

Hearing held in public

Summary

Name:	TURNBULL, Colin Robertson [Registration number: 83141]
Type of case:	Professional Conduct Committee (Review)
Outcome:	Indefinite suspension imposed
Date:	24 November 2022
Case number:	CAS-181784

This is a Professional Conduct Committee (PCC) review hearing in relation to Mr Turnbull, pursuant to section 27C of the *Dentists Act 1984 (as amended)* ('the Act'). The hearing is being held remotely by Microsoft Teams video-link in line with the current practice of the General Dental Council (GDC).

The purpose of this hearing has been for this Committee to review two separate cases in respect of Mr Turnbull, and to determine what action to take in relation to his registration, which is currently subject to two concurrent orders of suspension. This determination relates to the second of those cases (CAS-181784).

Decision on service:

The Committee first considered whether notice of the hearing had been served on Mr Turnbull in accordance with Rules 28 and 65, and Section 50A of the Act. The Committee noted that included in the hearing bundle relating to this case was a copy of the Notice of Hearing dated 18 October 2022 ('the notice'), which was sent to Mr Turnbull's registered address by Special Delivery. The Committee took into account that there is no requirement within the Rules for the GDC to prove receipt of the notice, only that it was sent. However, it had sight of the associated Royal Mail 'Track and Trace' receipt, which confirmed that the notice was still at London Central MC. A copy of the notice was also sent by email to Mr Turnbull and to his legal representative on 18 October 2022.

The Committee was satisfied that the notice sent to Mr Turnbull 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 via video-link on Microsoft Teams, and that the Committee had the power to proceed with the hearing in his absence and on the papers.

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

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

The Committee considered whether in principle this PCC review was suitable to be conducted entirely on the papers and decided that it was. There had been no request for an oral hearing and there were no factors that required an oral hearing.

The Committee next considered whether to exercise its discretion under Rule 54 to proceed with the hearing in the absence of Mr Turnbull. 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 explained in the case of *General Medical Council v Adeogba [2016] EWCA Civ 162*. The Committee remained mindful that fairness to Mr Turnbull was an important consideration, but also took into account the need to be fair to the GDC. It further had regard to the public interest in the expeditious review of the current suspension orders.

The Committee had regard to the chain of emails between the GDC and Mr Turnbull's legal representatives in relation to the matter and noted the email from Mr Turnbull's solicitor dated 8 November 2022, in which Mr Turnbull's solicitor states "*I am without instructions regarding whether there are any objections to these review hearings proceeding on the papers.*" They went on to state in an email dated 11 November 2022, "*To avoid any misunderstanding, the reference to "no explicit objection" was in reference to the written submissions that stated that there had been no objection by the defence. We have not responded to confirm whether we object to the reviews proceeding on the papers or not as we are without our client's instructions to do so...."*. The Committee noted, there was no formal request from him, or on his behalf, for an adjournment of today's proceedings. Further, the Committee received no information to suggest that an adjournment was likely to secure Mr Turnbull's attendance on a future date.

The Committee considered that Mr Turnbull had been given ample notice of this hearing. In the circumstances, the Committee considered that there were significant public interest considerations in reviewing Mr Turnbull's cases expeditiously, particularly given the public protection concerns raised by the last reviewing Committee in its determination. Taking all these considerations into account, the Committee was satisfied that it was fair and in the public interest to proceed with the hearing in the absence of Mr Turnbull.

Case background

This case was first considered by the PCC in August 2017. The allegations that Mr Turnbull faced consisted of 21 charges and related to the care and treatment he had provided to nine patients in the period of June 2011 to December 2014. Through written submissions Mr Turnbull made admissions to a majority of the charges. After considering the evidence the Committee in August 2017 found the admitted charges proved. The charges found not proved included those denied by Mr Turnbull, and record keeping charges which were charged in the alternative to the clinical allegations found proved. The findings made included failings in the areas of radiography, anti-microbial prescribing, cross-infection control, oral hygiene, periodontal assessment, treatment planning and medical histories.

The PCC in August 2017 found that the failings, both individually and cumulatively, amounted to misconduct. It was not satisfied that there was sufficient evidence of Mr Turnbull having remedied the specific issues of concern identified in the case. It did not consider his evidence of targeted learning, insight and reflection to be sufficient remediation of the serious departures found proved. In addition, that PCC was concerned that Mr Turnbull had been out of practice for 32 months, at that time, and therefore had not had the opportunity to demonstrate that his learning had been embedded into clinical practice. That initial PCC determined that Mr Turnbull's fitness to practise was impaired by reason of his misconduct. It directed that a period of conditional registration for 21 months be imposed on his registration with a review of the case prior to the expiry of the order.

First review

On 10 May 2019 the case was reviewed. That PCC determined that Mr Turnbull's fitness to practise remained impaired by reason of misconduct. It noted that he had not been able to practice as a dentist and had not been in a position to demonstrate full remediation of the clinical matters identified by the initial PCC. The Committee was informed of various health and personal matters. In those circumstances the concerns of patient safety identified at the initial hearing remained unaddressed, and there remained a risk of repetition. The PCC in May 2019 directed that the period of conditional registration be extended for a period of 18 months with a review of the case prior to the expiry of the order.

Second review

The case was further reviewed by a PCC on 12 November 2020. That Committee noted that for reasons heard in private, Mr Turnbull had been unable to complete his remediation process because he was yet to return to clinical practice at that time. It noted that the remediation undertaken so far involved a large amount of online learning, however, the scope and intensity of those courses were not before it. In addition, it found that Mr Turnbull's Personal Development Plan (PDP) had not progressed much since 2016 with few additions since that time. That Committee expressed concern that Mr Turnbull, who had not worked as a dentist for some five years, was "*now slipping further away from his goal to remedy his misconduct: that can only be achieved by embedding change in his daily clinical practice*".

