

**HEARING HEARD IN PUBLIC**

**MCILVENEY, Tracey Isabella Betty**

**Registration No: 115344**

**PROFESSIONAL CONDUCT COMMITTEE**

**JANUARY 2018 – JANUARY 2020**

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

\*\* See page 12 for the latest determination

Tracey Isabella Betty MCILVENEY, a dental nurse, Qual- Cert in Dental Surgery Assisting NEBDSA 1988 was summoned to appear before the Professional Conduct Committee on 15 January 2018 for an inquiry into the following charge:

**Charge**

“That being a registered dental nurse:

1. On or around each of the dates set out in Column A of Schedule 1<sup>1</sup> you carried out each of the tasks set out in Column B of Schedule 1 when you were not appropriately registered with the General Dental Council as a dental nurse.
2. On or around 8 June 2016 you submitted a signed application for registration as a dental nurse to the General Dental Council in which you had ticked the box marked “No” in response to the question “Have you been working as a dental care professional in the UK during the time that you were not registered with the GDC?”.
3. Your conduct at paragraph 2 above was:
  - a. misleading, in that the information you provided was inaccurate and/or
  - b. dishonest, in that you knew that the information you provided was inaccurate and your intention was to mislead the General Dental Council.

And that in consequence of the matters set out above your fitness to practise is reason of your misconduct.”

Ms McIlveney was not present and was not represented. On 15 January 2018, the Chairman announced the findings of fact to the Counsel for the GDC:

“Mrs McIlveney was neither present nor represented.

Mr Singh, on behalf of the General Dental Council (GDC), submitted that service of the notification of the hearing had been effected in accordance with the General Dental Council (Fitness to Practise) Rules 2006 (“the Rules”) and applied for the hearing to proceed in the absence of Mrs McIlveney.

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<sup>1</sup> The schedule is a private document that cannot be disclosed.

The notification of hearing dated 14 December 2017 was sent to Mrs McIlveney at her registered address by Special Delivery. Royal Mail 'Track and Trace' records that the item was delivered on 15 December 2017, signed for under the name "MILWINY". The Committee was satisfied that the notification duly contained the information required under Rule 13 of the Rules, including the time, date and venue of this hearing; and that it had been served on Mrs McIlveney in accordance with the requirements of Rule 65, by virtue of it having been sent to her registered address.

Mrs McIlveney was initially represented by the Medical and Dental Defence Union of Scotland (MDDUS). However, by email to the GDC sent 08:55 on 29 August 2017, Ms Ritchie, Senior Lawyer at the MDDUS, stated:

...Mrs McIlveney has confirmed to us that she has resigned from her employment as a dental nurse, and intends to leave the profession permanently. She will not be attending the GDC hearing in January and will not be engaging further in the process. As a consequence, I have to indicate my withdrawal from acting as her solicitor in this matter with immediate effect, and would confirm that MDDUS will have no further role to play in this matter on her behalf...

The Committee was therefore satisfied that Mrs McIlveney was aware of this hearing. There had been no further communication from or on behalf of her. There was no application for a postponement and there was nothing to suggest to the Committee that an adjournment would make Mrs McIlveney's attendance at a future date any more likely. The Committee was satisfied that Mrs McIlveney had voluntarily absented herself from this hearing and had waived her right to attend and/or be represented. The Committee therefore determined that it would be fair and in the interests of justice to proceed with the hearing, notwithstanding the absence of Mrs McIlveney.

The Committee drew no adverse inference from the fact of Mrs McIlveney's absence.

#### *The factual inquiry*

The Committee heard oral evidence from Nigel B. A. Entwistle, a general dental practitioner instructed by the GDC for his expert opinion. The Committee also had regard to his report dated 13 September 2017.

The Committee allowed the witness statements of Ms McCarthy, registration officer at the GDC; and Witness 1, an associate dentist with whom Mrs McIlveney had worked, to be admitted as hearsay.

Ms McCarthy was merely providing a chronology of registration documents held by the GDC for Mrs McIlveney and she exhibited those documents to her witness statement. There was no factual dispute in respect of the documents themselves. The Committee could identify no further information or explanation which would be required from Ms McCarthy in respect of her witness statement.

There was also nothing contentious in Witness 1's statement. He corroborated Mrs McIlveney's account of the dates she had worked as a dental nurse between registration as a dental care professional. His evidence was neither controversial nor prejudicial to Mrs McIlveney's case.

Mrs McIlveney had been put on notice of the GDC's intention to apply for those witness statements to be admitted as hearsay. She raised no objection in respect of such an application and had not otherwise contested the content or admissibility of the witness

statements.

As the witness statements were uncontroversial and there was nothing in them which would require either witness to be called, the Committee was satisfied that it would be fair, proportionate and in the interests of justice to allow both witness statements to be taken as read into the evidence.

