

ON THE PAPERS**Professional Conduct Committee
Review Hearing****4 October 2023****Name:** NOTLEY, Heather Mary**Registration number:** 158270**Case number:** CAS-194697-Y0L4H5

General Dental Council: Rochelle Williams, IHLPS**Registrant:** Unrepresented

Fitness to practise: Impaired by reason of conviction, misconduct and health**Outcome:** Suspended indefinitely**Duration:** N/A**Immediate order:** N/A

Committee members: Peter Ommer (Chair, Dentist Member)
Kirsty Payton (DCP Member)
Miranda Carruthers-Watt (Lay Member)**Legal adviser:** Richard Ferry-Swainson**Committee Secretary:** Lola Bird

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

1. This is a resumed hearing of Ms Notley's case before the Professional Conduct Committee (PCC), pursuant to section 36Q of the *Dentists Act 1984 (as amended)* ('the Act').
2. The hearing is being conducted remotely by Microsoft Teams video-link.

Purpose of the hearing

3. The purpose of the hearing has been to review a substantive order of suspension currently in place on Ms Notley's registration. Neither party is present today, following a request made by the General Dental Council (GDC) for the review to take place on the papers. The Committee received two hearing bundles and written submissions from the GDC.

Service and proceeding

4. The Committee first considered the issues of service and proceeding in the absence of Ms Notley and any representatives for either party. The Committee accepted the advice of the Legal Adviser on these matters.

Decision on service

5. The Committee considered whether notice of the hearing had been served on Ms Notley in accordance with Rules 28 and 65 of the *GDC (Fitness to Practise) Rules Order of Council 2006* ('the Rules'), and section 50A of the Act. The Committee received from the GDC an indexed 'PCC Resumed Hearing Bundle' of 50 pages. This bundle contained a copy of the Notice of Hearing, dated 5 September 2023 ('the notice'), which was sent to Ms Notley's registered address by Special Delivery and by First Class post.
6. The Committee noted from the Royal Mail 'Track and Trace' receipt provided, that the notice sent by Special Delivery was 'delivered back to sender' on 11 September 2023. The Committee took into account that there is no requirement within the Rules for the GDC to prove delivery of the notice, only that it was sent. The Committee was satisfied on the proof of postage information provided to it, that the requirement of sending had been met by the Council.
7. The Committee also noted that on 5 September 2023, a copy of the notice was sent to Ms Notley by email.
8. The Committee was satisfied that the notice sent to Ms Notley complied with the 28-day notice period required by the Rules. It was further satisfied that the notice contained all the required particulars, including the date and time of the hearing, confirmation that it would be held remotely by Microsoft Teams, and that the Committee had the power to proceed with the hearing in her absence.
9. On the basis of all the information provided, the Committee was satisfied that notice of the hearing had been served on Ms Notley in accordance with the Rules and the Act.

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

10. The Committee next considered whether to exercise its discretion under Rule 54 to proceed with the hearing in the absence of Ms Notley, and any representative for either party. It approached this issue with the utmost care and caution. The Committee took into account the factors to be considered in reaching its decision, as set out in the case of *R v Jones* [2003] 1 AC 1HL, and as

affirmed in the joined regulatory cases of *General Medical Council v Adeogba* and *General Medical Council v Visvardis* [2016] EWCA Civ 162.

11. The Committee remained mindful that fairness to Ms Notley was an important consideration, but it also took into account the need to be fair to the GDC. The Committee had regard to the GDC's written submissions in which it invited the Committee to exercise its discretion to proceed. The Committee further had regard to the public interest in the expeditious review of the current order on Ms Notley's registration.

12. The Committee was satisfied that all reasonable efforts had been made by the GDC to notify Ms Notley of today's resumed hearing. It noted that in addition to serving the notice of 5 September 2023, the Council sent Ms Notley an email dated 28 September 2023, to enquire whether she would be attending today's hearing and, if not, whether she would object to the review taking place on the papers. Ms Notley was also asked if she had any documents she wished to put before the Committee. That email of 28 September 2023 was returned as undeliverable. The Committee noted the unsuccessful attempts made by the GDC to contact Ms Notley by telephone on 28 September 2023 and 2 October 2023.

13. The Committee had regard to its statutory duty to review the current suspension order, which is due to expire on 21 October 2023. It took into account that Ms Notley did not apply for an adjournment of this hearing. Indeed, the indication is that she has not engaged with these fitness to practice proceedings for some time. Accordingly, there is no information before the Committee to suggest that deferring today's hearing would secure her attendance on a future date. The Committee therefore concluded that an adjournment would serve no meaningful purpose.

14. In all the circumstances, the Committee was satisfied that it was fair and in the public interest to proceed with the review on the papers in the absence of both parties.

Private information

15. In light of some of the information before it, which relates Ms Notley's health, the Committee produced both a private and a suitably redacted public version of its determination.

