

HEARING HEARD IN PUBLIC

SMITH, David Norman

Registration No: 142932

PROFESSIONAL CONDUCT COMMITTEE

OCTOBER 2016 – OCTOBER 2018

Most recent outcome: Suspended indefinitely **

**** See page 12 for the latest determination**

David Norman SMITH, a Dental Technician; Qual- Final Certification in Dental Technology City & Guilds 1976, was summoned to appear before the Professional Conduct Committee on Wednesday 26 October 2016 for an inquiry into the following charge:

Charge

“That being a registered dental care professional:

1. On the 9th of October 2015 you offered to provide a denture directly to a member of the public;
 - a. including taking an impression;
 - b. without proposing referral to a dentist or clinical dental technician;
 - c. without a prescription from a dentist;
2. In respect of allegation 1 you have offered to work beyond the scope of your practice.
3. In respect of allegation 1 you have offered to provide dental services whilst you failed to hold adequate indemnity insurance.

AND that by reason of the facts alleged at head of charge 1-3 above, your fitness to practice is impaired by reason of your misconduct.”

Mr Smith was not present and was not represented. On 26 October 2016 the Chairman announced the findings of fact to the Counsel for the GDC:

“Mr Smith is neither present nor represented at this Professional Conduct Committee (PCC) hearing today. Mr Stevens appears as the Case Presenter for the General Dental Council (GDC). On behalf of the GDC, Mr Stevens made an application pursuant to Rule 54 of the GDC (Fitness to Practise) Rules Order of Council 2006 (‘the Rules’), to proceed with the hearing in Mr Smith’s absence.

The Committee took account of Mr Stevens’ submissions in respect of the application and it accepted the advice of the Legal Adviser.

Service

The Committee first considered whether Mr Smith had been sent notification of the hearing in accordance with Rules 13 and 65. It saw a copy of the Notification of Hearing, dated 28

September 2016, which was sent to Mr Smith's registered address by Special Delivery. The Committee was satisfied that the letter contained proper notification of today's hearing, including its date, time and location, as well as notification that the PCC had the power to proceed with the hearing in Mr Smith's absence. The Committee took into account that the GDC is not required by the Rules to prove receipt of the Notification of Hearing. However, it had regard to a Royal Mail 'Track and Trace' receipt, which confirmed that the letter was delivered and signed for on 29 September 2016. The Committee was satisfied that Mr Smith had been notified in accordance with the Rules.

Proceeding in the absence of the respondent

The Committee next considered whether to exercise its discretion under Rule 54 to proceed with the hearing in the absence of Mr Smith. It took into account the need to be fair to both parties and the whole circumstances of this case, including the nature of the allegations. The Committee also took into account its duty to act expeditiously in the public interest.

The Committee was satisfied on the basis of the information provided to it, that Mr Smith is aware of today's hearing. It had regard to the Attendance Note, dated 19 October 2016, which detailed a telephone conversation between Mr Smith and a member of the GDC's legal team. The Committee further had regard to a subsequent email, dated 19 October 2016, from Mr Smith to the GDC, in which he confirmed that he would not be attending this hearing. Mr Smith also stated "*I agree the Committee may go ahead without my attendance*" and he referred to what was already explained in the Attendance Note, namely his reasons for taking early retirement.

The Committee was satisfied that Mr Smith had voluntarily absented himself and had waived his right to be present and represented at this hearing. Mr Smith did not request an adjournment and the Committee considered that an adjournment today would not make his attendance on another occasion any more likely. In all the circumstances, the Committee determined that it was reasonable and in the public interest to proceed with the hearing in the absence of Mr Smith.

Background to the case against Mr Smith

At the material time, Mr Smith practised as a dental technician at his own practice in Leicester. The case against Mr Smith, as reflected in the charge, relates to his offer to provide a denture directly to a member of the public.

It is alleged by the GDC that in doing so, Mr Smith offered to work beyond the scope of his practice and consequently offered to provide dental services for which he did not hold adequate indemnity insurance. The evidence upon which the allegations are based was obtained by two independent investigators, Witness A and Witness B who were instructed by the GDC to carry out an under guise investigation into Mr Smith's practice. This was in light of concerns having been raised with the GDC about the dental services Mr Smith was allegedly providing to members of the public.