The background facts are uncontroversial. Mrs McIlveney qualified as a dental nurse in 1988 and registered with the GDC on 31 July 2007, when GDC registration for dental nurses was introduced. Her name was removed from the dental care professionals (DCP) register on 6 August 2012, due to non-payment of the Annual Retention Fee. On 4 December 2015 she submitted an application to be restored to the DCP register. The application was rejected. Among other things, Mrs McIlveney had failed to provide sufficient Continuing Professional Development (CPD) hours with her application. The application for restoration was resubmitted and this was received by the GDC on 9 June 2016. In that form Mrs McIlveney ticked the box marked "No" in response to the question "*Have you been working as a dental care professional in the UK during the time that you were not registered with the GDC?*"

Mrs McIlveney's application was successful and she was restored to the DCP register with effect from 16 June 2016. Accordingly, between 6 August 2012 and 15 June 2016 Mrs McIlveney was not registered with the GDC.

The Committee heard the submissions made by Mr Singh. The Committee accepted the advice of the Legal Adviser. The burden is on the GDC to prove each allegation on the balance of probabilities.

Mr Singh confirmed that Mrs McIlveney has no previous findings against her and that she can therefore be treated as a person of good character.

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

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| 1. | <p><i>On or around each of the dates set out in Column A of Schedule 1 you carried out each of the tasks set out in Column B of Schedule 1 when you were not appropriately registered with the General Dental Council as a dental nurse.</i></p> <p>Proved.</p> <p>By letters dated 21 December 2016 and 12 January 2016 [sic], the MDDUS disclosed that Mrs McIlveney carried out the duties in question on 22 dates between 30 September 2015 and 1 June 2016 inclusive, as particularised in Schedule 1.</p> <p>The Committee accepted the evidence of Mr Entwistle that those duties fell within the Scope of Practice of a dental nurse and that Mrs McIlveney therefore needed GDC registration to carry them out.</p> <p>Mrs McIlveney's own account, as set out by the MDDUS in their observations to the Case Examiners, dated 13 April 2017, is that she carried out the duties on an ad hoc basis when the practice where she was employed as a receptionist was short staffed. She did so at the request of the principal dentist and did not receive any additional remuneration for carrying out those additional duties. She expressed concerns to the principal dentist about whether it was appropriate for her to be carrying out the duties of a dental nurse as her registration had lapsed. Mrs McIlveney asserted that the principal dentist checked GDC standards and assured that what she was doing was permissible. She further asserted that the</p> |
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|       | <p>principal dentist subsequently realised that he had misinterpreted the GDC standards.</p> <p>Mrs McIlveney's account is consistent with what is set out in the statement of Witness 1.</p>   |
| 2.    | <p><i>On or around 8 June 2016 you submitted a signed application for registration as a dental nurse to the General Dental Council in which you had ticked the box marked "No" in response to the question "Have you been working as a dental care professional in the UK during the time that you were not registered with the GDC?"</i></p> <p>Proved.</p> <p>The signed and dated form shows that the box marked "No" had been ticked. Mrs McIlveney confirmed in the observations to the Case Examiners that she ticked that box.</p>   |
| 3.    | <p><i>Your conduct at paragraph 2 above was:</i></p>  |
| 3. a. | <p><i>misleading, in that the information you provided was inaccurate and/or</i></p> <p>Proved.</p> <p>Mrs McIlveney had as a matter of fact been working as a dental care professional during the time that she was not registered with the GDC.</p> <p>Mrs McIlveney also conceded in the observations to the Case Examiners that the information she provided on the form was misleading, in so far as it was accepted by the GDC at the time.</p>   |
| 3. b. | <p><i>dishonest, in that you knew that the information you provided was inaccurate and your intention was to mislead the General Dental Council.</i></p> <p>Proved.</p> <p>Mrs McIlveney's account in the observations to the Case Examiners was that she did not consider she was misleading the GDC when ticking "No", as she had not been "employed" as a dental nurse during the period in question. She therefore believed that she answered the question correctly. Her statement was made carelessly rather than dishonestly.</p> <p>The Committee rejected that explanation. Mrs McIlveney knew that she was required to be registered with the GDC to carry out the duties of a dental nurse. She knew that she had carried out such duties whilst unregistered and had raised concerns with her employer about this. Indeed, she was applying for the restoration of her registration because she was carrying out the duties of a dental nurse and was being asked to do so more frequently.</p> <p>Mrs McIlveney would have understood the question asked of her on the form and she would have understood its significance. That question did not ask whether she had been "employed" as a dental nurse but whether she had been working as a dental care professional whilst unregistered. Mrs McIlveney knew that she had.</p> |

We move to Stage Two."

