

PUBLIC HEARING

Professional Conduct Committee Review Hearing

3 January 2025

Name: McNALLY, Damian
Registration number: 72174
Case number: CAS-185631-W3G1T9

General Dental Council: Andrew Molloy of Counsel
Holly Watt of IHLPS

Registrant: Present
Unrepresented

Fitness to practise: Impaired by reason of misconduct
Outcome: Conditions extended (with a review)
Duration: 3 months

Committee members: Amitha Ranauta (Dentist) (Chair)
Katarzyna Richards (DCP)
Anita Clay (Lay)

Legal adviser: Trevor Jones

Committee Secretary: Paul Carson

Mr McNally,

1. This is a resumed hearing pursuant to section 27C of the Dentists Act 1984. The hearing was conducted remotely using Microsoft Teams.

Background

2. On 19 September 2018 the Professional Conduct Committee (PCC) found your fitness to practise to be impaired by reason of misconduct and directed that your registration be suspended for a period of 12 months with a review. You were neither present nor represented at the initial PCC proceedings. The misconduct found proved related to implant treatment which you had provided to two patients between March 2015 and April 2017. There had been failures in relation pre-treatment assessments; adequate treatment planning, including the provision of an adequate written treatment plan; obtaining informed consent; radiography; record keeping; and the provision of adequate post-treatment care. You had also inappropriately placed four implants too far buccally. In addition, you had failed to co-operate with the GDC's investigation, including by failing to provide the GDC with any evidence of indemnity between June 2017 and January 2018. You also failed to maintain a correct and up-to-date registered address between April 2017 and July 2018.
3. The PCC reviewed the suspension on 1 October 2019 and found that your fitness to practise continued to be impaired by reason of misconduct. You were neither present nor represented at the hearing. The October 2019 PCC extended the suspension by a further period of 12 months with a review.
4. The PCC next reviewed the suspension on 7 October 2020 and found that your fitness to practise continued to be impaired by reason of misconduct. You were neither present nor represented at the hearing but had recently appointed legal representation. You had initially sought a postponement of the hearing to allow you more time to prepare in light of your recent re-engagement in the proceedings, but ultimately asked the PCC through written submissions to extend the suspension by a short period. The October 2020 PCC directed that the suspension of your registration be extended by a further period of 3 months with a review, stating in its determination: *"...it would be in the interests of justice for Mr McNally to be given the opportunity to return in a few months' time to be able to fully present his case at a review hearing."*
5. The PCC next reviewed the suspension on 8 January 2021. You were in attendance at that hearing and were represented by counsel. The January 2021 PCC found that your fitness to practise continued to be impaired and replaced the suspension of your registration with conditions of practice for a period of 18 months with a review. In its determination, it stated:

"The findings and determinations of the previous Committees highlight that the clinical failings identified in your practice were serious, including harm to patients. The evidence you have provided to the Committee today does not demonstrate insight into those concerns. Nor have you addressed in your reflections your initial failure to cooperate with the GDC, although the Committee noted the contents of the health report. The evidence of CPD you provided indicates that it was undertaken over a very short period of time, and it fails to address a number of the

identified clinical failings. Your learning to date only touches the surfaces of record keeping and implantology, and there is no evidence that you have undertaken learning in any of the other relevant clinical areas, namely treatment planning, radiography, including reporting on radiographs and informed consent. Furthermore, as you have not been able to practise by virtue of the suspension of your registration, there is no evidence to demonstrate how you have embedded into your clinical practice what you have learned so far.

...

...the Committee noted the change in circumstances today, in that you have now started to engage with the fitness to practise process. It had regard to your written reflections, which although limited in nature, do demonstrate your commitment to continued participation. The Committee noted that you stated "I would be more than happy to work under any sanction the council saw fit to impose..." In these circumstances, the Committee considered that the continued suspension of your registration would be disproportionate. It considered that a set of robust conditions to address the outstanding concerns relating to your clinical practice would be workable and proportionate, and would serve to protect the public and the wider public interest.

In deciding on the appropriateness of conditional registration, the Committee took into account that the matters found proved by the PCC in September 2018 also concerned your initial lack of cooperation with the GDC's investigation, including your failure to provide evidence of your indemnity insurance. Whilst it considered that you have not yet addressed this issue directly as part of your reflections, it was satisfied from your current engagement that you are at least aware of the importance of engaging with and responding to your regulator body. The Committee took into account that conditional registration in itself will require you to maintain effective communication and engagement with the GDC process..."

