

**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 the text.

**McGOWAN, Clare Katherine Mary**

**Registration No: 73333**

**HEALTH COMMITTEE**

**JUNE 2017 – JUNE 2019**

**Most recent outcome: Suspended Indefinitely \*\***

\*\* See page 7 for the latest determination

Clare Katherine Mary McGOWAN, a dentist, BDS Lpool 1997, was summoned to appear before the Health Committee on 5 June 2017 for an inquiry into the following charge:

**Charge**

“That being a registered Dentist,

1. You suffer from the medical condition set out in the Schedule<sup>1</sup>.

And by reason of the facts stated, your fitness to practise as a Dentist is impaired by reason of your adverse health.”

Ms McGOWAN was not present and was not represented. On 6 June 2017 the Chairman announced the findings of fact to the Counsel for the GDC:

**“Service and proceeding in the absence of Ms McGowan**

This was a hearing before the Health Committee (HC). Ms McGowan was neither present nor represented at the hearing. Mr Chris Hamlet of Counsel appeared on behalf of the General Dental Council (GDC). In Ms McGowan’s absence, the Committee first considered whether the GDC had complied with service of the Notice of Hearing in accordance with Rules 13 and 65 of the GDC (Fitness to Practise) Rules Order of Council 2006 (the Rules).

The Committee took into account all the information before it. It bore in mind the submissions from Mr Hamlet on behalf of the GDC. It accepted the advice of the Legal Adviser in respect of both service and proceeding in absence.

The Committee had sight of a copy of the Notification of Hearing, dated 4 May 2017, which was sent to Ms McGowan’s registered address by Special Delivery. The Committee was satisfied that the letter contained proper notification of today’s hearing, including its time, date and location, as well as notification that the Committee has the power to proceed with the HC hearing in Ms McGowan’s absence. The Notification of Hearing also contained a copy of the charge against Ms McGowan. The Committee was content that the Notification of Hearing complied with Rule 13.

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<sup>1</sup> The Schedule is a private document and is not disclosed to the public.

The Committee also had sight of a Royal Mail Track and Trace receipt which confirmed the item was delivered back to sender on 9 May 2017. It also had sight of a Royal Mail 'unable to deliver' receipt stating that the item was 'refused'.

Taking all this into account, the Committee was satisfied that notification of this hearing had been served on Ms McGowan in compliance with the Rules.

The Committee then considered whether to exercise its discretion under Rule 54 to proceed with this HC hearing in Ms McGowan's absence.

The Committee was mindful that this was a discretion that must be exercised with the utmost care and caution. It also had regard to the need for fairness to both parties, as well as the public interest in the expeditious disposal of the hearing.

Ms McGowan had been sent notification of this hearing. The Committee was provided with evidence of numerous attempts made by the GDC to contact Ms McGowan in relation to this hearing. The Committee was therefore satisfied that GDC had made all reasonable efforts to serve the notice and that Ms McGowan had been provided with the means of knowledge as to when and where her hearing was to take place.

The Committee noted that there has been no response to the notification of hearing from Ms McGowan. It had sight of a letter, dated 19 May 2017, from Carson McDowell LLP, who were previously instructed on behalf of Ms McGowan. The letter states, 'We write to inform you that we are no longer instructed to act on Dr McGowan's behalf and are no longer representing her in relation to the GDC's investigation...'.

The Committee had not received a request from Ms McGowan for an adjournment of this hearing. It had no information before it to suggest that an adjournment would result in Ms McGowan's attendance at a future hearing. Taking this all into account, the Committee concluded that Ms McGowan has absented herself from today's hearing.

Having weighed the interests of Ms McGowan with those of the GDC and the public interest in the expeditious disposal of this hearing the Committee determined to proceed in her absence. The Committee was satisfied that there would be no undue prejudice to Ms McGowan in proceeding with this hearing in her absence.

#### **Application for the entirety of the hearing to be held in private**

At the outset of the hearing, Mr Hamlet made an application under Rule 53 for this hearing to be held in private. He submitted that the entirety of the hearing should be held in private as the matters under consideration relate to Ms McGowan's health. He submitted that, given the matters under consideration, it would not be possible or practicable for this hearing to go between private and public session.

