

HEARING PART-HELD IN PRIVATE

Professional Conduct Committee Review Hearing

25 October 2024

Name: SMART, Amy Ellen
Registration number: 270108
Case number: CAS-199924-H6W5H9

General Dental Council: Rebecca Vanstone, Counsel
Instructed by Amy Jones, IHLPS

Registrant: Not Present
Not Represented

Fitness to practise: Impaired by reason of conviction, misconduct and health
Outcome: Suspended indefinitely
Duration: N/A
Immediate order: N/A

Committee members: Gaon Hart (Chair, Lay Member)
Louise Fletcher (Dental Care Professional Member)
Susan Stevens (Dentist Member)

Legal Adviser: Megan Ashworth

Committee Secretary: Lola Bird

At this hearing the Committee made a determination that includes some private information. That information has been omitted from this public version of the determination, and this public document has been marked to show where private material has been removed.

1. This is a resumed hearing of Ms Smart's case before the Professional Conduct Committee (PCC), pursuant to section 36Q of the *Dentists Act 1984 (as amended)* ('the Act').
2. The hearing is being conducted remotely by Microsoft Teams video-link.
3. The purpose of the hearing has been for the Committee to review a substantive order of suspension that is currently in place on Ms Smart's registration.
4. Ms Smart is not present at these proceedings, and she is not represented in her absence. The Case Presenter for the General Dental Council (GDC) is Ms Rebecca Vanstone, Counsel.

Decision on application to proceed with the hearing in the absence of the registrant

5. At the outset, Ms Vanstone made an application under Rule 54 of the *GDC (Fitness to Practise) Rules Order of Council 2006* ('the Rules'), to proceed with the hearing notwithstanding Ms Smart's absence.
6. The Committee took account of Ms Vanstone's submissions in respect of the application and had regard to the supporting documentation provided.
7. The Committee accepted the advice of the Legal Adviser in relation to the issues of service and proceeding with a hearing in the absence of a registrant.

Decision on service

8. The Committee first considered whether notice of the hearing had been served on Ms Smart in accordance with Rules 28 and 65 of the Rules and section 50A of the Act.
9. It had sight of a copy of the Notice of Hearing dated 9 September 2024 ('the notice'), which was sent to Ms Smart's registered address by Special Delivery and First Class post. The Committee took into account that there is no requirement within the Rules for the GDC to prove delivery of the notice, only that it was sent. However, the Royal Mail 'Track and Trace' receipt, also provided, confirmed that the copy of the notice sent by Special Delivery was delivered on 10 September 2024 and signed in the printed name of 'SMART'.
10. The Committee further noted that on 9 September 2024, a copy of the notice was sent by way of an attachment within a secure email, and there is evidence that the attachment was downloaded.
11. The Committee was satisfied that the notice sent to Ms Smart complied with the 28-day notice period required by the Rules. It was further satisfied that the notice contained all the required particulars, including the date and time of the hearing, and that it was intended that the hearing would

take place remotely by video-link. Ms Smart was also advised that the Committee had the power to proceed with the hearing in her absence.

12. On the basis of all the information provided, the Committee was satisfied that notice of the hearing had been served on Ms Smart in accordance with the Rules and the Act.

Decision on whether to proceed with the hearing in the absence of the registrant

13. The Committee next considered whether to exercise its discretion under Rule 54 to proceed with the hearing in the absence of Ms Smart. It approached this issue with the utmost care and caution. The Committee took into account the factors to be considered in reaching its decision, as set out in the case of *R v Jones [2002] UKHL 5*, and as affirmed in the joined regulatory cases of *General Medical Council v Adeogba* and *General Medical Council v Visvardis [2016] EWCA Civ 162*.

14. The Committee remained mindful that fairness to Ms Smart was an important consideration, but it also took into account the need to be fair to the GDC. The Committee further considered the public interest in the expeditious review of the current order on Ms Smart's registration.

15. The Committee had regard to an email received from Ms Smart earlier this morning, 25 October 2024, in which she queried the possibility of postponing today's proceedings as she would have difficulty attending due to work commitments. The Committee noted Ms Vanstone's submission that this was the first time that Ms Smart had raised the issue of work commitments, and that she had only done so on the morning of this hearing after being contacted by the GDC.

