

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 this text.

OGILVIE, Eilidh Catriona

Registration No: 67719

PROFESSIONAL CONDUCT COMMITTEE

APRIL 2017 – JUNE 2019

Most recent outcome: Suspended indefinitely

**See page 13 for the latest determination

**Please note that the initial hearing was brought before the Health Committee. On 19 April 2017, the Committee concluded there were no health-related findings and directed that, on review, the case is considered by the Professional Conduct Committee.

Eilidh Catriona OGILVIE, a dentist, BDS Edin 1992; was summoned to appear before the Professional Conduct Committee on 18 April 2017 for an inquiry into the following charge:

Charge

“That, being a registered Dentist:

1. You have an adverse [PRIVATE] health condition, (Condition A) as specified in Schedule A¹; and/or
2. You have an adverse [PRIVATE] health condition, (Condition B) as specified in Schedule A.
3. Between 12 March 2016 and 06 January 2017 you failed to adequately cooperate with an investigation conducted by the GDC.

AND by reason of the matters alleged, your fitness to practise is impaired by reason of your adverse health and/or misconduct.”

On 18 April 2017 the Chairman made the following statement regarding the finding of facts:

“This is a hearing before the Health Committee. Ms Ogilvie is neither present nor represented at this hearing.

At the outset, Ms Headley, the Case Presenter for the General Dental Council (GDC), made an application pursuant to Rule 54 of the ‘GDC (*Fitness to Practise*) Rules Order of Council 2006’ (‘the Rules’), to proceed with the hearing notwithstanding Ms Ogilvie’s absence.

The Committee took into account the submissions made by Ms Headley in respect of her application. It accepted the advice of the Legal Adviser.

¹ Schedule A is a private document and cannot be disclosed.

Decision on service of the Notification of Hearing

The Committee first considered whether Ms Ogilvie had been sent notification of the hearing in accordance with Rules 13 and 65 of the Rules. It saw a copy of the Notification of Hearing, dated 14 March 2017 and confirmation that this letter was sent to Ms Ogilvie's registered address by Special Delivery. The Committee was satisfied that the letter contained proper notification of today's hearing, including its date, time and location, as well as notification that the Committee had the power to proceed with the hearing in Ms Ogilvie's absence.

Whilst the Committee took into account that the GDC is not required by the Rules to prove receipt, it noted the additional efforts made by the GDC in sending a further copy Notification of Hearing to a last known address for Ms Ogilvie. The Committee had regard to the associated Royal Mail 'Track and Trace' receipt, which shows that this further copy Notification of Hearing was delivered and signed for in the printed name of 'OGILVIE'.

The Committee was satisfied on the basis of the evidence before it, that service of the Notification of Hearing had been effected in accordance with the Rules.

Decision on proceeding in the absence of Ms Ogilvie

The Committee next considered whether to exercise its discretion under Rule 54 to proceed with the hearing in the absence of Ms Ogilvie. It approached this issue with the utmost care and caution. The Committee took into account the need to be fair to both parties and it had regard to the public interest in dealing with the matters in this case expeditiously.

The Committee was satisfied on the evidence before it, that Ms Ogilvie has been made aware of this hearing today and of her right to attend and be represented. It noted from the information provided that Ms Ogilvie did not attend a previous Professional Conduct Committee (PCC) hearing in respect of separate allegations, which was held over the period August to December 2015. This Committee further noted that Ms Ogilvie's lack of engagement with the GDC is ongoing. In the circumstances, the Committee concluded that Ms Ogilvie has voluntarily absented herself. There has been no suggestion that Ms Ogilvie has requested an adjournment of this hearing and, given her history of non-engagement, the Committee considered that it was highly unlikely that an adjournment today would secure her attendance on a future date. Taking all of this into account, the Committee determined that it was fair and in the public interest to proceed with the hearing in the absence of Ms Ogilvie.

Decision to hold the hearing in private under Rule 53

The Committee next acceded to a further application made by Ms Headley to hold the hearing entirely in private under Rule 53 of the Rules. Whilst the Committee took into account that the charge against Ms Ogilvie contains alleged matters of health and misconduct, it was satisfied that the matters were inextricably linked. It therefore considered that it was appropriate and practical to proceed in private session.

In the circumstances, the Committee has prepared both a private version and a public version of its Findings of Fact. This version is public.

The charge

The alleged facts in this case are that Ms Ogilvie has adverse health conditions, [PRIVATE].

There is also a misconduct allegation that Ms Ogilvie failed to adequately cooperate with an investigation conducted by the GDC.

Evidence

In relation to the alleged matters concerning Ms Ogilvie’s health, the GDC provided the Committee with documentary evidence, including [PRIVATE]. Also provided was information relating to the previous PCC proceedings against Ms Ogilvie in 2015, which this Committee received to provide context in respect of the current health matters before it. The Committee further received a report, dated 4 January 2017, prepared by the expert witness for the GDC, Dr [PRIVATE]. Dr [PRIVATE] also gave oral evidence to the Committee.

In relation to the allegation of misconduct, the Committee received the signed witness statement of Witness 1, an employee of the GDC, dated 9 January 2017 and associated exhibits. The Committee also heard oral evidence from Witness 1 via telephone.

