



Neutral Citation Number: [2023] EWHC 2604 (Admin)

Case No: CO/3985/2022
AC-2022-LDS-000240

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
SITTING IN LEEDS

Friday, 20th October 2023

Before:
FORDHAM J

Between:
GHAFOOR MANAN **Appellant**
- and -
GENERAL DENTAL COUNCIL **Respondent**

Matthew McDonagh (instructed by Weightmans LLP) for the **Appellant**
Peter Mant (instructed by GDC) for the **Respondent**

Hearing date: 10.10.23

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

FORDHAM J

FORDHAM J:

Introduction

1. By a determination given on 4 October 2022, the Professional Conduct Committee of the GDC imposed the sanction of erasure on Dr Manan. The Committee was comprised of Dr Adair Richards, Ms Laura Bryson and Mr Roger Green. The best starting reference-point for any decision-maker in these cases are these provisions, found within section 1 of the Dentists Act 1984:

(1ZA) The overarching objective of the [GDC] is the protection of the public. (1ZB) The pursuit by the [GDC] of their overarching objective involves the pursuit of the following objectives— (a) to protect, promote and maintain the health, safety and well-being of the public; (b) to promote and maintain public confidence in the professions regulated under this Act; and (c) to promote and maintain proper professional standards and conduct for members of those professions. (1A) When exercising their functions under this Act, the [GDC] shall have proper regard for— (a) the interests of persons using or needing the services of registered dentists or registered dental care professionals in the United Kingdom; and (b) any differing interests of different categories of registered dentists or registered dental care professionals.

2. The case arose out of the following course of treatment. Dr Manan saw “Patient A” at 6 appointments in 2018. Five of these were at Dr Manan’s Morden Dental Practice in London SM4; one was at his Wandsworth Town Dental Practice in London SW18. Patient A had been referred by her dentist in Wimbledon, who provided a radiograph (x-ray). The first appointment (23 March 2018) was for an assessment. The second (13 April 2018) involved a root canal treatment. The third (10 May 2018) was a follow-up and involved a temporary crown. The fourth (21 May 2018) involved fitting a crown. The fifth (12 September 2018) was an emergency appointment, at Wandsworth. The sixth (27 September 2018) was a follow-up, back at Morden. Following those 6 appointments, Patient A obtained a second opinion, together with a new x-ray. What came to light was an infection, an unobturated (unfilled and unsealed) second root canal, and the fractured tip of a dental instrument (a rotary file) lodged within the treated root canal.
3. Patient A complained to Dr Manan on 21 November 2018 and 5 December 2018. Unsatisfied with how Dr Manan had responded, she then complained to the GDC on 11 December 2018. Dr Manning was notified on 7 January 2019 of the GDC investigation. The GDC processes then ran their course. During the GDC processes, there were various communications between Dr Manan and the GDC about relevant documents. Also during the GDC process, on 16 October 2019, an interim orders committee imposed an interim suspension order (“ISO”) on Dr Manan. The ISO meant that he was suspended from the register. This meant that carrying out dental treatment, or carrying on the business of dentistry, were each prohibited, and each constituted a criminal offence. The disciplinary process culminated in a “Stage 1” hearing which commenced on 4 January 2021 and ran through to 8 January 2021, resuming in July 2022 and then again in September 2022. Stage 1 was completed by way of findings of fact made by the Committee on 16 September 2022. In light of those findings of fact the proceedings continued to “Stage 2”. A Stage 2 hearing took place on 3 and 4 October 2022. At Stage 2 the Committee addressed Dr Manan’s fitness to practise history, made findings of misconduct, and then made a finding of impairment of fitness to practise. In light of all of those findings, the Committee then

addressed the question of sanction and arrived at the sanction of erasure from the register.

This Appeal

4. This is a statutory appeal pursuant to section 29 of the 1984 Act. The appeal is by way of a rehearing. The ultimate question is whether the appealed decision was wrong or unjust because of serious procedural irregularity (CPR52.21(3)). No serious procedural irregularity is alleged. There is no challenge to the Committee's findings of fact, nor to the Committee having found misconduct and impairment. There are criticisms of the reasoning in relation to each of those aspects. But the appeal is solely against sanction: that the sanction was wrong. The argument, advanced by Mr McDonagh on behalf of Dr Manan, is that the less draconian sanctions of a conditions of practice order, or alternatively a suspension order to be followed by a review hearing, ought to have been imposed instead of erasure. These alternative sanctions are described in GDC's Guidance for the Practice Committees including Indicative Sanctions Guidance (December 2020) at paragraphs 6.10 to 6.29. Erasure is discussed at paragraphs 6.30 to 6.34. Having said all this, the essential question for me to decide is whether the erasure sanction imposed by the Committee was appropriate and necessary in the public interest or whether it was excessive and disproportionate: see Sastry v General Medical Council [2021] EWCA Civ 623 [2021] 1 WLR 5029 at paragraph 102.

Adverse Findings of Fact

5. The Committee's Findings of Fact were announced and delivered, as the culmination of Stage 1, on 16 September 2022. The findings are not challenged on this appeal; nor is the Committee's reasoned analysis in arriving at them. I can summarise them as follows. There were some adverse findings as to clinical failings. There had been an inadequate assessment by Dr Manan, by reason of failing to take a further x-ray before proceeding with the root canal treatment, constituting a poor standard of care. Also constituting a poor standard of care was Dr Manan's failure to take an x-ray after the root canal treatment. Dr Manan had failed to record giving an explanation of the risks and benefits of the proposed treatment. He had failed to identify the second canal, which he had therefore also failed to disinfect or obturate. He had failed to use a rubber dam. In the later appointments there were failures to make proper records as to x-rays, as to materials used, and as to the fitting of the temporary crown. Beyond the clinical matters, there was also a finding of unprofessional action in Dr Manan recording that he would treat Patient A "like a baby".
6. There were adverse findings relating to the fractured tip of the rotary file becoming lodged in the treated root canal. The Committee found that Dr Manan (i) had failed to communicate to Patient A that the file had fractured, and its tip had become lodged in the treated root canal, (ii) had failed to discuss with Patient A the impact of that event on the prospects of the treatment succeeding, and (iii) had failed to discuss with her the options arising out of that event. The Committee found that (i) and (ii) constituted failures as to Dr Manan's "duty of candour"; and that (i), (ii) and (iii) all constituted conduct which was unprofessional and lacking in integrity.
7. There were also adverse findings by the Committee relating to the period after which Patient A had complained to Dr Manan. These findings concerned a failure to provide

to Patient A (and therefore a failure to follow) the requisite complaints procedure; and a failure to provide Patient A with a substantive (ie. properly substantive) response to her complaint.