On 16 January 2018, the Chairman announced the determination as follows:

“The Committee heard the submissions made on behalf of the General Dental Council (GDC) by Mr Singh. The Committee accepted the advice of the Legal Adviser. The Committee had regard to the *Guidance for the Practice Committees, including Indicative Sanctions Guidance* (October 2016).

On twenty two dates between 30 September 2015 and 1 June 2016 inclusive Mrs McIlveney carried out the duties of a dental nurse whilst employed as a receptionist at the practice. She claims she did so at the request of the principal dentist when the practice was short staffed and did not receive any additional remuneration for this.

The duties in question fell within the Scope of Practice of a dental nurse and Mrs McIlveney therefore needed GDC registration to carry those duties out. However, she was not registered with the GDC during that period as her registration had lapsed in August 2012 and her name was not restored to the dental care professionals (DCP) register until 16 June 2016.

Mrs McIlveney claims to have expressed concern to the principal dentist about undertaking the duties of a dental nurse without GDC registration and that she was assured by him that she was allowed to do so under GDC standards, as she was an experienced and competent dental nurse who would only be covering on an ad hoc basis in response to unforeseen circumstances. She claims the principal dentist subsequently realised that he had misinterpreted the GDC standards.

When applying for restoration on around 8 June 2016, Mrs McIlveney ticked the box marked “No” on the application form in response to the question “*Have you been working as a dental care professional in the UK during the time that you were not registered with the GDC?*”. That statement was misleading and dishonest, as Mrs McIlveney had been working as a dental care professional on the twenty two dates between 30 September 2015 and 1 June 2016 inclusive. The Committee found that Mrs McIlveney knew that she would be misleading the GDC by ticking “No” and that in providing that information to the GDC her conduct was therefore dishonest.

#### *Misconduct*

Misconduct is a serious departure from the standards reasonably to be expected of a dental professional. In assessing whether the facts found proved amount to misconduct, the Committee had particular regard to the following principles from *Standards for the Dental Team* (September 2013):

- 1.3 Be honest and act with integrity.
- 1.3.2 You must make sure you do not bring the profession into disrepute.
- 1.9 You must find out about, and follow, laws and regulations affecting your work.
- 7.2 You must work within your knowledge, skills, professional competence and abilities
- 7.2.1 You must only carry out a task or a type of treatment if you are appropriately trained, competent, confident and indemnified...

Carrying out the duties of a dental nurse without GDC registration was a clear and fundamental breach of GDC standards. That breach occurred repeatedly over a period of several months and wholly undermined the purpose of professional registration. Although

she was experienced as a dental nurse, Mrs McIlveney could not have been acting within her professional competence as she did not have GDC registration. There was therefore no regulatory oversight of her skill and competence. It appeared that she also was not keeping up to date with the Continuing Professional Development (CPD) requirements of a dental nurse.

The Committee considered Mrs McIlveney's action in undertaking the duties of a dental nurse without GDC registration. She stated she was acting at the request of the principal dentist and she stated she was under an assurance from him that what she was doing was in accordance with GDC standards and guidance. However, the Committee noted that this happened on twenty two separate occasions and did not conform to the standards and guidance. The Committee concluded that due to the repeated nature of this behaviour the threshold for misconduct was met in respect of the unregistered practice.

Mrs McIlveney did dishonestly declare to the GDC that she had not been working as a dental care professional whilst unregistered. She did so in order to gain the restoration of her name to the DCP register. Her dishonesty, in itself a most serious breach of GDC standards, compounds the seriousness of her unregistered practice. Rather than declare that she had on occasion been carrying out the duties of a dental nurse whilst unregistered, and explaining the circumstances in which this was done, Mrs McIlveney dishonestly provided false and misleading information to the GDC, which the GDC relied upon when deciding to restore her name to the DCP register.

There have therefore been clear and substantial breaches of the above standards not only in respect of dishonesty but also in respect of the unregistered practice. The Committee finds that the facts found proved amount to misconduct.

#### *Impairment*

In assessing whether Mrs McIlveney's fitness to practise as a dental nurse is currently impaired by reason of her misconduct, the Committee considered whether her conduct is remediable, whether it had been remedied and the likelihood of repetition. The Committee also had regard to the wider public interest, which includes the need to uphold and declare proper standards of conduct and behaviour.

By email sent 29 August 2017 Mrs McIlveney's legal representatives confirmed that she has left the dental profession and that she no longer wishes to engage in these proceedings. Any remediation therefore came to an abrupt halt. She has not attended the hearing or otherwise provided any evidence of remediation. The Committee also afforded her the opportunity to engage and make further representations if she so wished by emailing her the findings the Committee had made, including the finding of dishonesty at 15:25 on 15 January 2018. As of 9:30 on 16 January 2018 there was no response from her.

The Committee had regard to the earlier correspondence in these proceedings, including Mrs McIlveney's observations to the Case Examiners.

