General Dental Council | protecting patients, regulating the dental team

HEARING HEARD IN PUBLIC

SMOLKA, Aleksandra Krystyna

Registration No: 254253

PROFESSIONAL CONDUCT COMMITTEE

JUNE 2018 – DECEMBER 2019*

Outcome: Conditions revoked and suspension imposed for 12 months with immediate suspension (with a review)

***See page 15 for the latest determination**

SMOLKA, Aleksandra Krystyna, a dentist, Lek Stom Katowice 1995 was summoned to appear before the Professional Conduct Committee on 11 June 2018 for an inquiry into the following charge:

Charge (as amended on 14 June 2018)

"That being a registered dentist:

1. You failed to provide an adequate standard of care to Patient A on 9 May 2015, in that you did not:
   a. Carry out a general dental examination,
   b. Carry out an orthodontic examination and assessment,
   c. Use or have access to dental study models for the treatment you provided,
   d. Withdrawn,
   e. Obtain informed consent for the treatment you carried out in that you did not:
      i. Adequately inform Patient A of why the treatment provided was necessary,
      ii. Provide Patient A with the treatment options available,
      iii. Adequately inform Patient A of the risks and benefits of the treatment.
2. Between 29 March 2015 and 10 May 2015, you failed to provide an adequate standard of care to Patient B, in that you did not:
   a. Carry out a general dental examination,
   b. Have or record an adequate treatment plan for the treatment you provided,
   c. Obtain informed consent for the treatment you carried out in that you did not:
      i. Adequately inform Patient B of why the treatment provided was necessary,
      ii. Provide Patient B with the treatment options available,

iii. Adequately inform Patient B of the risks and benefits of the treatment,

d. Withdrawn.

3. On 9 April 2015, you failed to provide an adequate standard of care to Patient C, in that you did not:

   a. Carry out a general dental examination,

   b. Have or record an adequate treatment plan for the treatment you provided,

   c. Obtain informed consent for the treatment you carried out in that you did not:

      a. Adequately inform Patient C of why the treatment provided was necessary,

      b. Provide Patient C with the treatment options available,

      c. Adequately inform Patient C of the risks and benefits of the treatment,

4. You failed to provide an adequate standard of care to Patient D on 22 May 2015, in that you did not:

   a. Carry out a general dental examination,

   b. Carry out an orthodontic examination and assessment,

   c. Use or have access to dental study models for the treatment provided,

   d. Withdrawn,

   e. Obtain informed consent for the treatment you carried out in that you did not:

      a. Adequately inform Patient D of why the treatment provided was necessary,

      b. Provide Patient D with the treatment options available,

      c. Adequately inform Patient D of the risks and benefits of the treatment.

5. You failed to maintain an adequate standard of record keeping for the treatment provided between 29th March and 22 May 2015 to :

   a. Patient A,

   b. Patient B,

   c. Patient C,

   d. Patient D.

And that by reason of the matters alleged above, your fitness to practise is impaired by reason of your misconduct and/or deficient professional performance."

On 20 June 2018 the Chairman made the following statement regarding the finding of facts:

"Dr Smolka,

This case relates to a complaint received from witness 2, the practice manager at Polmedics Ltd, Rugby, Warwickshire, on behalf of witness 1, a Director at Polmedics who alleges that you provided substandard treatment to four of your former patients, A, B, C and D at the Wellingborough practice. The heads of charge you face include alleged failures to carry out a general dental examination, carry out an orthodontic examination and an assessment, use

or have access to dental study models for the treatment provided, have or record an adequate treatment plan, inform the patients of the risks and benefits of the treatment, provide treatment options and inform the patients why the treatment you carried out was necessary, and obtain informed consent. It is also alleged that you failed to maintain an adequate standard of record keeping in respect of these patients.

Admissions

You made no admissions at the outset of the hearing.

Factual evidence

The Committee received documentary evidence, which included copies of the clinical records for Patient A, Patient B, Patient C and Patient D at the Practice.

During proceedings, Mr Coke-Smyth on behalf of the GDC made an application under Rule 57(1) to admit two statements from Amy Jones, para legal at the GDC and Witness 2, practice manager at the Rugby practice. Mr Coke-Smyth submitted that following concerns made by you that the GDC was not in possession of all of the patient's records, and it is both fair and relevant to admit these additional witness statements at this stage. You made no objection to this application by the GDC. The Committee, having heard the advice of the Legal Advisor, considered that there is no unfairness to you by accepting these witness statements and acceded to the GDC's application.

You also made an application under Rule 57(1) to admit three witness statements of Dr K, WF and MC.

Mr Coke-Smyth objected to your application. He submitted that the Committee have a discretion but the GDC objects to the exercise of that discretion on two grounds. The first is because it is in breach of the directions given at the Preliminary Hearings and that no good reason has been provided for failing to comply with the requirements to serve the witness statements by 5 June 2018. He further submitted that the Committee also needed to consider fairness to the GDC in being able to deal with the issues raised and respond to them. Secondly, he submitted that the evidence referred to is simply not relevant at stage 1 to the issues before this Committee. He finally submitted that Dr K has a fitness to practise history which calls into question his credibility and reliability and as a consequence no weight should be given to his statement.

You accepted non-compliance with the Preliminary hearing directions. You explained that you had not monitored the case closely as you had trusted your lawyer to deal with this. You state that when you realised the deadlines were not adhered to you started taking steps, by terminating the relationship with your lawyer, because she failed to keep you updated. You subsequently instructed Mr A, who you stated did not deal with the matter as he should have. It was only towards the end of May that you realised your representative had failed to treat the matter appropriately. The Committee that during this hearing you have received lay support from Mr A via telephone, but not have been legally represented. You eventually dispensed with his services during the hearing.

