

## ON PAPERS

### Health Committee Review Hearing

16 February 2024

**Name:** SOLANKY, Kishan

**Registration number:** 104103

**Case number:** CAS-188439-H3F1W7

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**General Dental Council:** Represented by Rochelle Williams, IHLPS

**Registrant:** Represented by Anne Green, Weightmans LLP

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**Fitness to practise:** Impaired by reason of health

**Outcome:** Suspended indefinitely

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**Committee members:** Anne Ng (Chair, Dental Care Professional Member)  
Alastair Smith (Lay Member)  
Alison Mayell (Dentist Member)

**Legal Adviser:** Michael Bell

**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 before the Health Committee, pursuant to section 27C 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 conduct a review of the substantive order of suspension currently in place on Mr Solanky's registration.
4. Neither party is present nor represented at these proceedings, following a request made by the General Dental Council (GDC) for the review of the suspension order to take place on the papers. The Committee was provided in advance with the following documentation:
  - An indexed 'HC Resumed Bundle' of 45 pages.
  - An indexed 'HC Resumed Medical Records Bundle' of 510 pages.
  - The written submissions of the GDC.
  - A letter dated 12 February 2024, provided on Mr Solanky's behalf from his solicitors, Weightmans LLP.

### **Preliminary Matters**

#### **Decision on a potential conflict of interest**

5. Prior to the proceedings formally starting, the Chair of the Committee raised that she had previously sat on an IOC review hearing relating to Mr Solanky in January 2021. The Legal Adviser advised that the matter should be disclosed to both parties for their observations.
6. The issue was disclosed this morning in an email sent by the Committee Secretary, and the GDC, having made enquiries with Mr Solanky's legal representatives, responded by email stating, "*To confirm the GDC and the defence do not have any objection to the Committee member sitting today.*"
7. At the outset of the hearing, the Chair of the Committee formally placed the matter on record, including the response received from the parties. The Committee then received and accepted the advice of the Legal Adviser, who referred to the legal authority of *Suleman v General Optical Council* [2023] EWHC 2110 (Admin), a case which reflected the relevant test for bias, as set out in *Porter v Magill* [2001] UKHL 67. This test being whether a fair-minded and informed observer, having considered the facts, would conclude that there is a real possibility that the Chair of the Committee was biased.
8. The Chair of the Committee did not consider that there was any possibility of bias on her part in the circumstances. She also highlighted that neither party had raised any objection to her

continuation on today's review hearing. The Committee was satisfied that it could proceed as constituted.

*Service and proceeding on the papers*

9. The Committee next considered the issues of service and proceeding in the absence of Mr Solanky and any representatives for either party. It accepted the advice of the Legal Adviser on these matters.

*Decision on service*

10. The Committee considered whether notice of the hearing had been served on Mr Solanky 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.

11. The Committee had regard to the Notice of Hearing dated 8 January 2024 ('the notice') included in the HC Resumed Bundle, which was sent to Mr Solanky'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, a Royal Mail 'Track and Trace' receipt was provided to the Committee, which confirmed that the copy of the notice sent by Special Delivery was delivered and signed for on 9 January 2024 in the printed name of 'SOLANKY'.

12. The Committee also took into account that a copy of the notice was sent by email to Mr Solanky and to his solicitors on 8 January 2024, and that his solicitors had provided a letter for consideration at this hearing.

13. The Committee was satisfied that the notice sent to Mr Solanky 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 Solanky's absence.

14. On the basis of all the information provided, the Committee was satisfied that notice of the hearing had been served on Mr Solanky 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*

15. The Committee next considered whether to exercise its discretion under Rule 54 of the Rules to proceed with the hearing in the absence of Mr Solanky, 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* [2003] 1 AC 1HL, and as affirmed in the joined regulatory cases of *General Medical Council v Adeogba* and *General Medical Council v Visvardis* [2016] EWCA Civ 162.

16. The Committee further took into account the need to be fair to both Mr Solanky and the GDC, as well as the public interest in the expeditious review of the current suspension order.

17. The Committee had regard to the letter dated 12 February 2024 from Mr Solanky's solicitors, in which they stated that *"We can confirm that Mr Solanky will not be attending the Hearing, nor will he be represented, and he agrees to the Hearing proceeding by way of a review on the papers"*.

18. The Committee also had regard to the written submissions of the GDC, in which the Council submitted that, *"the only reasonable conclusion that can be drawn taking into account all of the circumstances of the case, is that the Registrant is voluntarily absent having been properly notified of the hearing. In light of this the Committee are invited to proceed with the hearing in the absence of the Registrant"*.