The Committee’s Findings of Fact

The Committee considered all the evidence presented to it. It took account of the submissions made by Ms Headley on behalf of the GDC and it accepted the advice of the Medical Adviser and that of the Legal Adviser.

The Committee considered each head of charge separately, bearing in mind that the burden of proof rests with the GDC and that the standard of proof is the civil standard, that is, whether the alleged facts are proved on the balance of probabilities. The Committee drew no adverse inferences from Ms Ogilvie’s absence from this hearing.

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

1.	<p><i>You have an adverse [PRIVATE] health condition, (Condition A) as specified in Schedule A; and/or</i></p> <p>Found not proved.</p>
2.	<p><i>You have an adverse [PRIVATE] health condition, (Condition B) as specified in Schedule A.</i></p> <p>Found not proved.</p> <p>The Committee considered heads of charge 1 and 2 separately, but reached the same finding in respect of both.</p> <p>The Committee received very limited medical evidence in relation to Ms Ogilvie’s current state of health. The evidence that it did receive was largely based on information arising from the [PRIVATE] reports, the last of which was written almost four years ago. There were also incidental references to some health matters during Ms Ogilvie’s PCC hearing in 2015.</p> <p>[PRIVATE].</p> <p>[PRIVATE].</p> <p>Having considered all the evidence, the Committee was not satisfied that the GDC has discharged its burden of proof in relation to the alleged health matters. [PRIVATE].</p>
3.	<p><i>Between 12 March 2016 and 06 January 2017 you failed to adequately cooperate with an investigation conducted by the GDC.</i></p> <p>Found proved.</p>

	The Committee was satisfied that, as a registered dentist, Ms Ogilvie had a duty to cooperate with the GDC's investigation into her fitness to practise. It received and accepted the clear evidence from Witness 1 of Ms Ogilvie's non-engagement with the GDC over the period in question.
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We move to Stage Two.”

On 19 April 2017 the Chairman announced the determination as follows:

“Ms Ogilvie is neither present nor represented at this hearing.

The Committee considered all the evidence presented to it. It took account of the submissions made by Ms Headley, the Case Presenter for the General Dental Council (GDC) and it accepted the advice of the Medical Adviser and that of the Legal Adviser.

The facts found proved

The single matter found proved by the Committee is that, between 12 March 2016 and 6 January 2017, Ms Ogilvie failed to cooperate adequately with an investigation conducted by the GDC. The Committee received and accepted the evidence of Witness 1, an employee of the GDC, regarding the correspondence sent to Ms Ogilvie at the various stages of the GDC's investigation into her fitness to practise, to which there has been no response from her to date.

Decision on misconduct

The Committee considered whether the facts found proved in this case amount to misconduct. It took into account that misconduct in the regulatory context requires a serious falling short of the expected professional standards. The Committee had regard to the GDC Standards, as set out in its publication '*Standards for the Dental Team (September 2013)*'. In particular, Standard 9.4, which contains the following paragraph:

9.4.1 If you receive a letter from the GDC in connection with concerns about your fitness to practise, you must respond fully within the time specified in the letter. You should also seek advice from your indemnity provider or professional association.

The Committee was satisfied from the above Standard that Ms Ogilvie had an unequivocal duty to cooperate adequately with the investigation being conducted by the GDC and she clearly failed to do so. Ms Ogilvie has failed to respond to numerous letters from her regulatory body and the Committee considered that her conduct in this respect potentially undermined the effectiveness of the GDC's role in professional regulation. In the Committee's view, Ms Ogilvie has breached a fundamental obligation of her registration. It was satisfied that such a breach is serious and that it amounts to misconduct.

Decision on impairment

The Committee next considered whether Ms Ogilvie's fitness to practise is currently impaired by reason of her misconduct.

In reaching its decision, the Committee exercised its independent judgement. It had regard to the over-arching objective of the GDC, which involves: 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 was satisfied that Ms Ogilvie's misconduct, as found in this case, is such that it is capable of being easily remedied. It considered that in order to demonstrate remediation, Ms Ogilvie would need to embark on meaningful engagement with the GDC, which would include an explanation for her non-engagement to date.

However, the Committee has received no evidence of insight on Ms Ogilvie's part. There is nothing before the Committee to suggest that she has any understanding of her wrongdoing, nor has she provided any reason for her failure to cooperate with her regulatory body in matters of significant importance. Whilst the Committee has not drawn any adverse inference from Ms Ogilvie's absence from this hearing, the current factual position is that Ms Ogilvie's lack of engagement is ongoing.

The Committee also took into account Ms Ogilvie's fitness to practise history. It noted the details of her Professional Conduct Committee (PCC) hearing held over the period August to December 2015, with which she did not engage. This Committee noted that at that hearing, the PCC found proved an allegation that from approximately January 2013 to April 2013, Ms Ogilvie had failed to cooperate with an investigation into her conduct by Sussex Community NHS Trust.