Case background

16. Ms Notley's case was first considered by a PCC at a hearing in September 2021. She did not attend that hearing nor was she represented in her absence. That initial PCC considered allegations against Ms Notley brought by the GDC. The overriding allegation against her was one of impaired fitness to practise by reason of conviction, misconduct and adverse health.

17. The background to the allegations was that on 22 March 2019, the GDC received a referral regarding Ms Notley from the practice where she was working at the time as a dental nurse. The referral stated that, on 15 March 2019, Ms Notley was assisting a Specialist Orthodontist, Witness A, at the practice when concerns were raised by Witness 1 **[IN PRIVATE]**.

18. On 28 June 2019, Ms Notley pleaded guilty and was subsequently convicted at Surrey Magistrates' Court for driving a motor vehicle after consuming so much alcohol that the proportion

of it in her blood exceeded the prescribed limit. She was disqualified from driving for 36 months and sentenced to a Community Order for 12 months, which included an unpaid work requirement.

19. The GDC subsequently undertook an investigation into the matter, and it was alleged that Ms Notley failed to co-operate with its investigation, which included her alleged failure to inform the GDC that she was charged for the offence of driving a motor vehicle with excess alcohol and her subsequent conviction. [IN PRIVATE]

20. The PCC in September 2021 found all the allegations against Ms Notley proved including that she:

- [IN PRIVATE].

- Was convicted on 28 June 2019 of driving a motor vehicle after consuming so much alcohol that the proportion of it in her blood exceeded the prescribed limit, contrary to Section 5(1)(a) of the Road Traffic Act 1988 and Schedule 2 of the Road Traffic Offenders Act 1988.
- Failed to immediately inform the GDC that she was charged by police and convicted of an offence.
- Her conduct was misleading, lacked integrity and was dishonest.
- Failed to co-operate with the GDC investigation.
- [IN PRIVATE].

21. The initial PCC concluded that Ms Notley's actions in [IN PRIVATE], failing to inform the GDC of the criminal proceedings against her, and failing to cooperate with the Council's investigation amounted to misconduct, as her behaviour had fallen far short of the standards of conduct that were proper in the circumstances.

22. The initial PCC went on to determine that Ms Notley's fitness to practise was impaired by reason of her misconduct, her conviction and her adverse health. It imposed a suspension order for a period of 12 months and directed a review prior to the expiry of the 12-month period.

First review

23. A resumed hearing of Ms Notley's case was held on 5 October 2022. She did not attend the hearing and she was not represented in her absence.

24. The PCC in October 2022 noted that there had been no evidence of any engagement by Ms Notley with the GDC or any evidence of any remediation undertaken by her. That Committee stated in its determined that:

"The Committee considered that there has been no evidence of material change since the initial hearing in September 2021. There is no evidence before this Committee that Ms Notley has addressed her past conduct, provided any evidence of remediation or any medical evidence relating to her health. It also took account of the fact that Ms Notley is unrepresented and accepted that this process may be challenging for her. However, the Committee was of the view that it is incumbent on Ms Notley, as a GDC registrant, to engage with her

remediation and her regulator. The Committee considered that Ms Notley has not demonstrated sufficient insight into her misconduct, conviction and adverse health condition”.

25. The PCC in October 2023 determined that Ms Notley’s fitness to practise remained impaired by reason of her conviction, misconduct and adverse health. It directed that the suspension order imposed on her registration following the initial hearing in September 2021, should be extended by a period of 12-months.

26. The PCC in October also directed a further review of Ms Notley’s case shortly before the expiry of the suspension order. In directing the extension of the suspension order and a review, that Committee stated that:

“The Committee considered that a period of 12 months will afford [Ms Notley] time to focus on:

- any remediation*
- engagement with the GDC*
- evidence of insight and remorse by way of a reflective piece*
- Up to date evidence relating to Ms Notley’s health*
- and any other evidence she considers is relevant”*

Today’s review

27. This is the second review of the suspension order first imposed on Ms Notley’s registration in September 2021. In comprehensively reviewing the order today, the Committee considered all the evidence provided. It took account of the written submissions provided by the GDC. The Committee accepted the advice of the Legal Adviser. No material or written submissions were received from, or on behalf of, Ms Notley.

28. The documentation before the Committee was as follows:

- The indexed ‘PCC Resumed Hearing Bundle’ of 50 pages.
- An indexed PCC Resumed Hearing Addendum Bundle of 11 pages.
- The written submissions of the GDC (October 2023) (8 pages).

29. In its written submissions in respect of this hearing, the GDC submitted the following in relation to current impairment:

The persuasive burden will be on the Registrant to demonstrate that her fitness to practise is no longer impaired (Abrahaem v General Medical Council (2008) EWHC 183 (Admin)).

...

Given that the Registrant has continued not to engage with the Council or provided any updated evidence since the previous review hearing, the Council submit that a risk of

repetition remains and that the Registrant's fitness to practise remains impaired accordingly.
[IN PRIVATE].

