

ON PAPERS

Health Committee Review Hearing

2 December 2024

Name: BLACKALLER, Rebecca Kim

Registration number: 202047

Case number: CAS-195949-N2F6L3

General Dental Council: Represented by Rosie Geddes, IHLPS

Registrant: Unrepresented

Fitness to practise: Impaired by reason of misconduct and health

Outcome: Suspended indefinitely

Committee members: Michael Speakman (Chair, Dentist Member)
Valerie Atkinson (Lay Member)
Lisa Shaw (DCP Member)

Legal Adviser: Melanie Swinnerton

Committee Secretary: Jamie Barge

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

1. This is a resumed hearing of Mrs Blackaller's case before the Health Committee (HC), 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 Mrs Blackaller'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 an indexed hearing bundle ('the HC Review Bundle') and written submissions from the GDC.

Service and proceeding

4. The Committee first considered the issues of service and proceeding in the absence of Mrs Blackaller 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 Mrs Blackaller 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.

6. The HC Review Bundle of 69 pages contained a copy of the Notice of Hearing, dated 24 October 2024 ('the notice'), which was sent to Mrs Blackaller's registered address by Special Delivery and First-Class post.

7. 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. However, the Royal Mail 'Track and Trace' receipt, also provided, confirmed that the copy of the notice sent by Special Delivery was delivered and signed for on 25 October 2024 in the printed name of 'BLACKALLER'.

8. The Committee also noted that on 24 October 2024, a copy of the notice was sent to Mrs Blackaller by email.

9. The Committee was satisfied that the notice sent to Mrs Blackaller 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 Mrs Blackaller's absence.

10. On the basis of all the information provided, the Committee was satisfied that notice of the hearing had been served on Mrs Blackaller 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

11. The Committee next considered whether to exercise its discretion under Rule 54 to proceed with the hearing in the absence of Mrs Blackaller, 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 regulatory cases of *General Medical Council v Adeogba*; *General Medical Council v Visvardis* [2016] EWCA Civ 162.

12. The Committee remained mindful that fairness to Mrs Blackaller 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 the Council invited the Committee to exercise its discretion to proceed with the hearing. The Committee further had regard to the public interest in the expeditious review of the current order on Mrs Blackaller's registration.

13. The Committee was satisfied that all reasonable efforts had been made by the GDC to notify Mrs Blackaller of today's resumed hearing. It took into account that the notice of 24 October 2024 was received at her registered address. The Registrant responded in an email to the GDC dated 7 November 2024, where she stated "*Thank you for your email. I have received the papers. I have stated I know longer wish to remain on the GDC register. I have re trained as a chef. (3 yes at college) and have no intention to return to dental nursing*".

14. The Committee took into account that Mrs Blackaller did not apply for an adjournment of this hearing. Indeed, it appears that she no longer wishes to engage with the GDC's fitness to practise process.. In light of this information, the Committee was satisfied that Mrs Blackaller's absence from this hearing is voluntary.

15. Accordingly, there is no information before the Committee to suggest that deferring today's hearing would secure Mrs Blackaller's attendance on a future date. It was satisfied that she had waived her right to attend this hearing and it concluded that an adjournment would serve no meaningful purpose. The Committee took into account that it had a statutory duty to review the current suspension order, which is due to expire 26 December 2024.

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

Decision on holding the hearing in private

17. In its written submissions, the Council applied for the matters to be part heard in private pursuant to Rule 53(2) of the Rules.

18. The Committee considered the submissions and accepted the advice of the Legal Adviser. It considered Rule 53, taking into account the public interest and fairness to the Registrant. The Committee first considered the public interest and also reflected on the need for open justice and transparency. The Committee considered that it would not be appropriate to hold parts of the hearing

in private because it considered that matter relating to the Registrants health and conduct are inter linked. Therefore, the Committee determined to hold the hearing entirely in private.

Case background

19. Mrs Blackaller's case was first considered by the HC at a hearing which took place in November 2022. That initial Committee considered and found proved allegations relating to her conduct, as well as matters relating to her health.

20. The conduct allegations found proved were that, on 25 September 2020, there was an incident involving Mrs Blackaller at work [IN PRIVATE]. Also, that between 16 December 2020 and 24 June 2022, Mrs Blackaller failed to co-operate with an investigation conducted by the GDC into her fitness to practise by not providing sufficient evidence of her indemnity covering the period from 25 September 2020 onwards. It was further found that she did not comply with numerous requests made by the GDC for her to provide a medical reference, and that she did not make herself available to attend a GDC Health Assessment between 16 December 2020 and 24 June 2022. However, Mrs Blackaller did eventually attend an assessment in November 2022.

