HEARING HEARD IN PUBLIC

SHEIKH, Hamza Tahir
Registration No: 154800

PROFESSIONAL CONDUCT COMMITTEE
DECEMBER 2016 – JULY 2017

Outcome: 3 month suspension

Hamza Tahir SHEIKH, a dentist, BDS Lond 2008, was summoned to appear before the Professional Conduct Committee on Monday 5 December 2016 for an inquiry into the following charge:

Charge (as amended on 7 December 2016)

“That being a registered dentist:

1. On or before 26 January 2015 you purchased counterfeit dental equipment for use on your patients, as set out in the Schedule attached¹.

2. Between 13 December 2014 and 26 January 2015 you purchased non-compliant dental equipment for use on your patients, as set out in the Schedule attached.

3. Your conduct in relation to paragraph 1 above was:
   a) Misleading;

4. Your conduct in relation to paragraph 2 above was:
   a) Misleading;

5. Between 27 January 2015 and 20 July 2015 you purchased non-compliant dental equipment for use on your patients, as set out in the Schedule attached.

6. Your conduct in relation to paragraph 5 above was:
   a) Financially motivated;
   b) Misleading;
   c) Deliberately misleading;
   d) Dishonest, in that you knew that you were permitting the use of non-compliant dental equipment at Practice A.

7. Your conduct in relation to paragraph 1 above put patients and staff at risk, in that they could have been harmed by the use of the counterfeit dental equipment.

¹ Please note that the schedule is a private document and cannot be disclosed.
8. Your conduct in relation to paragraphs 2 and 5 above put patients and staff at risk, in
that they could have been harmed by the use of the non-compliant dental equipment.

9. On 20 July 2015 you failed to co-operate with an investigation by the Medicines and
Healthcare products Regulatory Agency (MHRA) concerning your suspected purchase
of counterfeit and/or non-compliant dental equipment.

10. Your conduct in relation to paragraph 9 above was:
   a) Unprofessional
   b) Dishonest

   AND, by reason of the facts stated, your fitness to practise as a dentist is impaired by reason
   of your misconduct.”

On 9 December 2016, the Chairman made the following statement regarding the finding of facts:

“Mr Sheikh,

This is a Professional Conduct Committee hearing. You are represented at this hearing by
Mr Kennedy, Counsel. Mr Dent, Counsel, is the Case Presenter for the General Dental
Council (‘the GDC’).

The matters in this case arise from your alleged purchase from an online auction site of
counterfeit dental equipment on or before 26 January and non-compliant dental equipment

There are also allegations concerning your failure to co-operate on 20 July 2015 with an
investigation by the Medicines and Healthcare Products Regulatory Agency (‘the MHRA’)
concerning your suspected purchase of counterfeit and/or non-compliant dental equipment.

Admissions

At the outset of the hearing, Mr Kennedy informed the Committee of your admissions in
respect of heads of charge 1, 2, 3(a), 4(a), 5, 6(a), 6(b), 7 and 8. The Committee noted Mr
Kennedy’s submissions regarding the basis upon which some of your admissions were
made. He told the Committee that your admissions to heads of charge 2 and 5 were partial
admissions in that you accepted these allegations in respect of certain number dental
devices referred to in this case, but not all. In relation to your admissions to the allegations
of misleading conduct, as set out at heads of charge 3(a), 4(a), and 6(b), Mr Kennedy stated
that you accepted that your conduct was objectively misleading.

Notwithstanding your admissions, the Committee determined to defer any findings on the
facts until all the evidence had been adduced.

The evidence of the GDC

The Committee received documentary evidence which comprised the witness statements
and associated exhibits, of Witness A and Witness B, dated 12 July 2016 and 18 July 2016
respectively. Witness A and Witness B were the Investigating Officers of the MHRA (‘the
MHRA officers’), who carried out unannounced inspections at your practice on 26 January
2015 and on 20 July 2015. Their evidence was that the first of these inspections took place
following concerns about a dental device that you had sent for repair. The second inspection took place after the officers became aware that you had made further purchases of dental equipment from the same online auction site and supplier. The MHRA officers attended this hearing to give oral evidence to the Committee. In addition to the oral evidence, the Committee saw a number of the dental devices seized by them during the inspections in January and July 2015.

In terms of expert evidence, the Committee received a report, dated 21 July 2016, and a supplemental report, dated 4 December 2016, both prepared by Professor Stuart Morganstein, the expert witness for the GDC. Professor Morganstein also gave oral evidence.

