

**HEARING HEARD IN PUBLIC**

**WHITEHEAD, Graham David**

**Registration No: 160901**

**PROFESSIONAL CONDUCT COMMITTEE**

**NOVEMBER 2018 – DECEMBER 2020**

**Most recent outcome: Suspended Indefinitely \***

\* See page 12 for the latest determination

Graham David WHITEHEAD, a dental technician, Verified experience in Dental Technology was summoned to appear before the Professional Conduct Committee on 26 November 2018 for an inquiry into the following charge:

**Charge**

“That, being a registered as a Dental Care Professional

1. On 14 September 2017 you offered to undertake oral impressions.
2. In offering to undertake the work set out in charge 1, you held yourself out to be professionally qualified to provide the said work when you were not.
3. In offering to undertake the work set out in charge 1, you offered to work beyond your scope of practice.
4. Between at least September 2016 and September 2017 you undertook oral impressions for patients.
5. In undertaking the work set out in charge 4, you held yourself out to be professionally qualified to provide the said work, when you were not.
6. In undertaking the work set out in charge 4, you worked beyond your scope of practice.
7. Your conduct in relation to allegations 1, and/or 2 and/or 3 and/or 4 and/or 5 and/or 6 was:
  - a) misleading; and/or
  - b) dishonest in that you held yourself out to be professionally qualified to provide the said work when you knew that you were not; and/or
  - c) lacked integrity in that you knowingly or recklessly failed to adhere to the GDC’s Scope of Practice of 30 September 2013.

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

On 28 November 2018 the Chairman made the following statement regarding the finding of facts:

“Mr Whitehead,

This is a Professional Conduct Committee (PCC) hearing. You are present and represented at this hearing by Ms Jennifer Agyekum of Counsel. Mr Alex Jamieson of Counsel represents the General Dental Council (GDC).

### **Background and summary of the charge**

The allegation arises out of an in-guise visit on 14 September 2017 by two GDC investigators to KMO Dental Laboratory in Manchester following a complaint received from a patient who said that they had had oral impressions taken at the laboratory by someone who was not a dentist for clip on veneers by “Need That Smile” company. At the visit on 14 September 2017, it is alleged that you offered to take oral impressions of one of the investigators. It is further alleged that you took oral impressions for patients between September 2016 and September 2017, and that you held yourself out to be professionally qualified to do so when you knew you were not and acted outside the scope of your practice. The Council alleges that your actions were misleading and/or dishonest and/or lacked integrity.

### **Evidence**

By way of factual evidence from the GDC, the Committee was provided with the following signed witness statements: a witness statement, dated 08 January 2018, from Ms Shareen Shah, GDC investigator; a witness statement, dated 12 January 2018 from Mr Steve White, GDC investigator; and a witness statement, dated 19 January 2018 from Ms Fereshta Momand, GDC investigator.

As part of your defence case, the Committee received the following witness statements: your witness statement, dated 16 November 2018; a witness statement, dated 14 November 2018 from Ms M, a Director of “Need That Smile” company; a witness statement, dated 14 November 2018 from Mr H, Director of “Need That Smile” company; a witness statement, dated 21 November 2018 from Mr M, a Dental Surgeon and Associate Dentist at the Lees Road clinic in Oldham; and a witness statement, from Ms W, a Dental Therapist and Hygienist; and a reference from a Councillor, Mr B. The Committee also took account of your oral evidence.

### **Application for hearsay evidence and witnesses to give evidence via telephone**

Ms Agyekum, on your behalf, made an application for the witness statements of Ms W and Mr M to be adduced as hearsay evidence as they were unable to attend the hearing because of work and family commitments. Ms Agyekum made a further application for witnesses Mr H and Ms M to give evidence remotely via telephone as they were also unable to attend the hearing in person. She submitted that their witness statements are relevant to the charges and would assist the Committee with the matters in this case.

Mr Jamieson opposed the application. He told the Committee that there was no indication as to why the witnesses were unable to attend the hearing and that their evidence would be more effective via video link rather than telephone and that this should be explored.

The Committee heard and accepted the advice of the Legal Adviser. It was of the view that there would be no prejudice to your case to hear the evidence of Ms M and Mr H remotely via video link if possible, but if not, via telephone. The Committee therefore acceded to the application.

With regard to the hearsay application, the Committee was of the view that the witness statements of Ms W and Mr M could be admitted as hearsay evidence if it proved impossible to secure their attendance, however the weight that could be attached to their witness statements may be negligible if they were not able to attend.

### **The Committee’s assessment of the witnesses who gave oral evidence**

The Committee first considered the oral evidence of GDC witness, Mr White. It noted that he had a vast amount of experience in undertaking in-guise investigations. Whilst the Committee found that his oral evidence was largely an interpretation of what was said to him by you during the in-guise visit, he had a clear and confident recollection of the events that accorded with the contemporaneous notes he made shortly after the visit that confirms how he interpreted what he was told. The Committee was assisted by his evidence and found him to be a credible, honest and reliable witness.

