

**HEARING HEARD IN PUBLIC**

**BANNATYNE, Ashleigh**

**Registration No: 214342**

**PROFESSIONAL CONDUCT COMMITTEE**

**JUNE 2017 - JUNE 2019\***

**Most recent outcome: Suspended indefinitely**

\*See page 13 for the latest determination

Ashleigh BANNATYNE, a Dental Nurse, SQA L3 Dental Nursing & PDA Dental Nursing SQA 2011, was summoned to appear before the Professional Conduct Committee on 2 June 2017 for an inquiry into the following charge:

**Charge**

“That being registered as a dental care professional;

1. On 10 March 2016 you were convicted at Falkirk Sheriff Court of dangerous driving, contrary to Section 2 of the Road Traffic Act 1988.
2. On 10 March 2016 you were convicted at Falkirk Sheriff Court of Assault to Injury, contrary to Common Law.
3. You failed to immediately inform the General Dental Council that you were subject to criminal proceedings in relation to allegations 1 and/or 2 above.
4. Your conduct in relation to allegation 3 was:
  - a. Misleading;
  - b. Dishonest.

By reason of the matters alleged, your fitness to practise is impaired by reason of your convictions and/or misconduct.”

Ms Bannatyne was not present and was not represented. On 2 June 2017, the Chairman announced the findings of fact to the Counsel for the GDC:

“This is a hearing before the Professional Conduct Committee. Ms Bannatyne is neither present nor represented today. Ms Headley is the Case Presenter for the General Dental Council (GDC).

At the outset, Ms Headley made an application pursuant to Rule 54 of the ‘*GDC (Fitness to Practise) Rules Order of Council 2006*’ (‘the Rules’), to proceed with the hearing in Ms Bannatyne’s absence.

The Committee took into account Ms Headley’s submissions in respect of the application. It accepted the advice of the Legal Adviser.

**Decision on service of the Notification of Hearing**

The Committee first considered whether Ms Bannatyne had been sent notification of the hearing in accordance with Rules 13 and 65. It saw a copy of the Notification of Hearing letter, dated 28 April 2017, and an associated Royal Mail 'Track and Trace' receipt confirming that the letter was sent to Ms Bannatyne's registered address by Special Delivery. A copy was also sent to her by email. The Committee was satisfied that the letter contained proper notification of today's hearing, including its date, time and location, as well as notification that the Committee had the power to proceed with the hearing in Ms Bannatyne's absence. The Committee was satisfied on the basis of the information provided that notice of this hearing had been served upon Ms Bannatyne in accordance with the Rules.

**Decision on proceeding in the absence of Ms Bannatyne**

The Committee next considered whether to exercise its discretion under Rule 54 to proceed with the hearing in the absence of Ms Bannatyne. It approached this issue with the utmost care and caution. The Committee took into account the need to be fair to both parties and it had regard to the public interest in dealing with this case expeditiously.

In addition to serving the Notification of Hearing which, the Committee noted, was successfully delivered, there is evidence of the additional efforts made by the GDC to contact Bannatyne about this hearing. This included several recent attempts to contact her by telephone and to make contact by email. There has been no response from Ms Bannatyne in relation to these recent efforts. She has not requested an adjournment and the Committee received no information to indicate that an adjournment would secure her attendance on a future date. In the circumstances, the Committee was satisfied that Ms Bannatyne had voluntarily absented herself from these proceedings. It took into account the serious nature of the allegations against her and its duty to act expeditiously in its consideration of this case. Taking all of this into account, the Committee determined that it was fair and in the public interest to proceed with the hearing in the absence of Ms Bannatyne.

**The charge against Ms Bannatyne**

The matters in this case relate to two separate convictions received by Ms Bannatyne on 10 March 2016 for dangerous driving and for assault. She also faces associated allegations of misleading and dishonest conduct regarding an alleged failure to immediately inform the GDC after being charged with the offences in question.

**Evidence**

The Committee heard no oral evidence in this case. The documentary evidence it received in respect of the matters against Ms Bannatyne included a copy of the Extract of Conviction in respect of her offences and a copy of the police case summary. The Committee was also provided with the signed witness statement of Ms K, an employee of the GDC, dated 8 February 2017 including two exhibits. The first exhibit was a letter, dated 28 April 2016, from Ms Bannatyne which was received by the GDC on 3 May 2016. The second exhibit was copy of the GDC's '*Guidance on reporting criminal proceedings (Effective from 30 September 2013)*'. This guidance document also makes reference to the GDC's publication '*Standards for the Dental Team (September 2013)*', a copy of which the Committee also had available.

**The Committee's Findings of Fact**

In making its findings, the Committee considered all the evidence before it. It took account of the submissions made by Ms Headley on behalf of the GDC and accepted the advice of the Legal Adviser. The Committee 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 matters are proved on the balance of probabilities.

