

**HEARING PARTLY HEARD IN PRIVATE**

**SMITH, Andrew David**

**Registration No: 271784**

**PROFESSIONAL CONDUCT COMMITTEE**

**MARCH 2021**

**Outcome: Erased with Immediate Suspension**

Andrew SMITH, a dentist, BDS Newcastle University 2016, was summoned to appear before the Professional Conduct Committee on 18 March for an inquiry into the following charge:

**Charge (as amended 18 March 2021)**

“That, being registered as a dentist:

1. On 12 July 2019, you were convicted at West Yorkshire Magistrates’ Court of making indecent photographs or pseudo-photographs of children - **(Category A)**. Contrary to sections 1(1)(a) and 6 of the Protection of Children Act 1978.
2. On 12 July 2019, you were convicted at West Yorkshire Magistrates’ Court of making indecent photographs or pseudo-photographs of children - **(Category B)**. Contrary to sections 1(1)(a) and 6 of the Protection of Children Act 1978.
3. On 12 July 2019, you were convicted at West Yorkshire Magistrates’ Court of making **an** indecent photograph or pseudo-photograph of children – **(Category C)**. Contrary to sections 1(1)(a) and 6 of the Protection of Children Act 1978.
4. On 12 July 2019, you were convicted at West Yorkshire Magistrates’ Court of possession **of** prohibited images of children. Contrary to sections 62(1) and 66(2) of the Coroners and Justice Act 2009.

And that by reason of the above, your fitness to practise is impaired by reason of any or all of the convictions set out at paragraphs 1-4.”

Mr Smith was not present and was not represented. On 18 March 2021, the Chairman announced a statement on proof of service. On 18 March 2021, the Chairman announced the findings of fact to the Counsel for the GDC:

“The allegations against Mr Smith relate to his criminal convictions in 2019. He had self-referred his arrest and the charges he faced to the General Dental Council (GDC).

*Service and absence*

Mr Ahmed, for the GDC, submitted that the notification of hearing had been served on Mr Smith in accordance with the requirements of the General Dental Council (Fitness to Practise) Rules 2006 (the “Rules”) and that the hearing should proceed in his absence.

The Committee accepted the advice of the Legal Adviser on the requirements of service and proceeding in absence.

The notification of hearing was sent to Mr Smith at his registered address on 16 February 2021 by Special Delivery. Royal Mail 'Track and Trace' records that the item was delivered on 17 February 2021 and signed for under the initials "AS".

The Committee was satisfied that the notification of hearing contained the required information under Rule 13 of the Rules, including the time, date and (remote) venue of this hearing; and that it had been served on Mr Smith in accordance with Rule 65 by virtue of its being posted to his registered address.

The Committee next considered whether to proceed with the hearing in the absence of Mr Smith. This is a discretion which must be exercised with great care and caution.

A copy of the notification of hearing was also sent to Mr Smith by email on 16 February 2021, using a secure file sharing service which records that the document was downloaded by the recipient later that day. The Committee was satisfied that the GDC had made all reasonable efforts to notify Mr Smith of this hearing.

Mr Ahmed stated to the Committee that the GDC spoke with Mr Smith over the telephone in February, August and December 2020. Mr Ahmed stated that the corresponding telephone attendance notes are not before the Committee at this stage of proceedings but that Mr Smith had indicated during those calls that he did not wish to participate in these regulatory proceedings.

There was no record before the Committee of any engagement from Mr Smith regarding these proceedings. There was no application from him for an adjournment or postponement of the hearing. There was nothing to suggest to the Committee that adjourning or postponing the hearing would make Mr Smith's attendance any more likely. Mr Smith was aware of this hearing and its purpose. He was aware of the charges he faces. The Committee concluded that he had chosen not to attend the hearing, as is his right.

Having regard to all the circumstances, including the public interest in the expeditious determination of the serious allegations against Mr Smith and there being nothing to indicate that he would engage in the hearing were it to be adjourned or postponed, the Committee determined that it would be fair and in the interests of justice to proceed with the hearing, notwithstanding his absence.

*Amendment of the charge contained in the notification of hearing*

Mr Ahmed applied under Rule 18 of the Rules for the charge contained in the notification of hearing to be amended to include the following underlined text in charges 1-3: "Contrary to sections 1(1)(a) and 6 of the Protection of Children Act 1978"; and in charge 4: "Contrary to sections 62(1) and 66(2) of the Coroners and Justice Act 2009." Mr Smith was notified of the proposed amendments by letter dated 10 March 2021. Mr Ahmed submitted that the proposed amendments were to particularise the legislative references stated in the memorandum of conviction better, and that the amendments could be made without injustice, as they do not alter the substance of the charge against Mr Smith.

