

ON PAPERS

Professional Conduct Committee Review Hearing

12 December 2024

Name: SMITH, Jake Mark
Registration number: 250334
Case number: CAS-198524-P0J1C5

General Dental Council: Holly Watt, IHLPS

Registrant: Not represented

Fitness to practise: Impaired by reason of misconduct

Outcome: Suspended indefinitely

Committee members: Aysha Ahmed-Kibria (Chair, Dentist Member)
Alastair Smith (Lay Member)
Tanya Viehoff (Dental Care Professional Member)

Legal Adviser: Lucia Whittle-Martin

Committee Secretary: Lola Bird

1. This is a resumed hearing of Mr Smith's case before the Professional Conduct Committee (PCC), pursuant to section 36Q of the *Dentists Act 1984 (as amended)* ('the Act'). The hearing is being conducted remotely by Microsoft Teams video-link.
2. The purpose of the hearing has been for the Committee to conduct a review of the substantive order of suspension currently in place on Mr Smith's registration.
3. Neither party is present today, following a request made by the General Dental Council (GDC) for the review to take place on the papers. The Committee received from the GDC an indexed review hearing bundle (63 pages) as well as the Council's written submissions (12 pages).
4. The Committee first considered the issues of service and proceeding with the hearing in the absence of Mr Smith and any representatives for either party. The Committee heard and accepted the advice of the Legal Adviser on these matters.

Decision on service

5. The Committee considered whether notice 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') and section 50A of the Act.
6. The Committee had regard to the indexed review hearing bundle, which included a copy of the Notice of Hearing dated 15 October 2024 ('the notice'). The notice was sent to Mr Smith's registered address by Special Delivery and First Class post. A copy of the notice was also sent to him by email.
7. The Committee noted from the Royal Mail 'Track and Trace' information provided, that delivery of the copy of the notice sent by Special Delivery was attempted on 16 and 17 October 2024, with no answer at the address. The notice was eventually 'returned to sender' on 7 November 2024.
8. 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. It was satisfied from the evidence before it that the Council has met the requirement of sending notice to Mr Smith.
9. The Committee was satisfied that the notice sent to Mr Smith 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, confirmation that it would be held remotely by Microsoft Teams, and that the Committee had the power to proceed with the hearing in Mr Smith's absence.
10. On the basis of all the information provided, the Committee was satisfied that notice of the hearing had been served on Mr Smith in accordance with the Rules and the Act

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

11. The Committee next considered whether to exercise its discretion under Rule 54 to proceed with the hearing in the absence of Mr Smith and any representative for either party. 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 cases of *GMC v Adeogba; GMC v Visvardis* [2016] EWCA Civ 162.

12. The Committee took into account that fairness to Mr Smith was an important consideration, but also bore in mind the need to be fair to the GDC and the public interest in the expeditious review of the current suspension order. The Committee noted the submission made by the GDC inviting it to exercise its discretion to proceed with the matter on the papers in the absence of both parties.

13. The Committee was satisfied that all reasonable efforts had been made by the GDC to notify Mr Smith of this hearing. It noted that in addition to the notice of 15 October 2024, which was sent to Mr Smith by post and by email, the Council sent him follow-up emails on 21 October 2024 and 19 November 2024. An attempt was also made to contact him by telephone on 19 November 2024. Mr Smith has not responded to any of these communications.

14. The Committee noted that Mr Smith has a pattern of very limited engagement with the GDC. It noted that whilst he attended the initial PCC hearing of his case held in June 2022, he did not attend the two subsequent resumed hearings which took place in November 2022 and December 2023. Mr Smith has not acknowledged any of the communications sent to him by the GDC in respect of today's proceedings, and the Committee received no information to suggest that adjourning this hearing would secure his attendance on a future date. In all the circumstances, the Committee concluded that an adjournment would serve no meaningful purpose.

15. In reaching its conclusion, the Committee took into account its statutory duty to review the current suspension order on Mr Smith's registration, which is due to expire on 2 January 2025. It considered that without good reason for deferring today's hearing, the review of the order should be undertaken as scheduled.

16. The Committee was satisfied that it was fair and in the public interest to proceed with this hearing on the papers in the absence of both parties.