The Committee accepted the advice of the Legal Adviser.

The Committee acceded to the application for the entirety of this hearing to be held in private as the matters under consideration relate solely to Ms McGowan's health.

#### **Background to the case and allegations**

[PRIVATE].

#### **Evidence**

[PRIVATE].

**Committee's findings of fact**

The Committee took into account all the information before it. It considered the submissions made by Mr Hamlet on behalf of the GDC.

The Committee accepted the advice of the Medical Adviser.

The Committee accepted the advice of the Legal Adviser.

The Committee reminded itself that the burden of proof lies with the GDC, and considered the head of charge against the civil standard of proof, that is to say, on the balance of probabilities.

The Committee's finding in relation to the head of charge alleged is detailed below:

1.	<i>You suffer from the medical condition set out in the Schedule.</i> Found Proved. [PRIVATE]. It therefore found this charge proved.
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The hearing will now proceed to stage 2."

On 6 June 2017 the Chairman announced the determination as follows:

"At this hearing, the Committee made a determination that includes some private information. That information shall be omitted from any public version of this determination and the document marked to show where private material is removed.

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**PUBLIC DETERMINATION**

Having announced its findings of fact the Committee then heard submissions on the matters of current impairment and sanction.

**Submissions**

In accordance with Rule 20 (1) (a), Mr Hamlet informed the Committee that Ms McGowan has previous fitness to practice history. He informed the Committee that it was in relation to a conduct matter and that it was not relevant to the Committee's considerations in relation to her health.

[PRIVATE]. He submitted that Ms McGowan's fitness to practise is currently impaired by reason of her health.

Mr Hamlet then addressed the Committee on the issue of sanction. He referred the Committee to the GDC's *Guidance for Practice Committees and Indicative Sanction Guidance (October 2016)* ('the GDC's Guidance'). He informed the Committee of the sanctions available to it and submitted it should consider them in ascending order of severity. He submitted that the appropriate and proportionate sanction was one of suspension for a period of 12 months.

### **Committee's decision**

The Committee carefully considered all the information before it. It took into account the submissions made by Mr Hamlet on behalf of the GDC.

The Committee accepted the advice of the Medical Adviser.

The Committee accepted the advice of the Legal Adviser.

The Committee had regard to 'the GDC's Guidance'.

### **Current impairment**

The Committee first considered whether Ms McGowan's fitness to practise is currently impaired by reason of her adverse physical or mental health. In doing so, it has exercised its independent judgement. Throughout its deliberations, it bore in mind that its primary duty is to address the public interest, which includes the protection of patients, the maintenance of public confidence in the profession and the declaring and upholding of proper standards of conduct and behaviour.

[PRIVATE].

[PRIVATE].

The Committee bore in mind that its primary function is to protect patients. It has also taken into account the wider public interest, which includes maintaining confidence in the dental profession and the GDC as its regulator, and upholding proper standards and behaviour. The Committee concluded that, [PRIVATE], a reasonably informed member of the public would conclude that public confidence in the profession would be undermined should she be allowed to practise unrestricted.

Taking into account all the information before it, [PRIVATE], the Committee determined that Ms McGowan's fitness to practise is currently impaired by reason of her adverse health.

### **Sanction**

The Committee next considered what sanction, if any, to impose on Ms McGowan'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'. The Committee considered the sanctions available to it, starting with the least restrictive.

The Committee concluded that, [PRIVATE], taking no further action would be inappropriate and would be inadequate to protect against the concerns highlighted.

The Committee reached a similar conclusion in respect of a reprimand. [PRIVATE].

The Committee then considered whether to impose conditions of practice on Ms McGowan's registration. It bore in mind that conditions must be workable, measurable, relevant and proportionate. It took into account that by their nature conditions of practice require a strong degree of engagement and a willingness to comply on behalf of the registrant. It concluded that, given Ms McGowan's lack of engagement with this process, it could not be assured that she would comply with any conditions imposed on her registration. It therefore considered that conditions would not be appropriate as they would not protect against the concerns highlighted. [PRIVATE].

