

**HEARING PARTLY HEARD IN PRIVATE\***

\*The Committee has made a determination in this case that includes some private information.  
That information has been omitted from this text.

**UNDERWOOD, Keith Derek**

**Registration No: 55419**

**HEALTH COMMITTEE**

**NOVEMBER 2015 – APRIL 2018\*\***

**Most recent outcome: Suspended indefinitely\*\***

\*\* See page 12 for the latest determination.

Keith Derek UNDERWOOD, a registered dentist; BDS Lond 1981, DOrth RCS Edin 1989, DOrth RCS Eng 1989, MOrth RCS Eng 1993, MSc Lond 1989, LDS RCS Eng 1981, was summoned to appear before the Health Committee on 23 November 2015 for an inquiry into the following charge:

**Charge**

**Part A - Conviction and Caution**

"That, being a registered dentist:

1. On or about 17 September 2014 you were convicted at Central Kent Magistrates' Court for driving a motor vehicle after consuming so much alcohol that the proportion of It in your breath exceeded the prescribed limit.
2. On or about 17 March 2014 you received a police caution from Kent Police for the possession of the following controlled drugs:
  - a. Cocaine;
  - b. Cannabis / Cannabis Resin.

And that, in relation to the facts alleged, your fitness to practise is impaired by reason of your conviction and/or caution."

**Part B - Misconduct**

"That, being a registered dentist:

3. You failed to notify the General Dental Council ('the Council') when you were charged with the offence at 1 above by Kent Police on or about 17 March 2014:
  - a. immediately following charge; and/or
  - b. at any time prior to the Council contacting you about the offence by letter dated 14 May 2014.
4. You failed to notify the Council of the conviction at 1 above immediately following receipt of the conviction.

5. You failed to notify the Council of the caution at 2 above:
  - a. immediately following receipt of the caution; and/or
  - b. at any time prior to the Council contacting you about the caution by letter dated 14 May 2014.

And that, in relation to the facts alleged, your fitness to practise is impaired by reason of your misconduct."

### **Part C - Health**

"That, being a registered dentist:

6. You suffer from one or more the medical conditions set out in the attached Schedule\*.

And that, in relation to the facts alleged, your fitness to practise as a dentist is impaired by reason of your adverse physical and/or mental health."

On 23 November 2015 the Chairman made the following statement regarding the finding of facts:

"Mr Underwood:

At the beginning of the hearing Ms Steele, on behalf of the General Dental Council (GDC), made an application under Rule 53(2)(a) of the GDC (Fitness to Practise) Rules 2006 (the Rules) that the hearing be heard in private since the matters under consideration relate to your health. You supported the application. The Committee, having heard the submissions from both parties, and accepting the advice of the Legal Adviser, acceded to Ms Steele's application. The hearing was therefore heard in private.

Thereafter, at the outset of the hearing, you admitted the entirety of the charges against you (charges 1 to 6).

Whilst noting your admissions, the Committee has considered whether the GDC's case has been made out to the requisite standard in respect of all of the charges. In so doing, the Committee has taken into account the bundle of documents provided by the GDC, as highlighted by Ms Steele.

The Committee has considered each head of charge separately. It has borne in mind that the burden of proof rests with the GDC throughout and that the standard of proof is the civil standard, namely, whether the matters are proved on the balance of probabilities.

I will now announce the Committee's findings in relation to each charge:

|       |  |
|-------|--|
| 1.(a) | Admitted and found proved<br><br>The Committee has seen a copy of the certificate of conviction dated 17 September 2014 for Central Kent Magistrates' Court and in accordance with Rule 57(5), it has accepted it as conclusive proof of your conviction.  |
| 2.(a) | Admitted and found proved<br><br>The Committee has seen a copy of the police caution from Kent Police, signed by you on 17 March 2014, in relation to the possession of Cocaine and Cannabis/Cannabis Resin and has had regard to the witness statement of Ms A of Kent Police dated 5 October 2015. |