You stated that the statements may seem indirectly relevant, but they will set out some of the background to what you are going to say.

The Committee considered the relevance of statements - questioning how they can judge relevance if they have not seen the material. The Committee was satisfied that they would be able to judge if it is relevant, and would be able to judge the weight to place on it. The Committee noted that you were prompted numerous times by the GDC, but you failed to

respond. You or your representative did not comply and the burden was on you. The Committee considered that the directions clearly outline when they needed to be disclosed.

However, in the interests of justice and fairness, the Committee is satisfied that it is able to accept these documents at this stage. The Committee was satisfied that they can then assess what weight and relevance to attach to them, bearing in mind that there would be no opportunity for the GDC to cross examine the evidence of Dr K or for the Committee to seek clarification. The Committee noted that you have been open and honest about your non-compliance. In all the circumstances the Committee consider it fair to admit the statements.

Assessment of witnesses

The Committee heard oral evidence from Patient A, Patient B, Patient C, Patient D, Witness 1 and 2, and from you. Patients C and B, and Witness 1 were heard via Skype. This was not opposed by you.

It considered that Patient A was a credible witness and was doing her best to assist the Committee. She was honest when she was unable to remember a specific detail due to the passage of time. In relation to Witness B, the Committee considered that she provided her evidence in a straightforward, clear and credible manner. Patient C's recollection of events was vague at times, however, she was clear about what she could not remember. In relation to Patient D the Committee found his oral evidence to be consistent, however at times his evidence was vague. The Committee found the oral evidence of witnesses 1 and 2 to be credible and reliable but at times conflicted each other.

The Committee also heard evidence from you. Your evidence overall was clear and consistent with your witness statement. Your oral evidence was assisted by the aid of an interpreter as Polish is your first language.

You later called two of the witnesses to give oral evidence, WF via Skype and MC via telephone. The Committee found the oral evidence of WF to be honest, however the Committee noted that she did not work with you during the relevant period and therefore her evidence was of limited assistance. The Committee found the oral evidence of MC to be credible, although at times it found it conflicting with your oral evidence.

Expert evidence

The Committee received a report, dated 12 April 2017, prepared by Professor Willmot, the expert witness called by the GDC. It also heard oral evidence from Professor Willmot. The Committee found his evidence to be of assistance in reaching its findings. Professor Willmot was careful to point out the limits of his expertise. For example, the Committee noted that he conceded in oral evidence that his expert knowledge was in orthodontics rather than in general dentistry.

No case to answer application

Mr Coke-Smyth, on behalf of the GDC, submitted that in respect of Charges 1(d), 2(d) and 4(d) there was insufficient evidence for him to be able to invite the Committee to find these charges proved in light of the evidence of Professor Willmot. Accordingly, he submitted that he will not advance a case in respect of those charges (albeit not applying to formally withdraw those charges)

You subsequently made an application of no case to answer in respect of 1(d), 2(d) and 4(d). This was not opposed by GDC and the Committee acceded (without retiring) to the application. The Committee accepted that on the basis of Professor Willmot's evidence there

was an adequate treatment plan is respect of Patient's A and D given the circumstances. The Committee also accepted that Professor Willmot conceded during his oral evidence that he was not critical of the absence of a radiograph because you had not carried out the original root filling. As a consequence, the determined that there is a no case to answer in respect of charges 1(d), 2(d) and 4(d).

The Committee's findings of fact

The Committee considered all of the evidence presented to it. It took account of the submissions made by Mr Coke-Smyth on behalf of the GDC and those made by you. The Committee accepted the advice of the Legal Adviser. It considered each head of charge separately, bearing in mind that the burden of proof rests with the GDC and that the standard of proof is the civil standard, that is, whether the alleged facts are proved on the balance of probabilities.

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

1. a)	Proved Patient A stated in evidence that no dental examination was carried out by you and no instruments were used by you. The Committee noted that there is no record made of a general dental examination. The Committee accepted the oral evidence of Professor Willmot who stated that "*there is no prior general dental assessment recorded in Patient A's notes and therefore he would have expected you to have carried out one but there is no record of this*." You stated in oral evidence that you had performed and recorded the examination, but that the records were removed by a colleague at Polmedics. The Committee is satisfied that you had begun treatment for Patient A and that you had a duty to perform a general dental examination for Patient A. You and other witnesses stated in oral evidence that you were placed under time pressure by the practice to see a large number of patients in a short period of time. However, the Committee considers that although the environment at the practice could have been better, ultimately it is your responsibility to ensure that all examinations are carried out and recorded. The Committee was satisfied that the working conditions at Polmedics did not amount to good reason for failing to comply with your professional obligations regarding adequate standards of care. The Committee therefore considers that due to the working conditions of time pressures being placed on you, it is more likely than not that you did not carry out a general dental examination and finds this charge proved.
1. b)	Proved. As you embarked on active orthodontic treatment, an orthodontic examination and assessment should have been provided. As there was no record of neither of these in the clinical record the Committee finds this

