

HEARING HEARD IN PUBLIC

CROSS, Paul Montague

Registration No: 42872

PROFESSIONAL CONDUCT COMMITTEE

MAY 2017

Outcome: Erased with Immediate Suspension

Paul Montague CROSS, a dentist, BDS Birm 1968, was summoned to appear before the Professional Conduct Committee on 8 May 2017 for an inquiry into the following charge:

Charge (as amended)

“That, being a registered dentist,

Part A

1. Between around January 2007 and October 2011 you were practising in general dentistry:
 - (a) as an associate at Shams Moopen Dental Practice ('SMP') at 54/56 Kingsley Road in Northampton;
 - (b) under contract with Sandwell PCT at The Village Practice ('VP') 4 St Mary's Road, Smethwick, in Birmingham.
2. You provided care and treatment, including dentures, under the provisions of the NHS to the patients set out in Schedule A1¹.

Diversion of Claims from SMP to VP

3. As set out in Schedule B you made claims to Sandwell PCT for Units of Dental Activity ('UDAs') in respect of care and treatment provided to patients treated at SMP in Northampton.
4. You made the claims for patients treated at SMP in Northampton to Sandwell PCT in order to avoid a short fall of claims for UDAs in respect of patients treated at VP in Birmingham.
5. You failed to discuss with Sandwell PCT, adequately or at all, whether it was permissible to claim UDAs in respect of patients treated at SMP in Northampton as opposed to at VP in Birmingham.
6. Your conduct as set out above at 3 and/or 4 and/or 5 was:
 - (a) inappropriate;
 - (b) misleading.

Premature UDA claims

¹ All Schedules are private documents and are therefore not disclosed to the public

7. In respect of Patient 1 you caused or permitted incorrect details to be inserted on the FP17 form in that:
 - (a) the information inserted at Part 3 of the form did not accurately reflect:
 1. the date of acceptance,
 2. the date of completion;
 - (b) the dates against the patient's signatures did not accurately reflect the dates upon which the signatures had been provided.
8. In respect of Patient 2 you caused or permitted incorrect details to be inserted on the FP17 form in that:
 - (a) the information inserted at Part 3 of the form did not accurately reflect:
 1. the date of acceptance,
 2. the date of completion;
 - (b) the dates against the patient's signatures did not accurately reflect the dates upon which the signatures had been provided.
9. In respect of Patient 3 you caused or permitted incorrect details to be inserted on the FP17 form in that the information inserted at Part 3 of the form did not accurately reflect the date of completion.
10. In respect of Patient 4 you caused or permitted incorrect details to be inserted on the FP17 form received on 8 May 2009 in that the information inserted at Part 3 of the form did not accurately reflect the date of completion.
11. In respect of Patient 5 you caused or permitted incorrect details to be inserted on the FP17 form in that:
 - (a) the information inserted at Part 3 of the form did not accurately reflect:
 1. the date of acceptance,
 2. the date of completion;
 - (b) the dates against the patient's signatures did not accurately reflect the dates upon which the signatures had been provided.
12. In respect of Patient 6 you caused or permitted incorrect details to be inserted on the FP17 form in that:
 - (a) the information inserted at Part 3 of the form did not accurately reflect:
 1. the date of acceptance,
 2. the date of completion;
 - (b) the dates against the patient's signatures did not accurately reflect the dates upon which the signatures had been provided.
13. In respect of Patient 7 you caused or permitted incorrect details to be inserted on the FP17 form in that:
 - (a) the information inserted at Part 3 of the form did not accurately reflect:
 1. the date of acceptance,

2. the date of completion;
 - (b) the dates against the patient's signatures did not accurately reflect the dates upon which the signatures had been provided.
14. Your conduct as set out above at 7, 8, 9, 10, 11, 12 and/or 13 was:
- (a) misleading;
 - (b) dishonest in that it was done with the intention of causing UDAs to fall prematurely into the previous UDA year.

Charging NHS patients for soft linings

15. As set out in Schedule C NHS denture patients were charged privately for the provision of soft linings.
16. Where soft linings are clinically indicated the treatment is available under the NHS without any additional fee being payable.
17. You failed to inform patients, appropriately or adequately, of the availability of soft linings under the NHS.
18. Your conduct as set out above at 15 and 17 was:
- (a) inappropriate;
 - (b) misleading;
 - (c) dishonest in that it was done with the intention of obtaining additional payment.

Premature UDA claims

19. As set out in Schedule D you caused or permitted claims to be made that did not accurately reflect the dates of treatment in respect of:
- (a) Patient 36;
 - (b) Patient 38;
 - (c) Patient 46;
 - (d) Patient 47;
 - (e) Patient 49;
 - (f) Patient 50;
 - (g) Patient 51.
20. Your conduct as set out above at 19 was:
- (a) misleading;
 - (b) dishonest in that it was done with the intention of causing UDAs to fall prematurely into the previous UDA year.

Overclaims

21. As set out in Schedule E you caused or permitted claims to be made for Band 3 treatments when:

- (a) in respect of Patient 4, you only provided one Band 3 treatment as opposed to two Band 3 treatments;
 - (b) in respect of Patient 26, you only provided a Band 2 treatment, namely, a soft reline and fit;
 - (c) in respect of Patient 36, you only provided a Band 1 treatment, namely, a repair and fit of a repaired upper denture.
22. Your conduct as set out above at 21(a), 21(b) and/or 21(c) was:
- (a) misleading;
 - (b) dishonest in that it was done with the intention of obtaining additional UDAs.

Part B

23. Between around December 2006 and June 2007 you were practising in general dentistry:
- (a) as an associate at Shams Moopen Dental Practice ('SMP') at 54/56 Kingsley Road in Northampton;
 - (b) under a Domiciliary Services contract with Sandwell PCT.
24. You provided care and treatment, including dentures, under the provisions of the NHS to the patients set out in Schedule A2.

Diversion of Claims from SMP to VP (Domiciliary Contract)

25. As set out in Schedule F you made claims to Sandwell PCT for Units of Dental Activity ('UDAs') under your Domiciliary Services contract in respect of care and treatment provided to patients treated at the practice premises of SMP in Northampton.
26. You made the claims for patients treated at the practice premises of SMP in Northampton under your Domiciliary Services contract with Sandwell PCT in order to avoid a short fall of claims for UDAs in respect of your Domiciliary Services contract with Sandwell PCT.
27. You failed to discuss with Sandwell PCT, adequately or at all, whether it was permissible to claim UDAs in respect of patients treated at the practice premises of SMP in Northampton as opposed to VP in Birmingham.
28. Your conduct as set out above at 25, 26 and/or 27 was:
- (a) inappropriate;
 - (b) misleading.

Premature UDA claims

29. You caused or permitted claims to be made that did not accurately reflect the dates of completion of treatment in respect of:
- (a) Patient RT;
 - (b) Patient JW;
 - (c) Patient LF.
30. Your conduct as set out above at 29 was:

- (a) misleading;
- (b) dishonest in that it was done with the intention of causing UDAs to fall prematurely into the previous UDA year.

