

**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.

**WINLOW, Nadine**

**Registration No: 199316**

**PROFESSIONAL CONDUCT COMMITTEE**

**FEBRUARY 2017 – FEBRUARY 2019**

**Most recent outcome: Suspended indefinitely\*\***

\*\* See page 12 for the latest determination.

Nadine Winlow, a dental nurse, Qual- National Certificate NEBDN 1998 was summoned to appear before the Professional Conduct Committee on 14 February 2017 for an inquiry into the following charge:

**Charge (as amended on 14 February 2017)**

“That, being a registered dental nurse:

1. At all material times you were employed at the Smile Spa, 5 Innovation Court, Yarm Road, Stockton-On-Tees, Cleveland, TS18 3DA (“the Practice”).
2. Between 10 September 2015 and 9 October 2015 you misappropriated monies held by the Practice as set out in Schedule 1.
3. Between 10 September 2015 and 9 October 2015 you falsified records to indicate that refunds had been issued to the patients set out in Schedule 1.<sup>1</sup>
4. Your conduct in relation to head of charge 2 and/or 3 above was dishonest.
5. You have one or more of the adverse physical or mental health conditions detailed in Schedule 2.

And that, in consequence of the matters set out above, your fitness to practise is impaired by reason of:

- a. misconduct in relation to heads of charge 2, 3 and 4; and
- b. health in relation to head of charge 5.”

On 14 February 2017 the Chairman made the following statement regarding the finding of facts:

“Ms Winlow,

You participated in this hearing via Skype and you were represented by Mr Suggitt, your lay representative. Ms Vanya Headley appeared on behalf of the General Dental Council (GDC).

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<sup>1</sup> Please note this schedule is private and cannot be disclosed.

### Preliminary matters

Ms Headley made an application under Rule 53 of the General Dental Council (Fitness to Practise) Rules Order of Council 2006 (the Rules) for part of this hearing to be held in private. She informed the Committee that the starting point for all hearings is that they are held in public and that the Committee has a discretion as to whether it would be more appropriate to consider the matters in private. She submitted that the matters which relate to your health should be dealt with in private session but that the issues relating to the misconduct allegations should be dealt with in public session. She submitted that the misconduct matters in this case are not so inextricably linked to your health as for them to be held in private.

Mr Suggitt on your behalf submitted that the health matters are so inextricably linked that the entirety of the hearing should be held in private.

The Committee accepted the advice of the Legal Adviser.

The Committee noted the standard position is for a hearing before a Committee to be conducted in public. [PRIVATE]. It considered [PRIVATE] that it is necessary for the hearing to be held entirely in private.

Ms Headley also made an application under Rule 18 to amend the charge. She informed the Committee that the amendment was in relation to charge 1 and that it was to remove the words 'practise as a dental nurse' and replace them with 'were employed'. She submitted that the amendment was to ensure the charge is accurate, that it would not change the substance of the case and that it would not cause any injustice to you.

Mr Suggitt informed the Committee that you did not object to the proposed amendment.

The Committee accepted the advice of the Legal Adviser.

The Committee considered that the proposed amendment did not cause any injustice to either party and it therefore acceded to the application. In accordance with this decision the charge was duly amended.

### Admissions

On your behalf, Mr Suggitt made admissions to all of the charges that you face. The Committee noted your admissions and deferred making a finding on them until all the evidence had been adduced.

### Background and allegations

The allegations that form part of the charge against you are that between 10 September 2015 and 9 October 2015 you misappropriated monies held by Smile Spa (the Practice). Further, that between this period you falsified records to indicate that refunds had been issued to the patients as set out in Schedule 1. It is also alleged that your conduct in relation to misappropriating monies and falsifying records was dishonest.

[PRIVATE].

### Evidence

The Committee heard oral evidence from Witness 1 and [PRIVATE].

The Committee was also provided with documentary material in relation to the heads of charge that you face, including a statement from Witness 1, [PRIVATE], an email enclosing

your response to the charges, performance review documents from the Practice, your contract of employment and a character reference.

Committee's findings of fact

In reaching its decision on the facts, the Committee carefully considered all the evidence presented to it. It took account of the submissions made by Mr Suggitt on your behalf and by Ms Headley on behalf of the GDC.

The Committee accepted the advice of the Legal Adviser. In accordance with that advice, it considered each charge separately.

The Committee was aware that the burden of proof rests on the GDC, and that the standard of proof is the civil standard, namely the balance of probabilities. The Committee reminded itself that you were not required to prove or disprove anything.