The evidence before this Committee indicates a pattern of non-engagement on Ms Ogilvie's part and, in the absence of any evidence of insight or remediation, it considered that there is a likelihood that Ms Ogilvie could repeat the misconduct it has found. Given that Ms Ogilvie's wrongdoing is of the kind that could potentially undermine the GDC's ability effectively to regulate the profession, the Committee considered that patient safety concerns do arise from the matters in this case. Whilst it took into account that it has not found proved the health allegations brought by the GDC in this case, there were nonetheless concerns that had the potential to put patients at risk. In the Committee's view, Ms Ogilvie's inaction demonstrates a disregard for the GDC's important role in the protection of the public. It therefore considered that a finding of impairment is necessary in the interest of public protection.

The Committee also decided that a finding of impairment is in the wider public interest to maintain public confidence and uphold proper standards of conduct and behaviour. Ms Ogilvie has breached a fundamental standard required by her regulator and has to date shown no insight into this serious matter. The Committee considered that public confidence in the dental profession would be undermined if a finding of impairment were not made in the circumstances of this case.

Accordingly, the Committee has determined that Ms Ogilvie's fitness to practise is currently impaired by reason of her misconduct.

Decision on sanction

The Committee considered what sanction, if any, to impose on Ms Ogilvie's registration. The purpose of a sanction is not to be punitive, although it may have that effect, but to protect patients and the wider public interest.

The Committee took into account the '*Guidance for the Practice Committees including Indicative Sanctions Guidance (effective from October 2016)*'. It considered the range of sanctions available to it, starting with the least restrictive. The Committee applied the principle of proportionality, balancing the public interest with Ms Ogilvie's own interests.

In light of its outstanding concerns about the risk of Ms Ogilvie repeating her misconduct and the potential impact this could have for the public and the wider public interest, the Committee concluded that it would be inappropriate to conclude this case without taking any action in respect of her registration. The Committee also decided against issuing a reprimand. Neither of these outcomes would impose any restriction on Ms Ogilvie's registration to protect the public, nor would they satisfy the wider public interest.

Whilst the Committee did consider the sanction of conditions, it determined that conditional registration would not be workable in a case such as this one. It noted that Ms Ogilvie's registration is currently suspended by virtue of the previous PCC proceedings. Furthermore, this Committee has received no evidence of insight or remediation and there is virtually no information about Ms Ogilvie's current circumstances. Therefore, the Committee could not be satisfied that conditions would serve to address its concerns in this instance.

In all the circumstances, the Committee has determined to suspend Ms Ogilvie's registration. It considered that the sanction of suspension would afford the public the necessary protection and would also serve to mark the seriousness of Ms Ogilvie's misconduct.

In reaching its decision, the Committee took into account that the sanction of erasure was open to it. It considered the current lack of information from Ms Ogilvie, including her apparent ongoing lack of insight. However, it had regard to the evidence of Dr [PRIVATE], the expert witness who appeared for the GDC, and also the advice of the Medical Adviser that an explanation for Ms Ogilvie's continuing lack of engagement could, given the albeit limited evidence, include ill health. This Committee also noted the contents of the findings of the PCC in 2015 that Ms Ogilvie was regarded as a highly skilled and empathetic clinician. This Committee therefore decided that erasure would be disproportionate in the particular circumstances of this case.

The Committee has decided to suspend Ms Ogilvie's registration for a period of six months. It considered a six-month period to be sufficient in view of the gravity of Ms Ogilvie's wrongdoing. It also considered that six months would give her ample opportunity to prepare and present any evidence of her remediation.

A Committee will review Ms Ogilvie's case at a resumed hearing to be held shortly before the end of the period of suspension. That Committee will consider what action to take in relation to her registration. She will be informed of the date and time of that resumed hearing, with which she will be expected to engage.

The Committee reviewing Ms Ogilvie's case may find it helpful to receive the following:

- evidence of her meaningful engagement with the GDC;
- evidence of her insight into the findings of this Committee;
- evidence of her Continuing Professional Development; and
- any other evidence that she considers that the reviewing Committee may find of assistance in her case.

Unless Ms Ogilvie exercises her right of appeal, her registration will be suspended 28 days from the date when notice of this determination is deemed to have been served upon her.

The Committee now invites submissions from Ms Headley on behalf of the GDC, as to whether Ms Ogilvie's registration should be suspended immediately, pending its substantive determination taking effect."

“In deciding whether to impose an immediate order of suspension on Ms Ogilvie’s registration, the Committee took account of the submissions made by Ms Headley on behalf of the GDC. It accepted the advice of the Legal Adviser.

The Committee has determined that it is not necessary for the protection of the public, nor is it otherwise in the public interest, or in Ms Ogilvie’s own interests to impose an immediate order of suspension on her registration. In reaching its decision, the Committee took into account that Ms Ogilvie’s registration is currently suspended by virtue of the previous PCC proceedings and therefore the public protection issue arising from this case is satisfied.

Unless Ms Ogilvie exercises her right of appeal, the substantive direction for the suspension of her registration, as already announced by this Health Committee, will take effect 28 days from the date when notice is deemed to have been served upon her.

This Committee has also taken into account that it has made no health-related findings in respect of Ms Ogilvie. It therefore directs that, on review, Ms Ogilvie’s case is considered by the Professional Conduct Committee.

That concludes this hearing.”

