

HEARING HEARD IN PRIVATE

DUTTON, Sally Anne

Registration No: 164501

HEALTH COMMITTEE*

*The Committee has made a determination in this case that includes some private information.

That information has been omitted from this text

MAY 2017 – MAY 2019

Outcome: Suspended indefinitely**

**See page 8 for the latest determination.

Sally Anne DUTTON, a dental nurse, NVQ L3 Oral Health Care: Dental Nursing & Indp Asses City & Guilds 2008, was summoned to appear before the Health Committee on 4 May 2017 for an inquiry into the following charge:

Charge (as amended on 4 May 2017)

“That being a registered dental care professional:

1. You have the adverse health conditions set out in Schedule 1¹.
2. Withdrawn
3. Withdrawn

And that, by reason of the above, your fitness to practise is impaired by reason of your:

- a. Withdrawn
- b. Adverse physical or mental health.”

As Ms Dutton did not attend and was not represented at the hearing, the Chairman made the following statement regarding proof of service. He addressed this to the Counsel for the GDC.

“This is a hearing before the Health Committee. Ms Dutton was not in attendance nor legally represented at this hearing. Ms Headley appeared on behalf of the General Dental Council (GDC).

Decision on service of the Notification of Hearing

Ms Dutton was neither present nor represented today. The Committee had before it a copy of the notification of hearing letter dated 6 April 2017 which was sent to her registered address by special delivery. It was satisfied that the letter contained all the requirements for notice as set out in Rule 13 of the General Dental Council (GDC) (Fitness to Practise) Rules Order of Council 2006 (the Rules). The Committee noted the Royal Mail track and trace print out which showed that the letter was posted to two different addresses on 6 April 2017. The notification of hearing letter was also sent by secure email to Ms Dutton on the same date.

¹ Please note that schedules are private documents and are not disclosed to the public.

The Committee was satisfied that service had been effected in accordance with Rules 13 and 65.

Decision on proceeding in Ms Dutton's absence

In making this decision the Committee bore in mind that its discretion to proceed with a hearing in the absence of a registrant should be exercised with the utmost care and caution. The Committee took account of the principles set out in *R v Jones* [2003] and *GMC v Adeogba* [2016] EWCA Civ 162.

The Committee considered carefully the submissions made by Ms Headley, on behalf of the General Dental Council (GDC), and had regard to the issue of fairness to both parties, as well as the public interest in the expeditious consideration of this case. The Committee accepted the advice of the Legal Adviser. It was aware that any registrant has the right to a fair hearing and the right to participate in it. However, a registrant may knowingly and voluntarily absent themselves.

The Committee had to consider all the circumstances of Ms Dutton's absence, whether she had chosen voluntarily to absent herself, whether an adjournment would be likely to secure her attendance at a future hearing and the nature of the case against her, when reaching any decision regarding proceeding in her absence.

Ms Headley referred the Committee to the documentation before it regarding the attempts made by the GDC to contact Ms Dutton by post and email. She submitted that Ms Dutton had previously responded to correspondence sent by the GDC in relation to a different hearing, however, received no response from her in relation to her attendance at this hearing. Ms Headley applied for the Committee to proceed in the absence of Ms Dutton.

The Committee considered that all reasonable efforts had been made to notify Ms Dutton of this hearing. It noted that there has only been sporadic contact from her and none since her last email dated 15 April 2017. The Committee noted that no application for an adjournment had been made by Ms Dutton and considered it unlikely that an adjournment would serve any useful purpose, particularly in the light of the lack of engagement from her. The Committee was aware that this was a health case but there was an absence of medical evidence to suggest that Ms Dutton was unable to attend due to her adverse health. Further, there was no information to suggest that Ms Dutton would be likely to attend any future listing. The Committee concluded that she had voluntarily absented herself from the hearing. Having weighed the interests of Ms Dutton and those of the GDC and the public interest in an expeditious disposal of this hearing, the Committee determined to proceed in Ms Dutton's absence.

Amendments to the charge under Rule 18

At the start of the GDC's evidence, Ms Headley made an application to amend the charge under Rule 18 of the Rules. She applied to withdraw charges 2 and 3 and to remove misconduct as a basis of impairment. Ms Headley's application was based on Dr [PRIVATE] report which indicated that any failure to co-operate with her employer and the GDC was likely due to Ms Dutton's health.

The Committee accepted the advice of the Legal Adviser.

The Committee considered that the application to withdraw charges 2 and 3 and to remove misconduct as a basis of impairment, was entirely appropriate given Dr [PRIVATE] evidence

and was satisfied that the amendment to the charge could be made without causing any injustice.

