

**HEARING HEARD IN PUBLIC**

**LESTER, Adrienne**

**Registration No: 115906**

**PROFESSIONAL CONDUCT COMMITTEE**

**November 2016 – March 2019**

**Most recent outcome: Suspended indefinitely \*\***

**\*\* See page 14 for the latest determination**

Adrienne LESTER, a dental nurse, Verified experience in Dental Nursing, was summoned to appear before the Professional Conduct Committee on 29 November 2016 for an inquiry into the following charge:

**Charge**

"That being registered as a dental care professional Adrienne Lester's (115906) fitness to practice is impaired by reason of misconduct. In that:

1. You failed to protect Mr A's confidentiality on 17 June 2015 including by inappropriately:
  - a. accessing his records in relation to medical consultations on:
    - i. 12 March 2006; and,
    - ii. 23 December 2006.
  - b. accessing his records in relation to a dental consultation on 9 August 2014.
  - c. discussing details of his medical history with a colleague.
2. In a letter dated 6 October 2015 you advised the GDC "I did not access Mr A's medical records as this is not possible. As dental nurses you only have access to dental records."
3. Your conduct in relation to 2 was:
  - a. Misleading; and,
  - b. Dishonest."

Ms Lester was not present and was not represented. On 29 November 2016 the Chairman announced the findings of fact to the Counsel for the GDC:

"Mr Stoton

**Evidence of service and proceedings in registrant's absence.**

Ms Lester was not present or represented at this hearing today.

The Committee saw a copy of the notice of today's hearing dated 27 October 2016 that was sent to Ms Lester's registered address by first class post and special delivery. A printout from the Royal Mail Track and Trace website states that the special delivery item was delivered on 2 November 2016.

The Notice was also sent to the registrant via email on 26 October 2016.

The Committee read an email between a member of the GDC's staff and Ms Lester on 8 November 2016. It noted that Ms Lester confirmed that she had received documents sent to her and would not be attending the hearing.

In all the circumstances the Committee was satisfied that the GDC had made all reasonable efforts to serve notice upon Ms Lester as required by the Rules.

The Committee noted that Ms Lester was in touch with the GDC and had answered correspondence promptly. It was concerned that she had decided not to come, given the potentially serious consequences. The Legal Adviser advised that the courts had recently indicated that disciplinary bodies should forewarn a registrant not just that a hearing may proceed in his or her absence, but also that the consequences of non-attendance are likely to be severely prejudicial. The Committee noted that Ms Lester had exchanged information with the GDC and had been consistent in her desire not to attend. She had given reasons for her decision. She has not requested an adjournment and there is no indication that she would attend on another date.

The Committee was satisfied that Ms Lester has chosen not to attend the hearing today expecting it to proceed in her absence.

The charges are serious, involving dishonesty. The Committee is therefore of the view that it is in the public interest and the interests of justice to proceed with the hearing.

### **General Background**

The charges relate to alleged failures in protecting the confidentiality of Mr A by accessing his medical records on various dates as well as discussing his medical history with a colleague. It is also alleged that Ms Lester's conduct was misleading and dishonest in that she advised the GDC in a subsequent letter that she had not accessed these records.

### **Evidence**

The Committee was provided with a number of documents submitted by the GDC, including a witness statement of AH and seven documentary exhibits. You stated at the conclusion of the GDC evidence that it would not be pursuing charges 2 and 3.

### **Committee's findings of fact**

The Committee has taken into account all the written evidence presented to it. It has also considered the submission made by you.

The Committee has accepted the advice of the Legal Adviser. In accordance with that advice it has considered each head of charge separately. The Committee has been reminded that the burden of proof rests with the GDC, and has considered the heads of charge on the civil standard of proof, that is to say, the balance of probabilities.