The Committee's findings in relation to each head of charge are as follows:

1.	<p><i>On 10 March 2016 you were convicted at Falkirk Sheriff Court of dangerous driving, contrary to Section 2 of the Road Traffic Act 1988.</i></p> <p><b>Found proved.</b></p>
2.	<p><i>On 10 March 2016 you were convicted at Falkirk Sheriff Court of Assault to Injury, contrary to Common Law.</i></p> <p><b>Found proved.</b></p> <p>The Committee had regard to Rule 57(5) of the Rules, which states that:</p> <p><i>“Where a respondent has been convicted of a criminal offence—</i></p> <p><i>(a) a copy of the certificate of conviction, certified by a competent officer of a court in the United Kingdom (or, in Scotland, an extract conviction) shall be conclusive proof of the conviction; and</i></p> <p><i>(b) the findings of fact upon which the conviction is based shall be admissible as proof of those facts.</i></p> <p>The Extract of Conviction received by the Committee confirms that Ms Bannatyne was convicted on 10 March 2016 at Falkirk Sheriff Court of the offences set out at heads of charge 1 and 2. Accordingly, the Committee has found these heads of charge proved.</p>
3.	<p><i>You failed to immediately inform the General Dental Council that you were subject to criminal proceedings in relation to allegations 1 and/or 2 above.</i></p> <p><b>Found proved.</b></p> <p>In determining whether there was a failure on Ms Bannatyne's part to immediately inform the GDC, the Committee first considered whether she had an obligation to do so. It had regard to the GDC's publications '<i>Standards for the Dental Team (September 2013)</i>' and '<i>Guidance on reporting criminal proceedings (Effective from 30 September 2013)</i>', both of which state that registrants must inform the GDC of any criminal proceedings against them. In particular, the Committee took into account Standard 9.3.1, which states that:</p> <p><i>“You must inform the GDC immediately if you are subject to any criminal proceedings anywhere in the world. See our guidance on reporting criminal proceedings for more information.”</i></p> <p>The Committee was satisfied from the Standards and the associated guidance that Ms Bannatyne did have an obligation to immediately inform the GDC that she had been charged with criminal offences.</p>

	<p>The police summary indicates that Ms Bannatyne was charged on 3 December 2014 and Ms Bannatyne herself confirmed this when she self-reported her convictions to the GDC in 2016. The Committee accepted the evidence of Ms K, who stated in her witness statement that Ms Bannatyne’s letter of 28 April 2016, received on 3 May 2016, was the first time the GDC received notification from her regarding the criminal matters. In the Committee’s view there was a significant time delay between Ms Bannatyne being charged with the offences and her informing the GDC. In the circumstances, the Committee concluded that Ms Bannatyne’s self-report could in no way be considered as immediately informing the GDC and consequently she failed in her obligation as set out in the GDC’s Standards.</p>
4.	<p><i>Your conduct in relation to allegation 3 was:</i></p>
4. (a)	<p><i>Misleading;</i></p> <p><b>Found proved.</b></p> <p>The Committee was of the view that Ms Bannatyne’s failure to immediately inform the GDC that she was subject to criminal proceedings was conduct that was inherently misleading. The Committee considered that by not making the GDC aware of the matters, Ms Bannatyne created a false impression of there being no issues regarding her conduct and behaviour as a registered dental professional.</p>
4. (b)	<p><i>Dishonest.</i></p> <p><b>Found proved.</b></p> <p>In reaching its decision, the Committee took into account the explanation given by Ms Bannatyne for not immediately informing the GDC of the criminal proceedings, as contained in her letter of 28 April 2016. It noted that she thought that it was appropriate to wait for all of the criminal matters against her to be concluded before she contacted her regulatory body. In rejecting her explanation, the Committee had regard to the clear obligations set out in the GDC’s Standards and associated guidance, which have been in force since 2013. It also took into account that Ms Bannatyne has been a registered dental nurse since 2011 and it was satisfied that she would have been aware of her responsibilities as a GDC registrant. The Committee was of the view that Ms Bannatyne’s failure to report matters to the GDC immediately was an attempt to avoid possible disciplinary actions by her professional regulator.</p> <p>The Committee therefore found on the balance of probabilities that Ms Bannatyne’s failure to notify the GDC immediately that she had been charged with the offences would be regarded as dishonest by the standards of an ordinary and honest member of the public. Further, that Ms Bannatyne must have known that she was acting dishonestly by those standards.</p>

We move to Stage Two.”

On 2 June 2017 the Chairman announced the determination as follows:

“Ms Bannatyne is neither present nor represented today.

The Committee’s tasks at this second stage of the hearing have been to decide whether Ms Bannatyne’s fitness to practise is currently impaired and if so, what sanction to impose on her registration. The Committee considered all the evidence before it. It took account of the submissions made by Ms Headley on behalf of the General Dental Council (GDC) and accepted the advice of the Legal Adviser.