	charge proved. The Committee also took into account the findings made in charge 1(a).
1. c)	Proved. The Committee considers that you set about orthodontic treatment without reference to the study models. The Committee considers that you should have carried out treatment with reference to study models but failed to do so. This Committee accepted the evidence of Professor Willmot. He stated in his report that, "*there is no evidence that impressions were taken for dental study models, or that they were made, either by the earlier orthodontist of Dr Smolka, and I have not been given any such models*." Taking all of this into account the Committee finds this charge proved.
1. d)	No case to answer – Withdrawn
1. e) i)	Proved.
1. e) ii)	Proved
1. e) iii)	Proved. The Committee noted Patient A's evidence who stated that the appointment was rushed and you just wanted to get on with it. Patient A states that she arrived under the impression she was having a consultation and was surprised that active treatment was provided. She confirmed that you gave Patient A a piece of paper to sign and that you did not discuss why the treatment was being provided, the treatment options available and the risks and benefits of these options. You maintained in oral evidence that you did have a discussion with Patient A of the treatment proposed and had made a record of this but that these records were taken away by employees at Polmedics. The Committee accepted the evidence of Professor Willmot and in particular his findings in his report which states "*I would expect a dentist to take informed consent ensuring that the patient has enough information to make decisions about his/her future treatment. This should include, why the proposed treatment is necessary, the risks and benefits, what might happen if the treatment is not carried out and any other forms of treatment that are available*" Professor Willmot then goes on to state "*In her witness statement (p3, para 11,12) Patient A states that she was not given any further information as to why treatment was necessary or any other treatment options. Patient A also states she wanted to ask further questions but was not given the opportunity to do so*." In your oral evidence you appear to rely on the forms signed by patients as confirmation of consent. The Committee does not accept that this amounts to informed consent or a record of informed consent in accordance with GDC standard 3.1.2 *You should document the discussions you have with patients in the process of gaining consent. Although a signature on a for, is important in*

	verifying that a patient has given consent, it is the discussions that take place with the patient that determine whether the consent is valid. Taking all of this together the Committee is satisfied that you failed to obtain informed consent and finds charge 1(e) in its entirety proved.
2. a)	Proved. The Committee notes that this patient had multiple appointments with you during which you provided advanced restorative treatment. The patient has no recollection of an examination being carried. The Committee has no record of a general dental examination which would have been required prior to any restorative treatment.
2. b)	Proved. The Committee accepted the evidence of Professor Willmot who stated *there is no evidence of a treatment plan being in place when you took over the treatment of Patient B and in these circumstances, he would have expected you to make and record an adequate treatment plan*. The Committee took into account the relevant GDC standards at the time, in particular standard 2.3.8 *You should keep the treatment plan and estimated costs under review during treatment. You must inform your patients immediately if the treatment plan changes and provide them with an updated version in writing.* The Committee did take into account the language barrier between Patient B, who spoke Lithuanian, and you who speaks Polish. However, the Committee is satisfied that you had a duty to ensure that Patient B was provided with a treatment plan. It is therefore satisfied that you failed to have or record an adequate treatment plan for the treatment you provided and finds this charge proved.
2. c) i)	Proved. For the same reasons as in charge 1(e).
2. c) ii)	Proved For the same reasons as in charge 1(e).
2. c) iii)	Proved. For the same reasons as in charge 1(e). In oral evidence you stated that you relied on Patient B signing a form to confirm her consent. The Committee notes that this form is complex and is not in Patient B's first language. In any event the Committee did not consider this confirmation of informed consent.
2. d)	No case to answer – Withdrawn
3. a)	Proved. For the same reasons as in charge 1(a).
3. b)	Proved.

	For the same reasons as in charge 2(b).
3. c) a)	Proved. For the same reasons as in charge 1(e).
3. c)b)	Proved. For the same reasons as in charge 1(e).
3. c) c)	Proved. For the same reasons as in charge 1(e).
4. a)	Proved. For the same reasons as in charge 1(a). Also, in his oral evidence Patient D stated that his appointment was about 10-15 minutes in duration. The Committee finds this suggestive of a rushed appointment, and more likely than not to contribute to a lack of clinical records.
4. b)	Proved. For the same reasons as in charge 1(a) and 1(b).
4. c)	Proved. For the same reasons as in charge 1(c).
4. d)	No case to answer – Withdrawn
4. e) a)	Proved. For the same reasons as in charge 1(e).
4. e) b)	Proved. For the same reasons as in charge 1(e).
4. e) c)	Proved. For the same reasons as in charge 1(e).
5. a)	Proved.
5. b)	Proved.
5. c)	Proved.
5. d)	Proved. The Committee considers the record keeping was sparse. The records which have been supplied by Polmedics are all contained in the prosecution bundle. You maintain that these do not represent the full records in existence and the sections of your clinical records, some of which you wrote on separate pieces of paper, were removed by Polmedics prior to submission to the GDC. The Committee did not accept this as a credible explanation for the precocity of the clinical notes contained within the hearing bundle. The Committee concluded that it was more likely that the clinical notes provided accurately reflect tour standard of record keeping in respect of Patients A, B,

	C and D. The Committee having assessed the records is satisfied that it clearly demonstrates the style of practice that is below the standards required. Witness 1 and 2 gave oral evidence to confirm that all the records available in respect of Patient A, B, C, and D were passed onto the GDC. In particular, the Committee considered GDC standard; 4.1 *Make and keep contemporaneous, complete and accurate patient records.* You were clearly under a duty to maintain the records of Patients A, B, C, and D but failed to do so. The Committee finds charge 5 proved in its entirety.

We move to Stage Two."

On 22 June 2018 the Chairman announced the determination as follows:

"Dr Smolka,

The Committee has considered all the evidence presented to it. It has taken account of the submissions made by Mr Coke-Smyth on behalf of the General Dental Council (GDC) and the submissions made by you. The Committee has accepted the advice of the Legal Adviser.

Facts

You provided dental treatment to 4 patients between 29 March 2015 and 22 May 2015. There were repeated failings in providing an adequate standard of care for these patients, in fundamental areas of dentistry. These included your:

- failure to carry out general dental examinations;
- failure to carry out orthodontic examinations and assessments;
- failure to use or have access to dental study models for the treatment you provided;
- failure to have or record an adequate treatment plan for the treatment you provided
- failure to obtain informed consent;
- failure to keep and maintain accurate records.

