

## ON PAPERS

### Professional Conduct Committee Review Hearing

28 March 2025

**Name:** McMURRAY, James

**Registration number:** 277023

**Case number:** CAS-198067

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**General Dental Council:** Instructed by Rosie Geddes, IHLPS

**Registrant:** Represented by MDDUS

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**Fitness to practise:** Impaired by reason of misconduct and deficient professional performance

**Outcome:** Suspension extended (with a review)

**Duration:** 12 months

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**Committee members:** Anthony Mole (Lay) (Chair)  
Alison Mayell (Dentist)  
Victoria Hewson (Dental Care Professional)

**Legal adviser:** William Hoskins

**Committee Secretary:** Andrew Keeling

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1. This was a review hearing before the Professional Conduct Committee (PCC) in accordance with Section 27C of the Dentists Act 1984 (as amended) ('the Act'). The purpose of this hearing has been for this PCC to review Mr McMurray's case and determine what action to take in relation to his registration.
2. The General Dental Council (GDC) requested that the hearing be conducted on the papers and, therefore, neither party was present nor represented today.

## Preliminary Matters

### Decision on Service of the Notice of Hearing

3. The Committee first considered whether notice of the hearing had been served on Mr McMurray in accordance with Rules 28 and 65 of the GDC's Fitness to Practise Rules 2006 ('the Rules') and Section 50A of the Dentists Act 1984 (as amended) ('the Act'). The Committee accepted the advice of the Legal Adviser in respect of this matter.
4. The Committee received from the GDC an indexed hearing bundle, which contained a copy of the Notice of Hearing ('the notice'), dated 12 February 2025, thereby complying with the 28-day notice period. The hearing bundle also contained a Royal Mail 'Track and Trace' receipt confirming that the notice was sent to Mr McMurray's registered address by Special Delivery. A copy of the notice was also sent by first-class post and emailed to Mr McMurray and his legal representatives on 12 February 2025.
5. The Committee was satisfied that the notice sent to Mr McMurray contained proper notification of today's hearing, including its time, date and that it will be taking place remotely, and the other prescribed information including notification that the Committee had the power to proceed with the hearing in Mr McMurray's absence.
6. On the basis of the information provided, the Committee was satisfied that notice of the hearing had been served on Mr McMurray in accordance with the Rules and the Act.

### Decision on Proceeding in the Registrant's Absence and on the Papers

7. The Committee next considered whether to exercise its discretion under Rule 54 of the Rules to proceed with the hearing in the absence of Mr McMurray. The Committee accepted the advice of the Legal Adviser in respect of this matter.
8. The Committee approached the issue of proceeding in absence with the utmost care and caution. The Committee took into account the factors to be considered in reaching its decision, as set out in the case of *R v Jones [2003] 1 AC 1HL* and as explained in the cases of *General Medical Council v Adeogba* and *General Medical Council v Visvardis [2016] EWCA Civ 162*. It remained mindful of the need to be fair to both Mr McMurray and the GDC, taking into account the public interest and Mr McMurray's own interests in the expeditious review of the suspension order imposed.
9. The Committee noted the email from Mr McMurray to the GMC, dated 3 March 2025, in which he stated that he had no intention of working in general dental practice and wished to voluntarily remove himself from the register. In light of this email, the Committee was satisfied that Mr McMurray had voluntarily absented himself from the hearing and that adjourning the hearing would be unlikely to secure Mr McMurray's future attendance. The Committee also bore in mind that there was a statutory requirement for a review hearing to take place before the expiry of the substantive

order. Accordingly, the Committee was satisfied that it was fair and in the public interest to proceed with the hearing in the absence of Mr McMurray and on the papers.

## Background

10. Mr McMurray's case was first considered by a PCC at a hearing in October 2023. Mr McMurray neither attended nor was represented at the hearing. The background to the case was that in May 2021, the GDC received information from the Associate Postgraduate Dental Dean at NHS Education for Scotland (NES) and the Vocational Training National Lead for Scotland. Concerns were raised about Mr McMurray failing to complete his Vocational Training to a satisfactory standard.