At a review hearing on 7 November 2017, the Chairman announced the determination as follows:

“This is a resumed hearing pursuant to s 27C of the Dentists Act 1984.

Ms Ogilvie is neither present nor represented. The General Dental Council (GDC) is also not in attendance. It relies on written submissions, in which it submits that: (i) service of the notification of hearing had been effected on Ms Ogilvie in accordance with the General Dental Council (Fitness to Practise) Rules 2006 (the Rules); (ii) the hearing should proceed in her absence; (iii) her fitness to practise remains impaired by reason of misconduct; and (iv) the current period of suspension should be extended for a further period of 10 months with a review.

Service and absence

The Committee first considered whether notification of this hearing had been served on Ms Ogilvie in accordance with the requirements of the Rules. The notification of hearing dated 6 October 2017 was sent by Special Delivery to her at both her registered address and a last known address. The Committee was satisfied that the notification duly set out the required information under Rule 28, including the time, date and venue of this hearing; and that the notification had been served on Ms Ogilvie in accordance with Rule 65 by virtue of it being sent to her addresses. Royal Mail ‘Track and Trace’ also records that the notification sent to her last known address was delivered on 9 October 2017, signed for under the name ‘OGILVIE’.

The Committee’s power to proceed in the absence of Ms Ogilvie is a discretion which must be exercised with the utmost care and caution. The Committee was satisfied that the GDC had made all reasonable efforts to notify her of this hearing and its purpose. The notification of hearing informed her of the Committee’s power to proceed in her absence and stated that her non-attendance could be “severely prejudicial” to her case. Ms Ogilvie was asked to confirm by 13 October 2017 whether she would be attending this hearing. On the material before the Committee, she did not respond to that request and there has otherwise been no

engagement from her. There has been no application for a postponement and there is nothing to suggest that an adjournment would make Ms Ogilvie's attendance any more likely by 21 November 2017, which is the date on which the current period of suspension is due to expire. The hearing was scheduled to commence at 9:30 but the Committee waited until 10:00, in case Ms Ogilvie would attend. Having regard to all the circumstances, the Committee determined that Ms Ogilvie had voluntarily absented herself from this hearing and that it would be in the interests of justice to proceed with the hearing, notwithstanding her absence.

The Committee drew no adverse inference from the fact of her non-attendance.

The proceedings before the Practice Committees

On 19 April 2017, the Health Committee (HC) found Ms Ogilvie's fitness to practise to be impaired by reason of her misconduct, which it summarised as follows:

The single matter found proved by the Committee is that, between 12 March 2016 and 6 January 2017, Ms Ogilvie failed to cooperate adequately with an investigation conducted by the GDC. The Committee received and accepted the evidence of Witness 1, an employee of the GDC, regarding the correspondence sent to Ms Ogilvie at the various stages of the GDC's investigation into her fitness to practise, to which there has been no response from her to date.

...Ms Ogilvie had an unequivocal duty to cooperate adequately with the investigation being conducted by the GDC and she clearly failed to do so. Ms Ogilvie has failed to respond to numerous letters from her regulatory body and the Committee considered that her conduct in this respect potentially undermined the effectiveness of the GDC's role in professional regulation...

In finding impairment on both public protection and wider public interest grounds, the HC stated:

...the Committee has received no evidence of insight on Ms Ogilvie's part. There is nothing before the Committee to suggest that she has any understanding of her wrongdoing, nor has she provided any reason for her failure to cooperate with her regulatory body in matters of significant importance. Whilst the Committee has not drawn any adverse inference from Ms Ogilvie's absence from this hearing, the current factual position is that Ms Ogilvie's lack of engagement is ongoing.

...the Committee also took into account Ms Ogilvie's fitness to practise history. It noted the details of her Professional Conduct Committee (PCC) hearing held over the period August to December 2015, with which she did not engage. This Committee noted that at that hearing, the PCC found proved an allegation that from approximately January 2013 to April 2013, Ms Ogilvie had failed to cooperate with an investigation into her conduct by Sussex Community NHS Trust.

The evidence before this Committee indicates a pattern of non-engagement on Ms Ogilvie's part and, in the absence of any evidence of insight or remediation, it considered that there is a likelihood that Ms Ogilvie could repeat the misconduct it has found. Given that Ms Ogilvie's wrongdoing is of the kind that could potentially undermine the GDC's ability effectively to regulate the profession, the Committee considered that patient safety concerns do arise from the matters in this case...

The Committee also decided that a finding of impairment is in the wider public interest to maintain public confidence and uphold proper standards of conduct and behaviour. Ms Ogilvie has breached a fundamental standard required by her regulator and has to date shown no insight into this serious matter...

The HC directed that Ms Ogilvie's registration be suspended for a period of 6 months with a review:

...The Committee has decided to suspend Ms Ogilvie's registration for a period of six months. It considered a six-month period to be sufficient in view of the gravity of Ms Ogilvie's wrongdoing. It also considered that six months would give her ample opportunity to prepare and present any evidence of her remediation.

A Committee will review Ms Ogilvie's case at a resumed hearing to be held shortly before the end of the period of suspension. That Committee will consider what action to take in relation to her registration. She will be informed of the date and time of that resumed hearing, with which she will be expected to engage.