### **Facts found proved**

On 10 March 2016, Ms Bannatyne was convicted at Falkirk Sheriff Court of dangerous driving, contrary to Section 2 of the Road Traffic Act 1988 and of Assault to Injury, contrary to Common Law. The Committee noted that there was limited information before it as to the precise facts upon which Ms Bannatyne’s convictions are based. However, there is some indication as to the circumstances of her offences in the police case summary provided. On 3 December 2014, Ms Bannatyne was witnessed driving dangerously by a police officer. The police officer in question confirmed herself to Ms Bannatyne as being an officer of the law by showing police identification. There is further reference to Ms Bannatyne denying punching the police officer to the face and head which, in the Committee’s view, gives some indication of the facts surrounding Ms Bannatyne’s conviction for assault.

On 27 April 2016, Ms Bannatyne was sentenced to a Community Payback Order to carry out 200 hours of unpaid work within six months. She was also disqualified from holding and obtaining a driving licence for nine months until she passes an extended driving test.

In addition to the fact of her convictions, the Committee found proved that, after she was charged with the above offences, Ms Bannatyne failed in her duty to immediately inform the GDC that she was subject to criminal proceedings. Ms Bannatyne did not report the matters to the GDC until almost 16 months after she was formally charged. The Committee found that Ms Bannatyne’s conduct in this regard was misleading and dishonest. By not making the GDC aware of the matters, she created a false impression of there being no issues regarding her conduct and behaviour as a registered dental professional. The Committee was also of the view that Ms Bannatyne’s failure to report matters to the GDC immediately was an attempt to avoid possible disciplinary actions by her professional regulator.

### **Decision on misconduct**

The Committee first considered whether the facts found proved in relation to Ms Bannatyne’s failure to immediately inform the GDC amounted to misconduct. It took into account that a finding of misconduct in the regulatory context requires a serious departure from the expected professional standards. The Committee had regard to the GDC’s Standards, as set out in ‘*Standards for the Dental Team (September 2013)*’, in particular the following paragraphs:

- 1.3.2 You must make sure you do not bring the profession into disrepute.
- 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.
- 9.3 Inform the GDC if you are subject to criminal proceedings or a regulatory finding is made against you anywhere in the world.

The Committee was in no doubt that Ms Bannatyne failed to adhere to these standards. It has already found that she withheld from the GDC information about the criminal proceedings against her, so as to circumvent potential investigation. It considered that such dishonesty serves only to undermine the GDC's regulatory powers, which are essential to protecting patients and the wider public. The Committee was satisfied that fellow dental professionals would find such conduct to be deplorable.

In all the circumstances, the committee was satisfied that Ms Bannatyne's behaviour in not immediately informing the GDC of the relevant information represented a serious falling short of what was expected of a registered dental professional. Accordingly it has determined that the facts found proved in relation to this particular matter amount to misconduct.

### **Decisions on impairment**

The Committee next considered whether Ms Bannatyne's fitness to practise is currently impaired by reason of her convictions and/or her misconduct.

In reaching its decisions, the Committee exercised its 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.

### **Convictions**

The Committee noted the lack of information regarding the circumstances of Ms Bannatyne's convictions. Notwithstanding this, it took into account that she has been convicted in a court of law and this Committee does not seek to go behind those convictions, which were for serious criminal offences.

The Committee found that there was no evidence before it to indicate that Ms Bannatyne has made any efforts to address the reasons for her convictions. The only evidence received from Ms Bannatyne is her letter of 28 April 2016, which is now over a year old. Further, the Committee noted that at that time, Ms Bannatyne was still denying the offence and was questioning the fairness of the police and legal systems. There is no up to date evidence in relation to Ms Bannatyne's current level of insight into her convictions or how she has reflected on the behaviour that led to her convictions and its impact on the dental profession.

In the absence of any evidence of insight or remediation, the Committee could not be confident that Ms Bannatyne would not repeat the conduct that led to her convictions. The Committee took into account that there are no clinical matters in this case. It considered, however, that the types of conduct involved, namely dangerous driving and assault, are issues that raise concerns about the safety of the wider public.

Taking all of these factors into account, 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 Ms Bannatyne's fitness to practise is currently impaired by reason of her convictions.

### Misconduct

The Committee considered that it is difficult to demonstrate remediation of the kind of misconduct found in this case, which includes dishonesty. As with Ms Bannatyne's convictions, there is no evidence before the Committee of her current level of insight or in relation to any remediation she has undertaken. There is nothing before the Committee to indicate that Ms Bannatyne now acknowledges her dishonesty in failing to immediately inform the GDC of the criminal proceedings against her.

In the absence of any evidence of insight or remediation, the Committee considered that there is a likelihood that Ms Bannatyne could repeat her misconduct. This was conduct that brought the dental profession into disrepute and had the potential to impact on the GDC as an effective regulator. In all the circumstances, the Committee decided that a finding of impairment is required to uphold standards within the dental profession and to maintain public confidence in it.

Accordingly, the Committee has determined that Ms Bannatyne's fitness to practise is currently impaired by reason of her misconduct.

### Decision on sanction

The Committee considered what sanction, if any, to impose on Ms Bannatyne's 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 Ms Bannatyne's 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 serious nature of Ms Bannatyne's convictions
- the finding of dishonesty; and
- Ms Bannatyne's lack of insight.