The Committee made the following findings:

1.	<p><i>At all material times you were employed at the Smile Spa</i></p> <p>Admitted and found proved.</p> <p>The Committee had sight of your contract of employment which confirmed that you were employed at the Smile Spa during all material times. It also noted your admission to this charge.</p> <p>The Committee therefore found this head of charge proved on the basis of your admission and the documentary evidence before it.</p>
2.	<p><i>Between 10 September 2015 and 9 October 2015 you misappropriated monies held by the Practice as set out in Schedule 1.</i></p> <p>Admitted and found proved.</p> <p>The Committee took into account your admission at this hearing and contained within the documentation before it. It also noted the oral and documentary evidence of Witness 1 who confirmed that you had misappropriated monies held by the Practice.</p> <p>In light of these reasons the Committee found this charge proved.</p>
3.	<p><i>Between 10 September 2015 and 9 October 2015 you falsified records to indicate that refunds had been issued to the patients set out in Schedule 1.</i></p> <p>Admitted and found proved.</p> <p>The Committee took into account your admission at this hearing and contained within the documentation before it. It also noted the oral and documentary evidence of Witness 1 who confirmed that you had falsified records to indicate that refunds had been issued to the twelve patients listed in Schedule 1.</p> <p>In light of these reasons the Committee found this charge proved.</p>
4.	<p><i>Your conduct in relation to head of charge 2 and/or 3 above was dishonest.</i></p> <p>Admitted and found proved.</p> <p>The Committee took into account your admission at this hearing and</p>

	<p>contained within the documentation before it. It also noted the oral evidence of [PRIVATE] who stated that you would have been aware of what you were doing and that you knew that it was wrong. The Committee concluded that on a balance of probabilities an ordinary and honest Dental Nurse would consider your actions in relation to charges 2 and 3 to be dishonest. It also concluded that it was more likely than not that you realised that your conduct was dishonest by those standards.</p> <p>In light of these reasons the Committee found this charge proved.</p>
5.	[PRIVATE]

The hearing will now proceed to stage 2.”

On 15 February 2017, the Chairman announced the determination as follows:

#### PUBLIC VERSION

“Ms Winlow,

Having announced its findings of fact the Committee heard submissions on the issue of misconduct in relation to charges 2, 3 and 4. It also heard submissions on current impairment by reason of misconduct and by reason of adverse health in relation to charge 5 and sanction in relation to all the charges.

#### Submissions

In accordance with Rule 20 (1) (a) the Committee was informed by Ms Headley that you do not have any previous fitness to practise history. She also informed the Committee that you have been subject to an interim order of suspension from 26 April 2016.

Ms Headley referred the Committee to the case of *Roylance v GMC* (no. 2) [2000] 1 AC 311 which defines misconduct as ‘a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed...’. She outlined the specific issues identified in line with the standards, which in her submission, have been breached. She submitted that your conduct was of a serious nature and that it amounts to misconduct.

Ms Headley then moved on to the issue of current impairment. She referred the Committee to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin) and to the observations of Dame Janet Smith as approved in this case. She addressed the Committee on the factors that it should consider, including your level of insight, any remediation and the risk of repetition. She also addressed the Committee on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards, maintain public confidence in the profession and in the GDC as a regulatory body.

Ms Headley submitted that your conduct in falsifying records could be considered remediable. [PRIVATE]. She submitted that dishonesty is harder to remedy. She further submitted that you have not taken any steps to remedy your failings in relation to the alleged misconduct or [PRIVATE]. She referred the Committee to your apology within the

documentation before it. She submitted that your fitness to practise is impaired by reason of misconduct and/or your adverse physical or mental health.

Ms Headley then addressed the Committee on the issue of sanction. She referred the Committee to the GDC's Guidance for the Practice Committees, including Indicative Sanctions Guidance (October 2016) ('the Guidance') and outlined the mitigating and aggravating factors that were engaged in this case. She submitted that the appropriate and proportionate sanction in this case was suspension for a period of 12 months.

On your behalf, Mr Suggitt submitted that you do not and never have disputed the facts of this case. He informed the Committee that when the Practice conducted its investigation into the misappropriated funds it was you who informed them of your conduct. He further informed the Committee that you had paid back the funds to the Practice. He went on to inform the Committee that you have applied for voluntary removal from the register as you no longer wish to continue your career in dentistry but that this was rejected by the GDC as you were in the process of fitness to practise proceedings.