The Committee also found GDC witness Ms Shah to be a professional and experienced witness. Whilst she did not make a contemporaneous note at the time of the visit and the passage of time since the events caused some difficulty in her recollecting the details of the events, this did not undermine the overall quality of her evidence. The Committee was assisted by her evidence and found her to be a credible, honest and reliable witness.

The Committee considered your oral evidence. It did not find you to be a credible or reliable witness. It was of the view that you changed your account of events several times during the course of your evidence in order to provide an explanation that would be favourable to you, however this was inconsistent with your written statement and the oral evidence of other witnesses heard by the Committee. In all the circumstances, the Committee was not confident that it could rely on your account.

The Committee considered the oral evidence of Ms M and Mr H. They both denied any involvement with KMO's operations in acquiring oral impressions from patients. The Committee found them to be straightforward, credible and reliable witnesses, however were of limited assistance to the Committee in taking matters forward.

The Committee took account of the evidence of defence witness, Ms W, the last factual witness from whom it heard. It found her evidence to be clear and concise. It considered that she had a good recollection of the relevant events. Overall, the Committee found that she was an honest and credible witness on whose evidence it could rely.

**The Committee's Findings of Fact**

The Committee has taken into account all the evidence presented to it, both oral and documentary. It took account of the submissions made by Mr Jamieson on behalf of the GDC and those made by Ms Agyekum on your behalf. The Committee heard and accepted the advice of the Legal Adviser. In accordance with that advice it has considered each head of charge separately, bearing in mind that the burden of proof rests with the GDC and that the standard of proof is the civil standard, that is, whether the alleged matters are found proved on the balance of probabilities.

The Committee's findings in relation to each head of charge are as follows:

*"That, being a registered as a Dental Care Professional*

1.	<p><i>On 14 September 2017 you offered to undertake oral impressions.</i></p> <p><b>Found proved.</b></p> <p>You denied this charge. Your oral evidence to the Committee was that you were explaining the process of clip-on veneers to Mr White in order for him to take oral impressions of his teeth himself.</p> <p>The Committee considered the evidence of GDC witnesses Mr White and Ms Shah that they attended the appointment for the purpose of oral impressions to be taken of Mr White, and when Mr White asked you to explain what you were going to do, you</p>
----	---

	<p>confirmed that you would take his oral impressions and explained how you would do so. When they revealed themselves to be GDC investigators, it is their evidence that you admitted you were prepared to take an impression of Mr White's teeth, apologised for your actions and said you knew what you were doing was wrong.</p> <p>The Committee preferred the evidence of the GDC witnesses and concluded that, on the balance of probabilities and based on the evidence before it, you offered to undertake oral impressions at the in-guise visit on 14 September 2017.</p>
2.	<p><i>In offering to undertake the work set out in charge 1, you held yourself out to be professionally qualified to provide the said work when you were not.</i></p> <p><b>Found proved.</b></p> <p>The Committee considered that in absence of any disclaimer by you, the offer to undertake the work set out in charge 1 necessarily implied that you were professionally qualified to do it.</p>
3.	<p><i>In offering to undertake the work set out in charge 1, you offered to work beyond your scope of practice.</i></p> <p><b>Found proved.</b></p> <p>The Committee accepted the concession by the defence that if charge 1 were to be found proved, this charge would accordingly be found proved.</p>
4.	<p><i>Between at least September 2016 and September 2017 you undertook oral impressions for patients.</i></p> <p><b>Found proved.</b></p> <p>The Committee considered that whilst there was no direct evidence in relation to this charge, it took account of the written statement and oral evidence of Mr White. He told the Committee that when he and Ms Shah revealed themselves as GDC investigators at the visit, you admitted that you had provided oral impressions for at least 10-15 patients in the previous 12 months and that you would no longer do so.</p> <p>Your oral evidence to the Committee was that you were explaining the process of taking oral impressions to Mr White and Ms Shah in the place of your colleague, Ms W, as she was unavailable. However, Ms W's oral evidence was that as a Dental Therapist she is able to take oral impressions but that she has never had any involvement with "Need That Smile" company and the oral impressions taken for patients' clip-on veneers.</p> <p>The Committee found the witness statements of your admission to the GDC investigator to be credible and consistent with all the evidence heard and that your oral evidence offering an alternative explanative was not credible. The Committee therefore finds it reasonable to infer in all the circumstances that you had been undertaking oral impressions of patients during the period alleged.</p>
5.	<p><i>In undertaking the work set out in charge 4, you held yourself out to be professionally qualified to provide the said work, when you were not.</i></p> <p><b>Found proved.</b></p> <p>The Committee finds it reasonable to infer on the balance of probabilities that by taking oral impressions between September 2016 and September 2017, you held yourself out</p>