**Amendments to the charge under Rule 18 of the GDC (Fitness to Practise) Rules 2006 (‘the Rules’)**

Prior to the formal conclusion of the GDC’s factual case, Mr Dent applied to amend the charge by attaching to it an agreed ‘Schedule to the Charges’ (‘the Schedule’), which sets out the scope of the allegations at heads of charge 1, 2 and 5. The Schedule contained the descriptions and the number of dental devices allegedly purchased at the material times. Mr Dent proposed amending individually heads of charge 1, 2 and 5 by adding the words “as set out in the Schedule attached” to the end of each paragraph.

Mr Dent went on to make a further application to amend the Schedule, so as to accurately reflect the evidence. Professor Morganstein accepted in cross-examination that there had been some duplication in the table appended to his supplementary report. Accordingly, Mr Dent applied to modify the Schedule to remove that duplication.

Mr Kennedy indicated that he was content with all of the amendments proposed.

Following advice from the Legal Adviser, the Committee acceded to both of Mr Dent’s applications. Having had regard to the merit of the case and the fairness of the proceedings, the Committee was satisfied that the amendments could be made without causing any injustice.

Mr Kennedy confirmed to the Committee that your admissions made at the outset of the hearing remained applicable to the charge, as amended.

**Determination on the submission of no case to answer under Rule 19 of the Rules**

At the conclusion of the GDC’s factual case, Mr Kennedy, on your behalf, made a submission under Rule 19(3) of the Rules. His submission was that there was no case to answer in respect of head of charge 5, in so far as it relates to subsections (a), (e), (f) and (g) under Charge 5 in the Schedule.

Mr Kennedy drew the Committee’s attention to the wording of head of charge 5, as amended, which states that: “Between 27 January 2015 and 20 July 2015 you purchased non-compliant dental equipment for use on your patients, as set out in the Schedule attached.” Mr Kennedy submitted that the burden was on the GDC firstly, to prove that you purchased the dental equipment listed in the Schedule under Charge 5 and secondly, to prove that the dental equipment was non-compliant. He stated that the GDC’s evidence had to satisfy both of these criteria for head of charge to be found proved in relation to the relevant dental devices in the Schedule.

It was Mr Kennedy’s submission in relation to the dental device at subsection (a) under Charge 5 in the Schedule, namely the ‘Skysea dental handpiece’, that there was no
evidence of purchase. He stated that the only evidence advanced by the GDC was your purchase history for the online auction site, from which Professor Morganstein was unable to identify the purchase of the handpiece in question.

In relation to subsections (e), (f) and (g) under Charge 5 in the Schedule, Mr Kennedy submitted that there was insufficient evidence upon which the Committee could find, on the balance of probabilities, that these devices were non-compliant. The devices in question are the Ultrasonic scaler handpiece, the ‘Kavo’ multiflex quick coupler and the ‘Kavo’ fibre optic high speed quick coupler. Mr Kennedy highlighted that Professor Morganstein’s opinion that these devices are non-compliant was based solely on the information regarding their cost, origin and location. Mr Kennedy stated that the items could not simply be regarded as non-compliant because they were purchased via the online auction site.

In opposing the submission, Mr Dent submitted that there was a proper evidential basis for finding subsection (a) under Charge 5 in the Schedule proved. He highlighted the apparent absence of the Skysea dental handpiece at the first inspection by the MHRA officers and its presence at the second inspection. Mr Dent stated that this indicates that the handpiece must have been purchased after 26 January 2015. He argued that it could have been purchased by means other than via the online auction site.

Mr Dent also invited the Committee to conclude that there was evidence upon which the Committee could find that the items at subsections (e), (f) and (g) under Charge 5 were non-compliant dental devices. Mr Dent referred the Committee to the factors outlined by Professor Morganstein. These included information that the retailers of these products were known to be suppliers of non-compliant items and also the price differential between these products and devices that are regarded as compliant items.

The Committee had regard to the evidence that had been adduced by the GDC in respect of the relevant subsections in the Schedule and it took account of the submissions made by both Counsel. The Committee also accepted the advice of the Legal Adviser, who confirmed that the correct test to be applied was that set out in R v Galbraith [1981] 1 WLR 1039, as referred to during Counsel’s submissions.

The Committee decisions were as follows:

**Head of charge 5 in relation to subsection (a) under Charge 5 in the Schedule**

The Committee did not accede to the submission of no case to answer.

The Committee noted Mr Kennedy’s submission regarding the absence of any online purchase information for the Skysea dental handpiece. It decided, however, that there was evidence which could support a purchase of the handpiece during the material times set out in head of charge 5. The Committee therefore concluded that the evidence in respect of this particular allegation was not so tenuous that it could not be found proved.

