

Hearing held in public

Summary	
Name:	MARSHALL, Alex [Registration number: 214665]
Type of case:	Professional Conduct Committee (review)
Outcome:	Suspended indefinitely
Duration:	N/A
Date:	28 January 2022
Case number:	CAS-190586

Neither party is present at this resumed hearing of the Professional Conduct Committee (PCC). The hearing is being conducted remotely using Microsoft Teams in line with the GDC's current practice. The GDC has invited the Committee to conduct the hearing on the papers in the absence of both parties.

Purpose of hearing

The purpose of today's hearing is to review a substantive direction of suspension first imposed on Miss Marshall by the PCC on 18 October 2019. The hearing is being held in accordance with section 36Q (1) of the Dentists Act 1984 (as amended) ('the Act').

Service

The Committee first considered whether service has been properly effected in accordance with the General Dental Council (Fitness to Practise) Rules 2006 ('the Rules').

In its written representations to the Committee the GDC submitted that Miss Marshall has been properly notified of today's hearing in accordance with Rule 28 of the Rules. The Committee noted that a notice of hearing was sent to Miss Marshall's registered address on 9 December 2021 using the Royal Mail's Special Delivery postal service. That notice set out the date and time of the hearing, as well as confirming the remote nature of the hearing and the powers available to the Committee. A copy of the notice was also sent to Miss Marshall's known email address. The Royal Mail's Track and Trace service records that the notice was delivered on the morning of 10 December 2021.

The Committee accepted the advice provided by the Legal Adviser. Having regard to the GDC's submissions and the evidence placed before it the Committee was satisfied that service has been effected in accordance with the Rules.

Proceeding in absence

The Committee then went on to consider whether to exercise its discretion to proceed in the absence of Miss Marshall in accordance with Rule 54 of the Rules. It was mindful that its discretion to proceed in the absence of a registrant must be exercised with the utmost care and caution. The Committee noted that the GDC has invited the Committee to proceed in the absence of Miss Marshall and to conduct the hearing on the papers alone.

The Committee accepted the advice of the Legal Adviser. It determined that it would be appropriate to proceed in the absence of Miss Marshall. The Committee is mindful of the public interest in seeing an expeditious review of her suspension, particularly given its imminent expiry. The Committee considers that an adjournment, which has not been sought by Miss Marshall, would be unlikely to secure her attendance, given her lack of attendance at all previous PCC hearings. The Committee considers that the GDC has made every effort to secure Miss Marshall's attendance, and that she has voluntarily absented herself. In the circumstances the Committee was content to proceed in Miss Marshall's absence, and for the hearing to take place on the papers.

Existing order

In October 2019 the PCC held a hearing of inquiry to consider allegations relating to Miss Marshall. Miss Marshall was not present at the hearing, and was not represented in her absence.

The case related to her criminal conviction for an offence of drink driving. More particularly, on 25 November 2016 Miss Marshall appeared before North Northumbria Magistrates' Court and was convicted of an offence of driving after having consumed excess alcohol. Miss Marshall was recorded as having 126 micrograms of alcohol in 100 millilitres of breath. She was sentenced to a period of imprisonment of 12 weeks, suspended for 18 months; was ordered to pay costs in the sum of £85.00; was ordered to pay a victim surcharge in the amount of £85.00; was ordered to undertake 50 hours' worth of unpaid work; and was disqualified from driving for a period of three years.

Following its factual inquiry the Committee determined that a finding of impaired fitness to practise was in the public interest. At the conclusion of the hearing the Committee determined that it was appropriate and proportionate to suspend Miss Marshall's registration for a period of six months, with a review hearing to take place prior to the end of that period of suspended registration. The Committee also made recommendations as to the evidence that Miss Marshall might provide which the future reviewing Committee might find helpful, including a reflective piece dealing with 'her understanding of the impact of her conviction on the public's trust and confidence in the profession and on the standing and reputation of the profession'.

The PCC reviewed Miss Marshall's suspension on 14 April 2020. Miss Marshall was not present at the hearing and was not represented in her absence, although she provided a statement for the Committee's consideration dated 30 March 2020 in which she expressed her regret for her actions and stated that there would be no repeat. The Committee determined that Miss Marshall had 'made no attempts to fulfil the recommendations made by the Committee in October 2019'. The Committee determined that a finding of current impairment was again required. The Committee determined to extend the period of suspension by six months, with another review hearing to take place prior to the expiry of that extended period of suspension. The reviewing Committee adopted the suggestions of the index PCC in identifying the reflections that Miss Marshall may wish to undertake and present.