|       |  |
|-------|--|
| 2.(b) | Admitted and found proved<br>This is for the same reasons as set out at 2(a) above.  |
| 3.(a) | Admitted and found proved<br>The Committee has had regard to the witness statement and exhibits of Ms B (a GDC employee) dated 10 September 2015, as well as your email to the GDC dated 17 December 2014. |
| 3.(b) | Admitted and found proved<br>This is for the same reasons as set out at 3(a) above.  |
| 4.    | Admitted and found proved<br>This is for the same reasons as set out at 3(a) above.  |
| 5.(a) | Admitted and found proved<br>This is for the same reasons as set out at 3(a) above.  |
| 5.(b) | Admitted and found proved<br>This is for the same reasons as set out at 3(a) above.  |
| 6.    | Admitted and found proved<br>The Committee has had regard to the medical evidence which confirms that you suffer from the medical conditions set out in the schedule.                                      |

We move to Stage Two.”

On 24 November 2015 the Chairman announced the determination as follows:

“Mr Underwood: In accordance with Rule 20(1) of the GDC’s (Fitness to Practise) Rules 2006 the Committee has considered the submissions made by Ms Steele on behalf of the General Dental Council (GDC) and your own evidence. The Committee has accepted the advice of the Legal Adviser.

### **Misconduct**

The Committee has considered whether the findings against you in respect of charges 3, 4 and 5 amount to misconduct. In so doing, it has had in mind the GDC’s ‘Standards for the Dental Team’ (September 2013) and its ‘Guidance on reporting criminal proceedings’ (September 2013).

On 22 January 2014 you were arrested by Kent Police on suspicion of driving with excess breath alcohol and of being in possession of a Class A drug (cocaine) and a Class B drug (cannabis). You were charged by Kent Police on 17 March 2014 with the offence of driving with excess alcohol and you also admitted the offences of possession of cocaine and cannabis, contrary to section 5(2) of the Misuse of Drugs Act 1971, and received a police caution. On 9 May 2014 you entered a guilty plea in respect of the offence of driving with excess alcohol, namely 82 milligrams of alcohol in 100 millimetres of blood, in excess of the prescribed limit, contrary to section 5(1)(a) of the Road Traffic Act 1988 and Schedule 2 to the Road Traffic Offenders Act 1988. On 17 September 2014 you were sentenced at Central Kent Magistrates Court in relation to that offence.

You failed to notify the GDC immediately after being charged by Kent Police on 17 March 2014 or immediately following your conviction. You also failed to notify the GDC immediately after you received the caution from Kent Police on 17 March 2014.

The Committee notes that by letter dated 28 January 2014 Kent Police informed the GDC of the date and reason for your arrest and the fact that you had been granted bail pending further police enquiries. The letter was generated as you are a dentist, which is a notifiable occupation. The GDC wrote to you on 14 May 2014 in connection with these matters. Following that letter you provided some information to the GDC in connection with these criminal matters.

The Committee considers that you had a professional duty to inform the GDC that you were subject to criminal proceedings. Such information is necessary for the GDC in order for it to investigate matters, in accordance with its statutory duty. You failed to comply with paragraph 9.3 of the GDC's Standards for the Dental Team. That standard states that you must: "Inform the GDC if you are subject to criminal proceedings or a regulatory finding is made against you anywhere in the world." Nevertheless, it has taken into account that, at the time of the events in question, you were experiencing significant health problems. In your observations to the GDC you stated that Kent Police informed you that they would contact the GDC in view of your occupation, and therefore, you did not feel the need to contact the GDC yourself. You also explained that you had informed your employer that you had been arrested by the police, and that this matter was the "critical issue" in your mind.

The Committee accepted your explanation and considered that your actions did not amount to a deliberate attempt to conceal your conviction or your caution from the GDC. Taking all these factors into account, the Committee considers that while your failure to inform the GDC regarding the criminal matters against you is serious, and a clear failure to comply with one of its standards, it does not amount in this case to conduct that would be regarded as "deplorable" by fellow professionals. Accordingly, the Committee is not satisfied that the findings amount to misconduct.