Evidence

The Committee received the witness statement of Witness A and the witness statement of Witness B, both dated 21 October 2015. The witness statement of Witness A included a note of the conversation he had, in the presence of Witness B, with Mr Smith on 9 October 2015 during the under guise telephone call. The Committee was also provided with a redacted transcript of Mr Smith's Interim Orders Committee (IOC) hearing held on 19 February 2016, which Mr Smith attended. Mr Smith made comments to the IOC about the allegations

against him. These included his acknowledgement of his conversation with Witness A and his apparent acceptance that *“It was true”*. In addition, this Committee had regard to the Attendance Note of 19 October 2016, in which it is recorded that Mr Smith *“admits to providing out of scope services. He provided dentures directly to members of the public for some years and throughout his career...”*

This Committee heard oral evidence from Witness A and Witness B about the investigation they undertook on behalf of the GDC. With regard the note of the under guise telephone call, Witness A explained his technique in recording what Mr Smith had said. He told the Committee that he had taken contemporaneous notes during their conversation and had then made fuller notes immediately after the telephone call had ended. Whilst Witness A accepted that his note was not a verbatim record of what Mr Smith had said, he stated it was a true and accurate account. Witness B confirmed to the Committee that she had been present during the conversation in question and that she had been taking a note of what Witness A had said to Mr Smith, but could not hear Mr Smith’s responses. The note of the conversation taken by Witness B therefore had the effect of corroborating Witness A’s account.

By way of expert evidence, the Committee received a report, dated 30 September 2016, prepared by Mr Nigel Entwistle, the expert witness called by the GDC. With his report, Mr Entwistle provided a copy of the GDC’s Scope of Practice Guidance in relation to Dental Technicians, effective from 30 September 2013 (‘the Guidance’). Mr Entwistle also gave oral evidence to the Committee.

The Committee considered Witness A and Witness B to be experienced and professional independent investigators. It had no reason to doubt that what they said was true, although it took into account that Witness B’s evidence was limited, in that she only heard one side of the telephone conversation on 9 October 2015. Notwithstanding this, the Committee accepted both witnesses accounts as fair, accurate and reliable. The Committee found Mr Entwistle’s evidence, both written and oral, to be of assistance in making its findings of fact. It considered that he was fair and measured in giving his opinion on the matters in this case.

The Committee’s findings of fact

The Committee considered all of the evidence presented to it. It took account of the submissions made Mr Stevens on behalf of the GDC. It also had regard to Mr Smith’s comments as contained in the IOC hearing transcript of 19 February 2016 and the Attendance Note of 19 October 2016. The Committee accepted the advice of the Legal Adviser. It 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 facts are proved on the balance of probabilities.

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

1.	<i>On the 9th of October 2015 you offered to provide a denture directly to a member of the public;</i>
1.(a)	<i>including taking an impression;</i> Proved.
1.(b)	<i>without proposing referral to a dentist or clinical dental technician;</i>

	<p>Proved.</p>
1.(c)	<p><i>without a prescription from a dentist;</i></p> <p>Proved.</p> <p>The Committee considered heads of charge 1(a), 1(b) and 1(c) separately, but reached the same finding in relation to each head of charge.</p> <p>The Committee had regard to the note taken by Witness A of the answers given by Mr Smith during their telephone conversation on 9 October 2015. In considering this evidence, the Committee was satisfied that Witness A had indeed been speaking to Mr Smith. The Committee noted that there has been no dispute regarding Mr Smith's identification and that during the IOC hearing on 19 February 2016, Mr Smith himself acknowledged his involvement in the telephone call.</p> <p>The note taken by Witness A clearly confirms that Mr Smith did offer to take an impression. In this regard Mr Smith stated that <i>"...I take the old denture and make a copy and then I take an impression with something I use..."</i>. Mr Smith further stated <i>"I take the dentures, make a copy then put something inside them to take the impression of his mouth..."</i>. The Committee further took into account that there is no mention in the note taken by Witness A of Mr Smith proposing to refer his 'father-in-law' to a dentist or clinical dental technician. On the contrary, Mr Smith stated that <i>"I do it all in the kitchen at his home."</i> Mr Smith then went on to reiterate to Witness A that he was <i>"going to do everything"</i>.</p> <p>Taking into account this evidence and the oral evidence of Witness A given under oath, the Committee was satisfied that Mr Smith did offer a denture directly to a member of the public. It was further satisfied that Mr Smith's apparent admissions, as contained in the transcript of the IOC hearing and the Attendance Note, reinforced its findings.</p>
2.	<p><i>In respect of allegation 1 you have offered to work beyond the scope of your practice.</i></p> <p>Proved.</p> <p>The Committee heard expert evidence from Mr Entwistle about the scope of practice of a dental technician, and how the taking of impressions goes beyond that scope. The Committee also had regard to the Guidance, which makes clear what a dental technician can and cannot do. It was satisfied from the Guidance and from Mr Entwistle's evidence that a dental technician cannot work independently to take impressions of a patient's mouth or provide dentures to members of the public without proposing an appropriate referral and/or without a prescription from a dentist. The Committee therefore determined that in offering to do so, Mr Smith had offered to work beyond the scope of his practice as a dental technician.</p>
3.	<p><i>In respect of allegation 1 you have offered to provide dental services whilst you failed to hold adequate indemnity insurance.</i></p> <p>Proved.</p> <p>The Committee saw no evidence regarding Mr Smith's indemnity</p>