Mr Suggitt submitted that should the Committee consider a sanction needs to be imposed then it should take into account all the background factors in this case. He submitted that whilst you accept that your conduct may have brought your trust and reliability into question, the Committee should bear in mind that it was a one-off incident. He also referred the Committee to the positive testimonial contained within the documentation before it.

#### Committee's considerations

The Committee bore in mind the submissions from Ms Headley on behalf of the GDC and those from Mr Suggitt on your behalf. The Committee considered all of the information placed before it.

The Committee accepted the advice of the Legal Adviser.

In its deliberations, the Committee had regard to the GDC's guidance (the Guidance).

#### Decision on misconduct

The Committee first considered whether the facts found proved at charges 2, 3 and 4 amount to misconduct. In considering the matter, the Committee exercised its own independent judgement. The Committee reminded itself of the extent and nature of the findings made against you. The Committee's reasons for its findings have been set out in full in its determination on the facts.

When determining whether the facts found proved amount to misconduct the Committee had regard to the terms of the relevant professional standards in force at the time.

The Committee concluded that your conduct was in breach of each of the sections of the Standards for the Dental Team (2013) as set out below.

1.3 Be honest and act with integrity.

1.3.1 You must justify the trust that patients, the public and your colleagues place in you by always acting honestly and fairly in your dealings with them. This applies to any business or education activities in which you are involved as well as to your professional dealings.

1.3.2 You must make sure you do not bring the profession into disrepute.

- 1.7 Put patients' interests before your own or those of any colleague, business or organisation.
- 1.7.1 You must always put your patients' interests before any financial, personal or other gain.
- 4.1 Make and keep contemporaneous, complete and accurate patient records.
- 9.1 Ensure that your conduct, both at work and in your personal life, justifies patients' trust in you and the public's trust in the dental profession.

The Committee accepted the above breaches do not automatically result in a finding of misconduct. However, it considered that they were serious, repeated and fundamental to the integrity of the profession. It also considered that such breaches were capable of undermining public confidence in the profession.

The Committee considered that you have breached a number of fundamental tenets of the profession on more than one occasion. In particular, you breached the requirement to act in an honest and trustworthy manner. The Committee noted that honesty and integrity are fundamental tenets of the dental profession and go to the heart of your practice as a Dental Nurse. It considered that your conduct fell far short of the standards reasonably expected of a registered Dental Nurse, and that fellow professionals would consider them to be deplorable. The Committee has found that you placed your own financial interests before your duty towards patients. It considered that in so doing you put the standing and reputation of the profession at risk of being brought into disrepute. The Committee considered that your dishonest conduct in misappropriating monies in credit to twelve patients was compounded by your dishonest conduct in relation to you then falsifying records in an attempt to hide what you had done. The Committee also noted that you accept that your actions amount to misconduct.

Taking all these factors into account, the Committee was in no doubt that the facts found proved amount to misconduct.

#### Decision on current impairment

The Committee then proceeded to consider whether your fitness to practise is currently impaired by reason of your misconduct and/or by your adverse physical or mental health. In reaching its decision on impairment, the Committee exercised its own independent judgement. It bore in mind that its duty was to consider the public interest, which includes the protection of patients, the maintenance of public confidence in the profession and the declaring and upholding of proper standards of conduct and behaviour.

In considering the matter of impairment, the Committee first considered whether your fitness to practise is currently impaired by reason of your misconduct. The Committee considered whether your failings were remediable and concluded that some of your failings were remediable. It concluded that you had taken steps to address your conduct by admitting your actions and by refunding the money to the practice. It also took into account that you have apologised to the practice for your actions and that you have developed some insight into your failings, partly demonstrated by your acknowledgment of your misconduct to the Committee. Whilst the Committee considered that some of your failings were remediable, it considered that by nature your dishonest conduct was harder to remedy.

The Committee concluded that in light of your lack of full remediation and insight there remained a risk of repetition in this case. [PRIVATE].



Whilst the Committee bore in mind that its primary function is to protect patients, it also took into account the wider public interest, which includes maintaining confidence in the dental profession and the GDC as a regulator, and upholding proper standards and behaviour. The Committee concluded that to make a finding of no current impairment in relation to your misconduct would send a message to the public and the profession that your actions were acceptable. It concluded that trust and confidence in the profession and in the GDC as the regulator would be seriously undermined if a finding of impairment was not made. The Committee had regard to the serious nature of the issues identified in the circumstances of this case when reaching this decision.

