

**HEARING HEARD IN PUBLIC**

**COOPER, Rosemarie Emma**

**Registration No: 162564**

**PROFESSIONAL CONDUCT COMMITTEE**

**August 2017**

**Outcome: Erased with immediate suspension**

Rosemarie Emma COOPER, a dental nurse, Verified competency in Dental Nursing was summoned to appear before the Professional Conduct Committee on 30 August 2017 for an inquiry into the following charge:

**Charge (as amended 30 August 2017)**

“That being a Registered Dental Care Professional:

1. On 2 October 2015, you were convicted at Tameside Magistrates Court for assaulting a person by beating her contrary to Section 39 of the Criminal Justice Act 1988.
2. You failed to inform the General Dental Council that on 2 October 2015, you were convicted of the offence outlined in charge 1 above.
3. Your conduct as set out in charge 2 was misleading, in that you failed to disclose to the General Dental Council that you were convicted of an offence.
4. Your conduct as set out in charge 2 was dishonest, in that you failed to disclose to the General Dental Council that you were convicted of an offence and knew or ought to have known that you were required to disclose.
5. For some or all of the period between 22 September 2016 and 2 December 2016 you failed to adequately co-operate with the investigation into your fitness to practise.

AND, by reason of the matters stated, your fitness to practise as a Dental Care Professional is impaired by reason of your conviction and/or misconduct.”

On 30 August 2017 the Chairman made the following statement regarding the finding of facts:

“Miss Cooper is neither present nor represented. Mr Middleton, the General Dental Council (GDC) Case Presenter, made an application for the hearing to proceed notwithstanding her absence.

*Service*

A notification of hearing dated 28 July 2017 was sent to Miss Cooper at her registered address by Special Delivery. Royal Mail Track and Trace records that the item was delivered on 29 July 2017, signed for under the name “COOPER”. The notification set out the time, date and venue of this hearing in accordance with Rule 13 of the General Dental Council (Fitness to Practise) Rules 2006 and had been duly served on Miss Cooper in accordance with Rule 65.

A copy of the notification of hearing had also been sent by email to Miss Cooper on 28 July 2017 using a secure file sharing service.

*Absence*

The Committee's discretion to proceed in the absence of Miss Cooper must be exercised with the utmost care and caution.

Miss Cooper was asked in the notification of hearing to confirm by 3 August 2017 whether she would be attending the hearing. There is no record before the Committee of any response to that request or of any other engagement or acknowledgement from Miss Cooper. On 18 and 29 August 2017 the GDC prosecution team attempted to contact Miss Cooper via telephone regarding this hearing. The telephone attendance notes record that they used her mobile and home contact numbers but were unable to establish contact.

The Committee was satisfied that Miss Cooper is aware of this hearing and its purpose, the GDC having made all reasonable efforts to notify her of the same. She is aware from the notification of hearing that she has the right to attend (whether in person, via video link or over the telephone) and that the Committee has the power to proceed in her absence. There is no evidence before the Committee of any engagement after September 2016 from Miss Cooper in relation to these regulatory proceedings. There has been no application for an adjournment or postponement of the hearing and there is nothing to suggest that one would make Miss Cooper's attendance more likely in the future. In all the circumstances, the Committee was satisfied that Miss Cooper had voluntarily absented herself from this hearing and that it would be fair and in the interests of justice to proceed to hear the case against her, notwithstanding her absence.

*Preliminary application*

Mr Middleton applied under Rule 18 for the charges contained in the notification of hearing to be amended. The Committee acceded to the application, as the proposed amendments would result in the scope of the allegations against Miss Cooper being narrowed and could, therefore, be made without causing prejudice to her.

*The factual inquiry*

It is alleged that Miss Cooper was convicted of a criminal offence and failed in a duty to disclose the conviction to the GDC, such that her conduct was misleading and dishonest. It is also alleged that Miss Cooper failed to adequately cooperate with the ensuing fitness to practise investigation. The Committee allowed the witness statements of two GDC employees, Mr DW and Mr RP, to be admitted without those witnesses being called to give oral evidence. There were no other witnesses as part of the factual inquiry.

The Committee had careful regard to all the evidence put before it. The Committee heard the submissions made by Mr Middleton on the allegations and it accepted the advice of the Legal Adviser.