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

Mr Cross was not present and was not represented. On 15 May 2017 the Chairman announced the findings of fact to the Counsel for the GDC:

“This is the Professional Conduct Committee’s inquiry into the facts which form the basis of the allegation against Mr Cross that his fitness to practise is impaired by reason of misconduct.

Decision on service of notification of hearing

Mr Cross was neither present nor represented at this hearing. At the commencement of the hearing Ms Barnfather, Counsel on behalf of the General Dental Council (GDC) made a submission under Rule 13 of the General Dental Council (Fitness to Practise) Rules 2006 that the notification of hearing had been sent to the Registrant in accordance with the Rules.

The Committee had before it a copy of the notification of hearing letter dated 20 March 2017 which was sent to Mr Cross’ registered address as it appears on the Dentists Register, by special delivery. It was satisfied that the letter contained all the components necessary for a notice of hearing to be valid as set out in the Rules. The Committee noted the Royal Mail track and trace proof of delivery which showed that the letter was delivered on 21 March 2017 and signed for in the printed name “CROSS”. The notice of hearing was sent to Mr Cross’ then legal representatives, De Maids Solicitors and Advocates LLP. The GDC subsequently received an email dated 18 April 2017 from De Maids Solicitors and Advocates LLP that Mr Cross could no longer justify instructing their firm on this matter. Having heard the advice of the Legal Adviser, the Committee was satisfied that the notification of hearing had been served in accordance with Rules 13 and 65.

Decision on proceeding in the Registrant’s absence

Ms Barnfather then made an application under Rule 54 that the hearing should proceed in Mr Cross’ absence. The Committee bore in mind that its discretion to proceed with a hearing in these circumstances should be exercised with the utmost care and caution. It took account of Ms Barnfather’s submissions and it accepted the advice of the Legal Adviser.

The Committee noted the email dated 18 April 2017 from Mr Cross’ previous legal representatives to the GDC in which they stated “Mr Cross will not defend the proceedings, nor will he be instructing any alternate lawyers in our place.” In a letter to the PCC dated 8 May 2017 from Mr Cross, he said “I regret I am unable to attend the hearing in person.” The Committee considered that Mr Cross had waived his right to attend this hearing. He has not requested for an adjournment and the Committee concluded based on the information before it that an adjournment was unlikely to secure Mr Cross’ attendance at a future date. The Committee concluded that in light of the serious nature of the allegations against Mr Cross, fairness to the GDC and the public interest in the expeditious disposal of this case, the hearing should proceed notwithstanding that Mr Cross is absent.

Amendment to the Charge

Whilst the Committee was considering the evidence in private, it noted an apparent omission from paragraph 27 of the allegation. Under Rule 18 the Committee was minded to amend that paragraph to insert the words “(Domiciliary Contract)” in order to clarify the way in which the GDC had put its case.

At the request of the Committee, Ms Barnfather was consulted by the Legal Adviser. She confirmed that the Council was “in complete agreement with the proposed amendment”.

The Committee determined to make the amendment as it was intended to clarify the charge and caused no injustice or prejudice to the registrant.

Decision on the facts

The Committee heard oral evidence from Mr Jason Williams, NHS Protect Anti-Fraud Specialist at the time of these events. It also had before it a copy of his witness statement dated 13 June 2016. Mr Williams exhibited copies of the claims data submitted by Mr Cross to Sandwell PCT.

The Committee heard oral evidence from Mr Julian Scott, expert in General Dental Practice Probity, called on behalf of the GDC. It also received reports from Mr Scott dated 29 December 2015 and 16 June 2016.

The Committee took account of the written evidence of the Practice Manager of SMP, Patient 33 and Brian Wallace, Senior Contract Manager, Sandwell PCT. In addition, it took into account the defence bundle submitted on behalf of Mr Cross and his letter to the PCC dated 8 May 2017.

The Committee carefully considered all the evidence before it. It took account of the submissions made by Ms Barnfather, Counsel, on behalf of the GDC. The Committee accepted the advice of the Legal Adviser. In accordance with that advice it considered each head and sub-head of charge separately. In considering the allegations of misleading conduct, the Committee was advised to follow the definition outlined in the case of *Shamsian v GMC* [2011] EWHC 2885 (Admin) which is “...one which leads someone to believe something is true when it is not true. There is no implication of dishonesty or any intention to mislead.”

In relation to the allegations of dishonesty, the Committee was advised to apply the test set out in the case of *Twinsectra Ltd v Yardley & Ors* [2002] UKHL 12 in which Lord Hutton stated “before there can be a finding of dishonesty it must be established that the registrant’s conduct was dishonest by the ordinary standards of reasonable and honest people and that he himself realised that by those standards his conduct was dishonest.”

The Committee’s findings are as follows:

| | <u>Part A</u> |
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| 1. | <i>Between around January 2007 and October 2011 you were practising in general dentistry:</i> |
| 1.(a) | <i>as an associate at Shams Moopen Dental Practice ('SMP') at 54/56 Kingsley Road in Northampton – Found proved</i> The print out of clinical records from the Shams Moopen Dental Practice (“SMP”) in Northampton showed that Mr Cross provided dental treatment |

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| | to patients at that practice. |
| 1.(b) | <p><i>(under contract with Sandwell PCT at The Village Practice ('VP') 4 St Mary's Road, Smethwick, in Birmingham – Found proved</i></p> <p>A copy of the Standard General Dental Services Contract between Mr Cross and Sandwell PCT was before the Committee.</p> |
| 2. | <p><i>You provided care and treatment, including dentures, under the provisions of the NHS to the patients set out in Schedule A1 – Found proved</i></p> <p>The clinical records from SMP confirm that Mr Cross provided NHS dental treatment to the 51 patients set out in Schedule A1.</p> |
| | Diversion of Claims from SMP to VP |
| 3. | <p><i>As set out in Schedule B you made claims to Sandwell PCT for Units of Dental Activity ('UDAs') in respect of care and treatment provided to patients treated at SMP in Northampton – Found proved</i></p> <p>The Committee carefully examined the dental records before it and found that Mr Cross provided dental treatment to the 11 patients in Schedule B at the SMP practice in Northampton and diverted the claims for the treatment of these patients to Sandwell PCT for payment under his Village Practice (VP) contract in Birmingham.</p> |
| 4. | <p><i>You made the claims for patients treated at SMP in Northampton to Sandwell PCT in order to avoid a short fall of claims for UDAs in respect of patients treated at VP in Birmingham – Found proved</i></p> <p>The Committee noted the transcript of the Police interview with Mr Cross dated 5 December 2011, which was done under caution. At that interview, Mr Cross stated "Right. So, that led to the fact that basically I couldn't do any work for six months approximately. So then, like that interruption to business, it's difficult to replace your patients straight away. So that kind of led to the situation where I had excess UDAs in one place and excess patients in another place. It seemed logical to me seeing as it was all NHS treatment to marry them up. To keep the budget fulfilled which was the contractual requirement." The Committee regarded this as acceptance by the registrant himself that he was diverting claims to avoid a shortfall in VP.</p> |
| 5. | <p><i>You failed to discuss with Sandwell PCT, adequately or at all, whether it was permissible to claim UDAs in respect of patients treated at SMP in Northampton as opposed to at VP in Birmingham – Found proved</i></p> <p>The Committee first considered whether Mr Cross had a duty to discuss with Sandwell PCT, his plan to claim UDAs from Sandwell PCT under his Village Practice contract for patients he treated at SMP in Northampton.</p> <p>The Committee noted that Mr Cross disputed the terms of aspects of his contract with Sandwell PCT. He communicated with the PCT in writing regarding the nature of the dispute. The Committee received evidence</p> |