**Head of charge 5 in relation to subsections (e), (f) and (g) under Charge 5 in the Schedule**

The Committee did accede to the submission of no case to answer in relation to these three subsections. It reached the same conclusion in respect of each of the individual dental items in question, namely the Ultrasonic scaler handpiece, the ‘Kavo’ multiflex quick coupler and the ‘Kavo’ fibre optic high speed quick coupler.

It was expert opinion of Professor Morganstein that these items were non-compliant dental devices. The Committee noted that his assessment in this regard was based solely on the
cost of the items, their origin and location. The three dental devices concerned were not seized during either of the inspections of your practice and had therefore not been seen by Professor Morganstein. The Committee decided that in the absence of any supporting physical evidence, it would not be safe to proceed with these allegations. The Committee was not satisfied that the evidence adduced by the GDC, when taken at its highest, was capable of finding these particular allegations proved on the balance of probabilities.

The Committee noted that as a consequence of its Rule 19(3) determination and the aforementioned amendments to the charge, your admissions to heads of charge 2 and 5 became full admissions.

The evidence of the Defence

The Committee received a copy of your witness statement, dated 8 November 2016. You also gave oral evidence to the Committee regarding the outstanding allegations in this case.

The Committee further heard character evidence from Witness 1, who gave evidence on your behalf by telephone.

The Committee’s assessment of the witnesses in this case

The Committee found Witness A to be a credible witness. He was clear and measured in giving his testimony. The Committee was satisfied that Witness A had a good recollection of the inspections and it noted that he was clear in saying when he could not recall specific details. The Committee found that the oral evidence of Witness B supported what was said by Witness A. It considered her to be a more nervous witness, who, at times, became defensive during cross-examination. Nevertheless, the Committee considered that she was truthful in giving her account of the events.

The Committee found your evidence to be less reliable than that of Witness A and Witness B. Whilst it considered your evidence to be credible in parts, it found that there were clear inconsistencies between your witness statement and what you told the Committee in evidence. The Committee found that these discrepancies were most notable when you were challenged on key issues during cross-examination. For example, in your witness statement you stated that you had “no suspicions” with regard to any of the dental equipment you had purchased. By contrast, under cross-examination, you admitted to believing that there was only a “slim chance” that the handpieces you had purchased would be found to be compliant.

In relation to Witness 1, the Committee considered that he gave answers that would ordinarily be expected from a character witness. The Committee noted that he is someone who has known you for a long period of time. However, the Committee considered that his evidence was not relevant at this stage.

In considering the expert evidence, the Committee accepted the credentials of Professor Morganstein as an eminent member of the dental profession. However, it was not satisfied that his expertise lies in the area of CE markings, counterfeit and non-compliant dental equipment. The Committee did not consider that to be a reason to entirely discard his evidence on these matters, as it did find his reports and oral evidence to be helpful. During Professor Morganstein’s evidence, the Committee was able to examine the dental handpieces in the polythene bags in which they were sealed. Whilst helpful up to a point, this was not central to its fact-finding task.

The Committee’s findings of fact
The Committee considered all of the evidence presented to it, both oral and documentary. It took account of the closing submissions made by Mr Dent on behalf of the GDC and those made by Mr Kennedy on your behalf. The Committee accepted the advice of the Legal Adviser, including his advice regarding the case of *Fish v General Medical Council* [2012] EWHC 129, in which Foskett J stated “b) when it [a dishonesty allegation] is made it should be clearly particularised so that the person against whom it is made knows how the allegation is put...”

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:

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<tr>
<td>1.</td>
<td><strong>On or before 26 January 2015 you purchased counterfeit dental equipment for use on your patients, as set out in the Schedule attached.</strong></td>
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<td></td>
<td>Admitted and proved (as amended).</td>
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<td>2.</td>
<td><strong>Between 13 December 2014 and 26 January 2015 you purchased non-compliant dental equipment for use on your patients, as set out in the Schedule attached.</strong></td>
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<td></td>
<td>Admitted and proved (as amended).</td>
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<td>3.</td>
<td>Your conduct in relation to paragraph 1 above was:</td>
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<td>3. a)</td>
<td>Misleading;</td>
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<td>Admitted and proved.</td>
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<td>4.</td>
<td>Your conduct in relation to paragraph 2 above was:</td>
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<td>4. a)</td>
<td>Misleading;</td>
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<td></td>
<td>Admitted and proved.</td>
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<td>5.</td>
<td><strong>Between 27 January 2015 and 20 July 2015 you purchased non-compliant dental equipment for use on your patients, as set out in the Schedule attached.</strong></td>
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<td>Admitted and proved (as amended) in relation to the dental devices set out at subsections (b) and (c) under Charge 5 in the Schedule, namely five <em>Yabangbang contra angle fibre optic handpieces</em>.</td>
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<td>Not proved (as amended) in relation to the dental device set out at subsection (a) under Charge 5 in the Schedule, namely one <em>Skysea dental handpiece</em>.</td>
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The Committee was not satisfied that the GDC had discharged its burden of proof in relation to subsection (a). It accepted that the lack of evidence relating to a purchase specifically through the online auction site in question did not mean that the Skysea dental handpiece was not purchased by you. However, the Committee considered that there was insufficient evidence overall to conclude, on the balance of probabilities, that the handpiece was purchased between 27 January and 20 July 2015.
6. **Your conduct in relation to paragraph 5 above was:**