8. Finally, there were adverse findings by the Committee relating to the period in which the GDC investigation and proceedings were afoot. Dr Manan was found to have provided the GDC (May 2019), when requested by the GDC, with a typed up transcript of his manuscript notes which were incorrect and incomplete. The errors of transcription in two respects constituted unprofessional action, and in one of those two respects was found to be misleading. Then, in providing (January 2020) incomplete records to the GDC, and moreover in maintaining to the GDC (February 2020) that complete records had been provided, Dr Manan was found to have acted in an unprofessional and misleading way, which actions were further failures of integrity. As to communications with Patient A during the GDC proceedings, there was an adverse finding that, in December 2019 communications with Patient A, Dr Manan requested that she withdraw her allegations of sexually motivated statements by him, which was found to constitute unprofessional action, intended to influence the outcome of the GDC proceedings, which was lacking in integrity.

Features of the Findings Emphasised by Dr Manan

9. The adverse Findings of Fact have to be seen in the light of two things: first, the entirety of the allegations which were made and addressed and what was decided by the Committee in relation to each and all of them; and secondly, the Committee's detailed reasoning. Emphasised at Stage 2 and in this appeal, on behalf of Dr Manan, there are these key features in particular. First, that many of the clinical Findings of Fact had involved admissions on the part of Dr Manan. Secondly, that other allegations had formed part of the case against Dr Manan, on which the Committee found no case to answer. Specifically, these were that Dr Manan had perforated the root; and that the fracturing of the instrument of itself constituted a failure of adequate care. Thirdly, that there were several further allegations in the case against Dr Manan, on which there was a case to answer but which the Committee found – in his favour – were not proved. Specifically, these were: an allegation of failing to explain the risks and benefits of the proposed treatment; an allegation of a failure of adequate care in not referring Patient A to another dentist after the fractured instrument event; an allegation that antibiotics prescribed by Dr Manan (at the appointment at Wandsworth) were without clinical justification; an allegation that during the root canal treatment an x-ray should have been taken, not an apex locator used; an allegation that at the 27 September 2018 appointment an x-ray was recorded which had not been taken; an allegation that the supply of the inaccurate and incomplete transcript of the manuscript notes was dishonest; an allegation that the supply to the GDC of incomplete records was dishonest; an allegation that it was unprofessional and/or lacked integrity for Dr Manan to have offered Patient A a financial settlement in December 2019; allegations that an admitted statement made by Dr Manan to Patient A (“how do you look so young?”) was unprofessional and sexually motivated; and allegations that Dr Manan had made disputed further statements to Patient A (“you’re so beautiful”, “do you have a daughter? Is she more beautiful than you or less beautiful than you?”) and to her partner (“how do you satisfy such a beautiful woman in bed?”), which statements were unprofessional and sexually motivated. All of these further allegations were found unproven.

10. Mr McDonagh, for Dr Manan, emphasises a number of what I will call “Contextual Features” within the Committee’s reasoning in the Findings of Fact. First, the single statement made, admitted and found proved (“how do you look so young?”), was accepted by the Committee to have been likely to have been an innocuous attempt at breaking the ice and putting Patient A at ease. Secondly, in the course of the reasoned finding the other, disputed alleged statements were unproved, the Committee positively relied on the absence of any evidenced “pattern” by Dr Manan of inappropriate behaviour of that kind. Thirdly, in finding a failure of candour, unprofessionalism and lack of integrity in not communicating to Patient A that the file tip had fractured and become lodged in the treated root canal, and in finding the consequential failures to discuss the impact on the prospects of the treatment’s success and the options for action, the Committee found unproven the allegation that there was dishonesty. As to this, the Committee accepted that Dr Manan’s intention in not informing Patient A of the fractured file appeared to have been “well-meaning”, in this sense. His intention was to protect Patient A from feeling distressed by a situation which he was actively monitoring; which was not likely in his clinical judgment to have resulted in any complications; where he did not want to worry her unnecessarily; where he did not appear to have had any intention to conceal information from patient A, to protect his own interests, or to avoid criticism or embarrassment; and without a conscious disregard by Dr Manan of Patient A’s rights or dignity. Fourthly, in finding the failure of professionalism and integrity in the December 2019 request to Patient A to withdraw her complaints of sexually motivated statements, the Committee accepted that the other aspect of these communications - offering a financial out-of-court settlement to resolve a complaint – was not in itself unprofessional conduct. On this aspect, the context also includes the Committee’s ultimate findings that the allegations of statements, which were sexual motivated, were found unproven. Fifthly, in finding the transcript of manuscript notes to have been unprofessional and misleading, the Committee did not find dishonesty or an intention to mislead. Sixthly, in finding the communications to GDC of, and about, the records (in January and February 2020) to have been unprofessional, misleading and lacking in integrity the Committee did not find that there had been dishonesty, or action in deliberately misleading the GDC, or action in concealing some damaging content in undisclosed records.