Taking all this into account, the Committee concluded that your fitness to practise is currently impaired by reason of your misconduct.

The Committee next considered whether your fitness to practise is currently impaired by reason of your adverse physical or mental health. [PRIVATE].

Whilst the Committee again bore in mind that its primary function is to protect patients, it also considered the wider public interest. It concluded that [PRIVATE] trust and confidence in the profession and in the GDC as the regulator would be seriously undermined if a finding of impairment was not made.

In light of these reasons, the Committee concluded that your fitness to practise is currently impaired by reason of your adverse physical or mental health.

The Committee therefore finds that your fitness to practise is currently impaired by reason of both your misconduct and adverse physical or mental health.

#### Decision on sanction

The Committee then considered what sanction, if any, would be appropriate in light of the findings of facts, misconduct and impairment that it has made. The Committee bore in mind that the purpose of a sanction is not to be punitive, although it may have that effect, but is instead imposed in order to protect patients and safeguard the wider public interest mentioned above.

In reaching its decision the Committee again took into account the GDC's Guidance for the Practice Committees, including Indicative Sanctions Guidance (October 2016) ('the Guidance'). The Committee applied the principle of proportionality, balancing the public interest with your own interests. It also had regard to the submissions made by Ms Headley on behalf of the GDC and those of Mr Suggitt on your behalf.

In considering the matter of sanction, the Committee considered the mitigating and aggravating factors in this case.

In the Committee's view the mitigating factors are:

- evidence of good conduct following the incident in question, particularly in relation to your early admissions and your remedial steps in refunding the money to the practice;
- evidence of previous good character;
- evidence of your apology to the practice; and
- [PRIVATE]

Aggravating factors include:

- dishonesty;
- repeated misconduct;

- financial gain by you; and
- breach of trust;

The Committee also took into account the positive testimonial contained in the documentation before it.

The Committee considered the range of sanctions available to it, starting with the least serious. In light of its findings, the Committee determined that it would be wholly inappropriate to conclude this case without taking any action in respect of your registration, given the serious departures from the standard expected of a registered Dental Nurse, including its finding of dishonesty. It considered that this would not provide the necessary level of public protection nor would it address the wider public interests engaged in this case.

It reached the same conclusion in respect of a reprimand. The serious nature of the conduct that it has found, raising as it does significant concerns about public trust and confidence, as well as the standing and reputation of the profession and the regulatory process, means that a form of action must be taken. It bore in mind its findings that the misconduct found in this case was not at the lower end of the spectrum. [PRIVATE].

The Committee next considered whether a period of conditional registration would be appropriate. The Committee determined that, given the serious findings that it has made in respect of the allegations which are not clinical in nature, there are no conditions that could be formulated which would prove to be workable, measurable or enforceable, or which would adequately address the need to protect the public or satisfy the public interest by securing the necessary degree of protection for patients and confidence in the profession. [PRIVATE].

The Committee then went on to consider whether to suspend your registration. It concluded that in the circumstances of this case a period of suspension would provide the necessary level of public protection and would adequately address the public interest concerns. Whilst the Committee was impressed with the initial steps you have taken to address your misconduct it considered that as there was a risk of repetition in this case, public protection and the wider public interest would not be adequately addressed by any lesser sanction. [PRIVATE].

The Committee gave consideration to whether the higher sanction of erasure was appropriate, but considered that in the particular circumstances of this case it was disproportionate, [PRIVATE]. In these particular circumstances, it did not consider that your actions were so damaging to your fitness to practise and to public confidence in the dental profession that removal of your professional status would be the only appropriate outcome.

The Committee was aware that the effect of this order is that you will be prevented from working as a registered Dental Nurse and that this could result in financial hardship. However, in applying the principle of proportionality, the Committee determined that your interests in this regard were outweighed by that of the wider public interest.

The Committee determined that your registration should be suspended for a period of twelve months. This period of time is necessary to mark the seriousness of your misconduct. [PRIVATE].

The Committee further directs that your suspension should be reviewed before its expiry.

Accordingly, the Committee determined that your registration should be suspended for a period of 12 months with a review prior to its expiry.



Although the Committee in no way wishes to bind the reviewing Committee, it considered that that Committee may be assisted in being provided with the following:

- [PRIVATE]
- any evidence to demonstrate the further steps you have taken to address the failings identified in relation to your dishonest conduct.