Misconduct

The Committee has had regard to what it considered to be the relevant GDC standards in this case, as set out in *'Standards for the Dental Team' (September 2013),* which are the publications that cover the timeframe in question.

In relation to the clinical aspects of the Committee's findings, the failings were multiple, involving 4 patients and related to basic areas of dentistry. The omissions included no, or no adequate, records of: general dental examinations, orthodontic examinations, lack of dental study models, and informed consent. Further, you failed to maintain an adequate standard of record keeping. The Committee accepted, based on the opinion of Professor Willmot, that cumulatively, your standard of care and record keeping failings fell far below the standard expected of a reasonably competent general dental practitioner.

The Committee has concluded that your conduct was in breach of each of the standards as set out below.

Standards for the Dental Team (September 2013):

3.1 Obtain valid consent before starting treatment, explaining all the relevant options and possible costs.

3.2 Make sure that patients (or their representatives) understand the decisions they are being asked to make.

3.3 Make sure that the patient's consent remains valid at each stage of investigation or treatment.

4.1 Make and keep contemporaneous, complete and accurate patient records.

7.1 Provide good quality care based on current evidence and authoritative guidance.

9.1 Ensure that your conduct, both at work and in your personal life, justifies patients' trust in you and the public's trust in the dental profession.

The Committee is satisfied that there is a pattern of fundamental failings in areas of basic clinical care. It also took into account that although there was no evidence of actual patient harm, your failures to carry out any general dental examination or orthodontic examinations, failure to provide treatment plans as well as failure to obtain informed consent, placed these patients at risk of harm. The Committee also noted the opinion of the GDC expert, Professor Willmot, who stated that your failings in providing examinations and assessment were far below the standards expected. The Committee was satisfied on the basis of the factual findings that your failings in these aspects of your clinical practice were a serious departure from the standard expected of a reasonably competent dentist, and that they amount to misconduct.

Decision on deficient professional performance

In light of the Committee's conclusion that the facts found proved amounted to misconduct the Committee did not go on to make a finding in respect of deficient professional performance.

Impairment

The Committee next considered whether your fitness to practise is currently impaired by reason of your misconduct.

The Committee adopted the approach formulated by Dame Janet Smith in her Fifth Report from the Shipman case; that is, the PCC should ask itself:

> 'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:
>
> a. has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or
>
> b. has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or
>
> c. has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or

d. has in the past acted dishonestly and/or is liable to act dishonestly in the future.'

In reaching its decision on impairment, the Committee exercised its own independent judgement. It bore in mind that its duty was to consider the public interest, which 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.

In reaching its decision the Committee had regard to whether your failings were remediable, whether they have been remedied and whether they were unlikely to be repeated. The Committee noted that your failings related solely to the standard of care you provided in relation to examinations, assessments, treatments and record keeping. The Committee was satisfied that although serious, these shortcomings were capable of being remedied.

You stated to the Committee that you were open to learning and personal development and intend to continue to improve your professional skills. You stated to the Committee that you are now more careful, and have taken responsibility for your record keeping.

The Committee had before it limited evidence of relevant Continuing Professional Development (CPD) courses attended by you. It noted that it had not been provided with any evidence of CPD undertaken by you since January 2018. It also noted that the CPD you submitted has not been targeted towards the areas of concern. You have also produced letters from former colleagues at Green Surgery, but the Committee notes that this surgery closed in October 2016 and as a result did not cover your current practice.

The Committee noted that there was no evidence of patient harm. However, aside from evidence of that CPD, some testimonials produced from former colleagues and the reference from your current employer, the Committee did not have before it any evidence of adequate remediation undertaken by you.

Additionally, the Committee had concluded that you had demonstrated only limited insight into your failings or of your understanding of the potential risk of harm to your patients or the impact your actions could have had on public trust and confidence in the profession. Throughout these proceedings, you have continually sought to blame others for your failings.

You have not taken the opportunity to provide evidence to demonstrate that you have made effective changes in your practice. The limited evidence of remediation and insight lead the Committee to conclude that there remains a real risk of repetition. It considers that informed consent is a fundamental tenet of treating patients and providing treatment without this on a number of occasions is sufficiently serious to bring the profession into disrepute.

The Committee bore in mind that its primary function is to protect patients. It also considered the wider public interest, which includes maintaining confidence in the dental profession and the GDC as a regulator, and upholding proper standards and behaviour. The Committee concluded that to make a finding of no current impairment would significantly undermine the profession and public trust and confidence in the regulator as it would give the impression that such serious shortcomings would be tolerated. The Committee had regard to the serious nature of the issues identified in the circumstances of this case when reaching this decision.

Having regard to all these factors, the Committee concluded that your fitness to practise is currently impaired by reason of misconduct.

Decision on sanction

The Committee considered what sanction, if any, to impose on your registration. In reaching its decision, it took into account the '*Guidance for the Practice Committees including*

Indicative Sanctions Guidance (effective from October 2016)' (the Guidance). 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 your own interests.

In its consideration of the appropriate sanction, the Committee took into account what it considered to be the aggravating and mitigating factors in this case.

In terms of aggravating features, the Committee identified the following:

- The lack of insight throughout the whole process where you sought to pass blame by continually stating that former colleagues at Polmedics Ltd had removed the patient records.

In relation to mitigation, the Committee had regard to the following:

- That you have no fitness to practise history.
- That you have provided some evidence of remediation and the steps you have taken to try and avoid a repetition of your failings.
- The disorganised working environment at Polmedics
- Positive character references provided on your behalf by your current employer

Taking all the above factors into account, the Committee considered the available sanctions in ascending order.