I will now announce the Committee's findings in relation to each head of charge:

1.a.i.	Proved.
1.a.ii.	<p>Proved.</p> <p>The Committee had sight of various screen shots of the Adastra computer system used by Ms Lester accessing these records, and which also confirm the dates she accessed these records. The Committee had sight of the minutes of the disciplinary hearing on 8 July 2015, where Ms Lester asserted that she had accessed these records. The Committee also had sight of the written statement of AH, which confirms that Ms Lester accessed these records.</p> <p>No explanation has been made by Ms Lester as to the appropriateness of her accessing these records, although she has admitted to accessing these records. Accordingly, the Committee finds charges 1a i and 1 a.ii proved.</p>
1.b.	<p>Proved.</p> <p>As for the reasons given above for charges 1 a. i and 1 a. ii.</p>
1.c.	<p>Proved</p> <p>The Committee noted the witness statement of AH which confirms that a discussion had taken place relating to the medical history of Mr A. The Committee had sight of the admission made by Ms Lester during the disciplinary hearing on 8 July 2015. The Committee therefore finds this charge proved.</p>
2.	<p>Proved.</p> <p>The Committee had sight of the letter dated 6 October 2015 to the GDC, in which these words are contained within that letter.</p>
3.	<p>You on behalf of the GDC, stated that you were not pursuing allegations 2 and 3 due to the ambiguity of the wording set out in charge 2 that contains the wording “dental records” and “medical records” and that it is not able to provide sufficient evidence to find these charges proved to the required standard.</p> <p>The Committee noted that Ms Lester had readily admitted the allegations against her at the disciplinary hearing and had not challenged the evidence. Apart from the passage in the letter dated 6 October 2015, there is no indication that Ms Lester denied having accessed the records of Mr A. The Committee noted the distinction she made between “medical records “and “dental records” which might explain this apparently inconsistent statement. If that was the explanation, then allegation 3 would probably not be established.</p> <p>The Committee agreed that there was insufficient evidence to prove allegation 3.</p> <p>Therefore, allegation 3a and 3b are not proved.</p>

We move to Stage Two.”

On 30 November 2016 the Chairman announced the determination as follows:

**“Determination on misconduct and impairment**

Having announced its findings on all the facts, the Committee heard submissions on the matters of misconduct, impairment and sanction.

It found that Ms Lester acted inappropriately by accessing the patient records of Mr A on three occasions and had discussed this with a colleague.

Mr Stoton referred the Committee to the specific issues identified in respect of the facts in line with the standards, which in his submission, have been breached. Mr Stoton submitted that the facts found proved by the Committee do fall far below the standards expected, would be considered deplorable by fellow practitioners and amount to misconduct.

Mr Stoton then moved on to the issue of current impairment and addressed the Committee on the factors that it must consider. He also addressed the Committee on the need to have regard to the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the GDC as a regulatory body. Mr Stoton stated that there has been little or no engagement made by Ms Lester to the GDC, and that to date there is a complete absence of any evidence of remediation provided by Ms Lester. He stated that Ms Lester’s fitness to practise today is currently impaired.

Mr Stoton addressed the Committee on the matter of sanction and submitted that, given the circumstances of, and the inherent wider public interest in, this case, the only appropriate sanction is that of a period of suspension. He stated that conditions would not be appropriate given the lack of engagement made by the registrant which made it impossible to formulate workable conditions.

The Committee fully considered all the evidence in this case as well as the submissions made by Mr Stoton. It accepted the advice of the Legal Adviser which included the factors relevant to the considerations of the Committee at each stage.

**Decision on Misconduct:**

When determining whether the facts found proved amount to misconduct the Committee had regard to the terms of the relevant professional standards in force at the time.

The Committee, in reaching its decision, had regard to the public interest and accepted that there was no burden or standard of proof at this stage. The Committee exercised its own independent judgement in reaching its decision.

The Committee has concluded that Ms Lester’s conduct was in breach of the *Standards for the Dental Team* (2013) as set out below.

***Standards for the Dental Team (2013):***

***Standard 4.2***

*You must protect the confidentiality of patients’ information and only use it for the purpose for which it was given.*

The Committee appreciated that the above breach does not automatically result in a finding of misconduct. The importance of maintaining patient confidentiality was well understood throughout all the healthcare professions. Ms Lester's breach of confidentiality was deliberate. The Committee considered that Ms Lester's conduct demonstrated a significant disregard for the expectations placed upon her as a registered professional, and it was the view of the Committee that these are serious matters and fall significantly below the standards expected of a registered dental care professional.

The Committee considered that the facts found proved, individually and collectively, demonstrated conduct unbecoming of a registered dental care professional and would be viewed as deplorable by fellow professionals. The Committee concluded that the facts found proved amount to misconduct that is serious.

**Decision on impairment:**

The Committee proceeded to decide if, because of this misconduct, Ms Lester's fitness to practise is currently impaired.