insurance status. However, it was satisfied from the evidence of Mr Entwistle that Mr Smith could not have been adequately indemnified in any event, as he could not have indemnified himself against the illegal act of working outside his scope of practice.

We move to Stage Two.”

On 27 October 2016 the Chairman announced the determination as follows:

“Mr Smith is neither present nor represented at this Professional Conduct Committee hearing. Mr Stevens is the Case Presenter for the General Dental Council (GDC).

The Committee considered all of the evidence presented to it. It took account of the submissions made by Mr Stevens on behalf of the GDC. It also had regard to Mr Smith’s comments on the matters in this case, as contained in the transcript of Mr Smith’s Interim Orders Committee hearing held on 19 February 2016, in the Attendance Note of 19 October 2016 and in Mr Smith’s email to the GDC, dated 19 October 2016. The Committee accepted the advice of the Legal Adviser.

Facts

The facts found proved in this case are that on 9 October 2015, Mr Smith, a dental technician, offered to provide a denture directly to a member of the public including taking an impression. Mr Smith made the offer without proposing a referral to a dentist or clinical dental technician and without a prescription from a dentist.

In proposing to provide the denture, Mr Smith offered to work beyond the scope of his practice. He also offered to provide dental services whilst he failed to hold adequate indemnity insurance. In this regard, the Committee found that Mr Smith could not have indemnified himself against the illegal act of working outside his scope of practice.

Misconduct

The Committee considered whether the facts found proved amount to misconduct. It took into account that a finding of misconduct in this regulatory context requires a serious falling short of the standards expected of a registered dental professional. The Committee had regard to the GDC’s publication ‘*Standards for the Dental Team (September 2013)*’, in particular the following paragraphs:

- 1.7.1 You must always put your patients’ interests before any financial, personal or other gain.
- 1.8.1 You must have appropriate insurance or indemnity in place to make sure your patients can claim any compensation to which they may be entitled.
- 1.9.1 You must find out about, and follow, laws and regulations affecting your work.
- 6.3.3 You should refer patients on if the treatment required is outside your scope of practice or competence. You should be clear about the procedure for doing this.
- 7.2 Work within your knowledge, skills, professional competence and abilities.

The Committee had regard to the fact that this case involved a single fictitious patient and that no harm was actually caused by Mr Smith. It took into account the evidence of Mr Entwistle, the expert witness called by the GDC. He told the Committee about the potential risks of significant harm to patients, if Mr Smith worked outside his scope of practice as a

dental technician. These risks included, amongst other things, the production of ill-fitting dentures with poor function, which could cause pain and significant joint problems. There is also the potential for poorly fitting dentures to cause ulcerations in a patient's mouth that may lead to very serious complications including malignancy. Whilst the Committee noted that such a serious impact on a patient would be relatively rare, it took into account that if it did happen the consequences for any patient would be grave. Furthermore, by not being adequately indemnified, Mr Smith exposed potential patients to the risk of having no recourse to proper compensation.

Mr Smith was offering to provide services illegally, as they were beyond the scope of his competence. That is inherently serious. Taking all of these matters into account, the Committee was satisfied that Mr Smith's behaviour, as highlighted in this case, falls far below the standards expected of him. In the Committee's view, it was behaviour that fellow dental professionals would find deplorable. It has therefore determined that the facts found proved do amount to misconduct.

Impairment

The Committee next considered whether Mr Smith's fitness to practise is currently impaired by reason of his misconduct.

