

HEARING PARTLY HEARD IN PRIVATE*

*The Committee has made a determination in this case that includes some private information.
That information has been omitted from this text.

SWORN, Verity Elizabeth

Registration No: 122477

HEALTH COMMITTEE

JANUARY 2017 – JANUARY 2019**

Most recent outcome: Suspended Indefinitely**

** See page 7 for the latest determination.

Verity Elizabeth SWORN, a dental nurse, Qual- National Certificate NEBDN 1998, was summoned to appear before the Health Committee on 4 January 2017 for an inquiry into the following charge:

Charge

“That being a registered dental nurse:

1. On 19 June 2015 at the Wimbledon Magistrates Court you were convicted on your own admission of an offence of assault by beating contrary to section 39 of the Criminal Justice Act 1988.
2. In respect of the conviction at paragraph 1 you were:
 - a) sentenced to a 12 month Community Order with a Rehabilitation Activity Requirement and an Unpaid Work Requirement (150 hours);
 - b) ordered to pay compensation of £300, a victim surcharge of £60, CPS costs of £85 and a criminal courts charge of £150.
3. You have failed adequately to co-operate with the GDC’s investigation into your fitness to practise in that you have not agreed to undergo a health assessment.
4. You suffer from the health condition set out in the attached Schedule¹.

And that, in consequence of the matters set out above, your fitness to practise is impaired by reason of your conviction and/or misconduct and/or adverse physical or mental health.”

Miss Sworn was not present and was not represented. On 4 January 2017, the Chairman announced the findings of fact to the Counsel for the GDC:

“Decision on service of the Notification of Hearing

Miss Sworn was neither present nor represented today. The Committee had before it a copy of the notification of hearing letter dated 6 December 2016 which was sent to the registrant’s registered address by special delivery. It was satisfied that the letter contained all the requirements for notice as set out in Rule 13 of the General Dental Council (GDC) (Fitness

¹ Please note that the schedule is a private document and cannot be disclosed

to Practise) Rules Order of Council 2006 (the Rules). The Committee noted the Royal Mail track and trace print out which showed that the letter was delivered on 7 December 2016 and signed for in the printed name "SWORN". The notification of hearing letter was also sent by secure email to Miss Sworn on 6 December 2016. The Committee was satisfied that service had been effected in accordance with Rules 13 and 65 and that all reasonable efforts had been made to notify the registrant of this hearing.

Decision on proceeding in the registrant's absence

In making this decision the Committee bore in mind that its discretion to proceed with a hearing in the absence of a registrant should be exercised with the utmost care and caution. The Committee took account of the principles set out in *R v Jones* [2003] and *GMC v Adeogba* [2016] EWCA Civ 162. It took account of Mr Singh's submissions and accepted the advice of the Legal Adviser.

The Committee noted that in an email dated 25 November 2016, Miss Sworn was notified by the GDC of the listing window for this hearing and she was informed that a formal notice of hearing would be sent to her. In her response to the GDC on 25 November 2016 Miss Sworn stated "I will not be attending any hearing though." She also stated in a letter dated 13 December 2015 "I would appreciate if this matter could be dealt with sooner rather than later." The Committee also noted other correspondence within the hearing bundle between Miss Sworn and the GDC in which she indicated an unwillingness to engage fully with the GDC's proceedings. It concluded that Miss Sworn had waived her right to attend this hearing. There was no application for an adjournment from Miss Sworn. The Committee was of the view that an adjournment would be unlikely to secure her attendance at a future date. The Committee considered the public interest in the expeditious disposal of this case and the registrant's own interests. Having satisfied itself that all reasonable efforts had been made, in accordance with the Rules, to notify Miss Sworn of this hearing and that the notification had been duly sent, the Committee determined, in the circumstances, that there was a public interest in proceeding with this hearing notwithstanding the absence of the registrant.

The Committee then considered Mr Singh's application under Rule 53 that part of this hearing relating to the registrant's health should be held in private. The Committee accepted the advice of the Legal Adviser and granted the application.

During the course of his opening, Mr Singh made an application under Rule 18 to amend paragraph 1 of the charge by changing the date "19 June 2015" to "29 May 2015". He submitted that the proposed amendment was necessary to bring the charge in line with the available evidence and would not change the nature of the allegation. The Committee accepted the advice of the Legal Adviser. It was satisfied that the amendment could be made without injustice and granted the application.