Case background

17. Mr Smith's case was first considered by the PCC at a hearing held in June 2022. He was present at that hearing, and he represented himself. That initial PCC considered and found proved allegations relating to Mr Smith's practice as a dental technician. Mr Smith admitted, and it was found proved, that he had acted outside of his scope of practice by providing a partial upper denture to a patient (Patient A) on 3 March 2021 without the prescription of a dentist. The initial Committee found that Mr Smith's conduct in that regard was misleading. It was also found proved, based on Mr Smith's admission, that he provided dental services without holding indemnity insurance between 15 November 2019 and 16 December 2019 and between 15 November 2020 and 7 February 2021.

18. The PCC in June 2022 determined that the facts found proved against Mr Smith amounted to misconduct. It stated in its decision, which was addressed to Mr Smith, that:

“The Committee considers that your conduct fell far short of the standards reasonably expected of a dental care professional. In the Committee’s judgement your acts and omissions exposed Patient A to the risk of harm as a result of you acting outside of your scope of practice. The misconduct arising from your actions is underscored by their misleading nature, in that you created the impression that you were entitled to provide an upper partial denture without the prescription of a dentist when you were not in fact entitled to do so. You also exposed patients to risk by providing dental services without having indemnity insurance in place during two separate periods of time, for the reason that such patients would have been deprived of normal recourse to any compensation that might have been available.”

19. The initial PCC further determined that Mr Smith’s fitness to practise was impaired by reason of his misconduct. In its decision on impairment, that Committee stated as follows:

“The Committee considers that your fitness to practise is impaired by reason of your misconduct. The Committee finds that you have not demonstrated sufficient insight into, and remediation of, your misconduct for it to be able to conclude that your fitness to practise is no longer impaired. Your insight into your misconduct is in the Committee’s judgment only partial and limited. Although you have approached this hearing in an open and helpful manner, including making some admissions to heads of charge that the Committee went on to find proved, the Committee considers that you lack real awareness of the nature and seriousness of your acting outside of your scope of practice and your provision of dental services in the absence of a prescription from a dentist. It was apparent to the Committee that, even at this hearing, you do not have a thoroughgoing understanding of the terms and purpose of the GDC’s Scope of Practice as it relates to your work, and indeed that hearing the evidence of the GDC’s expert witness appeared to represent a process of discovery for you. Although the Committee finds that these proceedings, which have culminated in this hearing, have had a salutary effect on you, it concludes that your lack of insight and remediation of your misconduct means that a repeat cannot be said to be highly unlikely. Consequently, the Committee finds that you pose a risk to the public, and that your fitness to practise is currently impaired.

The Committee has further determined that a finding of impairment is also required in order to declare and uphold proper standards of conduct and behaviour and to maintain trust and confidence in the profession. The Committee considers that members of the public are entitled to assume that registrants providing dental services are permitted and indemnified to provide the services that they receive. The Committee finds that trust and confidence in the profession and in the regulatory process would be undermined if a finding of impairment were not made in the particular circumstances of this case.”

20. The PCC in June 2022 directed that Mr Smith’s registration should be made subject to a conditions of practice order for a period of 12 months, and it imposed an immediate order to cover the appeal period. That Committee also directed a review shortly before the end of the substantive 12-month period.

First resumed hearing – November 2022

21. A resumed hearing of Mr Smith’s case was convened on 29 November 2022, when a PCC conducted an early review of the conditions of practice order that was imposed on his registration in June 2022. Mr Smith was neither present nor represented at that hearing.

22. The early review in November 2022 was requested by the GDC in light of its concerns regarding Mr Smith's engagement with the Council. It was noted that following the initial PCC hearing, Mr Smith had contacted the GDC regarding his difficulty in appointing a Workplace Supervisor by the deadline of 11 July 2022. Mr Smith was granted an extension until 29 July 2022, and whilst he informed the GDC that he would send a follow-up email in relation to his workplace supervision arrangements, this was never received by the Council.

23. On review of the conditions of practice order that was in place on Mr Smith's registration, the PCC in November 2022 determined that it should be replaced with an order of suspension for a period of 12 months. It was stated by that Committee that:

"As Mr Smith has not engaged with the GDC and failed to demonstrate any compliance with the current conditions, the Committee concluded that conditional registration is no longer workable or appropriate in the circumstances. It has already identified a continuing risk to the public and the necessity to declare and uphold proper standards."

24. The Committee in November 2022 also directed a review shortly before the expiry of the 12-month suspension order. In doing so, it stated that *"Any reviewing Committee may be assisted by the following:*

- *Mr Smith's engagement with the GDC; and*
- *Mr Smith's attendance at any review hearing."*

Second resumed hearing – December 2023

25. The PCC conducted a review of the suspension order at a second resumed hearing which was held on 13 December 2023. Mr Smith did not attend that hearing, and he was not represented in his absence.