30. In relation to sanction, the GDC submitted the following:

"The Council is aware that the Committee will consider the least restrictive sanction first, in this instance that is replacing the order of suspension with an order of conditions. The Council respectfully submits that an order of conditions remains wholly inappropriate in this matter, given the Registrant's failure to engage with her regulator and her failure to demonstrate any steps towards remediating her conduct. The Registrant's lack of insight particularly, means that even a suspension order is no longer adequate to address the identified risks. The Council would further submit that any lesser sanction would not adequately protect patients' interests and would serve to undermine public confidence in the profession.

The Council submit that it would be appropriate and proportionate to consider imposing an indefinite suspension on the Registrant's registration. In accordance with Section 36Q of the Act, the Registrant's suspension order expires on 21 October 2023. By 4 October 2023 (date of review), the Registrant will have been suspended for more than 2 years (having been suspended since 21 September 2021) and the direction of the Committee at this review, will be made not more than two months before the date on which the period of suspension would otherwise expire".

Decision on current impairment

31. The Committee considered whether Ms Notley's fitness to practise remains impaired, as of today, by reason of her conviction, misconduct and adverse health. In doing so, it exercised its independent judgement. It had regard to the over-arching objective of the GDC, which is: the protection, promotion and maintenance of the health, safety and well-being of the public; the promotion and maintenance of public confidence in the dental profession; and the promotion and maintenance of proper professional standards and conduct for the members of the dental profession.

32. The Committee took into account that, at this review, the persuasive burden rests with Ms Notley to demonstrate that she had addressed her past impairments. The Committee noted that she has not engaged with the GDC at all over the past 12 months. Consequently, there is no material from her before the Committee today.

33. [IN PRIVATE].

34. Whilst the Committee considered that the concerns raised in respect of Ms Notley are remediable, it received no evidence of her insight into the identified issues, or any significant evidence of any remedial action she has taken, including to guard against recurrence. Accordingly, the Committee could only conclude that the concerns remain.

35. In all the circumstances, the Committee considered that there would be an ongoing risk to the public if Ms Notley were permitted to return to unrestricted practice. A finding of impairment is therefore necessary for the protection of the public.

36. The Committee also considered that such a finding is required in the wider public interest, to maintain public confidence in the dental profession. Ms Notley's lack of engagement has continued over a number of years, and there is little evidence to suggest that she has made any efforts to address the matters found proved against her in September 2021. The Committee was of the view that public confidence in the dental profession would be undermined if a finding of impairment were not made in these circumstances. It also remained mindful of its duty to uphold proper professional standards.

37. Accordingly, the Committee determined that Ms Notley's fitness to practise remains impaired by reason of her conviction, misconduct and adverse health.

Decision on sanction

38. The Committee next considered what action to take in respect of Ms Notley's registration. It had regard to section 36Q(1) of the Act, which sets out the options available to the Committee at this review.

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

40. In the absence of any evidence to indicate that the serious concerns raised regarding Ms Notley have been adequately addressed, the Committee determined that it would be inappropriate to terminate the current suspension and take no further action. The Committee has identified a risk of repetition in this case and such a course would not protect the public or uphold the wider public interest.

41. The Committee considered whether to impose a period of conditional registration. It concluded that conditions would not be appropriate or proportionate. Ms Notley has not engaged in any meaningful way with these proceedings. There is, therefore, no evidence that she would comply with any conditions that could be formulated. The Committee decided that in the absence of such evidence, conditional registration would not serve to protect the public, nor would such an outcome satisfy the public interest.

42. The Committee next considered whether to suspend Ms Notley's registration for a further specified period. In doing so, the Committee took into account that an extension of the current suspension order would safeguard the public from any repetition of the identified concerns.

43. However, the Committee considered the public interest in these matters, in particular the use of resources in conducting repeated review hearings. Ms Notley has failed to meaningfully engage with the fitness to practise hearings, [IN PRIVATE], and there is nothing to indicate any future engagement on her part. There has been no evidence to suggest that she has acknowledged the serious findings made against her. For these reasons, the Committee determined that a further extension of the current suspension order would serve no useful purpose.

44. In reaching its decision, the Committee considered Ms Notley's interests and the potential consequences that an indefinite suspension may have for her. However, it decided that the public interest outweighs her own interests in this particular case.

45. Accordingly, the Committee directs the indefinite suspension of Ms Notley's registration in accordance with section 36Q(1)(d) of the Act. In making this direction, the Committee was satisfied that the criteria for imposing an indefinite suspension are met.

46. The Committee considered that the onus should now rest with Ms Notley to contact the GDC if and when she is willing to engage with its processes. It noted that she can request a review of the indefinite suspension order when at least two years have elapsed since the date on which the direction takes effect.

47. Unless Ms Notley exercises her right of appeal, her registration will be suspended indefinitely, 28 days from the date that notice of this direction is deemed to have been served upon her. In the event that she does exercise her right of appeal, the suspension order currently in place on her registration will remain in force until the resolution of the appeal.

That concludes this determination.