Mr Singh also made an application under Rule 57(1) for two witness statements to be admitted as hearsay evidence. The Committee noted that 'hearsay notice' was served on Miss Sworn by way of letter dated 6 December 2016 in which she was notified of the GDC's intention to rely on the statements without calling the witnesses to give evidence in chief. The Committee noted that the witness statements related to the production of correspondence between those acting for the GDC and the Registrant and as such were demonstrably reliable. Miss Sworn has neither challenged nor raised any objections to this evidence. In those circumstances, the Committee concluded that the witnesses did not need

to give oral evidence. It granted the application to admit the witness statements as hearsay evidence.

Decision on the facts

[Private information]

The Committee took account of the submissions made by Mr Singh on behalf of the GDC. It accepted the advice of the Legal Adviser. The Committee considered each head and sub-head of charge separately and whether they had been proved on the balance of probabilities.

The Committee's findings are as follows:

1.	<p>Amended to: On 29 May 2015 at the Wimbledon Magistrates Court you were convicted on your own admission of an offence of assault by beating contrary to section 39 of the Criminal Justice Act 1988 – Found Proved</p> <p>The Committee noted that Rule 57(5) states:</p> <p>“Where a respondent has been convicted of a criminal offence –</p> <p>(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</p> <p>(b) the findings of fact upon which the conviction is based shall be admissible as proof of those facts.”</p> <p>There was no certificate of conviction before this Committee as prescribed in Rule 57(5). However, the Committee noted that the Miss Sworn self-referred to the GDC following the incident which led to her conviction. The Committee also had before it a copy of a ‘memorandum of an ENTRY entered in the Register of the South West London Magistrates’ Court LJA:2577’ which contained the Registrant’s name, the charge, the plea entered and the orders made by the court; a PNC entry confirming the conviction; Solicitors letter confirming the outcome of the hearing; and correspondence from Miss Sworn also acknowledging the conviction.</p> <p>On the basis of the evidence before it, the Committee found this charge proved.</p>
2.	In respect of the conviction at paragraph 1 you were:
2. (a)	<p>sentenced to a 12 month Community Order with a Rehabilitation Activity Requirement and an Unpaid Work Requirement (150 hours) – Found Proved</p> <p>For the same reasons as set out at paragraph 1 above.</p>
2. (b)	<p>ordered to pay compensation of £300, a victim surcharge of £60, CPS costs of £85 and a criminal courts charge of £150 – Found Proved</p> <p>For the same reasons as set out at paragraph 1 above.</p>
3.	PRIVATE INFORMATION
4.	PRIVATE INFORMATION

We move to Stage Two.”

On 5 January 2017, the Chairman announced the determination as follows:

“Having announced its findings on the facts as alleged, the Committee heard submissions from Mr Singh pursuant to Rule 20 of the General Dental Council (GDC) (Fitness to Practise) Rules Order of Council 2006. **[Private information]**. It also accepted the advice of the Legal Adviser in relation to all the facts found proved.

Background

On 29 May 2015, Miss Sworn, on her own admission, was convicted of an offence of assault by beating contrary to section 39 of the Criminal Justice Act 1988. She was sentenced to a 12-month Community Order with a Rehabilitation Activity Requirement and an Unpaid Work Requirement (150 hours). She was ordered to pay compensation of £300, a victim surcharge of £60, CPS costs of £85 and a criminal courts charge of £150.

Miss Sworn made a self-referral to the GDC advising that she had been charged with an offence for which she was subsequently convicted. **[Private information]**

The Committee bore in mind that the decisions on misconduct and impairment are matters for its own independent judgement. There is no burden or standard of proof at this stage of proceedings.

Misconduct in relation to Head of Charge 3

The Committee found that Miss Sworn had a duty as a registered dental professional to co-operate with her regulator. By failing to do so, she breached paragraph 9.4 of the GDC's Standards for the Dental Team (September 2013) which states “You must co-operate with any relevant formal or informal inquiry and give full and truthful information.”

[Private information]

Impairment of Fitness to Practise

The Committee next considered whether Miss Sworn's fitness to practise is currently impaired by reason of her conviction and/or misconduct **[Private information]**. It reminded itself of its duty to protect the public, declare and uphold proper standards, and maintain public confidence in the dental profession.

