

Hearing held in public
Summary

Name:	TURNBULL, Colin Robertson [Registration number: 83141]
Type of case:	Professional Conduct Committee (Review)
Outcome:	Indefinite suspension imposed
Date:	24 November 2022
Case number:	CAS-175828

This is a Professional Conduct Committee (PCC) review hearing in relation to Mr Turnbull, pursuant to section 27C of the *Dentists Act 1984 (as amended)* ('the Act'). The hearing is being held remotely by Microsoft Teams video-link in line with the current practice of the General Dental Council (GDC). Neither party is present nor represented today. The General Dental Council (GDC) has requested that the hearing be conducted on the papers and has provided written representations.

The purpose of this hearing has been for this Committee to review two separate cases in respect of Mr Turnbull, and to determine what action to take in relation to his registration, which is currently subject to two concurrent orders of suspension. This determination relates to the first of those cases (CAS-175828).

Decision on service:

The Committee first considered whether notice of the hearing had been served on Mr Turnbull in accordance with Rules 28 and 65, and Section 50A of the Act. The Committee noted that included in the hearing bundle relating to this case was a copy of the Notice of Hearing dated 18 October 2022 ('the notice'), which was sent to Mr Turnbull'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, it had sight of the associated Royal Mail 'Track and Trace' receipt, which confirmed that the notice was still at London Central MC. A copy of the notice was also sent by email to Mr Turnbull and to his legal representative on 18 October 2022.

The Committee was satisfied that the notice sent to Mr Turnbull 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 his absence and on the papers only.

On the basis of all the information provided, the Committee was satisfied that notice of the hearing had been served on Mr Turnbull in accordance with the Rules and the Act.

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

The Committee considered whether in principle this PCC review was suitable to be conducted entirely on the papers and decided that it was. There had been no request for an oral hearing and there were no factors that required an oral hearing.

The Committee next considered whether to exercise its discretion under Rule 54 to proceed with the hearing in the absence of Mr Turnbull. 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 Mr Turnbull was an important consideration, but also took into account the need to be fair to the GDC. It further had regard to the public interest in the expeditious review of the current suspension orders.

The Committee had regard to the chain of emails between the GDC and Mr Turnbull's legal representatives in relation to the matter and noted the email from Mr Turnbull's solicitor dated 8 November 2022, in which Mr Turnbull's solicitor states "*I am without instructions regarding whether there are any objections to these review hearings proceeding on the papers.*" They went on to state in an email dated 11 November 2022, "To avoid any misunderstanding, the reference to "no explicit objection" was in reference to the written submissions that stated that there had been no objection by the defence. We have not responded to confirm whether we object to the reviews proceeding on the papers or not as we are without our client's instructions to do....". The Committee noted, there was no formal request from him, or on his behalf, for an adjournment of today's proceedings. Further, the Committee received no information to suggest that an adjournment was likely to secure Mr Turnbull's attendance on a future date.

The Committee considered that Mr Turnbull had been given ample notice of this hearing. In the circumstances, the Committee considered that there were significant public interest considerations in reviewing Mr Turnbull's cases expeditiously, particularly given the public protection concerns raised by the last reviewing Committee in its determination. Taking all these factors into account, the Committee was satisfied that it was fair and in the public interest to proceed with the hearing in the absence of Mr Turnbull.

Case background

This first case in relation to Mr Turnbull was initially considered by a PCC at a hearing in April 2016. The charge before that Committee related to 14 patients whom Mr Turnbull had treated between 8 June 2010 and 11 June 2012. Mr Turnbull admitted, and that PCC found proved, deficiencies in respect of the treatment and care he had provided to the 14 patients. The failings were in fundamental areas of dentistry, such as assessments, diagnosis, the provision of adequate and appropriate treatment, treatment planning and the provision of treatment without clinical justification. Mr Turnbull also admitted, and the PCC found proved, numerous failings in respect of his record keeping practice.

The PCC found that the facts found proved amounted to deficient professional performance, and it determined that Mr Turnbull's fitness to practise was impaired

by reason of deficient professional performance. A sanction of conditional registration for a period of 12 months was imposed on his registration, and a review was directed prior to the expiry of the order. An immediate order of conditions was also imposed.

First Review

On 4 May 2017 the case was reviewed by a PCC. That Committee determined that Mr Turnbull's fitness to practise remained impaired. It noted that he had not resumed clinical practice. The absence of any evidence that his remediation had been embedded into his clinical practice led that PCC to conclude that he continued to present a risk to patients. The PCC also concluded that there was a significant public interest in a finding of impairment in order to maintain public confidence in the profession. The PCC imposed a sanction of conditional registration for a period of 24 months, with a review of the case prior to the expiry of the order.

Second Review

On 10 May 2019 the case was again reviewed by a PCC. That Committee determined that Mr Turnbull's fitness to practise remained impaired. It was noted that he had not been able to practise as a dentist since 2015, and therefore had not been in a position to demonstrate full remediation of the clinical matters identified at the initial hearing. The Committee was informed of various health and personal matters. The PCC in 2019 concluded that the concerns about the safety of patients remained unaddressed, and that there remained a risk of repetition. The period of conditional registration was extended by 18 months, with a review of the case prior to the expiry of the order.