The burden is on the GDC to prove each charge on the balance of probabilities and the Committee drew no adverse inference from the fact of Miss Cooper's absence. I will now announce the Committee's findings in relation to each head of charge (as amended):

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| 1. | <i>On 2 October 2015, you were convicted at Tameside Magistrates Court for assaulting a person by beating her contrary to Section 39 of the Criminal Justice</i> |
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	<p><i>Act 1988.</i></p> <p>Proved.</p> <p>The memorandum of conviction certifies that Miss Cooper was convicted on her guilty plea and was sentenced to 80 hours of unpaid community work. She was also ordered to pay £100.00 in compensation and was made subject to a Community Order. The police report dated 16 September 2015 records that on 8 June 2015 she smacked or punched her victim in the face, which resulted in bruising and a cut to the victim's upper lip. The report records that she admitted this to the police and expressed remorse for her violence.</p> <p>In accordance with Rule 57(5) the Committee accepted the memorandum of conviction as conclusive proof of the conviction.</p>
2.	<p><i>You failed to inform the General Dental Council that on 2 October 2015, you were convicted of the offence outlined in charge 1 above.</i></p> <p>Proved.</p> <p>The Committee accepted the evidence of Mr DW, the GDC's registration casework manager; and Mr RP, a caseworker at the GDC.</p> <p>Mr DW reviewed the internal database of the GDC and could find no record of any contact from Miss Cooper notifying the GDC of her conviction or the fact that she had been charged with an offence.</p> <p>Further, Mr RP exhibited in his witness statement an attendance note prepared by one of his colleagues who had spoken with Miss Cooper over the telephone on 29 September 2016. The attendance note records that Miss Cooper explained that she did not disclose her conviction to the GDC because she "<i>has been in and out of work and has ongoing court hearings [relating to another matter]</i>". The GDC became aware of Miss Cooper's conviction in June 2016 from an anonymous complainant.</p>
3.	<p><i>Your conduct as set out in charge 2 was misleading, in that you failed to disclose to the General Dental Council that you were convicted of an offence.</i></p> <p>Proved.</p> <p>The GDC's <i>Standards for the Dental Team</i> (September 2013) states, at 9.3.1: You must inform the GDC immediately if you are subject to any criminal proceedings anywhere in the world. See our guidance on reporting criminal proceedings for more information.</p> <p>The guidance referred to under 9.3.1 is headed <i>Guidance on reporting criminal proceedings</i> and makes clear to dental professionals that: "<i>You must inform the GDC if anywhere in the world you... are found guilty of a criminal offence...</i>" The Committee was satisfied that Miss Cooper was therefore required to disclose her conviction to her regulator. Her failure to have done so was objectively misleading. This is because in the absence of the disclosure, the GDC would have assumed that Miss Cooper has not been convicted of an offence.</p>
4.	<p><i>Your conduct as set out in charge 2 was dishonest, in that you failed to disclose to the General Dental Council that you were convicted of an offence and knew or ought to have known that you were required to disclose.</i></p>

	<p>Not proved.</p> <p>The Committee was satisfied that Miss Cooper clearly “<i>ought to have known</i>” that she was required to disclose her conviction. Her failure to have done so was culpable, as she was required to make herself familiar with the standards associated with her professional registration and to comply with those standards. However, for Miss Cooper to have acted dishonestly it was necessary to establish both that she knew that she was required to disclose her conviction and that she had deliberately attempted to mislead the GDC by not complying with that requirement.</p> <p>By letter dated 14 May 2013 the Investigating Committee (IC) issued Miss Cooper with an unpublished warning regarding a conviction in 2003 and a caution in 2000. These matters came to light following a CRB check by Miss Cooper’s employers, who advised her to notify the GDC of her conviction and caution. Miss Cooper did so by letter dated 28 November 2012. The IC noted in its warning letter that at the time Miss Cooper registered in 2008 she was not under a duty to disclose the conviction and caution to the GDC.</p> <p>It appears from the evidence that Miss Cooper was not practising as a dental nurse at the time of her 2015 conviction. She was undertaking beauty and bar work when not unemployed. In the Committee’s judgment, based on the limited evidence before it, it is conceivable that Miss Cooper was not conscious of her professional obligation to disclose her conviction to the GDC, as she was not working as a dental professional at the time.</p> <p>The Committee is of the view that cogent evidence is required to prove this serious allegation of dishonesty. There is some evidence to suggest that Miss Cooper might have acted dishonestly, by deliberately omitting to notify the GDC of her conviction in circumstances where she knew she was under a professional obligation to do so. However, it is equally possible that Miss Cooper was not fully conscious of her professional obligations at the relevant time, as she was not working as a dental professional at the time and did not consciously regard herself as subject to the corresponding professional obligations.</p> <p>The Committee does not consider that the limited evidence available is sufficient to justify an inference that Miss Cooper was acting dishonestly when she failed to disclose her conviction to the GDC.</p>
5	<p><i>For some or all of the period between 22 September 2016 and 2 December 2016 you failed to adequately co-operate with the investigation into your fitness to practise.</i></p> <p>Proved.</p> <p>Miss Cooper failed to respond to numerous attempts by the GDC to obtain information regarding her employer and her indemnity status. There has been no engagement from Miss Cooper regarding the fitness to practise investigation, except for the telephone discussion in September 2016.</p>