Features of the Findings Emphasised by the GDC

11. Mr Mant, for the GDC, also emphasises a number of “Contextual Features” within the reasoning. First, in the adverse findings of a failure of candour, of unprofessionalism and of lack of integrity in not communicating the fractured file tip lodged in the root canal, and in the consequential failures to discuss implications and options, Dr Manan’s actions were found by the Committee to be “clearly unprofessional”, involving breach of a professional duty of candour which was a duty “of fundamental importance to public confidence in the profession and to the right of patients to make informed decisions regarding their treatment”, where “basic standards of professionalism” required Dr Manan to have informed Patient A of the matter and to have discussed the clinical consequences and treatment options with her. Secondly, in the adverse findings of failure of professionalism and integrity in the December 2019 request made to Patient A, the Committee found that it was unprofessional and inappropriate for Dr Manan to have communicated as he did, and that adherence to the highest standards of the profession would have compelled him not to attempt to communicate directly, to ask Patient A to withdraw serious allegations while a GDC

investigation was continuing. Thirdly, in the adverse findings of unprofessional action which was misleading and lacking in integrity, in providing incomplete records and purporting to confirm that they were complete, Dr Manan was found to have caused or allowed the GDC to be provided with what purported to be a complete set of records, provided in response to formal requests from the GDC for the records, so that the GDC “could perform its regulatory functions” of investigating a patient’s complaint and presenting a case before a Professional Conduct Committee. This was, found the Committee, all in circumstances where Dr Manan was likely to have known throughout that undisclosed records existed, and that these fell within the scope of the request. It was his duty to have identified them, but he positively assured the GDC that there remained nothing further. That was unprofessional and misleading, regardless of whether it had been Dr Manan’s intention to mislead. The GDC was entitled to expect registrants to exercise care and diligence when responding to requests for the disclosure of patient records in a regulatory investigation or proceeding, and to ensure that responses provided were accurate and complete. That was a basic expectation of any professional and the failure to respond appropriately was capable of undermining the scheme of professional regulation.

Not an Erasure Case

12. Mr McDonagh accepts, as he accepted at the Stage 2 hearing, that the Findings of Fact justified the Committee making adverse findings of misconduct, of present impairment of fitness to practise, and as to the imposition of a sanction. But this, he submits, was ‘not an erasure case’. What caused the Committee to treat it as an erasure case was the adducing by GDC at the stage 2 hearing of a certificate of conviction. The central submission is that the Certified Convictions could not justifiably constitute a ‘game-changer’ which transformed this into ‘an erasure case’.

The Certified Convictions

13. At the Stage 2 hearing on 3 October 2022 the GDC formally adduced as evidence – pursuant to rule 57 of the General Dental Council (Fitness to Practise) Rules 2006 – a certified record of conviction. This document had been certified on 3 March 2021. It was the register of the Lavender Hill Magistrates’ Court for 9 February 2021. The certified register recorded 8 convictions of criminal offences by Dr Manan, to which he had pleaded guilty on 9 February 2021, each of which had culminated in a fine of £500. There were two offences of carrying on the business of dentistry contrary to section 41 of the 1984 Act. The remaining six were offences of carrying out dental treatment contrary to section 38 of the 1984 Act. The certified particulars of the 8 offences were as follows:

(1) Mr Ghafoor Manan carried out dental treatment on Ms Shumaila Abdul Rehman. Contrary to section 38 of the Dentists Act 1984. (2) Mr Ghafoor Manan carried out dental treatment on Ms Fozia Khan. Contrary to section 38 of the Dentists Act 1984. (3) On 05/11/2019 Mr Ghafoor Manan carried on the business of dentistry, namely receiving payment for dental treatment from Ms Fazila Khan in the amount of £260 (cash) at Morden Dental Clinic 6 Crown Parade Morden SM4 5AG. Contrary to section 41 of the Dentists Act 1984. (4) Mr Ghafoor Manan carried out dental treatment on Mr Nasrullah Khan. Contrary to section 38 of the Dentists Act 1984. (5) On 05/11/2019 Mr Ghafoor Manan carried on the business of dentistry, namely receiving payment for dental treatment from Mr Nasrullah Khan in the amount of £60 (cash) at 8 London Road, Morden SM4 5BH. Contrary to section 41 of the Dentists Act 1984. (6) Mr Ghafoor Manan carried out dental treatment on Ms Fozia Khan at Morden Dental Clinic 6 Crown Parade Morden SM4

5AG. Contrary to section 38 of the Dentists Act 1984. (7) Mr Ghafoor Manan carried out dental treatment on Ms Shumaila Abdul Rehman at Wandsworth Town Dental Practice, 140 Garratt Lane, SW18 4EE. Contrary to section 38 of the Dentists Act 1984. (8) Mr Ghafoor Manan carried out dental treatment on Ms Shumaila Abdul Rehman at Wandsworth Town Dental Practice, 140 Garratt Lane, SW18 4EE. Contrary to section 38 of the Dentists Act 1984.

14. Mr McDonagh accepts the following: that the certified conviction document reflects convictions for practising dentistry when subject to an interim order of suspension; that there were 8 offences amounting to breaches of the interim order of suspension; that the certificate is conclusive proof of the convictions; that the sole available rebuttal of a certified conviction (mistaken identity: pursuant to rule 57(6)) does not arise; and that Dr Manan was and is not entitled to seek to re-litigate the convictions as to their facts (see Achina v General Pharmaceutical Council [2021] EWHC 415 (Admin) at paragraph 32).