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| 6. a) | **Financially motivated;**  
|      | Admitted and proved. |
| 6. b) | **Misleading;**  
|      | Admitted and proved. |
| 6. c) | **Deliberately misleading;**  
|      | Proved. |

This head of charge relates to your re-purchase from the online auction site of five Yabangbang contra angle fibre optic handpieces. The evidence before the Committee shows that you made this re-purchase on 10 February 2015. In reaching its finding, the Committee considered what your knowledge would have been at the time of re-purchasing the five Yabangbang handpieces. It took into account that there had been an inspection of your practice on 26 January 2015, during which, the MHRA officers had seized the same Yabangbang handpieces that had been bought by you previously from the same online auction site. It was the evidence of Witness A, that he had told you during the first inspection that the makers Yabangbang were known to the MHRA as sellers of non-compliant items. He also stated that he informed you that the CE numbers for handpieces seized at that time were false. Witness A said that he advised you to refrain from buying dental devices from non-UK based suppliers.

Further, in your witness statement, you stated that one week after the first inspection, your sister, a solicitor, had made a telephone call to the MHRA on your behalf seeking an update on the items that had been seized. Your sister spoke to Mr D L F, a senior official of the MHRA, who also advised that you buy handpieces from UK-based retailers and not the online auction site in question.

You accepted in cross-examination that the MHRA officers had raised concerns with you at the first inspection about the origin of the Yabangbang handpieces and told you that their CE numbers were false. You also confirmed that you had been advised at the first inspection and then shortly after by Mr D L F, not to make any further purchases from non-UK based suppliers. Notwithstanding this information and advice, you proceeded to re-purchase exactly the same model of handpiece, from the same retailer on the same online auction site, just over two weeks after the first inspection.

By way of explanation, you told the Committee that, as at 10 February 2015, when you re-purchased the handpieces, you did not completely understand the difference between counterfeit and non-compliant dental equipment. However, when challenged during cross-examination, you acknowledged that both counterfeit and non-compliant items presented a risk because they would not have undergone an appropriate level of conformity testing. You also told the Committee that you often relied upon CE numbers as an indication that the equipment you were purchasing was genuine. When questioned on why you then disregarded the information about the CE
numbers of the previously seized handpieces being false, you stated that you still thought that there was a “slim chance” that those seized handpieces would be found to be compliant after testing by the MHRA. In the Committee’s view, your answer to this question clearly implied that you considered that there was a greater chance that the seized handpieces would be found to be non-compliant. In fact, you accepted this to be the case and you also admitted to being suspicious of the Yabangbang handpieces, even though you re-purchased them. You explained, however, that you had never experienced any problems when using them and that this had informed part of your decision to buy them again.

The Committee concluded that your actions in repurchasing the handpieces, given what you knew about the product at the time and given your own reservations, was deliberately misleading. The Committee was in no doubt that patients would have expected and relied on you, as a registered dental professional, to buy and use genuine, certified dental equipment in their treatment. The Committee found that in purchasing and using the Yabangbang handpieces you, as a dentist, were misrepresenting them as properly tested and safe pieces of dental equipment.

6. d) **Dishonest, in that you knew that you were permitting the use of non-compliant dental equipment at Practice A.**

   **Proved.**

   The Committee had no doubt that ordinary and honest members of the dental profession would consider permitting the use of non-compliant dental equipment to be dishonest because patients would be put at risk of harm.

   In the light of what you knew at the time of purchasing the same handpieces from the same retailer on the online auction site, and permitting their subsequent use, the Committee found the subjective limb of the test proved. You admitted to believing that there was only a “slim chance” that the Yabangbang handpieces would be found to be compliant and you also stated that you had your own suspicions about them, even though you had never experienced any actual problems during use. You accepted, however, that you had understood there to be a risk attached to non-compliant items and in the Committee’s view, this was a risk that you were prepared to take.