The Committee next considered whether to suspend Ms McGowan's registration. [PRIVATE]. The Committee concluded that, [PRIVATE], no lesser sanction than one of suspension would be sufficient to protect against the concerns in this case.

In considering the length of the period of suspension the Committee concluded that 12 months would be appropriate and proportionate. [PRIVATE].

The Committee was aware that the effect of this order is that Ms McGowan will be prevented from working as a registered dentist and that this could result in financial hardship. However, in applying the principle of proportionality, the Committee determined that Ms McGowan's interests were outweighed by those of patient safety and the wider public interest in this regard.

The Committee further determined that a review hearing should be held prior to the expiry of the period of suspension, [PRIVATE].

Accordingly, the Committee determined that Ms McGowan's registration should be suspended for a period of 12 months with a review.

The Committee will now invite submissions on whether an immediate order should be imposed.

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Having directed that Ms McGowan be suspended from the register, the Committee considered whether to impose an order for immediate suspension in accordance with section 30. (1) of the Dentists Act 1984 (as amended).

The Committee considered all the information before it. It bore in mind the submissions made by Mr Hamlet on behalf of the GDC.

The Committee accepted the advice of the Legal Adviser.

The Committee was satisfied that an immediate order for suspension was necessary for the protection of the public and was otherwise in the public interest. The Committee concluded that given its findings and reasons for the substantive order of suspension to direct otherwise would be inconsistent.

If, at the end of the appeal period of 28 days, Ms McGowan has not lodged an appeal, this immediate order will lapse and will be replaced by the substantive direction of suspension for a period of 12 months. If Ms McGowan does lodge an appeal, this immediate order will continue in effect until that appeal is determined.

The Committee hereby revokes the current interim order on Ms McGowan's registration.

That concludes this determination."

At a review hearing on 14 June 2018 the Chairman announced the determination as follows:

"Neither party was present at today's hearing. The Council invited the Committee to review the case on the basis of the papers alone. Written submissions dated 13 June 2018 were received on behalf of the Council.

**Decision on application to proceed in private**

The Committee considered the Council's application under Rule 53 for this hearing to be held entirely in private. It accepted the advice of the Legal Adviser on the matter. The

Committee determined that, given the circumstances of this case, it is in the interests of justice to deal with the review in private in order to protect Ms McGowan's private and family life. The Committee will prepare a private and public version of its determination.

### **Service of notification of hearing**

Following advice from the Legal Adviser, the Committee first considered service of the notification of hearing in accordance with Rules 28 and 65 of the General Dental Council (GDC) (Fitness to Practise) Rules Order of Council 2006 ('the Rules'). It had before it a copy of the notification of hearing letter dated 14 May 2018 which was sent to Ms McGowan's registered address as it appears on the Dentists' Register, via special delivery. The Committee is satisfied that the letter contains all the requirements for notice as set out in Rule 28. The Committee noted the Royal Mail track and trace print-out which shows that delivery was attempted but returned to sender. The Committee noted that notification of the hearing was also sent via email to Ms McGowan. The Committee is satisfied that notice has been served in accordance with the Rules.

### **Decision on proceeding in the absence of the Registrant**

The Committee then considered whether to proceed to review this case in the absence of Ms McGowan. The Committee has borne in mind that its discretion to proceed with a hearing in the absence of a respondent should be exercised with the utmost care and caution. In making its decision the Committee has taken account of the principles set out in GMC v Adeogba [2016] EWCA Civ. 162 and Davies v HCPC [2016] EWHC 1593 (Admin).

The Committee notes that Ms McGowan has not responded to the GDC's correspondence regarding this review hearing. It is satisfied that all reasonable efforts have been made by the Council to communicate with Ms McGowan about this hearing. Ms McGowan has not requested an adjournment and the Committee is not satisfied that an adjournment would secure Ms McGowan's attendance at a future date. The Committee has determined that in light of the statutory requirement to review the order on Ms McGowan's registration, it is in the public interest to proceed with the hearing in the absence of Ms McGowan.