16. In reaching its decision on whether to proceed notwithstanding Ms Smart's absence, the Committee noted that although she cited work commitments as the reason for her non-attendance today, she did not give any details of when she could be available to attend a hearing. The Committee also had regard to the evidence of Ms Smart's sporadic contact with the Council to date, and her pattern of non-attendance. The Committee noted that Ms Smart did not attend the two previous PCC hearings of her case. In all the circumstances, the Committee decided that an adjournment today would serve no useful purpose in securing Ms Smart's attendance on a future occasion.

17. The Committee took into account that it had a statutory duty to review the substantive order of suspension currently in place on Ms Smart's registration, which is due to expire on 5 December 2024. The Committee considered that without good reason for an adjournment, today's hearing should go ahead as scheduled.

18. The Committee was satisfied that it was fair and in the public interest to proceed with the hearing in the absence of Ms Smart.

Decision on application to hold the hearing partly private

19. The Committee next heard a further application made by Ms Vanstone to hold part of the hearing in private. Ms Vanstone submitted that her application was made under Rule 53(2)(a) of the Rules, for the protection of Ms Smart's private and family life, given that some of the matters in this

case relate to her health. Ms Vanstone submitted that it was not necessary for the whole hearing to be held in private, but solely those issues pertaining to Ms Smart's health.

20. Having heard from Ms Vanstone and having accepted the advice of the Legal Adviser, the Committee acceded to the application. It was satisfied that it was appropriate and in accordance with the relevant Rule for those matters relating to Ms Smart's health to be heard in private session.

21. As is usual in these proceedings, the Committee has produced both a private version of its determination and a suitably redacted public version.

Case background

The initial PCC hearing – October to November 2022

22. Ms Smart's case was first considered by the PCC at a hearing which took place from 31 October to 3 November 2022. This was following her self-referral to the GDC. Ms Smart did not attend that hearing, and she was not represented in her absence.

23. The PCC in 2022 ('the initial PCC') considered a charge brought against Ms Smart by the Council involving three aspects, namely her conviction in December 2020, her alleged failure to cooperate with the GDC's investigation into the matter of her conviction, and an allegation that Ms Smart suffered from an adverse health condition.

24. The initial PCC Committee found proved that on 16 December 2020, Ms Smart was convicted at Swindon Magistrates' Court of driving a motor vehicle on 21 August 2020, after consuming alcohol exceeding the prescribed limit, contrary to Section 5(1)(a) of the Road Traffic Act 1988 and Schedule 2 of the Road Traffic Offenders Act 1988. The factual particulars of Ms Smart's offence, which occurred on 21 August 2020, were that whilst driving under the influence of alcohol, she was involved in a serious road traffic accident. Her car was said to have swerved off the road and "*was found on its roof down the embankment*". Witnesses to the accident referred to "*debris flying everywhere*".

25. It was found that following her self-referral of her conviction to the GDC, Ms Smart failed to cooperate with an investigation conducted by the Council in that she failed to respond to requests for information. [PRIVATE].

26. [PRIVATE]

27. The initial PCC found that the facts found proved against Ms Smart in relation to her failure to engage with the GDC's investigation amounted to misconduct. That Committee also determined that Ms Smart's fitness to practise was impaired by reason of her misconduct, and by reason of her conviction and her adverse health condition.

28. The initial PCC noted the serious nature of the offence which led to Ms Smart's conviction, which was marked by a significant period of 40 months disqualification from driving, and the imposition of a community order with a requirement of 120 hours of unpaid work. In finding her fitness to practise impaired by reason of her conviction, the initial PCC stated that:

“...Whilst the Committee noted that no serious harm was suffered by Ms Smart or any members of the public, this was clearly an offence where the risk of harm to herself and to others was significant.

...

The Committee noted that Ms Smart referred herself to the GDC in respect of her conviction in December 2020, and that she pleaded guilty to the offence in court. It also noted the information regarding her expressions of regret, including during her police interview. However, there has been no information at this hearing relating to Ms Smart’s current level of insight into her conviction in terms of its impact on public safety and the reputation of the dental profession.

In all the circumstances, the Committee considered that there is a risk of repetition associated with the matter of Ms Smart’s conviction. It therefore determined that a finding of impairment is necessary for the protection of the public.

The Committee also determined that, given the nature and seriousness of Ms Smart’s conviction, a finding of impairment is also in the wider public interest, to maintain public confidence in the dental profession and to declare and uphold proper professional standards...”