Having found that there is an ongoing risk of repetition, given the insufficiencies in your remediation, the Committee decided that it would be inappropriate to conclude this case without taking any action in relation to your registration. It considered that such a course of action would not provide the necessary public protection and it would not address the wider public interest concern in this case.

The Committee next considered whether to issue you with a reprimand. It had regard to the Guidance which states that a reprimand might be appropriate if the circumstances do not pose a risk to patients or the public which requires rehabilitation or restriction of practice. In view of the Committee's concern about the ongoing risk to the public, it determined that a reprimand would not be an appropriate or proportionate outcome.

The Committee went on to consider whether to impose conditions on your registration. In doing so, it took into account paragraph 7.18 of the Guidance which deals with the sanction of conditions. It found that a number of the factors in support of imposing conditions applied in this case.

It was also satisfied that as you have engaged with the hearing process, there is a realistic prospect that you will respond positively to conditions. The Committee also took into account that there was no evidence of patient harm. In the circumstances, the Committee concluded that it was possible to formulate a set of conditions that will protect the public during the period they are in force. It also considered that conditional registration would serve to satisfy the wider public interest. Furthermore, the Committee was of the view that conditions would assist you in targeting your remediation towards the specific areas of concern as highlighted in this case.

In deciding to impose a conditions of practice order, the Committee was mindful that it was open to it to impose a suspension. However, it concluded that the risks identified in this case were not such that it warranted the suspension of your registration. In reaching this

conclusion the Committee took into account that you have no fitness to practise history and that you have remained in unrestricted practice since your treatment of the four patients. It has received no evidence of any concerns about your current practice in Tooting where you work 5 days a month, and your conduct in the intervening period. It also noted the positive character reference submitted on your behalf from your current employer.

It further considered the impact of suspension on your patients, who would be deprived of continuity of care, and for whom finding an alternative practitioner may prove difficult due to the nature of your work in orthodontics. The Committee was satisfied that conditional registration would be sufficient to address its outstanding concerns. It therefore decided that a suspension would be proportionate and punitive.

In all the circumstances, the Committee has determined to impose conditions on your registration for a period of 18 months. In deciding on this period, the Committee took into account that you are now engaging personally with this process. It considered the serious and widespread failings highlighted in its findings. It decided that, even with good progress, it would take a considerable amount of time for you to produce evidence of how you have embedded all your learning into your practice.

The following conditions are worded and set out as they will appear against your name in the Dentists Register:

1. She must notify the GDC promptly of any professional appointment she accepts and provide the contact details of her employer or any organisation for which she is contracted to provide dental services and any Commissioning Body on whose Dental Performers List she is included.
2. She must allow the GDC to exchange information with her employer or any organisation for which she is contracted to provide dental services.
3. She must inform the GDC of any formal disciplinary proceedings taken against her, from the date of this determination.
4. She must inform the GDC if she applies for any further dental employment outside the UK.
5. She must, within 6 weeks of the date of this order, if employed, or providing dental services, which require her to be registered with the GDC; and place herself and remain under the supervision of a workplace supervisor nominated by her and agreed by the GDC.
6. She must work with her workplace supervisor, to formulate a Personal Development Plan, specifically designed to address the deficiencies in the following areas of her practice:
    - General dental examination
    - Orthodontic examination
    - Appropriate use of study models
    - Treatment planning
    - Informed consent
    - Record keeping

7. She must forward a copy of her Personal Development Plan to the GDC within 2 months of the date on which these conditions become effective.

8. She must allow her workplace supervisor to provide reports to the GDC at intervals of not more than 3 months (from date of appointment), and to be provided two weeks prior to any review PCC hearing.

9. a) She shall carry out three monthly audits of:

- General dental examinations
- Orthodontic examinations
- Appropriate use of study models
- Treatment planning
- Informed consent
- Record keeping .

b) She must provide a copy of her audit to the GDC on a six-monthly basis, or alternatively, confirm that there have been no such cases.

10. She must inform within one week the following parties that her registration is subject to the conditions, listed at 1 to 9, above:

- Any organisation or person employing or contracting with her to undertake dental work;
- Any locum agency or out-of-hours service she is registered with or applies to be registered with (at the time of application);
- Any prospective employer (at the time of application);
- Any Commissioning Body on whose Dental Performers List she is included or seeking inclusion.

11. She must permit the GDC to disclose the above conditions to any person requesting information about her registration status.

A Committee will review your case at a resumed hearing to be held shortly before the end of the period of conditional registration. 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.

Unless you exercise your right of appeal, your registration will be subject to the above conditions, 28 days from the date when notice is deemed to have been served upon you.

The Committee now invites submissions from Mr Coke-Smyth and from you, as to whether the conditions should be imposed on your registration immediately, pending the Committee's substantive determination taking effect."

"Proceed in absence

Prior to the submissions made by Mr Coke-Smyth on an immediate order, the Committee noted that Dr Smolka was not present today. She informed the GDC today via email that she would not be attending in person today. Mr Coke-Smyth made an application to proceed in

her absence for the purposes of handing down the stage 2 determination and subsequently made a further application prior to his request for an immediate order. He submitted that it would be appropriate and in the public interest to proceed in the absence of Dr Smolka, given that she is aware of the today's hearing but has chosen voluntarily not to attend. He further submitted that there would be no prejudice to Dr Smolka.

The Committee then considered whether to hear this case in the absence of Dr Smolka in accordance with Rule 54. The Committee accepted advice from the Legal Adviser. The Committee took into account the submissions made by Mr Coke-Smyth and determined that it is fair to proceed in Dr Smolka's absence.