There is some evidence from that material of insight and remorse in respect of the unregistered practice. Mrs McIlveney initially cooperated fully with the fitness to practise investigation and disclosed the occasions on which she carried out the duties of a dental nurse, particularising the duties which had been undertaken in respect of each date. She expressed concern at the time to the principal dentist as to whether it was appropriate for her to be carrying out such duties. She was acting under pressure from her employer and with an assurance from him that what she was doing was allowed under the GDC standards. She

has reflected and fully acknowledged as part of these proceedings that she should not have carried out those duties without GDC registration. In all the circumstances, the Committee is satisfied that the risk of repetition is low.

Mrs McIlveney's dishonesty is more difficult to remedy. She denies that she acted dishonestly. Her case was that she believed she was answering the question correctly, as at the time she was not "employed" as a dental nurse. She accepts that the answer she did provide was in fact wrong and conceded that this was misleading, in so far as it was accepted by the GDC. The Committee rejected that explanation and found that she was deliberately trying to mislead the GDC and was dishonest in respect of her answer to the question. She has not at any stage accepted her dishonesty. She therefore shows no insight into that dishonesty and there is no evidence at all of any remediation. As dishonesty goes to character, the Committee cannot be satisfied in the absence of insight and remediation that the risk of repetition is low.

Further, in the Committee's judgment, making a dishonest statement to a regulator in order to gain professional registration is so serious that public confidence in the profession would in any event require a finding of impairment.

Having regard to all the circumstances, the Committee determined that Mrs McIlveney's fitness to practise as a dental nurse is currently impaired by reason of her misconduct in respect of both her dishonesty and her unregistered practice. Whilst the Committee was satisfied that there was no real risk of repetition in respect of the unregistered practice, Mrs McIlveney dishonestly provided false and misleading information to the GDC about this. Public confidence in the profession would therefore be seriously undermined if no finding of impairment were made in respect of the unregistered practice.

#### *Sanction*

The Committee next considered what sanction, if any, to impose on Mrs McIlveney's registration. The purpose of a sanction is not to be punitive, although it may have that effect, but to protect the public and the wider public interest. The Committee considered each sanction in ascending order of severity.

To conclude this case with no further action or a reprimand would be inappropriate. Mrs McIlveney's behaviour was deliberate: she dishonestly provided false information to her regulator. There is no evidence of insight or corrective steps in respect of that dishonesty. A reprimand would be insufficient to maintain public confidence in the profession.

The Committee next considered whether to direct that Mrs McIlveney's registration be made subject to her compliance with conditions. She is not currently engaging in these proceedings and there was therefore no evidence that she would comply with any conditions on her registration. The Committee could not in any event identify any conditions which could be formulated to address her dishonesty to the GDC in respect of her registration. The Committee next considered whether to suspend Mrs McIlveney's registration. Suspension could mark the seriousness of her misconduct and would therefore serve to uphold and declare proper standards of conduct and behaviour. In assessing the sufficiency of suspension, the Committee considered whether to direct that Mrs McIlveney's name be erased from the DCP register. It concluded on balance that erasure would be disproportionate as the dishonesty was isolated. Several mitigating factors are apparent, including that she has previous good character, she has shown some evidence of remorse and her difficult personal circumstances at the time of the events. There was also some insight in respect of the unregistered practice. Whilst there was a potential risk of harm to

patients through her unregistered practice, there was no evidence of actual harm to patients. Accordingly, the Committee directs that Mrs McIlveney's registration be suspended for a period of 12 months with a review. This period is appropriate to mark the seriousness of Mrs McIlveney's misconduct and will allow her sufficient time to reflect on the decision the Committee has made, as well as complete any professional development that would enable her to return to practice. Any Committee reviewing this case may be assisted by a reflective piece from Mrs McIlveney demonstrating insight and understanding of the seriousness of her misconduct.

The Committee now invites submissions on the question of an immediate order.”

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“The Committee is satisfied that it is necessary for the protection of the public and is otherwise in the public interest to order the immediate suspension of Mrs McIlveney's registration under section 36(U) of the Dentists Act 1984. In reaching its decision, the Committee balanced the public interest with Mrs McIlveney's interests. It would be inconsistent with the decision the Committee has made not to make an immediate order. Mrs McIlveney's dishonesty was serious and there remains a risk of repetition.

The effect of the foregoing determination and this order is that Mrs McIlveney's registration shall be suspended immediately. Unless she exercises her right of appeal the substantive 12 month period of suspension will commence 28 days from when notification of this decision is served on her.

Should she exercise her right of appeal, this immediate order will remain in force pending the disposal of the appeal proceedings.

That concludes the case for today.”

At a review hearing on 1 February 2019, the Chairman announced the determination as follows:

**“Service and Proceeding in absence**

This is the first review hearing of Mrs McIlveney's case before the Professional Conduct Committee (PCC). The hearing is being held pursuant to section 27C of the *Dentists Act 1984 (as amended)* (the Act). Mrs McIlveney was neither present nor represented.

