

PUBLIC HEARING

Professional Conduct Committee Review Hearing

7 February 2024

Name: KARUNASEKARA, Roshan

Registration number: 172165

Case number: CAS-173004- Q2W847

General Dental Council: Anna Leathem, Counsel.
Instructed by Rochelle Williams, IHLPS

Registrant: Present
Represented by Richard Mumford, Counsel
Instructed by Joana Da Costa, MDDUS

Fitness to practise: Impaired by reason of misconduct

Outcome: Conditions revoked and suspension imposed (with a review)

Duration: 12 Months

Immediate order: Immediate order of suspension

Committee members: Clive Powell (Chair, Lay member)
Stephanie Yarwood (Dentist Member)
Pamela Machell (Dental Care Professional Member)

Legal Adviser: Kenneth Hamer

Committee Secretary: Lola Bird

Mr Karunasekara,

1. This is a resumed hearing before the Professional Conduct Committee pursuant to Section 27C of the *Dentists Act 1984 (as amended)* ('the Act'). The hearing is proceeding remotely by Microsoft Teams video-link.

Purpose of the hearing

2. The purpose of this hearing has been for the Committee to conduct a review of a substantive conditions of practice order currently in place on your registration.

3. You are represented at these proceedings by Mr Richard Mumford, Counsel. The Case Presenter for the General Dental Council (GDC) is Ms Anna Leathem, Counsel.

Case background

4. Your case was first considered by the PCC at a hearing held in July 2016. That PCC found your fitness to practise to be impaired by reason of your misconduct in respect of your care and treatment of 18 patients between 23 April and 14 May 2014.

5. The initial PCC stated in its determination that:

"...your practice in a number of areas fell far short of the standards reasonably expected of a registered dentist. These areas included your radiography, patient assessment, treatment planning, record-keeping and obtaining of informed consent. The Committee considers that your failings in these areas represent serious and significant departures from fundamental tenets of the profession, and that accordingly they amount to misconduct. These shortcomings were repeated across a considerable number of specific patient cases. The Committee has heard that both expert witnesses agree that your actions and omissions fell far below the required standards in a number of cases. Your acts and omissions placed patients at risk of harm and, in a number of instances, caused actual harm to patients in your care. Your failure to treat caries that was present in a number of cases caused harm to those patients. Your other shortcomings created the potential for harm to be caused to those and other patients, more particularly your failure to obtain a medical history, take appropriate radiographs, provide preventative advice and planning in respect of patients' periodontal conditions, obtain informed consent, properly plan treatment and appropriately prescribe antibiotics. Your poor record-keeping, that was in evidence in a number of cases, may have caused harm for the patients concerned, given that the records may have made it difficult for subsequent treating dentists to have a clear understanding of the treatment that you provided..."

6. The initial PCC directed that your registration be made subject to your compliance with conditions for a period of 18 months, with a review. In doing so, that Committee stated that:

"...it is appropriate and proportionate to place conditions on your registration for a period of 18 months, with a review hearing to take place prior to the end of that period. The

Committee considers that this period of time is necessary and sufficient for you to continue and conclude the process of remedying the shortcomings that have been identified. A period of conditional registration will also have the effect of allowing you to put into practice that which you have learned as part of your efforts to date to remediate.”

First resumed hearing – 7 February 2018

7. The conditions of practice order was first reviewed by the PCC on 7 February 2018. That Committee determined to extend and vary the order of conditions for a further period of 18 months. The Committee considered that you were *“motivated and have been diligent in trying to remedy your misconduct as far as your circumstances allow. However, your remediation has been limited only to the theory of dentistry. You have undertaken some clinical shadowing work and 3 completed a 6 hour return to dentistry course but the fact remains that you have not practised dentistry for nearly 4 years. You are wholly unable to demonstrate to this Committee that any of your learning and reflection has been embedded into clinical practice.”* In those circumstances, the Committee in February 2018 considered that the risk of repetition remained and that your fitness to practise remained impaired.