   The Committee was satisfied on the balance of probabilities that you acted dishonestly by the standards of ordinary and honest members of the dental profession. It was also satisfied that it was more likely than not that you realised that what you were doing was by those standards dishonest.

7. **Your conduct in relation to paragraph 1 above put patients and staff at risk, in that they could have been harmed by the use of the counterfeit dental equipment.**

   **Admitted and proved.**

8. **Your conduct in relation to paragraphs 2 and 5 above put patients and staff at risk, in that they could have been harmed by the use of the non-compliant dental equipment.**
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<th>Admitted and proved.</th>
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<td>9.</td>
<td><strong>On 20 July 2015 you failed to co-operate with an investigation by the Medicines and Healthcare products Regulatory Agency (MHRA) concerning your suspected purchase of counterfeit and/or non-compliant dental equipment.</strong></td>
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<td><strong>Proved.</strong></td>
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<td>The Committee received a considerable amount of evidence from the MHRA officers and from you regarding the second inspection of your practice on 20 July 2015. It noted that there was a dispute over what happened exactly during that visit in terms of your conduct towards the MHRA officers. However, the Committee was satisfied on all accounts that the visit was confrontational. The evidence of the MHRA officers, which the Committee accepted, was that they had to wait a considerable amount of time to be seen. They also told the Committee of your repeated refusal to let them take anything away from the practice. You confirmed in evidence that you had made it clear to them that they could leave the premises, but that they could not take any of your dental equipment with them. Taken together, this behaviour amounted to a failure to co-operate with identified Government inspectors.</td>
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<td>10.</td>
<td><strong>Your conduct in relation to paragraph 9 above was:</strong></td>
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<td>10. a)</td>
<td><strong>Unprofessional</strong></td>
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<td><strong>Proved.</strong></td>
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<td>The Committee considered that your failure to co-operate was unprofessional. It found your actions in trying to frustrate the powers of officers from a Government body was unbecoming of a registered dentist. The Committee would have expected any dental professional to have co-operated and facilitated their investigation. Whilst the Committee took into account your concerns about the exact nature of the powers of the MHRA officers, it noted that 20 July 2015 was the second time that they had visited your practice. The Committee considered that you had ample opportunity to make relevant enquiries with the MHRA after the first inspection in January 2015.</td>
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<td>10. b)</td>
<td><strong>Dishonest</strong></td>
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<td><strong>The Committee determined to dismiss this particular allegation and accordingly has made no finding in respect of head of charge 10 (b).</strong></td>
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<td>By comparison with head of charge 6(d) above, the Committee decided that the dishonesty allegation at head of charge 10(b) had not been clearly particularised. In light of the legal requirements as set out in the case of Fish the Committee agreed that head of charge 10(b) must fall.</td>
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We move to Stage Two.”

On 9 December 2016 the hearing adjourned part-head and will resume at a date to be confirmed.
On 6 July 2017 the hearing resumed. On 7 July 2017 the Chairman announced the determination as follows:

“Mr Sheikh,

The Committee reached its findings of facts in this case in December of last year, following which, the hearing was adjourned part-heard as there was insufficient time to conclude all matters on that occasion. The Committee resumed its consideration of your case yesterday, 6 July 2017.

The Committee has considered all the evidence presented to it, both at the fact-finding stage and at this stage. The evidence received by the Committee at this stage included a bundle of documents containing evidence of your remediation and reflection. The Committee also heard further oral evidence from you, as well as the oral evidence of Mrs Elizabeth Gibb, Chartered Occupational Psychologist, who was called on your behalf and gave her evidence by Skype. Ms Gibb also prepared an expert report, which is dated 22 June 2017. Two further witnesses, Witness 2 and Witness 3 attended the hearing in person and gave evidence regarding your character and professional ability.

In addition, the Committee has taken account of the submissions made by Mr Dent on behalf of the General Dental Council (GDC) and those made by Mr Kennedy on your behalf in relation to the issues of misconduct, impairment and sanction. The Committee accepted the advice of the Legal Adviser.

**The facts found proved**

The factual allegations found proved in December 2016, many of which you admitted, relate to your purchase of counterfeit and non-compliant dental equipment from an online auction site. The expert evidence received by the Committee was that a counterfeit item is one that purports to be the branded product, whilst a non-compliant item may resemble the branded product, but will not purport to be that product. Further, the Committee noted the evidence that neither counterfeit nor non-compliant dental equipment would have been tested to the relevant safety standards and therefore could pose a risk of harm.