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| | <p>from Mr Wallace, a PCT employee, that Mr Cross did not discuss his plans on diverting his claims for UDAs from Northampton to Sandwell PCT.</p> <p>The Committee noted Mr Cross' letter dated 8 May 2017 in relation to this hearing in which he stated, "It became obvious that sub contraction was needed in the future to keep the draft contract viable. My regret is that I should have made this clearer to the PCT at that time."</p> <p>Mr Scott, the expert called on behalf of the GDC, is of the opinion that "By claiming for treatment provided at SMP under his VP contract, Mr Cross has breached the terms of his contract with Sandwell PCT. Although the arrangement appeared to be a pragmatic solution to his problem of not being able to fulfil his VP UDA target, whilst having a surfeit of patients requiring Band 3 treatment at the SMP practice, he should have known that it was inappropriate, He could have contacted Sandwell PCT, being the Commissioner of dental services, to obtain their permission...Part 2 of the Contract states in clause 9 'in complying with this Contract, in exercising its rights under the Contract and in performing its obligations under the Contract, the Contractor must act reasonably and in good faith.'"</p> <p>The Committee was of the view that diverting claims in the way that Mr Cross did was so out of the ordinary that a reasonable person would have sought clarification from the PCT that it was permissible to do so. It found that Mr Cross had a duty to discuss his intentions with Sandwell PCT and he failed to do so in breach of that duty.</p> |
| 6. | <i>Your conduct as set out above at 3 and/or 4 and/or 5 was:</i> |
| 6.(a) | <p><i>Inappropriate – Found proved</i></p> <p>The Committee found that Mr Cross' conduct in submitting claims for UDAs with Sandwell PCT for treatment he provided to patients at SMP practice in Northampton, in order to avoid a shortfall of UDAs in relation to his VP practice in Birmingham and without discussing with Sandwell PCT whether it was permissible to do so, was inappropriate.</p> <p>The Committee therefore found Mr Cross' conduct at paragraphs 3, 4 and 5 to be inappropriate.</p> |
| 6.(b) | <p><i>Misleading – Found proved</i></p> <p>In considering this charge, the Committee applied the meaning of 'misleading' as advised by the Legal Adviser.</p> <p>Mr Cross' conduct in submitting claims for UDAs with Sandwell PCT in respect of treatment he provided to patients at SMP practice in Northampton was misleading as it led Sandwell PCT to believe that the treatment had been provided to patients at the VP practice when it was not true.</p> <p>Mr Cross' conduct in submitting claims for UDAs with Sandwell PCT in respect of treatment he provided to patients at SMP in order to avoid a shortfall of claims for UDAs in respect of his VP contract was misleading</p> |

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| | <p>as Sandwell PCT would have reasonably assumed by virtue of the submissions under the VP practice contract that he was meeting the terms of his contract.</p> <p>Mr Cross' conduct in failing to discuss with Sandwell PCT whether it was permissible to divert claims for UDAs from SMP practice in Northampton to his VP practice in Birmingham was misleading because Sandwell PCT would have reasonably assumed that the UDAs claimed were for treatment provided at the VP in Birmingham when they were in fact provided at the SMP practice in Northampton.</p> |
| | Premature UDA claims |
| 7. | <i>In respect of Patient 1 you caused or permitted incorrect details to be inserted on the FP17 form in that:</i> |
| 7.(a) | <i>the information inserted at Part 3 of the form did not accurately reflect:</i> |
| 7.(a)(1)&(2) | <p>(1) the date of acceptance – Found proved</p> <p>(2) the date of completion – Found proved</p> <p>In considering paragraph 7, the Committee carefully reviewed the evidence, including computer patient records, appointments book, FP17 forms and laboratory 'chits' exhibited in this hearing.</p> <p>The Committee noted from the records that Patient 1 was treated by Mr Cross at the SMP practice, was first seen by another dentist on 25/03/2011 and by Mr Cross on 30/03/2011 for denture impressions and dentures were fitted on 18/05/2011. It also noted that the FP17 form for the VP practice shows date of acceptance as 09/02/2011 and date of completion as 02/03/2011. There is no evidence that this patient attended an appointment on 09/02/2011 or 02/03/2011.</p> <p>The Committee accepted Mr Scott's opinion that "The evidence very strongly indicates that the claim was submitted by Mr Cross to Dental Services Division of the NHS Business Services Authority (DSD) before the treatment had been completed, with dates of acceptance and completion that did not accord with the dates evidenced by the records."</p> |
| 7.(b) | <p><i>the dates against the patient's signatures did not accurately reflect the dates upon which the signatures had been provided – Found proved</i></p> <p>The Committee accepted the opinion of Mr Scott that "Mr Cross has dated his signature as 02/03/2011 and the patient's signatures are dated 09/02/2011." Mr Scott was also of the opinion that Mr Cross "manipulated claim dates of completion which had the effect of placing a course of treatment, for accounting purposes, in a different Contract Year to the one it should have been placed in. UDAs were therefore inaccurately attributed to the wrong Contract Year."</p> |
| 8. | <i>In respect of Patient 2 you caused or permitted incorrect details to be inserted on the FP17 form in that:</i> |
| 8.(a) | <i>the information inserted at Part 3 of the form did not accurately reflect:</i> |

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| <p>8.(a)(1)&(2)</p> | <p><i>(1) the date of acceptance – Found proved</i></p> <p><i>(2) the date of completion – Found proved</i></p> <p>The Committee noted from the records that Patient 2 was treated by Mr Cross at the SMP practice, was first seen on 14/02/2011 by another dentist but transferred to Mr Cross who then saw the patient on 30/03/2011 for denture impressions. The dentures were fitted on 20/04/2011. The Committee also noted that the FP17 form for the VP practice shows date of acceptance as 16/03/2011 and date of completion as 30/03/2011. There is no evidence that this patient attended an appointment on 16/03/2011 and the patient was first seen by Mr Cross on 30/03/2011.</p> <p>The Committee accepted the opinion of Mr Scott that “The evidence very strongly indicates that although the claim was submitted by Mr Cross to DSD after the treatment had been completed, the dates of acceptance and completion did not accord with the dates evidenced by the records.</p> |
| <p>8.(b)</p> | <p><i>the dates against the patient’s signatures did not accurately reflect the dates upon which the signatures had been provided – Found proved</i></p> <p>The Committee accepted the opinion of Mr Scott that “Mr Cross has dated his signature as 30/03/2011 and the patient’s signatures are dated 16/03/2011.” Mr Scott was also of the opinion that Mr Cross “manipulated claim dates of completion which had the effect of placing a course of treatment, for accounting purposes, in a different Contract Year to the one it should have been placed in. UDAs were therefore inaccurately attributed to the wrong Contract Year.”</p> |
| <p>9.</p> | <p><i>In respect of Patient 3 you caused or permitted incorrect details to be inserted on the FP17 form in that the information inserted at Part 3 of the form did not accurately reflect the date of completion – Found proved</i></p> <p>The Committee noted from the records that Patient 3 was treated by Mr Cross at the SMP practice and on 05/03/2008 denture impressions were taken. Mr Cross next saw the patient on 17/04/2008.</p> <p>The Committee accepted the opinion of Mr Scott that “...the claims data arising from the submitted form shows the Date of acceptance 05/03/2008 and date of completion 26/03/2008...The evidence very strongly indicates that the claim was submitted by Mr Cross to DSD with date of completion that did not accord with the dates evidenced by the records.”</p> |
| <p>10.</p> | <p><i>In respect of Patient 4 you caused or permitted incorrect details to be inserted on the FP17 form received on 8 May 2009 in that the information inserted at Part 3 of the form did not accurately reflect the date of completion – Found proved</i></p> <p>The Committee noted from the records that Patient 4 was treated by Mr Cross at the SMP practice and first saw the patient on 26/02/2009. Mr Cross next saw the patient on 23/07/2009 and again on 11/11/2009. The evidence before the Committee indicates that this patient’s course of</p> |

