

**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.

**McCLUSKEY, Derrick Gavin**

**Registration No: 160040**

**PROFESSIONAL CONDUCT COMMITTEE**

**OCTOBER 2020**

**Outcome: Erased with Immediate Suspension**

McCluskey, Derrick Gavin, a Dental Nurse, Dental Therapist and Hygienist, Diploma in Dental Hygiene and Therapy University of Leeds 2013 NVQ L3 Oral Health Care: Dental Nursing & Indp Asses City & Guilds 2008, was summoned to appear before the Professional Conduct Committee on 20 October 2020 for an inquiry into the following charge:

**CHARGE** (as AMENDED and READ on 20 October 2020)

“That being a registered dental care professional:

1. On 25 July 2008 you signed the application form for registration with General Dental Council and ticked the box “No” in response to the question: “Have you been convicted of a criminal offence and/or cautioned and/or are you currently subject to any police investigations which might lead to a conviction or a caution in the UK or any other country?”
2. On 12 September 2006 you were convicted at Milton Keynes Magistrates Court of Assaulting a Constable. Contrary to section 89(1) of the Police Act 1996.
3. On 6 December 2006 you were convicted at Milton Keynes Magistrates Court of Breaching a Community Order. Contrary to Schedule 8 Criminal Justice Act 2003.
4. On 7 February 2007 you were convicted at Milton Keynes Magistrates Court of Breaching a Community Order. Contrary to Schedule 8 Criminal Justice Act 2003.
5. On 20 June 2007 you were convicted at Milton Keynes Magistrates Court of Breaching a Community Order. Contrary to Schedule 8 Criminal Justice Act 2003.
6. On 29 August 2008 you were convicted at Milton Keynes Magistrates Court of Resisting or Obstructing a Constable. Contrary to section 89(2) of the Police Act 1996.
7. On 7 January 2019, you were convicted at Milton Keynes Magistrates Court of:
  - a. Resisting a constable in the execution of her duty. Contrary to Section 89(2) of the Police Act 1996,
  - b. Assault by beating. Contrary to section 39 of the Criminal Justice Act 1988.
8. On 20 February 2019 you were convicted at Milton Keynes Magistrates Court of assault by beating. Contrary to section 39 of the Criminal Justice Act 1988.

9. You failed to immediately inform the General Dental Council of the criminal proceedings that resulted in the criminal convictions as set out at any or all of paragraphs 6 to 8 above.
10. Your conduct in relation to paragraph 1 above was:
  - a) Misleading,
  - b) Dishonest, in that you knew the answer to be false.
11. Your conduct in respect of paragraph 9 above was:
  - a) Misleading,
  - b) Dishonest, in that you sought to conceal your criminal proceedings from the General Dental Council.

And that by reason of the above your fitness to practise is impaired by:

- i.* Misconduct,
- ii.* Any, or all of your convictions as set out at paragraphs 7-8.”

On 21 October 2020 the Chairman made the following statement regarding the finding of facts:

“This is a hearing of the Professional Conduct Committee (PCC). MMr McCluskey is not present and is not represented in his absence. Ms Vanya Headley of the General Dental Council's (GDC's) In-House Legal Presentation Service appears for the GDC. The hearing is being conducted remotely via Microsoft Teams in line with the GDC's current practice.

#### **Service of notice**

On behalf of the GDC Ms Headley submitted that service of notice of this hearing has been properly effected in accordance with Rules 13 and 65 of the General Dental Council (Fitness to Practise) Rules 2006 ('the Rules'). On 21 September 2020 a notice of hearing was sent to the address that Mr McCluskey has registered with the GDC, setting out the date and time of this hearing, as well as its remote nature. The notice was sent using the Royal Mail's Special Delivery postal service. The Royal Mail's Track and Trace service records that the notice was delivered on the morning of the following day, namely 22 September 2020, and was signed for by a 'MCCLUSKEY DEREK'. A copy of the notice was also sent to Mr McCluskey by email.

The Committee accepted the advice of the Legal Adviser. The Committee was satisfied that service had 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 Mr McCluskey in accordance with Rule 54 of the Rules. Ms Headley invited the Committee to proceed in Mr McCluskey's absence on the basis that all reasonable efforts have been made to inform him of this hearing and that he has voluntarily absented himself.