Analysis of the Certified Convictions

15. By way of a first issue, addressed at the Stage 1 hearing, the Committee dealt with the relevance of the Certified Convictions. The Committee received and heard submissions on behalf of Dr Manan and the GDC, and advice from the Legal Adviser to the Committee. Within a passage headed “Fitness to Practise History” the Committee recorded that prior to these regulatory proceedings and his convictions, Dr Manan had an unblemished record over a long practising career. As to the Certified Convictions, and what Dr Manan said about his criminal conduct, the Committee reasoned as follows (the numbers in square brackets are mine):

[1] Your GDC registration was subject to an order for interim suspension pending the determination of this case which, for reasons beyond your control, has regrettably taken nearly 2 years longer than initially envisaged. On 9 February 2021 you were convicted in the Lavender Hill Magistrates’ Court of eight counts relating to the unlawful practice of dentistry when your registration was suspended as a result of the order for interim suspension.

[2] The fact of your convictions was before the Committee at this stage of the proceedings because it forms part of your regulatory history. It was the GDC’s submission that your convictions mean that you can no longer be trusted to comply with any restriction on your registration and that, if the Committee were to find current impairment in respect of the facts which it has determined, erasure would be the appropriate sanction in all the circumstances of this case. The Committee is not asked to consider your convictions as being in themselves a ground of impairment, or to otherwise impose a sanction directly in response to those convictions. These would be matters for another Practice Committee to decide in due course, were those convictions to be referred under the GDC’s fitness to practise procedures. At present, the convictions have not been referred and are only before the Committee as a factor to consider when deciding (if it reaches that stage) the questions of impairment and sanction in respect of the facts found proved relating to your care and treatment of Patient A and your responses to her complaint and to the GDC’s ensuing investigation.

[3] The certified memorandum of conviction was the only document before the Committee relating to the convictions. It records that six of the counts in respect of which you were convicted were for carrying out dental treatment on a total of three patients at the Morden and Wandsworth Practices (and potentially a third address), contrary to section 38 of the Dentists Act 1984. The date(s) on which these offences were committed is not specified in the terms of the memorandum of conviction. The remaining two counts were recorded as being for receiving cash payments for dental treatment from two people on 5 November

2019, thus carrying on the business of dentistry contrary to section 41 of the Dentists Act 1984. You were fined £500.00 for each of the eight counts, ordered to pay costs totalling £5000.00, a victim surcharge of £181.00 and compensation to two victims totalling £320.00.

[4] Mr McDonagh (who had not acted for you in the criminal proceedings) initially submitted to the Committee that, as instructed by you, your convictions involved an “isolated” incident where you had booked a family for the completion of their treatment with a locum, but that the locum did not “turn up” and so you treated the family yourself in response to pressure from them. When referred by the Committee to the terms of the memorandum of conviction, which refers to the patients being treated from more than one practice address, Mr McDonagh said he was unable to provide the Committee with any further detail or clarity as to the nature of the offending for which you were convicted.

[5] The Committee had regard to Rule 57 of the General Dental Council (Fitness to Practise) Rules 2006, which provides that: (5) Where a respondent has been convicted of a criminal offence— (a) a copy of the certificate of conviction, certified by a competent officer of a court in the United Kingdom (or, in Scotland, an extract conviction) shall be conclusive proof of the conviction; and (b) the findings of fact upon which the conviction is based shall be admissible as proof of those facts.

[6] There was no dispute that you were the person referred to in the memorandum conviction and that you had received the convictions in question. You pled guilty to all eight charges. The Committee accepted the terms of the memorandum of conviction as establishing that you had been convicted of six counts providing dental treatment to three patients from at least two different practice addresses and that you had unlawfully received cash payments for dental treatment from two people on 5 November 2019. The Committee therefore did not accept that your criminal offending related to an isolated occasion when a locum did not “turn up” to treat a family, as your offending took place in at least two different dental practices.

Misconduct

16. The Committee was aware of the Certified Convictions, and had analysed them, when it turned to decide the Stage 2 questions of misconduct, impairment and sanction. In its unimpugned Stage 2 findings of misconduct, the Committee found the relevant threshold (serious departure from reasonably expected standards) had been crossed, emphasising the clinical failings, the actual harm which had been caused to Patient A, and the compounding effect of the failure of candour (after the fractured file incident) and the failure of integrity in the response to Patient A and to the GDC in the context of the GDC’s proceedings. The Committee’s reasoning included this:

The duty of candour is a fundamental tenet of the profession and your breach of it was unprofessional and lacking integrity, as was your conduct in relation to asking Patient A to withdraw her allegations of sexual misconduct and also when responding to the GDC’s requests in relation to Patient A’s dental records. Such conduct is a serious departure from basic professional standards and has the potential to bring the profession into disrepute. A lack of integrity in any professional person is a serious matter, as it undermines the confidence the public and the profession can place in the practitioner in terms of compliance with the higher ethical and professional standards to which they are subject.

Impairment

17. In its unimpugned Stage 2 findings of impairment, the Committee emphasised the failures of candour and the various findings of want of integrity. The Committee also emphasised what it assessed to be attitudinal problems and the very limited insight exhibited by Dr Manan. The Committee characterised as “cursory” a reflective statement from Dr Manan, and as “minimal” the relevant contents of a continuing

practice development record which Dr Manan had submitted for Stage 2. The Committee emphasised the lack of evidence of any full remediation and specifically rejected the explanation put forward by Mr McDonagh on behalf of Dr Manan that responsive shortcomings were attributable to the Dr Manan being hindered as a result of his repeated presence and activities in Ghana. The Committee recognised that clinical failings were “clearly remediable”, but said this in paragraphs about “attitudinal failings” and about future “risks” (numbers in square brackets are mine):

[a] Your attitudinal failings, relating to your unprofessional conduct and your lack of integrity, are more difficult to remedy in the Committee’s judgment. These matters go to your character and encompassed both your interactions with Patient A and also with your regulatory body. There is no evidence of any structured steps towards remediation, such as mentorship or peer-based discussion. There is little evidence of any meaningful reflection by you on your unprofessional conduct and lack of integrity and the impact this had on Patient A and on the GDC’s ability to discharge its regulatory functions. There has been no meaningful reflection by you on how your actions had the potential to bring the profession into disrepute and to otherwise undermine public confidence in the profession and in the GDC’s regulatory role. The Committee noted that rather than provide adequate evidence of remediation you had instead received eight convictions relating to the unlawful practice of dentistry by breaching the interim suspension order imposed on you during the course of these proceedings.