Second resumed hearing – 30 July 2019

8. A second review of the conditions of practice order was undertaken on 30 July 2019. On that occasion, the PCC determined to extend and vary the order of conditions for a further period of 18 months. At that hearing the Committee stated that it *“recognises the employment difficulties you have been going through, which may partly have impeded your progress, during the time when your registration has been subject to conditions. It notes the theoretical remediation work you have undertaken in respect of your CPD. It is encouraged that you have been offered a position at a dental practice ... It is clear from your evidence to the Committee that you are keen to undertake a full programme of remediation. Nevertheless, the Committee considers that you have been out of dental practice for over five years and that you have been unable to demonstrate effective changes have been embedded in your practice. In the Committee’s judgment, the risk of repetition of your misconduct remains. In these circumstances, the Committee has determined that your fitness to practise remains impaired by reason of your misconduct.”*

Third resumed hearing – 10 February 2021

9. A third resumed hearing was held on 10 February 2021. You were not present or represented on that occasion. That Committee determined to extend and vary the order of conditions for a further period of 18 months. The Committee noted *“...that Mr Karunasekara is engaging with the remediation process. However, the level of remediation he has demonstrated has been limited. Mr Karunasekara’s [sic] has taken some steps to remedy his clinical failings which include undertaking CPD courses, his PDP and his contact with the PGDD. The Committee acknowledges from the information before it that Mr Karunasekara’s efforts have been hampered by his inability to secure employment and the ongoing pandemic. Nevertheless, as he has not been able to fully comply with the conditions on his registration, the Committee could not be satisfied that the failings have been remedied and considered that it would be impossible for him to fully address the identified clinical concerns by way of theoretical learning alone. It concluded that there remains a risk of repetition. It considered that Mr Karunasekara demonstrates good insight. However, until sufficient remediation has been undertaken and the impact of that*

remediation in his day-to day practice has been demonstrated, a finding of current impairment is required to protect patients... The Committee considered that a fully informed member of the public aware of the initial findings made, the limited remediation that Mr Karunasekara has undertaken and that he has been out of clinical practice for approximately 6-7 years, would be shocked if a finding of current impairment was not made."

Fourth resumed hearing – 9 August 2022

10. At the last review on 9 August 2022, the conditions of practice order was extended for a further 18 months, and it was directed that a further review of the order should take place shortly before the end of the 18-month period. The hearing in August 2022 was conducted on the papers in the absence of both parties, and that PCC noted that:

"Mr Karunasekara has recently returned to practise after a period of not working for 6 years. It bore in mind the Workplace Supervisor report dated 18 July 2022, which stated that you had "a slow start" when you first started at the practice. The Committee bore in mind that Mr Karunasekara has only been back in employment a short time and that it will take some time for him to rebuild his confidence, clinical skills and knowledge in practice.

Given that Mr Karunasekara has only been back in practice a short time, the Committee considers that the risk of repetition remains and that he remains a risk to the public. The Committee also considers that confidence in the profession and in the regulator would be undermined if a finding of impairment were not made, given that Mr Karunasekara has only just returned to work after being out of practice for such a lengthy period. Accordingly, the Committee has determined that Mr Karunasekara's fitness to practise remains impaired".

11. In determining to continue the conditions of practice order on your registration, the PCC in August 2022 stated that:

"The Committee was satisfied that Mr Karunasekara will continue to engage and comply with conditions on his registration. Having regard to all the circumstances, the Committee was satisfied that the conditions currently on Mr Karunasekara's registration remain workable and proportionate. The issue before the Committee is not a breach of those conditions or concerns regarding their workability, but rather the need for Mr Karunasekara to have further time to practise under those conditions in order to demonstrate embedded improvement in practice. He has not worked since 2016 which has limited his ability to demonstrate remediation under those conditions."

Today's review

12. This is the fifth review of the conditions of practice order first imposed on your registration in July 2016. In comprehensively reviewing the order today, the Committee considered all the documentary evidence provided. It took account of the submissions made by Ms Leathem on behalf of the GDC and those made by Mr Mumford on your behalf. The Committee accepted the advice of the Legal Adviser.