The Committee accepted the advice provided by the Legal Adviser. The Committee was mindful that its discretion to conduct a hearing in the absence of a registrant should be exercised with the utmost care and caution. After careful consideration the Committee determined that it was fair and appropriate to proceed with the hearing in the absence of Mr McCluskey. The Committee considered that Mr McCluskey is aware of this hearing and has voluntarily absented himself. It considered that there is nothing to suggest that an

adjournment, which has not been sought, would secure his attendance at a future date. The Committee was also mindful of the public interest in the expeditious consideration of this case.

### **Preliminary matters**

At the start of the hearing Ms Headley applied to amend heads of charge 6 and 11 (b) in accordance with Rule 18 of the Rules. The Committee again accepted the advice of the Legal Adviser. The Committee considered that the amendments sought could be made without injustice to Mr McCluskey. The schedule of charge was duly amended.

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

The allegations giving rise to this case relate to Mr McCluskey's criminal convictions in the period of 2006 to 2019.

It is specifically alleged that Mr McCluskey failed to declare four criminal convictions when applying for registration with the GDC as a dental care professional (DCP) in 2008. On 25 July 2008 Mr McCluskey signed an application form for registration with the GDC and, in response to the question of whether he had been convicted of a criminal offence, cautioned, or was subject to a police investigation, he declared that he had not. The GDC alleges that Mr McCluskey had in fact been convicted of four criminal offences at separate appearances before Milton Keynes Magistrates' Court in the period of 12 September 2006 to 20 June 2007, more particularly a conviction for an offence of assaulting a police constable and three offences of breaching a community order. The GDC alleges that Mr McCluskey's failure to declare his criminal convictions was misleading and dishonest.

Mr McCluskey's name was entered on to the GDC's Register on 2 September 2008. A few days before on 29 August 2008 Mr McCluskey was convicted at Milton Keynes Magistrates' Court of an offence of resisting or obstructing a constable. Mr McCluskey reappeared before the same court on 7 January 2019 and was convicted of two offences, namely resisting a constable in the exercise of her duty and assault by beating. Mr McCluskey reappeared before the same court on 20 February 2019 and was convicted of a further offence of assault by beating. The GDC alleges that Mr McCluskey failed to immediately inform the GDC of the criminal proceedings that resulted in his convictions on 29 August 2008, 7 January 2019 and 20 February 2019. The GDC further contends that his failure to do so was misleading and dishonest.

### **Evidence**

The Committee has been provided with documentary material in relation to the allegations that Mr McCluskey faces, including the witness statements and documentary exhibits of a GDC trainee solicitor with knowledge of Mr McCluskey's case and of two members of the GDC's Registrations Department with access to Mr McCluskey's registration records; the Memoranda of Convictions relating to Mr McCluskey's 2008 and 2019 convictions; a printout from the Police National Computer (PNC) relating to Mr McCluskey; information from Thames Valley Police relating to its investigations giving rise to Mr McCluskey's criminal convictions; and previous responses to the allegations from Mr McCluskey.

The Committee heard no oral evidence in relation to the allegations that Mr McCluskey faces.

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

The Committee has taken into account all the evidence presented to it and has considered the submissions made by Ms Headley on behalf of the GDC. The Committee has accepted

the advice of the Legal Adviser, and has taken account of the GDC's *Guidance for the Practice Committees, including indicative sanctions guidance* (October 2016, updated May 2019).

The Committee is mindful that the burden of proof lies with the GDC, and has considered the heads of charge against the civil standard of proof, that is to say, the balance of probabilities. The Committee has considered each head of charge separately, although some of its findings will be announced together.