You admitted and the Committee found proved that, on or before 26 January 2015 you purchased a counterfeit ‘NSK S Max SG 20 reduction 20:1 handpiece’ for use on your patients. You also admitted and it was found that, between 13 December 2014 and 26 January 2015 you purchased non-compliant dental equipment for use on your patients, namely five ‘Yabangbang contra angle fibre optic handpieces’.

The background to these particular findings is that, on 26 January 2015, two officers from the Medicines and Healthcare Products Regulatory Agency (‘the MHRA’) carried out an inspection at your practice following concerns that had been raised about the NSK handpiece, which you had sent for repair. This handpiece was subsequently identified as counterfeit by the manufacturer of genuine NSK handpieces. During the inspection, a number of other dental devices were seized for examination. You were informed by the officers that the devices were believed to be either counterfeit or non-compliant. The five Yabangbang handpieces you purchased between 13 December 2014 and 26 January 2015 were confirmed to be non-compliant pieces of dental equipment.

You also admitted and the Committee found proved that between 27 January 2015 and 20 July 2015 you purchased further non-compliant dental equipment for use on your patients. This was your re-purchase on 10 February 2015 from the online auction site of a further five Yabangbang handpieces, despite having had the same model of handpiece seized by the
MHRA officers during their inspection of your practice less than a month earlier. You had already been made aware that Yabangbang were known to the MHRA as a supplier of non-compliant equipment and you had received advice through your sister (a solicitor) from a senior member of the MHRA to refrain from buying dental equipment from non-UK based suppliers.

On 20 July 2015, the same MHRA officers, having received information regarding your re-purchase of the Yabangbang handpieces, carried out a further inspection of your practice. The evidence received by the Committee was that this second visit was confrontational. You repeatedly refused to let the officers take anything away from the practice. The Committee found that there had been a failure on your part to cooperate with the MHRA officers and that your conduct in this regard was unprofessional.

Your admissions made at the hearing in December 2016 included your admission that your conduct in purchasing counterfeit and non-compliant dental equipment for use on your patients was misleading. You acknowledged that the expectation would have been that, as a dentist, you were using genuine and compliant dental devices. You further admitted that your re-purchasing of the five further Yabangbang handpieces on 10 February 2015 was financially motivated. The Committee found that your conduct in this particular respect was also dishonest, in that you knew, by that time, that you were permitting the use of non-compliant dental equipment at the practice. You admitted that by purchasing the counterfeit and non-compliant handpieces concerned in this case, you put patients and staff members at risk of harm.

**Decision on misconduct**

The Committee considered whether the facts found proved amount to misconduct. It took into account that misconduct in the regulatory context requires a serious departure from the expected professional standards.

The facts found proved in this case are clearly serious. They include a finding that you acted dishonestly in repurchasing dental equipment which you knew was non-compliant. The Committee noted that the evidence of Professor Morganstein, the GDC’s expert witness in this case, was that there was only anecdotal evidence of any harm being caused through the use of such equipment.

However, the Committee considered that the anecdotal nature of the evidence was irrelevant. The purpose of safety testing equipment is to ensure that it is safe to use. Non-compliant dental equipment would not have been checked for safety and therefore by its very nature poses a risk of harm. Regardless of your own personal perception regarding the safety of such dental equipment, the Committee considered that it was incumbent upon you as a registered dental professional to adhere to the advice given to you by the MHRA. The Committee also took into account the financial motivation behind your repurchasing of the non-compliant dental handpieces.

The Committee considered that fellow dental professionals would find your behaviour, as outlined in this case, to be deplorable. It was satisfied on the evidence that your conduct did fall far below the expected professional standards. The Committee noted that you accepted this to be the case.

Accordingly, the Committee has determined that the facts found proved amounted to misconduct.
Decision on impairment

In considering whether your fitness to practise is currently impaired by reason of your misconduct, the Committee exercised its own independent judgement. It had regard to the over-arching objective of the GDC, which involves: the protection, promotion and maintenance of the health, safety and well-being of the public; the promotion and maintenance of public confidence in the dental profession; and the promotion and maintenance of proper professional standards and conduct for the members of the dental profession.

The Committee was satisfied that your fitness to practise was impaired at the time of the events in question. In considering the issue of current impairment, it had regard to the evidence of the steps you have taken to address your misconduct. It considered the substantial amount of documentation evidencing the remediation you have undertaken, including a copy of your Personal Development Plan. The Committee acknowledged your efforts in compiling such an extensive portfolio of your evidence, although it considered that not all of the information within the remediation bundle went directly to the matters in this case.

