

**Hearing held in private**

**PUBLIC DETERMINATION**

**Summary**

<b>Name:</b>	<b>BURTON, Denise Kim [Registration number: 123269]</b>
<b>Type of case:</b>	<b>Health Committee (Review)</b>
<b>Outcome:</b>	<b>Suspended indefinitely</b>
<b>Duration:</b>	<b>N/A</b>
<b>Date:</b>	<b>9 August 2021</b>
<b>Case number:</b>	<b>CAS-187982</b>

**At this hearing the Committee made a determination that includes some private information. That information has been omitted from this public version of the determination, and this public document has been marked to show where private material has been removed.**

This is a resumed hearing pursuant to Section 36Q of the *Dentists Act 1984 (as amended)* ('the Act'). The hearing is being conducted remotely via Microsoft Teams video-link in line with the current practice of the General Dental Council (GDC).

The purpose of the hearing has been for this Health Committee to review Ms Burton's case and determine what action to take in relation to her registration. Ms Burton's registration is currently subject to an order of suspension.

Ms Burton is not present, and she is not represented in her absence. The Case Presenter for the GDC is Mr Sam Thomas, Counsel.

**Decision on application to proceed with the hearing in the absence of the registrant**

At the outset, Mr Thomas made an application under Rule 54 of the *GDC (Fitness to Practise) Rules Order of Council 2006* ('the Rules'), to proceed with the hearing notwithstanding Ms Burton's absence. The Committee took into account Mr Thomas' submissions in respect of the application and the supporting documentation provided. The Committee accepted the advice of the Legal Adviser on service and proceeding in the absence of Ms Burton.

**Decision on service**

The Committee first considered whether notice of the hearing has been served on Ms Burton in accordance with Rules 28 and 65 of the Rules.

The Committee received a copy of the Notice of Hearing, dated 1 July 2021 ('the notice'), which was sent to Ms Burton's registered address by Special Delivery. The Committee took into account that there is no requirement within the Rules for the GDC to prove receipt of the notice, only that it was sent. However, the Committee noted from the associated Royal Mail 'Track and Trace' information provided to it, that the notice was delivered and signed for on 2 July 2021. A copy of the notice was also sent to Ms Burton by email on 1 July 2021.

The Committee was satisfied that the notice sent to Ms Burton complied with the 28-day notice period required by the Rules. It was further satisfied that the notice contained all the required particulars, including the date and time of the hearing, confirmation that it would be held

remotely via video-link on Microsoft Teams, and that the Committee had the power to proceed with the hearing in her absence.

On the basis of all the information provided, the Committee was satisfied that notice of the hearing had been served on Ms Burton in accordance with the Rules.

#### Decision on whether to proceed with the hearing in the absence of the registrant

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 Burton. 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 case of *R v Jones [2003] 1 AC 1HL* and as explained in the case of *General Medical Council v Adeogba [2016] EWCA Civ 162*. The Committee remained mindful that fairness to Ms Burton was of prime importance, but it also had regard to the need to be fair to the GDC. The Committee also bore in mind the public interest in expeditiously considering this case.

The Committee took into account the information that Ms Burton has not engaged with the GDC since April 2019. It noted that she did not attend the previous Health Committee hearings of her case in July 2019 and July 2020. This Committee received no information to suggest that an adjournment of the hearing today would assist with securing her attendance on a future date. It was satisfied, having taken into account all the relevant factors, that Ms Burton had voluntarily absented herself from these proceedings. The Committee therefore decided that it would be fair to the GDC, and in the public interest, to proceed with the hearing in Ms Burton's absence.

#### Decision on application to hold the hearing in private

Mr Thomas made a further application under Rule 53 of the Rules to hold the hearing in private. He submitted that, given the nature of the hearing today, before the Health Committee, it should proceed entirely in private.

Following advice from the Legal Adviser, which it accepted, the Committee acceded to Mr Thomas' application. Whilst the Committee took into account that this case involves matters of conviction and health, having read the case papers, it was satisfied that the issues are inextricably linked. The Committee therefore determined that a wholly private hearing was appropriate.

#### Background

The matters in the case relate to Ms Burton's health, as well as a conviction that she received in May 2018. Ms Burton first appeared before a Health Committee in July 2019. She did not attend that hearing and she was not represented in her absence.

That initial Committee found proved an allegation that Ms Burton's fitness to practise was impaired by reason of her conviction on 22 May 2018. [IN PRIVATE]. That Committee also found proved that Ms Burton's fitness to practise was impaired by reason of her adverse health. [IN PRIVATE].

[IN PRIVATE].

That initial Committee determined to suspend Ms Burton's registration for a period of 12 months with a review before the expiry of the order.

Accordingly, Ms Burton's case was reviewed by a HC at a hearing in July 2020. She did not attend that hearing and she was not represented in her absence. That Committee determined that her fitness to practise remained impaired by reason of her conviction and by reason of her adverse health.