	to be professionally qualified to do so, when you were not.
6.	<p><i>In undertaking the work set out in charge 4, you worked beyond your scope of practice.</i></p> <p><b>Found proved.</b></p> <p>The Committee finds it reasonable to infer on the balance of probabilities that by taking oral impressions between September 2016 and September 2017, you worked beyond the scope of your practice.</p>
7.	<p><i>Your conduct in relation to allegations 1, and/or 2 and/or 3 and/or 4 and/or 5 and/or 6 was:</i></p>
7(a).	<p><i>misleading; and/or</i></p> <p><b>Found proved.</b></p> <p>The Committee considered that patients who had their oral impressions taken by you during the material time would have reasonably assumed that by offering to do the work, you were qualified, it was within your scope of practice and that you were permitted to do so, none of which were true. The Committee therefore determined that your conduct at charges 1-6 was misleading.</p>
7(b).	<p><i>dishonest in that you held yourself out to be professionally qualified to provide the said work when you knew that you were not; and/or</i></p> <p><b>Found proved.</b></p> <p>The Committee determined that your conduct was dishonest by the objective standard. It found that an ordinary, honest person would perceive your actions in undertaking dental impressions outside the scope of your practice for financial gain to be dishonest. The Committee also considered that you knew your actions were wrong because you admitted to acting outside the scope of your practice and apologised for doing so to the GDC investigators during the in-guise visit.</p>
7(c).	<p><i>lacked integrity in that you knowingly or recklessly failed to adhere to the GDC's Scope of Practice of 30 September 2013.</i></p> <p><b>Found proved.</b></p> <p>The Committee had regard to the <i>GDC's Scope of Practice of 30 September 2013</i> document. It found that your conduct at charges 1-6 was not in accordance with a regulated dental professional acting within their scope of practice and your actions therefore lacked integrity. It also found that by working outside your scope of practice, you were not fully indemnified and therefore patients did not have access to recourse should they have required it.</p>

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

We move to Stage Two.”

On 28 November 2018 the Chairman announced the determination as follows:

“Mr Whitehead,

You are represented at this Professional Conduct Committee hearing by Ms Jennifer Agyekum of Counsel. Mr Alex Jamieson of Counsel represents the General Dental Council (GDC).

Having concluded its findings of fact, the Committee went on to consider whether the matters found proved amount to misconduct, and if so, whether your fitness to practise is currently impaired by reason of that misconduct. The Committee noted that if it found current impairment, it would need to go on to consider the issue of sanction.

In reaching its decisions, the Committee considered all the evidence presented to it, both at the fact-finding stage and your oral evidence at this stage. You told the Committee that you understand what your scope of practice is, and you are sorry for your actions. You said that you understand that your conduct caused a risk of harm to patients as you knew were not indemnified to take oral impressions of patients and should not have done so. You said that you are of the view that patients would be displeased to learn of your actions, and you are aware of the detrimental reputational impact your actions could have on the public and your regulatory body. Since the material time, you told the Committee that you do not see patients anymore and confine your work to running the KMO laboratory only. You told the Committee that you would not repeat your actions and you have learnt your lesson not to work beyond your scope of practice or act dishonestly. You told the Committee that being erased from the Register would have dire consequences on your capability to run your business.

In addition to the evidence, the Committee took into account the submissions made by Mr Jamieson on behalf of the GDC, Ms Agyekum on your behalf, and all the documentation before it. The Committee also heard and accepted the advice of the Legal Adviser. It remained mindful that misconduct, impairment and sanction are matters for its own independent judgment. There is no burden or standard of proof at this stage of the proceedings.

### **GDC submissions**

Mr Jamieson submitted that the Council invites the Committee to determine that the criteria for a finding of misconduct is clearly satisfied in this case and that your fitness to practise is currently impaired by reason of that misconduct on both public protection and wider public interest grounds. He submitted that there was a clear risk of harm in your actions of repeatedly working beyond your scope of practice, competence and training, and that these acts are liable to bring the profession into disrepute, particularly considering the dishonesty and lack of integrity found proven by the Committee. It is the Council's submission that breached a fundamental tenet of the profession by taking your own interests ahead of the interests of patients. He submitted that it is for the Committee to consider whether there is a risk of repetition in this case. With regard to sanction, Mr Jamieson invited the Committee to determine that there a number of aggravating features present in this case and whilst it a matter for the Committee which sanction, if any, to impose, this is a serious case which the Committee may determine warrants a period of suspension or erasure.

### **Your submissions**

Ms Agyekum, on your behalf, submitted that you accept that the matters found proven by the Committee amount to misconduct and may lead to a finding of current impairment of your fitness to practise. She told the Committee that whilst she agrees with the Council's submissions that your actions caused a risk of harm to patients, there has been no actual patient harm found in this case. She submitted that your actions were limited in scope, confined to taking oral impressions of a handful of patients during the material time. Ms Agyekum submitted that your oral evidence demonstrates that you have some insight as to why you should not work beyond scope of practice and why acting dishonestly is unacceptable. She told the Committee that the risk of repetition in this case is low, and to accept your oral evidence that it has not been repeated since the material

time as you no longer see patients. She asked the Committee to take into account your oral evidence that you understand the seriousness of the findings against you. She told the Committee to consider that you have engaged with the fitness to practise proceedings and have shown insight to the Committee of the steps you have taken to remedy your misconduct. With regard to sanction, she invited the Committee to take into account your cooperation and engagement with the fitness to practise process and the remorse you have expressed. She invited the Committee to impose a sanction no higher than a period of suspension.