Dental care professionals occupy a position of privilege and trust in society and must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession. In this regard the Committee had regard to the approach to determining this issue formulated by Dame Janet Smith in her Fifth Shipman Report:

*"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 Committee considered that Ms Lester inappropriately accessing Mr A's records did bring the profession into disrepute. Ms Lester breached a fundamental tenet of the profession namely preserving patient confidentiality.

The Committee had no information from Ms Lester to demonstrate what, if any, steps she may have taken to remedy her misconduct. It cannot be satisfied that there is no risk of repetition.

She has not provided any evidence to demonstrate that she has fully acknowledged the seriousness of her conduct, nor has Ms Lester demonstrated any remorse or insight into her failings.

The Committee has borne in mind that its primary function is not only to protect patients but also to take account of the wider public interest, which includes maintaining

confidence in the dental profession and the GDC as a regulator, and upholding proper standards and behaviour.

The misconduct identified in this case was, in the view of the Committee, such that the need to uphold proper professional standards and public confidence in the profession would be significantly undermined if a finding of impairment were not made in the circumstances of this case.

Having regard to all this the Committee has concluded that Ms Lester's fitness to practise is currently impaired.

### **Sanction**

In assessing what sanction, if any, to impose on Ms Lester's registration, the Committee had regard to The Guidance for the Practice Committees, including Indicative Sanctions Guidance, effective October 2015. It bore in mind that the purpose of a 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 Ms Lester's interests. It considered in ascending order of seriousness each sanction available to it.

To conclude this case with no further action or to issue a reprimand would be wholly inappropriate given the seriousness of her conduct and the need for her to begin to demonstrate insight into her failings. Misconduct of this nature demands a greater sanction.

The Committee considered with great care whether to direct that her registration be made subject to her compliance with an order for conditions. The Committee was satisfied that in principle, conditions of practice could be formulated, be measurable workable and proportionate in relation to her clinical failings. The Committee however, could not be satisfied that given her lack of engagement, she would adequately comply and provide evidence that she had complied with any conditions imposed on her registration.

The Committee therefore directs that Ms Lester's registration be suspended. A period of 3 months' suspension is proportionate to the severity of her misconduct and is necessary to uphold and declare proper standards of conduct and behaviour. The Committee considered either a longer period of suspension or erasure but felt that either would be disproportionate and punitive and as such inappropriate.

The period of suspension shall be for 3 months with a review prior to the expiry of that period. This is to allow Ms Lester sufficient time to reflect on her inappropriate conduct and to demonstrate appropriate levels of remediation and insight.

The next Committee maybe assisted by Ms Lester's attendance together with her written reflections on her past failings, evidence of remediation and insight and any relevant courses attended particularly those regarding patient confidentiality. Finally, it may be assisted by testimonials from colleagues confirming evidence of good character.

The Committee now invites you to make submissions on the question of an immediate order.

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**Immediate Order:**

Having directed that Ms Lester's name be suspended from the register the Committee had to consider, in accordance with Rule 22(2), whether to impose an immediate order to cover the appeal period, or until any appeal against the outcome is heard.

The Committee has considered the submissions made by Mr Stoton that an immediate order should be made on the grounds that it is necessary in the wider public interest. Mr Stoton applied for this order to cover any possible appeal period and submitted that this would be compatible with the Committee's findings.

The Committee accepted the advice of the Legal Adviser.

The Committee was satisfied that an immediate order was in the public interest given the absence of any information from the registrant. The Committee concluded that given its findings and reasons for the substantive order of suspension to direct otherwise would be wholly inconsistent.

If, at the end of the appeal period of 28 days, Ms Lester has not lodged an appeal, this immediate order will lapse and will be replaced by the substantive direction of suspension. If Ms Lester does lodge an appeal, this immediate order will continue in effect until that appeal is determined.

Unless Ms Lester exercises her right of appeal, her name will be suspended from the register 28 days from the date when notice of this determination is deemed to have been served upon her.

That concludes this case."

On 2 March 2017 at a review hearing, the Chairman announced the determination as follows:

"This is a Professional Conduct Committee (PCC) resumed hearing, pursuant to Section 36Q of the Dentists Act 1984 (as amended) ('the Act').

Neither party is present at today's hearing following a request for the review of Ms Lester's case to take place on the papers provided. The documentation before the Committee includes written submissions from the GDC, dated 20 February 2017 and email correspondence from Ms Lester, dated 7, 16 and 17 February 2017 respectively.