The Committee in November 2020 concluded that there remained a risk to the safety of patients and a risk of repetition. It determined that a finding of current impairment was required for the protection of the public. That Committee also determined that a finding of current impairment was in the public interest in order to uphold the standards of the profession.

That Committee determined that the order of conditions that was in place on Mr Turnbull's registration should be revoked and replaced with an order of suspension for a period of 12 months, and it directed a review of his case before the expiry of the order.

In its determination imposing the suspension order, that Committee stated as follows:

"If at a review hearing, Mr Turnbull is able to demonstrate continued engagement in keeping his CPD and PDP updated and makes clear his intention to proceed with a return to practice course, it may be appropriate at

that time to reinstate conditions although that will be a matter for that reviewing Committee who are not fettered by this decision.”

Third Review

On 29 November 2021 a further review of the case was conducted by a PCC. That Committee determined that Mr Turnbull's fitness to practise remained impaired. It was noted that there had been a total lack of engagement by Mr Turnbull. The PCC in 2021 concluded that there had been an absence of recent engagement with the GDC by Mr Turnbull, and there had been no suggestion of any potential engagement in remediation at that stage. The Committee determined to extend the current suspension order by a period of 12 months, and it directed a further review.

Today's review

This has been the fourth review since the findings of the PCC in August 2017. In comprehensively reviewing this case today, the Committee considered all the evidence before it. It took account the written submissions of the GDC. The Committee accepted the advice of the Legal Adviser.

The GDC submitted that that Mr Turnbull's fitness to practise remains impaired on both public protection and public interest grounds. The GDC stated that *“...it is submitted that there has not been a material change since the previous hearing and the Registrant's fitness to practise remains impaired by reason of his misconduct for the same reasons identified by previous Committees. ...In light of the circumstances of the case and the Registrant's lack of meaningful engagement, it is submitted that it is appropriate and proportionate to suspend the Registrant indefinitely on both public protection and public interest grounds as the conditions are met.”*

Decision on impairment

The Committee first considered whether Mr Turnbull's fitness to practise remains impaired by reason of misconduct. In reaching its decision, the Committee 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.

The Committee noted that there has been no material change since the last PCC review. Mr Turnbull has not engaged with the GDC since the last PCC review. Consequently, there is no evidence before this Committee to demonstrate that he has made any progress in relation to his remediation into his clinical deficiencies. The position remains that there has been an absence of recent engagement with the GDC by Mr Turnbull, and there has been no suggestion of any potential engagement in remediation at this stage.

The Committee noted that the Registrant has been suffering from ill health. However, in the absence of evidence of any meaningful reflection, insight or remediation, the Committee could not be satisfied that the risk of Mr Turnbull's repeating his misconduct would be low or that the suspension of his registration has been sufficient to mark the seriousness of his misconduct, so as to maintain public confidence in the profession and in this regulatory process. The Committee therefore considered there to be a high risk of repetition.

Accordingly, the Committee determined that Mr Turnbull's fitness to practise as a dentist continues to be impaired on the statutory basis of misconduct. The Committee was satisfied that his misconduct continues to raise both public protection and wider public interest concerns.

Decision on sanction

The Committee next considered what action to take in respect of Mr Turnbull's registration. It had regard to section 27C(1) of the Act, which sets out the options available to the Committee at this review.

In reaching its decision, the Committee had regard to the '*Guidance for the Practice Committees including Indicative Sanctions Guidance (effective from October 2016; last 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 Mr Turnbull's own interests.

The Committee was satisfied that the continued restriction of Mr Turnbull's registration is necessary. There would be a risk of harm to the public should Mr Turnbull be allowed to practise without any restriction on his registration and public confidence in the profession and in this regulatory process would also be seriously undermined.

The Committee could not identify any conditions of practice which could be formulated to be workable, measurable and proportionate owing to the nature of Mr Turnbull's misconduct and his lack of full engagement in these proceedings. The Committee noted that Mr Turnbull has been out of practice for over 7 years, and the Committee could not be satisfied that Mr Turnbull would comply with any conditions on his registration. The Committee noted that he had previously failed to fully comply with the conditions initially imposed on his registration by the PCC in this set of proceedings.

The Committee determined that the suspension of Mr Turnbull's registration therefore remains necessary and proportionate. The periods of suspension previously imposed on Mr Turnbull's registration have not achieved their intended purpose, as Mr Turnbull has been unable to demonstrate reflection, insight and remediation into his deficient professional performance and there is a lack of engagement from him in respect of these proceedings and also with his legal representatives. There was nothing to suggest to the Committee that Mr Turnbull would be likely to engage fully in these proceedings in respect of his deficient professional performance and demonstrate sufficient reflection, insight and remediation within the next 12 months.

The Committee determined that, in all likelihood, any reviewing Committee considering the case in 12 months' time would be in the same position as the Committee today in respect of Mr Turnbull's deficient professional performance. The Committee therefore determined that extending the current period of suspension for a further period of up to 12 months with a review would serve no meaningful purpose. There has been no evidence provided of the Registrant's CPD, PDP or his intentions to return to dentistry as recommended by the previous Committees, and there has been a lack of engagement by him. Mr Turnbull has been suspended from practice for over 2 years, and his current order of suspension is due to expire on 15 December 2022.

Taking all of this into account, the Committee is satisfied that the imposition of a sanction of indefinite suspension is proportionate and necessary in order to protect the public and is otherwise in the public interest. The Committee therefore directs that Mr Turnbull's registration be suspended indefinitely.

That concludes the hearing today