The Committee will now invite submissions on whether an immediate order should be imposed.

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Having directed that your name be suspended from the register, the Committee considered whether to impose an order for your immediate suspension in accordance with section 36 (U) of the Dentists Act 1984 (as amended).

The Committee considered the submissions made by Ms Headley on behalf of the GDC and from Mr Suggitt, on your behalf, as to the necessity of an immediate order.

The Committee accepted the advice of the Legal Adviser.

The Committee was satisfied that an immediate order for suspension was necessary for the protection of the public and was otherwise in the public interest. The Committee concluded that given its findings and reasons for the substantive order of suspension to direct otherwise would be inconsistent. It also considered that it was in your own interests [PRIVATE].

If, at the end of the appeal period of 28 days, you have not lodged an appeal, this immediate order will lapse and will be replaced by the substantive direction of suspension for a period of 12 months. If you do lodge an appeal, this immediate order will continue in effect until that appeal is determined.

The Committee hereby revokes the current interim order on your registration.

That concludes this case for today.”

At a review hearing on 9 March 2018 the Chairman announced the determination as follows:

“Neither party is present at this resumed hearing of the Professional Conduct Committee (PCC). The GDC has invited the Committee to conduct the hearing on the papers in the absence of both parties.

#### **Purpose of hearing**

The purpose of today's hearing is to review a substantive direction of suspension imposed on Miss Winlow's registration by the PCC on 15 February 2017. The hearing is being held in accordance with section 36Q (1) of the Dentists Act 1984 (as amended) ('the Act'). The suspension is due to expire on 19 March 2018.

#### **Service**

The Committee first considered whether service has been properly effected in accordance with the General Dental Council (Fitness to Practise) Rules 2006 ('the Rules').

In its written representations to the Committee the GDC has submitted that Miss Winlow has been properly notified of today's hearing in accordance with Rule 28 of the Rules. The Committee noted that a notice of hearing was sent to Miss Winlow's registered address on 6

February 2018 using the Royal Mail's Special Delivery service. That notice set out the date, time and venue of the hearing, as well as confirming the nature of the hearing and the powers available to the Committee. The Royal Mail's Track and Trace service records that an attempt was made to deliver the notice on the afternoon of 7 February 2018, and that a 'while you were out' card was left. The Committee also noted that a copy of the notice of hearing was sent to Miss Winlow by email on 6 February 2018, and is recorded as having been downloaded by Miss Winlow that same afternoon.

The Committee accepted the advice provided by the Legal Adviser. Having regard to the GDC's submissions and the evidence placed before it the Committee was satisfied that service has been properly effected in accordance with the Rules.

### **Proceeding in absence**

The Committee then went on to consider whether to exercise its discretion to proceed in the absence of Miss Winlow in accordance with Rule 54 of the Rules. It was mindful that the discretion to proceed in the absence of a registrant must be exercised with the utmost care and caution. The Committee notes that the GDC has invited the Committee to proceed in the absence of Miss Winlow.

The Committee accepted the advice of the Legal Adviser. It determined that it would be appropriate and fair to proceed with the hearing in Miss Winlow's absence. The Committee considers that there is a clear public interest in ensuring that the suspension order is reviewed before its expiry. The Committee considered that Miss Winlow has voluntarily absented herself from today's hearing, noting as it does that Miss Winlow sent an email to the GDC on 5 March 2018 in which she stated that she would not be attending. The Committee considers that an adjournment would serve no useful purpose, as it would be unlikely to secure Miss Winlow's attendance. Miss Winlow has also not requested an adjournment of today's hearing. The Committee therefore considers that proceeding in the absence of Miss Winlow would not be prejudicial to her.

### **Preliminary matters**

In its written submissions to the Committee the GDC made an application under Rule 53 of the Rules for the hearing to be part-held in private given that part of the case relates to Miss Winlow's health. Having accepted the advice of the Legal Adviser, the Committee decided to accede to the application. The hearing was thereafter part-held in private as indicated below.

### **Existing order**

In February 2017 the PCC held a hearing to consider allegations relating to Miss Winlow. Miss Winlow participated in the hearing by Skype and was represented by a lay representative. The allegations which Miss Winlow faced, which she admitted, and which the Committee subsequently found proved, related to her misappropriation of monies held by the practice at which she worked. The Committee also found that Miss Winlow falsified records to suggest that refunds had been issued to patients when that was not in fact the case. The Committee found that such proven conduct was dishonest, and amounted to misconduct.

