepted the advice of the Legal Adviser.

**Purpose of hearing**

The purpose of today's hearing is to review a substantive order of suspension imposed on Mr Thomson's registration for a period of 3 months by the Professional Conduct Committee (PCC) on 22 June 2016, which was extended for nine months on 5 October 2016.

**Service**

The Committee first considered whether service of the notice of hearing has been duly effected in accordance with rules 28 and 65 of the Rules. It saw a copy of the notice of hearing letter dated 26 May 2017 sent to Mr Thomson's registered address by way of recorded delivery. It also saw the Royal Mail track and trace document confirming that the letter was attempted to be delivered on 31 May 2017. The Committee was satisfied that all reasonable efforts had been made, in accordance with the Rules, to send notification of this hearing to Mr Thomson.

**Proceeding in absence**

The Committee next considered whether to proceed with this hearing in Mr Thomson's absence in accordance with Rule 54 of the Rules. In accordance with the legal advice, the Committee bore in mind that its discretion to proceed with a hearing in the absence of a registrant must be exercised with the utmost care and caution. The Committee noted the email dated 3 July 2017 from Mr Thomson in which he confirms he will not be attending today's hearing. In light of the above information, the Committee was satisfied that Mr Thomson is aware of this hearing and has deliberately and voluntarily waived his right to attend and to be legally represented. The Committee has therefore determined to proceed with the hearing notwithstanding Mr Thomson's absence.

**Existing order**

This is the second review of a suspension order initially imposed on Mr Thomson's registration for a period of 3 months, following the decision by the PCC on 22 June 2016.

This hearing was convened pursuant to Section 36 Q (1) of the Act to review the current suspension order. At the initial substantive hearing in June 2016 that Committee considered allegations relating to Mr Thomson offering to provide dental services outside of his scope of practice as a dental technician, by offering to make dentures without the prescription of a dentist. That Committee found that Mr Thomson had acted outside of his scope of practice as a dental technician, and his conduct had been misleading in respect of this. This had the potential to put patients at risk of harm and undermine confidence in the profession. That Committee determined that the facts found proved amounted to misconduct. It concluded that Mr Thomson's fitness to practise was impaired, given that he did not engage in the proceedings and provided no evidence of any insight or remediation. It further determined to suspend his registration for a period of 3 months and directed a review of this case before the end of the period of suspension. The matter was reviewed on 5 October 2016, when it was determined that Mr Thomson's fitness to practise remained impaired and directed that the suspension be continued for a period of nine months.

**Committee's determination**

Today you, on behalf of the GDC, referred the Committee to the documentation before it. You outlined the background of this case. You submitted that in view of the limited engagement from Mr Thomson, and in the absence of any evidence of insight and remediation from him, Mr Thomson's fitness to practise remains impaired. You submitted

that in the circumstances the appropriate sanction would be an extension of the suspension order for a further period of three to twelve months with a review.

The Committee accepted the advice of the Legal Adviser.

There has been no information before the Committee today to suggest that Mr Thomson has breached the order.

### **Impairment**

The Committee considered that the misconduct identified was potentially remediable. The Committee was very concerned, however, regarding Mr Thomson's limited engagement with the process, and the absence of any evidence of insight or remediation. The Committee noted Mr Thomson's email to the GDC dated 7 January 2017, where he briefly reflects that "I have made an error of judgement and that I have now fully familiarised myself with what is expected of a practising technician". However, there has been no further evidence from Mr Thomson of his insight, remediation or reflection into his past failings. The Committee considered that the continued lack of any evidence of insight, and remediation including continuing professional development indicates that there remains a risk of repetition.

Mr Thomson's limited engagement with the regulatory process also means that a finding of impairment is required on public interest grounds so as to maintain proper standards of behaviour and confidence in the profession. The kind of misconduct in this case could pose a risk to patients.

The Committee therefore concluded that Mr Thomson's fitness to practise remains currently impaired.

### **Sanction**

The Committee then considered what action to take in accordance with its powers under Section 36 Q of the Dentists Act 1984 (as amended).

The Committee was aware that it should have regard to the principle of proportionality, balancing the public interest against Mr Thomson's own interests. The public interest includes the protection of the public, the maintenance of public confidence in the profession, and declaring and upholding proper standards of conduct and behaviour within the profession.

The Committee first considered whether to terminate the present order of suspension. It concluded that this would be inappropriate in view of the finding of continued impairment.