6. The conditions imposed by the January 2021 PCC included a requirement of workplace supervision; audit in the areas of pre-treatment assessments, treatment planning, radiography, communicating the risks and benefits of proposed treatment, consent, implants, record keeping and aftercare; and a requirement that you work with your Postgraduate Dental Deanery to formulate a Personal Development Plan (PDP) to address the deficiencies in your practice in these areas.
7. The PCC reviewed the conditions on 28 July 2022. You were in attendance at that hearing and were represented by counsel. The July 2022 PCC found that your fitness to practise continued to be impaired and continued the conditions of practice for a further period of 12 months with a review. It also varied the conditions to reduce the frequency of the meetings with your workplace supervisor. In its determination, it stated:

"...the Committee took into account the evidence of your compliance with the conditions, including the positive reports from your Workplace Supervisor. It noted the comment made in the most recent report stating that, "Damian McNally now presents himself as a more confident clinician with the initial nerves of restarting his career gone. and I feel that he looks more like his old self. I believe coming back to dentistry has restored some of his self esteem."

Having had regard to all of the evidence, the Committee was satisfied that conditional registration remains appropriate and proportionate to safeguard the public and the wider public interest.

...

...The Committee considered that the circumstances of this case have changed, in that you are now engaging with the GDC, have been able to work for some time under conditions, and no concerns have been raised about your compliance. The Committee considered this change to be positive and reassuring.

However, the Committee took into account, as has been acknowledged on your behalf, that you have only been back in clinical practice for a short period of time, since January 2022. The Committee considered that this was compounded by the fact that, prior to resuming practice, you had not worked as a dentist for a significant period. The effect of all of this, is that there is insufficient evidence before the Committee today to demonstrate that the previously identified concerns in relation to your clinical practice have now been remedied. The Committee noted that the allegations found proved in respect of your care of the two patients involved in this case, related to the provision of implant treatment, and that you have been unable to carry out any implant treatment in your current practice. Therefore, there is also no evidence before the Committee to indicate whether your clinical practice has improved in this particular area.

In the absence of sufficient evidence that your learning to date has been embedded into your practice, the Committee considered that a risk of repetition remains. Accordingly, it was satisfied that a finding of impairment is necessary for the ongoing protection of the public. The Committee also considered that such a finding is in the wider public interest, to promote and maintain public confidence in the profession, and to promote and maintain proper professional standards.

...

...The Committee considered the evidence of your proactive engagement with the fitness to practise process, the evidence of positive change, and that no concerns have been raised about your clinical practice. In these circumstances, the Committee was satisfied that your meetings with your Workplace Supervisor could be reduced to a monthly frequency. In deciding on this variation to the supervision element of your conditions, the Committee was satisfied that the change would not result in an increased risk to the public or the public interest..."

8. The PCC reviewed the conditions on 3 August 2023. You were in attendance at that hearing and were not represented. The August 2023 PCC found that your fitness to practise continued to be impaired by reason of misconduct and directed that the conditions on your registration be varied and extended by a further period of 12 months, with a review. In its determination, it stated:

"...The Committee was satisfied from your audits, Continuing Professional Development record, and workplace supervisor reports that you have continued to remedy the deficiencies in your general clinical practice which are the subject of

these proceedings. In the Committee's judgement these matters are no longer an area of concern. Your previous failure to have cooperated with the GDC's investigation and to have maintained up-to-date contact details with the GDC are also no longer areas of concern in light of your continued full engagement and cooperation in these proceedings and the conditions on your registration since January 2021.

The only remaining issue is remediation in respect of the provision of implant treatment. This area of practice was the subject of the finding of misconduct against you in September 2018. You are yet to resume practice in relation to the provision of implant work and you are therefore yet to demonstrate any corresponding evidence of remediation. The evidence of remediation which you have provided is confined to general dental practice. The Committee therefore determined that your fitness to practise continues to be impaired in respect of the provision of implant treatment. There would be a real risk of harm to the public should you be allowed to resume unrestricted practice in respect of implant work. Wider public confidence in the profession and its regulation would also be undermined, as you are yet to demonstrate remediation in respect of this core aspect of the misconduct which had been found against you."

9. The PCC reviewed the conditions on 8 July 2024. It did so on the papers, in the absence of the parties. The July 2024 PCC found that your fitness to practise continued to be impaired by reason of misconduct and directed that the conditions on your registration be extended by a further period of 6 months, with a review. In its determination, it stated:

"The Committee considered that Mr McNally demonstrates evidence of continued steps towards his remediation. He is making good progress in the Committee's judgment. However, there was limited written reflection from Mr McNally on his continued progress and an absence of any professional references and testimonials from other clinicians with whom he works. There was also no evidence before the Committee that he has restored any implants yet, which suggests that he might need to undertake further supervised practice in order to demonstrate full remediation, given the high risk and complex nature of implantology."