The Committee first considered whether notice of the hearing had been served on Mrs McIlveney in accordance with the Rules. It was provided with a copy of the Notification of Hearing letter, dated 18 December 2018. A copy of the letter was also sent to her by email. The Committee had sight of a download receipt indicating that the Notification of Hearing had been downloaded.

The Committee was satisfied that the letter contained proper notification of today's hearing, including its date, time and location, as well as notification that the Committee may proceed with the hearing in the absence of Mrs McIlveney. The Committee was satisfied that notice of the hearing had been served on Mrs McIlveney in accordance with the Rules.

The Committee then went on to consider whether to proceed in the absence of Mrs McIlveney and on the papers. It has considered the GDC's written submissions dated 1 February 2019 which invites the Committee to do so. The Committee notes Mrs McIlveney's

statement in her email dated 22 December 2018 that *“Thank you for your email. I have decided that i no longer wish to be registered with the GDC as i will not be pursuing a career in Dental Nursing.”*

There is nothing before the Committee today to suggest that Mrs McIlveney might attend the hearing on a future occasion. In these circumstances, the Committee concluded that Mrs McIlveney has voluntarily absented herself from today’s hearing. In addition, the Committee considers that there is a clear public interest in reviewing the order today, given its imminent expiry. 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. The GDC reminds the Committee that the current suspension order needs to be reviewed before its expiry on 15 February 2019.

### **Background**

This is the first review of a suspension order that was first imposed on Mrs McIlveney’s registration for a period of 12 months by the PCC in January 2018. Mrs McIlveney did not attend that hearing. At that hearing the PCC found Mrs McIlveney had failed on twenty two occasions between 30 September 2015 and 1 June 2016 inclusive, Mrs McIlveney carried out the duties of a dental nurse whilst employed as a receptionist at the practice. She claims she did so at the request of the principal dentist when the practice was short staffed and did not receive any additional remuneration for this.

The duties in question fell within the Scope of Practice of a dental nurse and Mrs McIlveney therefore needed GDC registration to carry those duties out. However, she was not registered with the GDC during that period as her registration had lapsed in August 2012 and her name was not restored to the dental care professionals (DCP) register until 16 June 2016.

Mrs McIlveney claims to have expressed concern to the principal dentist about undertaking the duties of a dental nurse without GDC registration and that she was assured by him that she was allowed to do so under GDC standards, as she was an experienced and competent dental nurse who would only be covering on an ad hoc basis in response to unforeseen circumstances. She claims the principal dentist subsequently realised that he had misinterpreted the GDC standards.

When applying for restoration on around 8 June 2016, Mrs McIlveney ticked the box marked “No” on the application form in response to the question *“Have you been working as a dental care professional in the UK during the time that you were not registered with the GDC?”*. That statement was misleading and dishonest, as Mrs McIlveney had been working as a dental care professional on the twenty two occasions between 30 September 2015 and 1 June 2016 inclusive. The Committee found that Mrs McIlveney knew that she would be misleading the GDC by ticking “No” and that in providing that information to the GDC her conduct was therefore dishonest.

The PCC considered Mrs McIlveney’s misconduct and determined the following:

*The Committee considered Mrs McIlveney’s action in undertaking the duties of a dental nurse without GDC registration. She stated she was acting at the request of the principal dentist and she stated she was under an assurance from him that what she was doing was in accordance with GDC standards and guidance. However, the Committee noted that this happened on twenty two separate occasions and did not conform to the*

*standards and guidance. The Committee concluded that due to the repeated nature of this behaviour the threshold for misconduct was met in respect of the unregistered practice.*

Having found there was misconduct the PCC considered whether Mrs McIlveney's fitness to practise was impaired and determined the following:

*Having regard to all the circumstances, the Committee determined that Mrs McIlveney's fitness to practise as a dental nurse is currently impaired by reason of her misconduct in respect of both her dishonesty and her unregistered practice. Whilst the Committee was satisfied that there was no real risk of repetition in respect of the unregistered practice, Mrs McIlveney dishonestly provided false and misleading information to the GDC about this. Public confidence in the profession would therefore be seriously undermined if no finding of impairment were made in respect of the unregistered practice.*

Having found Mrs McIlveney's fitness to practise impaired the PCC considered the matter of sanction and determined the following:

*The Committee next considered whether to suspend Mrs McIlveney's registration. Suspension could mark the seriousness of her misconduct and would therefore serve to uphold and declare proper standards of conduct and behaviour. In assessing the sufficiency of suspension, the Committee considered whether to direct that Mrs McIlveney's name be erased from the DCP register. It concluded on balance that erasure would be disproportionate as the dishonesty was isolated. Several mitigating factors are apparent, including that she has previous good character, she has shown some evidence of remorse and her difficult personal circumstances at the time of the events. There was also some insight in respect of the unregistered practice. Whilst there was a potential risk of harm to patients through her unregistered practice, there was no evidence of actual harm to patients.*

### **Decision of review**

The Committee has considered whether Mrs McIlveney's fitness to practise remains impaired. In doing so, the Committee has exercised its independent judgement. Throughout its deliberations, it has borne in mind that its primary duty is to address 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.