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

1.	On 25 July 2008 you signed the application form for registration with General Dental Council and ticked the box "No" in response to the question: "Have you been convicted of a criminal offence and/or cautioned and/or are you currently subject to any police investigations which might lead to a conviction or a caution in the UK or any other country?"  <b>Proved</b>
	The Committee finds the facts alleged at head of charge 1 proved. The Committee has been provided with a copy of Mr McCluskey's application for registration as a dental nurse with the GDC which he signed on 25 July 2008. The Committee notes that Mr McCluskey declared on that form that he had not been convicted of a criminal offence, had not been cautioned and was not currently subject to a police investigation which might lead to a conviction or caution. Accordingly, the Committee finds the facts alleged at head of charge 1 proved.
2.	On 12 September 2006 you were convicted at Milton Keynes Magistrates Court of Assaulting a Constable. Contrary to section 89(1) of the Police Act 1996.  <b>Proved</b>
3.	On 6 December 2006 you were convicted at Milton Keynes Magistrates Court of Breaching a Community Order. Contrary to Schedule 8 Criminal Justice Act 2003.  <b>Proved</b>
4.	On 7 February 2007 you were convicted at Milton Keynes Magistrates Court of Breaching a Community Order. Contrary to Schedule 8 Criminal Justice Act 2003.  <b>Proved</b>
5.	On 20 June 2007 you were convicted at Milton Keynes Magistrates Court of Breaching a Community Order. Contrary to Schedule 8 Criminal Justice Act 2003.  <b>Proved</b>
	The Committee finds the facts alleged at heads of charge 2, 3, 4 and 5 proved. The Committee has had regard to a copy of a printout from the relevant entry in the PNC which records that Mr McCluskey was convicted as set out at these four heads of charge. Accordingly, the Committee finds the facts alleged at heads of charge 2, 3, 4 and 5 proved.

6.	On 29 August 2008 you were convicted at Milton Keynes Magistrates Court of Resisting or Obstructing a Constable. Contrary to section 89(2) of the Police Act 1996.  <b>Proved</b>
7.	On 7 January 2019, you were convicted at Milton Keynes Magistrates Court of:
7. a)	Resisting a constable in the execution of her duty. Contrary to Section 89(2) of the Police Act 1996,  <b>Proved</b>
7. b)	Assault by beating. Contrary to section 39 of the Criminal Justice Act 1988.  <b>Proved</b>
8.	On 20 February 2019 you were convicted at Milton Keynes Magistrates Court of assault by beating. Contrary to section 39 of the Criminal Justice Act 1988.  <b>Proved</b>
	The Committee finds the facts alleged at heads of charge 6, 7 (a), 7 (b) and 8 proved. The Committee had regard to Rule 57 (5) of the Rules and determined that the certified copy of the Memorandum of Conviction placed before it provides conclusive proof of both the fact of convictions, and also proves the facts of the offence giving rise to those convictions. The Committee notes that the facts upon which the convictions were based have been found proven beyond reasonable doubt, which is an evidential standard that is higher than that employed by this Committee. The Committee accepted that it cannot go behind the facts on which those convictions were made. Accordingly, the Committee finds the facts alleged at heads of charge 6, 7 (a), 7 (b) and 8 proved.
9.	You failed to immediately inform the General Dental Council of the criminal proceedings that resulted in the criminal convictions as set out at any or all of paragraphs 6 to 8 above.  <b>Proved</b>
	The Committee finds the facts alleged at head of charge 9 proved.  The Committee notes that in his initial application for registration as a dental nurse dated 25 July 2008 Mr McCluskey was informed that, during the time it would take for the GDC to process his application, he should declare any other issues of which he became aware. The Committee considers that, as Mr McCluskey had already been charged and was convicted around a month after he submitted his application for registration, it is more likely than not that Mr McCluskey knew that he was subject to criminal proceedings and that he was aware of his duty to inform the GDC of the same. The evidence presented to the Committee is that Mr McCluskey did not declare those criminal proceedings either on that form or separately thereafter. The Committee considers that Mr McCluskey was under a duty to do so, and that he failed in this duty.  In respect of Mr McCluskey's convictions in 2019 as particularised at heads of charge 7 (a), 7 (b) and 8, the Committee notes that the GDC's Standards for the Dental Team requires registrants at paragraph 9.3.1 to 'inform the GDC