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| | <p>treatment extended beyond the date of completion entered by Mr Cross on his FP17 form.</p> <p>The Committee accepted the opinion of Mr Scott that "...the claims data arising from the submitted form shows the Date of acceptance 26/02/2009 and date of completion 26/03/2009...The evidence very strongly indicates that the claim was submitted by Mr Cross to DSD with date of completion that did not accord with the dates evidenced by the records."</p> |
| 11. | <i>In respect of Patient 5 you caused or permitted incorrect details to be inserted on the FP17 form in that:</i> |
| 11.(a) | the information inserted at Part 3 of the form did not accurately reflect: |
| 11.(a)(1)&(2) | <p>(1) <i>the date of acceptance</i> – Found proved</p> <p>(2) <i>the date of completion</i> – Found proved</p> <p>The Committee noted from the records that Patient 5 was treated by Mr Cross at the SMP practice, was first seen on 19/04/2011 by another dentist following extractions, and was referred to Mr Cross for full dentures. Mr Cross saw the patient on 20/04/2011 for denture impressions and the dentures were fitted on 18/05/2011. It also noted that the FP17 form for the VP practice shows date of acceptance as 02/03/2011 and date of completion as 30/03/2011. There is no evidence that this patient attended an appointment on 02/03/2011 or 30/03/2011.</p> <p>The Committee accepted Mr Scott's opinion that "The evidence very strongly indicates that the claim was submitted by Mr Cross to DSD before the treatment had been completed, with dates of acceptance and completion that did not accord with the dates evidenced by the records."</p> |
| 11.(b) | <p><i>the dates against the patient's signatures did not accurately reflect the dates upon which the signatures had been provided</i> – Found proved</p> <p>The Committee accepted the opinion of Mr Scott that "Mr Cross has dated his signature as 30/03/2011 and the patient's signatures are dated 02/03/2011."</p> <p>Mr Scott was also of the opinion that Mr Cross "manipulated claim dates of completion which had the effect of placing a course of treatment, for accounting purposes, in a different Contract Year to the one it should have been placed in. UDAs were therefore inaccurately attributed to the wrong Contract Year."</p> |
| 12. | <i>In respect of Patient 6 you caused or permitted incorrect details to be inserted on the FP17 form in that:</i> |
| 12.(a) | <i>the information inserted at Part 3 of the form did not accurately reflect:</i> |
| 12.(a)(1)&(2) | <p>(1) <i>the date of acceptance</i> – Found proved</p> <p>(2) <i>the date of completion</i> – Found proved</p> <p>The Committee noted from the records that Patient 6 was treated by Mr Cross at the SMP practice, was first seen on 06/04/2011 for impressions</p> |

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| | <p>and dentures were fitted on 27/04/2011. It also noted that the FP17 form for the VP practice shows date of acceptance as 23/02/2011 and date of completion as 23/03/2011. There is no evidence that this patient attended an appointment on 23/02/2011 or 23/03/2011.</p> <p>The Committee accepted Mr Scott's opinion that "The evidence very strongly indicates that the claim was submitted by Mr Cross to DSD with dates of acceptance and completion that did not accord with the dates evidenced by the records."</p> |
| 12.(b) | <p><i>the dates against the patient's signatures did not accurately reflect the dates upon which the signatures had been provided – Found proved</i></p> <p>The Committee accepted the opinion of Mr Scott that "The form was signed by Mr Cross and dated 23/03/2011. The patient signatures were dated 23/02/2011."</p> <p>Mr Scott was also of the opinion that Mr Cross "manipulated claim dates of completion which had the effect of placing a course of treatment, for accounting purposes, in a different Contract Year to the one it should have been placed in. UDAs were therefore inaccurately attributed to the wrong Contract Year."</p> |
| 13. | <p><i>In respect of Patient 7 you caused or permitted incorrect details to be inserted on the FP17 form in that:</i></p> |
| 13.(a) | <p><i>the information inserted at Part 3 of the form did not accurately reflect:</i></p> |
| 13.(a)(1)&(2) | <p><i>(1) the date of acceptance – Found proved</i></p> <p><i>(2) the date of completion – Found proved</i></p> <p>The Committee noted from the records that Patient 7 was treated by Mr Cross at the SMP practice, was first seen on 30/03/2011 for denture impressions and the dentures were fitted on 20/04/2011. It also noted that the FP17 form for the VP practice shows date of acceptance as 16/03/2011 and date of completion as 30/03/2011. There is no evidence that this patient attended an appointment on 16/03/2011.</p> <p>The Committee accepted Mr Scott's opinion that "The evidence very strongly indicates that the claim was submitted by Mr Cross to DSD with dates of acceptance and completion that did not accord with the dates evidenced by the records."</p> |
| 13.(b) | <p><i>the dates against the patient's signatures did not accurately reflect the dates upon which the signatures had been provided – Found proved</i></p> <p>The Committee accepted the opinion of Mr Scott that "The form was signed by Mr Cross and dated 30/03/2011. The patient signatures were dated 16/03/2011."</p> <p>Mr Scott was also of the opinion that Mr Cross "manipulated claim dates of completion which had the effect of placing a course of treatment, for accounting purposes, in a different Contract Year to the one it should have been placed in. UDAs were therefore inaccurately attributed to the</p> |