In reaching its decision the Committee applied the approach formulated by Dame Janet Smith in her Fifth Report from the Shipman case; that is, it should ask itself:

“Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:

- a. has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or
- b. has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or
- c. has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or
- d. has in the past acted dishonestly and/or is liable to act dishonestly in the future.”

The fourth question was not considered in this case because no findings had been made which concerned Miss Sworn's honesty.

Impairment by reason of conviction

Miss Sworn was convicted of assault by beating another, within a domestic setting, where children were also present. **[Private information]**

The evidence before the Committee showed that the attack was unprovoked and sustained. The incident occurred in a domestic environment and did not involve patients. However, Miss Sworn breached fundamental tenets of the dental profession and brought the profession into disrepute.

In her letter to the GDC dated 2 October 2015, Miss Sworn expressed regret for 'the domestic altercation' that resulted in her conviction. The Committee considered that this demonstrated some insight by Miss Sworn. Nevertheless, it was of the view that the nature of Miss Sworn's conviction required a finding of current impairment in order to maintain public confidence in the dental profession. There was no evidence before the Committee of the need for a finding of impaired fitness to practise on the grounds of public protection.

The Committee therefore determined that Miss Sworn's fitness to practise is currently impaired by reason of her conviction.

Impairment by reason of misconduct**[Private information]**

Miss Sworn's misconduct breached the standards of the profession and brought it into disrepute. The Committee was of the view Miss Sworn was liable, in the future, to breach the standards and to bring the profession into disrepute should she continue to refuse to co-operate fully with the GDC. Furthermore, given her continued firm refusal to co-operate, the Committee concluded that Miss Sworn's misconduct, although remediable, had not been remedied and could be repeated in the future. **[Private information]**

The Committee was of the view that public confidence in the profession would be undermined if a finding of impairment was not made in the circumstances.

It therefore determined that Miss Sworn's fitness to practise is currently impaired by reason of her misconduct.

[Private information]***Disposal***

The Committee next considered what sanction, if any, to impose on Miss Sworn's registration. It reminded itself that the purpose of a sanction is not to be punitive although it may have that effect. The Committee bore in mind the principle of proportionality. It carefully considered the GDC's Guidance for the Practice Committees, including Indicative Sanctions Guidance (October 2015) (the PCC Guidance).

The Committee noted the character references by colleagues and friends on behalf of Miss Sworn. They described Miss Sworn as caring, compassionate, conscientious and hard working. Miss Sworn, however did not engage with this hearing and the Committee drew no adverse inferences from her absence. **[Private information]**

The Committee then considered whether to impose conditions of practice on Miss Sworn's registration. It bore in mind that conditions must be workable, measurable, relevant and

proportionate. Miss Sworn has not engaged with this hearing and has stated she has no intention to return to dental work. As such the Committee was not assured that she would comply with any conditions imposed on her registration.

The Committee next considered whether to suspend Miss Sworn's registration. The character references from her employer demonstrated that Miss Sworn was a valued member of the dental team. Taking account of Miss Sworn's self-referral to the GDC, her early guilty plea, her correspondence and engagement with the GDC's investigations some of which demonstrated some insight and remorse, the Committee concluded that suspension was the appropriate disposal for this case and that erasure would be disproportionate in the circumstances.

The Committee therefore directs that Miss Sworn's registration be suspended from the Register for Dental Care Professionals for a period of 12 months, with a review, pursuant to section 36P (7)(b) of the Dentists Act 1984, as amended.

[Private information]

The Committee took account of the submissions made by Mr Singh on behalf of the GDC. It accepted the advice of the Legal Adviser.

Given the Committee's findings and determination on impairment, the absence of any evidence of insight and the need to protect the public, an immediate order is necessary for the protection of the public and is otherwise in the public interest. The Committee noted that there was currently an interim order of suspension on Miss Sworn's registration. However, it considered that the serious nature of the impairment found in this case justifies the imposition of an immediate order.

The effect of the foregoing direction and this order is that Miss Sworn's registration will be suspended with immediate effect and unless she exercises her right to appeal, the substantive direction of suspension will take effect 28 days from when notice is deemed served on her. Should she exercise her right to appeal, this order for immediate suspension will remain in place pending the resolution of any appeal proceedings.