In considering the issue of impairment, the Committee exercised its independent judgement. It had regard to the over-arching objective of the GDC, which involves: the protection, promotion and maintenance of the 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 was satisfied that Mr Smith's wrongdoing is easily remediable, given a willing mindset. The matters found proved relate to his offer to work outside the scope of his practice. There is no evidence of any repetition on Mr Smith's part and the Committee considered he could address his past wrongdoing through insight and by demonstrating steps he has taken in relation to the identified concerns.

There is no evidence of remediation before this Committee. Whilst the Committee took into account Mr Smith's apparent acknowledgement of the then allegations to the IOC, there has been no other information from Mr Smith. The Committee had regard to Mr Smith's email of 19 October 2016 in which he stated that there were no documents that he wished to provide to this Committee and he chose to take no active part in this hearing.

In the absence of any evidence of remediation and given what appears to be very limited insight on the part of Mr Smith, the Committee concluded that it is highly likely that he could repeat his misconduct. It therefore concluded that the identified risks to patients are ongoing.

Further, the Committee considered the public interest and it decided that public confidence in the dental profession would be undermined if a finding of impairment were not made in the circumstances of this case. In making this decision, the Committee considered that there was a potential risk to patients, that the actions of Mr Smith brought the dental profession into disrepute and that Mr Smith breached fundamental tenets of the profession.

In all the circumstances, the Committee has determined that Mr Smith's fitness to practise is currently impaired.

Sanction

The Committee considered what sanction, if any, to impose on Mr Smith's registration. It reminded itself 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 took into account the '*Guidance for the Practice Committees including Indicative Sanctions Guidance (effective from October 2015)*' ('the Guidance'). It considered the range of sanctions available to it, starting with the least serious. The Committee applied the principle of proportionality, balancing the public interest with Mr Smith's own interests.

In view of the serious nature of Mr Smith's misconduct, the Committee determined that it would be wholly inappropriate to conclude this case without taking any action in respect of his registration. It reached the same decision, in respect of a reprimand. It considered that these courses of action would not be sufficient to address its concerns about the ongoing risk to patients, nor would they satisfy the public interest.

The Committee considered whether to impose conditions on Mr Smith's registration. It took into account that any conditions imposed would have to be clear, workable and measurable. The Committee concluded that it could not formulate any workable conditions to address the issue of scope of practice, the requirements of which Mr Smith should already be adhering to. Further, he is not fully engaging with the GDC and is understood not to be working currently. In any event, the Committee considered that the matters in this case were too serious to be addressed by way of conditional registration.

The Committee therefore considered whether to suspend Mr Smith's registration. In doing so, it had regard to Paragraph 7.28 of the Guidance which deals with the factors to be considered in relation to the sanction of suspension. The Committee noted that this paragraph stated, amongst other things, that suspension is appropriate for more serious cases and may be appropriate when all or some of the following factors are present:

- when there is evidence that the registrant has not shown insight;
- when the registrant 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; and that
- there is no evidence of harmful deep seated personality problems.

The Committee also had regard to Paragraph 7.34 of the Guidance which relates to the sanction of erasure. Whilst the Committee was in no doubt as to the seriousness of the matters in this case, it decided that it would be disproportionate to remove Mr Smith's name from the Dentists Register. The Committee had regard to the fact that Mr Smith had not caused actual harm to any patients and that his failings are remediable with appropriate insight. It further noted that Mr Smith has made some acknowledgement of his wrongdoing to the IOC in February 2016 and within his subsequent communications with the GDC. The Committee remained mindful of its need to act proportionately in imposing the least severe sanction which deals adequately with the identified issues. It was satisfied, in the particular circumstances of this case, that a period of suspension would serve to protect the public sufficiently and would address the wider public interest concerns.

The Committee has determined that it is appropriate and proportionate to suspend Mr Smith's registration for a period of 12 months. It considers that this sanction marks the seriousness of Mr Smith's misconduct, will afford the public adequate protection and will satisfy the wider public interest. The Committee also considers that the 12-month period will give Mr Smith time to reflect on his wrongdoing.

A Committee will review Mr Smith's case at a resumed hearing to be held shortly before the end of the period of suspension. That Committee will consider what action to take in relation to his registration. Mr Smith will be informed of the date and time of that resumed hearing, with which he will be expected to engage.

The Committee reviewing Mr Smith's case may find it helpful to receive:

- evidence of his engagement with the GDC;
- evidence of insight and any remediation undertaken;
- evidence of his understanding of his scope of practice and the GDC Standards.

Unless Mr Smith exercises his right of appeal, his registration will be suspended 28 days from the date when notice of this determination is deemed to have been served upon him.