[b] In the Committee’s judgment, the lack of evidence of full remediation means that there is a risk of harm to the public should you be allowed to practise without restriction. Public confidence in the profession and in this regulatory process would also be seriously undermined if no finding of impairment were to be made. The Committee considered you had put Patient A at an unwarranted risk of harm and had caused actual harm to her and that you are liable to do so again with patients in the future. You had also acted in a way which was liable to bring the profession into disrepute through your lack of integrity, particularly in relation to your failure to comply with the duty of candour, and that you are liable to demonstrate a lack of integrity again in the future.

Sanction

18. Since this is the heart of the case, I will set out the Committee’s reasoning on sanction in full (again, paragraph numbers are mine):

[i] The purpose of a sanction is not to be punitive, although it may have that effect, but to protect the public and the wider public interest.

[ii] In deciding on what sanction, if any, to impose on your registration, the Committee had regard to the aggravating and mitigating features present in this case.

[iii] The aggravating features present include actual harm caused to Patient A, a breach of her trust in respect of your failure to have complied with the duty of candour, limited remediation and insight demonstrated at this stage of the proceedings and a blatant or wilful disregard of the role of the GDC and the systems regulating the profession. Your convictions for unlawful practice that took place whilst these proceedings were ongoing are also an aggravating factor, undermining your trustworthiness, and demonstrating a disregard for regulatory orders.

[iv] In mitigation the Committee recognised that there has been some expression of remorse by you, that you have taken some steps towards remediation, that you had attended and engaged fully in the hearing, and that you have no previous fitness to practise history.

[v] The Committee considered the question of sanction in ascending order of severity.

[vi] To conclude this case with no action and reprimand would be wholly inappropriate in the Committee's judgment, given the seriousness of your misconduct and the lack of remediation which you demonstrate. Taking no further action or issuing a reprimand would not protect the public and meet the wider public interest.

[vii] The Committee next considered whether conditions of practice could be formulated which would be workable, measurable and proportionate. The Committee considered that conditions of practice might be appropriate to address the clinical concerns in this case. However, the Committee could not identify conditions of practice which could be formulated to address the behavioural issues identified in this case. The Committee determined that conditions of practice would not in any event be sufficient to mark the seriousness of those non-clinical aspects of your misconduct. Further, the Committee could not place its trust in you to comply with conditions on your practice in light of your convictions for illegally practising dentistry in breach of the interim suspension order which was made as part of these proceedings. In the Committee's judgment there appear to be deep seated underlying professional attitudinal problems relating to your failure to take the role of the GDC seriously.

[viii] The Committee next considered whether to direct that your registration be suspended for a period of up to 12 months, with or without a review. In the Committee's judgment, suspension would not be sufficient to maintain public confidence in the profession and this regulatory process. This is because of your breaches of the interim suspension order which resulted in your receiving eight convictions relating to the unlawful practice of dentistry. Such conduct, whatever the precise details of your offending, was truly extraordinary and wholly unacceptable from a regulatory perspective. It is conduct which destroys the ability of the public, the profession and the GDC as regulator to trust you to comply with any restriction on your registration, including a period of suspension. In reaching its decision, the Committee was mindful that protecting the reputation of the profession outweighs your personal interests. The Committee considered the facts relating to your misconduct would not in themselves ordinarily result in the ultimate sanction of erasure. However, [i] the consequence of your criminal convictions, coupled with [ii] your misconduct in the present case, where you had repeatedly acted with a lack of integrity, along with [iii] your lack of any full or meaningful remediation, makes erasure the only appropriate and proportionate outcome. In the Committee's judgment no lesser sanction would be sufficient to protect the public and to maintain public confidence in the profession and in this regulatory process.

[ix] Accordingly, the Committee directs that your name be erased from the Register.

Dr Manan's Appeal

19. I can turn to the issues in the appeal. In careful, comprehensive and sustained submissions in support of this appeal, Mr McDonagh submits – in essence, as I saw it – as follows. The starting point is that, leaving aside the certificate of conviction, this was not an erasure case (§12 above). This was a case involving a single patient (indeed, a single tooth). The events arose in the context of a 30 year otherwise unblemished career. Dr Manan had made a series of appropriate admissions. The allegations of dishonesty and of sexually motivated statements had been rejected by the Committee. The important contextual elements (§§9-10 above) had been identified. But then came the certificate of conviction. That was adduced belatedly, and with no supporting detail. That meant that its contents raised many unanswered questions about the nature of the conduct in question.
20. The Certified Convictions were, in principle, legally irrelevant to any issue of misconduct, because the conviction had never – as it could have done – featured as a misconduct case. But they were also, again in principle, legally irrelevant to any question of impairment. That was because they lacked any sufficiently close nexus to

the subject matter of the findings of fact and the misconduct. The importance of a close nexus can be seen from the discussion in Nicholas-Pillai v GMC [2009] EWHC 1048 (Admin) at paragraph 18. There, the Court explained that false evidence given to a disciplinary panel about an alleged clinical failing as the allegation of misconduct could not at that hearing be an impairment of fitness to practise. Lies told to a panel would need to be pursued in separate proceedings, as a separate freestanding allegation of misconduct, in order to become a ground of impairment leading to sanction. So too with the convictions in the present case. That is why the submissions on both sides focused on sanction. It is why the analysis of the Certified Convictions at [2] (§15 above) spoke of the regulatory history as relevant “if the Committee were to find current impairment in respect of the facts which it has determined”. Where the committee went off the rails was later at [2], in treating the Certified Convictions as “a factor to consider when deciding (if it reaches that stage) the questions of impairment and sanction in respect of the facts found proved relating to Dr Manan’s care and treatment of Patient A and his responses to her complaint and to GDC’s ensuing investigation”. The analysis of impairment contained a sentence referring to the Certified Convictions at the end of [a] (§17 above). That should have played no role within the section on impairment. It plainly influenced the passage as to impairment that followed at [b].