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| | wrong Contract Year.” |
| 14. | <i>Your conduct as set out above at 7, 8, 9, 10, 11, 12 and/or 13 was:</i> |
| 14.(a) | <p>Misleading – Found proved</p> <p>The Committee found that Mr Cross’ conduct in causing/permitting incorrect dates of acceptance and dates of completion to be inserted in Parts 2 and 3 of the FP17 claim forms was misleading. This was because Mr Cross’ actions gave the misleading impression that treatment had been carried out within the timeframe claimed, which would have led the PCT to assume that he was meeting the terms of his contract.</p> |
| 14.(b) | <p><i>dishonest in that it was done with the intention of causing UDAs to fall prematurely into the previous UDA year – Found proved</i></p> <p>The Committee noted from the evidence that the claims diverted from SMP in Northampton to VP in Birmingham were of a small number. Regardless, it was of the view that there could be no honest explanation for altering dates of acceptance and completion of treatment of patents as Mr Cross had done other than for the purposes of causing the UDAs claimed to fall into a particular UDA year under his NHS contract. The Committee found that objectively Mr Cross’ conduct would be regarded as dishonest according to the standards of reasonable and honest people.</p> <p>The Committee also noted from the records that Mr Cross was keeping a very careful tally on his UDAs and as such it was improbable that the manipulation of dates of FP17 claim forms was done in error. The Committee found that it was more likely than not Mr Cross knew that what he was doing was by the standards of reasonable people, dishonest.</p> |
| | Charging NHS patients for soft linings |
| 15. | <p><i>As set out in Schedule C NHS denture patients were charged privately for the provision of soft linings – Found proved</i></p> <p>The Committee carefully considered the receipt book submitted in evidence. It found that the 39 patients listed in Schedule C were charged privately for the provision of soft linings.</p> |
| 16. | <p><i>Where soft linings are clinically indicated the treatment is available under the NHS without any additional fee being payable – Found proved</i></p> <p>The Committee accepted the opinion of Mr Scott that soft lining, if clinically indicated, is available within a Band 3 course of treatment under NHS regulations.</p> |
| 17. | <p><i>You failed to inform patients, appropriately or adequately, of the availability of soft linings under the NHS – Found Not Proved</i></p> <p>The Committee was of the view that the duty to inform the patient that soft lining was available on the NHS was predicated on the consideration that there was a clinical need. The Committee received evidence from</p> |

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| | <p>Patient 33 who expressly stated in her witness statement dated 23 January 2016 that</p> <p>“I remember the conversation that I had with Mr Cross at the initial consultation. I asked Mr Cross how much it would cost to have the dentures done privately, because I thought I might get better quality dentures than those available on the NHS. Mr Cross said that I did not need to have the dentures done privately because they were available on the NHS but that the soft lining for the dentures was not available on the NHS and the fee for that was approximately £80 I had not previously had a soft lining and I understood it to be a cushioning for the lower dentures made out of silicone. Mr Cross said that the soft lining would make the dentures more comfortable. Mr Cross did not say that I needed the soft lining but instead offered it as an option. I agreed to have the soft lining...”</p> <p>On the face of Patient 33’s statement, there is no evidence that she had a clinical need for a soft lining. In the absence of a clinical need for a soft lining, it would not be available on the NHS. If it was not available on the NHS, there would be no duty to inform the patient that it was. In respect of the other patients in Schedule C, there is no evidence that soft linings were clinically needed and the same reasoning applies. Mr Scott accepts that “if he offered soft linings to Patients where there was not a demonstrable clinical need, he would be entitled to provide the treatment privately.” The Council has failed to prove this charge.</p> |
| 18. | <i>Your conduct as set out above at 15 and 17 was:</i> |
| 18.(a) | <p><i>Inappropriate – Found not proved</i></p> <p>In relation to paragraph 15, Mr Scott was of the opinion that in certain circumstances a dentist would be entitled to provide soft linings to patients privately if there was no demonstrable clinical need which would make it available for free on the NHS. However there was no evidence before the Committee demonstrating a clinical need for soft lining in respect of the patients listed in Schedule C. The Committee also noted that there was no criticism of the treatment Mr Cross provided to these patients. The Committee concluded that the Council had not discharged its burden of proving what had been alleged. It therefore found this charge not proved.</p> <p>In relation to paragraph 17 which was found not proved, this charge is found not proved.</p> |
| 18.(b) | <p><i>Misleading – Found not proved</i></p> <p>In relation to paragraph 15, for the same reasons as in 18(a) above, the Committee could not find this charge proved.</p> <p>In relation to paragraph 17 which was found not proved, this charge is found not proved.</p> |
| 18.(c) | <i>dishonest in that it was done with the intention of obtaining additional</i> |

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| | <p><i>payment</i> – Found not proved</p> <p>In relation to paragraph 15, for the same reasons as in 18(a) above, the Committee could not find this charge proved.</p> <p>In relation to paragraph 17 which was found not proved, this charge is found not proved.</p> |
| | Premature UDA claims |
| 19. | <i>As set out in Schedule D you caused or permitted claims to be made that did not accurately reflect the dates of treatment in respect of:</i> |
| 19.(a) | <p><i>Patient 36</i> – Found proved</p> <p>Mr Cross submitted an FP17 claim form which was signed by the patient and dated 02/03/2011, and signed by Mr Cross and dated 29/03/2011. The dental records show that impression appointment was 18/05/2011, bite appointment was 25/05/2011 and denture with soft-lining was fitted on 08/06/2011. The Committee accepted the opinion of Mr Scott that the claim dates were inaccurate.</p> |
| 19.(b) | <p><i>Patient 38</i> – Found proved</p> <p>Mr Cross submitted a claim form with a date of completion as 31/03/2009 when the records show that the bite appointment was 31/03/2009 and denture with soft-lining was fitted on 06/05/2009. The Committee accepted the opinion of Mr Scott that the claim dates were inaccurate.</p> |
| 19.(c) | <p><i>Patient 46</i> – Found proved</p> <p>Mr Cross submitted a claim form with a date of completion as 27/03/2008 when the records show that the treatment was completed on 16/10/2008. The Committee accepted the opinion of Mr Scott that the claim dates were inaccurate.</p> |
| 19.(d) | <p><i>Patient 47</i> – Found not proved</p> <p>The date of acceptance is shown as 29/10/2008 and date of completion is 18/03/2009. The dental records show a first primary denture impression appointment on 29/10/2008 which would make Mr Cross' date of acceptance, correct. The dental records also show that there was a bite appointment on 07/01/2009 and a fit appointment on 18/03/2009.</p> <p>£98 was paid on 15/04/2009. According to the records both the appointments on 18/03/2009 and 15/04/2009 were cancelled. Copies of the appointment book for 18/03/2009 were available to the Committee but not for 15/04/2009. On the face of the records, the Committee did not accept Mr Scott's evidence that Patient 47's treatment was completed on 15/04/2009 rather than 18/03/2009 and found that the Council had failed to prove this charge.</p> |
| 19.(e) | <p><i>Patient 49</i> – Found proved</p> <p>Mr Cross submitted a claim form with a date of completion as 28/03/2008 when the records show that denture with soft lining was fitted</p> |