Decision to hold the hearing in private

Following advice from the Legal Adviser, the Committee acceded to an application made by Ms Headley, to hold the hearing entirely in private under Rule 53(2)(a) of the '*GDC (Fitness to Practise) Rules 2006*' (the Rules).

In granting the application, the Committee took into account that the single charge is an allegation in relation to matters of Ms Dutton's health. It accepted therefore that the appropriate course of action would be to hold the hearing entirely in private.

In the circumstances, the Committee has produced a private version and a public version of its finding of facts determination. This version is public.

The charge

The alleged matters in this case concern issues relating to your adverse health condition, namely [PRIVATE]

Evidence

The documentary evidence provided to the Committee by the GDC comprised the signed witness statement of Mr N S, Ms Dutton's employer, dated 6 January 2017 and witness statements from a caseworker and paralegal at the GDC dated 11 and 12 January 2017. Also, provided to the Committee was the main expert report dated 8 January 2017, prepared at the instruction of the GDC by Dr [PRIVATE]. The Committee noted that Dr [PRIVATE] prepared his main report following a review of a letter of instruction from the GDC dated 16 November 2016, copies of the updated Expert's bundle, including Ms Dutton's medical records from [PRIVATE]. It also had regard to Ms Dutton's correspondence when she had engaged, for example her correspondence of 15 October 2015 and 17 April 2017.

In addition to the documentary evidence, Dr [PRIVATE] gave oral evidence to the Committee. It accepted his credentials as an expert witness and it found him to be fair and helpful.

On 4 May 2017, the Chairman announced the findings of fact to the Counsel for the GDC:

"The Committee's findings of fact

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

The Committee considered the head of charge carefully, 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 a balance of probabilities.

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

1. You have the adverse health conditions set out in Schedule 1.

Found proved.

The Committee considered and accepted Dr [PRIVATE] written and oral

evidence that Ms Dutton suffers from the two health conditions as specified in Schedule 1. While it noted that Dr [PRIVATE] had not had the benefit of seeing Ms Dutton and that he made his diagnosis on the basis of the documents, the Committee found his opinion and his reasons for it to be compelling. The Committee noted that Dr [PRIVATE] placed particular weight on the long duration of Ms Dutton's illness and the fact that she has received, and remained under the care of [PRIVATE] over an extended period. It also noted that Dr [PRIVATE] did not change his opinion despite his acceptance that Ms Dutton had occasionally engaged with her employer and the GDC, which he categorised as sporadic. The Committee accepted Dr [PRIVATE] opinion that Ms Dutton's lack of engagement supported his diagnosis.

Noting the extended period of Ms Dutton's illness and the absence of any evidence to support an improvement in her health, the Committee was satisfied on the balance of probabilities that her health condition is still present.

Accordingly, the Committee finds this charge proved.

2. ***Withdrawn***

3. ***Withdrawn***

We move to Stage 2."

On 5 May 2017, the Chairman announced the determination as follows:

"In deciding on the issue of current impairment, the Committee exercised its independent judgement. It had regard to the over-arching objective of the GDC, which includes: 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.

Decision on impairment by reason of adverse health

The Committee has considered whether Ms Dutton's fitness to practise is currently impaired by reason of her adverse health. In so doing, it has had regard to the evidence before it, including that of Dr [PRIVATE], called as an expert witness by the General Dental Council (GDC), as well as the submissions made by Ms Headley on behalf of the GDC and such information as it had from Ms Dutton. The Committee has accepted the advice of the Medical Adviser and that of the Legal Adviser.

Ms Headley invited the Committee to find that Ms Dutton's fitness to practise is currently impaired. In support of that contention she referred to the nature of Ms Dutton's diagnosed conditions [PRIVATE] and Dr [PRIVATE] opinion that Ms Dutton's fitness to practise is impaired by reason of those health conditions.

The Committee considered Dr [PRIVATE] report dated 11 March 2016 (referred to in Dr [PRIVATE] report). Dr [PRIVATE] assessed Ms Dutton and stated that [PRIVATE]. It was Dr [PRIVATE] view that Ms Dutton was unfit to work.

The Committee considered Dr [PRIVATE] evidence. Dr [PRIVATE] was of the opinion that Ms Dutton's adverse health does affect her fitness to practise and in his report dated 8 January 2017, he set out reasons why he considered this to be the case. [PRIVATE]. It was the opinion of Dr [PRIVATE] [PRIVATE]. [PRIVATE]. Dr [PRIVATE] also considered that Ms Dutton's health condition was affecting her ability to engage with her regulatory body to adequately resolve concerns about her practice. He stated that Ms Dutton is not fit to work as a dental nurse until she is well enough to engage with the GDC investigation and attend an examination by a [PRIVATE] appointed by the GDC.