26. The PCC in December 2023 determined that Mr Smith's fitness to practise remained impaired by reason of the misconduct identified at the initial PCC hearing in June 2022.

27. In its decision on impairment, the PCC in December 2023 stated that:

"The Committee took into account that, at this review, the persuasive burden rests with Mr Smith to demonstrate that he has addressed his past impairment. It noted, however, that since the last resumed hearing in November 2022, Mr Smith has not engaged with the GDC in any meaningful way. Consequently, there is no evidence before the Committee today in relation to his insight into his misconduct or any remediation he has undertaken.

The previous Committees identified a risk of harm to the public arising out of Mr Smith's misconduct, which involved his working outside the scope of his practice and working without indemnity. There was also a concern that Mr Smith did not thoroughly understand the scope of his practice as a dental technician and the seriousness of his misconduct. In the absence of any information today regarding the current level of Mr Smith's insight or any remediation, the Committee concluded that there remains a risk of repetition in this case. It therefore determined that a finding of impairment is necessary for the protection of the public.

The Committee was also satisfied that a finding of impairment is in the wider public interest. It considered that public confidence in the dental profession and this regulatory process would be undermined if a finding of impairment were not made in all the circumstances.”

28. The PCC in December 2023 directed that the suspension order in place on Mr Smith’s registration should be extended by a period of 12 months. It also directed a further review of his case shortly before the end of the 12-month period. In directing a review, that PCC recommended that:

“...any reviewing Committee would be assisted by the following:

- Evidence of Mr Smith’s full and consistent engagement with the GDC; and
- Mr Smith’s attendance at any review hearing.”

Today’s resumed hearing – 12 December 2024

29. This is the third review of the substantive order first imposed on Mr Smith’s registration in June 2022 as a conditions of practice order, and subsequently changed and maintained as an order of suspension. The matter is being considered today on the basis of the papers with neither party in attendance.

30. In comprehensively reviewing the current order of suspension, the Committee considered all the evidence within the indexed review hearing bundle. It also had regard to the written submissions provided by the GDC. The Committee accepted the advice of the Legal Adviser.

31. No documents or written submissions were received from, or on behalf of, Mr Smith.

32. The Committee had regard to the chronology of events since the last resumed hearing in December 2023. It noted that the GDC wrote to Mr Smith on 10 January 2024, and again on 15 August 2024, to remind him of the recommendations made by the PCC in December 2023. No response was received from Mr Smith in relation to those communications.

33. On 21 August 2024, Mr Smith contacted the GDC stating that he was *“no longer working in the industry”*.

34. The Committee also noted that further concerns have recently been referred to the GDC in respect of Mr Smith, which the Council is currently investigating. The Committee remained mindful that the new concerns do not form part of the case before it at this hearing, and therefore it did not take those matters into consideration when reaching its decisions. The matter before the Committee today is in relation to the misconduct found against Mr Smith by the initial PCC in June 2022.

35. In relation to today’s review and the issues of current impairment and sanction, the GDC stated in its written submissions that:

“...there is no evidence to show any material change in position since the last hearing which reduces the risks identified by the previous Committee. The Registrant has continued to fail to engage with the Council and there remains an absence of any information in respect of his insight and remediation into the concerns raised. The previous Committee noted that the reviewing Committee would be assisted by evidence of full and consistent engagement with the Council along with attendance at any review hearing....

The Council submit that the lack of engagement, along with a failure to demonstrate insight and remediation suggests that the risk of repetition cannot be said to be unlikely, and therefore the Registrant poses a risk to the public. Further, the Council submit that an informed member of the public would be rightfully surprised if the suspension order were permitted to lapse in circumstances where the Registrant has failed to meaningfully engage with the Council since July 2022.

For the reasons outlined above the Council submit that the Registrant's fitness to practise remains impaired by reason of misconduct...

The initial Committee found that the Registrant's insight was limited. As it currently stands there has been no change since the initial hearing. There is no evidence to indicate further insight into the seriousness of the Registrant's misconduct and the Registrant has not engaged with the Council. Therefore, the Council submit that it would be appropriate and proportionate to consider imposing an indefinite suspension on the Registrant's registration. In accordance with 36Q(1)(d) of the Act".