#### Mitigating:

- the time elapsed since Ms Bannatyne's offences; and
- that the dishonesty found was a single isolated incidence.

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

In view of the seriousness of its findings in this case, the Committee decided that it would be inappropriate to conclude the case without taking any action in relation to Ms Bannatyne's registration. It considered that such an outcome would not serve to maintain public confidence in the dental profession.

The Committee considered whether to issue Ms Bannatyne with a reprimand. It took into account the time that has elapsed since her convictions and that her dishonesty represented an isolated incidence. However, the Committee concluded that a reprimand would not reflect the gravity of the matters in this case and would therefore be disproportionate. It also had

regard to Ms Bannatyne's lack of insight and its outstanding concerns about the risk of repetition.

The Committee went on to consider whether to impose conditions on Ms Bannatyne's registration. It decided however, that the issues raised in this case, which include dishonesty, could not be appropriately addressed by way of conditional registration. The Committee further considered Ms Bannatyne's very limited engagement with the GDC to date and the indication that she is no longer working as a dental professional and it determined that conditions would not be workable or measurable.

The Committee next considered whether to suspend Ms Bannatyne's registration. In doing so, it had regard to paragraph 7.28 of the Guidance, which deals with the sanction of suspension. The Committee considered the relevant factors for imposing a suspension as set out in this paragraph and was satisfied that the majority of them applied in this case. The Committee noted that the sanction of suspension is a serious one and it was satisfied that this outcome would mark sufficiently the Committee's findings of misconduct and impairment.

In deciding to suspend Ms Bannatyne's registration, the Committee considered the sanction of erasure, but concluded that her removal from the Register would be a disproportionate course of action. It took into account that she has no fitness to practise history, that there is no actual evidence of repeat offending and that her dishonesty was an isolated incidence. The Committee was also satisfied that there was no evidence that Ms Bannatyne has a deep-seated personality or attitudinal problem. It considered that the public interest in this case can be protected by the imposition of the lesser sanction of suspension.

In all the circumstances, the Committee has determined to suspend Ms Bannatyne's registration for a period of 12 months. In determining upon a 12-month period, the Committee considered the serious nature of Ms Bannatyne's behaviour both in relation to her convictions and her misconduct. It was of the view that the maximum time available would satisfy the wider public interest in this case. The Committee also considered that this timeframe would give Ms Bannatyne ample opportunity to reflect on the findings of this Committee and to take appropriate action.

A Committee will review Ms Bannatyne's case at a resumed hearing to be held shortly before the end of the period of suspension. That Committee will consider what action to take in relation to her registration. She will be informed of the date and time of that resumed hearing, with which she will be expected to engage.

The Committee reviewing Ms Bannatyne's case may find it helpful to receive the following:

- Evidence of her reflection on all of the matters raised in this case.
- Evidence of her Continuing Professional Development.
- Testimonial evidence.

Unless Ms Bannatyne exercises her right of appeal, her registration will be suspended 28 days from the date when notice of this determination is deemed served upon her.

The Committee now invites submissions from Ms Headley, as to whether Ms Bannatyne's registration should be suspended immediately, pending its substantive determination taking effect.

In deciding whether to impose an immediate order on Ms Bannatyne's registration, the Committee took account of the submissions made by Ms Headley on behalf of the GDC and it accepted the advice of the Legal Adviser.

The Committee has determined that it is in the public interest to impose an order suspending Ms Bannatyne's registration immediately. It considered that, given the gravity of the matters found against her, immediate action is required to protect public confidence in the dental profession.

The effect of the foregoing determination and this order is that Ms Bannatyne's registration is suspended immediately to cover the appeal period. If she does not appeal, the substantive direction for suspension, as already announced, will take effect 28 days from the date when notice is deemed to have been served upon her.

Should Ms Bannatyne exercise her right of appeal, this immediate order for suspension will remain in place until the resolution of any appeal.

That concludes this hearing."

At a review hearing on 13 June 2018 the Chairman announced the determination as follows:

"This is a resumed hearing pursuant to Section 36Q of the Dentists Act 1984 (as amended) ('the Act') to review the order of suspension for 12 months which was imposed on Ms Bannatyne's registration by the Professional Conduct Committee (PCC) on 2 June 2017.

Neither party is present at today's hearing. A request was made by the General Dental Council (GDC) for the review of the suspension order on Ms Bannatyne's registration to be conducted on the papers.

In the absence of both parties, the Committee first considered the issues of service and whether to proceed with the hearing in the absence of Ms Bannatyne and any representatives for either party. The Committee accepted the advice of the Legal Adviser on these matters.