### **Current fitness to practise**

The Committee went on to consider whether your fitness to practise is currently impaired by reason of your conviction, your caution and your health.

### **Conviction and caution**

On 17 September 2014 you received a conviction at Central Kent Magistrates Court in relation to the drink driving offence committed on 22 January 2014. You were fined, ordered to pay costs and disqualified from holding or obtaining a driving licence for 12 months.

The Committee takes a serious view of your conviction. Driving a car, having consumed excessive alcohol, can never be acceptable. You were convicted of a similar offence, albeit many years ago.

On 17 March 2014 you received a police caution for the possession of cocaine and cannabis on 22 January 2014, contrary to section 5(2) of the Misuse of Drugs Act 1971. These are also very serious matters.

Moreover, the Committee considers that members of the public and fellow professionals would also view these matters as very serious. It has concluded that the need to uphold professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in this case.

Accordingly, the Committee is satisfied that your fitness to practise is currently impaired by reason of your conviction and your caution.

### **Health**

The Committee determined that your fitness to practise is currently impaired by reason of your adverse health.

### **Sanction**

The Committee next considered what outcome, if any, to impose. It recognises that the purpose of a sanction is not to be punitive, although it may have that effect, but to protect patients and the wider public interest. The Committee had regard to the GDC's "Guidance for the Health Committee" (November 2009) and "Guidance for the Practice Committee including Indicative Sanctions Guidance" (October 2015).

The Committee is aware of the general principles it must apply in considering what sanction, if any, is to be imposed. This includes the need to protect patients and the public interest. The public interest includes not only the protection of patients, but also the maintenance of public confidence in, and the reputation of, the profession and its regulatory process, as well as the declaring and upholding of proper standards of conduct and behaviour. The Committee has also had regard to the principle of proportionality, weighing the interests of the public with your own interests.

Ms Steele submitted that the appropriate outcome would be a period of suspension of your registration for 12 months.

The Committee has considered carefully the submissions you have made. It was assisted by the questions posed by the Medical Adviser to you, and your answers to them. It has accepted the advice of the Legal Adviser.

The Committee has determined that it is necessary for the protection of the public, is otherwise in the public interest, as well as in your own interests, to direct that your registration be suspended for a period of 9 months. It is also satisfied that such a sanction is necessary in the wider public interest in view of the serious nature of your conviction and caution in order to uphold the reputation of the profession.

The Committee considers that to go further and erase your name from the Register would be disproportionate in all the circumstances of the case given that this case relates predominantly to your health.

A Committee will review your case at a resumed hearing to be held shortly before the end of the period of suspension. That Committee will consider what action to take in relation to your registration. You will be informed of the date and time of that resumed hearing.

The Committee has determined to revoke the interim order of suspension on your registration.

It now invites submissions as to whether your registration should be suspended immediately, pending its substantive direction taking effect."

### **Decision on immediate order**

"Ms Steele: Having directed that Mr Underwood's registration be suspended, the Committee has considered whether to impose an order for immediate suspension.

You, on behalf of the General Dental Council (GDC), have submitted that such an order is necessary in the light of the Committee's findings.

In all the circumstances, the Committee has determined that it is necessary for the protection of the public, is otherwise in the public interest and is in Mr Underwood's own interests to order that his registration be suspended forthwith in accordance with Section 30(1) of the Dentists Act 1984. The Committee is satisfied that Mr Underwood poses an ongoing risk to the public and that it would be inconsistent to allow him the opportunity to continue to practise during the intervening appeal period.

The effect of the foregoing determination and this immediate order is that Mr Underwood's registration is now suspended. Should Mr Underwood exercise his right of appeal, this immediate order for suspension will remain in place until the resolution of any appeal.

The interim order of suspension on Mr Underwood's registration is hereby revoked in accordance with Section 27B(9) of the Dentists Act 1984.

That concludes this case."

At a review hearing on 8 September 2016 the Chairman announced the determination as follows:

"Mr Underwood,

This is a resumed hearing of your case, pursuant to Section 27C(1) of the Dentists Act 1984, as amended ('the Act').