The Committee noted the medical evidence and had regard to the advice given by the Medical Adviser which highlighted that Ms Dutton is suffering from [PRIVATE].

The Committee has borne in mind the nature of Ms Dutton's adverse health and the risk of the [PRIVATE]. It has also noted that, when well, she appeared to function as a dental nurse in an able manner. However, in the Committee's view, there is a real risk to patient safety arising from Ms Dutton's conditions, given the information before it and particularly so, as there is no current evidence on her health conditions or the treatment she is receiving. Taking all these factors into account, the Committee concluded that in the absence of any up-to-date health assessment, it could not be satisfied that Ms Dutton's health condition has been addressed.

The Committee therefore determined that Ms Dutton's fitness to practise is currently impaired by reason of her adverse health.

Disposal

The Committee next considered what sanction, if any, to impose on Ms Dutton's registration. It reminded itself that the purpose of a sanction is not to be punitive although it may have that effect. The Committee bore in mind the principle of proportionality. It carefully considered the GDC's Guidance for the Practice Committees, including Indicative Sanctions Guidance (October 2016) (the PCC Guidance).

The Committee has determined that Ms Dutton is currently not fit to practise. It had no evidence from Ms Dutton of the steps she had taken to address her health conditions. Therefore, it determined that to take no action would be inappropriate given the nature of Ms Dutton's adverse health. For the same reasons the Committee determined that it was not appropriate to issue a reprimand.

The Committee then considered whether to impose conditions of practice on Ms Dutton's registration. It bore in mind that conditions must be workable, measurable, relevant and proportionate. Ms Dutton has not engaged with this hearing and she has stated in correspondence to the GDC that she has no longer wishes to practise as a dental nurse. As such the Committee was not assured that she would comply with any conditions imposed on her registration. Further and in any event the medical evidence before the Committee is that Ms Dutton is not fit to work at all at present, therefore conditional working cannot be appropriate.

The Committee next considered whether to suspend Ms Dutton's registration. The Committee noted that Ms Dutton has no previous fitness to practise history. It also had regard to the positive comment made by Ms Dutton's employer, who described her as a '*good nurse*' during her ten years of employment at the dental practice. However, the Committee concluded that suspension was the only appropriate and proportionate disposal for this case given the seriousness of her health conditions and the risks they present.

The Committee therefore directs that Ms Dutton's registration be suspended from the Register for Dental Care Professionals for a period of 12 months, with a review, pursuant to section 36P (7)(b) of the Dentists Act 1984, as amended. It considered this period is proportionate as it gives Ms Dutton time to address her health issues.

At the review, it may help a future Committee to see evidence that Ms Dutton has fully engaged with treatment and with a GDC health assessment. The Committee expresses its hopes that Ms Dutton receives beneficial treatment and makes sufficient improvement to be able to return to practice should she so wish.

Immediate Order

The Committee took account of the submissions made by Ms Headley on behalf of the GDC. It accepted the advice of the Legal Adviser.

Given the Committee's findings and determination on impairment, an immediate order is necessary for the protection of the public and is otherwise in the public interest as well Ms Dutton's own interests. The Committee noted that there was currently an interim order of suspension on Ms Dutton's registration. However, it considered that the serious nature of the impairment found in this case justifies the imposition of an immediate order.

The effect of the foregoing direction and this order is that Ms Dutton's registration will be suspended with immediate effect and unless she exercises her right to appeal, the substantive direction of suspension will take effect 28 days from when notice is deemed served on her. Should she exercise her right to appeal, this order for immediate suspension will remain in place pending the resolution of any appeal proceedings.

The interim order of suspension currently on Ms Dutton's registration is revoked pursuant to Section 36P (10) of the Dentists Act 1984, as amended.

That concludes the case."

On 24 May 2018, at the review hearing the Chairman announced the determination as follows:

"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.