#### **Decision on service of the Notification of Hearing**

The Committee considered whether notice of the hearing had been served on Ms Bannatyne in accordance with Rules 28 and 65 of the *General Dental Council (Fitness to Practise) Rules Order of Council 2006* ('the Rules'). It had before it a copy of the notification of hearing letter dated 2 May 2018 which was sent by special delivery to Ms Bannatyne's registered address as it appears on the Register as a Dental Care Professional. Whilst the Committee noted from the Royal Mail 'track and trace' print-out that the letter was returned to sender on 24 May 2018, it took into account that there is no requirement within the Rules for the GDC to prove receipt of the letter, only that it was sent. The Committee noted that a copy of the letter was also sent to Ms Bannatyne by email.

The Committee was satisfied that the notification of hearing letter, dated 2 May 2018, contained proper notification of today's review hearing, including its time, date and venue, as well as notification that the Committee had the power to proceed with the hearing in Ms Bannatyne's absence. On the basis of the information provided, the Committee was satisfied that notice of the hearing had been served on Ms Bannatyne in accordance with the Rules.

**Decision on proceeding with the hearing in the absence of Ms Bannatyne and on the papers**

The Committee next considered whether to exercise its discretion under Rule 54 of the Rules to proceed with the hearing in the absence of Ms Bannatyne and any representative for either party. It approached this issue with the utmost care and caution. The Committee took into account the factors to be considered in reaching its decision as set out in the cases of *R v Jones [2002] UKHL 5* and *General Medical Council v Adeogba and General Medical Council v Visvardis [2016] EWCA Civ 162*. The Committee remained mindful of the need to be fair to both Ms Bannatyne and the GDC, and it had regard to the public interest in the expeditious review of the suspension order in place on Ms Bannatyne's registration.

The Committee was satisfied from the information before it, that all reasonable efforts had been made by the GDC to notify Ms Bannatyne of today's hearing. In addition to the sending of the notification of hearing letter, dated 2 May 2018, the Committee noted that an email dated 7 February 2018 was sent to Ms Bannatyne regarding today's review. The information provided to the Committee shows that the email was successfully downloaded. Further, an attempt was made by the GDC to contact Ms Bannatyne by telephone on 31 May 2018.

The Committee was satisfied that Ms Bannatyne would have been aware of these ongoing proceedings before the GDC, given the outcome of her PCC hearing in June 2017 and the attempts that have been made to contact her. It considered that there is a burden upon her to engage with the proceedings of her regulatory body. The information before the Committee suggests that there has been no contact from Ms Bannatyne since the last hearing of her case. In the circumstances, the Committee decided that an adjournment would serve no meaningful purpose. It noted that Ms Bannatyne did not request an adjournment and it received no information to suggest that an adjournment would secure her attendance on a future date.

The Committee also took into account the written submissions of the GDC provided in respect of today's review, dated 6 May 2018, in which they invited the Committee to conduct the resumed hearing on the basis of the papers provided to it.

In all the circumstances, the Committee determined that it was fair and in the public interest to proceed with the hearing in the absence of Ms Bannatyne and any representatives for either party.

**Background to Ms Bannatyne's case**

Ms Bannatyne's case was first considered by the PCC in June 2017. That Committee found proved that Ms Bannatyne was convicted on 10 March 2016 at Falkirk Sheriff Court of dangerous driving, contrary to section 2 of the Road Traffic Act 1988; and of Assault to Injury, contrary to Common Law. It was also found proved that Ms Bannatyne failed to immediately inform the GDC that she was subject to criminal proceedings and that her actions in that respect were misleading and dishonest. Ms Bannatyne did not attend that initial hearing.

That Committee considered that by not informing the GDC she was subject to criminal proceedings until almost 16 months after she was formally charged, Ms Bannatyne created a false impression of there being no issues regarding her conduct and behaviour as a registered dental care professional. That Committee was also of the view that Ms Bannatyne's failure to report matters to the GDC immediately was an attempt to avoid

possible disciplinary actions by her professional regulator. It found that the proven facts amounted to misconduct.

In relation to impairment by reason of conviction, the previous Committee found that there was no evidence to indicate that Ms Bannatyne had made any efforts to address the reasons for her convictions. It also noted in its determination that there was no up-to-date evidence in relation to Ms Bannatyne's current level of insight into her convictions or how she reflected on the behaviour that led to her convictions and the impact on the dental profession. That Committee was of the view that in the absence of any evidence of insight or remediation, there remained a risk of repetition of the conduct that led to the convictions. It determined that Ms Bannatyne's fitness to practise was impaired by reason of her convictions.

In relation to impairment by reason of misconduct, the previous Committee found that there was no evidence of remediation of insight and nothing to indicate that Ms Bannatyne acknowledges her dishonesty in failing to immediately inform the GDC of the criminal proceedings against her. The previous Committee concluded that there was a risk of repetition. It determined that Ms Bannatyne's fitness to practise was impaired by reason of her misconduct.