### **Decision on Misconduct**

The Committee took into account that a finding of misconduct in the regulatory context requires a serious falling short of the professional standards expected of a registered dental professional. It had regard to the GDC's standards, as contained in the publication '*GDC Standards for Dental Professionals (30 September 2013)*'. The Committee considered that the following standards are engaged in this case:

*1.7.1 - You must always put your patients' interests before any financial, personal or other gain.*

*7.2.1 - You must only carry out a task or a type of treatment if you are appropriately trained, competent, confident and indemnified....*

The Committee considered that your actions in performing oral impressions outside of the scope of your practice was misleading, dishonest, lacked integrity and therefore crosses the threshold of seriousness required for a finding of misconduct. The Committee also considered the risk of patient harm of your actions.

Accordingly, the Committee determined the facts found proved amount to misconduct.

### **Decision on Impairment**

The Committee went on to consider whether your fitness to practise is currently impaired by reason of your misconduct. It had regard to the over-arching objective of the GDC, which involves: the protection, promotion and maintenance of health, safety and well-being of the public; the promotion and maintenance of public confidence in the dental profession; and the promotion and maintenance of proper professional standards and conduct for the members of the dental profession.

The Committee considered whether your misconduct is remediable, has been remedied and whether it is likely to be repeated. The Committee was satisfied that the misconduct found in this case, whilst serious, is capable of being remedied. When considering whether you have remedied your misconduct, it considered your oral evidence and was of the view that you have demonstrated a degree of insight and an understanding of the potential detrimental impact of your actions on patient safety, the dental profession and yourself, both personally and professionally. However, the Committee was not satisfied, considering the repetitive nature of your misconduct of a substantial period of time, that your level of insight at this stage is sufficient to give the Committee confidence that you would not repeat your misconduct.

The Committee has borne in mind the wider public interest, including the need to declare and uphold proper standards of conduct and behaviour, in order to maintain public confidence in the profession. The Committee determined it was reprehensible and unprofessional for you to fail to act within the scope of your practice as a registered Dental Technician and the public would be dismayed to learn a dental professional had acted in this manner. The Committee therefore

concluded public confidence in the profession and the regulatory process would be significantly undermined were the Committee not to make a finding of current impairment.

Having regard to all of this, the Committee has concluded that your fitness to practise is currently impaired by reason of his misconduct. There is a clear need to protect members of the public.

### **Decision on Sanction**

The Committee next considered what sanction, if any, to impose on your registration. It recognised that the purpose of a sanction is not to be punitive, although it may have that effect, but to protect patients and the wider public interest.

The Committee had regard to the GDC's '*Guidance for the Practice Committees: Including Indicative Sanctions Guidance*' (October 2016) ('the Guidance'). The Committee applied the principle of proportionality, balancing the public interest with your own interests. The Committee has considered the range of sanctions available to it, beginning with the least serious.

The Committee found the following aggravating and mitigating factors in this case:

#### **Aggravating:**

- The risk of actual harm to patients;
- Dishonesty;
- Financial gain;
- Premeditated misconduct;
- Misconduct repeated over the period of the year;
- Lack of full insight shown.

#### **Mitigating:**

- No actual patient harm;
- The misconduct was limited in scope, involved a small number of patients and was for a particular purpose;
- The remorse and insight you have shown for your actions;
- The Committee received no evidence of previous poor character;
- Evidence of steps taken to avoid a repetition of your misconduct.

The Committee has determined that it would be inappropriate to conclude this case without taking any action or issuing a reprimand, given the seriousness of your misconduct and the finding of current impairment. Additionally, the Committee determined taking no further action would not mark the public interest concerns in this case.

The Committee next considered whether a period of conditional registration would be appropriate in this case. The Committee was mindful that any conditions imposed must be proportionate, measurable and workable. The Committee considered that there are no conditions that could be formulated to adequately address the misconduct found in this case as all dental professionals are required to work within the scope of their practice. In any event, the Committee considers that a period of conditional registration would not sufficiently declare and uphold proper professional standards and maintain trust and confidence in the profession. The Committee therefore

concluded that conditions would not be appropriate, workable or proportionate in the circumstances of this case.