21. The evidence of the Certified Convictions could support a finding of erasure if – but only if – it could justify the following conclusion: that the criminal conduct destroyed the ability of the public the profession and the GDC as regulator to trust Dr Manan to comply with any restriction on his registration including any period of suspension. The evidence could not however justify such a finding. First, on any view, the criminal conduct reflected a limited temporal part of the lengthy period during which the interim suspension order had been in place, since October 2019 up to February 2021, and then up to the Stage 2 hearing in October 2022. Secondly, the conduct for which Dr Manan had been fined in the magistrates’ court had been explained by Dr Manan. The named individuals were in fact all members of the same family. This was the same course of treatment. The essence of this explanation remained intact, even if some element of Dr Manan’s explanation were rejected by the Committee. Thirdly, whatever the position regarding Dr Manan’s explanation, including a wholesale rejection of it, the criminal conduct (and for that matter the rejection) could not justify an adverse conclusion as to the destruction of the ability to trust Dr Manan to comply with a future restriction.
22. The fundamental problem in the present case is that the Committee allowed the Certified Convictions to lead it astray and into an ultimate outcome of erasure. There were really three key problems. They overlap. The first is that the Certified Convictions entered the Committee’s analysis, including in relation to impairment where it was legally irrelevant, with a relevance and weight which they could not properly bear. The second is that the Certified Convictions can clearly be seen to have cast a dark shadow, transformative of the Committee’s reasoned characterisation of the subject matter of the Findings of Fact and of the misconduct, including in relation to matters such as candour and integrity. These distinct matters became ‘ratcheted up’. The third is that the distorting influence led to the Committee to lose sight of, and to overlook, the important positive features of the case including the Contextual Components emphasised on Dr Manan’s behalf from within the Committee’s own earlier Findings of Fact (§10 above). Viewed overall, and in the light of these three

key problems, the Committee was ultimately led erroneously to treat this as an erasure case. It was not an erasure case, when viewed independently of the Certified Convictions. It did not become an erasure case in light of the Certified Convictions. Yet that is what happened. That influence can clearly be seen in the ultimate reasoning in relation to sanction at [viii] (§18 above), where the Committee stated that it considered the facts relating to the misconduct would not in themselves ordinarily result in the ultimate sanction of erasure. The distorting consequence of the Certified Convictions can be seen in the next sentence where the committee described the consequence of the criminal convictions, coupled with Dr Manan's misconduct along with the lack of full or meaningful remediation made erasure the only appropriate and proportionate outcome.

23. The distorting influence of the Certified Convictions began much earlier in the Committee's reasoning. It explains the passages at [a] and [b], within the analysis of impairment (§17 above), about attitudinal failings and future risk. The references to actual harm, lack of candour and action lacking integrity and about Dr Manan being "liable to do so again ... in future" were descriptions of a future risk which could not be justified based on the actual Findings of Fact and misconduct. Even if the Certified Convictions were not a legal irrelevancy in relation to impairment, the Committee wrongly and unjustifiably allowing the collateral question of the Certified Convictions to 'ratchet-up' the characterisation of the Findings of Fact and misconduct.
24. In the analysis of sanction (§18 above) the distorting feature is clearly present. The Committee at [iii] described the aggravating features as including "blatant or wilful disregard of the role of the GDC and the systems regulating the profession". The presence of that aggravating factor – found in the Indicative Sanctions Guidance – purported to be separate and distinct from the certified convictions, since they were described as "also an aggravating factor" in the very next sentence. But there was no justification for characterising the Findings of Fact, nor the reflective statement and CPD record, as "blatant" or "wilful" disregard of the GDC or regulatory systems. The distorting influence of the Certified Convictions can also be seen in the perfunctorily brief description of mitigation at [iv]. Mitigating factors such as the long delay in concluding the case, the lengthy period of suspension adhered to by Dr Manan, his good work abroad and absence from the UK, the isolated nature of the misconduct, the lack of context for the certified convictions, the acceptance of the mistakes, the absence of any malice or dishonesty and the genuine desire to continue in a lengthy and otherwise unblemished career were ignored. The distortion continued. It can be seen in the Committee's unjustified description at [vii] of a "deep seated underlying professional attitudinal problems relating to your failure to take the role of the GDC seriously". Throughout the assessment of all of these issues the committee lost sight of, and ultimately disregarded, the important favourable Contextual Components of the case (§10 above). They receive no mention anywhere within the analysis.
25. Finally, and leaving aside the extent that the Certified Convictions did or could properly feature in the analysis, this is a case whose features did not justify the ultimate and most draconian sanction of erasure. This was a classic case – had the relevant considerations been properly and fairly characterised – for a conditions of practice order with supervision to ensure compliance. And even if a more draconian sanction than that were justified, it ought to have been a suspension order with a review. The Court should allow the appeal and substitute one or other of those orders.

Discussion

26. I am unable to accept those submissions. That is essentially for the reasons given by Mr Mant, which I accept and which are reflected in what follows. I start with Mr McDonagh's recognition that, if the Certified Convictions could justifiably be regarded as conduct which destroys the ability of the public, the profession and the GDC as regulator to trust Dr Manan to comply with any restriction on his registration, including a period of suspension, then that that would be a proper basis for erasure. I am quite sure that Mr McDonagh is correct to make that concession. It reflects what he twice told the Committee when the question arose as to how and in what way the Certified Convictions might in principle be relevant. He said:

The breach of [the interim suspension order] would only be relevant if in fact you were to conclude that Dr Manan could not be trusted to comply with any substantive order of conditions and I'm afraid you cannot fairly come to that conclusion/that inference from this may conviction.