The Committee was of the view that the misconduct identified was remediable, but there was no evidence that Mrs McIlveney had taken any steps to address the identified misconduct. Mrs McIlveney has not fully engaged with her regulatory body. The Committee has seen an email sent by the Registrant to the GDC on 22 December 2018 where she states "*Thank you for your email. I have decided that i no longer wish to be registered with the GDC as i will not be pursuing a career in Dental Nursing.*"

The Committee therefore considers that Mrs McIlveney does not wish to engage in the process any longer and noted that she has failed to provide any evidence of insight or remediation. The Committee is therefore satisfied that Mrs McIlveney continues to present a risk to patients and her fitness to practise remains impaired. The Committee also considers that a finding of impairment is also required for wider public interest reasons, namely, to declare and uphold proper professional standards of conduct and behaviour and to maintain public trust and confidence in the profession.

### **Sanction**

The Committee then considered what, if any, sanction to impose in this case.

The Committee noted its powers under section 27C(1) the Dentists Act 1984 (the Act). The Committee had the power to extend the current suspension order for a maximum period of 12 months. Alternatively, it could revoke the suspension order or replace the order with a conditions of practice order for up to 3 years.

The Committee was aware that it should have regard to the principle of proportionality, balancing the public interest against Mrs Mcllveney's own interests. The public interest includes the protection of the public, the maintenance of public confidence in the profession, and declaring and upholding standards of conduct and performance within the profession.

The Committee first considered whether it would be appropriate to allow the current order to lapse at its expiry on 15 February 2019 or to revoke it with immediate effect. The Committee considered that given all of the information before it, and for all the reasons outlined above, it would not be appropriate to revoke the current order or to allow it to lapse, as this would not protect the public nor would it be in the public interest.

The Committee next considered whether a period of conditional registration would be appropriate in this case. The Committee was mindful that any conditions imposed must be proportionate, measurable and workable. The Committee was aware that in order for conditions to be appropriate and workable there would need to be some measure of positive engagement from Mrs Mcllveney, which is noticeably absent in this case. Furthermore, Mrs Mcllveney has also stated that she has no intention to practise in future. Given the above, the Committee concluded that replacing the suspension order with a conditions of practice order would not be workable or appropriate at this stage.

The Committee concluded that in all the circumstances of this case a further period of suspension on Mrs Mcllveney's registration would protect the public, uphold the public interest and give Mrs Mcllveney a further opportunity to address the identified deficiencies and shortcomings in her practice and re-engage in the GDC process. The Committee concluded that for these reasons the appropriate order is that of a 12 month suspension, with a review.

The Committee therefore directs that Mrs Mcllveney's registration be suspended for a further period of 12 months pursuant to Section 27C(1)(b) of the Act. Section 33(3) of the Act comes into operation to cover any period between the expiry of the current suspension and the date when the direction ordered by this Committee comes into force.

The reviewing Committee would be assisted by evidence from Mrs Mcllveney of:

- Her attendance at the next review hearing;
- Relevant CPD she has achieved or intends to undertake;
- Reflective account demonstrating insight and learnings in relation to the identified failings.

That concludes this hearing."

At a review hearing on 29 January 2020 the Chairman announced the determination as follows:

“Neither party was present at today’s hearing. The GDC invited the Committee to perform a statutory review of the order of suspension of Mrs Mcllveney’s registration on the basis of the papers before it. The Committee was invited to proceed on the papers, in the absence of the parties, in accordance with Rule 29 of the General Dental Council (Fitness to Practise) Rules Order of Council 2006 (‘the Rules’).

**Decision on service of notification of hearing**

Following advice from the Legal Adviser, the Committee considered service of the Notice of Hearing in accordance with Rules 28 and 65. It had before it a copy of the notification of hearing letter dated 4 December 2019 which was sent to the Registrant’s registered address by special delivery and email. It noted that the Notice of Hearing contained all the requirements for notice to be valid as set out in Rule 28. The Committee also had before it a copy of a Royal Mail track and trace document which showed that the Notice of Hearing letter was delivered on 5 December 2019 and signed for in the printed name “MCILVENEY”. The Notice of Hearing letter was also sent to Mrs Mcllveney via email on 4 December 2019. The Committee was satisfied that the Notice of Hearing had been served in accordance with the Rules.