The Committee reviewing Ms Ogilvie's case may find it helpful to receive the following:

- evidence of her meaningful engagement with the GDC;
- evidence of her insight into the findings of this Committee;
- evidence of her Continuing Professional Development; and
- any other evidence that she considers that the reviewing Committee may find of assistance in her case.

It was alleged before the HC that Ms Ogilvie also suffered from adverse health conditions, but those allegations were found not proved. The HC therefore directed that the review of the suspension be undertaken by the Professional Conduct Committee (PCC), as the only remaining issue for consideration in relation to Ms Ogilvie's fitness to practise was that of misconduct.

In relation to the parallel PCC proceedings referred to by the HC, the last review hearing took place on 18 August 2017, when the period of suspension in relation to those matters was extended by a further period of 12 months with a review. Ms Ogilvie was neither present nor represented at that review hearing.

Decision on review

The role of the Committee today is to undertake the review directed by the April 2017 HC. In so doing, the Committee had regard to the *Guidance for the Practice Committees, including Indicative Sanctions Guidance* (October 2016). The Committee accepted the advice of the Legal Adviser.

The Committee had regard to whether Ms Ogilvie's misconduct is remediable, whether it had been remedied and whether it was highly unlikely to be repeated. The Committee also had regard to the wider public interest in maintaining and upholding proper standards of conduct and behaviour.

There is a persuasive burden on Ms Ogilvie to demonstrate to the reviewing Committee that she acknowledges her misconduct and has adequately addressed it. Given her lack of engagement in these regulatory proceedings, there continues to be no evidence from her of any insight, reflection or remediation. Whilst her misconduct is remediable through acknowledgement and reflection, there has been no remediation whatsoever. The Committee is in no different a position than that of the HC in April 2017. As noted by the April 2017 HC, Ms Ogilvie's failure to cooperate with a formal investigation into her practice is not an isolated occurrence, as other findings of misconduct in relation to her failure to have cooperated with an NHS investigation were also found proved against her in the parallel PCC proceedings.

In the Committee's judgment, there remains a real risk of Ms Ogilvie repeating her misconduct. She has not demonstrated any reflection and has not even acknowledged her misconduct at this review hearing. There remains a real risk of repetition and there therefore continues to be a risk to the public. Further, public confidence in the profession would also be seriously undermined if a finding of no impairment were made today, given the seriousness of Ms Ogilvie's misconduct and her continuing failure to address it.

The Committee therefore finds that Ms Ogilvie's fitness to practise continues to be impaired by reason of her misconduct.

The Committee next considered what sanction, if any, to impose on Ms Ogilvie's registration. The purpose of a sanction is not to be punitive, although it may have that effect, but to protect the public and the wider public interest. In the Committee's judgment, a sanction remains necessary to protect the public and also to uphold and declare proper standards of conduct and behaviour.

The Committee concluded that conditions of practice could not be formulated to be measurable, workable or proportionate. Ms Ogilvie is not currently engaging in these proceedings and the Committee cannot therefore be satisfied that she would comply with any conditions on her registration. Further, her registration is already suspended anyway in relation to other matters. Accordingly, the suspension of her registration in the present case remains necessary and proportionate, given her current lack of engagement and her failure to address her misconduct.

The Committee therefore directs that the suspension of Ms Ogilvie's registration be extended by a further period of 10 months, beginning with the date on which it would otherwise expire. The period of suspension shall be reviewed prior to its expiry. The period of 10 months is proportionate in all the circumstances, as Ms Ogilvie's registration is already suspended by the PCC in relation to other matters and a period of 10 months will align the two periods of suspension, allowing the two sets of proceedings to be reviewed at the same time.

That concludes the hearing today."

At a review hearing on 22 August 2018, the Chairman announced the determination as follows:

"This is a resumed hearing of Ms Ogilvie's case, pursuant to section 27C of the Dentists Act 1984.

Ms Ogilvie is neither present nor represented. The General Dental Council (GDC) is also not in attendance. It relies on written submissions, dated August 2018, in which it submits that: (i) service of the notification of hearing had been effected on Ms Ogilvie in accordance with the General Dental Council (Fitness to Practise) Rules 2006 (the Rules); (ii) the hearing should proceed in her absence; (iii) the hearing should proceed in private; (iv) her fitness to practise remains impaired by reason of misconduct and (v) the current period of suspension should be extended for a further period of up to 9 months, with a review.

Service and proceeding in the absence of parties

The Committee first considered whether the notification of today's review hearing had been served on Ms Ogilvie in accordance with Rules 28 and 65. The Committee has received a bundle of documents which contains a copy of notification of hearing dated 20 July 2018 which was sent by Special Delivery to Ms Ogilvie's last known address, in accordance with Section 50A(2) of the Dentists Act 1984. The Committee is satisfied that the notification contains the required information under Rule 28, including the time, date and venue of this hearing and that the notification had been served on Ms Ogilvie in accordance with Rule 65.