The Committee went on to consider whether a period of suspension would be proportionate and appropriate in this case. It noted paragraph 7.28 of the Guidance:

*Suspension is appropriate for more serious cases and may be appropriate when all or some of the following factors are present (this list is not exhaustive):*

- *there is evidence of repetition of the behaviour;*
- *the registrant has not shown insight and/or poses a significant risk of repeating the behaviour;*
- *patients' interests would be insufficiently protected by a lesser sanction;*
- *public confidence in the profession would be insufficiently protected by a lesser sanction;*
- *there is no evidence of harmful deep-seated personality or professional attitudinal problems (which might make erasure the appropriate order).*

Having given the matter very careful consideration and having had regard to the mitigating and aggravating factors referred to above, the Committee has determined that a period of suspension is the appropriate and proportionate sanction to impose given the particular circumstances of this case. You have shown a degree of insight and have taken some steps to mitigate the potential risk of harm to patients in the future. In the circumstances, the Committee considers that a reasonable and informed observer would be satisfied that the sanction of suspension represents a suitable disposal of this case. The Committee therefore considers that a suspension is sufficient to meet the public interest considerations that arise in this case.

Having determined that a period of suspension is the appropriate sanction, the Committee found that to impose the more severe sanction of erasure from the Register, would be disproportionate given all the circumstances of the case. The Committee considered that, whilst serious, your dishonest conduct does not connote a harmful professional or attitudinal personality problem which might make erasure the appropriate sanction, and that a period of suspended registration can adequately meet the public interest considerations in this case.

The Committee hereby directs that your registration be suspended for a period of 12 months, with a review hearing to take place prior to the expiry of the suspension.

Although this Committee in no way wishes to bind or fetter the committee which will review your suspension in approximately 12 months, that committee may be assisted by being provided with evidence of targeted CPD relevant to the shortcomings in this case, such as addressing legal and ethical issues, professional standards, probity and professional ethics. The reviewing committee may also be assisted your attendance at that hearing to evidence your reflection and further development of your insight into the matters that have led to the Committee's findings as set out above."

At a review hearing on 28 November 2019 the Chairman announced the determination as follows:

"This is a resumed hearing pursuant to Section 36Q of the Dentists Act 1984 (as amended) ('the Act') to review the order of suspension for 12 months which was imposed on Mr Whitehead's registration by the Professional Conduct Committee (PCC) on 28 November

2018. Mr Whitehead is neither present nor represented in the hearing. Mr Ahmed represents the General Dental Council (GDC).

### **Decision on Service of Notification of the Hearing**

The Committee had before it a copy of the Notice of Hearing letter, dated 16 October 2019, which was sent to Mr Whitehead's registered address by way of special delivery post and by email. The Committee was satisfied that the letter contained proper notification of today's hearing, including its time, date and location, as well as notification that the Committee has the power to proceed with the hearing in Mr Whitehead's absence. The Committee noted from the Royal Mail Track and Trace receipt that the letter was delivered on 17 October 2019 at 9:55am. The Committee was satisfied that the notice of this hearing has been served on Mr Whitehead in compliance with the rules.

### **Decision on Proceeding in the absence of Registrant**

The Committee then went on to consider whether to exercise its discretion under Rule 54 to proceed with the hearing in Mr Whitehead's absence. The Committee heard the submissions made by Mr Ahmed on behalf of the GDC and took account of the advice of the Legal Adviser. The Committee was mindful that this is a discretion that must be exercised with the utmost care and caution.

The Committee noted the email correspondence between Mr Whitehead's previous legal representatives and the GDC who notified the GDC that they no longer represented Mr Whitehead. The Committee noted that Mr Whitehead has not responded to the GDC's correspondence since the initial hearing at which he was present and represented. It considered whether to adjourn the hearing to a future date. However, given that Mr Whitehead is currently not engaging with the GDC and in the absence of any request from him for an adjournment, the Committee was of the view that an adjournment may not result in Mr Whitehead's attendance at a future date. Having weighed the interests of Mr Whitehead with those of the GDC and the public interest in an expeditious disposal of this hearing the Committee determined to proceed with the hearing in the absence of Mr Whitehead.

### **Background**

This case was first considered by a PCC in November 2018. The allegations against Mr Whitehead arose out of an in-guise visit on 14 September 2017 by two GDC investigators to the laboratory where he worked following the receipt of a complaint from a patient stating that they had had oral impressions taken at the laboratory by someone who was not a dentist. The PCC found proved that at the visit on 14 September 2017, Mr Whitehead offered to take oral impressions of one of the investigators, thereby holding himself out to be professionally qualified to do so when he was not. In so doing Mr Whitehead offered to work beyond the scope of his practice. The PCC also found that Mr Whitehead took oral impressions for patients between September 2016 and September 2017, which was holding himself out to be professionally qualified to do so when he knew he was not. In so doing Mr Whitehead worked beyond the scope of his practice. The PCC found that Mr Whitehead's actions were misleading, dishonest and lacked integrity. The PCC considered that Mr Whitehead's actions were serious and were aggravated by his dishonesty and lack of integrity. The PCC determined that the facts found proved amounted to misconduct.