The extended period of suspension was next reviewed by the PCC on 5 November 2020. Miss Marshall was again not present at the hearing, and was not represented in her absence. The reviewing Committee noted that Miss Marshall had not provided any written submissions or other material, save for an email regarding her non-attendance. The Committee stated that, 'there is no evidence before the Committee today to demonstrate Miss Marshall's appreciation of the impact of her conviction on the reputation of the dental profession. Nor is there any evidence of her insight into how she breached her professional standards'. The Committee determined that a finding of current impairment was required on public interest grounds. The

Committee determined to extend the period of suspension by six months, with another review hearing to take place prior to the expiry of that extended period of suspension.

The extended period of suspension was next, and most recently, reviewed by the PCC on 6 May 2021. Miss Marshall was again not present and was not represented in her absence. She provided no new information for the reviewing Committee to consider. The Committee determined that Miss Marshall's fitness to practise remained impaired on public interest grounds, once more noting her lack of engagement, insight, reflection or remediation. The Committee determined to extend the period of suspension by nine months, with another review hearing to take place prior to the expiry of that extended period of suspension.

It falls to this Committee today to once more review Miss Marshall's suspension.

Submissions

In their written submissions to the Committee the GDC submitted that, as Miss Marshall has not provided any information to provide the insight and reflection as suggested by previous Committees, Miss Marshall's fitness to practise remains impaired. The GDC has invited the Committee to make a direction of indefinite suspension from the register.

The Committee has not received any written submissions, or indeed any information, from Miss Marshall in relation to this review hearing.

Committee's determination

The Committee has carefully considered all the information presented to it, including the written documentation and submissions provided by the GDC. In its deliberations the Committee has had regard to the GDC's *Guidance for the Practice Committees, including Indicative Sanctions Guidance* (October 2016, updated December 2020). The Committee has accepted the advice of the Legal Adviser.

Impairment

The Committee has determined that Miss Marshall's fitness to practise remains impaired. It notes that Miss Marshall has not engaged in the hearing and has not submitted any material for the Committee to consider. The Committee is mindful that there is a persuasive burden on Miss Marshall to demonstrate that her fitness to practise is no longer impaired. At the last review hearing, and indeed the previous review and index PCC hearings, a number of recommendations were made in relation to what Miss Marshall might do to remedy her misconduct. Miss Marshall has not provided this or any other evidence, and the Committee finds that Miss Marshall's fitness to practise remains impaired. The Committee makes this finding on public protection and public interest grounds, and determines in particular that a finding of impairment is required to maintain public trust and confidence in the profession.

Sanction

The Committee next considered whether it would be appropriate to revoke the suspension, or to replace the suspension with a direction of conditional registration.

The Committee considered that revoking the suspension would be insufficient to protect the public and would also undermine public trust and confidence in the profession given its finding of current impairment.

The Committee next considered whether it could formulate conditions which would be workable and which would meet the issues, and particularly public interest issues, that have been identified. The Committee concluded that a direction of conditional registration would be insufficient and would also undermine public trust and confidence in the profession. The Committee notes that Miss Marshall has not engaged with these proceedings and is not in attendance. In the absence of such engagement the Committee is not able to identify conditions which would be workable, and it also considers that conditions would be unlikely to be complied with on account of Miss Marshall's longstanding lack of participation.

The Committee then went on to consider whether it would be appropriate to extend the current period of suspension. The Committee considers that a further extension of the current direction of suspension would serve little purpose given Miss Marshall's ongoing lack of engagement. The Committee is also mindful of the public interest in the efficient regulation of the profession, and it considers that a further direction of suspension with a review would not be an effective and proportionate use of the GDC's resources.

In the circumstances, the Committee considers that a direction of indefinite suspension is the appropriate and proportionate sanction. The Committee hereby directs that Miss Marshall's registration be suspended indefinitely in accordance with section 36Q (1) (d) of the Act. This indefinite suspension will take effect from the date on which the existing period of suspension would otherwise expire, namely 19 February 2022.

Right of appeal

Miss Marshall will have 28 days from the date on which notice of this decision is deemed to have been served on her to appeal against this decision. Should she decide to appeal, the extant suspension will remain in force until the resolution of any such appeal. Should she decide not to appeal, the current suspension will become indefinite on the date on which it would otherwise expire, namely on 19 February 2022.

Subsequent reviews

This direction may be reviewed in accordance with the provisions of section 36Q (4) of the Act. More particularly, Miss Marshall may, after two years have elapsed from the date on which this direction of indefinite suspension takes effect, ask for the indefinite suspension to be reviewed.

That concludes this case for today.