The Royal Mail 'Track and Trace' confirms that the notification sent to Ms Ogilvie's last known address was delivered on 23 July 2018 and was signed for in the name 'OGILVIE'. Taking all these factors into account, the Committee is satisfied that the GDC has complied with the requirements of service in accordance with Rules 28 and 65.

The Committee then went on to consider whether to proceed in the absence of Ms Ogilvie in accordance with Rule 54. In so doing, it has borne in mind that its discretion to proceed in the absence of Ms Ogilvie must be exercised with the utmost care and caution. It is satisfied that the GDC has made all reasonable efforts to notify Ms Ogilvie of this hearing and its purpose. She is under an obligation to ensure that the GDC has her current address. The notification of hearing informed her that the Committee had the power to deal with the resumed hearing on the papers in the absence of parties and that the GDC was proposing to request that arrangements be made for the hearing to take place on the papers. The letter further stated that it was open to Ms Ogilvie to provide the Committee with written submissions and any documents that she felt were relevant to the review of the Order. The letter asked Ms Ogilvie to notify the GDC by 30 July 2018 if there was any reason why the hearing should not proceed on the papers. She was also asked to notify the GDC whether she would be attending the hearing and/or be represented by 30 July 2018. On the material before the Committee, she did not respond to that request and there has otherwise been no engagement from her. There has been no application for a postponement and there is nothing to suggest that an adjournment would make Ms Ogilvie's attendance any more likely on a future occasion, given that she has not attended previous hearings of her case. Having regard to all the circumstances, the Committee has determined that Ms Ogilvie has voluntarily absented herself from this hearing. It considers that there is a clear public interest in reviewing the order today, given that it is due to expire in September 2018. Accordingly, the Committee has determined to proceed with today's review hearing in the absence of Ms Ogilvie.

Application to hear matters in private

The Committee has considered an application made by the GDC under Rule 53(2) that the hearing take place in private since the matters under consideration relate to Ms Ogilvie's health. However, it notes that matters relating to Ms Ogilvie's health were found not proved at the initial Health Committee (HC) hearing that took place on 19 April 2017. Accordingly, there is no need to refer to her health today. In these circumstances the Committee does not consider it necessary to hear matters in private.

Background matters

On 19 April 2017, the HC found Ms Ogilvie's fitness to practise to be impaired by reason of her misconduct. This was in relation to a single matter, namely that between 12 March 2016 and 6 January 2017 Ms Ogilvie failed to co-operate adequately with an investigation conducted by the GDC. The HC received and accepted the evidence of Witness 1, an employee of the GDC, regarding the correspondence sent to Ms Ogilvie at the various stages of the GDC's investigation into her fitness to practise, to which no response had been received by her.

In finding impairment on both public protection and wider public interest grounds, the HC stated:

"...the Committee has received no evidence of insight on Ms Ogilvie's part. There is nothing before the Committee to suggest that she has any understanding of her wrongdoing, nor has she provided any reason for her failure to cooperate with her regulatory body in matters of significant importance. Whilst the Committee has not

drawn any adverse inference from Ms Ogilvie's absence from this hearing, the current factual position is that Ms Ogilvie's lack of engagement is ongoing.

The Committee also took into account Ms Ogilvie's fitness to practise history. It noted the details of her Professional Conduct Committee (PCC) hearing held over the period August to December 2015, with which she did not engage. This Committee noted that at that hearing, the PCC found proved an allegation that from approximately January 2013 to April 2013, Ms Ogilvie had failed to cooperate with an investigation into her conduct by Sussex Community NHS Trust.

The evidence before this Committee indicates a pattern of non-engagement on Ms Ogilvie's part and, in the absence of any evidence of insight or remediation, it considered that there is a likelihood that Ms Ogilvie could repeat the misconduct it has found. Given that Ms Ogilvie's wrongdoing is of the kind that could potentially undermine the GDC's ability effectively to regulate the profession, the Committee considered that patient safety concerns do arise from the matters in this case..."

The HC directed that Ms Ogilvie's registration be suspended for a period of 6 months with a review. It indicated that the Committee reviewing the order might be assisted by evidence of her insight into the findings of the Committee, as well as evidence of her Continuing Professional Development (CPD).

Given that the allegations relating to Ms Ogilvie's health were found not proved the HC directed that the review of the suspension be undertaken by the PCC, as the only remaining issue for consideration in relation to Ms Ogilvie's fitness to practise was that of her misconduct.

The PCC reviewed the order on 7 November 2017. Ms Ogilvie was not present or represented at that hearing. At that hearing the Committee noted Ms Ogilvie's continuing lack of engagement with the GDC, as well as the absence of any insight or remediation. In the PCC's view, it was in no different position than that of the HC in April 2017. In the PCC's judgment, it considered that there remained a real risk of Ms Ogilvie repeating her misconduct and she therefore continues to be a risk to the public. The PCC determined that Ms Ogilvie's fitness to practise remained impaired by reason of her misconduct. It directed that Ms Ogilvie's registration be suspended for a further period of 10 months with a review. It was satisfied that an extension of the order of suspension remained necessary and proportionate, given her current lack of engagement and her failure to address her misconduct.