In relation to the issue of Ms Burton's conviction, the Committee in July 2020 stated as follows: "With regards to Ms Burton's conviction, although it notes that it is almost two years since Ms

*Burton was convicted, the Committee has received no evidence of insight or any remediation. In considering the level of her insight, remorse and remediation, the Committee noted that Ms Burton has failed to engage with the process and there is no information from her before this Committee. The nature of Ms Burton's conviction is serious. The Committee therefore determined that her fitness to practise is impaired by reason of her conviction.*

That Committee further stated in relation to Ms Burton's health, "[IN PRIVATE]. The Committee concluded that, in the absence of this information, the concerns about her health and her insight into her health condition has not been addressed. [IN PRIVATE]."

The Committee in July 2020 determined to suspend Ms Burton's registration for a further period of 12 months. It directed a further review of her case prior to the end of the 12-month period. That Committee noted and adopted the recommendations made by the initial Committee that, a Committee reviewing Ms Burton's case may find it helpful to receive the following:

- Evidence of engagement with the GDC process
- [IN PRIVATE]; and
- [IN PRIVATE].

### **Today's review**

This has been the second review of Ms Burton's case since the initial Health Committee hearing in July 2019. In comprehensively reviewing her case today, the Committee considered all the evidence before it. It took account of the submissions made by Mr Thomas on behalf of the GDC. It accepted the advice of the Legal Adviser. The Committee received no material from, or on behalf of, Ms Burton.

It was Mr Thomas' submission on behalf of the GDC that Ms Burton's fitness to practise remains impaired by both her conviction and her adverse health. [IN PRIVATE].

Mr Thomas submitted that the most appropriate and proportionate sanction in the circumstances was one of indefinite suspension.

### **The Committee's decisions on impairment**

The Committee first considered whether Ms Burton's fitness to practise remains impaired by reason of her conviction and/or by reason of her adverse health.

In reaching its decisions, the Committee exercised its independent judgement. It had regard to the over-arching objective of the GDC, which is: the protection, promotion and maintenance of the health, safety and well-being of the public; the promotion and maintenance of public confidence in the dental profession; and the promotion and maintenance of proper professional standards and conduct for the members of the dental profession.

#### **Decision on impairment by reason of conviction**

Ms Burton has not engaged with the GDC since April 2019. Consequently, there is no evidence before the Committee today to show any form of remorse, remediation, or insight on her part in relation to her conviction. [IN PRIVATE]. In all the circumstances, the Committee concluded that there remains a risk of repetition in relation to the conviction. The Committee was therefore satisfied that Ms Burton's fitness to practise remains impaired by reason of her conviction. It considered the nature of her conviction, and was satisfied that such a finding is necessary to protect the public. The Committee also considered that a finding of impairment is in the wider public interest. In its view, the reputation of the dental profession and the public's confidence in it would be undermined if no impairment were found on the basis of the conviction.

Decision on impairment by reason of adverse health

In considering the matter of Ms Burton's adverse health, the Committee again noted the lack of any information in this regard. [IN PRIVATE].

Accordingly, the Committee was satisfied that Ms Burton's fitness to practise also remains impaired by reason of her adverse health. [IN PRIVATE].

Decision on sanction

The Committee considered what sanction, if any, to impose on Ms Burton's registration. It had regard to section 36Q(1) of the Act, which sets out the options available to it at this review.

The Committee took into account that the purpose of a sanction is not to be punitive, although it may have that effect, but to protect patients and the wider public interest. In reaching its decision, the Committee had regard to the '*Guidance for Practice Committees including Indicative Sanctions Guidance (Effective from October 2016; last revised December 2020)*'. It applied the principle of proportionality, balancing the public interest with Ms Burton's own interests.

The Committee concluded that a sanction was necessary in this case, given the serious nature of the ongoing concerns and the identified risks to the public and the wider public interest. It therefore decided that it would not be appropriate to terminate the current order of suspension or to allow it to lapse.

The Committee considered whether to terminate the order of suspension and impose conditions on Ms Burton's registration. It decided, however, that conditional registration would not be appropriate or sufficient to protect the public and the wider public interest, given that Ms Burton has not engaged with the process for over two years now.

The Committee went on to consider whether to suspend Ms Burton's registration for a further specified period. The Committee took into account its duty to act proportionately in all the circumstances, and to only impose the minimum restriction necessary. It noted, however, that there has been no engagement by Ms Burton since April 2019. It has received no information to suggest that a further period of suspension would result in her re-engagement with the GDC and its processes. In the circumstances, the Committee considered that a further period of suspension would only serve to prolong the matters in this case, and would serve no meaningful purpose. In reaching its decision, the Committee took into account the possibility that Ms Burton could choose to re-engage with the Council. However, it considered that the onus should now be placed upon her to make contact, if she wishes to do so, as opposed to the GDC continuing to hold review hearings of her case.

Accordingly, the Committee directs that Ms Burton's registration should be suspended indefinitely in accordance with section 36Q(1)(d) of the Act. The Committee was satisfied that the requirements for indefinite suspension are met on this occasion.

Unless Ms Burton exercises her right of appeal, her registration will be suspended indefinitely. In the event that she does appeal, the suspension order currently on her registration will remain in force until the resolution of the appeal.

That concludes this determination.