**Decision on proceeding in the Registrant’s absence**

The Committee then considered whether to proceed to review this case in the absence of the parties and on the basis of the papers only. The Committee bore in mind that its discretion to proceed with a hearing in the absence of a respondent should be exercised with the utmost care and caution. In making its decision on whether to proceed in Mrs Mcllveney’s absence the Committee took account of the principles set out in *GMC v Adeogba & Visvardis [2016] EWCA Civ 162*.

The Committee noted that the GDC has sent multiple items of correspondence to Mrs Mcllveney regarding this hearing and no response was received. It noted that the last correspondence to the GDC from Mrs Mcllveney is an email dated 22 December 2018 in which she said in relation to a previous hearing:

“I have decided that I no longer wish to be registered with the GDC as I will not be pursuing a career in Dental Nursing. ...Therefore I will not attend any hearings nor do I wish it moved...”

The Council has not heard from Mrs Mcllveney since December 2018. The Committee considers that the Council has made more than adequate attempts to notify Mrs Mcllveney of this hearing. She has not made an application for an adjournment of the hearing. The Committee is of the view that given the absence of a response from Mrs Mcllveney in relation to this hearing and the contents of her last correspondence to the GDC, an adjournment would not serve any useful purpose and it would be highly unlikely that she would attend at a future date. Taking into account fairness to all parties including the GDC and the public interest in the expeditious disposal of the case, bearing in mind that the current order is due for review no later than 15 February 2020, the Committee determined that it is in the interests of justice and it is appropriate to proceed with the review in Mrs Mcllveney’s absence under Rule 54.

This is a resumed hearing pursuant to section 36Q of the Dentists Act 1984 (as amended) ('the Act') to review the order of suspension for 12 months which was imposed on Mrs Mcllveney's registration by the Professional Conduct Committee (PCC) on 16 January 2018.

### **Initial Hearing**

Mrs Mcllveney qualified as a dental nurse in 1988 and registered with the GDC on 31 July 2007, when GDC registration for dental nurses was introduced. Her name was removed from the dental care professionals (DCP) register on 6 August 2012, due to non-payment of the Annual Retention Fee. On 4 December 2015 she submitted an application to be restored to the DCP register. The application was rejected. Among other things, Mrs Mcllveney had failed to provide sufficient Continuing Professional Development (CPD) hours with her application. The application for restoration was resubmitted and this was received by the GDC on 9 June 2016. In that form Mrs Mcllveney ticked the box marked "No" in response to the question "*Have you been working as a dental care professional in the UK during the time that you were not registered with the GDC?*" Mrs Mcllveney's application was successful and she was restored to the DCP register with effect from 16 June 2016. Accordingly, between 6 August 2012 and 15 June 2016 Mrs Mcllveney was not registered with the GDC.

On twenty-two dates between 30 September 2015 and 1 June 2016 inclusive the PCC found proved that Mrs Mcllveney carried out the duties of a dental nurse whilst employed as a receptionist at a dental practice. She claimed that she did so at the request of the principal dentist when the practice was short staffed and did not receive any additional remuneration. The duties in question fell within the Scope of Practice of a dental nurse and Mrs Mcllveney therefore needed GDC registration to carry out those duties. However, she was not registered with the GDC during that period as her registration had lapsed in August 2012 and her name was not restored to the DCP register until 16 June 2016. Mrs Mcllveney claimed to have expressed concern to the principal dentist about undertaking the duties of a dental nurse without GDC registration and that she was assured by him that she was allowed to do so under GDC standards, as she was an experienced and competent dental nurse who would only be covering on an ad hoc basis in response to unforeseen circumstances. She claimed that the principal dentist subsequently realised that he had misinterpreted the GDC standards.

When applying for restoration on around 8 June 2016, Mrs Mcllveney ticked the box marked "No" on the application form in response to the question "*Have you been working as a dental care professional in the UK during the time that you were not registered with the GDC?*". The PCC found proved that the statement was misleading and dishonest, as Mrs Mcllveney had been working as a dental care professional on the twenty-two dates between 30 September 2015 and 1 June 2016 inclusive.

The Committee found that Mrs Mcllveney knew that she would be misleading the GDC by ticking "No" and that in providing that information to the GDC her conduct was dishonest. It found misconduct and determined that Mrs Mcllveney's fitness to practise was impaired by reason of her misconduct. Mrs Mcllveney's registration was suspended for a period of a 12 months with a review.

### **First Review**

On 1 February 2019 the PCC reviewed the case. Mrs Mcllveney was neither present nor represented at that hearing. The PCC noted that Mrs Mcllveney had provided no evidence of insight or remediation and she had not engaged fully with her regulatory body. The PCC

concluded that there remained a continued risk to patients. It determined that Mrs Mcllveney's fitness to practise remained impaired by reason of her misconduct. Mrs Mcllveney's registration was suspended for a further period of 12 months with a review.