The interim order of suspension currently on Miss Sworn's registration is revoked pursuant to Section 36P (10) of the Dentists Act 1984, as amended.

That concludes the case."

On 18 October 2017, at the review hearing, the Chairman announced the determination as follows:

"This is a resumed hearing for the purposes of s 36Q of the Dentists Act 1984, held in private under Rule 53 of the General Dental Council (Fitness to Practise) Rules 2006 (the Rules), as matters relate mostly to health.

[IN PRIVATE]

Accordingly, the Committee having found that Miss Sworn's fitness to practise continues to be impaired and directs that the period of suspension be extended for a further period of 12 months with a review.

If Miss Sworn does not attend or otherwise engage with the review hearing she risks the further suspension of her registration, which may include the indefinite suspension of her registration. She is therefore strongly encouraged to engage in this process to demonstrate insight, remediation and cooperation with this regulatory process (as indicated to her in the January 2017 determination of the Health Committee). She has good character references and there is material to suggest that she is a caring and competent dental nurse. The matters relating to her impairment are capable of remedy.

That concludes the hearing today.”

At a second review hearing on 16 January 2019, the Chairman announced the determination as follows:

“Miss Sworn is not present at this resumed hearing of the Health Committee (HC) and is not represented in her absence. Ms Sally Denholm of the GDC’s Legal Team appears for the Council.

Purpose of hearing

The purpose of today’s hearing is to review a substantive direction of suspension imposed on Miss Sworn’s registration by the HC on 5 January 2017. 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’).

On behalf of the GDC Ms Denholm submitted that Miss Sworn 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 Sworn’s registered address on 29 November 2018 using the Royal Mail’s Special Delivery service. That notice set out the date, time and venue of the hearing, as well as confirming the nature of the hearing and the powers available to the Committee. The notice was subsequently returned to the GDC’s offices with the information that the Royal Mail had attempted to deliver the item but that the addressee had ‘gone away’.

The Committee accepted the advice provided by the Legal Adviser. Having regard to Ms Denholm’s submissions and the information placed before it the Committee was satisfied that service has been properly 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 Sworn in accordance with Rule 54 and Rule 65 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. Ms Denholm submitted that the Council has complied with its duty to inform Miss Sworn of this hearing and that it would be fair and appropriate to proceed in her absence.

The Committee accepted the advice of the Legal Adviser. It determined that it would be appropriate and in the interests of justice to proceed with the hearing in Miss Sworn’s absence. The Committee considered that Miss Sworn has voluntarily and consistently absented herself from these proceedings. The Committee considered that an adjournment

would serve no useful purpose, as there is no indication that to do so would secure Miss Sworn's attendance. The Committee is mindful of Miss Sworn's obligation to keep the Council informed of her current address, and that previous attempts to contact her by email and by post have not secured her engagement. The Committee also considered that there is a clear public interest in ensuring that the suspension order is reviewed before its expiry, namely on 2 February 2019.

Preliminary matters

Ms Denholm made an application under Rule 53 of the Rules for the hearing to be part-held in private given that part of the case relates to Miss Sworn's health. Having accepted the advice of the Legal Adviser, the Committee decided to accede to the application. The hearing was thereafter part-held in private as indicated below.

IN PRIVATE

[text omitted]

IN PUBLIC

The Committee then went on to consider whether it would be appropriate to extend the current period of suspension. The Committee concluded that a further period of suspension is unlikely to serve any purpose in circumstances where Miss Sworn has disengaged. In light of Miss Sworn's persistent lack of engagement, the absence of any evidence to suggest that she has taken steps to address the issues in this case, and the risks to the public and the wider public interest arising from the same matters, the Committee considers that indefinite suspension is the appropriate and proportionate outcome. The Committee hereby directs that Miss Sworn's registration be suspended indefinitely in accordance with section 36Q (1) (d) of the Act.

Right of appeal

In accordance with section 36S, section 36T (2) and section 36W (3) of the Act Miss Sworn 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 indefinite suspension will take effect at the end of the 28-day appeal period, and the current suspension will continue to be in place until the indefinite suspension takes effect.

Subsequent reviews

This direction may be reviewed in accordance with the provisions of section 36Q (4) of the Act. More particularly, Miss Sworn 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."