**Application under Rule 53 of the General Dental Council (GDC) (Fitness to Practise) Rules Order of Council 2006 ('the Rules').**

The Committee had regard to the Rule 53 application made by the GDC in its written submissions. The GDC highlighted some private comments made in the email from Ms Lester of 17 February 2017. The GDC submitted that should the Committee consider it necessary to refer to these comments, then its application is that the relevant part of the hearing should be held in private.

The Committee accepted advice from the Legal Adviser on the Rule 53 application and determined that it would, if matters of a sensitive and personal nature were to be considered, hold that part of the hearing in private session.



For the avoidance of doubt, the Committee noted that this issue of privacy only related to the procedure of the hearing. The publication of any outcome in this case is a matter of course.

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

As part of its preliminary considerations, the Committee also considered whether the Notification of Hearing had been served upon Ms Lester in accordance with Rules 28 and 65 of the Rules.

The Committee received a bundle of documents containing a copy of the Notification of Hearing letter, dated 26 January 2017, which was sent to Ms Lester's registered address by Special Delivery. The Committee noted the associated Royal Mail 'Track and Trace' information confirming postage. The Committee noted that a copy of the letter was also sent to Ms Lester by email. The Committee was satisfied that the letter contained proper notification of today's hearing, including its time, date and location, as well as an indication that the Committee had the power to proceed with the hearing in Ms Lester's absence. The Committee was satisfied on the basis of the information before it, that the Notification of Hearing had been served in accordance with the Rules.

#### **Decision on proceeding in the absence of Ms Lester and on the basis of the papers**

The Committee went on to consider whether to proceed with today's hearing in the absence of Ms Lester and in the absence of any representation. The Committee approached this issue with the utmost care and caution. It had regard to the advice of the Legal Adviser on the relevant Rule, Rule 54, part of which was given in private session. The Committee took into account the need to be fair to both parties and it had regard to the public interest in dealing with the matters in this case expeditiously.

The Committee had regard to the email, dated 7 February 2017, from Ms Lester to the GDC, in which she stated that she would not be attending this hearing. In emails dated 16 and 17 February 2017 respectively, Ms Lester also confirmed that she did not wish to participate in the hearing remotely, nor did she have any documentation to submit to the Committee. Ms Lester further stated *"I have no problem with the hearing being conducted in my absence..."*. The Committee noted that there has been no suggestion that Ms Lester would be represented in her absence. She has not requested an adjournment and the Committee considered that an adjournment today would not make Ms Lester's attendance on a future date any more likely.

The Committee also considered the written submissions of the GDC, dated 20 February 2017, in which the Council respectfully invited the Committee to consider the papers that have been placed before it.

Given the indications of both parties, the Committee was satisfied that it was appropriate to proceed with the resumed hearing in the absence of Ms Lester and any representatives.

#### **Background**

Ms Lester's case was first considered by the PCC at a hearing which took place from 29 to 30 November 2016.



That Committee considered and found proved allegations that Ms Lester had failed to protect the confidentiality of Mr A on 17 June 2015, including by accessing his records in relation to two medical consultations and by accessing his records in relation to a dental consultation. It was further found that Ms Lester had discussed Mr A's medical history with a colleague.

The Committee in November 2016 considered that the facts it had found proved, individually and collectively, demonstrated conduct unbecoming of a registered dental care professional and that such conduct would be considered deplorable by fellow professionals. That Committee concluded that the facts it had found proved amounted to misconduct.

The Committee in November 2016 went on to determine that Ms Lester's fitness to practise was impaired by reason of her misconduct and it suspended her registration for a period of three months with an immediate order. In directing a review of her case prior to the expiry of the period of suspension, that Committee stated that:

*"The next Committee may be assisted by Ms Lester's attendance together with her written reflections on her past failings, evidence of remediation and insight and any relevant courses attended particularly those regarding patient confidentiality. Finally, it may be assisted by testimonials from colleagues confirming evidence of good character."*

### **Today's review**

Today this Committee comprehensively reviewed Ms Lester's case. In doing so, it considered all of the evidence placed before it, as set out in the documentation provided. The Committee accepted the advice of the Legal Adviser.