However, the Committee did find your reflective statement to be very helpful indeed. It considered this particular piece of evidence focussed on and addressed some of the pertinent issues, including your insight. The Committee found your written reflection to be compelling and convincing, and it took into account that you started preparing your statement prior to consulting with Mrs Gibb about your case. The Committee noted from your statement the holistic approach you have taken in relation to your remediation and it also had regard to your own thoughts on your conduct in initially purchasing the counterfeit and non-compliant dental equipment, your dishonesty in repurchasing such equipment and the issues relating to your professionalism.

You addressed the content of your reflective statement in your oral evidence to the Committee at this stage of the hearing. You told the Committee that you had wanted to express in writing what you felt about your learning over the past seven months. You stated that following the Committee’s findings of fact, you realised your mistakes and you are no longer using such dental equipment and indeed have not done so for over two years. You stated that the safety of your patients is of the most importance to you. With regard to your conduct in repurchasing the non-compliant dental equipment that you were warned against by the MHRA, you told the Committee that at the time you thought that, as a dental clinician, you knew better than the MHRA officers. You stated that you had experienced no problems with the handpieces previously and this led to you behaving defiantly and also conducting yourself in a confrontational manner during the second visit of the MHRA officers.

You explained to the Committee that you did not know much about the MHRA at the time, although it was noted that you had been provided with some information about the regulator through your own enquiries. However, you said that you had not fully understood the importance of its function. You told the Committee about the learning you have since undertaken in improving your knowledge about the MHRA and how you and your staff members become aware of any warnings issued about counterfeit or non-compliant dental equipment. In addition to no longer purchasing such equipment, you told the Committee that you now keep an inventory of all the equipment at your practice and included examples in your remediation bundle.
The Committee found that you were genuine and truthful in giving your evidence and it considered that you have come a long way since the start of these proceedings last year. Of particular note to the Committee was your honesty in expressing that you knew at the time of purchase that the dental equipment you purchased was counterfeit and non-compliant. This is a significant change from your original position at the start of the hearing in December 2016, when you provided a witness statement indicating that you had not been aware of the true nature of the dental equipment you had purchased. However, you did eventually accept in your oral evidence given at that hearing that you had been suspicious about the dental equipment. Whilst the Committee could not overlook the inconsistent nature of your evidence on this particular aspect of the case, it was reassured on this occasion that you are finally being honest about what you knew at the time. The Committee took into account the concern raised by the GDC that you did not explicitly state in your oral evidence that you were dishonest in repurchasing the dental equipment. However, it considered that it was evident from your frankness, both in your reflective statement and in your oral evidence, that you have accepted that you acted dishonestly at that time. You stated that you fully accept all the findings that have been made against you and told the Committee that the behaviour which led to this case represents one of the biggest mistakes in your life.

In addition to your evidence, the Committee found the report and oral evidence of Mrs Gibb to be of great assistance. It noted that you sought her assistance to better focus on this Committee’s findings and that your consultations with her involved psychometric testing. The Committee found Mrs Gibb’s expert opinion regarding your personality to be very helpful in putting into context your conduct, as highlighted in the allegations found proved. Mrs Gibb explained that, given your lack of knowledge of the MHRA’s powers at the time of the events in question, it was very likely that you had dismissed the advice of the MHRA officers as superficial. This was due in part to your strong belief in your self-efficacy and your tendency to value the opinions of other dental professionals. Mrs Gibb also told the Committee that you are extremely reserved and very formal in your manner and that this may be interpreted by some as being aloof, which can be associated with arrogance, although she did not consider you to be arrogant in the way that your interacted with people. She did state, however, that you have personality traits, which can lead you becoming frustrated in high pressured situation and affect your decision-making. Mrs Gibb stated in her report “...given the information in my assessment of him and the safeguards he describes in his reflections it is unlikely he will repeat these behaviours in future.” The Committee noted your acceptance and reflection on the outcomes of your psychometric testing, including your acknowledgement that you could have dealt much better with the second visit of the MHRA officers.

Taking all the evidence into account, the Committee considered that you have shown significant insight into all the concerns regarding the conduct and behaviour you displayed. In particular, the Committee noted your candidness in admitting that you considered that you knew better about the dental equipment you were using. The Committee was in no doubt as to the serious nature of your defiance, which could have potentially resulted in harm to patients and/or staff members. However, the Committee was satisfied from the evidence received that you did not fully appreciate the risk of danger, having had no problems with the dental equipment previously. It was further satisfied that you are not an inherently dishonest person. The Committee notes that you have now had the benefit of time, during which you have made yourself aware of the relevant guidance in this area, including the functions and powers of the MHRA. There is no evidence to suggest that you have repurchased any counterfeit and non-compliant equipment and given the level of your remediation and insight,
the Committee considered the risk of repetition on your part is low. It therefore has no current public safety concerns in this regard.