10. In directing that the extended period of conditional registration be reviewed prior to its expiry, the July 2024 PCC stated:

"The reviewing Committee might be assisted by references from clinical colleagues and patients regarding Mr McNally's work. It might also be assisted from hearing directly from Mr McNally on his reflections and remediation. The hearing today was listed to be on the papers at the GDC's request, unopposed by Mr McNally. The Committee considered that it might be more appropriate for the next review hearing to be listed as an oral hearing."

The resumed hearing 3 January 2025

11. It is the role of the Committee today to undertake the review directed by the July 2024 PCC.

12. The Committee had regard to the updated reports and correspondence from your workplace supervisor and the Associate Postgraduate Dental Dean, which continue to be positive and which show your continued engagement and compliance with the conditions. You did not provide any written reflections for consideration at this hearing and the Committee therefore had nothing more than the “limited written reflections” already identified by the July 2024 PCC. You had not provided any references from clinical colleagues and patients, as recommended by the July 2024 PCC. You also had not provided any updated Continuing Professional Development (CPD) records and there was therefore no record before the Committee of any additional CPD beyond that which was already before the PCC in July 2024. Your workplace supervisor was unable to attend today due to his clinical commitments.
13. The Committee heard oral evidence from you, in which you discussed your current practising circumstances and the remedial steps which you are taking. You expressed remorse for the misconduct which is the subject of these proceedings and apologised for any damage which your actions may have caused. With regard to a lack of references from clinical colleagues and patients, you stated that you would be happy to provide these and indicated an intention to do so in the near future. You stated that patient feedback is already being obtained at your practice and that this is something which could be provided to the GDC as part of these proceedings. In response to Committee questions, you acknowledged that the audits which you had undertaken might benefit from further detail and analysis. You also identified targeted CPD activity which you had undertaken in relation to implant treatment, specifically, full arch restorations, but which had not been included in the bundles which were before the Committee.
14. The Committee had regard to the submissions made on behalf of the GDC by Mr Molloy and to those which you made on your own behalf.
15. Mr Molloy submitted that your fitness to practise continues to be impaired by reason of misconduct and that the conditions on your registration should be extended in their current form by a further period of 3 months to allow you more time to provide sufficient evidence of remediation of the kind previously indicated by the July 2024 PCC.
16. You did not address the Committee specifically on the questions of current impairment and sanction. You instead expressed a willingness to continue to do whatever the Committee might require of you. You also indicated that the continuation of the conditions might cause practical difficulty for you, as you are working in another part of the country where your supervisor practises.

Decision

17. The Committee accepted the advice of the Legal Adviser in respect of the review.
18. The Committee had regard to the *Guidance for the Practice Committees, including Indicative Sanctions Guidance* (October 2016, last revised December 2020).
19. The first consideration for the Committee was whether your fitness to practise as a dentist continues to be impaired by reason of your misconduct in relation to the residual area of implant treatment.

20. The Committee considered whether the misconduct is remediable, whether it had been remedied and the risk of repetition. The Committee also had regard to the wider public interest, which includes a need to uphold and declare appropriate standards of conduct and behaviour.
21. The Committee considered that your misconduct is remediable, as it relates to narrow areas of clinical practice. There however continues to be a lack of sufficient evidence of remediation. You have not supplied the Committee with any further reflections or CPD records beyond those which were before the last PCC. The audits which you have undertaken in accordance with the conditions also lack sufficient detail and analysis. They resemble logs rather than audits which are capable of showing embedded improvement in practice for the purposes of these regulatory proceedings. In this regard, the Committee considered your compliance with the conditions on your registration to be technical rather than substantive. However, the Committee acknowledged that this might be the result of a difference in understanding on the expected format and content of an audit rather than a deliberate disregard for the conditions.
22. The Committee determined that you are still in the final stages of your remediation and that little progress has been demonstrated since the last review hearing in July 2024. Whilst it was clear from your engagement and oral evidence that you are willing to take the final remedial steps to address the impairment of your fitness to practise, you are yet to do so.
23. In the absence of sufficient evidence of remediation, the Committee could not be satisfied that the risk of your repeating your misconduct is low, given the high risk and complex nature of implantology. There therefore continues to be a risk to the public, and to wider public confidence in the profession, should you be allowed to resume practice without any restriction on your registration.
24. Accordingly, the Committee determined that your fitness to practise as a dentist continues to be impaired by reason of the misconduct found by the initial PCC in 2018.
25. The next consideration for the Committee was what further action, if any, to take in respect of your registration.
26. The Committee determined that the continued restriction of your registration remains necessary to protect the public and to maintain wider public confidence in the profession, whilst you continue with the final steps of your remediation in relation to implant treatment.
27. There was nothing to suggest to the Committee that the conditions on your registration have ceased to be workable and proportionate in their current form. You continue to comply with those conditions, which provide a sufficient framework to allow you to continue your remediation under supervision whilst protecting the public.
28. The Committee therefore directs that the conditions on your registration be extended unvaried by a further period of three months beginning with the date on which they would otherwise expire.