It was the submission of the GDC that Ms Lester's fitness to practise remains impaired. The GDC stated that no evidence has been provided by Ms Lester to demonstrate her acknowledgement or understanding of the concerns of the Committee in November 2016. The GDC submitted that the suspension order on Ms Lester's registration should be extended for a period of up to 12 months, with a further review prior to the end of the extended period.

In her email of 17 February 2017, Ms Lester stated that she did not oppose an extension of her suspension order. She stated that *"I do not intend to work as a dental nurse again as I'm pursuing a new career."*

### **Decision on impairment**

In reaching its decision on the issue of current impairment, 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.

The Committee noted that Ms Lester no longer intends to work as a dental nurse and is pursuing a new career. She has expressly stated that she has no information to put before this Committee and she has not done so. Consequently, there is no evidence of

any change in circumstances since the determination of the previous Committee in November 2016.

In the absence of any evidence to demonstrate that Ms Lester has developed insight or has undertaken any remediation in respect of her past failings, this Committee has concluded that the concerns raised by the previous Committee remain outstanding. This Committee therefore considered that, were Ms Lester to return to work as a dental nurse, there is a likelihood of repetition, which could put patients at future risk and undermine public confidence in the dental profession.

Accordingly, the Committee has determined that Ms Lester's fitness to practise is currently impaired.

### **Decision on sanction**

Having found that Ms Lester's fitness to practise remains impaired, the Committee considered Section 36Q(1) of the Act, which sets out the directions that it may make in relation to her registration.

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. It also took into account the '*Guidance for the Practice Committees including Indicative Sanctions Guidance (effective from October 2016)*'. The Committee applied the principle of proportionality, balancing the public interest with Ms Lester's own interests.

Ms Lester has not provided any evidence to demonstrate remorse or insight. The Committee has identified ongoing patient safety and the wider public interest concerns. Whilst it noted Ms Lester's stated intention not to continue working as a dental nurse, the Committee took into account that she could decide to return to dental practice at any time, should she wish to do so. In the circumstances, the Committee considered that it would be inappropriate to terminate the suspension order and take no further action.

The Committee took into account that, to date, Ms Lester has not engaged with this regulatory process in any productive manner. It therefore concluded that the imposition of conditions would not be appropriate or proportionate in this case.

In all the circumstances, the Committee has determined to extend the current period of Ms Lester's suspension by 12 months. In reaching its decision, the Committee again took into account that the serious concerns in this case have not been addressed. It considered that the 12-month period would give Ms Lester a further opportunity to reflect upon all of the issues raised in this case and to take appropriate action. In the meantime, members of the public and the wider public interest will continue to be protected by the order of suspension.

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

The Committee reviewing Ms Lester's case may be assisted by evidence provided by Ms Lester of her remorse, insight and any remediation she has undertaken.

Ms Lester will have 28 days, from the date that notice is deemed to have been served upon her, to appeal against this Committee's direction. Unless Ms Lester exercises her right of appeal, the suspension order currently on her registration will be extended for a period of 12 months.

In the event that Ms Lester does exercise her right of appeal, the current suspension order will remain in force until the resolution of the appeal.

That concludes this determination."

At a review hearing on 7 March 2018 the Chairman announced the determination as follows:

"Neither party is present at this resumed hearing of the Professional Conduct Committee (PCC). 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 Mrs Lester's registration by the PCC on 30 November 2016. The hearing is being held in accordance with section 36Q (1) of the Dentists Act 1984 (as amended) ('the Act'). The direction of suspended registration was previously reviewed by the PCC on 2 March 2017 and was extended for a further period of 12 months. The suspension is due to expire on 1 April 2018.

### **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 has submitted that Mrs Lester 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 Mrs Lester's registered address on 6 February 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 Royal Mail's Track and Trace service records that an attempt was made to deliver the notice on the afternoon of 7 February 2018, and that a 'while you were out' card was left.

The Committee also noted that a copy of the notice of hearing was sent to Mrs Lester by email on 6 February 2018, and is recorded as having been downloaded by Mrs Lester on 10 February 2018. Mrs Lester replied by email later that same day, stating that she would not be in attendance at this hearing due to other commitments. The GDC then sought clarification from Mrs Lester, and she sent a further email on 12 February 2018 to state that she did not wish to attend. A further email was received from Mrs Lester on 22 February 2018 in which she stated that she had no further documentation to submit regarding her case.

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 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 Mrs Lester in accordance with Rule 54 of the Rules. It was mindful that the discretion to proceed in the absence of a registrant must be exercised with the utmost care and caution. The Committee notes that the GDC has invited the Committee to proceed in the absence of Mrs Lester.