**Decision to hold the hearing in private**

At the outset, the Committee acceded to an application made by Mr Shadbolt, the Case Presenter for the General Dental Council (GDC), to hold this hearing entirely in private in accordance with Rule 53 of the *GDC (Fitness to Practise) Rules 2006*. You did not oppose the application.

The Committee was satisfied that this was an appropriate course of action, given that the matters under consideration relate to your health.

The Committee has prepared a private and public version of its determination. This determination is public.

**Background**

Your case was first considered by the Health Committee at a hearing in November 2015. At that substantive hearing, the Committee found proved allegations relating to your conviction and your police caution. These included allegations that you failed to notify the GDC at the relevant times of these criminal matters. The Committee in November 2015 also made findings in respect of your health.

In relation to the criminal matters, the chronology of events is that on 22 January 2014, you were arrested by Kent Police on suspicion of driving with excess alcohol and of being in possession of a Class A drug (cocaine) and a Class B drug (cannabis). You were charged by Kent Police on 17 March 2014 with the offence of driving with excess alcohol. You also admitted the offences of possession of cocaine and cannabis, contrary to section 5(2) of the Misuse of Drugs Act 1971, and received a police caution in respect of those offences.

On 9 May 2014 you entered a guilty plea in respect of the offence of driving with 82 milligrams of alcohol in 100 millimetres of blood, in excess of the prescribed limit, contrary to



section 5(1)(a) of the Road Traffic Act 1988 and Schedule 2 to the Road Traffic Offenders Act 1988. On 17 September 2014 you were sentenced at Central Kent Magistrates Court in relation to that offence.

[...].

The Committee in November 2015 considered that it was your professional duty to inform the GDC that you were subject to criminal proceedings and that your failure to do so was serious. However, it took all the factors in your case into account, including your “significant health problems” at the time, and it determined that its findings in relation to this matter did not amount to misconduct.

However, that Committee determined that your fitness to practise was impaired by reason of your conviction and caution, and by reason of your adverse health. It suspended your registration for a period of nine months and directed a review of your case before the end of the period of suspension. That Committee considered that the Committee reviewing your case may find it helpful to receive up to date medical reports from those treating you, [...].

### **Today’s review**

This Committee has reviewed the suspension order imposed on your registration in November 2015. In doing so, it has considered all of the evidence presented to it. It has taken into account the submissions made by Mr Shadbolt on behalf of the GDC and your submissions. The Committee has accepted the advice of the Medical Adviser and that of the Legal Adviser.

On behalf of the GDC, Mr Shadbolt reminded the Committee that the burden was upon you to demonstrate that your fitness to practise is no longer impaired. He told the Committee that since the hearing in November 2015, the GDC had received no medical evidence from any healthcare professionals involved in your care. Mr Shadbolt drew the Committee’s attention to the relevant correspondence between you and the GDC.

Mr Shadbolt also addressed the issue of your giving consent in relation to the GDC’s health procedures. He explained the attempts that had been made by the GDC in order to obtain a signed GDC Consent Form from you. He told the Committee, however, that he had provided you with a copy of the Consent Form prior to the start of the hearing, which you confirmed that you had now completed and signed. Mr Shadbolt stated that upon receipt of the form, the GDC would be able to seek disclosure of your medical records and request that you undertake an examination by a medical expert, [...].

You told the Committee that you had undertaken significant self-development to get to where you are currently. You stated, however, that this had involved great sacrifice on your part.

You accepted that, at the time of the hearing in November 2015, you were unwell, not fit to practise and were prepared to do whatever that Committee suggested. [...].

[...].

### **Impairment**

With regard to the matters of your caution and conviction, Mr Shadbolt directed this Committee to the finding of impairment made by the previous Committee on these grounds. That Committee determined that public confidence in the dental profession would have been undermined if you were found not to be impaired by reason of your caution and conviction.

Mr Shadbolt submitted that this Committee may decide that the public interest has now been satisfied, given that you have served a nine-month suspension.