Notwithstanding this, the Committee took into account the wider public interest in the matters in this case. Your misconduct as found in this case included a serious act of dishonesty, which had the potential to put patients and others at risk. Further, as detailed in the findings of this Committee you did not initially accept that you knew the dental equipment you were purchasing was counterfeit or non-compliant. Taking these factors into account, the Committee decided that a finding of current impairment is required to declare and uphold proper standards of conduct and behaviour in the dental profession and to maintain public confidence in it. The Committee considered that public confidence in the dental profession would be undermined if a finding of impairment were not made in the circumstances of this case.

The Committee has therefore determined that your fitness to practise is currently impaired.

**Decision on sanction**

Having found your fitness to practise to be impaired, the Committee considered what sanction, if any, to impose on your registration. In reaching its decision, the Committee 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 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 the following aggravating and mitigating features it identified in this case:

**Aggravating:**

- the potential for harm to patients and members of your staff;
- your dishonesty;
- your motivation for financial gain;
- your re-purchasing of non-compliant dental equipment; and
- your blatant disregard for the systems regulating the dental profession.

**Mitigating:**

- that you are of previous good character and have no fitness to practise history;
- your dishonesty related to a discrete area of conduct;
- the remediation you have undertaken;
- there is no evidence that you have since purchased counterfeit or non-compliant dental equipment; and
- the time that has elapsed since the events in question.

Taking the above factors into account, the Committee considered the sanctions available to it, starting with the least restrictive.

The Committee decided that it would be inappropriate to conclude this case without taking any action in respect of your registration. It reached the same conclusion in respect of a
reprimand. The Committee took into account its finding that there are no ongoing public protection concerns. However, it decided that, given the serious nature of your misconduct, some action restricting your registration is required.

The Committee considered whether to impose conditions on your registration. It decided, however, that conditional registration would not be proportionate to the misconduct found. The Committee’s findings include your serious dishonesty and your unprofessional behaviour towards officers of another regulatory body. In the circumstances, the Committee considered that conditions would not serve to meet the public interest in this case.

The Committee went on to consider the sanction of suspension. It considered the relevant section of the Guidance and was satisfied that a period of suspension would be sufficient and proportionate to the findings made in this case. In reaching its decision, the Committee took into account the gravity of your behaviour and it considered that the suspension of your registration would mark the seriousness and importantly send a clear message to the profession that such conduct will not be tolerated. Moreover, it would uphold and maintain public confidence in the dental profession.

The Committee took into account that the sanction of erasure was open to it, but it decided that erasing your name from the Dentists Register would be a disproportionate response. You have shown considerable insight into the findings made against you and have taken sufficient steps to reassure the Committee that a risk of repetition is unlikely. Furthermore, the Committee noted that no concerns have been raised about your skills and competence as a clinician. On the contrary, the Committee heard very positive evidence about your character and practice as a dentist from Witness 2 and Witness 3, both of whom have had the experience of working with you. Additionally, the Committee received a significant number of written testimonials from both patients and colleagues, which not only highlighted your clinical abilities, but also your integrity. The Committee considered that the erasure of your name from the register would deprive patients of an otherwise good and competent practitioner. It also considered that the public interest could be properly served by the lesser sanction of suspension.

In all the circumstances, the Committee has determined to suspend your registration for a period of three months. In deciding on this period, the Committee took into account that it has no ongoing concerns about public safety. It was satisfied that a three-month period of suspension would be sufficient to reassure the public that appropriate action has been taken in this case.

Given the Committee’s view on your remediation and the level of your insight, it has determined not to direct a review hearing of your case. It considered that you have done enough to demonstrate your full understanding of why you were brought before your regulator and it trusts that you will continue to reflect on all the issues that have been raised.

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

The Committee now invites submissions from Mr Dent and then Mr Kennedy, as to whether your registration should be suspended immediately, pending its substantive determination taking effect.

_________________________________________________________________________

Mr Sheikh,
In deciding whether to impose an immediate order on your registration, the Committee took account of the submission made by Mr Dent that, given the absence of any ongoing public protection concerns, an immediate order is not necessary. Mr Kennedy endorsed this submission. The Committee accepted the advice of the Legal Adviser.

The Committee has determined that it is not necessary to impose an order suspending your registration immediately. It took into account that there are no patient safety risks in this case and it was not satisfied that its findings require immediate action to be taken in the public interest.

Unless you exercise your right of appeal, the Committee’s substantive direction for suspension for a period of three months, as already announced, will take effect 28 days from the date when notice is deemed to have been served upon you.

That concludes this hearing.”