

**Hearing held in private  
PUBLIC DETERMINATION**

**Summary**

<b>Name:</b>	<b>COONEY, LEEANNE PATRICIA [Registration number: 241801]</b>
<b>Type of case:</b>	<b>Health Committee (review)</b>
<b>Outcome:</b>	<b>Suspended indefinitely</b>
<b>Date:</b>	<b>6 August 2021</b>
<b>Case number:</b>	<b>CAS - 189696</b>

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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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This is a resumed hearing pursuant to Section 36Q of the Dentists Act 1984 (as amended) ('the Act'). The purpose of this hearing has been for this Health Committee (HC) to review Ms Cooney's case and determine what action to take in relation to her registration. The Committee, as well as the Legal Adviser and the Committee Secretary, are participating via Microsoft Teams video-link in line with Her Majesty's Government's current advice concerning COVID-19.

Neither party is present nor represented today. The General Dental Council (GDC) has requested that the hearing be conducted on the papers and has provided written representations.

**Decision on Service of the Notice of Hearing**

The Committee first considered whether notice of the hearing had been served on Ms Cooney in accordance with Rules 28 and 65 of the GDC's Fitness to Practise Rules 2006 ('the Rules') and Section 50A of the Dentists Act 1984 (as amended) ('the Act'). The Committee received from the GDC a hearing bundle, which contained a copy of the Notice of Hearing ('the notice'), dated 15 June 2021, thereby complying with the 28-day notice period. The notice was sent by special delivery and first-class post to Ms Cooney's registered address. The Committee had before it a copy of a Royal Mail track and trace document which showed that the notice of hearing letter was delivered to this address and signed for on 16 June 2021. The notice was also emailed to Ms Cooney on 7 July 2021.

The Committee was satisfied that the notice sent to Ms Cooney contained proper notification of today's hearing, including its time, date and that it will be conducted remotely by Microsoft Teams video-link, and the other prescribed information including notification that the Committee had the power to proceed with the hearing in Ms Cooney's absence.

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

### **Decision on Proceeding in the Registrant's Absence**

The Committee next considered whether to exercise its discretion under Rule 54 of the Rules to proceed with the hearing in the absence of Ms Cooney. The Committee approached the issue of proceeding in absence with the utmost care and caution. It took into account the factors to be considered in reaching its decision, as set out in the case of *GMC v Adeogba & Visvardis* [2016] *EWCA Civ 162*. It remained mindful of the need to be fair to both Ms Cooney and the GDC, taking into account the public interest and Ms Cooney's own interests in the expeditious review of the suspension order imposed.

It first concluded that all reasonable efforts had been taken to send the notification of hearing to Ms Cooney in accordance with the Rules. It noted that there has been no response from Ms Cooney as to whether she will be attending the hearing. The Committee also noted that Ms Cooney did not attend the substantive and review hearings, and that the suspension order will expire on 18 August 2021. The Committee concluded that to adjourn the hearing would not secure Ms Cooney's attendance.

In those circumstances, the Committee determined that it was fair and appropriate to proceed with the hearing in the absence of Ms Cooney.

### **Application for hearing to be held in private**

In their written submissions, the GDC made an application pursuant to Rule 53 for the hearing to be part-held in private as the matters today relate to Ms Cooney's health, private and family life. The Committee heard and accepted the advice of the Legal Adviser.

The starting point for the Committee is for all hearings to be held in public as it is in the interests of justice to do so. However, a hearing may be heard in private where it concerns matters that are inextricably linked to the health or private and family life of the Registrant concerned, under Rule 53(2) of the General Dental Council (Fitness to Practise) Rules Order of Council ("the Rules"). The Committee agreed that as the matters in this case relate to Ms Cooney's health, it was in her interests that the hearing should be part-heard in private. The Committee therefore acceded to the application.

### **Background**

Ms Cooney first appeared before the Health Committee in July 2019. She did not attend and was not represented at the hearing. That Committee found proved an allegation that Ms Cooney's fitness to practice was impaired by reason of her adverse health, [PRIVATE]. It also considered whether Ms Cooney's fitness to practise was impaired by misconduct as it was alleged that she had failed to co-operate with the GDC's investigation by not providing them with a medical reference, evidence of her indemnity and details of her employment history. The Committee determined that Ms Cooney's failure to co-operate with the GDC's investigation did not amount to misconduct as her conduct did not fall far below the standards expected of dental practitioners given the state of her health at the time.

At the substantive hearing, that Committee noted that there was no current evidence before it about Ms Cooney's health as she had not engaged with the GDC since the completion of her health assessment. It, therefore, was unable to assess the current state of her health and the impact on her. In the absence of this information, the Committee concluded that there could be a risk of harm to patients if Ms Cooney were to attend work. The Committee determined to suspend her registration for a period of 12 months with a review hearing before the expiry of the order.