The Committee now invites submissions from Mr Stevens, on behalf of the GDC, as to whether an immediate order of suspension should be imposed on Mr Smith's registration, pending its substantive determination taking effect.

In considering whether to impose an immediate order of suspension on Mr Smith's registration, the Committee took account of the submissions made by Mr Stevens on behalf of the GDC. It accepted the advice of the Legal Adviser.

The Committee has determined that it is necessary for the protection of the public and is otherwise in the public interest to impose an immediate order of suspension on Mr Smith's registration. In view of its outstanding concerns about the ongoing risk of significant harm to patients, the Committee considered that it would be inconsistent not to impose an order in the circumstances. It also considered that public confidence in the dental profession and this regulatory process would be undermined if immediate action were not taken in respect of Mr Smith's registration.

The effect of the foregoing determination and this order is that Mr Smith's registration will be suspended over the appeal period. If he does not appeal, the substantive direction for suspension for a period of 12 months, as already announced, will take effect 28 days from the date when notice is deemed to have been served upon him.

Should Mr Smith exercise his right of appeal, this immediate order for suspension will remain in place until the resolution of any appeal.

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

That concludes this hearing."

At a review hearing on 10 November 2017 the Chairman announced the determination as follows:

“Mr Smith is not present at this resumed hearing of the Professional Conduct Committee (PCC) and is not represented in his absence. Mr Scott Shadbolt of the General Dental Council’s (GDC) In-House Legal Prosecution Service appears for the Council.

Purpose of hearing

The purpose of today’s hearing is to review a substantive direction of suspension imposed on Mr Smith’s registration for a period of 12 months by the PCC on 27 October 2016. The hearing is being held in accordance with section 36Q (1) of the Dentists Act 1984 (as amended) (‘the Act’). The substantive suspension came into effect on 29 November 2016 and is due to expire on 28 November 2017.

Service

The Committee first considered whether service has been properly effected in accordance with the General Dental Council (Fitness to Practise) Rules 2006 (‘the Rules’).

Mr Shadbolt submitted that Mr Smith has been properly notified of today’s hearing in accordance with Rule 28 of the Rules. The Committee noted that a notice of hearing was sent to Mr Smith’s registered address on 25 September 2017 using the Royal Mail’s Special Delivery service. That notice, although incorrectly dated 25 September 2015, set out the date, time and venue of the hearing, as well as confirming the nature of the hearing and the powers available to this Committee. The Committee notes that the venue for today’s hearing has changed since the notice was sent. It was informed that the GDC sent an email to Mr Smith on 9 November 2017 to inform him of that change and that arrangements were in place to redirect Mr Smith if he attended the original hearing venue. The Royal Mail’s Track and Trace service records that the notice was delivered on the afternoon of 26 September 2017 and was signed for by an individual by the name of ‘Smith’. The Committee also noted that a copy of the notice of hearing was sent to Mr Smith by email on 25 September 2017. Mr Smith sent an email to the GDC on 26 September 2017 to acknowledge receipt of the notice.

The Committee accepted the advice provided by the Legal Adviser. Having regard to the GDC’s submissions and the evidence placed before it the Committee was satisfied that service has been properly effected in accordance with the Rules.

Proceeding in absence

The Committee then went on to consider whether to exercise its discretion to proceed in the absence of Mr Smith in accordance with Rule 54 of the Rules. It was mindful that the discretion to proceed in the absence of a registrant must be exercised with the utmost care and caution.

The GDC submitted that all reasonable efforts have been made to inform Mr Smith of today’s proceedings and that he has voluntarily absented himself from this hearing. The GDC further submitted that an adjournment would not be likely to secure Mr Smith’s attendance, given his history of non-attendance, and that there is an overriding public interest in holding the hearing at the appointed time.

The Committee accepted the advice of the Legal Adviser. The Committee is mindful that, as noted above, Mr Smith sent an email to the GDC on 26 September 2017 to acknowledge receipt of the notice. In that email he stated that he would not be in attendance at today’s

hearing. The Committee also noted that, in addition to sending proper notice of today's proceedings, the GDC has also contacted Mr Smith to establish whether he would be in attendance at this hearing, whether he would like to send written representations or documents, or whether he would wish to participate by telephone or video-link.