### **Second Review**

This is the second review of this case. Today, this Committee has carried out a comprehensive review taking account of all the evidence presented. It has also taken account of the written submissions made on behalf of the GDC. The Committee has accepted the advice of the Legal Adviser.

In considering whether Mrs Mcllveney's fitness to practise is currently impaired, the Committee has borne in mind that this is a matter for its own independent judgement. It has also had regard to its duty to protect the public, declare and uphold proper standards of conduct and competence and maintain public confidence in the profession.

The Committee notes from the GDC's submissions that "the Council has not received any evidence or correspondence from the Registrant since her email of 22 December 2018. The Registrant has not engaged with the Council and has not provided any evidence of insight, reflection or remediation of the failings identified by the previous committee." The Council submitted that "there is no evidence to show any material change in position since the last hearing". It was submitted that, "in the absence of any evidence showing reflection insight or remediation, the Committee should consider that the Registrant's fitness to practise remains impaired by reason of misconduct."

The Committee had before it a copy of Mrs Mcllveney's reflective document received by the GDC on 4 December 2018. It noted that this document may not have been before the previous PCC in February 2019. In her written reflections Mrs Mcllveney stated:

"looking back now I would never do the same thing again. I deeply regret helping out in surgery and I'm extremely relieved that nothing untoward happened. I would never intentionally do anything to jeopardise patients or put patients at risk...I have learned a very harsh but valuable lesson...I never intentionally meant to break any rules or compromise anyone...In future if I'm in any doubt what so ever regarding situations I'm put in or not sure of the rules I will certainly be looking up the required information on the GDC website or seek advice from the MDDUS."

The Committee noted that the reflective document pre-dated the email from Mrs Mcllveney to the GDC dated 22 December 2018 in which said "I have decided that I no longer wish to be registered with the GDC as I will not be pursuing a career in Dental Nursing. ...Therefore I will not attend any hearings nor do I wish it moved..."

The Committee notes that in practical terms there is a persuasive burden on Mrs Mcllveney to demonstrate remediation and insight into her failings. It notes that there is no current information from Mrs Mcllveney to suggest that she has done anything to remedy her failings. Although it has evidence of her reflection on the matters found proved, she has subsequently ceased engaging with the Council and with these proceedings. In the absence of any evidence of remediation and current insight into her dishonesty, the Committee has concluded that the risk of repetition remains. It has determined that Mrs Mcllveney's fitness to practise remains currently impaired by reason of her misconduct.

**Sanction**

The Committee next considered what sanction to impose on Mrs McIlveney's registration under Section 36Q of the Act. It reminded itself that the purpose of any sanction is not to be punitive although it may have that effect. The Committee bore in mind the principle of proportionality.

The Committee reminded itself of the options open to it. It has the power under section 36Q of the Act to give a direction that:

- a) "that the suspension shall be terminated;
- b) that the current period of suspension shall be extended for such further period, specified in the direction and not exceeding twelve months, beginning with the date on which it would otherwise expire;
- c) professionals register under that title shall be conditional on his compliance, during such period not exceeding three years as may be specified in the direction, with such conditions specified in the direction as the Practice Committee think fit to impose for the protection of the public or in his interests; or
- d) that the person's registration in the dental care professionals register under that title shall be suspended indefinitely, if
  - (i) the period of suspension will, on the date on which the direction takes effect, have lasted for at least two years, and
  - (ii) the direction is made not more than two months before the date on which the period of suspension would otherwise expire."

These options were notified to Mrs McIlveney in the Notice of Hearing letter.

The Committee first considered whether to terminate the current order of suspension or allow it to lapse on its expiry. It is of the view that this course of action would be inappropriate given the absence of any evidence of remediation and the lack of engagement in recent times.

The Committee then considered whether to extend the current period of suspension for a further period. It is of the view that nothing would be gained by a further extension of the current suspension order given that she has not undertaken any remedial steps during the period of that order.

The Committee then considered whether to replace the order of suspension with an order of conditions. It is of the view that conditions would be inappropriate due to Mrs McIlveney's lack of engagement and the absence of any evidence to suggest that should conditions be imposed, she would seek to comply with them or engage with the Council.

The Committee has determined that in these circumstances it is appropriate and proportionate to suspend Mrs McIlveney's registration indefinitely. The Committee is mindful that an indefinite suspension would mean that Mrs McIlveney cannot request a review until at least two years have elapsed since the date on which the direction took effect. However, the Committee's view is that it is not in the public interest for this process to be iterated continuously in the absence of any engagement from Mrs McIlveney.

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The Committee therefore directs that Mrs McIlveney's registration be suspended indefinitely pursuant to section 36Q(1)(d) of the Act. Section 33(3) of the Act comes into operation to cover any period between the expiry of the current suspension and the date when the direction ordered by this Committee comes into force.

That concludes this determination.”