It has borne in mind the need for fairness to both parties, the nature of the allegations against Dr Smolka as well as the public interest in the expeditious disposal of this case. The Committee has seen a copy of Dr Smolka's email dated 22 June 2018 to the GDC's Hearings Team in which she states "*I would like to inform (sic) that I'll be absent today. I feel very bad and it is impossible co (sic) arrive*"

The Committee has received no compelling reasons as to why it should adjourn this PCC hearing and indeed there has been no such request from Dr Smolka. The Committee has also had regard to the public interest as well as Dr Smolka's own interests. The Committee has decided that it is fair to hand down the stage 2 determination and for the same reasons determined that the application for an immediate order should also proceed in the absence of Dr Smolka, in accordance with Rule 54.

Immediate Order

The Committee took account of the submissions made by Mr Coke-Smyth on behalf of the GDC that an immediate order should be imposed on Dr Smolka's registration.

The Committee accepted the advice of the Legal Adviser.

The Committee is satisfied that it is necessary for the protection of the public to order that Dr Smolka's registration be made conditional forthwith under s 30(2) of the Dentists Act 1984. In reaching its decision, the Committee balanced the public interest with her interests. It would be inconsistent with the decision the Committee has made at stage 2 not to make an immediate order.

The effect of the foregoing determination, and this order, is that Dr Smolka's registration is made conditional forthwith. Unless Dr Smolka exercises her right of appeal, the substantive 18-month period of conditional registration will commence in 28 days' time. Should Dr Smolka exercise her right of appeal, this immediate order will remain in force pending the disposal of the appeal.

That concludes the hearing for today."

At a review hearing on 6 December 2019 the Chairman announced the determination as follows:

"Ms Smolka: This is the resumed hearing of your case in accordance with Section 27C of the Dentists Act 1984 (as amended) (the Act) following a direction by a Professional Conduct Committee (PCC) in June 2018 that your registration should be subject to an order of conditions for a period of 18 months. That PCC indicated that the order should be reviewed before its expiry. You are participating at these proceedings via Skype link from Poland. A Polish interpreter is present at the hearing and is assisting with translation. Mr Middleton appears on behalf of the General Dental Council (GDC).

Background

You appeared before the PCC in June 2018 in respect of allegations against you relating to a failure to provide an adequate standard of care to four patients, A, B, C and D, between 29 March 2015 and 22 May 2015. The PCC found repeated failings for these patients in basic areas of dentistry, which included:

- failure to carry out general dental examinations;
- failure to carry out orthodontic examinations and assessments;
- failure to use or have access to dental study models for the treatment you provided;
- failure to have or record an adequate treatment plan for the treatment you provided
- failure to obtain informed consent;
- failure to keep and maintain accurate records.

The PCC heard expert evidence from Professor Willmot (called on behalf of the GDC). He opined that cumulatively, your standard of care and record keeping failings fell far below the standard expected of a reasonably competent general dental practitioner. The PCC agreed. It also concluded that your conduct was in breach of a number of the GDC's "Standards for the Dental Team" (September 2013). The PCC considered that there was a pattern of "fundamental failings in areas of basic clinical care". It also took into account that although there was no evidence of actual patient harm, your failures to carry out any general dental examination or orthodontic examinations, failure to provide treatment plans as well as failure to obtain informed consent, placed these patients at risk of harm. The PCC determined that the findings against you were serious and amounted to misconduct.

In reaching its decision on impairment, the PCC first considered whether your failings were remediable. It was satisfied that although serious, these shortcomings were capable of being remedied. The PCC had some evidence of remediation of it before it but considered that it was insufficient. Additionally, the PCC had concerns about your insight into your failings, which it described as being "limited". It considered that you had continually sought to blame others for your failings. Given these factors, the PCC concluded that there remained a real risk of repetition. The PCC also considered the wider public interest, which includes maintaining confidence in the dental profession and the GDC as a regulator and upholding proper standards and behaviour. It had regard to the serious nature of the issues identified in this case. Having regard to all these factors, the PCC concluded that your fitness to practise was currently impaired by reason of misconduct.

In terms of sanction, the PCC cited your lack of insight as an aggravating feature. However, in relation to mitigation, it acknowledged that you had provided some evidence of remediation. The PCC considered that it was appropriate to impose conditions (11 in total) on your registration. In reaching its decision on conditional registration, the PCC took into account that you had engaged with the hearing process and considered that there was a realistic prospect that you would respond positively to conditions. The PCC concluded that it was possible to formulate a set of conditions that would protect the public during the period they were in force and would serve to satisfy the wider public interest. Furthermore, the PCC

was of the view that conditions would assist you in targeting your remediation towards the specific areas of concern as highlighted in this case. The conditions included:

"4. She must inform the GDC if she applies for any further dental employment outside the UK.

5. She must, within 6 weeks of the date of this order, if employed, or providing dental services, which require her to be registered with the GDC; and place herself and remain under the supervision of a workplace supervisor nominated by her and agreed by the GDC.

6. She must work with her workplace supervisor, to formulate a Personal Development Plan, specifically designed to address the deficiencies in the following areas of her practice:

- General dental examination
- Orthodontic examination
- Appropriate use of study models
- Treatment planning
- Informed consent
- Record keeping

7. She must forward a copy of her Personal Development Plan to the GDC within 2 months of the date on which these conditions become effective.

9. a) She shall carry out three monthly audits of:

- General dental examinations
- Orthodontic examinations
- Appropriate use of study models
- Treatment planning
- Informed consent
- Record keeping .

b) She must provide a copy of her audit to the GDC on a six-monthly basis, or alternatively, confirm that there have been no such cases."