29. In its decision on impairment by reason of misconduct, the initial PCC stated:

“...[The Committee] took into account that it received no evidence from Ms Smart as to her insight into her lack of cooperation or any evidence of reflection or remediation. The Committee further took into account that the concerns raised about Ms Smart’s engagement with the GDC appear to be ongoing. It noted that her limited and sporadic engagement continued up until just before this hearing. The Committee considered the manner of Ms Smart’s engagement with the GDC to be representative of a pattern of behaviour that has become a feature in this case and is indicative of a risk of recurrence.

The Committee therefore determined that a finding of impairment is necessary for the protection of the public. It considered the issue of public protection to be engaged in relation to Ms Smart’s misconduct, given the important purpose of the required forms ... Ms Smart failed to cooperate with her regulatory body in respect of matters that are designed to provide protection to the public.

The Committee further determined that a finding of impairment is in the wider public interest, in view of Ms Smart’s serious breach of fundamental GDC Standards. The Committee considered that public confidence in the dental profession would be undermined in the absence of such a finding. It also had regard to its duty to uphold proper professional standards.”

30. In respect of its finding of impairment on the ground of Ms Smart’s adverse health, the initial PCC stated that:

[PRIVATE], the Committee determined that a finding of impairment is necessary for the protection of the public.

The Committee also determined that such a finding is in the wider public interest. It considered that allowing Ms Smart to continue in unrestricted practice under the current circumstances would undermine public confidence in the dental profession”.

31. The initial PCC determined that the appropriate and proportionate sanction, for the protection of the public and the wider public interest, was a suspension order for a period of 12 months. In deciding on the maximum 12-month period, that Committee took into account the gravity of its findings, and the absence of any evidence of insight or remediation. It also considered that 12 months would afford Ms Smart the opportunity to engage meaningfully with the GDC’s fitness to practise process. [PRIVATE].

32. The initial PCC directed a review of the suspension order shortly before the end of the 12-month period. In doing so, it made the following recommendations:

“This Committee considered that the Committee reviewing Ms Smart’s case may find it helpful to receive the following:

- *Evidence of her meaningful engagement and cooperation with the GDC.*
- *Evidence of her insight into all the aspects of this case.*
- *[PRIVATE].*

The first resumed hearing – November 2023.

33. The suspension order imposed on Ms Smart’s registration in November 2022 was reviewed by the PCC at a hearing held on 24 November 2023. Ms Smart did not attend that hearing, and she was not represented. The hearing proceeded on the basis of the papers alone, with neither party present.

34. The PCC in November 2023 had regard to the information received since the initial PCC hearing.

35. [PRIVATE.]

36. [PRIVATE]

37. The PCC in November 2023 determined that Ms Smart’s fitness to practise remained impaired by reason of her adverse health. [PRIVATE].

38. The PCC in November 2023 also determined that Ms Smart’s fitness to practise remained impaired by reason of her conviction and her misconduct. That Committee stated that *“...there has been no meaningful engagement with the GDC since the imposition of the suspension order demonstrating any remorse, insight or remediation, the Committee determined that there remains a risk of repetition of Ms Smart’s misconduct and of the behaviour that led to her conviction”.*

39. The reviewing Committee in November 2023 determined to extend the suspension order in place on Ms Smart's registration by a period of 12 months. It also directed a further review of the order shortly before that 12-month period. In directing a review, the PCC in November 2023 encouraged Ms Smart to engage with the GDC and reminded her that a future reviewing Committee might be assisted by receiving the evidence outlined by the initial PCC, namely:

- Evidence of her meaningful engagement and cooperation with the GDC.
- Evidence of her insight into all the aspects of this case.
- [PRIVATE].

Today's resumed hearing – 25 October 2024

40. This is the second review of the substantive order of suspension first imposed on Ms Smart's registration in November 2022. In comprehensively reviewing the order today, the Committee considered all the evidence before it. It took account of the submissions made by Ms Vanstone on behalf of the GDC. The Committee accepted the advice of the Legal Adviser.

41. By way of an update since the last PCC hearing in November 2023, Ms Vanstone told the Committee that [PRIVATE].

42. Ms Vanstone further submitted that no evidence has been received by the GDC in respect of Ms Smart's insight into her conviction and misconduct, nor has there been any evidence of remediation. Ms Vanstone submitted that without any meaningful engagement by Ms Smart since the last PCC hearing in November 2023, this Committee may consider that her fitness to practise remains impaired.

43. Ms Vanstone submitted that the Committee may have noted from the papers for this hearing that Ms Smart has stated her intention to apply for Voluntary Removal (VR) from the GDC's Register of Dental Care Professionals. However, Ms Vanstone told the Committee that Ms Smart is yet to complete all of the relevant application forms.