IN PRIVATE

[text omitted]

IN PUBLIC

On 15 February 2017 the Committee determined that Miss Winlow's fitness to practise was impaired by reason of her misconduct and health. The Committee determined that Miss

Winlow should be suspended for a period of 12 months in order to protect the public and meet the public interest considerations relevant to the case. The Committee directed that the suspension should be reviewed prior to its expiry, and that the reviewing Committee may be assisted by evidence of Miss Winlow having taken steps to address her dishonest conduct.

IN PRIVATE

[text omitted]

IN PUBLIC

### **Committee's determination**

The Committee has carefully considered all of the information presented to it, including the written documentation and submissions provided by the GDC and the correspondence sent by Miss Winlow referred to above. In its deliberations the Committee has had regard to the GDC's *Guidance for the Practice Committees, including Indicative Sanctions Guidance* (October 2016). The Committee has accepted the advice of the Legal Adviser.

### **Impairment**

The Committee has determined that Miss Winlow's fitness to practise remains impaired. It notes that Miss Winlow has provided no 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. Save for providing the GDC with details of her change of address and to confirm that she has no documentation to present to today's Committee, Miss Winlow has not engaged in these proceedings since the index PCC hearing, and in particular has not presented any evidence of any steps taken to remedy her dishonest conduct.

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[text omitted]

IN PUBLIC

The Committee has therefore concluded that the same risks to public safety and to public trust and confidence in the profession persist, and that accordingly Miss Winlow's fitness to practise remains impaired.

### **Sanction**

The Committee next considered whether it would be appropriate to revoke the suspension and instead impose a period of conditional registration. The Committee considered whether it could formulate conditions which would be workable and which would address the risks that have been identified. The Committee concluded that it could not formulate any conditions which would be practicable or workable, given that Miss Winlow has not substantively engaged with today's hearing and there is a lack of evidence as to her current employment and circumstances.

The Committee then went on to consider whether it would be appropriate to extend the current period of suspension. It has determined that suspension remains the proportionate and appropriate sanction in the circumstances of this case. There remains a risk of harm to the public and to trust and confidence in the profession arising from Miss Winlow's continued impairment. A further period of suspension is required to continue to protect the public, to declare and uphold proper standards of conduct and behaviour and to maintain trust and confidence in the profession.

In view of the risks to patients and to the wider public interest, as well as the absence of any evidence of remediation, the Committee hereby directs that Miss Winlow's registration be

suspended for a further period of 12 months. This period of time is commensurate with the ongoing risks that have been identified. Such a period of time will also provide a further period of time for Miss Winlow to demonstrate insight into, and remediation of, the matters that have precipitated these proceedings.

In accordance with section 36Q (1) of the Act this extended period of suspended registration will take effect from the date on which the existing period of suspension would otherwise expire, namely on 19 March 2018. The Committee has further determined that the suspension should be reviewed prior to its expiry.

### **Recommendations**

Although it is mindful that the task of reviewing this extended suspension is entirely one for the future PCC, the Committee considered that the reviewing Committee may find it helpful to have sight of the following:

- Any evidence to demonstrate the further steps Miss Winlow has taken to address the failings identified in relation to her dishonest conduct.

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[text omitted]

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### **Right of appeal**

Miss Winlow will have 28 days from the date on which notice of this decision is deemed to have been served on her to appeal against this decision. Should she decide to appeal, the extant suspension will remain in force until the resolution of any such appeal. Should she decide not to appeal, the current suspension will be extended for a period of 12 months from the date on which it would otherwise expire, that is to say 19 March 2018.

That concludes this case for today.”

At a review hearing on 27 February 2019 the Chairman announced the determination as follows:

“Neither party is present at this resumed hearing of the Professional Conduct Committee (PCC). The GDC has invited the Committee to conduct the hearing on the papers in the absence of both parties.

### **Purpose of hearing**

The purpose of today’s hearing is to review a substantive direction of suspension imposed on Miss Winlow’s registration by the PCC on 15 February 2017. The hearing is being held in accordance with section 36Q (1) of the Dentists Act 1984 (as amended) (‘the Act’).

### **Service**

The Committee first considered whether service has been properly effected in accordance with the General Dental Council (Fitness to Practise) Rules 2006 (‘the Rules’).