The Committee determined that it would be appropriate and fair to proceed with the hearing in Mr Smith's absence. It considers that there is a clear public interest in ensuring that the suspension order is reviewed before its expiry. The Committee considered that Mr Smith has voluntarily absented himself from today's hearing and that an adjournment would serve no useful purpose, as it would be unlikely to secure his attendance.

The hearing then proceeded in the absence of Mr Smith.

Existing order

In October 2016 the PCC held a hearing to consider allegations about Mr Smith's conduct. Mr Smith was not present at the hearing and was not represented in his absence. The allegations which Mr Smith faced, and which the Committee subsequently found proved, related to an offer that he made to provide a denture directly to a member of the public, including taking an impression, in the absence of a prescription from a dentist and without proposing to refer the member of public in question to a dentist or a clinical dental technician (CDT). The Committee found that the proven allegation amounted to an offer to work beyond Mr Smith's scope of practice and outside the limits of his indemnity insurance.

On 27 October 2016 the Committee determined that the facts that it had found proved amounted to misconduct, that Mr Smith's fitness to practise was impaired as a result, and that his name should be suspended from the register for dental care professionals (DCPs) for a period of 12 months, with a review hearing to take place prior to the expiry of the suspension. That Committee considered that Mr Smith had demonstrated only limited insight into his misconduct, and had not provided any evidence of remediation. It concluded that there was a real risk of repetition of his misconduct, and that Mr Smith posed a risk to the public. The Committee also considered that a finding of impairment was also required to maintain confidence in the profession. The Committee considered that the suspension should last for 12 months and would 'give Mr Smith time to reflect on his wrongdoing'. The Committee further suggested that the reviewing Committee may be assisted by evidence of his engagement with the GDC, evidence of any insight and remediation, and evidence of his understanding of the GDC's *Standards and Scope of Practice*.

The substantive suspension order came into effect on 29 November 2016 following the period in which Mr Smith could make an appeal. No such appeal was made. The Committee also made an immediate order of suspension to cover the appeal period.

Committee's determination

The Committee has carefully considered all of the information presented to it, including the written documentation and submissions provided by the GDC. In its deliberations the Committee has had regard to the GDC's *Guidance for the Practice Committees, including Indicative Sanctions Guidance* (October 2016). The Committee has accepted the advice of the Legal Adviser.

Impairment

The Committee has determined that Mr Smith's fitness to practise remains impaired. Mr Smith has provided no information whatsoever about any steps that he may have taken to remedy the misconduct that was previously found, or to develop and demonstrate insight

into his misconduct. Neither is there any evidence to demonstrate that he has taken any steps to retire from practice, despite the reference at the substantive hearing to his intention to do so. The Committee has therefore concluded that the same risks to patient safety persist. A finding of impairment also remains appropriate to maintain public trust and confidence in the profession and to declare and uphold proper standards of conduct and behaviour. Accordingly the Committee determines that Mr Smith's fitness to practise remains impaired.

Sanction

The Committee next considered whether it could formulate conditions which would be workable and which would address the risks that have been identified. The Committee concluded that it could not formulate any conditions which would be practicable or workable, particularly given the absence of information about Mr Smith's current circumstances or any information that he would engage and comply with any such conditions. The Committee notes that Mr Smith previously expressed a desire to retire, but it has not been provided with any information about whether he is currently working.

The Committee then went on to consider whether it would be appropriate to extend the current period of suspension. It has determined that suspension remains the proportionate and appropriate sanction to impose because of the serious failings identified, the risk of harm to the public and to trust and confidence in the profession, and the fact that there is no evidence of any change in circumstances. There is no indication that Mr Smith has developed insight and undertaken remediation in respect of the matters that gave rise to the previous finding of impairment, or that he has taken steps to retire. A further period of suspension is required to protect the public, to declare and uphold proper standards of conduct and behaviour and to maintain trust and confidence in the profession.

In view of the risks to patients and to the wider public interest, as well as the absence of any evidence of remediation, the Committee hereby directs that Mr Smith's registration be suspended for a further period of 12 months. This extended period of time is required to allow Mr Smith to demonstrate insight into and remediation of the matters that have precipitated these proceedings, and is commensurate with the serious nature of this case and the risks to public safety and public confidence.

In accordance with section 36Q (1) of the Act this extended period of suspended registration will take effect from the date on which the existing period of suspension would otherwise expire, namely on 28 November 2017. The Committee has further determined that the further suspension should again be reviewed prior to its expiry.