The Committee accepted the advice of the Legal Adviser on amendment under Rule 18 and acceded to the application. The Committee was satisfied that the amendments could be made without injustice. The amendments do not alter the substance of the allegations against Mr Smith and more precisely plead the legislative provisions under which he is alleged to have been convicted.

Mr Ahmed subsequently applied for further amendments to the charge in response to queries raised by the Committee. These amendments were to make clerical amendments to the charge and to particularise the categories of image (Categories A-C) in relation to each conviction alleged under charges 1-3. The Committee acceded to the application, as the amendments were uncontroversial and made the charge clearer by differentiating the convictions alleged under charges 1-3.

*Findings of fact*

The Committee accepted the advice of the Legal Adviser.

The burden is on the GDC to prove each allegation on the balance of probabilities.

Rule 57 of the Rules 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) The only evidence which may be presented by the respondent in rebuttal of a conviction certified or extracted in accordance with paragraph (5)(a) is evidence for the purpose of proving that the respondent is not the person referred to in the certificate or extract.

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

1.	<p>AMENDED TO READ: <i>On 12 July 2019, you were convicted at West Yorkshire Magistrates' Court of making indecent photographs or pseudo-photographs of children – (Category A). Contrary to sections 1(1)(a) and 6 of the Protection of Children Act 1978.</i></p> <p>Proved.</p> <p>The Committee accepted the memorandum of conviction certified on 27 November 2019 as conclusive proof of the conviction.</p>
2.	<p>AMENDED TO READ: <i>On 12 July 2019, you were convicted at West Yorkshire Magistrates' Court of making indecent photographs or pseudo-photographs of children – (Category B). Contrary to sections 1(1)(a) and 6 of the Protection of Children Act 1978.</i></p> <p>Proved.</p> <p>The Committee accepted the memorandum of conviction certified on 27 November 2019 as conclusive proof of the conviction.</p>
3.	<p>AMENDED TO READ: <i>On 12 July 2019, you were convicted at West Yorkshire Magistrates' Court of making an indecent photograph or pseudo-photograph of children – (Category C). Contrary to sections 1(1)(a) and 6 of the Protection of Children Act 1978.</i></p> <p>Proved.</p>

	The Committee accepted the memorandum of conviction certified on 27 November 2019 as conclusive proof of the conviction.
4.	<p>AMENDED TO READ: <i>On 12 July 2019, you were convicted at West Yorkshire Magistrates' Court of possession of prohibited images of children. Contrary to sections 62(1) and 66(2) of the Coroners and Justice Act 2009.</i></p> <p>Proved.</p> <p>The Committee accepted the memorandum of conviction certified on 27 November 2019 as conclusive proof of the conviction.</p>

We move to Stage Two."

On 18 March 2021, the Chairman announced the determination as follows:

"On 12 July 2019 Mr Smith was convicted on his guilty plea of four offences relating to the making and possession of indecent images of children. His offending occurred over the period 12 December 2013 to 6 July 2018 and involved both still and moving images, ranging from Category A to C. He was sentenced to a community order and made subject to Sexual Harm Prevention Order for a period of five years from 12 July 2019. He was also subject to the notification requirements of the Sexual Offences Act 2003 for the same period.

Mr Smith was neither present nor represented at the hearing before this Committee. Telephone attendance notes made by the General Dental Council (GDC) record that on 12 February 2020:

...The Registrant states that he does not wish to practice again and remarks "strike me off the register to be honest - that will do me good"...

On 27 August 2020:

...AS said that "I am guilty of a crime, I pleaded guilty, and that's what I did". AS said that he is working on his life and [...] and said doesn't "need your lot, with your £20 million headquarters" and your record on the internet has caused me to lose friends...

And on 11 December 2020:

...AS said that as far as he was aware this case had been dealt with back in February. He had been suspended from the register and this had been published on the website. He said he had lost a lot of friends over this and does not understand why the case is still going on. He said he is now being sent information that he would rather not see. EM explained that her understanding was tha [sic] the hearing in February was an interim order hearing and therefor the order that was imposed was only in place until the case could be considered by the Committee at a substantive hearing. EM said that this hearing was due to take place in March 2021 and at this hearing, the Committee would determine whether or not he could remain on the register. EM said she apologised if this had not been made clear to AS. EM asked if AS had any other questions or if there was any further, she could assist with.

AS reiterated that he wanted to know why the case was still going on. He said he has already pleaded guilty to the offences and paid for everything that happened. He said that he has not been practicing and nothing new has happened for the GDC to look into. He said he has no intention of returning to practice and wants to be wiped off the register. AS said that as far as he is concerned the case is over and he is very frustrated that he keeps being contacted about it...