### **Background**

[Private]

### **Decision on the Review of the Order**

Today this Committee has comprehensively reviewed Ms McGowan's case taking account of all the evidence presented. It has also taken account of the written submissions on behalf of the Council. The Committee accepted the advice of the Medical Adviser and Legal Adviser.

In considering whether Ms McGowan's fitness to practise is currently impaired, the Committee has borne in mind that this is a matter for its own independent judgement. It has also borne in mind that the persuasive burden to demonstrate that her fitness to practise is no longer impaired lies with Ms McGowan, as set out in the case of Abrahams v General Medical Council [2008] EWHC 183 (Admin). The Committee has had regard to its duty to protect the public, declare and uphold proper standards of conduct and competence and maintain public confidence in the profession.

[Private]

The Committee determined that Ms McGowan's fitness to practise remains impaired by reason of her adverse health condition.



**Sanction**

The Committee next considered what sanction to impose on Ms McGowan's registration under Section 27C of the Dentists Act, 1984 as amended. It reminded itself that the purpose of any 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 2016).

[Private]

For these reasons, the Committee concluded that conditions are currently not workable, appropriate or sufficient.

[Private]

The Committee has therefore determined to extend the suspension of Ms McGowan's registration for a period of 12 months pursuant to section 27C (1)(b) of the Dentists Act 1984, as amended.

The Committee has also determined that the matter should be reviewed prior to expiry of the suspension order. [Private]

That concludes this determination."

At a review hearing on 11 June 2019 the Chairman announced the determination as follows:

"Neither party was present at today's hearing. The Council invited the Committee to review the case on the basis of the papers alone. Written submissions dated 4 June 2019 were received on behalf of the Council.

**Service and proceeding in absence**

This is the resumed Health Committee (HC) hearing of Ms McGowan's case which is being held in accordance with Section 27C of the Dentists Act 1984 (the Act). Ms McGowan is neither present nor represented today. In her absence, the Committee first considered whether the Notification of Hearing had been served on Ms McGowan in accordance with Rules 28 and 65 and Section 50A(2) of the Act. The Committee has received a bundle of documents which contains a copy of the Notification of Hearing dated 8 May 2019, addressed to Ms McGowan's registered address and which contains a track and trace barcode at the top of the letter. The Committee is satisfied that the Notification of Hearing contains all the requirements for notice as set out in Rule 28. The Royal Mail track and trace print-out with the same barcode on it shows that it attempted delivery, but the item was returned to sender (the GDC) on 13 May 2019. However, the Committee is aware that the GDC is only required to demonstrate that it sent the item and not to demonstrate that it arrived. The Committee is satisfied that the GDC has complied with Rules 28 and 65.

The bundle of documents also shows that a copy of the Notification of Hearing was sent via the GDC's secure file sharing system to Ms McGowan's email address. The Committee, having heard the Legal Adviser's advice, is satisfied that the Notification of Hearing has been served on Ms McGowan in accordance with the Rules and Section 50(A)(2) of the Act.

**Decision on proceeding in the absence of the Registrant**

The Committee then considered whether to proceed to review this case in the absence of Ms McGowan. It has considered the GDC's written submissions dated 4 June 2019 which

invites the Committee to do so. The Committee has borne in mind that its discretion to proceed with a hearing in the absence of a respondent should be exercised with the utmost care and caution.

The Committee is satisfied that all reasonable efforts have been made by the GDC to notify Ms McGowan of today's review hearing. In the Notification of Hearing letter dated 8 May 2019, the GDC placed Ms McGowan on notice that it was their intention to request that arrangements be made for this hearing to take place on the papers. She was invited to provide the Committee with any written submissions and documents she felt were relevant to the review of the order. The letter also stated that if she did not wish the hearing to proceed on the papers, she should contact the GDC by 21 May 2019 so that arrangements could be made for an oral hearing to take place.