We move to Stage Two.”

On 30 August 2017 the Chairman announced the determination as follows:

“On 2 October 2015 Miss Cooper was convicted of assaulting a person by beating her contrary to Section 39 of the Criminal Justice Act 1988. The offence occurred outside a school at around 15:15 on 8 June 2015. Miss Cooper punched or smacked her victim in the face whilst holding a mobile phone in the hand she used to carry out the assault. The victim suffered bruising and a cut to the upper lip. Miss Cooper admitted the offence to the police and expressed remorse for her violence.

Miss Cooper did not inform the GDC of her conviction. However, the Committee concluded that Miss Cooper was negligent rather than dishonest: she was not working as a dental professional at the time of her conviction and had failed in those circumstances to consciously recognise her professional obligation to notify her regulator of her conviction. When the GDC became aware of the conviction from another source, Miss Cooper failed to adequately cooperate with the fitness to practise investigation. She did not provide information regarding her employer and indemnity status, despite repeated requests from the GDC.

The Committee heard the submissions made on behalf of the General Dental Council (GDC) by Mr Middleton.

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).

*Fitness to practise history*

On 10 July 2000 Miss Cooper was cautioned by Greater Manchester Police for assault occasioning actual bodily harm. On 19 February 2003 she was convicted at Manchester Crown Court for assault occasioning actual bodily harm. The Committee was informed that Miss Cooper’s offending included hitting a person over the head with a bottle. The Investigating Committee (IC) investigated the offences in May 2013 and stated:

...Whilst the conduct occurred outside the context of the Registrant’s professional practice it involved offences relating to violence. Offences relating to violence are unacceptable and can never be condoned. They are by their very nature serious enough to consider that it may be necessary to remove a practitioner’s registration. The Committee considered the GDC’s guidance of the need to at all times uphold the public trust in the profession. The Registrant at the time of committing the offence has demonstrated potentially both a lack of judgement and insight as well as risking harm both to members of the public and the wider public interest...

The IC concluded that there was a low risk of repetition and issued Miss Cooper with an unpublished warning in the following terms:

The Committee formally warns the Registrant that this type of behaviour should not be repeated and that any further criminal convictions especially those related to assault or other forms of violence, will be viewed extremely seriously. They will likely call into question the Registrant’s insight into her fitness to practise and into the consequences that her actions can have on the profession and may also bring her continued fitness to practise into question. The Registrant is reminded that this warning will form part of her fitness to practise history.

In looking at future conduct the Committee would specifically warn the Registrant that:

- the commission of a criminal offence, especially where there is direct harm to members of the public, can affect adversely the wider public interest; and
- Registrants are required by the General Dental Council to maintain appropriate standards of behaviour in all walks of life. This requirement is set out in the General Dental Council's standards guidance. The Guidance identifies that this requirement enables patients have confidence in the registrant and the public have confidence in the dental team. [sic]

#### *Misconduct*

Misconduct is a serious falling short of the standards reasonably expected of a dental professional. In assessing whether the facts found proved under charges 2,3 and 5 amount to misconduct, the Committee had regard to the following paragraphs from *Standards for the Dental Team*.

9.3.1 You must inform the GDC immediately if you are subject to any criminal proceedings anywhere in the world. See our guidance on reporting criminal proceedings for more information.