	<p>immediately if you are subject to any criminal proceedings'. The Standards came into effect on 30 September 2013. The evidence presented to the Committee is that Mr McCluskey did not inform the GDC of the criminal proceedings which culminated in his convictions in January and February 2019. The Committee considers that Mr McCluskey was under a duty to inform the GDC of those criminal proceedings, and that he failed in this duty.</p> <p>The Committee therefore finds the facts alleged at head of charge 9 proved.</p>
10.	Your conduct in relation to paragraph 1 above was:
10. a)	<p>Misleading,</p> <p><b>Proved</b></p>
	<p>The Committee finds the facts alleged at head of charge 10 (a) proved. The Committee considers that a person reading the application form that Mr McCluskey signed on 25 July 2008 would understand that Mr McCluskey had not been convicted of a criminal offence, that he had not been cautioned, and that he was not subject to criminal proceedings. The Committee has found above that Mr McCluskey had in fact been convicted of a number of criminal offences and was also subject at that time to further criminal proceedings. The Committee finds that Mr McCluskey's proven conduct at head of charge 1 was misleading, and accordingly it finds the facts alleged at head of charge 10 (a) proved.</p>
10. b)	<p>Dishonest, in that you knew the answer to be false.</p> <p><b>Proved</b></p>
	<p>The Committee finds the facts alleged at head of charge 10 (b) proved. In approaching this head of charge the Committee applied the test set out in <i>Ivey v Genting Casinos (UK) Ltd. t/a Crockfords</i> [2017] UKSC 67. The test is that the Committee must decide subjectively the actual state of Mr McCluskey's knowledge or belief as to the facts, and must then apply the objective standards of ordinary and decent people to determine whether his conduct is dishonest by those standards.</p> <p>Mr McCluskey's written evidence is that another individual, whom he describes as his then practice manager, completed his application form and that he simply signed the form. The Committee considers that, even if another individual had completed the form, Mr McCluskey would have checked the application form before signing and submitting it. Mr McCluskey has not provided any evidence in support of his contention that an unnamed practice manager completed his application form on his behalf. The Committee places little weight on Mr McCluskey's unsworn and untested evidence. In assessing Mr McCluskey's actual state of knowledge and belief, the Committee considers that Mr McCluskey would have been all too aware that he had been convicted of a number of criminal offences and indeed was at that time subject to further criminal proceedings with which he had been charged, and in respect of which he had formally submitted a 'not guilty' plea two months before submitting his application for GDC registration. Matters relating to current and historic criminal proceedings would, then, in the Committee's judgement, be at the forefront of his mind when completing his application for registration. The Committee considers that the written questions that were put to Mr McCluskey on the</p>



	<p>application form were clear and unambiguous, and that even the most cursory of glances would have left him in no doubt as to how to answer those questions honestly.</p> <p>Having determined Mr McCluskey's actual state of knowledge and belief as to the facts, the Committee went on to apply the objective standards of ordinary and decent people to determine whether his conduct is dishonest by those standards. The Committee is in no doubt that Mr McCluskey's conduct was dishonest by reference to those standards and would be considered to be an attempt to conceal his criminal convictions and criminal proceedings from the GDC.</p> <p>Accordingly, the Committee finds the facts alleged at head of charge 10 (b) proved.</p>
11.	Your conduct in respect of paragraph 9 above was:
11. a)	<p>Misleading,</p> <p><b>Proved</b></p>
	<p>The Committee finds the facts alleged at head of charge 11 (a) proved. The Committee considers that, by not immediately informing the GDC of the criminal proceedings that resulted in the convictions referred to at heads of charge 6, 7 (a), 7 (b) and 8 above, the GDC would be misled into believing that Mr McCluskey was not subject to criminal proceedings. The Committee therefore finds the facts alleged at head of charge 11 (a) proved.</p>
11. b)	<p>Dishonest, in that you sought to conceal your criminal proceedings from the General Dental Council.</p> <p><b>Proved</b></p>
	<p>The Committee finds the facts alleged at head of charge 11 (b) proved. In approaching this head of charge the Committee again applied the test set out in Ivey v Genting Casinos (UK) Ltd. t/a Crockfords [2017] UKSC 67. The test is that the Committee must decide subjectively the actual state of Mr McCluskey's knowledge or belief as to the facts, and must then apply the objective standards of ordinary and decent people to determine whether his conduct is dishonest by those standards.</p> <p>The Committee first considered the actual state of Mr McCluskey's knowledge and belief as to the facts. Mr McCluskey's written account is that he was told that the police and social services would have informed the GDC of the criminal proceedings resulting in the convictions set out at heads of charge 6, 7 (a), 7 (b) and 8 above. The Committee places little weight on his unsworn and untested evidence. Instead, the Committee considers that, as an experienced practitioner with some years of clinical practice, Mr McCluskey would have been in no doubt at all as to his ongoing obligation to inform the GDC of any criminal proceedings. Mr McCluskey gained further postgraduate qualifications as a dental hygienist and dental therapist from a higher education institution in 2013, and the Committee considers that such ethical considerations and professional obligations would have been made all the more clear to him as part of his studies. The Committee is also mindful of the clear and unambiguous obligation set out in the Standards for the Dental Team, effective</p>