Third Review

On 12 November 2020, a further review of the case was conducted by a PCC. That Committee noted that Mr Turnbull had been unable to complete his remediation process because he was yet to return to clinical practice at that time. It noted that the remediation he had undertaken involved a large amount of online learning, however the scope and intensity of those courses were not before the Committee. In addition, that Committee considered that his Personal Development Plan (PDP) had not progressed much since 2016 with few additions since that time. That Committee was concerned that Mr Turnbull, having not worked as a dentist for some five years at that point, was now *"slipping further away from his goal to remedy his deficient professional performance: that can only be achieved by embedding change in his daily clinical practice"*.

The Committee in November 2020 concluded that there remained a risk to the safety of patients, and a risk of repetition. It determined that a finding of current impairment was required for the protection of the public. Furthermore, that Committee determined that a finding of current impairment was in the public interest in order to uphold the standards of the profession. That Committee determined that the order of conditions that was in place on Mr Turnbull's registration should be revoked and replaced with an order of suspension for a period of 12 months. It also imposed an immediate order of suspension and directed a review of the case before the expiry of the order.

Fourth Review

On 29 November 2021 a further review of the case was conducted by a PCC. That Committee determined that Mr Turnbull's fitness to practise remained impaired. It was noted that there had been a total lack of engagement by Mr Turnbull. The PCC in 2021 concluded that the concerns about the safety of patients remained unaddressed, and that there remained a risk of repetition. The Committee determined to extend the current suspension order by a period of 12 months, and it directed a further review.

Today's review

This has been the fifth review since the findings of the PCC in April 2016. In comprehensively reviewing this case today, the Committee considered all the evidence before it. It took account of the written submissions of the GDC. The Committee accepted the advice of the Legal Adviser.

The GDC submitted that that Mr Turnbull's fitness to practise remains impaired on both public protection and public interest grounds. The GDC stated that "*over the last 12 months, the Registrant has failed to demonstrate any insight and has not provided any evidence that the identified failings have been remediated. In light of the circumstances of the case and the Registrant's lack of meaningful engagement, it is submitted that it is appropriate and proportionate to suspend the Registrant indefinitely on both public protection and public interest grounds as the conditions are met.*"

Decision on impairment

The Committee first considered whether Mr Turnbull's fitness to practise remains impaired by reason of deficient professional performance. In reaching its decision, 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.

The Committee noted that there has been no material change since the last PCC review. Mr Turnbull has not engaged with the GDC since the last PCC review. Consequently, there is no evidence before this Committee to demonstrate that he has made any progress in relation to his remediation. The position remains that there has been an absence of recent engagement with the GDC by Mr Turnbull, and there has been no suggestion of any potential engagement or remediation at this stage.

The Committee noted that the Registrant has been suffering from ill health. However, in the absence of evidence of any meaningful reflection, insight or remediation, the Committee could not be satisfied that the risk of Mr Turnbull's repeating his deficient professional performance would be low or that the suspension of his registration has been sufficient to mark the seriousness of his deficient professional performance, so as to maintain public confidence in the profession and in this regulatory process. The Committee therefore considered there to be a high risk of repetition.

Accordingly, the Committee determined that Mr Turnbull's fitness to practise as a dentist continues to be impaired on the statutory basis of deficient professional performance. The Committee was satisfied that his deficient professional performance continues to raise both public protection and wider public interest concerns.

Decision on sanction

The Committee next considered what action to take in respect of Mr Turnbull's registration. It had regard to section 27C(1) of the Act, which sets out the options available to the Committee at this review.

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

The Committee was satisfied that the continued restriction of Mr Turnbull's registration is necessary. There would be a risk of harm to the public should Mr Turnbull be allowed to practise without any restriction on his registration and public confidence in the profession and in this regulatory process would also be seriously undermined.

The Committee could not identify any conditions of practice which could be formulated to be workable, measurable and proportionate owing to his current lack of any engagement in these proceedings. The Committee noted that Mr Turnbull has been out of practice for over 7 years, and the Committee could not be satisfied that Mr Turnbull would comply with any conditions on his registration. The Committee noted that he had previously failed to fully comply with the conditions initially imposed on his registration by the PCC in this set of proceedings.

The Committee determined that the suspension of Mr Turnbull's registration therefore remains necessary and proportionate. The periods of suspension previously imposed on Mr Turnbull's registration have not achieved their intended purpose, as Mr Turnbull has been unable to demonstrate reflection, insight and remediation into his deficient professional performance and there is a lack of engagement from him in respect of these proceedings and also with his legal representatives. There was nothing to suggest to the Committee that Mr Turnbull would be likely to engage fully in these proceedings in respect of his deficient professional performance and demonstrate sufficient reflection, insight and remediation within the next 12 months.

The Committee determined that, in all likelihood, any reviewing Committee considering the case in 12 months' time would be in the same position as the Committee today in respect of Mr Turnbull's deficient professional performance. The Committee therefore determined that extending the current period of suspension for a further period of up to 12 months with a review would serve no meaningful purpose. There has been no evidence provided of the Registrant's CPD, PDP or his intentions to return to dentistry as recommended by the previous Committees, and there has been a lack of engagement by him. Mr Turnbull has been suspended from practice for over 2 years, and his current order of suspension is due to expire on 15 December 2022.

Taking all of this into account, the Committee is satisfied that the imposition of a sanction of indefinite suspension is proportionate and necessary in order to protect the public and is otherwise in the public interest. The Committee therefore directs that Mr Turnbull's registration be suspended indefinitely.

That concludes the hearing today.