Today's review

This Committee first considered whether your fitness to practise remains impaired by reason of misconduct. In so doing, the Committee has had regard to the GDC's bundle of documents as well as the submissions made by both parties. The GDC's bundle contains exchanges of correspondence between you and the GDC as to your compliance with the conditions and your future intentions, including a number of emails from the GDC reminding you to submit the required information. It also contains correspondence between you and the GDC regarding your nomination of your Workplace Supervisor. Further, the Committee has seen copies of two PDPs you sent to the GDC – the first one is dated 21 November 2018 and the second one (the most recent one) is dated 30 December 2018.

Your Workplace Supervisor stated in her first report dated 12 November 2018 that the first meeting with you took place on 7 September 2018. She set out what took place at that meeting. She observed that you only came to London once a month from Poland. A subsequent meeting was arranged for 9 November 2018 at which she says you reassured her that you had done a PDP. However, your Workplace Supervisor did not see a copy of it.

In her second report, dated 11 February 2019, your Workplace Supervisor stated that you sent her a copy of her PDP by email and that she suggested some improvements to it. She stated that a face to face meeting with you took place on 11 January 2019 but given that you had not been in London since the last meeting in November, there were no new cases to discuss or any start records, or assessments done. She set out some of the matters discussed at that meeting. Your Workplace Supervisor also reported that a further meeting took place on 8 February 2019, at which she noted that you had prepared and brought along two of your cases for an audit for the GDC. She set out the advice she gave you in respect of the matters discussed.

In her third report, dated 10 May 2019, your Workplace Supervisor states that she has only had one further meeting with you, which took place on 1 March 2019. At that meeting you discussed various clinical situations. She states that you were due to attend another meeting with her on 19 April 2019 when you were in the UK to treat your patients but that you cancelled this visit, saying that you were unwell. She further states that you did not offer the clinic another date when your patients could be rebooked. She states “it has been very frustrating times for clinic staff, the management and especially the patients. The clinic has decided to appoint someone else to continue her position. … So far, it looks as if this was the last report I am writing. ... She has not been in touch with myself either”.

Your Workplace Supervisor provided the GDC with a fourth report, dated 6 August 2019. She says that you have not been back to the London medical centre since April [2019]. She concludes by stating that she assumes her role as a supervisor has now come to an end.

The Committee notes from your communications with the GDC that in February 2019 you provided documentation of two cases (as part of your compliance with condition 9). In April 2019 you emailed the GDC, explaining you were unwell and seeking advice as to what you to do. You set out the symptoms that have arisen following a car accident which occurred in November 2018.

On 11 July 2019 you emailed the GDC, notifying it that you wished your registration to be cancelled due to your health problems. The necessary application forms for Voluntary Removal from the Register were sent to you on 11 July 2019 but the GDC received no response from you in that respect.

Mr Middleton indicated that the GDC has concerns as to your compliance with the conditions since they were imposed in 2018. These were as follows:

- Condition 4 – the GDC has concerns that you may have some involvement with a dental clinic in Poland, as demonstrated by a screenshot of a website from a dental clinic in Poland containing your details. By email dated 14 October the GDC wrote to you, asking you to clarify whether you were currently undertaking dental work outside the UK. You did not respond.
- Conditions 5, 6 and 7 – the GDC has concerns as to your level of engagement with your Workplace Supervisor, including the frequency of meetings and the fact that the

PDP (the first of two) you submitted was forwarded to the GDC later than 2 months after the conditions became effective. Furthermore, your PDP does not appear to have been formulated in conjunction with your Workplace Supervisor. It acknowledges that you have submitted a second PDP on 7 January 2019 but says that this one page document does not appear to address the areas of general dental examination or appropriate use of study models, as envisaged by Condition 6.

- Condition 9 – the GDC has only received information relating to one "audit".

Mr Middleton submitted that against this background, this Committee cannot be confident that the clinical failings identified by the PCC could not be repeated. He also raised the question as to whether or not you have addressed the previous PCC's concern regarding your lack of insight. Mr Middleton invited the Committee to find that during the time when your registration has been subject to conditions you have, on occasions, failed to comply with the conditions imposed on your registration, in accordance with Section 27C(3) of the Act. He submitted that your fitness to practise remains impaired by reason of your misconduct. Mr Middleton also submitted that conditions are no longer workable given that there is question as to whether this Committee can be reasonably confident that you will comply with them. Further, he submitted that you would need to be practising in the UK in order to comply with the conditions. In summary, the GDC's position is that the Committee should consider giving a direction under Section 27C(3) that your registration be suspended.

During the course of Mr Middleton's submissions, he referred the Committee to the cases of Abrahaem v General Medical Council [2008] EWHC 183 (Admin) and Kimmance v General Medical Council [2016] EWHC 1808, which he said, were useful judgements to be taken into account in this case.

You gave evidence, under affirmation, before the Committee. You explained that you tried to see your Workplace Supervisor as much as you could whenever you came to England, although the opportunities were limited as you did not stay very long. You assured the Committee that you discussed your PDP with your Workplace Supervisor. You accepted that there may have been some oversights on your part but that you did try to comply with the conditions on your registration. You explained that the audits were completed and that one of them was submitted to the GDC but said that you were unsure as to whether the other audits were submitted, either by yourself or your Workplace Supervisor. You spoke of the very positive support you received from your Workplace Supervisor and how this benefitted you. However, you accepted that you cancelled some of your meetings with your Workplace Supervisor due to health concerns.

You say that since Autumn 2018 you have not able to practise as a dentist due to health concerns. You provided further information as the nature of your health concerns. You say that you told the GDC and your employer about your circumstances around that time, but you felt that "nobody seemed to care." You explained that despite your health concerns, you say that you were trying to comply with the conditions. However, as of March 2019, you say that your health condition had deteriorated, which prevented you from being able to practise as a dentist, either in England or in Poland. You told the Committee that you do not anticipate returning to the UK to practise as a dentist, given your current situation. You accepted that conditions may no longer be workable given that you are not working in England and have no plans to do so in the foreseeable future.