The Committee in June 2017 imposed an order of suspension on Ms Bannatyne's registration for a period of 12 months. It directed a review of her case shortly before the end of the period of suspension and also imposed an immediate order. In directing a review, that Committee recommended to Ms Bannatyne in its determination that the reviewing Committee may be assisted by the following:

- *“Evidence of her reflection on all of the matters raised in this case.*
- *Evidence of her Continuing Professional Development.*
- *Testimonial evidence.”*

### **Today's review**

This has been the first review of Ms Bannatyne's case before the PCC. In comprehensively reviewing her case today, the Committee considered all the evidence before it. It accepted the advice of the Legal Adviser.

The documentation before the Committee comprised:

- An indexed PCC review bundle of 56 pages.
- The written submissions of the GDC, dated 6 May 2018.

In their written submissions, the GDC stated that Ms Bannatyne has not provided any information and/or demonstrated any commitment to reflect upon her convictions and misconduct, nor has she engaged with the GDC, despite being given the opportunity to do so. It was further submitted by the GDC that there is no evidence that Ms Bannatyne has made any efforts to meet the recommendations of the previous Committee.

It was the GDC's submission that Ms Bannatyne's fitness to practise remains impaired. They submitted that there is no evidence to show any material change in position since the initial PCC hearing. Therefore, there remains a real risk to the public should Ms Bannatyne return to practise unrestricted. Furthermore, the GDC submitted that public confidence in the dental profession would be undermined if a finding of impairment is not made in the circumstances of this case. In relation to sanction, the GDC submitted that it would be appropriate and

proportionate to suspend Ms Bannatyne's registration for a further period of 12 months, with a review.

### **Decision on impairment**

In reaching its decision on whether Ms Bannatyne's fitness to practise remains impaired, 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 took into account the case of *Abrahaem v General Medical Council [2008] EWHC 183 (Admin)* and noted that the burden is upon Ms Bannatyne to satisfied it that she has addressed all of the concerns raised by the previous Committee.

The nature of the misconduct found against Ms Bannatyne in June 2017 was serious and included findings of dishonesty. The previous Committee noted that the matters found against Ms Bannatyne were not clinical in nature. Nevertheless, it considered that the types of conduct involved, namely dangerous driving and assault, are issues that raise concerns about the safety of the wider public. That Committee also considered that public confidence in the dental profession would be undermined, if a finding of impairment were not made in the circumstances of Ms Bannatyne's case.

This Committee today received nothing by way of insight or remediation from Ms Bannatyne. In the absence of any evidence to demonstrate how Ms Bannatyne has remedied the serious concerns raised at the last hearing, this Committee concluded that those concerns remain. It decided that there continues to be a risk of repetition and consequently an ongoing risk to the safety of the public and the wider public interest.

The Committee therefore determined that Ms Bannatyne's fitness to practise remains impaired by reason of her convictions and her misconduct.

### **Decision on sanction**

The Committee considered what action, if any, to take in respect of Ms Bannatyne's registration. It had regard to its powers under Section 36Q(1) of the Act, which sets out the options available to it. The Committee also had regard to the '*Guidance for the Practice Committees including Indicative Sanctions Guidance (effective from October 2016)*'. It took into account that the purpose of any action taken is not to be punitive, although it may have that effect, but to protect patients and the wider public interest. It applied the principle of proportionality, balancing the public interest with Ms Bannatyne's own interests. The Committee considered its options in ascending order.

In the absence of any evidence to indicate that the serious concerns raised in June 2017 have been sufficiently addressed by Ms Bannatyne, the Committee determined that it would be wholly inappropriate to terminate the current suspension order or to allow it to lapse. Such action would not afford the public protection, nor would it serve to satisfy the wider public interest.

The Committee next considered whether to replace the current suspension order with an order of conditions. However, given Ms Bannatyne's ongoing lack of engagement and consequently her failure to provide any evidence of her insight or remediation, the Committee decided that conditions would not be appropriate or workable. It had received no

information to indicate that Ms Bannatyne would comply with any conditions that could be imposed. The Committee also question whether conditions would be proportionate in any event, given the serious nature of Ms Bannatyne's misconduct. It also considered that it could not formulate any conditions that would address the matter of her dishonesty. For these reasons, the Committee decided that the sanction of conditions would not be a suitable outcome.

In all the circumstances, the Committee has decided to extend the period of the current suspension order by 12 months. In reaching its decision, the Committee took into account the complete lack of engagement by Ms Bannatyne and the absence of any evidence of her insight or remediation. In deciding on the period of 12-months, the Committee noted the efforts made by the GDC in relation to this review, which has included drawing to Ms Bannatyne's attention the recommendations made by the previous Committee. Despite all attempts, nothing has been forthcoming from her. This Committee therefore considered that 12 months is an appropriate and proportionate length of time, as it would afford Ms Bannatyne a good opportunity to reflect on all the matters that have been raised. In the meantime, the public and the wider public interest would be sufficiently protected by the continued suspension of her registration.

A Committee will review Ms Bannatyne's case at a resumed hearing to be held shortly before the end of the extended period of suspension. That Committee will consider what action it should take in relation to her registration. Ms Bannatyne will be informed of the date and time of that resumed hearing, with which she will be expected to engage.