In relation to your health, however, Mr Shadbolt submitted that it was the position of the GDC that your fitness to practise remained impaired on this basis. Mr Shadbolt acknowledged your submissions of positive developments in relation to your health, but that in the absence of any new medical evidence, there was in fact little change in the information before this Committee. [...].

You told the Committee of your passion for dentistry, in particular orthodontics. You stated that you would have no problem returning to work in the right setting, although you also stated several times that you felt you were not fit to practise at present.

Notwithstanding the submissions made, the Committee reached its own determination on whether your fitness to practise remains impaired as of today. It exercised its independent judgement and reminded itself of its duty to act in the public interest. The public interest includes the protection of patients, the maintenance of public confidence in the profession and the declaring and upholding of proper standards of conduct and behaviour.

### **Conviction and caution**

The Committee first considered the matters relating to your conviction and your police caution. [...].

The Committee noted that your caution and your conviction related to one occasion on 22 January 2014. No concerns have since been raised regarding any criminal matters. The Committee did not consider that your fitness to practise is impaired today by reason of those past matters. It was satisfied that the wider public interest has been served by the action taken by your regulator to suspend your registration for a significant period of time.

In all the circumstances, the Committee has determined that your fitness to practise is not currently impaired by reason of your conviction or your caution.

### **Health**

The Committee next considered the matters regarding your health. [...].

[...].

Taking all of these matters into account, the Committee decided that there would be a risk to the safety of patients if you were permitted to return to unrestricted practice. The Committee was also satisfied that public confidence in the dental profession would be undermined if a finding of impairment were not made in the circumstances of this case where there is no up to date medical evidence to substantiate any progress you have made.

Accordingly, the Committee has determined that your fitness to practise remains impaired by reason of your adverse health.

### **Sanction**

In respect of a sanction, Mr Shadbolt acknowledged that a decision on what action to take was a matter for the Committee. However, he invited the Committee to consider extending the period of your suspension for nine months.

You told the Committee that you would be happier and more confident if your suspension were lifted.



The Committee had regard to its powers under Section 27C of the Act, which sets out the directions it may make. The Committee took into account that the purpose of a sanction is not to be punitive, although it may have that effect, but to protect patients and the wider public interest.

The Committee also took into account to the '*Guidance for the Health Committee (November 2009)*' and the '*Guidance for the Practice Committees including Indicative Sanctions Guidance (effective from October 2015)*'. It applied the principle of proportionality, balancing the public interest with your own interests.

Given the Committee's conclusion that there are ongoing patient safety issues, it determined that it would not be appropriate or proportionate to terminate the suspension and take no further action. This course of action would not afford the public any protection, nor would it serve to maintain public confidence in the dental profession.

The Committee carefully considered whether to impose conditions on your registration, in particular whether a period of conditional registration would address adequately its concerns about public protection and the wider public interest. It took into account the progress you said you have made with your health and your engagement with this regulatory process. The Committee was in no doubt about your motivation in wanting to return to work, provided that it was in the right setting. However, in the absence of any new medical evidence to confirm your current state of health and any impact this might have on your work as a dentist, the Committee decided that it could not formulate any workable conditions.

Further, this Committee noted that you have not produced any evidence as recommended by the previous Committee. [...]. In the Committee's view, this raises a concern about your ability to comply with conditional registration at this time. It was not satisfied that conditional registration would provide sufficient protection for the public in these circumstances. The Committee also considered that such action would not be in the wider public interest.

In all the circumstances, the Committee has determined to extend the current period of suspension on your registration for a period of seven months. [...].

The Committee took into account the potential consequences that a continued suspension would have for you, but it was satisfied of the need to protect the public and to uphold the public interest and that the order would be in your own interests.

A Committee will review your case at a resumed hearing to be held shortly before the end of the period of suspension, [...]. That Committee will consider what action it should take in relation to your registration. You will be informed of the date and time of that resumed hearing, with which you will be expected to engage.

The Committee reviewing your case may find it helpful to receive the following:

- [...];
- [...];
- evidence of your engagement with Continuing Professional Development (CPD);

In addition, you may provide any other evidence that you consider relevant to the matters in this case.

