

**Professional Conduct Committee
Review Hearing****17 April 2024****Name:** AGA, Nabeel**Registration number:** 254472**Case number:** CAS-199512

General Dental Council: Mark Shaw, King's Counsel
Instructed by Harry McNeilly, IHLPS**Registrant:** Present
Represented by Andrew Kennedy, King's Counsel
Instructed by Weightman's

Fitness to practise: Impaired by reason of misconduct**Outcome:** Suspension extended (with a review)**Duration:** Four months

Committee members: Zareen Elleby (Chair, Dental Care Professional member)
Arif Sadikot (Dentist member)
Valerie Atkinson (Lay member)**Legal adviser:** William Hoskins**Committee Secretary:** Sara Page

Mr Aga,

1. This was a review hearing of your case before the Professional Conduct Committee (PCC) in accordance with Section 27C of the Dentists Act 1984 (as amended) ('the Act'). The purpose of this hearing has been for this PCC to review your case and determine what action to take in relation to your registration.
2. You were present at the hearing and represented by Mr Andrew Kennedy KC, instructed by Weightman's.
3. Mr Mark Shaw KC appeared on behalf of the General Dental Council (GDC). The hearing was held remotely on Microsoft Teams.

Background

4. Your case was first considered by a PCC at a hearing in July 2023. The allegations against you arose out of your alleged harassment of Person A (a dental nurse), whom you wanted to have a sexual and marital relationship with, and your failure to inform the GDC of the ensuing criminal proceedings against you.
5. That Committee's findings of fact fell into the following categories:
 - i. pursuing the course of conduct in June to August 2020, which you knew amounted to harassment (charge 1);
 - ii. being charged on 8 September 2020 under the Protection from Harassment Act 1997 (charge 2);
 - iii. failing to inform the GDC of the criminal charges until 12 January 2021 (charge 3);
 - iv. being made subject to a restraining order on 19 May 2021 (charge 5).
6. That Committee found that the facts found proved under charges 1, 3 and 5 were serious and individually met the threshold for misconduct. It did not consider that the facts found proved under charge 2 amounted to misconduct.
7. In respect of impairment, that Committee found that your fitness to practise was currently impaired on both public protection and wider public interest grounds. It stated the following as part of its reasoning:

"The Committee considered your misconduct to be attitudinal in nature and therefore more difficult to remedy. You do not demonstrate remediation and the Committee considered there to be a real risk of repetition. Your harassment of Person A was not an isolated incident in the Committee's judgement. It reflected a course of conduct which was sustained and repeated over a period of years, even following Police warnings. Person A was previously a dental nurse and you first met her at a dental conference in December 2016. However, in the Committee's judgement, any other female with whom you wish to pursue a relationship and

marriage could be subject to the same course of harassing conduct by you. This is not a case where the risk of harassment is limited to Person A or to other dental professionals. In the Committee's judgement, female patients and other female members of the public are at risk, particularly given that you appear to take little personal responsibility for what happened and instead blame personal circumstances and misunderstandings.

The Committee also considered your conduct was so serious that a fair-minded and well-informed member of the public would lose confidence in the profession and its regulation if no finding of impairment were to be made to mark your misconduct, which was likely to have caused actual harm to your victim and to her family.

Accordingly, the Committee determined that your fitness to practise as a dentist is currently impaired by reason of misconduct on both public protection and wider public interest grounds. In reaching its finding of impairment, the main focus of the Committee's consideration was the harassment aspect of this case. Your failure to have informed the GDC of the criminal proceedings and the overlapping fact that a restraining order was made against you are also acts of misconduct which currently impair your fitness to practise."

8. That Committee directed that your name should be suspended from the Register for a period of nine months, with a review to take place before the expiry of the order. It stated the following:

"In the Committee's judgement, a period of suspension with a review would be sufficient to protect patients and the public, in so far as your professional standing as a dentist would grant you access to them, and to maintain wider public confidence in the profession. A period of suspension would be sufficient to mark the seriousness of your misconduct and to allow you further time within which to demonstrate further reflection and remediation, and to develop insight into the impact of your behaviour."

9. That Committee also recommended that a reviewing Committee may be assisted by the following:

"The reviewing Committee may be assisted by a detailed written reflective piece from you addressing the attitudes and behaviours which led to your harassment of Person A and the impact your harassment had on her, rather than the impact it had on you. The reviewing Committee may also be assisted by evidence of further CPD activity along with written reflections on your learning in areas such as personal and professional boundaries, professionalism and professional reflective practice. You should be able to demonstrate to the reviewing Committee how any learning has been embedded into your thinking so as to reduce the risk of repetition."