The Committee reviewing Ms Bannatyne's case may find it helpful if Ms Bannatyne provided the following:

- Evidence of her reflection on all of the matters raised in this case.
- Evidence of her Continuing Professional Development.
- Testimonial evidence.

Unless Ms Bannatyne exercises her right of appeal, her current suspension order will be extended by a period of 12 months, 28 days from the date when notice of this Committee's direction is deemed to have been served upon her. In the event that Ms Bannatyne does lodge an appeal against this decision, the current suspension order will continue to remain in force until the appeal has been decided.

That concludes this determination."

At a review hearing on 12 June 2019 the Chairman announced the determination as follows:

#### Service

"This is the resumed Professional Conduct Committee (PCC) hearing of Ms Bannatyne's case which is being held in accordance with Section 36Q of the Dentists Act 1984 (the Act). Ms Bannatyne is neither present nor represented today. Ms Culleton, Counsel, appears on behalf of the General Dental Council (GDC).

In the absence of Ms Bannatyne, the Committee first considered whether the Notification of Hearing had been served on her in accordance with Rules 28 and 65 of the GDC (Fitness to Practise) Rules Order of Council 2006 (the Rules). The Committee has received a bundle of documents which contains a copy of the Notification of Hearing dated 30 April 2019,

addressed to Ms Bannatyne at her registered address. The Committee is satisfied that the Notification of Hearing contains the necessary information set out in Rule 28. The Royal Mail track and trace receipt records that it attempted delivery on 2 May 2019. However, the Committee is aware that the GDC is only required to demonstrate that the item was sent and not to demonstrate that it arrived. The bundle of documents also shows that a copy of the Notification of Hearing was sent on 30 April 2019 via the GDC's secure file sharing system to Ms Bannatyne's email address. The Committee, having heard the Legal Adviser's advice, is satisfied that the Notification of Hearing has been served on Ms Bannatyne in accordance with the Rules.

#### Decision on proceeding in the absence of the Registrant

The Committee then considered whether to proceed to review this case in the absence of Ms Bannatyne. Ms Culleton invited the Committee to do so on the basis that the GDC has taken all reasonable efforts to notify Ms Bannatyne of today's review hearing. She submitted that Ms Bannatyne has not attended previous hearings throughout these proceedings. Further, she has not been in recent correspondence with the GDC, her last letter to the GDC was dated 28 April 2016.

The Committee has considered the submissions made. It has accepted the advice of the Legal Adviser. The Committee has borne in mind that its discretion to proceed with a hearing in the absence of a respondent should be exercised with the utmost care and caution.

The Committee is satisfied that all reasonable efforts have been made by the GDC to notify Ms Bannatyne of today's review hearing. It notes from the Notification of Hearing letter dated 30 April 2019 that Ms Bannatyne was asked to inform the GDC by 14 May 2019 whether or not she would be attending the hearing and/or whether she would be represented. She has not replied to that letter. Further, Ms Bannatyne has not requested an adjournment of today's hearing and there is nothing before the Committee today to suggest that she might attend the hearing on a future occasion, particularly given that she has not attended previous hearings of her case. In these circumstances, the Committee has concluded that Ms Bannatyne has voluntarily absented herself from today's hearing. In addition, the Committee considers that there is a clear public interest in reviewing the order today given its imminent expiry. Accordingly, the Committee has determined that it is fair to proceed with today's review hearing in the absence of Ms Bannatyne.

#### Background to Ms Bannatyne's case

Ms Bannatyne's case was first considered by the PCC in June 2017. Ms Bannatyne did not attend that initial hearing. That Committee found proved that Ms Bannatyne was convicted of two offences on 10 March 2016 at Falkirk Sheriff Court: firstly, of dangerous driving, contrary to section 2 of the Road Traffic Act 1988; and secondly, of Assault to Injury, contrary to Common Law. The offences took place on 3 December 2014. On 27 April 2016 Ms Bannatyne was sentenced to a Community Payback Order to carry out 200 hours of unpaid work within six months. She was also disqualified from holding and obtaining a driving licence for nine months until she passed an extended driving test.

In addition to her convictions, the PCC found proved that Ms Bannatyne failed to immediately inform the GDC that she was subject to criminal proceedings and that her actions in this regard were misleading and dishonest. It determined that these findings amounted to misconduct.

In relation to impairment by reason of conviction, the PCC found that there was no evidence to indicate that Ms Bannatyne had made any efforts to address the conduct that led to her convictions, any insight or reflections into her offending behaviour and its impact on the dental profession. The PCC concluded that there remained a risk of repetition of the conduct that led to Ms Bannatyne's convictions. It determined that Ms Bannatyne's fitness to practise was impaired by reason of her convictions.

In relation to the misconduct, the PCC found that there was no evidence of any insight or remediation and therefore there was a risk of repetition. It also considered that her conduct had brought the dental profession into disrepute. It determined that Ms Bannatyne's fitness to practise was also impaired by reason of her misconduct.