The matter was reviewed on 29 June 2020 where that reviewing Committee stated "*The Committee noted that Ms Cooney has not engaged with the GDC since the substantive hearing, and there is no evidence or information about her current state of health. The*

*Committee concluded that, in the absence of this information, the concerns about her health and her insight into her health condition have not been addressed. The Committee therefore determined that Ms Cooney's fitness to practise is currently impaired by reason of her adverse health." When considering on sanction that Committee determined "The Committee was satisfied that taking no action and allowing the current suspension to expire would not protect the public. The Committee was also satisfied that imposing conditions would not be workable owing to Ms Cooney's non-engagement with these proceedings. It would also not be in the public interest or protect patients as there is no evidence before this Committee that the concerns about her health have been addressed. The Committee therefore determined that only a further suspension was sufficient and proportionate. That suspension needed to be for a further 12 months in the circumstances to allow Ms Cooney to engage with the GDC, and there should be a review before the end."*

### **Submissions**

In their written submissions, the GDC stated that Ms Cooney has not engaged with the GDC. The GDC has invited her to undergo a further health assessment and requested access to her medical records, but it has not received a response. The GDC submitted that as Ms Cooney has failed to provide any evidence that her fitness to practise is no longer impaired by adverse health then the concerns, identified by the previous Committee, have not been addressed. It therefore stated that Ms Cooney's fitness to practise is currently impaired. It invited the Committee to determine that the appropriate form of suspension order is an indefinite order. Whilst Dr G recommends a further extension of the suspension for 12 months, based on the information currently available, there appears to be little prospect of improvement such that the Registrant might be able to practise with conditions in a year's time. The effect of the Registrant's health condition on her fitness to practise has not significantly changed during the period of her suspension. The medical evidence obtained by the Council indicates that she remains unable to work, and there is no evidence that this situation will change in the near future. The Council submits that it is neither in the Registrant's interests nor in the public interest to require the Registrant to undergo further regular reviews before the Committee while her health condition remains substantially unchanged.

### **Committee's Decision on Impairment**

It is the role of the Committee today to undertake a comprehensive review as per the request of the GDC. In so doing, the Committee had careful regard to all the documentary evidence before it and took account of the submissions made by both parties. The Committee also heard and accepted the advice of the Legal Adviser. The Committee had regard to the *GDC's Guidance for the Practice Committees*, including *Indicative Sanctions Guidance* (October 2016) (the Guidance).

In making its decision, the Committee first sought to determine whether Ms Cooney's fitness to practise is still impaired by reason of her health. It exercised its independent judgement and was not bound by the decision of the previous committee. It balanced Ms Cooney's needs with those of the public and bore in mind that its primary duty is to protect the public, including by maintaining public confidence in the profession and declaring and upholding proper standards and behaviour.

The Committee noted that Ms Cooney has not engaged with the GDC since the substantive hearing, and there is no evidence or information about her current state of health. The Committee concluded that, in the absence of this information, the concerns about her health and her insight into her health condition have not been addressed. The Committee concluded that, in light of the medical information before it, a finding of current impairment is required to protect patients. Furthermore, the Committee was of the view that a finding of current impairment is in the public interest in order to maintain public confidence in the profession and uphold the standards of the profession. A fully informed member of the public knowing the nature of Ms Cooney's health condition and the available medical information would expect a

finding of impairment to be made. The Committee determined that Ms Cooney's fitness to practise remains currently impaired by reason of her adverse health.

### **Committee's Decision on Sanction**

The Committee next considered what sanction, if any, should be imposed on Ms Cooney's registration. It bore in mind the need to protect patients and the public interest. The Committee once again had regard to the principle of proportionality, weighing the interests of the public with Ms Cooney's own interests.

The Committee was satisfied that taking no action and allowing the current suspension to expire would not protect the public. The Committee was also satisfied that imposing conditions would not be workable owing to Ms Cooney's non-engagement with these proceedings. It would also not be in the public interest or protect patients as there is no evidence before this Committee that the concerns about her health have been addressed.

It took into account Dr G has noted from the records that the Registrant has worked for a period of time as a dental receptionist one day a week, but that she appears to have stopped this work as at 24 May 2021 [PRIVATE]. Dr G states, [PRIVATE] . Dr G suggests that a further suspension for a minimum period of 12 months would be appropriate.

The Committee concluded that suspension remained the appropriate restriction to impose on Ms Cooney's registration. It considered whether a further period of 12-month suspension was sufficient or whether to suspend Ms Cooney's registration indefinitely. It took into account that Dr G recommended a further period of suspension for a minimum of 12 months. However, the Committee's view is that, given that Ms Cooney's health condition on her fitness to practise has not significantly changed during the period of her suspension, and also that the medical evidence obtained by the Council indicates that she remains unable to work.

The Committee therefore considers that it would be unfair to all parties including Ms Cooney to continue to hold yearly reviews of this case. The Committee considered that the criteria for an indefinite suspension are met in this case. It noted from section 27C(1)(d) that a person's registration in the register can be suspended indefinitely if "the period of suspension will, on the date on which the direction takes effect, have lasted for at least two years, and the direction is made not more than two months before the date on which the period of suspension would otherwise expire." The Committee noted that Ms Cooney's registration has now been suspended for two years, having first been suspended for 12 months from 16 July 2019 and then a further 12 months from 29 June 2020. In addition, the Committee noted that the current order is due to expire on 18 August 2021 which is less than 28 days from today.

The Committee therefore directs that Ms Cooney's registration in the register be suspended indefinitely pursuant to section 27C(1)(d) of the Dentists Act 1984, as amended.

That concludes this determination.