The Committee has considered carefully the submissions made. It has accepted the advice of the Legal Adviser.

Dealing firstly with the issue as to your compliance with the conditions on your registration, the Committee has considered in turn each of the conditions in question as follows:

In respect of the alleged breach of condition 4, you explained that you have been the owner of the medical practice in Poland over for the past 25 years. However, you say that due to your health situation you have not been working there. Although you did not respond to the GDC's request on 14 October 2019 for information, the Committee accepted your evidence on this matter. There is no suggestion that you applied for work outside the UK. It therefore finds that you did not breach condition 4.

In respect of the alleged breaches of conditions 5, 6 and 7, the Committee notes from the documents before it that you had some difficulty in securing the approval by the GDC of a suitable Workplace Supervisor. It notes that it was not until 13 August 2018 when the GDC approved your third suggestion of a Workplace Supervisor, by which time the conditions on your registration had been in place for several months. In the Committee's view, the delay in securing a suitable Workplace Supervisor compromised your ability to comply with working with your Workplace Supervisor in formulating a PDP. The Committee finds that there has been a technical breach of conditions 5, 6 and 7, but it considers that there were extenuating circumstances.

In respect of the alleged breach of condition 9, the Committee has borne in mind the correspondence between the GDC and you, from which it appears that you may be unfamiliar with the requirements of an audit. It also notes from an email sent from your Workplace Supervisor to the GDC on 14 August 2018 that she was inexperienced in that role. The Committee finds that there has been a technical breach of condition 9 but it considers that there were extenuating circumstances.

The Committee has taken into account your breaches of 4 of the 11 conditions imposed on your registration. It has also had regard to your health difficulties. While it recognises that you have attempted to address some of the concerns identified by the PCC in June 2018, it is not satisfied that your remediation is sufficient. In the Committee's view, your remediation needs to be more targeted to address all six of the areas of concern set out in condition 6. Further, the Committee has concerns about your insight. It considers that you have not yet taken full responsibility for the need to comply with the conditions on your registration and be proactive in engaging in the process. In the Committee's view, there remains a risk of repetition of the matters raised by the PCC in 2018 and that a finding of current impairment is necessary for the protection of the public.

The Committee further considers that a finding of current impairment is required in the wider public interest so as to declare and uphold proper professional standards. Given the serious nature of the concerns identified in June 2018 and the limited progress made to remediate them, the Committee finds that trust and confidence in the profession would be undermined and that the profession would be brought into disrepute if a finding of impairment were not made in the particular circumstances of this case.

Taking all these matters into account, the Committee has concluded that your fitness to practise remains impaired by reason of your misconduct.

The Committee next considered what direction to give, bearing in mind its powers in accordance with Section 27C(2) of the Dentists Act 1984. In so doing, it has had regard to the GDC's "Guidance for the Practice Committees including Indicative Sanctions Guidance"

(October 2016, updated May 2019). It has had regard to the submissions made. The Committee has also kept in mind the principle of proportionality.

In the Committee's view, you remain a risk to the public and in these circumstances, it is satisfied that it is necessary to take action in respect of your registration.

The Committee considered whether to extend the current order of conditions, or to vary the order. It recognises some of the difficulties you have faced in trying to comply with the conditions, not least the fact that you are currently residing in Poland and do not see the situation changing in the foreseeable future. The Committee has also had regard to your health condition which has meant that you have been unable to travel. You accepted that you would need to be in the UK in order to comply with the conditions. The Committee has also borne in mind your failure to comply with some of the conditions place on your registration. It is mindful that an important consideration in whether to impose conditions is the Registrant's willingness and/or ability to comply with conditions. Given the change in circumstances since the initial hearing of your case, the Committee is no longer satisfied that you are able to comply with conditions. It has concluded that conditions are no longer workable, achievable or sufficient for the protection of the public and the wider public interest.

The Committee therefore directs that your registration be suspended for a period of 12 months. It is satisfied that this period of time is necessary for the protection of the public and the wider public interest. It will also afford you time to take steps to address the specific concerns raised by the PCC. The order of suspension will be reviewed shortly before the end of the 12 month period. That Committee will consider what action it should take in relation to your registration.

Although the Committee in no way wishes to bind or fetter the Committee which will review this suspension, it considers that the reviewing Committee may be assisted by being provided with a reflective piece that demonstrates your insight into the matters of concerns raised by the PCC in June 2018 and evidence that you have addressed your failings. These are as follows:

- General dental examination
- Orthodontic examination
- Appropriate use of study models
- Treatment planning
- Informed consent
- Record keeping.

The Committee now invites submissions from both parties as to whether your registration should be suspended immediately, pending the taking effect of its substantive direction of suspension."

Decision on immediate order

"Having directed that Ms Smolka's registration be suspended, the Committee has considered whether to impose an order for immediate suspension on her registration in

accordance with Section 30(1) of the Dentists Act 1984 (as amended). Mr Middleton has invited the Committee to make such an order. Ms Smolka was not contactable by telephone or via Sykpe at this stage of the proceedings.

In light of its reasons for finding that Ms Smolka's fitness to practise is impaired and its decision that conditions are no longer workable, the Committee is satisfied that it would be inappropriate to allow her the opportunity to continue to practise during the intervening appeal period. In

accordance with Section 30(1) of the Dentists Act 1984 (as amended), the Committee has determined that it is necessary for the protection of the public and is otherwise in the public interest to order that Ms Smolka's registration be suspended forthwith.

The effect of this direction is that unless Ms Smolka exercises her right of appeal, her registration will be suspended immediately.

That concludes today's hearing."