44. Ms Vanstone invited the Committee to determine that Ms Smart's fitness to practise continues to be impaired by reason of her conviction, misconduct and adverse health, and to extend the current suspension order by a period of 12 months. Ms Vanstone reminded the Committee that any application for VR would still need to be considered by the GDC's Registrar.

Decision on current impairment

45. The Committee considered whether Ms Smart's fitness to practise remains impaired by reason of her conviction, misconduct and adverse health. In doing so, it exercised its independent judgement. It had regard to the over-arching objective of the GDC, which is: 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.

46. The Committee noted that Ms Smart's contact with the GDC since the last PCC hearing has continued to be sporadic in nature. There is no evidence before this Committee of any meaningful engagement by Ms Smart with the GDC, as recommended by the previous Committees. Whilst the Committee took into account that she has cooperated with the Council to a limited extent [PRIVATE].

47. [PRIVATE].

48. There is also no evidence before the Committee at this review of Ms Smart's insight into her conviction and her misconduct, or any evidence of any remediation undertaken. The Committee has not been provided with any information to suggest that Ms Smart understands the impact of her actions on the safety of the public and the wider public interest, including public confidence in the dental profession. The Committee therefore concluded that there remains a high risk of repetition in relation to both aspects.

49. In all the circumstances, the Committee determined that Ms Smart's fitness to practise remains impaired by reason of her conviction, misconduct and adverse health. The Committee considered that a finding of impairment on all three grounds is necessary for the protection of the public and otherwise in the public interest for the same reasons given previously.

Decision on sanction

50. The Committee next considered what action to take in respect of Ms Smart's registration. It had regard to section 36Q(1) of the Act, which sets out the options available to it at this review. The Committee noted that at this review, the option of an indefinite suspension was available to it under section 36Q(1)(d).

51. The Committee also had regard to the '*Guidance for the Practice Committees including Indicative Sanctions Guidance (effective from October 2016; last revised December 2020)*'. It noted that the purpose of any sanction is not to be punitive, although it may have that effect, but to protect the public and the wider public interest. The Committee applied the principle of proportionality, balancing the public interest with Ms Smart's own interests.

52. The Committee considered that some action in respect of Ms Smart's registration is necessary, given the identified risk to the public and the wider public interest in this case. The Committee therefore determined that it would be inappropriate to terminate the current order of suspension and take no further action or to allow the order to lapse.

53. The Committee considered the sanction of a conditions of practice order. However, it noted that conditional registration is usually appropriate when there are discrete aspects of a registrant's practice that need to be addressed. There are no clinical matters in this case, and the Committee was not satisfied that a conditions of practice order would be appropriate or sufficient to address the public protection concerns or wider public interest considerations arising in Ms Smart's case. In addition, with Ms Smart's lack of engagement the Committee was not confident that she would adhere to conditions.

54. The Committee next considered whether to suspend Ms Smart's registration for a further specified period up to a maximum of 12 months. In reaching its decision, the Committee took into account that Ms Smart's conviction and misconduct occurred a number of years ago. Since then, she has demonstrated little or no insight, remorse or remediation into those aspects of the case. [PRIVATE] The Committee also took into account that Ms Smart has repeatedly mentioned applying for VR but has yet to satisfactorily complete the relevant forms.

55. The Committee considered Ms Smart's pattern of sporadic engagement, and her failure to do things that she has said she would do, was a significant concern. Her lack of meaningful contact with her regulatory body has been a consistent feature in this case. Ms Smart's registration has been suspended since November 2022, and the Committee was not persuaded that a further period of suspension would address the persistent and ongoing issues with Ms Smart's engagement. The Committee therefore decided against the imposition of a further specified period of suspension.

56. In reaching its decision, the Committee was satisfied that the public interest outweighs Ms Smart's own interests in the particular circumstances of this case. The Committee considered that the onus should now rest with her to contact the GDC if and when she is willing to engage with its processes.

57. Accordingly, the Committee directs the indefinite suspension of Ms Smart's registration in accordance with section 36Q(1)(d) of the Act. In making this direction, the Committee was satisfied that the criteria for imposing an indefinite suspension are met.

58. Unless Ms Smart exercises her right of appeal, her registration will be suspended indefinitely, 28 days from the date that notice of this direction is deemed to have been served upon her. In the event that she does exercise her right of appeal, the suspension order currently in place on her registration will remain in force until the resolution of the appeal.

59. That concludes this determination.