11. At that initial hearing, the Committee found proved that Mr McMurray had:

- Failed to provide an adequate standard of care to patients in that he did not adequately remove caries in respect of three patients.
- Did not adequately use a matrix strip to separate patients' teeth in respect of two patients.
- Did not use an intra oral finger rest when carrying out treatment.
- Failed to follow radiographic IR(ME)R 2017 guidelines in that he inaccurately graded a radiograph and also took a radiograph of the wrong tooth.
- Did not give a clear indication of the treatment required to a patient.
- On a number of occasions provided an inadequate standard of cross infection control, which included touching a plug socket and not changing his gloves and also scratching his ear and then placing his hand in the patient's mouth.
- Did not correctly chart the presence of retained roots.
- Did not update or discuss patients' medical histories.
- Did not make meaningful progress with a 14-year-old patient's root canal treatment.
- Used a 3-in-1 syringe to blow air into an extraction site.

12. That Committee found that these failings fell far below the standards expected and amounted to misconduct and constituted deficient professional performance (DPP). With regard to impairment, that Committee had concerns about Mr McMurray's level of insight into these clinical failings and the insufficient remediation undertaken. It concluded that the risk of repetition was high and that his misconduct and DPP had the potential to place patients at future unwarranted risk of harm. Furthermore, that Committee determined that a finding of no impairment would seriously undermine public confidence in the dental profession as well as the regulatory process. Accordingly, that Committee determined that Mr McMurray's fitness to practise was currently impaired by reason of his misconduct and DPP on the grounds of public protection and the public interest.

13. That Committee directed that Mr McMurray's name should be suspended from the Register for a period of six months, with a review to take place before the expiry of the

order. It determined that although the proven facts were capable of being remedied by way of conditions, conditions were inappropriate given that Mr McMurray lacked the basic necessary knowledge and experience required of a qualified dentist and that he demonstrated limited insight. Furthermore, that Committee noted Mr McMurray's stated intention to leave the dental profession. The Committee also noted that erasure would be wholly disproportionate given that the failings were capable of being remedied.

14. That Committee was of the view that a period of six months would allow Mr McMurray to engage with his remediation by way of further learning and to demonstrate to a reviewing Panel that he had the requisite level of insight. It also considered that a reviewing Committee may be assisted by receiving the following:

- His engagement with the process and attendance at the next review hearing.
- A reflective piece addressing and demonstrating insight into the areas of deficiency in Mr McMurray's practice as found proved.
- Any steps taken by him to remedy the deficiencies in his practice, including any evidence of training, CPD or other remedial actions, testimonials and references.
- A structured Personal Development Plan which addresses the shortcomings identified at this hearing.

15. Mr McMurray's case was reviewed by a PCC at a hearing on 28 March 2024. The hearing took place on the papers with neither the GDC nor Mr McMurray present. That Committee noted that there had been no change in the circumstances of Mr McMurray's case since the conclusion of the substantive hearing. Mr McMurray had confirmed, via his legal representatives, that he had disengaged from these proceedings. Therefore, in the absence of any evidence of remediation or insight from Mr McMurray, that Committee determined that his fitness to practise remained currently impaired by reason of misconduct and deficient professional performance on the grounds of public protection and public interest.

16. That Committee then determined to extend the current suspension order by 12 months with a review hearing before the expiry of the period. It further re-iterated the recommendations made by the substantive Committee in respect of evidence that a future reviewing Committee may find helpful when reviewing his case.

### **Today's Review**

17. It was the role of the Committee today to undertake a comprehensive review of this case. In so doing, the Committee had careful regard to all the documentary evidence before it and took account of the written submissions from the GDC. The Committee also heard and accepted the advice of the Legal Adviser. The Committee had regard to

the GDC's Guidance for the Practice Committees, including Indicative Sanctions Guidance (October 2016, updated December 2020) ("the Guidance").