The Committee accepted the advice of the Legal Adviser. It determined that it would be appropriate and fair to proceed with the hearing in Mrs Lester's absence. The Committee considers that there is a clear public interest in ensuring that the suspension order is reviewed before its expiry. The Committee considered that Mrs Lester has voluntarily and expressly absented herself from today's hearing. An adjournment would serve no useful purpose, as it would be unlikely to secure her attendance. Mrs Lester has also not requested an adjournment of today's hearing, and indeed has confirmed that she will not be in attendance. The Committee therefore considers that proceeding in the absence of Mrs Lester would not be prejudicial to her.

**Existing order**

In November 2016 the PCC held a hearing to consider allegations about Mrs Lester's conduct. Mrs Lester was not present at the hearing and was not represented in her absence. The allegations which Mrs Lester faced, and which the Committee subsequently found proved, related to her failing to protect the confidentiality of an individual who was referred to for the purposes of the hearing as Mr A. It was found that on 17 June 2015 Mrs Lester had inappropriately accessed Mr A's records in relation to two medical consultations that had taken place in 2006, had accessed his records in relation a dental consultation that had taken place in 2014, and further had discussed details of Mr A's medical history with a colleague.

On 30 November 2016 the Committee determined that the facts that it had found proved amounted to misconduct, that Mrs Lester's fitness to practise was impaired as a result, and that her name should be suspended from the register for dental care professionals (DCPs) for a period of three months, with a review hearing to take place prior to the expiry of the suspension. The Committee found that there was a risk of repetition of the misconduct on account of the absence of any information from Mrs Lester to suggest that she had acknowledged, addressed and remedied her misconduct. The Committee also found that a finding of impairment was required to uphold proper professional standards of conduct and maintain confidence in the profession. The Committee considered that suspension from the register for a period of three months was commensurate with the seriousness of the misconduct that it had identified, and would provide Mrs Lester with sufficient time to reflect upon, and demonstrate evidence of her remediation of and insight into her misconduct.

A PCC review hearing took place on 2 March 2017 to review Mrs Lester's suspension prior to its expiry. Mrs Lester did not attend the hearing, and indeed neither party was present, with the hearing being conducted on the papers. The reviewing Committee found that Mrs Lester's fitness to practise remained impaired, having noted that she had not submitted any evidence to suggest that she had developed insight into or had remedied her misconduct. The reviewing Committee also noted that Mrs Lester had written to state that she did not intend to work as a dental nurse again and was instead pursuing a new career. The Committee found that the same risks of repetition of her misconduct continued to exist, as

well as noting the persistence of wider public interest considerations. The Committee decided to extend Mrs Lester's suspension for a further period of 12 months, and suggested that today's Committee may be assisted by evidence of her remorse, insight and remediation.

### **Committee's determination**

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

### **Impairment**

The Committee has determined that Mrs Lester's fitness to practise remains impaired. It notes that Mrs Lester has provided no information whatsoever about any steps that she may have taken to remedy the misconduct that was previously found, or to develop and demonstrate insight into her actions. The Committee further notes that there is no other information available from any other sources to suggest that she has reflected upon and remedied any of the issues which led to the previous Committee's findings of facts, misconduct and impairment. In short, there has been no material change in circumstances. The Committee has therefore concluded that the same risks to public safety and to public trust and confidence in the profession persist, and that accordingly Mrs Lester's fitness to practise remains impaired.

### **Sanction**

The Committee next considered whether it could formulate conditions which would be workable and which would address the risks that have been identified. The Committee concluded that it could not formulate any conditions which would be practicable or workable, given that Mrs Lester has not substantively engaged with these proceedings for a considerable period of time and that she has stated that she no longer wishes to practise.

The Committee then went on to consider whether it would be appropriate to extend the current period of suspension. It has determined that suspension remains the proportionate and appropriate sanction in the circumstances of this case. There remains a risk of harm to the public and to trust and confidence in the profession arising from Mrs Lester's continued impairment. A further period of suspension is required to continue to protect the public, to declare and uphold proper standards of conduct and behaviour and to maintain trust and confidence in the profession.