21. Based on the medical evidence provided to it, the initial HC also made a finding that Mrs Blackaller had an adverse health condition [IN PRIVATE].

22. The HC in November 2022 determined that the incident in which Mrs Blackaller was involved at work and her subsequent failure to cooperate with the GDC's investigation into the matter amounted to misconduct. In relation to Mrs Blackaller's failures in cooperation, that Committee stated that "...Mrs Blackaller had demonstrated a persistent and prolonged failure to co-operate with the GDC's investigation during this period. The Committee considered that Mrs Blackaller's conduct was a serious failing which had undermined the regulatory process and was a serious departure from the GDC's Standards". In relation to the incident that occurred at work, the initial HC stated that "Mrs Blackaller's actions had put patients and her colleagues at risk of harm".

23. The initial HC determined that Mrs Blackaller's fitness to practise was impaired by reason of her misconduct and her adverse health. It noted in respect of the misconduct matters that:

"As Mrs Blackaller has not attended this hearing or provided any written submissions, the Committee could find no evidence of any remorse, insight into her misconduct or that she had undertaken any remediation. Furthermore, there was no evidence before the Committee that Mrs Blackaller had understood the impact her actions had on patient safety and her colleagues' safety ... The Committee concluded therefore that there was a significant possibility she would repeat her misconduct."

24. In relation to the health matters, the Committee in November 2022 stated in its decision on impairment that:

"[IN PRIVATE]. The Committee considered that this would have a significant impact on patient safety"

25. The HC in November 2022 directed that Mrs Blackaller's registration should be suspended for a period of 12 months, and it imposed an immediate order of suspension. It also directed a review of the substantive order of suspension shortly before its expiry. In directing a review, that initial Committee stated that:

"The reviewing Committee may be assisted by the following:

- *Mrs Blackaller fully engaging with these proceedings;*
- **[IN PRIVATE]**
- *Written reflections on her misconduct;*
- *Evidence that she has kept her Continuing Professional Development up-to-date (the Committee noted that by the time of the review hearing, Mrs Blackaller would have been out of dental practice for three years)".*

First resumed hearing – December 2023

26. The suspension order was reviewed by the Health Committee at a resumed hearing which took place on 14 December 2023. That hearing was conducted on the papers in the absence of both parties.

27. The reviewing Committee in 2023 determined that Mrs Blackaller's fitness to practise remained impaired by reason of her misconduct and adverse health.

28. The Committee in 2023 concluded that "*...that she has not engaged with the GDC regarding the matters in this case, save for on 10 October 2023, when she advised the Council that she did not intend to return to practice as a dental nurse and that she did not wish to be restored to the Register. Consequently, there is no evidence before the Committee today to suggest that Mrs Blackaller has addressed her past misconduct or that she is dealing with her adverse health condition... In the absence of any information today regarding the Mrs Blackaller's insight into her misconduct and her adverse health, or any evidence of steps she had taken to address the concerns raised, the Committee concluded that there remains a risk of repetition in this case. It therefore determined that a finding*".

29. The Committee in 2023 extended the suspension order in place on Mrs Blackaller's registration by a period of 12 months and directed a further review shortly before the expiry of that 12-month period.

Today's resumed hearing

30. This is the second review of the substantive suspension order first imposed on Mrs Blackaller's registration in 2022. In comprehensively reviewing the order today, the Committee considered all the evidence placed before it. It took account of the written submissions made by the GDC. No written submissions were received from the Registrant. The Committee accepted the advice of the Legal Adviser.

31. In its written submissions, the GDC set out its position as follows:

“...The Registrant continues to fail to engage substantively with these proceedings. She has not engaged with health assessments [IN PRIVATE], has not provided any written reflections on her misconduct and has not provided evidence that she has kept her Continuing Professional Development up-to-date. There is no evidence of any remorse, insight into her misconduct or that she had undertaken any remediation. Therefore, it is submitted that the Registrant remains currently impaired by reason of the misconduct found by the initial Committee. ...