The Committee has borne in mind the absence of any response from Ms McGowan in connection with today's hearing. Ms McGowan has not requested an adjournment of today's hearing and there is nothing before the Committee today to suggest that she might attend the hearing on a future occasion, particularly given that she has not attended previous hearings of her case. In these circumstances, the Committee has concluded that Ms McGowan has voluntarily absented herself from today's hearing. In addition, the Committee considers that there is a clear public interest in reviewing the order today given its imminent expiry. Accordingly, the Committee has determined that it is fair to proceed with today's review hearing on the basis of the papers and in the absence of both parties.

#### **Application to hear matters in private**

The GDC made an application under Rule 53(2) that Ms McGowan's hearing be heard in private since the matters before it relate to Ms McGowan's health. The Committee, having heard the advice of the Legal Adviser, has acceded to the GDC's request in order to protect Ms McGowan's private and family life, which include matters relating to her health. It decided that it was necessary to conduct the whole hearing in private.

#### **Background**

*[Private]*

#### **Decision on the Review of the Order**

This Committee has comprehensively reviewed Ms McGowan's case. In so doing, it has had regard to the GDC's bundle of documents as well as its written submissions taking account of all the evidence presented. It has also taken account of GDC's written submissions dated 4 June 2019. The Committee accepted the advice of the Legal Adviser. The Committee notes the absence of any up to date information relating to Ms McGowan's health condition or indeed any correspondence from her.

In considering whether Ms McGowan's fitness to practise is currently impaired, the Committee has borne in mind that it is for Ms McGowan to demonstrate that her fitness to practise is no longer impaired. The Committee has had regard to its duty to protect the public, declare and uphold proper standards of conduct and competence and maintain public confidence in the profession.

*[Private]*

The Committee has determined that Ms McGowan's fitness to practise remains impaired by reason of her adverse health condition.



**Sanction**

The Committee next considered what sanction to impose on Ms McGowan's registration under Section 27C of the Act as amended. It is aware that the purpose of any sanction is not to be punitive although it may have that effect. The Committee has borne in mind the principle of proportionality. It has had regard to the GDC's Guidance for the Practice Committees, including Indicative Sanctions Guidance (October 2016, updated May 2019).

Given the absence of any up to date information as to Ms McGowan's health, and its finding of current impairment, the Committee considers that revoking the suspension order would not be sufficient or appropriate for the protection of the public. *[Private]*

The Committee next considered whether to replace the current order of suspension with one of conditions. The Committee concluded that it could not formulate any conditions which would be practicable or workable, given that Ms McGowan has not engaged with the GDC over a period of some two years. The Committee also has no information about Ms McGowan's current circumstances. For these reasons, the Committee has concluded that conditions would not be practicable, workable or sufficient for the protection of the public.

The Committee then went on to consider whether it would be appropriate to extend the current period of suspension. The Committee has borne in mind that Ms McGowan's registration has been suspended for a period of two years, during which time she has not engaged with the GDC. In light of Ms McGowan's persistent lack of engagement, the absence of any up to date evidence in relation to her health and the risks to the public, the Committee has concluded that a further period of suspension of 12 months would not be appropriate. It also considers that in the light of Ms McGowan's health concerns, it is possible that the continued correspondence from the GDC to her may have an adverse impact on her health.

Accordingly, the Committee directs that Ms McGowan's registration be suspended indefinitely in accordance with Section 27C(1)(d) of the Act. It also notes that the Notification of Hearing letter dated 8 May 2019 informed Ms McGowan that it was open to this Committee to give a direction that her registration be suspended indefinitely.

The effect of the foregoing direction is that, unless Ms McGowan exercises her right of appeal, her registration will be suspended indefinitely from the date on which the direction takes effect. The intervening period between the current order expiring and the new order coming into effect will be covered by the extension of the current order of suspension under the provisions of Section 33(3) of the Act.

The Committee would also highlight to Ms McGowan that should her condition sufficiently improve, she can apply to the GDC for a review of the indefinite suspension order two years after the direction for indefinite suspension takes effect. That concludes the case for today."