10. The Committee also directed that an immediate order of suspension should be imposed to cover the 28-day appeal period and any subsequent appeal made.
11. You subsequently appealed the length of the nine-month suspension at the High Court on 13 December 2023. You also sought the termination of the immediate order of suspension and, at the judge's suggestion, challenged the GDC's interpretation and practice relating to the effect of the interaction between the immediate suspension order and the direction for suspension on the total duration of your suspension.

12. Your appeal was dismissed on the grounds put forward in relation to the duration of the sanction. However, your challenge was granted on the ancillary ground in relation to the GDC's practice and interpretation of making the duration of the direction for suspension consecutive to the duration of the immediate order for suspension. Therefore, it was directed that your suspension for nine months should include the time already served under the immediate suspension order.

Today's review

13. It was the role of the Committee today to undertake a comprehensive review of this case. In so doing, the Committee had careful regard to all the documentary evidence before it and took account of the submissions made by both parties, and your oral evidence. The Committee also heard and accepted the advice of the Legal Adviser.
14. In his opening submissions, Mr Shaw, on behalf of the GDC, set out the factual and legal background to the case.
15. You then gave oral evidence to this Committee. You stated that you were currently giving evidence from Dubai, [PRIVATE]. You also informed the Committee that you had completed a course on 'Understanding Domestic Abuse'. Furthermore, you stated that you have completed unit one of a Level 2 course in 'Understanding Workplace Violence and Harassment'.
16. In addition to those two courses, you informed the Committee about the Continuing Professional Development (CPD) courses you have undertaken. You also confirmed that you had completed written reflections on these courses. You directed the Committee to a reference from a colleague, who stated that he was willing to employ you at his practice if your suspension was revoked. You also stated that you intended to re-apply for an NHS performer number.
17. You were then cross-examined by Mr Shaw on matters including [PRIVATE], your reflections document, your CPD and the testimonials you provided. You also answered questions from the Committee.

Submissions

18. Mr Shaw, on behalf of the GDC, informed the Committee that the burden is on you to persuade the Committee that all the concerns raised at the PCC hearing in July 2023 have been sufficiently addressed. This included you having completed any requisite compliant CPD. He referred the Committee to the relevant case law and guidance to assist in its decision-making.
19. Mr Shaw reminded the Committee that the decision of the PCC does not bind this Committee, but the PCC's determination is highly persuasive; it being impressive in its own right as the reasoning is detailed, is cogent, and is without any gaps or flaws. Both determinations have been scrutinised and upheld by the High Court on appeal and those findings have been upheld not only as not unreasonable, but as being right.
20. Mr Shaw invited the Committee to consider whether your fresh documentary material and further oral evidence reliably show the necessary attitudinal and behavioural reflection, remediation, insight, and learning. In this regard, he referred to the recommendations of the PCC (detailed in paragraph 8, above) and asked the Committee to decide whether any learning has been embedded into your thinking and learning. Mr Shaw stated that whilst there is evidence that you have made some progress in remediation, the high standard required has not yet been met. He submitted that extending the suspension would allow you further time to provide more evidence and more reassurance that you have sufficiently addressed your ongoing shortcomings.