The PCC also took into account Ms Ogilvie's fitness to practise history whereby she was subject to separate proceedings before the PCC between August to December 2015 in relation to another matter. At that hearing the PCC considered allegations against Ms Ogilvie in relation to her employment at Sussex Community NHS Trust as a Dentist and Assistant Clinical Director of Dental Service. That PCC found proved that between January 2013 to April 2013 she failed to co-operate with an investigation into her conduct by Sussex Community NHS Trust. It directed that her registration be suspended for 2 months. Thereafter, there have been subsequent reviews of the order of suspension by the PCC and which have been extended on each occasion. Save for the review hearing on 25 February 2016, when she did not attend but was legally represented, Ms Ogilvie had not engaged in relation to these proceedings or attended any of the hearings.

Today's review hearing

In reviewing the order today, this Committee has taken into account the information contained in the GDC's bundle as well as its written submissions. It has accepted the advice of the Legal Adviser.

The Committee notes the absence of any information from Ms Ogilvie or indeed any engagement by her with the GDC. This Committee is in the same position as the PCC at the first review hearing on 7 November 2017 in that it has no evidence from Ms Ogilvie as to any insight, reflection or remediation. In the absence of any evidence from Ms Ogilvie that she has addressed the concerns identified by the HC in April 2017 and by the PCC in November 2017, the Committee has concluded that Ms Ogilvie's fitness to practise continues to be impaired by reason of her misconduct.

The Committee next considered what sanction, if any, to impose on Ms Ogilvie's registration. The purpose of a sanction is not to be punitive, although it may have that effect, but to protect the public and the wider public interest. In the Committee's judgment, a sanction remains necessary to protect the public and also to uphold and declare proper standards of conduct and behaviour and therefore it would not be appropriate to revoke the order or allow it to lapse on its expiry.

The Committee first considered whether it would be appropriate to replace the current order of suspension with one of conditions. It has decided that such a course of action would not be sufficient or appropriate given that Ms Ogilvie is not currently engaging in these proceedings and therefore it cannot therefore be satisfied that she would comply with any conditions on her registration. Accordingly, the suspension of her registration in the present case remains necessary and proportionate, given her current lack of engagement and her failure to address her misconduct.

The Committee therefore directs that the suspension of Ms Ogilvie's registration be extended by a further period of 9 months, beginning with the date on which it would otherwise expire. The period of suspension shall be reviewed prior to its expiry.

That concludes the hearing today."

At a review hearing on 6 June 2019 the Chairman announced the determination as follows:

"This is a resumed hearing of Ms Ogilvie's case.

Ms Ogilvie is neither present nor represented. The General Dental Council (GDC) is also not in attendance. It relies on written submissions in which it submits that: (i) service of the notification of hearing had been effected on Ms Ogilvie in accordance with the General Dental Council (Fitness to Practise) Rules 2006 (the Rules); (ii) the hearing should proceed in her absence; (iii) her fitness to practise remains impaired by reason of misconduct and (iv) that an order of indefinite suspension be directed.

Application to hear matters in private

The Committee has considered an application made by the GDC under Rule 53(2) that the hearing take place in private since the matters under consideration relate to Ms Ogilvie's health. However, it notes that matters relating to Ms Ogilvie's health were found not proved at the initial Health Committee (HC) hearing that took place on 19 April 2017. Accordingly, there is no need to refer to her health today. In these circumstances the Committee does not consider it necessary to hear matters in private.

Service and proceeding in the absence of parties

The Committee first considered whether the notification of today's review hearing had been served on Ms Ogilvie in accordance with Rules 28 and 65. The Committee has received a bundle of documents which contains a copy of notification of hearing dated 03 May 2019 which was sent by Special Delivery to Ms Ogilvie's current address. The Committee is satisfied that the notification contains the required information under Rule 28, including the time, date and venue of this hearing; and that the notification had been served on Ms Ogilvie in accordance with Rule 65. The Committee had sight of the track and trace documents which showed that the notice of hearing letter was signed for by 'E OGILVIE'. Taking all these factors into account, the Committee is satisfied that the GDC has complied with the requirements of service in accordance with Rules 28 and 65.

The Committee then went on to consider whether to proceed in the absence of Ms Ogilvie in accordance with Rule 54. In so doing, it has borne in mind that its discretion to proceed in the absence of Ms Ogilvie must be exercised with the utmost care and caution. It is satisfied that the GDC has made all reasonable efforts to notify Ms Ogilvie of this hearing and its purpose. The notification of hearing informed her that the Committee had the power to deal with the resumed hearing on the papers in the absence of parties and that the GDC was proposing to request that arrangements be made for the hearing to take place on the papers. The letter further stated that it was open to Ms Ogilvie to provide the Committee with written submissions and any documents that she felt were relevant to the review of the order. The letter asked Ms Ogilvie to notify the GDC if there was any reason why the hearing should not proceed on the papers. She was also asked to notify the GDC whether she would be attending the hearing and/or be represented. The Committee had sight of a letter dated 16 May 2019 in which Ms Ogilvie was further reminded about her upcoming review hearing, to which no response had been received. There has been no application for a postponement and there is nothing to suggest that an adjournment would make Ms Ogilvie's attendance any more likely on a future occasion. Having regard to all the circumstances, the Committee has determined that Ms Ogilvie has voluntarily absented herself from this hearing. It considers that there is a clear public interest in reviewing the order today. Accordingly, the Committee has determined to proceed with today's review hearing in the absence of Ms Ogilvie and on the papers before it.