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

The guidance referred to under 9.3.1 is headed *Guidance on reporting criminal proceedings* and makes clear to dental professionals that: "You must inform the GDC if anywhere in the world you... are found guilty of a criminal offence..."

Miss Cooper was therefore under a clear professional duty to immediately notify her regulator of her conviction. She failed to take that duty seriously and caused the GDC to be misled. In the absence of any declaration from Miss Cooper the GDC was entitled to assume that she had no convictions. Miss Cooper also failed in a clear duty to adequately comply with the GDC's fitness to practise investigation.

There have been substantial breaches of the relevant standards and the Committee finds that the facts found proved amount to misconduct.

#### *Impairment*

The Committee next considered whether Miss Cooper's fitness to practise is currently impaired by reason of her (i) misconduct and (ii) conviction. In so doing, the Committee considered whether Miss Cooper's misconduct and violent offending is remediable, whether it had been remedied and the risk of repetition. The Committee also had careful regard to the wider public interest, which includes the need to uphold and declare proper standards of conduct and behaviour.

Miss Cooper's misconduct and violent offending are attitudinal in nature and are therefore difficult to remedy. However, the Committee considered that Miss Cooper would be capable of remedying these matters through substantial reflection. In the police interview for her 2015 conviction she indicated that she had signed up to an anger management course. She also expressed remorse for her violence. Unfortunately, due to her lack of engagement in these regulatory proceedings, there is no other evidence of insight or reflection before the Committee and there is no evidence of her attendance and completion of anger management or other relevant courses.

There is no evidence that any of the matters in this case have been remedied. In these circumstances, there remains a real risk of repetition. There is a real risk that Miss Cooper will continue to disregard her professional obligations to the GDC and a real risk that she will engage in violent behaviour again. The Committee noted with concern that the 2015 conviction was Miss Cooper's third recorded episode of violence.

Moreover, having regard to the IC warning from 2013, the violent nature of Miss Cooper's offending, her failure to have notified the GDC of her conviction and her failure to have adequately engaged in the ensuing fitness to practise investigation, the Committee determined that public confidence in the profession would be seriously undermined if a finding of impairment were not made.

Accordingly, the Committee finds that Miss Cooper's fitness to practise is currently impaired by reason of both her misconduct and her conviction.

#### *Sanction*

The Committee next considered what sanction, if any, to impose on Miss Cooper'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. It applied the principle of proportionality, balancing Miss Cooper's interests with the public interest.

To conclude this case with no further action or a reprimand would be wholly inappropriate. There is a need to protect both the public and the reputation of the profession. Miss Cooper's misconduct and violent offending are far too serious for a reprimand.

The Committee next concluded that conditions of practice could not be formulated to be workable, measurable or proportionate. Miss Cooper has not engaged in these proceedings or cooperated with the fitness to practise investigation. The Committee cannot therefore be satisfied that she would comply with any conditions on her registration. In any event, conditions could not be formulated to adequately address the concerns identified in this case, as those concerns relate to non-compliance with the regulatory process of the GDC and violent behaviour.

The Committee gave very careful consideration to suspending Miss Cooper's registration for a lengthy period. However, the Committee determined that Miss Cooper's violent offending is fundamentally incompatible with her remaining as a registered dental professional. Her fitness to practise history includes serious acts of violence which resulted in a conviction and a caution. The most recent offence, which resulted in the conviction which is the subject of charge 1, involved her striking her victim with a mobile phone in her hand outside a school. Inevitably, the victim suffered significant distress.

Miss Cooper has not attended the hearing to demonstrate to the Committee and the profession any insight, reflection or remorse. She has not engaged in the regulatory process and had failed to take her professional obligations seriously. Public confidence in the profession would be seriously undermined by Miss Cooper remaining a registered dental professional.

Accordingly, the Committee directs that Miss Cooper be erased from the DCP register under the title of dental nurse.

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

The Committee is satisfied that it is in the public interest to order that Miss Cooper's registration be suspended forthwith under s 36U (1) of the Dentists Act 1984. In reaching its decision the Committee balanced the public interest with her interests. It would be inconsistent with the foregoing determination not to make an immediate order. Such an order is necessary to uphold public confidence in the profession and this regulatory process.

The effect of this order is that Miss Cooper's registration will be suspended forthwith. Unless she exercises her right of appeal, her name will be erased from the DCP register 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 resolution of the appeal proceedings.

That concludes the case."