Mr Ahmed, for the General Dental Council (GDC), submitted that Mr Smith's fitness to practise as a dentist is currently impaired by reason of his convictions and that erasure is the appropriate outcome in this case.

The Committee accepted the advice of the Legal Adviser.

The Committee had regard to the *Guidance for the Practice Committees, including Indicative Sanctions Guidance* (October 2016, last revised December 2020).

In the Committee's judgment, Mr Smith's fitness to practise as a dentist is clearly currently impaired by reason of each of his convictions, which relate to the sexual abuse and exploitation of children. His offending occurred over a period of many years, with some of the still and moving indecent images of children in his possession falling within Category A, the most sexually explicit category of such images involving penetration and other extreme pornography. His offending would be regarded by both fellow members of the profession and the general public as truly deplorable and morally reprehensible.

Mr Smith demonstrates to the Committee no reflection, insight or remorse for his offending. He has engaged in conduct which has brought the profession into disrepute. The Committee could not be satisfied that the risk of Mr Smith re-offending is low, owing to the length of time over which his offending occurred and the lack of any evidence of remediation or rehabilitation. There is therefore a real risk of harm to patients and other members of the public should Mr Smith be allowed to practise as a dentist without restriction.

Further, Mr Smith remains subject to the Sexual Harm Prevention Order and notification requirements as a sex offender for the remainder of the five-year period imposed by the court on 12 July 2019.

In the Committee's judgment, the offences of which Mr Smith was convicted involved a breach of the fundamental tenets of the profession. Accordingly, the Committee determined that Mr Smith's fitness to practise as a dentist is currently impaired by reason of his convictions on both public protection and wider public interest grounds.

The Committee considered what sanction, if any, to impose. 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. The Committee considered sanction in ascending order of severity.

The Committee considered the aggravating and mitigating factors in this case.

The aggravating factors in this case include the following: Mr Smith expresses no apology or remorse for his offending; his offending occurred over a period of years and his convictions are relatively recent; his conduct was premeditated and involved vulnerable children; he shows no insight, except to express the impact of his conviction on him; and he shows a disregard for the role of the GDC and this regulatory process.

In mitigation, the Committee acknowledged Mr Smith's guilty plea before the court, albeit the evidence gathered against him by the Police appears to have left him with little other option. Mr Smith has no other fitness to practise history. However, he only registered with the GDC

in July 2017 and was already offending at that stage, as recorded in the Police interview where he explained that he had been viewing indecent images of children since his early twenties.

To conclude this case with no further action or a reprimand would be wholly inappropriate in the Committee's judgment. Mr Smith has been convicted of serious criminal offences for which he demonstrates no remediation or rehabilitation. Taking no further action or issuing a reprimand would be wholly insufficient to protect the public and to uphold and declare appropriate standards of conduct and behaviour and to maintain public confidence in the profession and this regulatory process.

The Committee next considered whether to direct that Mr Smith's registration be made subject to his compliance with conditions. The Committee could not identify any conditions which could be workable, measurable and proportionate, owing to the nature of his offending, its seriousness and his lack of engagement in these proceedings.

The Committee next considered whether to direct that Mr Smith's registration be suspended for a period of up to 12 months, with or without a review. The Committee determined that suspension, although it would protect patients and the public for the period of the suspension, would be insufficient to maintain public confidence in the profession and this regulatory process. Mr Smith's offending is wholly inconsistent with the standards of the profession and with the most basic values of right-thinking people. He has demonstrated over a period of years criminal conduct which is wholly inconsistent with registration as a dentist. Some of the images in his possession were Category A. His offending has brought the profession into dispute and he continues to be subject to the sentence imposed on him by the courts. No lesser sanction than erasure would be appropriate in this case to maintain public confidence in the profession and this regulatory process.

Accordingly, the Committee directs that the name of Andrew David Smith be erased from the Register.

The Committee now invites submissions on the question of an immediate order."

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"The Committee is satisfied that it is necessary for the protection of the public and otherwise in the public interest to order under section 30(1) of the Dentists Act 1984 that Mr Smith's registration be suspended forthwith. It would be inconsistent with the decision the Committee has made not to make an immediate order.

The effect of this order is that Mr Smith's registration will be immediately suspended upon notification of this decision being served on him. Unless he exercises his right of appeal his name will be erased 28 days later. Should he exercise his right of appeal, this immediate order shall remain in force pending the disposal of the appeal.

The interim order on Mr Smith's registration is hereby revoked.

That concludes the hearing."