Recommendations

Although it is mindful that the task of reviewing this extended suspension is entirely one for the future PCC, the Committee considered that the reviewing Committee may find it helpful to have sight of the following:

- Information and supporting evidence about his current circumstances and any future intentions with regard to his practice.
- If intending to practise, evidence of steps taken to develop insight into and remediation of his misconduct.

That concludes this case for today.”

At a review hearing on 22 October 2018 the Chairman announced the determination as follows:

“Service

Ms Whyment appears on behalf of the General Dental Council (GDC) at this Professional Conduct Committee (PCC) review hearing of Mr Smith’s case. Mr Smith is neither present nor represented at today’s hearing. In his absence the Committee first considered whether the Notice of Hearing had been served on Mr Smith in accordance with Rules 28 and 65 of the GDC (Fitness to Practise) Rules Order of Council 2006 (the Rules). In so doing, it has had regard to the submissions made by Ms Whyment on behalf of the GDC. It has accepted the advice of the Legal Adviser.

The Committee has received a copy of the Notification of Hearing, dated 19 September 2018, which was sent to Mr Smith’s registered address, by way of special delivery. The Committee is satisfied that the letter contains proper notification of today’s hearing, including its time, date and location, as well as advising Mr Smith that it has the power to proceed with the PCC hearing in his absence. Further, the Royal Mail track and trace receipt attempted to deliver the item on 20 September 2018, which is more than 28 days in advance of today’s hearing. The Committee is aware that the GDC is only required to demonstrate that the Notification of Hearing has been sent to Mr Smith timeously. With this in mind, on the basis of the information before it, the Committee is satisfied that Notification of Hearing has been served on Mr Smith in compliance with the Rules.

Proceeding in the absence of Mr Smith

The Committee then considered whether to proceed in the absence of Mr Smith, in accordance with Rule 54. Ms Whyment invited the Committee to do so on the basis that all reasonable efforts have been made to inform Mr Smith of today’s proceedings and he has voluntarily absented himself from attending. Further, there is nothing to suggest that Mr Smith would attend on a future occasion, given his history of non-attendance.

The Committee has accepted the advice of the Legal Adviser. It is aware that its discretion to proceed in the absence of Mr Smith must be exercised with the utmost care and caution. It also had regard to the need for fairness to both parties, as well as the public interest in holding this review hearing in accordance with the GDC’s statutory provisions.

The Committee has seen a copy of a Royal Mail track and trace receipt which states that it was unable to deliver the item as at 20 September 2018 as the recipient “is no longer at that address”. It is aware that there is a mandatory requirement for a Registrant to keep his/her registered address up to date and to notify the GDC of any change of that address. No such notification has been received by Mr Smith, even though he has had ample opportunity to do so. Indeed, there has been no engagement by Mr Smith with the GDC in relation to this review hearing or since the review hearing in November 2017. The Committee has concluded that Mr Smith has voluntarily absented himself from today’s hearing. There is nothing before it to indicate that Mr Smith might attend a future hearing in view of his non-engagement with the GDC throughout these proceedings. Further, the Committee considers that there is a clear public interest in conducting a timely review of the order, given that it is due to expire in November 2018. Having weighed the interests of Mr Smith with those of the GDC, the Committee has determined to proceed with today’s review hearing in Mr Smith’s absence.

Background

Mr Smith's case was first considered by the PCC in October 2016. Mr Smith was not present or represented at that hearing and the PCC decided to proceed in his absence. The PCC found proved that Mr Smith made an offer to provide a denture directly to a member of the public (who was in fact an investigator pretending to be patient), including taking an impression, in the absence of a prescription from a dentist and without proposing to refer the member of public in question to a dentist or a clinical dental technician (CDT). The PCC found that in offering to provide the denture directly to a member of the public, Mr Smith offered to work beyond the scope of his practice. He also offered to provide dental services in this context when he failed to hold adequate indemnity insurance.

The PCC in 2016 determined that the facts found proved amounted to misconduct and heard expert evidence of the potential risks of significant harm to patients if Mr Smith worked outside his scope of practice. There was no evidence of any remediation before that PCC and it considered that there was very limited insight on the part of Mr Smith. It concluded that there was a risk of repetition of the misconduct and therefore Mr Smith posed a risk to the public. The PCC also considered that a finding of impairment was required to maintain confidence in the profession. It directed that his registration from the dental care professionals' register (DCPs) be suspended for a period of 12 months, with a review hearing to take place prior to the expiry of the suspension. It recommended that the Committee reviewing Mr Smith's case may be assisted by evidence of his engagement with the GDC, evidence of any insight and remediation, and evidence of his understanding of the GDC's "*Standards and Scope of Practice*".