Service and proceeding in absence

This is the resumed Health Committee (HC) hearing of Miss Dutton's case which is being held in accordance with Section 36Q of the Dentists Act 1984 (the Act). Miss Dutton is neither present nor represented today. In her absence, the Committee first considered whether the Notification of Hearing had been served on Miss Dutton at her registered address in accordance with Rule 28 and Section 50A(2) of the Act. The Committee has received a bundle of documents which contains a copy of the Notification of Hearing dated 20 April 2018, addressed to Miss Dutton's registered address and which contains a track and trace barcode at the top of the letter. The Royal Mail track and trace receipt confirms that the item with the same barcode shown on the Notification of Hearing was "delivered

back to sender” on 11 May 2018. The Committee is satisfied that the Notification of Hearing set out the information required by Rule 28 and that it was sent to Miss Dutton’s registered address more than 28 days in advance of today’s hearing, also in accordance with Rule 28. The Committee also notes that the GDC sent notification of today’s hearing to Miss Dutton by email on 21 April 2018. The Committee, having heard the Legal Adviser’s advice, is satisfied that the GDC has complied with Rule 28 and Section 50(A)(2) of the Act and that service has been effected.

The Committee went on to consider whether to proceed in the absence of Miss Dutton and on the basis of the papers, in accordance with Rule 54. It has considered the GDC’s written submissions dated May 2018 which sets out its reasons for inviting the Committee to proceed.

The Committee has seen a copy of a telephone note dated 14 May 2018 concerning the content of a telephone conversation that took place between Miss Dutton and a member of staff from the GDC’s Fitness to Practise Prosecution Team in connection with today’s hearing. The telephone note confirms that Miss Dutton is aware of today’s hearing but has stated that she will not be attending for the reasons set out in that note. The note also confirms that Miss Dutton indicated that she was content for the hearing to proceed in her absence. In these circumstances, the Committee has concluded that Miss Dutton is aware of today’s hearing and has chosen not to attend. In addition, the Committee considers that there is a clear public interest in reviewing the order today. Accordingly, the Committee has determined that it is fair to proceed with today’s review hearing on the basis of the papers and in the absence of both parties.

Application to hear matters in private

The GDC made an application under Rule 53(2) that Miss Dutton’s hearing be heard in private since the matters before it relate to her health. The Committee, having heard the advice of the Legal Adviser, has acceded to the GDC’s request given that the matters under consideration relate to Miss Dutton’s health. It decided that it was necessary to conduct the whole hearing in private.

Background

This is the first review hearing of Miss Dutton’s case before the Health Committee (the Committee). [PRIVATE]

It determined that Miss Dutton’s fitness to practise was currently impaired by reason of her adverse health and directed that her registration be suspended for a period of 12 months. [PRIVATE]

Today’s review hearing

The Committee has comprehensively reviewed the suspension order today. In so doing, it has had regard to the information before it contained in the GDC’s bundle, as well as the written submissions made by the GDC dated May 2018. The Committee has accepted the advice of the Medical Adviser and that of the Legal Adviser.

This Committee has today considered whether Miss Dutton’s fitness to practise remains impaired by reason of her health conditions. [PRIVATE]

[PRIVATE]

Accordingly, the Committee has determined that Miss Dutton's fitness to practise remains impaired by reason of her adverse health.

The Committee next considered what action, if any, to take in respect of Miss Dutton's registration. It has borne in mind its duty to protect the public and safeguard public confidence in registered dental professionals. In all its deliberations it has had regard to the principle of proportionality. The Committee has had regard to its powers under Section 36Q of the Act.

The GDC invited the Committee to make a direction that Miss Dutton's registration be suspended for a further period of 12 months.

[PRIVATE]

Accordingly, the Committee is satisfied that the appropriate and proportionate order in this case is to direct a further order of suspension for a period of 12 months with a review. The Committee considers that this period of time will ensure that the public is protected, and public confidence is maintained.

A further Committee will review Miss Dutton's case at a resumed hearing to be held shortly before the period of suspension. That Committee will consider what action to take in relation to her registration. That concludes today's hearing."

At a review hearing on 28 May 2019 the Chairman announced the determination as follows:

"This is a resumed hearing pursuant to Section 36(Q) of the Dentists Act 1984 (as amended) ('the Act'). This hearing was held on the papers and in the absence of both parties.

Preliminary Matters

Application for hearing to be held in private

The Committee considered the Council's application pursuant to Rule 53 for the hearing to be held in private as the matters today relate directly to Miss Dutton's health. 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 matters that are inextricably linked to the health or private and family life of the Registrant concerned, under Rule 53(2) of the Rules. The Committee agreed that it was in the interests of the Registrant that matters relating to her health should be heard in private. The Committee therefore acceded to the application.

Proof of Service

The Committee noted the Registrant was neither present or represented at today's hearing. In her absence, the Committee first considered whether notice had been served on her in accordance with Rules 28 and 65 of the *General Dental Council (GDC) (Fitness to Practice) Rules 2006* ("the Rules"). Notice was served by both Royal Mail Special Delivery to the Registrant's registered address and by email on 17 April 2019. The notice outlined the date, time, location and purpose of today's hearing and invited her to attend.