21. Mr Shaw also drew the Committee's attention to the lack of third-party input as there is no testimonials or references from your family, friends and acquaintances, church leaders, community workers, or people you know and have observed you in your everyday life. He submitted that the absence of that material means the Committee has no "real-life" commentary, examples, or insights into your character or progress, leaving the Committee unable to compare and contrast the "old Mr Aga" with the "new Mr Aga". He stated that this lack of evidence to show how you now behave towards women fails to substantiate the argument that you are unlikely to repeat similar behaviour towards women in the future. Mr Shaw invited the Committee to find the testimonials that have been provided as somewhat weak and lacking in detail or specificity.
22. In his assessment of your reflective document, Mr Shaw submitted that his document was long, introspective and one-sided, but does not really convince or reassure the reader that there will not be a repetition of the underlying misconduct. He referred the Committee to you having removed yourself from your local community and that you have "...severed all ties with the entire East Midlands region, including [your] family, friends, and community." Mr Shaw invited the Committee to find that a physical and geographical removal from the temptation, whilst drastic, is not a mature, reassuring or long-term solution to the predicament you face. He asked the Committee to consider whether there is sufficient evidence that you have not only changed your location, but also your previous attitude and behaviour.
23. In reference to the CPD you have undertaken, Mr Shaw submitted that there is very little in the way of comfort to the Committee and the material begs more questions than it answers. You are required to meet your CPD requirements during your suspension. Whilst it appears you are on track, Mr Shaw submitted that it appeared that there has been something of a last-minute rush. He submitted that you do not appear to have embarked upon your CPD until late February or early March 2024. [PRIVATE].
24. Mr Shaw submitted that you have not followed the advice of the judge in your High Court appeal to obtain professional help in order to address your behavioural and attitudinal concerns towards women. [PRIVATE]. He stated that you do not appear to have sought help from any of the five sources suggested by the High Court. Mr Shaw submitted that you do not appear to have sought any help or guidance [PRIVATE] from anyone regarding the misconduct itself and there is no explanation in your reflection as to why you have not sought such help. He stated that you appear to have led a somewhat solitary and self-reliant life since the imposition of the order in July 2023. Mr Shaw submitted that although your defence bundle is substantial, there are a large number of significant omissions.
25. Therefore, Mr Shaw invited the Committee to impose a further period of suspension for a period of six to nine months in order to allow you to continue to address your shortcomings. This would allow you to attend a future review and enable you to assure any future reviewing committee that the concerns about your conduct and behaviour have been sufficiently addressed and that your fitness to practise is no longer impaired.
26. Mr Kennedy, on your behalf, invited the Committee to revoke the suspension order.
27. Mr Kennedy asked the Committee to consider whether you have developed the insight to permit the Committee to conclude that you no longer pose a risk to the public. The previous PCC provided guidance on what was expected of you to address and remedy the concerns it had. He stated that you have provided a detailed written reflective piece which the Committee must decide whether or not has sufficiently addressed the concerns. He also addressed the Committee on the requirement for relevant CPD which you have demonstrated with the certification in the defence bundle and the completion of two courses, 'Understanding workplace violence and harassment' and 'Understanding domestic abuse'.

28. In relation to the recommendations of the previous PCC, Mr Kennedy submitted that it was important that we do not *"inadvertently move the goalposts"* as we go along. He reminded the Committee that the PCC gave you some guidance. He stated that the Committee ought to be cautious about requiring you to produce material which was not included in that guidance. In considering the absence of a statement from your partner or others, which Mr Shaw had commented upon, Mr Kennedy pointed out that you had said that you did not wish to embroil your partner in these proceedings and that that reflected a positive attitude on your part. Mr Kennedy submitted that this was further evidence of insight into your attitude towards others, specifically women.
29. In assessing your current state of mind and the question of insight and whether you continue to deflect or blame others, Mr Kennedy submitted that the Committee may find it helpful to undertake an exercise in comparing and contrasting the tone of your evidence in July 2023 with your evidence of two weeks ago.
30. Mr Kennedy submitted that your evidence was more focused as you now understand the concerns of the PCC in July 2023 and the concerns this Committee is addressing. He stated that you also understand that the foremost consideration is the effect your actions had on Person A. Mr Kennedy also stated that the emphasis on blaming others has gone. He told the Committee that you acknowledge you have made significant mistakes in failing to follow advice given by the police and in not complying with a restraining order. Further, you now appreciated that your contact with Person A was entirely wrong.
31. In referencing your CPD, Mr Kennedy acknowledged Mr Shaw's point about timing [PRIVATE]. The two certificates you have now produced to the Committee are both relevant.
32. Mr Kennedy submitted that you have been, and will be, a valuable member of the dental community. He submitted that the element of punishment that was intended to address public confidence and mark the seriousness of the misconduct has now been achieved in the nine months of suspension. In light of that, he submitted that the question for the Committee is whether you should be permitted to return to practice on the basis that it is satisfied that patients and the public are safe. Mr Kennedy accepted that it can be difficult to articulate insight, particularly the type of insight required in a case such as this. The Committee has evidence which demonstrates that your attitude had undergone a change between July 2023 to April 2024. Mr Kennedy emphasised especially that you no longer seek to blame others and now accept personal responsibility.
33. Mr Kennedy invited the Committee to find that the issue is now historical and relates to a single individual. There is no evidence of similar conduct before or since and you have served a period of suspension for nine months, which is sufficient to deal with the public interest. As a result, you can now be permitted to return to unrestricted practice on the basis that you have learned from your previous conduct and your fitness to practise is no longer impaired.
34. Mr Kennedy submitted that if continued restriction is required, very clear directions would need to be provided that would be more specific than the PCC's recommendations, so you clearly know the target you are expected to achieve.

Decision on current impairment

35. In making its decision, the Committee first sought to determine whether your fitness to practise continues to be impaired by reason of your misconduct. It exercised its independent judgement and was not bound by the decision of the previous committee. It balanced your interests with those of

the public and bore in mind that its primary duty is to protect the public, including maintaining public confidence in the profession and declaring and upholding proper standards and behaviour.