The Council submit that it would be appropriate and proportionate to impose an indefinite suspension on the Registrant’s registration in accordance with Section 36Q(1)(d) of the Act... It is submitted that indefinite suspension is proportionate and appropriate given the Registrant’s lack of substantive engagement in this matter, and there being no indication that the Registrant will start engaging with the process (as she has, on a number of occasions, stated that she has no intention of returning to dental nursing, has retrained in another profession unrelated to healthcare, and has expressed a wish to voluntarily remove herself from the register). Indefinite suspension will save the Council the costs of any additional hearings in circumstances where the Registrant continues not to substantively engage”.

Decision on current impairment

32. The Committee considered whether Mrs Blackaller’s fitness to practise remains impaired by reason of her 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.

33. The Committee took into account that, at this review, the persuasive burden rests with Mrs Blackaller to demonstrate that she has addressed her past impairment. It noted, however, that there has been no material change in the circumstances of this case since the last review hearing in December 2023. In recent communication from the Registrant, she has indicated that she wants to apply for voluntary removal from the Register, as she no longer wants to work in the dental profession.

34. [IN PRIVATE]. In the Committee’s view, the position remains as outlined in the determination of the last Committee.

35. As Mrs Blackaller has not attended this hearing or provided any written submissions, the Committee could find no evidence of any remorse, insight into her misconduct or that she had undertaken any remediation. Furthermore, there was no evidence before the Committee that Mrs Blackaller had understood the impact her actions had on patient safety and her colleagues’ safety . The Committee concluded therefore that there was a significant possibility she would repeat her misconduct.

36. Having had regard to all the evidence, this Committee determined that Mrs Blackaller’s fitness to practise remains impaired for the same reasons given by the previous Committees. There continues to be an absence of any information to demonstrate that Mrs Blackaller has insight into

her misconduct and adverse health. As such, there would be a risk of harm to patients if she were permitted to return to unrestricted practise as a dental nurse. The Committee was satisfied that a finding of impairment is therefore necessary for the protection of the public.

37. The Committee also considered that a finding of impairment is required in the wider public interest. In its view, public confidence in the dental profession would be seriously undermined if such a finding were not made in all the circumstances of this case.

Decision on sanction

38. The Committee next considered what action to take in respect of Mrs Blackaller'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. The Committee also took into account the GDC's '*Guidance for the Practice Committees including Indicative Sanctions Guidance*' (Effective from October 2016; last reviewed 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 Mrs Blackaller's own interests.

40. The Committee has identified an ongoing risk of harm to the public on account of the matters arising out of this case, as well as wider public interest considerations. In the circumstances, the Committee determined that it would be inappropriate to terminate the current suspension and take no further action in respect of Mrs Blackaller's registration. The Committee decided that some form of continued restriction of her registration is necessary to protect the public and to maintain public confidence in the profession.

41. The Committee also determined that it would not be appropriate or proportionate to replace the current suspension order with a conditions of practice order. It concluded that no conditions could be formulated to address the serious outstanding concerns, which include concerns about Mrs Blackaller's insight into her misconduct and health. The Committee also took into account that **[IN PRIVATE]** her engagement with the GDC's fitness to practise process has been very limited. The Committee was not reassured that Mrs Blackaller would comply with conditional registration even if conditions could be formulated. It therefore decided that a conditions of practice order would not be sufficient to protect the public and the wider public interest.

42. The Committee next considered whether to further extend the suspension order currently in place on Mrs Blackaller's registration for a specified period. It was the view of the Committee, having taken all the evidence into account, that a further specified period of suspension would be of no benefit. There has been no material change in the circumstances of this case since the last review, and little or no progress since the suspension order was originally imposed in 2022. The Committee also had regard to the information that Mrs Blackaller does not intend to return to the practise of dentistry. For all these reasons, the Committee decided against the extension of the current order of suspension.

43. Accordingly, the Committee directs the indefinite suspension of Mrs Blackaller's registration in accordance with section 36Q of the Act. In making this direction, the Committee was satisfied that the criteria for imposing an indefinite suspension have been met.

44. The Committee considered that it would be in Mrs Blackaller's own interests not to have to attend and/or provide written representations in respect of yearly review hearings. It was the view of the Committee that the onus should now rest with Mrs Blackaller to contact the GDC if she decides to re-engage with its fitness to practise process. The Committee 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.

45. Unless Mrs Blackaller 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.

46. That concludes this determination.