The Committee was satisfied that service of notice of today's hearing has been effected in compliance with the rules.

Proceeding in the absence of the Registrant and on the papers alone

As the Committee found that the notice had been properly served, it went on to consider whether to exercise its discretion under Rule 54 to proceed with the hearing in the Registrant's absence and on the papers alone, as was the request of the Council. The Committee remained mindful of the need to approach this issue with the utmost care and caution.

The Committee was content from the notice of hearing documents that Miss Dutton should be aware of the hearing taking place today. Although attempts to contact the Registrant by telephone had been made, these had proved unsuccessful as the Registrant's telephone number was invalid. Whilst there has been no explicit correspondence from her in relation to the hearing taking place in her absence and on the papers alone, the Committee took the view that there would no benefit in adjourning the hearing as there is no indication that the Registrant would attend on another date given her failure to attend previous hearings. The Committee also had regard to the public interest and the statutory requirement for a review of this order. Having balanced the Registrant's interests with the public interest, it decided that it was fair to proceed in the absence of the Registrant and on the basis of the papers before it.

Background

On 5 May 2017, a Health Committee (HC) found Miss Dutton's fitness to practise to be impaired by reason of adverse physical or mental health [PRIVATE] summarising their reasons as follows:

[PRIVATE]

The HC in May 2017 directed that Miss Dutton's registration be suspended for a period of 12 months with a review.

The Order was reviewed on 24 May 2018. In the absence of any new information, that committee concluded that the Registrant's fitness to practise remained impaired by reason of her adverse health conditions and imposed a further order of suspension for a period of 12 months with a review.

Today's review

It is the role of the Committee today to undertake a comprehensive review directed by the May 2018 HC. In so doing, the Committee had careful regard to all the documentary evidence before it and took account of the GDC's written submissions. 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).

The Council submitted that the Registrant has not engaged with attempts made asking for her consent to undertake a health assessment and obtain her up-to-date medical records. In the absence of any new information on the current state of the Registrant's health and Miss Dutton's persistent lack of engagement, the Council submitted that there is no evidence before the Committee that the concerns identified by previous committees have been addressed adequately or at all and invited the Committee to find that the Registrant's fitness to practise remains impaired by reason of her adverse health conditions. With regard to

sanction, the Council submitted that an indefinite suspension is the appropriate order in all the circumstances and that any lesser sanction would not adequately protect patients and would serve to undermine public confidence in the profession.

Decision on current impairment

In making its decision, the Committee first sought to determine whether Miss Dutton's fitness to practise is still impaired by reason of her health. It exercised its independent judgement and was not bound by the decisions of previous committees. It balanced her 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 considered all the evidence before it to ascertain whether Miss Dutton has taken the necessary steps to address the concerns previously identified. The Committee took account of the long-standing nature of the Registrant's health conditions and considered that this could be a contributing factor to her lack of engagement. However, as there was no up-to-date information available to it with regard to the current state of her health, it determined that there is no evidence that Miss Dutton has insight into her health condition or that this will change in the short-term future. It therefore determined that the Registrant's fitness to practise remains impaired by reason of her adverse health conditions, as identified by previous committees.

Decision on sanction

The Committee next considered what sanction, if any, should be imposed on Miss Dutton'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 her own interests.

The Committee first considered whether it would be appropriate to terminate the current order of suspension and take no further action. It determined that given the Registrant's lack of engagement with the GDC, taking such action would neither serve to protect the public nor safeguard public confidence in the profession. Similarly, when considering whether to replace the current order with an order of conditional registration, the Committee found that the framing of workable conditions would require the Registrant's full engagement. The Committee therefore determined that an order of conditional registration would be neither appropriate nor proportionate given her lack of engagement.

The Committee then went on to consider the Council's submission for an order of indefinite suspension. The Committee decided that imposing a suspension for a fixed period with the provision for a review would not serve any practical purpose as the Registrant has not engaged with the fitness to practise process. There was no evidence before the Committee to demonstrate that Miss Dutton has in the past or is likely in the near future to engage with the GDC, or that she has begun to show any insight. The Committee has therefore determined that it is necessary for the protection of the public, is otherwise in the public interest, as well as in Miss Dutton's own interests, to direct that her registration be suspended indefinitely. The Committee considered that an order of indefinite suspension would ensure that the public is protected and public confidence in the profession is maintained, whilst allowing Miss Dutton the opportunity to seek a review in the future if she chooses to do so.

The Committee therefore ordered that the Registrant's registration be suspended indefinitely with immediate effect.

That concludes this hearing."