The PCC reviewed the order on 10 November 2017. Mr Smith was not present or represented at that hearing, having indicated to the GDC by email dated 26 September 2017 that he would not be attending. The PCC decided to proceed in his absence. It noted that Mr Smith failed to provide the GDC with any information whatsoever about any steps he may have taken to remedy the misconduct identified by the PCC in 2016, or to develop and demonstrate insight into his misconduct. Further, there was no update on Mr Smith's plans to retire from practice, despite reference at the PCC hearing in 2016 that he was planning to do so. The PCC concluded that the risks to patient safety remained. It determined that Mr Smith's fitness to practise was impaired. It directed that his registration be suspended for a further period of 12 months. The PCC considered that the extended period of time was necessary to allow Mr Smith to demonstrate insight and remediation of the matters found proved against him. It further directed a review hearing before the expiry of the order.

Today's review

At today's hearing this Committee has comprehensively reviewed the current order. In so doing, the Committee has had regard to the GDC prosecution bundle, which contains copies of letters and emails from the GDC's Case Review Team to Mr Smith, reminding him of the recommendations made by the PCC and a date by which he was required to provide the evidence. Mr Smith has not replied to the GDC's requests for information, despite being given ample opportunity to do so.

Ms Whyment submitted that Mr Smith's fitness to practise remains impaired. She referred to Mr Smith's lack of engagement with the GDC over a long period of time and the absence of any evidence of remediation or insight, or of any response to the recommendations made by the PCC. She invited the Committee to direct that Mr Smith's registration be suspended indefinitely, given that the provisions of 27C(1)(d)(i) and (ii) of the Dentists Act 1984 (as amended) (the Act) have been met.

The Committee considered carefully the submissions made. Throughout its deliberations, it has borne in mind that its primary duty is to address the public interest, which includes the protection of patients, the maintenance of public confidence in the profession and in the regulatory process, and the declaring and upholding of proper standards of conduct and behaviour. The Committee has accepted the advice of the Legal Adviser.

There is no evidence before this Committee that Mr Smith has addressed any of the deficiencies identified by the PCC at the initial hearing in October 2016 or at the review hearing in November 2017, despite being given the opportunity. Further, Mr Smith's engagement with the GDC throughout the two years when his registration has been suspended has been limited to notifying the GDC that he would not be attending two proceeding hearings of this matter. Given these factors, the Committee considers that Mr Smith remains a risk to the public and has determined that his fitness to practise remains impaired.

The Committee next considered what direction to give. In so doing, it has had regard to the GDC's "Guidance for the Practice Committees including Indicative Sanctions Guidance" (October 2016). It has also had regard to the submissions made by Ms Whyment.

In the Committee's judgement, Mr Smith has not demonstrated any commitment to remediate his deficiencies or engage with the GDC, despite being given the opportunity to do so. In these circumstances, the Committee concluded that terminating the current suspension order would not be appropriate or sufficient for the protection of the public.

The Committee considered whether to replace the current suspension order with one of conditions. In so doing, it had regard to the absence of any evidence of remediation from Mr Smith and his extremely limited engagement with his regulator over the last two years. Further, it has no information as to his current circumstances or his future intentions with regard to his practice. In these circumstances, the Committee is not satisfied that conditions are appropriate, workable or sufficient for the protection of the public.

The Committee then went on to consider whether to direct that the current period of suspension be extended for a further period. It has borne in mind Mr Smith's continuing lack of engagement with the GDC over a long period of time, despite being given the opportunity to do so, as well as the absence of any insight or remediation. Indeed, Mr Smith's decision not to participate at any of these proceedings over the last two years has exacerbated the situation. In these circumstances, the Committee has concluded that a further period of suspension of 12 months would serve no useful purpose and not be in Mr Smith's interests or that of the GDC. Accordingly, the Committee directs that Mr Smith's registration be suspended indefinitely. It is satisfied that this is the proportionate and appropriate outcome. It is further satisfied that the provisions of Sections 27C(1)(d)(i) and (ii) of the Act are met.

The effect of the foregoing direction is that, unless Mr Smith exercises his right of appeal, his registration will be suspended indefinitely from the date on which the direction takes effect. The intervening period between the current order expiring and the new order coming into effect will be covered by the extension of the current order of suspension.

That concludes this case for today."