In view of the risks to patients and to the wider public interest, as well as the absence of any evidence of remediation, the Committee hereby directs that Mrs Lester's registration be suspended for a further period of 12 months. This period of time is commensurate with the ongoing risks that have been identified. Such a period of time will also allow Mrs Lester to demonstrate insight into and remediation of the matters that have precipitated these proceedings.

In accordance with section 36Q (1) of the Act this extended period of suspended registration will take effect from the date on which the existing period of suspension would otherwise

expire, namely on 1 April 2018. The Committee has further determined that the suspension should again be reviewed prior to its expiry.

Without in any way wishing to bind or direct the next reviewing Committee, the Committee notes that, at the next hearing, it would be open to the next reviewing Committee to direct that Mrs Lester's suspension be made indefinite.

### **Recommendations**

Although it is mindful that the task of reviewing this extended suspension is entirely one for the future PCC, the Committee considered that the reviewing Committee may find it helpful to have sight of the following:

- A reflective statement relating to the matters that have culminated in the findings of impairment
- Evidence of steps taken to remedy the misconduct that has been identified

### **Right of appeal**

Mrs Lester 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 be extended for a period of 12 months from the date on which it would otherwise expire, that is to say 1 April 2018.

That concludes this case for today.”

At a review hearing on 6 March 2019 the Chairman announced the determination as follows:

“This is a resumed hearing of Ms Lester's case.

Ms Lester is neither present nor represented. The General Dental Council (GDC) is also not in attendance. It relies on written submissions, in which it submits that: (i) service of the notification of hearing had been effected on Ms Lester in accordance with the General Dental Council (Fitness to Practise) Rules 2006 (the Rules); (ii) the hearing should proceed in her absence; (iii) her fitness to practise remains impaired by reason of misconduct and (iv) that an order of indefinite suspension be directed.

### **Service and proceeding in the absence of parties**

The Committee first considered whether the notification of today's review hearing had been served on Ms Lester in accordance with Rules 28 and 65. The Committee has received a bundle of documents which contains a copy of notification of hearing dated 04 February 2019 which was sent by Special Delivery to Ms Lester's last known address. The Committee is satisfied that the notification contains the required information under Rule 28, including the time and date of this hearing. It notes that the original venue as stated in the notice was changed and Ms Lester was notified by email on 19 February 2019. Taking all these factors into account, the Committee is satisfied that the GDC has complied with the requirements of service in accordance with Rules 28 and 65.

The Committee then went on to consider whether to proceed in the absence of Ms Lester in accordance with Rule 54. In so doing, it has borne in mind that its discretion to proceed in



the absence of Ms Lester must be exercised with the utmost care and caution. It is satisfied that the GDC has made all reasonable efforts to notify Ms Lester of this hearing and its purpose. The notification of hearing informed her that the Committee had the power to deal with the resumed hearing on the papers in the absence of parties and that the GDC was proposing to request that arrangements be made for the hearing to take place on the papers. The letter further stated that it was open to Ms Lester to provide the Committee with written submissions and any documents that she felt were relevant to the review of the Order. The letter asked Ms Lester to notify the GDC by 11 February 2019 if there was any reason why the hearing should not proceed on the papers. She was also asked to notify the GDC whether she would be attending the hearing and/or be represented. On the material before the Committee, she responded via email dated 11 February 2019 that she was content for the hearing to proceed in her absence. There has been no application for a postponement and there is nothing to suggest that an adjournment would make Ms Lester's attendance any more likely on a future occasion, given that she has not attended previous hearings of her case. Having regard to all the circumstances, the Committee has determined that Ms Lester has voluntarily absented herself from this hearing. It considers that there is a clear public interest in reviewing the order today. Accordingly, the Committee has determined to proceed with today's review hearing in the absence of Ms Lester and on the papers before it.

### **Background matters**

This is the third review of a suspension order that was first imposed on Ms Lester's registration for a period of 3 months by the Professional Conduct Committee (PCC) in 2016. Ms Lester did not attend that hearing and she was not represented. At that hearing the PCC found proved that Ms Lester acted inappropriately by accessing the patient records of Mr A on three occasions and had discussed these with a colleague.

The PCC concluded that the findings against Ms Lester amounted to misconduct and considered that Ms Lester inappropriately accessing Mr A's records did bring the profession into disrepute. Ms Lester breached a fundamental tenet of the profession namely preserving patient confidentiality. That Committee had no information from Ms Lester to demonstrate what, if any, steps she may have taken to remedy her misconduct. It cannot be satisfied that there is no risk of repetition. It concluded that Ms Lester's fitness to practise was currently impaired by reason of misconduct.