Background matters

This is the third review of a suspension order that was first imposed on Ms Ogilvie's registration for a period of 6 months by the Professional Conduct Committee (PCC) on 19 April 2017. Ms Ogilvie did not attend that hearing and she was not represented. At that hearing the PCC found proved that between 12 March 2016 and 6 January 2017, Ms Ogilvie failed to cooperate adequately with an investigation conducted by the GDC.

The PCC concluded that the findings against Ms Ogilvie amounted to misconduct and considered that Ms Ogilvie breached a fundamental tenet of the profession. That Committee had no information from Ms Ogilvie to demonstrate what, if any, steps she may have taken to remedy her misconduct. It could not be satisfied that there is no risk of repetition. It concluded that Ms Ogilvie's fitness to practise remained impaired by reason of misconduct. The Committee considered that the reviewing Committee may find it helpful to have sight of the following:

The Committee reviewing Ms Ogilvie's case may find it helpful to receive the following:

- *evidence of her meaningful engagement with the GDC;*
- *evidence of her insight into the findings of this Committee;*
- *evidence of her Continuing Professional Development; and*

- *any other evidence that she considers that the reviewing Committee may find of assistance in her case.*

The PCC reviewed the order on 07 November 2017. Ms Ogilvie did not attend the hearing and was not legally represented. The Committee determined that her fitness to practise remained impaired by reason of misconduct. The Committee determined that the period of suspension should be extended by 10 months.

The second review of the order took place on 22 August 2018. The hearing took place on the papers, in the absence of both parties. The Committee determined that Ms Ogilvie's fitness to practise remained impaired. It noted that Ms Ogilvie had not provided any information about any steps that she may have taken to remedy the misconduct that was previously found, or to develop and demonstrate insight into her actions. The Committee further noted that there was no other information available from any other sources to suggest that she had reflected upon and remedied any of the issues which led to the previous Committee's findings of facts, misconduct and impairment. In short, there had been no material change in circumstances. The order of suspension was extended to a further period of 9 months.

Today's review hearing

This Committee has comprehensively reviewed the current order. In so doing, it has had regard to the GDC bundle, as well as the GDC's submissions. It notes the absence of any information from Ms Ogilvie and lack of engagement by her with the GDC.

The Committee first considered whether Ms Ogilvie's fitness to practise is still impaired. There is no evidence before this Committee that Ms Ogilvie has addressed her past impairment or provided any information as recommended to her by the PCC at the initial hearing and subsequent reviewing Committees. In these circumstances, the Committee considers that there remains a risk that Ms Ogilvie could repeat the misconduct and thus she remains a risk to the public. Indeed, it notes that Ms Ogilvie has not engaged with the GDC in relation to these proceedings over a protracted period of time, despite repeated attempts by the GDC to secure her involvement. Accordingly, the Committee has determined that Ms Ogilvie's fitness to practise is currently impaired.

The Committee next considered what direction, if any, to impose. It has had regard to the GDC's "Guidance for the Practice Committees including Indicative Sanctions Guidance" (Effective October 2016, revised May 2019).

The Committee has borne in mind the principle of proportionality, balancing the public interest against Ms Ogilvie's own interests. The public interest includes the protection of the public, the maintenance of public confidence in the profession, and declaring and upholding standards of conduct and performance within the profession.

The Committee first considered whether it would be appropriate to allow the current order to lapse at its expiry or to terminate it with immediate effect. Given Ms Ogilvie's lack of engagement with the GDC and the absence of any remediation, the Committee has concluded that it would not be appropriate to terminate the current order or to allow it to lapse.

The Committee next considered whether a period of conditional registration would be appropriate in this case. The Committee is aware that in order for conditions to be appropriate and workable there would need to be some measure of positive engagement from Ms Ogilvie. To date, she has not engaged with the GDC or provided any evidence of remediation, despite being given the opportunity to do so. In these circumstances, the

Committee has concluded that replacing the suspension order with a conditions of practice order would not be workable or appropriate.

The Committee then went on to consider whether to direct that the current period of suspension be extended for a further period. It has borne in mind Ms Ogilvie's lack of engagement with the GDC over a sustained period of time and the absence of any information as to her professional intentions. Ms Ogilvie has chosen not to attend any of the hearings of her case or to provide any meaningful evidence of her remediation. In these circumstances, the Committee has concluded that a further time bounded period of suspension would serve no useful purpose and that an indefinite period of suspension is the appropriate and proportionate outcome. It therefore directs that Ms Ogilvie's registration be suspended indefinitely.

The effect of the foregoing direction is that, unless Ms Ogilvie exercises her right of appeal, her registration will be suspended indefinitely from the date on which the direction takes effect.

The Committee would also highlight to Ms Ogilvie that should she wish to engage with the GDC, she can apply for a review of the indefinite suspension order in accordance with Section 27C (4) of The Dentist's Act 1984 "as amended".

That concludes the case for today."