13. Ms Leathem noted that until relatively recently you had been out of clinical practice for a number of years. She stated that, as at the time of the last resumed hearing in August 2022, you had returned to work as a dentist and had been practising for a period of four months. However, Ms Leathem told the Committee that towards the end of August 2022 you were dismissed from that employment. She stated that on 6 September 2022, the GDC was notified that you had been offered a new position elsewhere, but you were unable to take up that post because your proposed workplace supervisor was not accepted. Therefore, from September 2022, the position has been that you have not been in clinical practice. Ms Leathem drew the Committee's attention to the information that on 2 February 2024 you received an offer of employment as a dentist, which you are yet to commence.

14. Ms Leathem submitted that the GDC's position remains that your fitness to practise is impaired. She submitted that there is a persuasive burden on you at this review to satisfy the Committee to the contrary, however, she said that she understood that the issue of current impairment was not disputed. Nevertheless, she submitted that your fitness to practise remained a matter for the Committee to decide.

15. In relation to what action should be taken in respect of your registration today, Ms Leathem invited the Committee to vary and extend the current conditions of practice order for a period of 18 months, with a review. She stated that the one variation sought by the GDC was in relation to the level of supervision referred to in the current Condition 11. Ms Leathem requested that the level of supervision be varied from close supervision to direct supervision. She submitted that this variation was necessary to protect the public and the wider public interest.

16. In explaining the rationale for the proposed variation, Ms Leathem highlighted that concerns were raised about your clinical practice during your last period of employment in August 2022, which included a patient complaint. The concerns were referred to the GDC in September 2022 by your former workplace supervisor at that practice. Ms Leathem told the Committee that the concerns are currently the subject of an assessment by the GDC.

17. Ms Leathem noted that your former workplace supervisor made reference to a number of issues, including poor hygiene control, that you did not take on board advice given to you, and that you rarely reflected on your practice. Concerns were also raised in relation to treatment you provided and your record keeping. In summary, the opinion of your former workplace supervisor was that you were falling short of expected standards.

18. In addition, Ms Leathem referred the Committee to a letter dated 15 September 2023 from NHS England, which she said you provided to the GDC yesterday. The letter set out the decision of the NHS Performers List Decision Panel (PLDP) to remove you from the Dental Performers List following concerns arising from the NHS conditions that you were working under. Ms Leathem stated that she understood that you are appealing the PLDP's decision, but that the outcome of that hearing does raise serious concerns about your competency and implications for patient safety.

19. Ms Leathem also noted that your late notification to the GDC of the PLDP decision was technically a breach of your GDC Condition 5. However, in light of your continued engagement

with the GDC throughout the fitness to practise process, and the evidence of your intention to notify the Council of the PLDP decision, Ms Leathem stated that the GDC did not consider the technical breach as indicative of a wider inability to comply with conditions.

20. It was Ms Leathem's submission that you have not embedded your remediation into your clinical practice, as you have been unable to work to address the issues raised in this case. However, given your efforts and engagement to date, whilst taking on board the clinical concerns, it is not submitted by the GDC that your registration should be suspended. Ms Leathem reiterated the Council's invitation to extend the conditions of practice order for a period of 18 months, replacing the requirement for close supervision with direct supervision.

21. Mr Mumford apologised on your behalf of the late notification to the GDC of the PLDP proceedings. He stated that you accepted that you should have notified the Council earlier, and that it had not been your intention to mislead the GDC.

22. In relation to the case before the Committee today, Mr Mumford submitted that your position was that the current conditions of practice order, as imposed on 9 August 2022, should be continued without variation. He submitted that the suggestion of an 18-month period would not be opposed.

23. Mr Mumford confirmed that you last worked as a dentist in August 2022. He stated that your view is that during that four-month period that you were in practice, you were complying with the GDC conditions on your registration. Mr Mumford acknowledged the information that since you departed from that practice, concerns have been raised about the quality of your work and there has been a patient complaint. Mr Mumford told the Committee that it was not his intention to address those matters, as you recognise that this is not a fact-finding panel. He told the Committee, however, that you do not accept that you were at fault to the extent that has been suggested.