The PCC directed that Ms Bannatyne's registration be subject to an order of suspension for a period of 12 months. It directed a review of her case shortly before the end of the period of suspension and also imposed an immediate order of suspension. In directing a review, that Committee recommended to Ms Bannatyne that the reviewing Committee may be assisted by the following:

- Evidence of her reflection on all of the matters raised in this case.
- Evidence of her Continuing Professional Development.
- Testimonials

The order was reviewed by the PCC at a hearing on 13 June 2018. Ms Bannatyne did not attend that hearing and she did not provide the GDC with the information recommended to her by the PCC at the initial hearing. In the absence of any evidence to demonstrate how Ms Bannatyne had remedied the serious concerns raised at the initial hearing, the PCC concluded that there remained a risk of repetition. It determined that Ms Bannatyne's fitness to practise remained impaired by reason of her convictions and her misconduct. The PCC considered that given Ms Bannatyne's ongoing lack of engagement with the GDC and her failure to provide any evidence of her insight or remediation, conditions would not be appropriate or proportionate. It therefore directed that the suspension order be extended for a further period of 12 months with a review.

#### Decision on today's review hearing

At today's hearing this Committee has comprehensively reviewed the current order. In so doing, the Committee has had regard to the GDC bundle, which contains copies of letters and emails from the GDC's Case Review Team to Ms Bannatyne, reminding her of the recommendations made by the PCC, which she was asked to provide prior to this review hearing. Ms Bannatyne has not replied to those communications, despite being given several opportunities to do so.

The Committee has also had regard to the GDC review addendum bundle which contains documents that were considered at the initial PCC hearing in June 2017. This includes a copy of the Memorandum of Conviction, the Police Case Summary and media articles.

Ms Culleton invited the Committee to find that Ms Bannatyne's fitness to practise remains impaired by reason of her misconduct. She submitted that Ms Bannatyne has been given two opportunities to engage with the GDC following the initial PCC hearing of her case in June 2017 and at the first review hearing in June 2018, but she has chosen not to. There was, she said, no evidence of any remediation or insight into the concerns identified. In these circumstances, she invited the Committee to direct that Ms Bannatyne's registration be

suspended indefinitely. Ms Culleton said that the provisions of 36Q(1)(d)(i) and (ii) of the Act, which set out the powers for a committee to make such a direction, have been met.

The Committee considered carefully the submissions made. Throughout its deliberations, it has borne in mind that its primary duty is to address the public interest, which includes the protection of patients, the maintenance of public confidence in the profession and in the regulatory process, and the declaring and upholding of proper standards of conduct and behaviour. The Committee has accepted the advice of the Legal Adviser.

The matters found proved by the PCC in June 2017 were serious. There is no evidence before this Committee that Ms Bannatyne has addressed any of the concerns identified by the PCC at the initial hearing in June 2017 or at the review hearing in June 2018, despite being given the opportunity to do so. During this time Ms Bannatyne has not engaged with the GDC. In the absence of any remediation, reflection or remorse, the Committee considers that the risk of repetition remains. Accordingly, it has determined that Ms Bannatyne remains a risk to the public. The Committee has determined that public confidence in the profession would remain undermined if it were to find Ms Bannatyne impaired. Therefore, the Committee has concluded that Ms Bannatyne's fitness to practise remains impaired by reasons of her convictions and her misconduct.

The Committee next considered what direction to give in accordance with Section 36Q of the Act. 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 also had regard to the submissions made by Ms Culleton.

Given its reasons for finding current impairment, and its view that the risks remain, the Committee has concluded that terminating the current suspension order would not be appropriate or sufficient for the protection of the public and would not uphold the wider public interest.

The Committee considered whether to replace the current suspension order with one of conditions. In so doing, it had regard to the absence of any evidence of remediation from Ms Bannatyne and her lack of engagement with her regulator over the last two years. Further, it has no information as to her current circumstances. Therefore, the Committee is not satisfied that any conditions could be formulated that would be appropriate, workable or sufficient for the protection of the public and to uphold the wider public interest.

The Committee then went on to consider whether to direct that the current period of suspension be extended for a further period. It has borne in mind Ms Bannatyne's continuing lack of engagement with the GDC over a significant period of time, despite being given sufficient opportunity to do so. In the Committee's judgment, the Ms Bannatyne's decision not to participate at any of these proceedings over the last two years has exacerbated the situation. In these circumstances, the Committee has concluded that a further period of suspension of 12 months would serve no useful purpose.

Accordingly, the Committee directs that Ms Bannatyne's registration be suspended indefinitely. It is satisfied that this is a proportionate and appropriate outcome and that the provisions of Sections 36Q(1)(d)(i) and (ii) of the Act are met.

The effect of the foregoing direction is that, unless Ms Bannatyne exercises her right of appeal, her registration will be suspended indefinitely from the date on which the direction takes effect. If necessary, the intervening period between the current order expiring and the

new order coming into effect will be covered by the extension of the current order of suspension under Sections 36S, 36T and 36W of the Act.

That concludes this case for today.”