Returning to the same topic later, Mr McDonagh told the Committee:

Its relevance is limited to this. If it were permissible for you to conclude that this conviction means that actually this dentist cannot be trusted with anything, to comply with an order of suspension or conditions, then it might be appropriate to suggest that the conviction itself, even though it does not have a regulatory background, would allow you to erase because nothing else is possible.

27. It is very clear that the committee was satisfied that the certified convictions did want this description. The Committee expressly said at [viii] (§18 above) that the facts relating to the misconduct would not in themselves ordinarily result in the ultimate sanction of erasure. The Committee said that suspension would not be sufficient to maintain public confidence in the profession and in this regulatory process. It said why. This was "because of" Dr Manan's breaches of the interim suspension order which resulted in his receiving the 8 convictions relating to the unlawful practice of dentistry. The Committee said at that such conduct, "whatever the precise details" of the offending, was truly extraordinary and wholly unacceptable from a regulatory perspective. It continued:

it is conduct which destroys the ability of the public, the profession and the GDC as regulator to trust you to comply with any restriction on your registration, including a period of suspension.

The Committee added that, in reaching its decision, it was mindful that protecting the reputation of the profession outweighed the clinician's personal interests. In reaching its conclusion on the destruction of trust, the Committee was upholding the GDC's submission identified earlier in the Analysis of the Certified Convictions at [2] (§15 above).

28. In my judgment, the Committee was fully justified in characterising the certified criminality as truly extraordinary, wholly unacceptable from a regulatory perspective, and conduct destructive of the ability of the public the profession and the GDC to trust Dr Manan to comply with any restriction on his registration including a period of suspension. I will explain why, in my own words. Dr Manan was the subject of formal investigative and disciplinary procedure at the hands of his regulator. He was facing formal allegations of misconduct and impairment of fitness to practise. He was made

the subject of an interim suspension order on 16 October 2019. The effect of that order was clear. It meant that he could not practise as a dentist. This was serious and he was fully aware of it. He was then found to have breached that order, by committing 8 separate criminal offences. He was convicted in a criminal court. He also knew perfectly well that the certified convictions – arising from a process in which he had directly been involved and had pleaded guilty to criminal charges – would be relied on at Stage 2. A Stage 2 bundle, including the Certified Convictions, had been served by the GDC as long ago as 5 August 2021, in readiness for any Stage 2 hearing. Dr Manan chose not to adduce any evidence, nor to give oral evidence himself. He then, through his advocate, gave his explanation to the Committee. He purported to ‘come clean’ as to the nature of his criminal conduct. The Committee even adjourned to allow Mr McDonagh to speak to Dr Manan, after which the explanation was maintained. The explanation had two very striking components. The first was that this was a single isolated incident: it was clearly being described as “an isolated incident”. The second is that this single incident was one in which Dr Manan was saying that he had booked a locum to carry out the treatment, but “the locum” had not turned up (“did not show”). The Committee rejected that explanation. It was clearly right to do so. The story that Dr Manan was telling, and maintaining, was plainly inconsistent with the content of the Certified Convictions. That was because the Certified Convictions made clear and explicit that the criminal conduct of carrying out dental treatment contrary to section 38 of the 1984 Act had taken place at two different addresses: Ms Khan at the Morden Dental Clinic in London SM4 (count [6]) and Ms Rehman (twice) at the Wandsworth Town Dental Practice in London SW18 (counts [8] and [9]). This was the context for the Committee’s unimpeachable finding at [viii] of conduct destructive of trust (§18 above). This links to the Committee having expressed the judgment at [vii] that there appeared to be deep-seated underlying professional attitudinal problems relating to Dr Manan’s failure to take the role of the GDC seriously. The position was carefully and compellingly analysed in the section on fitness to practice history (§15 above). That is the end of the case. Mr McDonagh rightly accepts once this position is reached and upheld, the sanction of erasure cannot be impugned.

29. I add a footnote on this part of the case. If there were some burning injustice here – because it really was a single incident, at a single location and with a single locum who did not turn up – Dr Manan has never attempted to point to any extraneous material to show this. There was no evidenced explanation before the Committee. There was no unfair surprise. The Committee made plain its concerns. There was no request for an adjournment. There is no ground of appeal based on serious procedural irregularity. There has been no application to adduce putative fresh evidence. Dr Manan accepts that he cannot go behind the express terms of the Certified Convictions. But he has not attempted to show that there is any injustice in that position. There is none.
30. What I have said so far is decisive and is sufficient to dispose of the appeal, but I will deal with some of the other key points that have been raised. So far as the ongoing significance of the Contextual Components of the Findings of Fact emphasised by Mr McDonagh (§10 above), I accept that the Committee’s reasoned assessment of misconduct, impairment and sanction did not repeat these. But the Committee did not need to do. And it certainly had not forgotten them. It had promulgated its detailed Findings of Fact on 16 September 2022. The Stage 2 hearing proceeded two weeks

later, and everyone was making submissions about and in light of the written Findings of Fact. The Committee's reasoned analysis at Stage 2 moreover made specific and repeated reference to "the facts found proved". It referred to misconduct as the question of whether the facts found proved amounted to misconduct. It referred to the question of current impairment in respect of the facts which it had determined. It referred to the questions of impairment and sanction in respect of the facts found proved. The fact that the Committee did not repeat a contextual component – like "albeit that this was not dishonest" or "albeit that this was well-meaning" – does not in any way undermine the reasoning or suggest that those aspects were forgotten, overlooked or disregarded. Importantly, there were the Contextual Components emphasised by Mr Mant (§11 above). It was entirely appropriate that these should be emphasised by the Committee. That is not an imbalance. Rather, it was that these matters explained the conclusions being reached. So, for example, in the assessment of misconduct the Committee emphasised (§16 above) the point about the duty of candour as a fundamental tenet of the profession. That was the context in which the Committee also explained that a lack of integrity in any professional person is a serious matter undermining the confidence that public and the profession can place in the practitioner in terms of compliance with the higher ethical and professional standards to which they are subject. That assessment was wholly justified, and not undermined by the absence of a reference to a lack of dishonesty or conduct being well-meaning. It was, moreover, not reasoning which was based or even influenced by the Certified Convictions.