In its written representations to the Committee the GDC has submitted that Miss Winlow has been properly notified of today’s hearing in accordance with Rule 28 of the Rules. The Committee noted that a notice of hearing was sent to Miss Winlow’s registered address on 28 January 2019 using the Royal Mail’s Special Delivery service. That notice set out the date, time and venue of the hearing, as well as confirming the nature of the hearing and the powers available to the Committee. The Royal Mail’s Track and Trace service records that

an attempt was made to deliver the notice on 29 January 2019, and that a 'while you were out' card was left. The Committee also noted that a copy of the notice of hearing was sent to Miss Winlow by email 28 January 2019.

The Committee accepted the advice provided by the Legal Adviser. Having regard to the GDC's submissions and the evidence placed before it the Committee was satisfied that service has been properly effected in accordance with the Rules.

### **Proceeding in absence**

The Committee then went on to consider whether to exercise its discretion to proceed in the absence of Miss Winlow in accordance with Rule 54 of the Rules. It was mindful that the discretion to proceed in the absence of a registrant must be exercised with the utmost care and caution. The Committee notes that the GDC has invited the Committee to proceed in the absence of Miss Winlow.

The Committee accepted the advice of the Legal Adviser. It determined that it would be appropriate and fair to proceed with the hearing in Miss Winlow's absence. The Committee considers that there is a clear public interest in ensuring that the suspension order is reviewed before its expiry. The Committee noted that Miss Winlow has not responded to the correspondence sent by the GDC. Miss Winlow was informed in the notice of hearing that the case was to be heard on the papers and she has not objected or requested an oral hearing. The Committee considers that an adjournment would serve no useful purpose, as it would be unlikely to secure Miss Winlow's engagement. Miss Winlow has also not requested an adjournment of today's hearing. The Committee therefore considers that proceeding in the absence of Miss Winlow would not be prejudicial to her.

### **Preliminary matters**

In its written submissions to the Committee the GDC made an application under Rule 53 of the Rules for the hearing to be part-held in private given that part of the case relates to Miss Winlow's health. Having accepted the advice of the Legal Adviser, the Committee decided to accede to the application. The hearing was thereafter part-held in private as indicated below.

### **Existing order**

In February 2017 the PCC held a hearing to consider allegations relating to Miss Winlow. Miss Winlow participated in the hearing by Skype and was represented by a lay representative. The allegations Miss Winlow faced, which she admitted, and which the Committee subsequently found proved, related to her misappropriation of monies held by the practice at which she worked. The Committee also found that Miss Winlow falsified records to suggest that refunds had been issued to patients when that was not in fact the case. The Committee found that such proven conduct was dishonest, and amounted to misconduct.

IN PRIVATE

**[PRIVATE]**

IN PUBLIC

On 15 February 2017 the Committee determined that Miss Winlow's fitness to practise was impaired by reason of her misconduct and health. The Committee determined that Miss Winlow's registration should be suspended for a period of 12 months in order to protect the public and meet the public interest considerations relevant to the case. The Committee directed that the suspension should be reviewed prior to its expiry, and that the reviewing Committee may be assisted by evidence of Miss Winlow having taken steps to address her misconduct.

The Committee also suggested that Miss Winlow may wish to present evidence to the reviewing Committee of any steps taken to address her health conditions.

A PCC review was held on 9 March 2018 and the Committee determined that Miss Winlow's fitness to practise remained impaired. The Committee had no information about any steps Miss Winlow had taken to address the misconduct found in the case. Furthermore the Committee noted that Miss Winlow had not provided any evidence of having taken steps to address her health conditions. The Committee therefore concluded that the same risks to public safety and to public trust and confidence in the profession persisted, and accordingly Miss Winlow's fitness to practise remained impaired.

The Committee then went on to consider whether it would be appropriate to extend the period of suspension. It determined that suspension remained the proportionate and appropriate sanction in the circumstances of this case. There remained a risk of harm to the public and to trust and confidence in the profession arising from Miss Winlow's continued impairment. A further period of suspension was required to continue to protect the public, to declare and uphold proper standards of conduct and behaviour and to maintain trust and confidence in the profession. In view of the risk to patients and to the wider public interest, as well as the absence of any evidence of remediation, the Committee directed that Miss Winlow's registration be suspended for a further period of 12 months.

### **Submissions**

The Committee had regard to the GDC's written submissions which stated "The Committee will note that the Registrant has not provided any remediation to address the concerns that were identified by the previous Committee.

The Council submits that there is no evidence to show any material change in position in respect of the Registrant's health or misconduct since the initial hearing. **[PRIVATE]**.