Regarding impairment, the PCC in November 2018 was satisfied that the misconduct, whilst serious, was capable of being remedied. The PCC was of the view that Mr Whitehead had

demonstrated a degree of insight and an understanding of the potential detrimental impact of his actions on patient safety, the dental profession and himself, both personally and professionally. However, the PCC was not satisfied, considering the repetitive nature of Mr Whitehead's misconduct over a substantial period of time, that his level of insight, at that stage, was sufficient to assure it that he would not repeat his misconduct. The PCC determined that Mr Whitehead's fitness to practise was impaired by reason of his misconduct. It determined that a period of suspension was appropriate, proportionate and sufficient to meet the public interest. Mr Whitehead's registration was suspended for a period of 12 months with a review.

### **Today's Review**

This is the first review of the case. The Committee has carried out a comprehensive review taking account of all the evidence presented. It has also taken account of the submissions made by Mr Ahmed on behalf of the GDC. The Committee accepted the advice of the Legal Adviser.

#### *Current Impairment*

In considering whether Mr Whitehead's fitness to practise is currently impaired the Committee bore in mind that this is a matter for its own independent judgement. It also had regard to its duty to protect the public, declare and uphold proper standards of conduct and competence and maintain public confidence in the profession. The Committee was referred to the cases of *CHRE v NMC and Grant, Cohen v GMC* and *Abraheam v GMC*. The Committee accepted the advice of the Legal Adviser.

The Committee noted that there has been no change since the conclusion of the substantive hearing. Mr Whitehead has not communicated or engaged with the GDC since, neither has he submitted any evidence of remediation for consideration by this Committee. Mr Whitehead was advised by the previous Committee to consider providing evidence of CPD in the areas of legal and ethical issues, professional standards, probity and professional ethics, and evidence of his personal reflection into the matters that have led to the findings made against him. The Committee has received no evidence or communication from Mr Whitehead to demonstrate any of the above areas. The Committee is therefore unable to assess the current level of Mr Whitehead's insight into his previous failings. Therefore, it considers that there remains a risk of repetition of the failings found proved.

In relation to the public interest, the Committee concluded that, in the absence of any evidence of remediation and insight from Mr Whitehead, public confidence in the profession would be undermined if a finding of impairment was not made.

The Committee determined that Mr Whitehead's fitness to practise remains impaired by reason of his misconduct.

#### *Sanction*

The Committee next considered what sanction to impose on Mr Whitehead's registration under Section 36Q of the Dentists Act, 1984 as amended. It reminded itself that the purpose of any sanction is not to be punitive although it may have that effect. The Committee bore in mind the principle of proportionality.

The Committee first considered whether to terminate the current suspension order or replace it with a conditions of practice order. In light of Mr Whitehead's lack of engagement and the

absence of evidence of insight and remediation of the failings found proved, the Committee considered that conditions would not be workable.

The Committee concluded that the appropriate order is to suspend Mr Whitehead's registration for a further period. The Committee has therefore determined to extend the suspension of Mr Whitehead's registration, and given his lack of engagement concluded that a period of 12 months was appropriate, pursuant to section 36Q (2)(b) of the Dentists Act 1984, as amended.

The Committee has also determined that the matter should be reviewed prior to expiry of the suspension order. It is of the view that a reviewing Committee may be assisted by receiving evidence of targeted CPD relevant to his shortcomings in this case, such as addressing legal and ethical issues, professional standards, probity and professional ethics. The reviewing Committee may also be assisted by receiving evidence of Mr Whitehead's reflection and further development of his insight into the matters that have led to the findings made against him.

That concludes this determination."

At a review hearing on 3 December 2020 the Chairman announced the determination as follows:

"This is a resumed hearing pursuant to section 36Q of the Dentists Act 1984 (as amended) ('the Act') to review the order of suspension for 12 months which was imposed on Mr Whitehead's registration by the Professional Conduct Committee ("the PCC") on 28 November 2018. Neither party was present at today's hearing following a request for this statutory review to be dealt with on the papers.

#### **Submissions on service of notice of hearing**

It was submitted that the notification of this hearing had been served on Mr Whitehead in accordance with Rules 28 and 65 of the General Dental Council (Fitness to Practise) Rules Order of Council 2006 ("the Rules").

#### **Decision on service of notice of hearing**

The Committee received a bundle of documents which contained a copy of the notification of today's review hearing, dated 20 October 2020, that was sent to Mr Whitehead's registered address by special delivery. The Committee noted that the notification provided Mr Whitehead with more than the 28 days required by the Rules. It was satisfied that the letter contained proper notification of today's hearing, including its time, date and location, as well as notification that the Committee has the power to proceed with the hearing in Mr Whitehead's absence.

The Committee had sight of a Royal Mail Track and Trace proof of delivery document, with the same tracking number as is on the notification of hearing letter. This showed that the letter was delivered on 21 October 2020 and "signed for by: EHITEHEAD". The Committee noted that Rule 65 permitted the notification to be sent by post and proof of service to be confirmed by Royal Mail. It also noted that the Council are not required to prove that the notification was received, simply that the notification was posted. A copy of the notification of hearing was also sent as an attachment via secure email to Mr Whitehead and an email download receipt was also before the Committee.