31. The issues of the extent of insight, the CPD record and the argument excusing shortcomings by reason of absence while in Ghana were all convincingly dealt with by the Committee (§17 above). The reflective statement was cursory and did not provide any detailed or meaningful reflection on the failings. The CPD record was only partially targeted towards the issues in the case with minimal or no evidence of any reflection by Dr Manan on his learning from each activity. The submission based on absence in Ghana was squarely rejected: steps could have been undertaken to address remediation in relation to clinical record-keeping and radiography failings. As the Committee cogently explained, the description of "attitudinal failings" relating to unprofessional conduct and lack of integrity were not – by contrast with the clinical matters – "clearly remediable". As was explained, these matters went to character and concerned Dr Manan's interactions with Patient A and with the GDC as regulator. That was the part of the case where there was no evidence of any structured steps towards remediation and little evidence of meaningful reflection including as to how actions had the potential to bring the profession into disrepute and undermine public confidence. All of those observations by the Committee were clearly freestanding and referable to the findings of unprofessional conduct and lack of integrity, remembering the Contextual Components as to the fundamental and serious nature of such matters.
32. The reference made by the Committee at [a] (§17 above) to the absence of adequate evidence of remediation but rather the breach of the ISO with 8 convictions for unlawful dentistry practice was entirely fair and appropriate. I cannot accept the submission that there is the absence of some necessary nexus which made the Certified Convictions legally irrelevant to the question present impairment. It is not difficult to test the position. This is very different from the example given in Pillai at paragraph 18 about an "alleged clinical error" which did not impair fitness to practise, but "false evidence" given about that clinical error. I will assume, but need not decide,

whether that example is sound. In the present case, in the context of the formal GDC proceedings, there had been a formal request for the disclosure of records. Records had been provided. There had subsequently been a communication to the GDC as regulatory authority to confirm that the records which had been provided were complete. To Dr Manan's knowledge, they were not complete. This was not only unprofessional conduct but lack of integrity, in the provision of records and in an assurance to the regulator, in the context of live disciplinary proceedings. These were themselves matters relating to the relationship between the regulator and the regulatory proceedings and Dr Manan's attitude to both. There was a clear nexus between all of that and action in breach of an interim suspension order imposed during the same proceedings. The Committee was perfectly entitled to have regard to the Certified Convictions, and what Dr Manan said about them, in line with Pillai paragraphs 16-21.

33. As to the passage in the Committee's impairment reasoning at [b] (§17 above), addressing the question of actual harm and absence of integrity and Dr Manan being liable to act in such ways in future, I accept Mr Mant's two-pronged submission. First, that passage was supported by and justified in light of the Findings of Fact and all the Contextual Components relating to them. Secondly, and in any event, the passage was and would properly be reinforced by the fact and implications of the Certified Convictions.
34. Returning to the central question of sanction, as the aspect of the Committee's decision which is directly impugned in this appeal, I cannot accept that the Certified Convictions could be relevant only if supporting a conclusion on the destruction of trust. But nor can I accept that the finding of blatant or wilful disregard of the role of the GDC and the systems relating the profession was unjustified or distorted by the Certified Convictions. This was a description referable to the attitude exhibited in Dr Manan's interactions with the GDC as his regulatory body. That included the provision of incomplete dental records, and then the confirmation that those records were complete, when to Dr Manan's knowledge they were not. As to the breach of trust in respect of the failure to comply with the duty of candour, although this had been characterised in the Findings of Fact as well-meaning, it also being characterised as fundamental and serious because "however well-meaning" it was fundamentally unprofessional and lacking in integrity. The fact that that was not dishonest, but was well-meaning, did not prevent it from being serious and a breach of trust constituting an aggravating feature. The mitigation was described in brief terms, as in fact were the aggravating features. Those factors that were identified were relevant. The Committee was well aware of other factors and indeed had elsewhere referred to the passage of time and had stated that during the proceedings Dr Manan had lawfully practised dentistry in Ghana where he had also undertaken charitable work in relation to the provision of healthcare services in that region. There was no material deficiency in the reasons; still less when read fairly and as a whole; nor in any event any material defect capable of affecting the outcome.
35. For the reasons I have explained, I cannot accept that the Committee's reasoning in relation to the Findings of Fact and misconduct, or the distinct features as to impairment, were distorted by reference to the Committee's reaction to Dr Manan's conduct in breach of the interim suspension order. Most importantly, I do not accept that any – still less any material – aspect of the Committee's careful reasoning in

relation to sanction was wrong or unjustified. The Committee faithfully applied the Indicative Sanctions Guidance. It convincingly came to the conclusion that erasure was the only means of protecting the public and maintaining confidence in the profession. It is at least a relevant consideration in my own analysis that this was a cogent assessment arrived at by a specialist tribunal. But my conclusion is not borne out of so-called deference. In my judgment, for the cogent and persuasive reasons given by the Committee – with which I agree – the sanction imposed was appropriate and necessary in the public interest and was not excessive or disproportionate.

Outcome

36. The appeal is therefore dismissed. Having circulated this judgment in draft on 12 October 2023, the Order was agreed; (1) the appeal is dismissed (2) the appellant shall pay the respondent's costs in the agreed sum of £13,781.60 within 28 days.