24. Mr Mumford stated that it was recognised that the task of this Committee is to protect the public and uphold the wider public interest, and therefore, you accepted and welcomed the extension of the current conditions of practice order to achieve the goal of a safe return to practice.

25. Mr Mumford drew the Committee's attention to the evidence showing the considerable number of job applications you have made over the past few years, including since leaving your last employment in August 2022. He told the Committee that you had only received one job offer, which is the one included in the documentation before the Committee today. Mr Mumford submitted that your current conditions carry with them a significant administrative burden for prospective employers. He said that fortunately, the prospective employer referred to in the papers, has expressed a willingness to work with you under your conditions, as they currently stand. Mr Mumford submitted that the effect of varying the conditions to include a requirement for direct supervision would be to "destroy your chances" of returning to work as a dentist. He said that any increase in the burden of your conditions would mean that your current job offer would be withdrawn.

26. Mr Mumford told the Committee that you wished to have the opportunity to return to your chosen profession, and that you have been incredibly tenacious in seeking to return to work as a dentist.

Decision on current impairment

27. The Committee considered whether your fitness to practise remains impaired by reason of your misconduct. In doing so, it exercised its independent judgement. It had regard to the overarching 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.

28. The Committee took into account the evidence that until relatively recently you had been out of clinical practice for some 6 years. Further, it noted that your brief return to work as a dentist in August 2022 resulted in similar concerns to those considered by the initial PCC being raised by your then workplace supervisor.

29. The Committee also had regard to the decision of the PLDP to remove your name from the NHS Dental Performers List. Whilst the Committee took into account that this is an appealable decision, and that you are appealing it, the PLDP's report is, in the Committee's view, highly concerning. The Committee noted that similar concerns about your clinical practice are raised in the PLDP's decision, as well as concerns surrounding your compliance with your NHS conditions and your insight into the issues raised. In particular, the Committee noted the PLDP's comments at point 6 of its letter dated 15 September 2023, which are as follows:

"The Panel considered your responses, reflections and written documents and were concerned about your sustained lack of insight in relation to your professional failings, potential patient safety concerns and the limited time you had practised as an NHS dentist. The Panel were concerned about your inability to proactively remediate your deficiencies through improving your clinical practise or actively seeking training or CPD. Your reflective practice documents demonstrated a lack of insight and accountability in relation to patient safety concerns or complaints. Your verbal submissions focussed on apportioning responsibility for a number of your failings on the dental practice where you were working. As such, you demonstrated no evidence of understanding correct governance or patient safety mechanisms or accepted it was your own responsibility to practise safe NHS dentistry. You highlighted areas such as a poor-quality drill, a broken patient chair or inadequate or absent dental nurse but when questioned, showed no evidence of escalating these concerns through the appropriate channels. You stated that you verbally escalated your concerns to the head nurse, however there was no evidence of the discussion through email follow-up. Therefore the Panel agreed that you did not demonstrate awareness of governance processes within the practice".

30. On the basis of the evidence before it and taking into account the passage of time since you have been in continuous clinical practice, the Committee was not satisfied that you have demonstrated that you have addressed your past impairment. In fact, the Committee decided that

at best there has been little, or no improvement demonstrated since the initial PCC hearing in 2016.

31. In all the circumstances, the Committee considered that a finding of current impairment is necessary for the protection of the public. It also considered that such a finding is in the wider public interest to maintain public confidence in the dental profession and to declare and uphold proper professional standards.

32. Accordingly, the Committee determined that your fitness to practise remains impaired by reason of your misconduct.

Decision on sanction

33. The Committee next considered what action to take in respect of your registration. It had regard to section 27C(2) of the Act, which sets out the options available to the Committee at this review.

34. In view of its concerns and the identified risk to the public and the wider public interest, the Committee concluded that it would not be appropriate to revoke the current conditions of practice order and take no further action or to allow the conditions to lapse.