The PCC reviewed the order on 02 March 2017. Ms Lester did not attend the hearing and was not legally represented. The Committee determined that the Registrant's fitness to practise remained impaired by reason of misconduct. The Committee determined that the period of suspension should be extended by 12 months. The Committee considered that the extension would give Ms Lester a further opportunity to reflect upon all the issues raised in the case and take appropriate action. The Committee noted that the reviewing Committee may be assisted by evidence provided by Ms Lester of her remorse, insight and any remediation that she has undertaken.

The second review of the order took place on 07 March 2018. The hearing took place on the papers, in the absence of both parties. Ms Lester had confirmed that she did not wish to attend and did not have any documentation to submit. The Committee determined that Ms Lester's fitness to practise remained impaired. It noted that Ms Lester had not provided any information about any steps that she may have taken to remedy the misconduct that was previously found, or to develop and demonstrate insight into her actions. The Committee

further noted that there was no other information available from any other sources to suggest that she had reflected upon and remedied any of the issues which led to the previous Committee's findings of facts, misconduct and impairment. In short, there had been no material change in circumstances. The Committee considered that the reviewing Committee may find it helpful to have sight of the following:

- *A reflective statement relating to the matters that have culminated in the findings of impairment*
- *Evidence of steps taken to remedy the misconduct that has been identified.*

### **Today's review hearing**

This Committee has comprehensively reviewed the current order. In so doing, it has had regard to the GDC bundle, as well as the GDC's submissions. It notes the absence of any information from Ms Lester and lack of engagement by her with the GDC. The Committee has also had regard to the GDC's written submissions.

The Committee first considered whether Ms Lester's fitness to practise is still impaired. There is no evidence before this Committee that Ms Lester has addressed her past impairment, or provided any information as recommended to her by the PCC at the initial hearing or at the subsequent review hearings. In these circumstances, the Committee considers that there remains a risk that Ms Lester could repeat the misconduct and thus she remains a risk to the public. Indeed, it notes that Ms Lester has not fully engaged with the GDC in relation to these proceedings over a protracted period of time, despite repeated attempts by the GDC to secure her involvement. Accordingly, the Committee has determined that Ms Lester's fitness to practise is currently impaired.

The Committee next considered what direction to give, bearing in mind its powers in accordance with Section 36Q of the Dentists Act 1984. In so doing, it has had regard to the GDC's "Guidance for the Practice Committees including Indicative Sanctions Guidance" (October 2016).

The Committee has borne in mind the principle of proportionality, balancing the public interest against Ms Lester's own interests. The public interest includes the protection of the public, the maintenance of public confidence in the profession, and declaring and upholding standards of conduct and performance within the profession.

The Committee first considered whether it would be appropriate to allow the current order to lapse at its expiry or to terminate it with immediate effect. Given Ms Lester's lack of engagement with the GDC and the absence of any remediation, the Committee has concluded that it would not be appropriate to terminate the current order or to allow it to lapse.

The Committee next considered whether a period of conditional registration would be appropriate in this case. The Committee is aware that in order for conditions to be appropriate and workable there would need to be some measure of positive engagement from Ms Lester. To date, she has not engaged with the GDC or provided any evidence of remediation, despite being given the opportunity to do so. In these circumstances, the Committee has concluded that replacing the suspension order with a conditions of practice order would not be workable or appropriate.

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 Lester's lack of engagement with the GDC over a sustained period of time and the absence of any information as to her professional intentions. Ms Lester has chosen not to attend any of the hearings of her case or to provide any meaningful evidence of her remediation. In these circumstances, the Committee has concluded that a further period of suspension of 12 months would serve no useful purpose and that an indefinite period of suspension is the appropriate and proportionate outcome. It further notes Ms Lester has applied for voluntary removal and has indicated that she has no desire to return to practice. It therefore directs that Ms Lester's registration be suspended indefinitely.

The effect of the foregoing direction is that, unless Ms Lester exercises her right of appeal, her registration will be suspended indefinitely from the date on which the direction takes effect.

The Committee would also highlight to Ms Lester that should she wish to engage with the GDC, she can apply for a review of the indefinite suspension order after two years have elapsed since the direction for indefinite suspension takes effect.

That concludes the case for today."