The Committee then considered whether a conditions of practice order would be appropriate. It noted that the previous Committee did not consider that conditions of practice were appropriate. The Committee considered that there has been no material change since the last hearing. The Committee notes Mr Thomson's correspondence of 3 July 2017, where he states that he no longer works in the dental profession and has no intention to do so in the future. The Committee is therefore of the view that conditions would be neither workable and practicable.

The Committee determined that given the limited engagement and remediation by Mr Thomson since the last hearing, the appropriate and proportionate sanction is a further period of suspension of twelve months with a review. In the absence of any remediation there remains a continuing risk to the public. This period of suspension will also be sufficient

to declare and uphold proper standards of behaviour and maintain public confidence in the profession.

The Committee therefore directs that Mr Thomson's registration be suspended for a period of twelve months pursuant to Section 36Q of the Act, to take effect from the date when the present order would otherwise expire. This will be reviewed shortly before the end of the period.

The Committee was aware that the effect of this order is that Mr Thomson will be prevented from working as a registered dental professional using his GDC registration which could result in financial hardship. However, in applying the principle of proportionality, the Committee determined that the need for public protection and the public interest outweighs Mr Thomson's interests in this regard.

That concludes this hearing."

At a review hearing on 2 July 2018 the Chairman announced the determination as follows:

"Neither party is present at this resumed hearing of the Professional Conduct Committee (PCC). The GDC has invited the Committee to conduct the hearing on the papers in the absence of both parties.

#### **Purpose of hearing**

The purpose of today's hearing is to review a substantive direction of suspension imposed on Mr Thomson's registration by the PCC on 22 June 2016. The hearing is being held in accordance with section 36Q (1) of the Dentists Act 1984 (as amended) ('the Act').

#### **Service**

The Committee first considered whether service has been properly effected in accordance with the General Dental Council (Fitness to Practise) Rules 2006 ('the Rules').

In its written representations to the Committee the GDC has submitted that Mr Thomson has been properly notified of today's hearing in accordance with Rule 28 of the Rules. The Committee noted that a notice of hearing was sent to Mr Thomson's registered address on 17 May 2018 using the Royal Mail's Special Delivery service. That notice set out the date, time and venue of the hearing, as well as confirming the nature of the hearing and the powers available to the Committee. The Royal Mail's Track and Trace service records that the notice was delivered on the morning of 21 May 2018, and was signed for by an individual by the name of Thomson. The Committee also noted that a copy of the notice of hearing was sent to Mr Thomson by email on 17 May 2018.

The Committee accepted the advice provided by the Legal Adviser. Having regard to the GDC's submissions and the evidence placed before it the Committee was satisfied that service has been properly effected in accordance with the Rules.

#### **Proceeding in absence**

The Committee then went on to consider whether to exercise its discretion to proceed in the absence of Mr Thomson in accordance with Rule 54 of the Rules. It was mindful that its discretion to proceed in the absence of a registrant must be exercised with the utmost care and caution. The Committee notes that the GDC has invited the Committee to proceed in the absence of Mr Thomson and to conduct the hearing on the papers alone.

The Committee accepted the advice of the Legal Adviser. It determined that it would be appropriate and fair to proceed with the hearing in Mr Thomson's absence, and to consider the matter on the papers alone. The Committee considered that Mr Thomson has voluntarily absented himself from today's hearing and that he understands the implications of his non-attendance. The Committee has been provided with a copy of an email that Mr Thomson sent to the GDC on 26 June 2018 in which he stated that he would 'not be attending a hearing now or in the future. Please proceed'. The Committee considers that an adjournment would serve no useful purpose, as it would be highly unlikely to secure Mr Thomson's attendance. The Committee also considers that there is a clear public interest in ensuring that the suspension order is reviewed before its expiry, namely on 24 July 2018.

### **Existing order**

On 22 June 2016 the PCC held a hearing to consider allegations relating to Mr Thomson. Mr Thomson was not present at the hearing and has not attended any of the subsequent PCC review hearings. The allegations which Mr Thomson faced related to his practice as a dental technician. The Committee found that on 27 July 2015 Mr Thomson had offered to provide a partial denture to a patient without a dentist's prescription, and had also offered to provide a complete denture without the prescription of a dentist or a clinical dental technician (CDT). The Committee found that such conduct amounted to an offer to work beyond the scope of his practice as a dental technician, and that such conduct was misleading. The Committee also found that Mr Thomson has stated that the patient would not need to see a dentist beforehand 'unless there's a problem'. The Committee found that such proven conduct amounted to misconduct, and that Mr Thomson's fitness to practise was impaired as a result. The Committee determined to suspend his registration for a period of three months, with a review hearing to take place prior to the end of that period. An immediate order of suspension was also imposed to cover the period before the substantive direction of suspension took effect.