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| | on 19/06/2008. The Committee accepted the opinion of Mr Scott that the claim dates were inaccurate. |
| 19.(f) | Patient 50 – Found proved Mr Cross submitted a claim form with a date of completion as 31/03/2008 when the records show that denture with soft lining was fitted on 11/06/2008. The Committee accepted the opinion of Mr Scott that the claim dates were inaccurate. |
| 19.(g) | Patient 51 – Found proved Mr Cross submitted a claim form with a date of completion as 31/03/2008 when the records show that denture with soft lining was fitted on 19/06/2008. The Committee accepted the opinion of Mr Scott that the claim dates were inaccurate. |
| 20. | <i>Your conduct as set out above at 19 was:</i> |
| 20.(a) | Misleading – Found proved The Committee found that Mr Cross’ conduct was misleading in that Sandwell PCT would have been under the impression that treatment had been carried out within the timeframe claimed, which would have led the PCT to assume that he was meeting the terms of his contract. |
| 20.(b) | <i>dishonest in that it was done with the intention of causing UDAs to fall prematurely into the previous UDA year – Found proved</i> The Committee was of the view that there could be no honest explanation for altering dates of treatment provided to patients as Mr Cross had done other than for the purposes of causing the UDAs claimed to fall into a particular UDA year under his NHS contract. The coincidence of the dates being all in March made it difficult to reach any other conclusion than that it was made so that the UDAs would fall under that year. The Committee found that objectively Mr Cross’ conduct would be regarded as dishonest according to the standards of reasonable and honest people. The Committee found that it was more likely than not that Mr Cross knew that what he was doing was by the standards of reasonable people, dishonest. |
| | Overclaims |
| 21. | <i>As set out in Schedule E you caused or permitted claims to be made for Band 3 treatments when:</i> |
| 21.(a) | <i>in respect of Patient 4, you only provided one Band 3 treatment as opposed to two Band 3 treatments – Found proved</i> The Committee accepted the opinion of Mr Scott that “Two Band 3 claims were submitted for a single denture course of treatment that had been interrupted by the patient’s illness. The patient failed to keep his bite appointment on 08/04/2009 but continued his treatment with the bite taking place on 11/11/2009 with the denture finally fitted on 06/01/2010. |

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| | Mr Cross submitted an inaccurate FP17 form for a completed Band 3 course of treatment with a completion date of 26/03/2009. 12 UDAs were attributed to the contract year 2008/2009. A second claim for a Band 3 course of treatment was submitted with dates of acceptance being 11/11/2009 and date of completion being 06/01/2010, with 12 UDAs being attributed to the contract year 2009/2010. |
| 21.(b) | <i>in respect of Patient 26, you only provided a Band 2 treatment, namely, a soft reline and fit – Found proved</i> The Committee accepted the opinion of Mr Scott that the patient required lab prepared soft reline which is Band 2 treatment and not Band 3. |
| 21.(c) | <i>in respect of Patient 36, you only provided a Band 1 treatment, namely, a repair and fit of a repaired upper denture – Found proved</i> The Committee accepted the opinion of Mr Scott that a Band 3 claim was submitted through the VP contract 06/05/2010 but the treatment provided appears to be Charge Exempt denture repair (1UDA). |
| 22. | Your conduct as set out above at 21(a), 21(b) and/or 21(c) was: |
| 22.(a) | <i>Misleading – Found proved</i> The Committee found that in relation to Patients 4, 26 and 36 Mr Cross' conduct in claiming twice for the same course of treatment and claiming a higher banded course of treatment than he provided was misleading as it would have led to the assumption that the treatments claimed for were provided as claimed when that was not the case. |
| 22.(b) | <i>dishonest in that it was done with the intention of obtaining additional UDAs – Found not proved</i> The Committee found that it could not exclude the likelihood of these three overclaims being as a result of an administrative error based on the comparatively small number of claims, three over a three-year period. Further, there could not be said to be a pattern of overclaiming in this manner which made error a more likely explanation. |
| | Part B |
| 23. | <i>Between around December 2006 and June 2007 you were practising in general dentistry:</i> |
| 23.(a) | <i>as an associate at Shams Moopen Dental Practice ('SMP') at 54/56 Kingsley Road in Northampton – Found proved</i> The print out of clinical records from the Shams Moopen Dental Practice ("SMP") in Northampton showed that Mr Cross provided dental treatment to patients at that practice. |
| 23.(b) | <i>under a Domiciliary Services contract with Sandwell PCT – Found proved</i> A copy of the Standard General Dental Services Contract between Mr |

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| | Cross and Sandwell PCT was before the Committee. |
| 24. | <p><i>You provided care and treatment, including dentures, under the provisions of the NHS to the patients set out in Schedule A2 – Found proved</i></p> <p>The clinical records confirm that Mr Cross provided NHS dental treatment to the 10 patients set out in Schedule A2.</p> |
| | Diversion of Claims from SMP to VP (Domiciliary Contract) |
| 25. | <p><i>As set out in Schedule F you made claims to Sandwell PCT for Units of Dental Activity ('UDAs') under your Domiciliary Services contract in respect of care and treatment provided to patients treated at the practice premises of SMP in Northampton – Found proved</i></p> <p>The Committee carefully examined the dental records before it and found that Mr Cross provided dental treatment to the 10 patients in Schedule F at the SMP practice in Northampton and diverted the claims for the treatment of these patients to Sandwell PCT for payment under his VP domiciliary services contract in Birmingham.</p> |
| 26. | <p><i>You made the claims for patients treated at the practice premises of SMP in Northampton under your Domiciliary Services contract with Sandwell PCT in order to avoid a short fall of claims for UDAs in respect of your Domiciliary Services contract with Sandwell PCT – Found proved with the exception of claims relating to Patient B.</i></p> <p>In the case of Patient B, the Committee reviewed the clinical records which appeared to confirm Mr Cross' intention to transfer the claim for Patient B to his VP contract. This claim under his domiciliary contract seems likely to have been made in error as conceded by Mr Scott. The Committee therefore found that the intention as alleged had not been made out.</p> <p>In relation to the rest of the patients, Committee found that it was more likely than not that he diverted the claims with the intention of avoiding a short fall of claims for UDAs in respect of his domiciliary services contract.</p> |
| 27. | <p>Amended to: <i>You failed to discuss with Sandwell PCT, adequately or at all, whether it was permissible to claim UDAs in respect of patients treated at the practice premises of SMP in Northampton as opposed to VP (Domiciliary Contract) in Birmingham – Found proved</i></p> <p>For the same reasons set out in paragraph 5 above the Committee found that Mr Cross had a duty and failed in his duty to Sandwell PCT.</p> |
| 28. | <i>Your conduct as set out above at 25, 26 and/or 27 was:</i> |
| 28.(a) | <p><i>Inappropriate – Found proved</i></p> <p>The Committee found that Mr Cross' conduct in submitting claims for UDAs with Sandwell PCT for treatment he provided to patients at SMP practice in Northampton, in order to avoid a shortfall of UDAs in relation to his VP domiciliary services contract in Birmingham and without</p> |