36. The Committee heard and accepted the advice of the Legal Adviser.
37. In coming to its decision, the Committee had regard to whether your conduct has been remedied and whether it is likely to be repeated.
38. In assessing whether you are liable in the future to act in a way that puts a woman at unwarranted risk of harm, the Committee considered that your insight is not yet fully developed. The Committee did not consider that your reflective piece sufficiently addressed the impact your actions had on Person A. Whilst you accepted and acknowledged your misconduct, you did not fully explore what Person A has gone through and how your conduct had negatively impacted her. The Committee had considerable concerns about the balance of your reflection. The Committee accepted Mr Shaw's submission that while the document was long, it was unconvincing. Appropriate terminology was used, but the document was repetitive, and it did not feel personal.
39. The Committee did not consider that your reflection had adequately addressed the implications of your misconduct and there is no evidence that you have sought independent third-party help in addressing the attitudinal and behavioural concerns identified in this case. You told the Committee that you had addressed the concerns by employing self-help techniques, such as breathing exercises and with support from your family. The Committee has received no independent evidence in this respect.
40. The lack of detailed testimonial evidence was also a cause for concern. Testimonials from people who know you well and would be able to confirm that your attitudes towards women have changed significantly. While the Committee noted your explanation that you did not want to involve your current partner by requesting a testimonial from her, there are a number of people from whom you could have requested a testimonial that would not impact on your closest personal relationships. The lack of evidence in this regard means that there is very limited information before the Committee which demonstrates that you have learned from this experience.
41. In its consideration of your CPD, the Committee was concerned that your CPD commenced a matter of weeks before the review hearing was scheduled to be heard. **[PRIVATE]**. However, the CPD you have produced is very recent and the Committee was not satisfied that your learning is yet embedded.
42. Accordingly, the Committee was not persuaded that your fresh documentary material and oral evidence have reliably shown the necessary attitudinal and behavioural reflection, remediation, insight, and learning. Whilst the Committee accepted that you have begun your journey towards full and proper insight and remediation, you have not yet adequately addressed the ongoing concerns and the Committee concluded that there remains a risk of repetition of similar conduct in the future.
43. Therefore, the Committee determined that your fitness to practise remains impaired on the ground of public protection. The Committee further determined that the public interest had been adequately served by the order of the PCC and there was no longer a need to find impairment on public interest grounds.

Decision on sanction

44. The Committee next considered what sanction it should impose in light of its findings on your fitness to practise.

45. The Committee was aware that it should have regard to the principle of proportionality, balancing the public interest against your own interests. The public interest includes the protection of the public, the maintenance of public confidence in the profession, and declaring and upholding standards of conduct and performance within the profession.
46. In coming to its decision on sanction, the Committee had regard to the GDC document, *"Guidance for the Practice Committees including Indicative Sanctions Guidance (December 2020)"*.
47. The Committee first considered the imposition of conditions of practice but in light of its findings on current impairment, it determined that conditions were not workable or appropriate in the circumstances of this case. There are no conditions that could be formulated that would adequately address the ongoing behavioural concerns as well as your lack of insight and remediation.
48. The Committee therefore determined that the current period of suspension should be extended by a further period of four months beginning with the date on which the present order would otherwise expire. A review would be appropriate in the circumstances. It was satisfied that this would provide you with an opportunity to continue to develop your insight and provide evidence that you fully understand the impact of your misconduct on Person A. It would also provide you with an opportunity to demonstrate any learning you have been able to achieve to reduce the likelihood of repetition of such conduct in the future.
49. The Committee concluded that a further period of four months should provide you with sufficient time to be able to address the concerns outlined in this determination.
50. For clarity, the reviewing PCC may be assisted by:
 - A focused, concise and personal reflective statement expressed in ordinary language which demonstrates that you have a full understanding of the impact your actions have had on Person A and which shows an understanding of how you came to behave in the way you did and how your attitudes have evolved since then;
 - Detailed testimonials from those who know you well and can speak of your current behaviour and conduct;
 - Evidence of any independent third-party help which you have sought to address the attitudinal and behavioural concerns identified in this case; and
 - A short reflective piece on the 'Understanding Domestic Abuse' and 'Understanding Workplace Violence and Harassment' courses.
51. The suspension order will be reviewed before its expiry. At the review hearing, the Committee may revoke the order, it may confirm the order, or it may replace the order with another order.
52. This will be confirmed to you in writing.
53. That concludes this hearing.