18. The GDC submitted that there has been no material change in circumstances since the previous hearing. It submitted that there was a persuasive burden on Mr McMurray to demonstrate that his fitness to practise is no longer impaired. It submitted that Mr McMurray has not engaged with the GDC since before the PCC hearing, other than his email to the GDC on 3 March 2025 regarding voluntary removal, and there is no evidence of remediation or insight. It submitted, therefore, that Mr McMurray's fitness to practise remained impaired by reason of misconduct and DPP on the grounds of public protection and public interest.
19. With regard to sanction, the GDC submitted that it would be appropriate for the suspension to be extended for a period of 12 months with a review hearing before the expiry.

### **Decision on Current Impairment**

20. In making its decision, the Committee first sought to determine whether Mr McMurray's fitness to practise was currently impaired by reason of his misconduct and DPP. It exercised its independent judgement and was not bound by the decision of the previous committee. It balanced Mr McMurray's interests with those of the public and bore in mind that its primary duty was to protect the public, including maintaining public confidence in the profession and declaring and upholding proper standards and behaviour.
21. The Committee noted that there has been no material change in the case since the conclusion of the review hearing in March 2024. The Committee was mindful that Mr McMurray had a persuasive burden to demonstrate that his fitness to practise was no longer impaired. The Committee also noted that as the matters in this case related solely to clinical failings they were remediable. However, the Committee noted that Mr McMurray has not provided any evidence of any insight into these serious and wide-ranging failings or any remediation evidence. Furthermore, the Committee noted that he has effectively disengaged from these proceedings and intends to voluntarily remove himself from the register.
22. The Committee determined, therefore, that there was a high risk of repetition of these serious clinical failings, which would present a real risk of harm to patients. Accordingly, the Committee determined that Mr McMurray's fitness to practise remained currently impaired by reason of misconduct and deficient professional performance on the grounds of public protection.
23. The Committee further determined that a finding of current impairment is required in the public interest as public confidence in the profession would be undermined if such a finding were not made.

## Decision on Sanction

24. The Committee next considered what sanction to impose on Mr McMurray's registration.
25. The Committee has found that Mr McMurray's fitness to practise remains impaired. In these circumstances, the Committee concluded that terminating the current suspension order would not be appropriate or sufficient for the protection of the public and the public interest.
26. The Committee next considered whether to replace the current suspension order with one of conditions. In so doing, it noted Mr McMurray's stated intention to voluntarily remove himself from the register and his history of non-engagement with these proceedings. In these circumstances, the Committee determined that conditions would not be appropriate, workable or sufficient for this case.
27. Accordingly, the Committee is satisfied that it was necessary to maintain the current suspension order to protect the public and maintain public confidence in the dental profession. The Committee determined that a further period of suspension was appropriate and proportionate. In the circumstances the Committee decided that Mr McMurray's registration should be suspended for the maximum period of 12 months with a review hearing before the expiry.
28. The Committee also wished to re-iterate the previous recommendations made at the substantive hearing of evidence that a future reviewing Committee may find helpful:
- His engagement with the process and attendance at the next review hearing.
  - A reflective piece addressing and demonstrating insight into the areas of deficiency in Mr McMurray's practice as found proved.
  - Any steps taken by him to remedy the deficiencies in his practice, including any evidence of training, CPD or other remedial actions, testimonials and references.
  - A structured Personal Development Plan which addresses the shortcomings identified at this hearing.
29. Unless Mr McMurray exercises his right of appeal, the current suspension order will be extended by a period of 12 months, 28 days from the date that notice of this direction is deemed to have been served upon him. In the event that Mr McMurray does exercise his right of appeal, the suspension order currently in place on his registration will remain in force until the resolution of the appeal.

30. That concludes this hearing.