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| | <p>discussing with Sandwell PCT whether it was permissible to do so, was inappropriate.</p> <p>The Committee therefore found Mr Cross' conduct at paragraphs 25, 26 and 27 to be inappropriate.</p> |
| 28.(b) | <p>Misleading – Found proved</p> <p>Mr Cross' conduct in submitting claims for UDAs with Sandwell PCT in respect of treatment he provided to patients at SMP practice in Northampton was misleading as it led Sandwell PCT to believe that the treatment had been provided to patients under his VP domiciliary services contract when it was not true.</p> <p>Mr Cross' conduct in submitting claims for UDAs with Sandwell PCT in respect of treatment he provided to patients at SMP in order to avoid a shortfall of claims for UDAs in respect of his VP domiciliary services contract was misleading as Sandwell PCT would have reasonably assumed by virtue of the submissions under the VP domiciliary services practice contract that he was meeting the terms of his contract.</p> <p>Mr Cross' conduct in failing to discuss with Sandwell PCT whether it was permissible to divert claims for UDAs from SMP practice in Northampton to his VP domiciliary services contract in Birmingham was misleading because Sandwell PCT would have reasonably assumed that the UDAs claimed were for treatment provided under the VP domiciliary services contract in Birmingham when they were in fact provided at the SMP practice in Northampton.</p> |
| | <p>Premature UDA claims</p> |
| 29. | <p><i>You caused or permitted claims to be made that did not accurately reflect the dates of completion of treatment in respect of:</i></p> |
| 29.(a) | <p>Patient RT – Found proved</p> <p>The claims data showed that Mr Cross submitted a claim form with a date of completion as 27/03/2007 but the clinical records confirmed that the treatment was not concluded until 02/05/2007. The Committee accepted the opinion of Mr Scott that the claim dates were inaccurate.</p> |
| 29.(b) | <p>Patient JW – Found proved</p> <p>The claims data showed that Mr Cross submitted a claim form with a date of completion as 15/03/2007 but the clinical records show that the impressions were taken on 15/03/2007, with the bite being recorded on 25/04/2007. The completion date for this treatment could not have been before 25/04/2007. The Committee accepted the opinion of Mr Scott that the completion date claimed was inaccurate.</p> |
| 29.(c) | <p>Patient LF – Found proved</p> <p>The claims data showed that Mr Cross submitted a claim form with a date of completion as 26/03/2007 but the clinical records confirmed that the last recorded date for this course of treatment was 18/04/2007 and the treatment was incomplete. The Committee accepted the opinion of</p> |

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| | Mr Scott that the claim dates were inaccurate. |
| 30. | <i>Your conduct as set out above at 29 was:</i> |
| 30.(a) | <p>Misleading – Found proved</p> <p>The Committee found that Mr Cross’ conduct in causing/permitting incorrect dates of acceptance and dates of completion to be inserted in Parts 2 and 3 of the FP17 claim forms was misleading. This was because Mr Cross’ actions gave the misleading impression that treatment had been carried out within the timeframe claimed, which would have led the PCT to assume that he was meeting the terms of his contract.</p> |
| 30.(b) | <p><i>dishonest in that it was done with the intention of causing UDAs to fall prematurely into the previous UDA year – Found proved</i></p> <p>The Committee was of the view that there could be no honest explanation for altering dates of completion of treatment of patents as Mr Cross had done other than for the purposes of causing the UDAs claimed to fall into a particular UDA year under his NHS contract. The Committee found that objectively Mr Cross’ conduct would be regarded as dishonest according to the standards of reasonable and honest people.</p> <p>The Committee found that it was more likely than not Mr Cross knew that what he was doing was by the standards of reasonable people, dishonest.</p> |

We move to Stage Two.”

On 18 May 2017 the Chairman announced the determination as follows:

“Having announced its decision on the facts, Ms Barnfather invited the Committee to consider adjourning the hearing for a short period of time to allow the findings to be communicated to Mr Cross. The Legal Adviser referred the Committee to the cases of *Siddiqui v GMC* [2015] EWHC 1996 (Admin) and *Lawrance v General Medical Council* [2015] EWHC 586 (Admin). The Committee determined to adjourn the hearing for 24 hours in order for the Council to inform Mr Cross of the facts found proved, to remind him of his right to attend the hearing and to enable him to submit any material he wished the Committee to consider during the remainder of the hearing.

On its resumption, the Committee was provided with a note from Mr Cross titled “TO THE PCC” sent via email dated 16 May 2017 which it considered carefully.

The Committee took account of the submissions made by Ms Barnfather on behalf of the GDC. Ms Barnfather stated that Mr Cross has no previous fitness to practise findings against him.

The Committee took account of the defence bundle before it, including the letters from Mr Cross dated 8 May 2017 and sent via email on 16 May 2017. The Committee accepted the advice of the Legal Adviser.

The Committee bore in mind that its decisions on misconduct and impairment are matters for its own independent judgement. There is no burden or standard of proof at this stage of the proceedings. The Committee was referred to the cases of *Cheatle v GMC* [2009] EWHC 645 (Admin); *Roylance (no 2) v GMC* [2000] AC 311; *Doughty v General Dental Council* [1988] AC 164; and *Calhaem v GMC* [2007] EWHC 2606 (Admin).

Misconduct

The facts found proved against Mr Cross predominantly fall into three categories – making premature claims for Units of Dental Activity (“UDA”) in respect of treatment provided to patients, diverting claims for UDAs and overclaiming UDAs for a course of treatment.

Premature UDA Claims

The Committee found proved that Mr Cross made premature claims for UDAs by entering into FP 17 claim forms, incorrect dates of acceptance and completion of treatment which did not accurately reflect the actual dates that the courses of treatment were commenced and/or completed as shown in the patients’ records. The Committee found that Mr Cross’ conduct was misleading and dishonest because the alterations were made with the intention of causing UDAs to fall prematurely into the previous UDA contract year.

Mr Cross’ actions were a serious departure from the standards of conduct expected from a dental practitioner and breached the trust that the public and the NHS placed in him. Mr Cross’ premature claims were deliberate, multiple and spanned a protracted period of time. The Committee accepted the opinion of Mr Julian Scott, expert called by the GDC, that Mr Cross’ actions fell far below that expected of a competent NHS dentist.

Diversion of Claims from SMP to VP and VP Domiciliary Contract

The Committee found proved that Mr Cross diverted claims for treatment he provided to patients at the SMP practice in Northampton to his own practice in Birmingham by submitting the claims for UDAs to Sandwell PCT in Birmingham. This related to both his standard contract for the provision of dental services and contract for the provision of domiciliary dental services. Mr Cross did not discuss with Sandwell PCT whether it was permissible to claim UDAs under his VP contract, in respect of treatment that was provided at SMP in Northampton and not at his own practice in Birmingham. Mr Cross made these claims to Sandwell PCT in order to avoid a shortfall of claims for UDAs in respect of his VP contract for the provision of dental services with Sandwell PCT. The Committee found that his conduct was inappropriate and misleading because the PCT was led to assume that the treatments claimed for were provided at Mr Cross’ practice in Birmingham.

The Committee noted that Mr Cross had a contract with Sandwell PCT in Birmingham for the provision of dental services, including domiciliary dental services. Mr Cross has indicated in his written representations that the contract was in dispute and was unsigned. The Committee has not attempted to consider the contractual dispute between Mr Cross and Sandwell PCT. It has however noted that Mr Cross claimed for UDAs and was paid in line with the unsigned and disputed contract.

The Committee was of the view that although Mr Cross may have felt that he was adopting a pragmatic approach to his predicament, in that he had a surplus of patients at SMP in Northampton but faced a shortfall against his contracts in Birmingham, his actions in misleading Sandwell PCT were a serious departure from the standards of conduct expected from a dental practitioner.