Accordingly, the Committee was satisfied that the notification of this review hearing had been served on Mr Whitehead in accordance with the rules.

### **Application to proceed with the hearing in the absence of the registrant and on the papers**

It was then submitted on behalf of the Council that all reasonable efforts have been made in accordance with the Rules to send notification to Mr Whitehead and invited the Committee to exercise its discretion to proceed in his absence. The Committee was referred to the cases of *GMC v Adeogba*; *GMC v Visvardis [2016] EWCA Civ 162* and *R v Jones [2002] UKHL 5*.

### **Decision on proceeding with the hearing in the absence of the registrant and on the papers**

The Committee then considered whether to proceed to review this case in the absence of the parties pursuant to rule 54, and on the basis of the papers.

It was submitted on behalf of the GDC that Mr Whitehead is aware of the hearing today and has chosen to absent himself from either attending or providing the Committee with any evidence. The Committee noted from the written submissions on behalf of the GDC that a chaser email dated 12 November 2020 was sent to Mr Whitehead's email address. Mr Whitehead has not responded to the GDC's correspondence. There is no application for an adjournment from Mr Whitehead. Given that he is currently not engaging with the GDC and in the absence of any request from him for an adjournment, the Committee was of the view that an adjournment may not result in Mr Whitehead's attendance at a future date. The Committee was also of the view that Mr Whitehead had waived his right to attend the hearing by his non-cooperation with the GDC.

Having weighed the interests of Mr Whitehead with those of the GDC and the public interest in an expeditious disposal of this hearing, the Committee determined to proceed with the hearing in the absence of Mr Whitehead.

### **Background and summary of findings**

This case was first considered at an initial PCC hearing in November 2018. The background as summarised by the reviewing PCC in November 2019 is as follows:

*"This case was first considered by a PCC in November 2018. The allegations against Mr Whitehead arose out of an in-guise visit on 14 September 2017 by two GDC investigators to the laboratory where he worked following the receipt of a complaint from a patient stating that they had had oral impressions taken at the laboratory by someone who was not a dentist. The PCC found proved that at the visit on 14 September 2017, Mr Whitehead offered to take oral impressions of one of the investigators, thereby holding himself out to be professionally qualified to do so when he was not. In so doing Mr Whitehead offered to work beyond the scope of his practice. The PCC also found that Mr Whitehead took oral impressions for patients between September 2016 and September 2017, which was holding himself out to be professionally qualified to do so when he knew he was not. In so doing Mr Whitehead worked beyond the scope of his practice. The PCC found that Mr Whitehead's actions were misleading, dishonest and lacked integrity. The PCC considered that Mr Whitehead's actions were serious and were aggravated by his dishonesty and lack of integrity. The PCC determined that the facts found proved amounted to misconduct.*

*Regarding impairment, the PCC in November 2018 was satisfied that the misconduct, whilst serious, was capable of being remedied. The PCC was of the view that Mr Whitehead had demonstrated a degree of insight and an understanding of the potential detrimental impact of his actions on patient safety, the dental profession and himself, both personally and professionally. However, the PCC was not satisfied, considering the repetitive nature of Mr Whitehead's misconduct over a substantial period of time, that his level of insight, at that stage, was sufficient to assure it that he would not repeat his misconduct. The PCC determined that Mr Whitehead's fitness to practise was impaired by reason of his misconduct. It determined that a period of suspension was appropriate, proportionate and sufficient to meet the public interest. Mr Whitehead's registration was suspended for a period of 12 months with a review."*

### **First Review**

The PCC reviewed the order on 28 November 2019. Mr Whitehead was neither present nor represented at the hearing. The PCC determined that Mr Whitehead's fitness to practise remained impaired by reason of his misconduct. Its reasons as set out in its determination was that:

*"The Committee noted that there has been no change since the conclusion of the substantive hearing. Mr Whitehead has not communicated or engaged with the GDC since, neither has he submitted any evidence of remediation for consideration by this Committee. Mr Whitehead was advised by the previous Committee to consider providing evidence of CPD in the areas of legal and ethical issues, professional standards, probity and professional ethics, and evidence of his personal reflection into the matters that have led to the findings made against him. The Committee has received no evidence or communication from Mr Whitehead to demonstrate any of the above areas. The Committee is therefore unable to assess the current level of Mr Whitehead's insight into his previous failings. Therefore, it considers that there remains a risk of repetition of the failings found proved.*

*In relation to the public interest, the Committee concluded that, in the absence of any evidence of remediation and insight from Mr Whitehead, public confidence in the profession would be undermined if a finding of impairment was not made."*

Mr Whitehead's registration was suspended for a further period of 12 months with a review prior to the expiry of the order. The PCC recommended that Mr Whitehead produce some evidence to assist a reviewing Committee. It said this:

*"It is of the view that a reviewing Committee may be assisted by receiving evidence of targeted CPD relevant to his shortcomings in this case, such as addressing legal and ethical issues, professional standards, probity and professional ethics. The reviewing Committee may also be assisted by receiving evidence of Mr Whitehead's reflection and further development of his insight into the matters that have led to the findings made against him."*

### **Today's Review**

#### **GDC's Submissions**

On behalf of the GDC it was submitted that Mr Whitehead has complied with the order of suspension imposed on his registration. However, it was further submitted that "since the order was imposed at the initial hearing in November 2018, the Registrant has not provided any demonstrated insight or submitted remediation to date. The Registrant has not engaged

*with the Council since before his initial hearing in November 2018. The Registrant has been written to on 04 December 2019 and 06 August 2020 to remind him of the recommendations made by the previous Committee...To date, the Registrant has not responded to any of these emails."*

It was submitted on behalf of the GDC that *"there is no evidence to show any material change in position in respect of the Registrant's misconduct since the initial hearing. The Registrant has not provided any evidence of insight or remediation, nor has he engaged with the Council."* It was therefore submitted that there remains a risk of repetition of the failings found proved and that confidence in the dental profession would be undermined if a finding of impairment is not made. The Committee was invited to consider imposing an indefinite suspension on Mr Whitehead's registration.

#### *Current Impairment*

In considering whether Mr Whitehead's fitness to practise is currently impaired, the Committee bore in mind that this is a matter for its own independent judgement. It also had regard to its duty to protect the public, declare and uphold proper standards of conduct and competence and maintain public confidence in the profession. The Committee accepted the advice of the Legal Adviser.

The Committee first considered whether Mr Whitehead has remedied the failings found proved by the PCC in November 2018. The facts found proved in this case relate to serious findings of misleading and dishonest conduct. There is a persuasive burden on Mr Whitehead to convince the Committee that he is no longer impaired. The recommendations made by previous Committees of the type of evidence that a review Committee would be assisted by has not been produced. There has been no evidence of remediation from Mr Whitehead and no evidence of his reflection and insight into the failings found against him. The Committee concluded that there remains a risk of repetition in the absence of any evidence of remediation from Mr Whitehead and a finding of current impairment is required to protect the public.

The Committee is of the view that a finding of current impairment is also in the public interest in order to maintain public confidence and uphold the standards of the profession. It is also of the view that a fully informed member of the public aware of the initial findings made and the absence of any evidence of remediation or insight from Mr Whitehead, would be concerned if a finding of current impairment was not made.

The Committee therefore has determined that Mr Whitehead's fitness to practise remains currently impaired by reason of the misconduct found in November 2018.

#### *Sanction*

In considering what restriction, if any, to impose on Mr Whitehead's registration, the Committee reminded itself that the purpose of restrictions is not to be punitive although it may have that effect. The Committee bore in mind the principle of proportionality.

The Committee considered whether to terminate the current order of suspension or allow it to lapse. It is of the view that, given that Mr Whitehead has not engaged with the GDC and is yet to demonstrate any remediation of his failings previously found proved, some form of restriction is required to protect patients and the public interest.

The Committee considered whether to impose a period of conditional registration however it considered that conditions would not be appropriate given Mr Whitehead's lack of engagement with his regulator.

The Committee concluded that suspension remains the appropriate restriction to impose on Mr Whitehead's registration. It considered whether a 12 month suspension was sufficient or whether to suspend Mr Whitehead's registration indefinitely. It is of the view that in the absence of any indication that Mr Whitehead intends to engage with the Council, an extension for another period of 12 months with a review would serve no purpose. The Committee's view is that yearly reviews in a case where a registrant has not engaged at all is an unwise use of GDC resources.

In considering the criteria for imposing an indefinite suspension, the Committee noted from the written submissions on behalf of the GDC that *"The Registrant was first suspended on 28 November 2018. He did not appeal the decision and the order started on 03 December 2018. The Registrant's suspension was further extended for a further 12 months on 28 November 2019. He did not appeal the decision to extend the order and the order started on 31 December 2019."* The Committee sought clarification from those representing the GDC regarding the start date of the initial suspension. Clarity has been provided that the original order commenced on 31 December 2018 and not 3 December 2018 as set out in the written submissions.

The Committee concluded that the criteria for an indefinite suspension is met in this case. It noted from section 36Q(1) that a person's registration in the register can be suspended indefinitely if *"the period of suspension will, on the date on which the direction takes effect, have lasted for at least two years, and the direction is made not more than two months before the date on which the period of suspension would otherwise expire."* The Committee noted that Mr Whitehead's registration would have been suspended for two years by 30 December 2020, having first been suspended for 12 months on 28 November 2018. The current order is due to expire in less than two months from today. In addition, its decision for an indefinite suspension today will take effect in January 2021.

The Committee therefore directs that Mr Whitehead's registration in the register be suspended indefinitely pursuant to section 36Q (1)(d) of the Dentists Act 1984, as amended.

That concludes this determination."