Unless you exercise your right of appeal, your registration will be suspended for a further period of seven months, 28 days from the date that notice of this direction is deemed to have

been served upon you. In the event that you do exercise your right of appeal, the suspension order currently on your registration will remain in force until the resolution of the appeal.

That concludes this hearing today.”

At a review hearing on 6 April 2017 the Chairman announced the determination as follows:

**“SERVICE AND PROCEEDING IN ABSENCE**

Mr Underwood was not present at this hearing today, nor was he represented.

The Committee saw a copy of the notification of hearing that was sent to Mr Underwood’s registered address by special delivery and emailed to him. It saw a Royal Mail Track and Trace website service printout that indicates that the special delivery item was delivered and signed for on 7 March 2017.

The Committee was therefore satisfied that notification had been duly sent to Mr Underwood in accordance with the Rules.

The Committee saw an email dated 21 March 2017 from Mr Underwood to the GDC, in which he stated that he would be attending this hearing. However, Mr Underwood did not in fact attend. The start of the hearing was delayed by an hour and during that time Mr Underwood sent an email to a lawyer at the GDC stating that he was not able to attend ...[PRIVATE].

The Committee took the view that Mr Underwood was aware of this hearing and had chosen not to attend. He did not request an adjournment or postponement, and his email does not suggest that he expects to feel able to attend in the near future.

The current order is due to expire this month. The Committee is required to review the case before the order expires, and it would not be possible to give the required 28 days’ notice of a new hearing date.

Taking these matters together, and bearing in mind the public interest in the expeditious disposal of the case, the Committee determined that it was fair and reasonable to proceed with the hearing in Mr Underwood’s absence.

**BACKGROUND**

**Initial Hearing**

In November 2015, the Health Committee determined that Mr Underwood:

[PRIVATE].

That Committee suspended Mr Underwood’s registration for a period of nine months and directed a review of the case before the end of the period of suspension.

**First review**

On 8 September 2016, the HC reviewed the matter. [PRIVATE].

[PRIVATE].

It directed that the suspension of Mr Underwood’s registration be extended for seven months.

**THIS REVIEW**

Today the Committee conducted a second review of the matter. It took account of all the information before it, including the communications from Mr Underwood. It heard submissions from Mr James on behalf of the GDC. The Committee accepted the advice of the Medical Adviser and the Legal Adviser.

Mr James submitted that Mr Underwood's fitness to practise remains impaired and that an extension of the order of suspension for a further 6 months is necessary in this case for the protection of the public and in the public interest.

[PRIVATE].

In the light of its findings, and having regard to the need to protect the public and maintain public trust and confidence in the profession and in the regulatory process, the Committee has determined that Mr Underwood's fitness to practise continues to be impaired.

**SANCTION**

The Committee then went on to determine what sanction, if any, would be appropriate in the light of the findings that it has made. The Committee recognises that the purpose of a sanction is not to be punitive, although it may have that effect, but is instead imposed in order to protect patients and safeguard the wider public interest.

In reaching its decision the Committee applied the principle of proportionality, balancing the public interest with Mr Underwood's own interests.

In the light of the findings made against Mr Underwood, the Committee determined that it would be wholly inappropriate to revoke the current order of suspension. [PRIVATE].

The Committee next considered whether to replace the order of suspension with one of conditions. [PRIVATE]. It determined that there were no conditions that could adequately address the risks identified.

The Committee then considered whether it was necessary to extend the current order of suspension on Mr Underwood's registration. It determined that a further period of suspension is proportionate and appropriate. Such a sanction will address the identified risks to the public and safeguard the wider public interest.

In the Committee's judgement, the appropriate period of extension is six months. In reaching that decision, the Committee has taken account of the impact of a further suspension on Mr Underwood and has determined that this is the appropriate and proportionate period. It further directs that the order be reviewed shortly before the end of the period.

[PRIVATE].

The Committee hereby directs that the suspension of Mr Underwood's registration in the Register be extended for a period of six months, with a review hearing to take place before the end of that period."