29. The conditions shall continue to appear against your name in the Register in the following terms:

1. He must notify the General Dental Council (GDC) promptly of any post he accepts for which GDC registration is required.
2. If employed, he must provide contact details of his employer within 7 days and allow the GDC to exchange information with his employer.
3. He must inform the GDC of any formal disciplinary proceedings taken against him, from the date of this determination.
4. He must inform the GDC within 7 days of any complaints made against him, from the date of this determination.
5. He must inform the GDC within 7 days if he applies for dental employment outside the UK.
6. At any time he is providing dental services, which require him to be registered with the GDC, he must agree to the appointment of a workplace supervisor* nominated by the Registrant and approved by the GDC. The workplace supervisor shall be a GDC registrant in the same category of the register as the Registrant or higher.
7. He must present the workplace supervisor with a copy of this determination within 14 days of the date on which these conditions become effective.
8. He must permit the GDC and the workplace supervisor to exchange information.
9. He must provide the GDC with a report from his workplace supervisor to the GDC every 3 months and, at least 14 days prior to any review. The GDC will make these reports available to any Postgraduate Dean/Director (or a nominated deputy) referred to in these conditions.
10. He must keep his professional commitments under review and limit his dental practice in accordance with his workplace supervisor's advice.
11. In respect of any implant treatment which he provides, he must carry out audits in the areas of:
 - Pre-treatment assessments
 - Treatment planning
 - Radiography
 - Communicating the risks and benefits of proposed treatment
 - Consent
 - Record keeping
 - After care

The audits must be reviewed and signed by his workplace supervisor.

12. He must provide a copy of his signed audits to the GDC every 3 months, and at least 14 days prior to any review or, alternatively, confirm that there have been no such cases.
13. He must work with a Postgraduate Dental Dean/Director (or a nominated deputy), to formulate a Personal Development Plan, specifically designed to address the deficiencies in his practice in the provision of implant treatment.
14. He must forward a copy of his Personal Development Plan to the GDC within 3 months of the date on which these conditions become effective.
15. He must meet with the Postgraduate Dental Dean/Director (or a nominated deputy), on a regular basis to discuss his progress towards achieving the aims set out in his Personal Development Plan. The frequency of his meetings is to be set by the Postgraduate Dental Dean/Director (or a nominated deputy). These meetings can be held by remote means.
16. He must allow the GDC to exchange information about the standard of his professional performance and his progress towards achieving the aims set out in his Personal Development Plan with the Postgraduate Dental Dean/Director or (or a nominated deputy), and any other person involved in his remediation and supervision.
17. He must inform, within 7 days, the following parties that his registration is subject to the conditions, listed at (1) to (16), above:
 - Any organisation or person employing or contracting with him to undertake dental work
 - Any locum agency or out-of-hours service he is registered with or applies to be registered with (at the time of application)
 - Any prospective employer (at the time of application)
 - The PCT on whose Dental Performers List he is included or seeking inclusion, or Local Health Board if in Wales, Scotland or Northern Ireland (at the time of application)
18. He must permit the GDC to disclose the above conditions, (1) to (18), to any person requesting information about his registration status.

**Workplace Supervision in the particular circumstances of this case means the following:*

The registrant's day to day work must be supervised by a person who is registered with the GDC in their category of the register or above. The supervisor need not work at the same practice as the registrant, but must make themselves available to provide advice or assistance should they be required. The registrant's work must be reviewed at least once monthly by the supervisor via face to face one to one meetings and case-based discussion. These monthly meetings must be focused on all areas of concern identified by the conditions/undertakings.

30. The conditions shall be reviewed prior to the expiry of the extended period of conditional registration.

31. The reviewing Committee may well be assisted by the following:

- your up to date reflections on the findings of misconduct made against you;
- up to date references from clinical colleagues regarding your work;
- up to date patient feedback; and
- up to date records of all relevant CPD.

32. That concludes this determination.