The substantive suspension was reviewed by the PCC on 5 October 2016 and was extended for a further period of nine months, with a further review hearing to take place before the end of that extended period. At the next review hearing on 7 July 2017 the PCC decided to extend the suspension for an additional period of 12 months, with a review before the end of that period. It falls to this Committee today to conduct that review.

### **Committee's determination**

The Committee has carefully considered all the information presented to it, including the written documentation and submissions provided by the GDC and the correspondence sent by Mr Thomson as referred to above. In its deliberations the Committee has had regard to the GDC's *Guidance for the Practice Committees, including Indicative Sanctions Guidance* (October 2016). The Committee has accepted the advice of the Legal Adviser.

### **Impairment**

The Committee has determined that Mr Thomson's fitness to practise remains impaired. It notes that Mr Thomson has provided no information about any steps taken to remedy the misconduct that was previously found, or to develop and demonstrate insight into his actions. Indeed, the only correspondence that Mr Thompson has sent to the GDC in relation to these proceedings after being suspended was to declare that he is no longer working in the dentistry profession and that he wishes to be suspended permanently. There has been

only minimal engagement in these proceedings for the past three years. The Committee has concluded that the same risks to public safety and to public trust and confidence in the profession persist, and that accordingly Mr Thomson's fitness to practise remains impaired.

### **Sanction**

The Committee next considered whether it would be appropriate to revoke the suspension, or to replace the suspension with a direction of conditional registration. The Committee considered that revoking the suspension would place the public at considerable risk of harm given the registrant's current impairment, and would also undermine trust and confidence in the profession. The Committee next considered whether it could formulate conditions which would be workable and which would address the risks that have been identified. The Committee concluded that it could not formulate any conditions which would be practicable or workable, given that Mr Thomson has not substantively engaged with today's hearing and that he has provided no indication of any willingness to engage with any conditions that might be capable of being formulated. The Committee is also mindful that the facts giving rise to his impairment relate to an offer to work outside of his scope of practice, and that conditions could not properly be formulated to address the risks arising from such misconduct.

The Committee then went on to consider whether it would be appropriate to extend the current period of suspension. The Committee concluded that a further period of suspension is unlikely to serve any meaningful purpose. Mr Thomson has not engaged in these proceedings in any meaningful way for a considerable period of time. This Committee, and the previous Committees which imposed and extended his suspension, has not been provided with any evidence to suggest that Mr Thomson has taken any steps to remedy his misconduct, or that he intends to do so in the future. Instead, Mr Thomson has stated that he is no longer practising and will not engage with these proceedings. Mr Thomson has also stated that he wishes to be permanently suspended, although the Committee has exercised its own independent judgement.

In light of Mr Thomson's ongoing lack of engagement, the absence of any evidence from him to demonstrate that he has acknowledged, addressed and remedied the matters giving rise to these proceedings, the risks to the public and the wider public interest arising from his misconduct, and the costs involved in reviewing a suspension which Mr Thomson has stated he wishes to be made permanent, the Committee considers that there is no merit in further extending Mr Thomson's suspension for a finite period. Indefinite suspension is the appropriate and proportionate outcome.

The Committee hereby directs that Mr Thomson's registration be suspended indefinitely in accordance with section 36Q (1) (d) of the Act. This indefinite suspension will take effect from the date on which the existing period of suspension would otherwise expire, namely on 24 July 2018.

### **Right of appeal**

Mr Thomson will have 28 days from the date on which notice of this decision is deemed to have been served on him to appeal against this decision. Should he decide to appeal, the extant suspension will remain in force until the resolution of any such appeal. Should he decide not to appeal, the current suspension will become indefinite on the date on which it would otherwise expire, that is to say 24 July 2018.



**Subsequent reviews**

This direction may be reviewed in accordance with the provisions of section 36Q (4) of the Act. More particularly, Mr Thomson may, after two years have elapsed from the date on which this direction of indefinite suspension takes effect, ask for the indefinite suspension to be reviewed.

That concludes this case for today.”