The Committee at the initial hearing considered the Registrant had not shown full remediation and insight into her actions and as such there remained a risk of repetition.

The Registrant has not provided any document or update to demonstrate any further development of this. The Council respectively submits that with no change in position since the last hearing, the confidence in the dental profession would be undermined if a finding of impairment was not found".

In regard to sanction the GDC stated "The Registrant has not engaged substantively with the GDC since 2017. It is the Council's submission that in the absence of any updated information, the Registrant should not be able to return to practise at this stage. **[PRIVATE]**.

For the reasons outlined in the paragraphs above, the Council submits that the public would not be adequately protected if the Registrant were to return to unrestricted practice. Furthermore, in the circumstances of this case, conditions could not be formulated to be workable due to the lack of engagement from the Registrant and the absence of insight or remediation in respect of the misconduct. The trust and confidence in the profession and the Council would be undermined if the Registrant were permitted to practise unrestricted without receipt of satisfactory information regarding her remediation into the misconduct and her health conditions. It is the Council's submission that to revoke the order of suspension or to impose conditions would be inappropriate in the circumstances of this case.

The Council submit that it would be appropriate and proportionate to consider imposing an indefinite suspension on the Registrant's registration".



### **Committee's determination**

The Committee has carefully considered all the information presented to it, including the written documentation and oral submissions provided by the GDC. In its deliberations the Committee has had regard to the GDC's *Guidance for the Practice Committees, including Indicative Sanctions Guidance* (October 2016). The Committee has accepted the advice of the Legal Adviser.

### **Impairment**

The Committee has determined that Miss Winlow's fitness to practise remains impaired. The Committee noted that there is no evidence of non-compliance with the order of suspension. However it notes that Miss Winlow has provided no information whatsoever about any steps that she may have taken to remedy the misconduct that was previously found. The same risks of repetition therefore persist. Were Miss Winlow to practise the public would be at risk of harm. Miss Winlow has not engaged with the GDC in any substantive way in relation to these proceedings since her suspension was first imposed. There has been no material change in circumstances to suggest that Miss Winlow's fitness to practise is no longer impaired. The ongoing lack of engagement shows a persistent disregard for the regulatory process.

The Committee also notes that there is no evidence to suggest that Miss Winlow has addressed her health conditions. The Committee notes that there has not been an updated medical report on Miss Winlow's health conditions. It remains the case that there is no evidence of Miss Winlow having engaged with measures to manage and recover from her health conditions. The Committee determined that Miss Winlow's fitness to practise is likely to be impaired by reason of her health conditions, and that patients would continue to be at risk of harm were she to return to practise.

The Committee has therefore concluded that Miss Winlow's fitness to practise remains impaired by reason of her misconduct and her adverse health.

### **Sanction**

The Committee next considered what direction to give. In so doing, it has had regard to the GDC's "Guidance for the Practice Committees including Indicative Sanctions Guidance" (October 2016).

Miss Winlow has not demonstrated any commitment to remediate her deficiencies or engage with the GDC, despite being given the opportunity to do so. In these circumstances, the Committee concluded that terminating the current suspension order would not be appropriate or sufficient for the protection of the public.

The Committee next considered whether it would be appropriate to replace the current suspension with conditions. The Committee considered whether it could formulate conditions which would be workable and which would address the risks that have been identified. The Committee concluded that it could not formulate any conditions which would be practicable or workable, given that Miss Winlow has not substantively engaged with these proceedings and that there is no information as to her current circumstances and employment.

The Committee then went on to consider whether it would be appropriate to extend the current period of suspension for a further period of up to 12 months. The Committee concluded that such a direction is not likely to serve any meaningful purpose, given Miss Winlow's persistent lack of engagement and the ongoing risks of harm arising from the complete absence of any evidence from Miss Winlow at any stage in these proceedings that she has addressed and remedied the matters precipitating the findings of impairment.

In view of the risks to the public and to the wider public interest, as well as the absence of any evidence of remediation and engagement, the Committee hereby directs that Miss Winlow's registration be suspended indefinitely. This indefinite suspension will take effect from the date on which the existing period of suspension would otherwise expire.

**Right of appeal**

Miss Winlow will have 28 days from the date on which notice of this decision is deemed to have been served on her to appeal against this decision. Should she decide to appeal, the extant suspension will remain in force until the resolution of any such appeal. Should she decide not to appeal, the current suspension will become indefinite on the date on which it would otherwise expire.

That concludes this case for today."