Decision on current impairment

36. The Committee first considered whether Mr Smith's fitness to practise remains impaired by reason of his misconduct. 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.

37. The Committee took into account that, at this review, the persuasive burden rests with Mr Smith to demonstrate that he has addressed his past impairment. The information before the Committee is that since the last resumed hearing in December 2023, Mr Smith has not engaged with the GDC, other than his enquiry in relation to Voluntary Removal made in August 2024.

38. As Mr Smith has not followed the recommendations of the last Committee for full and consistent engagement with his regulatory body and attendance at this hearing, there is no evidence before the Committee today in relation to his insight or any steps he has taken to address his misconduct.

39. Mr Smith's misconduct involved his working outside the scope of his practice and working without indemnity. There was also a concern that Mr Smith did not thoroughly understand the scope of his practice as a dental technician and the seriousness of his actions. In the Committee's view, Mr Smith clearly acted in a way that put patients at unwarranted risk of harm. It considered that, in the absence of any evidence today regarding the current level of Mr Smith's insight or any remediation, the risk of repetition in this case is high. It therefore determined that a finding of impairment is necessary for the protection of the public.

40. The Committee also determined that a finding of impairment is in the wider public interest. Through his misconduct, Mr Smith brought the dental profession into disrepute and breached fundamental tenets of the profession and there is no evidence that he has fully acknowledged or addressed his wrongdoing. In these circumstances, the Committee considered that public confidence in the dental profession and this regulatory process would be undermined if a finding of impairment were not made.

41. Accordingly, the Committee determined that Mr Smith's fitness to practise remains impaired by reason of his misconduct.

Decision on sanction

42. The Committee next considered what action to take in respect of Mr Smith's registration. It had regard to section 36Q(1) of the Act, which sets out the options available to the Committee at this review.

43. The Committee took into account the '*Guidance for the Practice Committees including Indicative Sanctions Guidance (effective from October 2016; 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 Mr Smith's own interests.

44. In deciding on the appropriate sanction, this Committee agreed with the assessment of the initial Committee regarding the circumstances of Mr Smith's misconduct. It noted that patients were placed at the risk of harm, that Mr Smith's conduct resulted in a potential financial gain, entailed a breach of trust, that his lack of indemnity was repeated and sustained. Further, that his actions amounted to a disregard of the GDC as a regulatory body.

45. The Committee considered that there remains no evidence to indicate that Mr Smith has developed sufficient insight into his misconduct and that he has addressed his lack of understanding around his scope of practice and the importance of having indemnity. In the circumstances, the Committee determined that it would be wholly inappropriate to terminate the current suspension order and take no further action. The Committee has identified a risk of repetition in this case and such a course would not protect the public or uphold the wider public interest.

46. The Committee also concluded that a period of conditional registration would not be appropriate or proportionate. It noted that conditions of practice were initially imposed on Mr Smith's registration in June 2022, but he failed to engage with them. Furthermore, his lack of meaningful engagement with the GDC is ongoing. The Committee was not reassured that Mr Smith would comply with any conditions that could be imposed. It therefore decided that conditional registration would not be sufficient to protect the public or the wider public interest.

47. The Committee next considered whether to suspend Mr Smith's registration for a further specified period up to a maximum of 12 months. In doing so, the Committee took into account that Mr Smith has failed for over two years to engage meaningfully with the fitness to practise process. He has repeatedly failed to provide sufficient evidence to demonstrate that he has addressed the concerns raised by the previous Committees. This is despite the clear recommendations to engage with GDC regarding the matter. As a result, there has been no material change in the circumstances of this case since the initial hearing in June 2022.

48. Mr Smith is not currently engaging with his regulatory body and there has been no indication that he wishes to do so. The Committee noted that he has informed the GDC that he has left the dental industry.

49. In all the circumstances, the Committee decided against a further period of suspension. It was not persuaded that a further extension of the current order would serve any useful purpose. In reaching its decision, the Committee was satisfied that the public interest outweighs Mr Smith's own interests in this particular case. The Committee considered that the onus should now rest with him to contact the GDC if and when he is willing to engage with its processes.

50. Accordingly, the Committee directs the indefinite suspension of Mr Smith'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.

51. Unless Mr Smith exercises his right of appeal, his registration will be suspended indefinitely, 28 days from the date that notice of this direction is deemed to have been served upon him. In the event that he does exercise his right of appeal, the suspension order currently in place on his registration will remain in force until the resolution of the appeal.

52. That concludes this determination.