Overclaims

The Committee found proved that Mr Cross overclaimed UDAs for treatment by claiming twice for one Band 3 course of treatment, claiming Band 3 UDAs when the treatment provided was a Band 2 course of treatment and claiming Band 3 UDAs when the course of treatment provided was a Band 1. The Committee found that Mr Cross' conduct was misleading because claiming twice for the same course of treatment and claiming a higher banded course of treatment than provided would have led to the assumption that the treatments claimed for were provided as claimed when that was not the case.

Mr Cross' conduct in diverting claims and making premature claims breached the GDC's Standards for Dental Professionals (May 2005), particularly Principle 6 – Be Trustworthy:

- 6.1 Justify the trust that your patients, the public and your colleagues have in you by always acting honestly and fairly.
- 6.2 Apply these principles to clinical and professional relationships, and any business or educational activities you are involved in.
- 6.3 Maintain appropriate standards of personal behaviour in all walks of life so that patients have confidence in you and the public have confidence in the dental profession.

The Committee was in no doubt that the facts found proved are serious and amount to misconduct.

Impairment

The Committee next considered whether Mr Cross' fitness to practise is currently impaired by reason of his misconduct. It was referred to the cases of *Cohen v General Medical Council* [2008] EWHC 581 (Admin) and *Council for Healthcare Regulatory Excellence v Nursing and Midwifery Council and Paula Grant* [2011] EWHC 927 (Admin).

The Committee was of the view that all failings are capable of being remedied but dishonest conduct is harder to remedy than clinical failings or failings involving clinical performance.

In considering whether there had been remediation in this case, the Committee took account of Mr Cross' submissions within the defence bundle of documents together with his letters of 8 May 2017 and 16 May 2017. Mr Cross, in his letter of 16 May 2017, states "I realise I may have fallen down in some administrative areas and for that I apologise. I have always done my best for patients and have never intentionally claimed for work that wasn't done." The Committee noted Mr Cross' comments but considered that he had not expressly addressed the deliberate act of entering inaccurate dates into FP17 claim forms to avoid a shortfall which it found to be dishonest. Mr Cross also stated that "avoiding a shortfall equates to achieving targets which is perfectly reasonable behaviour...there is no requirement for permission (let alone discussion) regarding sub-contracting to additional premises." It appeared to the Committee that Mr Cross may regard the serious findings on entering inaccurate dates into claim forms to bring the claims into a different year as "administrative areas".

The Committee has not made a finding that Mr Cross claimed for work not done. However, his method of claiming for the work done has been found to be misleading, and in respect of the premature claims, dishonest. The Committee was of the view that having given Mr Cross an opportunity to consider the facts found proved, Mr Cross remains adamant that he has done nothing wrong. The Committee concluded that Mr Cross has not remedied or sought to

remedy his behaviour. Furthermore, it considered that Mr Cross has not developed any insight into his dishonest behaviour and in the absence of any evidence of remediation and insight, the Committee could not be assured that his misconduct would not be repeated.

Mr Cross acted dishonestly, breached fundamental tenets of the profession and brought the profession into disrepute. The Committee concluded that he is liable to act in the same way in the future in the absence of any remediation. Furthermore, public confidence in the profession would be greatly undermined if a finding of impairment is not made in the face of the serious nature of Mr Cross' misconduct.

The Committee therefore concluded that Mr Cross' fitness to practise is currently impaired by reason of his misconduct.

Disposal

The Committee next considered what action, if any, to take in relation to Mr Cross' registration. It reminded itself that the purpose of a sanction was not to be punitive although it may have that effect. The Committee bore in mind the principle of proportionality. It also had regard to the *Guidance for the Practice Committees including Indicative Sanctions Guidance, October 2016, ("PCC Guidance")*.

The Committee considered the mitigating and aggravating factors in this case. It took account of Mr Cross' previous good character and the fact that there was no actual harm or risk of harm to patients. In contrast, there is a range of aggravating factors in this case and they include:

- Multiple findings of dishonest conduct;
- Premeditated misconduct in that Mr Cross kept a close tally on his UDAs;
- Financial gain by Mr Cross because by entering inaccurate dates of acceptance and/or completion of treatment, Sandwell PCT were given the impression that the UDA target for the relevant year had been achieved;
- Serious breach of trust;
- Sustained and repeated misconduct over a significant period of time; and
- Absence of any insight or remedial action into the dishonest conduct.

The Committee was of the view that to conclude this case with no further action would be insufficient to mark the seriousness of Mr Cross' misconduct.

The Committee considered the available sanctions in ascending order starting with the least serious. It determined that a reprimand would be inappropriate and inadequate given the deliberate nature and protracted period of the dishonest conduct found proved and the lack of recognition by Mr Cross that he should not have behaved in the way that he did.

The Committee then considered whether a conditions of practice order would be appropriate. There has been no criticism in this case of Mr Cross' treatment of patients. The facts found proved involve dishonest behaviour and the Committee was of the view that conditions cannot address the dishonesty findings given the absence of any insight and acceptance of wrong-doing by Mr Cross. In addition, conditions are insufficient to safeguard the wider public interest.

The Committee next considered whether suspension would be sufficient to mark the serious misconduct in this case. Mr Cross has shown no insight into his behaviour. The evidence

before the Committee suggests a professional attitudinal problem in light of his persistent contention of no wrong-doing. The Committee considers that serious and persistent dishonest behaviour and a persistent lack of insight into the seriousness of the dishonest conduct are damaging to public confidence in the dental profession and are fundamentally incompatible with being a dental professional.

The Committee also took account of paragraph 49 of Appendix A in the PCC Guidance:

“Dishonesty is serious even when it does not involve direct harm to patients (for example defrauding the NHS or providing misleading information) because it can undermine public confidence in the profession. The Privy Council has emphasised that “Health Authorities must be able to place complete reliance on the integrity of practitioners and the Committee is entitled to regard conduct which undermines that confidence as calculated to reflect on the standards and reputation of the profession as a whole”.

The Committee concluded that a period of suspension would not be appropriate in light of the nature of the dishonest conduct and Mr Cross’ persistent attitude that he has done nothing wrong in the way he behaved. Having decided that suspension would be inappropriate, the Committee determined that erasure was the proportionate outcome in this case. The Committee considered the impact upon Mr Cross of erasure but determined that the public interest outweighed Mr Cross’ interest in this regard.

The Committee therefore determined, pursuant to Section 27B(6)(a) of the Dentists Act 1984, as amended, to direct that Mr Cross’ name be erased from the Register.

Decision on immediate order of suspension

The Committee took account of the submissions made by Ms Barnfather on behalf of the GDC that an immediate order should be imposed on Mr Cross’ registration. The Committee accepted the advice of the Legal Adviser.

Having decided that Mr Cross acted dishonestly, breached fundamental tenets of the profession and brought the profession into disrepute and that he is liable to act in the same way in the future in the absence of any insight and remediation, the Committee was of the view that not to impose an immediate order would be inconsistent with these findings. The Committee concluded that the serious nature of the dishonesty found proved in this case reached the threshold for the imposition of an interim order on public interest grounds. It therefore determined that an immediate order of suspension is otherwise in the public interest, pursuant to Section 30 (2) of the Dentists Act 1984, as amended.

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

That concludes the case.”