	<p>30 September 2013, which required him to inform the GDC of any criminal proceedings as an ongoing obligation of his registration.</p> <p>Having determined Mr McCluskey's actual state of knowledge and belief as to the facts, the Committee went on to apply the objective standards of ordinary and decent people to determine whether his conduct is dishonest by those standards. The Committee is in no doubt that Mr McCluskey's conduct was dishonest by reference to those standards and would again be viewed as an attempt to conceal his criminal convictions and criminal proceedings from the GDC.</p> <p>Accordingly, the Committee finds the facts alleged at head of charge 11 (b) proved.</p>
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We move to stage two.”

On 21 October 2020 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 this public version of this determination and the document marked to show where private material has been removed.**

#### **Proceedings at stage two**

The Committee has considered all the evidence presented to it, both written and oral. It has taken into account the oral submissions made by Ms Headley on behalf of the GDC. The Committee has also had regard to the written representations that Mr McCluskey provided at earlier stages of the GDC's proceedings. The Committee has also received further information from the GDC at this stage of the proceedings, namely an updated printout relating to Mr McCluskey from the Police National Computer (PNC).

In its deliberations the Committee has had regard to the GDC's *Guidance for the Practice Committees, including Indicative Sanctions Guidance* (October 2016, updated May 2019). The Committee has accepted the advice of the Legal Adviser.

#### **Fitness to practise history**

Ms Headley addressed the Committee in accordance with Rule 20 (1) (a) of the General Dental Council (Fitness to Practise) Rules 2006 ('the Rules'). Ms Headley confirmed that Mr McCluskey has no other fitness to practise history with the GDC.

#### **Misconduct**

The Committee first considered whether the facts that it has found proved at heads of charge 1, 9, 10 (a), 10 (b), 11 (a) and 11 (b) constitute misconduct. The Committee has heard from Ms Headley that the GDC submits that those facts constitute misconduct. In considering this matter, the Committee has exercised its own independent judgement.

In its deliberations the Committee has had regard to the following paragraph of the GDC's *Standards for Dental Professionals* (May 2005) in place at the time of some of the facts that it has found proved. This paragraph states that as a dental care professional you must:

- 6.1 Justify the trust that your patients, the public and your colleagues have in you by always acting honestly and fairly.



- 6.3 Maintain appropriate standards of personal behaviour in all walks of life so that patients have confidence in you and the public have confidence in the dental profession.

The Committee has also had regard to the following paragraphs of the GDC's *Standards for the Dental Team* (September 2013) in place at the time of the remaining facts that it has found proved. These paragraphs state that as a dental care professional:

- 1.3 [You must] be honest and act with integrity.
- 1.3.1 You must justify the trust that patients, the public and your colleagues place in you by always acting honestly and fairly in your dealings with them. This applies to any business or education activities in which you are involved as well as to your professional dealings.
- 1.3.2 You must make sure you do not bring the profession into disrepute.
- 9.1 [You must] ensure that your conduct, both at work and in your personal life, justifies patients' trust in you and the public's trust in the dental profession.
- 9.3.1 You must inform the GDC immediately if you are subject to any criminal proceedings.

The Committee's findings relate to Mr McCluskey having made a false declaration to the GDC about his criminal convictions and criminal proceedings when seeking to register with the GDC, and then failing to notify the GDC of further criminal proceedings to which he was later subject. The Committee has found that such conduct was misleading and dishonest. The Committee has little difficulty in determining that these findings amount to misconduct. The Committee considers that Mr McCluskey's conduct fell far short of the standards reasonably expected of a dental care professional. Mr McCluskey's deceit was serious, and was all the more concerning given its context, namely the undermining of the integrity of the GDC's register. It is of the utmost importance that the public have confidence in the accuracy and integrity of the register, and it is equally important that the GDC's overarching objective to protect the public is founded on an accurate and reliable register. Mr McCluskey's dishonest conduct repeatedly undermined the GDC's effective regulation of the profession.