19. Having taken into account the submissions of both parties, particularly the indication on behalf of Mr Solanky that he agreed for this review hearing to take place on the papers, the Committee determined to proceed on that basis. It noted that Mr Solanky did not apply for an adjournment through his solicitors, and that there is no information to suggest that an adjournment would secure his attendance on a future date. The Committee was satisfied that Mr Solanky's absence is voluntary. It concluded that an adjournment today would serve no meaningful purpose in the circumstances.

20. In reaching its decision, the Committee also remained mindful of its statutory duty to review the suspension order currently on Mr Solanky's registration, which is due to expire on 3 March 2024. The Committee decided that in the absence of any good reason to defer the review, it was fair and in the public interest to proceed on the papers and in the absence of both parties.

#### Decision on application to conduct the hearing in private under Rule 53

21. In its written submissions, the GDC made an application for this matter concerning Mr Solanky to be heard in private pursuant to Rule 53(2)(a) of the Rules, given that the matter relates to his health.

22. Rule 53(2)(a) states that:

*"(2) All or part of a hearing may be held in private -*

*(a) where the interests of the parties or the protection of the private and family life of the respondent or any other person so requires;"*

23. The Committee accepted the advice of the Legal Adviser. It took into account that at this hearing, in the absence of either party, its review would be conducted on the papers without any members of the public present. Nevertheless, given that this case relates solely to Mr Solanky's health, and it is usual and in accordance with the Rules for details of any health matters to be kept confidential, the Committee agreed to produce both a private and suitably redacted public version of its determination.

#### **Case background**

24. Mr Solanky's case was first considered by the Health Committee at a hearing held in January and February 2022. Mr Solanky was present at that hearing and was legally represented.

25. That initial Health Committee found Mr Solanky's fitness to practise as a dentist to be impaired on the grounds of his adverse health condition, [IN PRIVATE]. It stated as follows in its determination on impairment:

*"The Committee had regard to the nature of your adverse health condition and its likely impact on your fitness to practise. [IN PRIVATE]. The Committee considers that you have demonstrated limited insight at this stage and the Committee is therefore unable to assess any progress you have made since the investigation began.*

[IN PRIVATE]

*The Committee has concluded that in the absence of any current information to demonstrate adequate insight from you into your health condition, there is a risk of harm to patients if you were to return to unrestricted practise as a dentist. The Committee notes that you do not contest the issue of impairment. ... Furthermore, the Committee considers that public confidence would be undermined if a finding of impairment were not made [IN PRIVATE]. It concluded that a finding of impairment is also in the public interest. Taking all these factors into account, the Committee has determined that your fitness to practise is currently impaired by reason of your adverse health condition."*

26. The initial Committee in 2022 directed that Mr Solanky's registration be subject to a suspension order for a period of 12 months, with a review, stating;

*"The Committee considered whether a period of suspension would adequately protect the public. You will be unable to work as a dentist during your suspension and a review would be required prior to the suspension being lifted which will require you to demonstrate that you are fit to practise. Suspension is appropriate and proportionate to uphold the standards of the profession. The Committee is satisfied that that an order of suspension would be in your own interests to allow you time to reflect on your level of insight [IN PRIVATE]."*

#### First resumed hearing – February 2023

27. The suspension order was reviewed by the Health Committee at a resumed hearing which took place on 17 February 2023. That hearing was conducted on the papers in the absence of both parties.

28. The reviewing Committee in 2023 determined that Mr Solanky's fitness to practise remained impaired by reason of his adverse health. [IN PRIVATE].

29. The Committee in 2023 concluded that, in the absence of any information to demonstrate adequate insight from Mr Solanky into his health condition, there remained a risk of harm to patients if he were to return to unrestricted practise as a dentist. The Committee noted that Mr Solanky and his legal representatives do not contest the issue of impairment. That Committee also considered that a finding of impairment was in the public interest as well as in Mr Solanky's own interests.

30. The Committee in 2023 extended the suspension order in place on Mr Solanky's registration by a period of 12 months and directed a further review shortly before the expiry of that 12-month period.

### **Today's resumed hearing**

31. This is the second review of the substantive suspension order first imposed on Mr Solanky's registration in 2022. In comprehensively reviewing the order today, the Committee considered all the evidence placed before it. It took account of the written submissions made by the GDC, and the written submissions made on behalf of Mr Solanky, as set out in the letter from Weightmans LLP dated 12 February 2024. The Committee accepted the advice of the Legal Adviser.