35. The Committee therefore considered whether it would be appropriate and proportionate to extend the current conditions of practice order for a further period. It was the view of the Committee that in the brief period since July 2016 that you have been able to resume clinical practice, the current set of conditions did not achieve their objectives to enable you to return safely to dentistry. The Committee had regard to your Personal Development Plan and recognised that you have recently received an offer of employment. However, the Committee was not satisfied that the current conditions are sufficient to protect the public or to address the wider public interest consideration in this case.

36. The Committee considered the proposal made by the GDC for a variation to the current conditions to include a requirement for the direct supervision of your work. In doing so, it took into account the submissions made on your behalf regarding the consequences for you of such a variation.

37. However, the Committee was not satisfied that direct supervision of your work would alleviate its concerns in any event. Serious issues have been raised in respect of your clinical competence and insight, including by another regulatory body. The Committee noted that this included concerns about your ability to accept responsibility for your own shortcomings. In its view, the evidence before it today is that you are not safe to practise as a dentist even under conditions. In the Committee's judgment continuing conditional registration would be failing to protect the public and failing to maintain public confidence in the dental profession and the regulatory process.

38. The Committee therefore determined to replace the current conditions of practice order with a substantive order of suspension for a period of 12 months. The Committee had regard to

the seriousness of the concerns in this case and the need to protect the public and the wider public interest. It was satisfied that a 12-month period was appropriate and proportionate in all the circumstances.

39. The Committee took into account the consequences for you of the suspension of your registration but concluded that the public interest outweighed your own interests in this case.

40. The Committee also directs a further review of this matter. This means that a Committee will convene to review the suspension order shortly before the expiry of the 12-month period. It will be for that Committee to decide, based on the evidence before it, what action to take in relation to your registration at that time.

41. Unless you exercise your right of appeal, your registration will be suspended for a period of 12 months, 28 days from the date that notice of this direction is deemed to have been served upon you.

42. The Committee now invites submissions from the parties as to whether an immediate order of suspension should be imposed on your registration pending the substantive order of suspension taking effect.

Decision on an immediate order

43. Ms Leathem submitted that in light of the Committee's substantive determination that you are not safe to practise as a dentist under conditions, an immediate order should be imposed on your registration for the protection of the public and otherwise in the public interest. She submitted that it would be inconsistent not to impose an immediate order in the circumstances.

44. Mr Mumford opposed the imposition of an immediate order on the basis that such an order would serve no real purpose. He submitted that you are not currently working as a dentist, and that you would not be able to practise under the current conditions without an approved workplace supervisor. It was Mr Mumford's submission that an immediate order of suspension would be excessive.

45. In reaching its decision on whether to impose an immediate order of suspension on your registration, the Committee took account of the submissions made by both parties. It accepted the advice of the Legal Adviser, who drew the Committee's attention to the relevant legal provisions in respect of immediate orders, as well as to the guidance contained at paragraphs 6.35 to 6.38 of the GDC's *'Guidance for the Practice Committees including Indicative Sanctions Guidance'* (October 2016; last revised December 2020).

46. The Committee determined that the imposition of an immediate order of suspension on your registration is necessary for the protection of the public and is otherwise in the public interest.

47. The Committee has identified an ongoing risk to the public to the extent that it has determined that you are not fit to practise as a dentist even under conditions. Whilst the Committee took into account that you are not currently working, it considered that there would be

a risk to the public if you had any opportunity to return to clinical practice during the 28-day appeal period, or for potentially longer, in the event of an appeal. An immediate order is therefore necessary to protect the public.

48. The Committee was also satisfied that an immediate order is required in the wider public interest. It considered that immediate action is warranted in this case to maintain public confidence in the dental profession.

49. The effect of the foregoing substantive determination and this order is that your registration will be suspended to cover the appeal period. Unless you exercise your right of appeal, the substantive direction for suspension for a period of 12 months (with a review), will take effect 28 days from the date of deemed service.

50. Should you exercise your right of appeal, this immediate order will remain in place until the resolution of any appeal.

That concludes this determination.