On 6 October 2017, at the review hearing, the Chairman announced the determination as follows:

“Mr Underwood,

This is a resumed hearing for the purposes of s 27C of the Dentists Act 1984. The hearing was held in private under Rule 53 of the General Dental Council (Fitness to Practise) Rules 2006 (the “Rules”), as matters relate to health. [IN PRIVATE]

The Committee having found that your fitness to practise continues to be impaired by reason of your adverse physical or mental health directs that the period of suspension be extended for a further period of 6 months with a review.

That concludes the hearing today.”

On 6 April 2018, at a review hearing the Chairman announced the determination as follows:

“Mr Underwood,

This is a resumed hearing pursuant to section 27C of the Dentists Act 1984, as amended, to review the suspension order imposed on your registration by the Health Committee on 6 October 2017 for a period of 6 months.

Mr Middleton made an application under Rule 53(2) of the General Dental Council (Fitness to Practise) Rules 2006 (the “Rules”), for the entire hearing to be held in private as the matters under consideration relate entirely to health. You opposed the application. You told the Committee that you have nothing to hide and that you want “everything out in the open”. The Committee accepted the advice of the Legal Adviser on this issue. The Committee carefully considered the nature of the hearing and your submission. It decided that the hearing will proceed in public.<sup>1</sup>

On 24 November 2015, the Health Committee (HC) found your fitness to practise to be impaired by reason of your: (i) conviction and caution; (ii) adverse physical or mental health. In relation to the conviction and caution, you admitted, and it was found proved that:

- on or about 17 September 2014 you were convicted at Central Kent Magistrates’ Court for driving a motor vehicle after consuming so much alcohol that the proportion of it in your breath exceeded the prescribed limit;
- on or about 17 March 2014 you received a police caution from Kent Police for the possession of controlled drugs namely cocaine and cannabis / cannabis resin.

In relation to the adverse health, you admitted, and it was found proved that you suffer from [PRIVATE]

The November 2015 Committee directed that your registration be suspended for a period of 9 months with a review.

At the review hearing on 8 September 2016, the HC found that your fitness to practise was no longer impaired by reason of your conviction and caution but continued to be impaired by reason of your adverse physical or mental health. The suspension was extended by a further period of 7 months with a review.

---

<sup>1</sup> Subsequent to the hearing, the material indicated as [Private] was redacted from the public determination in accordance with Rule 32 of FTP Rules 2006.

A second review hearing took place on 6 April 2017. You were neither present nor represented at that hearing. There was no evidence before that Committee of any progress in relation to your treatment. The April 2017 Committee found that your fitness to practise continued to be impaired by reason of your adverse physical or mental health. It directed that the period of suspension be extended for a further period of 6 months with a review.

A third review hearing took place on 6 October 2017. You attended the hearing and gave oral evidence to the Committee. That Committee commended your sincerity and the frankness of your reflection in your oral evidence. However, it did not receive any medical or other documentary evidence of [PRIVATE] or of any other progress in your treatment. The October 2017 Committee determined that your fitness to practise continued to be impaired. It directed that the period of suspension be extended for a further period of 6 months with a review.

### **Impairment**

This is the fourth review of your case. The Committee has comprehensively reviewed your case, taking account of the oral and documentary evidence. The Committee took account of the submissions made by Mr Middleton on behalf of the GDC and your representations including the documents which you asked the Committee to review.

After Mr Middleton had put the case for the GDC, you told the Committee that you accepted that your fitness to practise is currently impaired. You then sought to address the Committee on issues which were not within the scope of this Committee's powers. You wanted to inform the Committee of the causes of your adverse health and the effect on you that resulted. You also wanted to address the Committee on what you expected it to do about these issues. You were advised that these issues were not within the scope of the Committee's consideration today. You removed yourself from the hearing and you refused to participate further unless you were permitted to address the Committee on the matters referred to above.

The Committee heard submissions from Mr Middleton that he had explained the order of proceedings today and the issues which need to be considered today. The Legal Adviser also spoke with you in Mr Middleton's presence. The details of the discussions were placed on the record of the proceedings.