The Committee also finds that this conduct would be considered by Mr McCluskey's fellow practitioners to be deplorable. Mr McCluskey's actions are likely to have brought the standing and reputation of the profession into disrepute and undermined public trust and confidence in the profession. The Committee has little difficulty in determining that the facts that it has found proved at heads of charge 1, 9, 10 (a), 10 (b), 11 (a) and 11 (b) amount to misconduct.

### **Impairment**

The Committee then went on to consider whether Mr McCluskey's fitness to practise is currently impaired by reason of the misconduct and convictions that it has found. In doing so, the Committee has again exercised its independent judgement. The Committee has heard that Ms Headley on behalf of the GDC submits that Mr McCluskey's fitness to practise is currently impaired. Throughout its deliberations, it has borne 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 in the regulatory process, and the declaring and upholding of proper standards of conduct and behaviour.

The Committee finds that Mr McCluskey's fitness to practise is currently impaired by reason of the misconduct that it has found. The Committee considers that Mr McCluskey has

provided very little in the way of evidence to demonstrate that he has developed insight into, and has taken steps to remedy, his misconduct. Mr McCluskey's failure to declare his criminal proceedings was sustained and repeated over a considerable number of years, and this is suggestive of a pattern of wilful concealment. The Committee therefore finds that there is a real risk of Mr McCluskey repeating his misconduct, and a repeat would further undermine the integrity of the GDC's register as well as public trust and confidence in the profession and in the regulatory process.

The Committee also considers that the convictions that it has found proved at heads of charge 7 (a), 7 (b) and 8, that is to say the 2019 convictions, mean that Mr McCluskey's fitness to practise is impaired. The majority of these convictions relate to acts of violence to persons. There is again little in the way of evidence to suggest that Mr McCluskey has developed insight into, and has taken steps to remedy, the offences giving rise to his criminal convictions. The additional information provided to the Committee at this stage of the proceedings details criminal proceedings and convictions arising more recently than the 2019 matters, and may be further suggestive of a pattern of offending behaviour which may be harmful to Mr McCluskey's fitness to practise. The Committee is of the view that the convictions that it has found proved at heads of charge 7 (a), 7 (b) and 8 are of a nature and seriousness to amount to impairment of Mr McCluskey's fitness to practise.

The Committee also finds that a finding of impairment is undoubtedly required in order to declare and uphold proper standards of conduct and behaviour and to maintain trust and confidence in the profession and in the regulatory process. The Committee finds that Mr McCluskey's dishonest conduct has breached a fundamental tenet of the profession, namely the requirement to act with honesty and integrity. Mr McCluskey's dishonest conduct and criminal convictions have brought the reputation of the profession into disrepute. In the Committee's judgement public trust and confidence in the profession, and in the regulator, would be seriously undermined if a finding of impairment were not made in the particular circumstances of this case.

### **Sanction**

The Committee then determined what sanction, if any, would be appropriate in light of the findings of facts, misconduct and impairment that it has made. The Committee recognises that the purpose of a sanction is not to be punitive, although a sanction may have that effect, but is instead imposed in order to protect patients and safeguard the wider public interest referred to above.

In reaching its decision the Committee has again taken into account the GDC's *Guidance for the Practice Committees, including Indicative Sanctions Guidance* (October 2016, updated May 2019). The Committee has heard that Ms Headley submits on behalf of the GDC that the appropriate and proportionate sanction to impose is that of erasure from the register. The Committee has applied the principle of proportionality, balancing the public interest with Mr McCluskey's own interests.

The Committee has considered the aggravating and mitigating factors present in this case.

In relation to mitigating factors, the Committee notes that Mr McCluskey has no previous fitness to practise history.

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In relation to aggravating factors, the Committee notes that Mr McCluskey's convictions related to violence to persons. His misconduct relates to dishonest and premeditated conduct which resulted in financial gain in terms of him gaining and retaining his GDC registration. His dishonest conduct entailed a serious breach of trust with his regulator, and represents a blatant and wilful disregard of the regulatory systems which are designed to protect the public. Mr McCluskey's deceit was characterised by his repeated and sustained efforts to conceal his criminal convictions from the GDC. The Committee also notes the other adverse findings recorded against him by the criminal justice system, and notes his longstanding lack of insight.