32. In its written submissions, the GDC set out its position as follows:

*"It is the Council's submission that the Registrant's fitness to practise remains impaired by reason of his health in the absence of any information suggesting an improvement in health [IN PRIVATE]. ... There remains a clear risk of harm to the public and an informed member of the public would be surprised if the Registrant were permitted to return to practise ...*

...

*The Council submit that it would be appropriate and proportionate to impose an indefinite suspension on the Registrant's registration. In accordance with Section 27(1)(d) of the Act, the Registrant's suspension order expires on 3 March 2024, and he has been suspended since 4 March 2022. Should the Committee impose an order of indefinite suspension, by the date the direction takes effect, the Registrant will have been suspended for 2 years.*

*The Registrant has been made aware that it is open to the Committee to impose an indefinite suspension. It is relevant that the Registrant has not sought to persuade the Committee as to what approach they should take in reviewing the suspension order".*

33. In their letter provided on behalf of Mr Solanky in respect of this review, Weightmans LLP submitted as follows:

*"Mr Solanky agrees to the continuation of his current suspension. We have been provided with the GDC's written submissions and we note that they are seeking an order for indefinite suspension. We can confirm that Mr Solanky does not oppose this".*

### **Decision on current impairment**

34. The Committee considered whether Mr Solanky's fitness to practise remains impaired by reason of his 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.

35. The Committee took into account that, at this review, the persuasive burden rests with Mr Solanky to demonstrate that he has addressed his past impairment. It noted, however, that there has been no material change in the circumstances of this case since the last review hearing in February 2023.

36. [IN PRIVATE].

37. Having had regard to all the evidence, this Committee determined that Mr Solanky's fitness to practise remains impaired for the same reasons given by the previous Committees. There continues to be an absence of any information to demonstrate that Mr Solanky has insight into his adverse health. As such, there would be a risk of harm to patients if he were permitted to return to unrestricted practise as a dentist. The Committee was satisfied that a finding of impairment is therefore necessary for the protection of the public.

38. The Committee also considered that a finding of impairment is required in the wider public interest. In its view, public confidence in the dental profession would be seriously undermined if such a finding were not made in all the circumstances of this case.

### **Decision on sanction**

39. The Committee next considered what action to take in respect of Mr Solanky's registration. It had regard to section 27C(1) of the Act, which sets out the options available to the Committee at this review.

40. The Committee also took into account the GDC's '*Guidance for the Practice Committees including Indicative Sanctions Guidance*' (Effective from October 2016; last reviewed 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 Solanky's own interests.

41. The Committee has identified an ongoing risk of harm to the public on account of the matters arising out of this case, as well as wider public interest considerations. In the circumstances, the Committee determined that it would be inappropriate to terminate the current suspension and take no further action in respect of Mr Solanky's registration. The Committee decided that some form of continued restriction of his registration is necessary to protect the public and to maintain public confidence in the profession.

42. The Committee also determined that it would not be appropriate or proportionate to replace the current suspension order with a conditions of practice order. It concluded that no conditions could be formulated to address the serious outstanding concerns, which include concerns about Mr Solanky's insight into his health. The Committee also took into account that [IN PRIVATE] his engagement with the GDC's fitness to practise process has been very limited. The Committee was not reassured that Mr Solanky would comply with conditional registration even if conditions could be formulated. It therefore decided that a conditions of practice order would not be sufficient to protect the public and the wider public interest.

43. The Committee next considered whether to further extend the suspension order currently in place on Mr Solanky's registration for a specified period. It was the view of the Committee, having taken all the evidence into account, that a further period of suspension would be of no benefit. There has been no material change in the circumstances of this case since the last review, and little or no progress since the suspension order was originally imposed in 2022. The Committee also had regard

to the information that Mr Solanky does not intend to return to the practise of dentistry. For all these reasons, the Committee decided against the extension of the current order of suspension.

44. Accordingly, the Committee directs the indefinite suspension of Mr Solanky's registration in accordance with section 27C(1)(d) of the Act. In making this direction, the Committee was satisfied that the criteria for imposing an indefinite suspension have been met.

45. The Committee considered that it would be in Mr Solanky's own interests not to have to attend and/or provide written representations in respect of yearly review hearings. It noted that his solicitors indicated that he does not oppose the indefinite suspension of his registration.

46. It was the view of the Committee that the onus should now rest with Mr Solanky to contact the GDC if he decides to re-engage with its fitness to practise process. The Committee noted that he can request a review of the indefinite suspension order when at least two years have elapsed since the date on which the direction takes effect.

47. Unless Mr Solanky 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.

48. That concludes this determination.