The Committee then sought submissions on whether the hearing should adjourn or proceed without you being in the hearing room. Mr Middleton submitted that you had elected to absent yourself from the hearing and that the hearing should proceed in your absence. The Committee accepted the advice of the Legal Adviser. The hearing started with you in attendance. The Committee notes that it is your right to withdraw from proceedings at any time and you decided to exercise that right. You did not suggest that the hearing should not continue but only that you did not wish to continue to participate unless you were allowed to address matters that you had been advised were outside this Committee's powers. The Committee determined that you had waived your right to be present and proceeded with the rest of the hearing in your absence.

The Committee's task today is to consider whether your fitness to practise is currently impaired and if so, what sanction, if any, to impose on your registration.

In considering current impairment, the Committee considered whether there had been any changes since the last hearing to indicate that your fitness to practise is no longer impaired. The Committee noted a change in that there was an up-to-date medical report from Dr S

before it whereas the previous Committee had no up-to-date medical report. The report states however that you remain unfit to work and recommends, amongst others, that you re-engage with the [PRIVATE] at least 6 months, before you are considered as fit to return to practice. The Committee took account of the report of Dr S dated 25 March 2018. It also heard oral evidence from him. Dr S confirmed his opinion in his report. Dr S interviewed you on 21 March 2018. He explained the remit of his discussions with you and stated that [PRIVATE].

[PRIVATE] Furthermore, Dr S's opinion was that you are "not fit for a return to practice at the present time."

The Committee noted the opinion of Dr S in his report and in his oral evidence. He remained clearly of the view that you are currently not fit to practise. [PRIVATE]. The Committee's view was that current and objective medical evidence was essential before it would be able to conclude that your fitness to practise is no longer impaired. Furthermore, it was of the view that you had demonstrated a lack of insight by not [PRIVATE], albeit that you accepted that you are not currently fit to practise. The Committee determined that your fitness to practise continues to be impaired by reason of your adverse health.

The Committee next considered what sanction, if any, to impose on your registration. In doing so it balanced the public interest with your interests. The purpose of a sanction is to protect the public and to maintain public confidence in the profession. For all the reasons set out above, the Committee concluded that it would not be appropriate to terminate your suspension and that a sanction should be imposed on your registration.

The Committee considered whether it should terminate the period of suspension and direct that your registration be made subject to your compliance with conditions. After careful consideration the Committee could not be satisfied that conditions of practice could be formulated at this stage to be workable, measurable or proportionate given the opinion of Dr S. A further period of suspension therefore remained the appropriate sanction in the Committee's judgment.

The Committee then considered Mr Middleton's submission that a period of 12 months suspension should be imposed to give you a further opportunity to engage fully with the recommendations made by Dr S. The Committee was of the view that this would have been appropriate if it was assured that you would use the time to manage your health conditions. The Committee noted that:

- there was no evidence of motivation on your part to manage your health conditions;
- there was no evidence that you were engaging with or that you intended to engage with any [PRIVATE] services that would assist you in managing your conditions;
- you have not cooperated with the GDC's request for [PRIVATE];
- you have had four previous periods of suspension giving you opportunities to engage with recovery processes in respect of your health conditions but you have not taken those opportunities;

The Committee had no confidence that imposing a suspension for a further period of 12 months would serve any useful purpose based on the history of this case and the current position. It therefore determined to direct that your registration be suspended indefinitely. It considers that in this time you will have the opportunity to manage your conditions in your own timeframe and as set out in Dr S's report.



Accordingly, the Committee directs that the period of suspension be imposed indefinitely pursuant to section 27C (1)(d) of the Dentists Act.

In accordance with section 27C(4) a Committee must review the order for indefinite suspension if:

- (a) you request them to do so;
- (b) at least two years have elapsed since the date on which the direction took effect; and
- (c) if the direction has previously been reviewed under this subsection, at least two years have elapsed since the date of the last such review decision.

That concludes the hearing today.”