The Committee has considered the range of sanctions available to it, starting with the least restrictive. In the light of the findings made against Mr McCluskey, the Committee has determined that it would not be appropriate to conclude this case with no action or with a reprimand. The nature of the Committee's findings, which relate to dishonest conduct and criminal convictions of offences involving violence, means that taking no action, or issuing a reprimand, would be insufficient to maintain public confidence and trust in the profession and in the regulatory process, and to declare and uphold proper standards of conduct and behaviour.

The Committee next considered whether a period of conditional registration would be appropriate. Mr McCluskey's dishonest conduct could not in the Committee's view be properly addressed with conditions. The Committee seriously doubts that Mr McCluskey would comply with conditions given his long history of dishonest conduct in his dealings with the GDC. In any event, the Committee considers that a period of conditional registration would not be sufficient to declare and uphold proper professional standards of conduct and behaviour and maintain trust and confidence in the profession.

The Committee therefore went on to consider whether to suspend Mr McCluskey's registration. Having given the matter careful consideration, the Committee concluded that a period of suspension would not be sufficient to address the serious issues in this case. The Committee finds that Mr McCluskey's dishonest conduct suggests a harmful and deep-seated professional attitudinal deficiency. Mr McCluskey's criminal convictions and dishonest conduct are highly damaging to his fitness to practise. Mr McCluskey has not demonstrated any meaningful insight into or remediation of his misconduct, or of any willingness to do so in the future. The Committee considers that a period of suspended registration, however long, would not be sufficient to declare and uphold proper professional standards of conduct and behaviour and would not maintain trust and confidence in the profession or in the regulatory process.

The Committee has therefore determined that erasure from the register is the only appropriate and proportionate sanction to impose in the particular circumstances of this serious case. The misconduct that the Committee has identified arises out of serious and sustained departures from professional standards. Mr McCluskey's actions have undermined the integrity of the GDC's register and, consequently, are likely to have undermined the public's trust and confidence in the profession and the regulatory mechanisms governing it. Mr McCluskey has also demonstrated a persistent lack of insight into his conduct. In short, Mr McCluskey's conduct and convictions are fundamentally incompatible with the privileged status of GDC registration. The Committee therefore finds that any lesser sanction than erasure would be insufficient to declare and uphold proper professional standards and maintain public trust in confidence in the profession and in the regulatory process.

The Committee hereby directs that Mr McCluskey's name be erased from the register.

**Existing interim order**

In accordance with Rule 21 (3) of the General Dental Council (Fitness to Practise) Rules 2006 and section 36P (10) of the Dentists Act 1984 (as amended) the extant interim order of suspension in place on Mr McCluskey's registration is hereby revoked.

**Immediate order**

Having directed that Mr McCluskey's registration be suspended, the Committee now invites submissions as to whether it should impose an order for his immediate suspension in accordance with section 36U (1) of the Dentists Act 1984 (as amended).

**Immediate order of suspension – 21 October 2020**

Having directed that Mr McCluskey's name be eased from the register, the Committee invited submissions as to whether to impose an order for his immediate suspension in accordance with section 36U (1) of the Dentists Act 1984 (as amended) ('the Act').

Ms Headley submitted on behalf of the GDC that it would be appropriate for the Committee to impose an immediate order for Mr McCluskey's suspension on the grounds that such an order is necessary to protect the public and is otherwise in the public interest.

The Committee accepted the advice of the Legal Adviser.

In the circumstances, the Committee has determined that it is necessary for the protection of the public and is otherwise in the public interest to impose an order for the immediate suspension of Mr McCluskey's registration. The Committee considers that an immediate order for suspension is consistent with the findings that the Committee has set out in its determination. An immediate order is required to meet the risks that the Committee has already identified.

The effect of the foregoing determination and this immediate order is that Mr McCluskey's registration will be suspended by virtue of this immediate order from the date on which notice of this decision is deemed served upon him. Unless he exercises his right of appeal, the substantive direction of erasure will be recorded in the Dental Care Professionals' Register 28 days from the date of deemed service. Should Mr McCluskey decide to exercise his right of appeal, this immediate order of suspension will remain in place until the resolution of any appeal.

That concludes this case."