

HEARING HEARD IN PUBLIC

DOWNIE, Ashley

Registration No: 131551

PROFESSIONAL CONDUCT COMMITTEE

MAY 2016 – JUNE 2018*

Most recent outcome: Suspended indefinitely

* See page 11 for the latest determination

Ashley DOWNIE, a Dental Nurse, Qual- SVQ in Oral Health Care (level 3) SQA 2007, was summoned to appear before the Professional Conduct Committee on 23 May 2016 for an inquiry into the following charge:

Charge

“That being a registered dental nurse:

1. On or around 26 November 2014 you wrote "Thanks for texting about whitening, I do the same system as the dentist but I only charge £150 (they charge at least £300)" in a text message to Patient A.
2. On or around 27 November 2014 you took impressions of Patient A's mouth/teeth without a prescription from a dentist or a Clinical Dental Technician (CDT).
3. Between 27 November 2014 and 4 December 2014 you obtained a bleaching/whitening tray for Patient A without a prescription from a dentist.
4. On or around 4 December 2014 you provided a tooth whitening kit to Patient A.
5. On or around 4 December 2014 you demonstrated and/or provided instructions on the tooth whitening process to Patient A.
6. Your actions in relation to paragraphs 1 and/or 2 and/or 3 and/or 4 and/or 5 were:
 - a) beyond your scope of practice;
 - b) financially motivated.
7. On 29 January 2015 you communicated inappropriately with Patient A during a phone call in that you shouted "don't say I have fucking took your money and left you with faulty goods" or words to that effect.
8. Between 26 November 2014 and 29 January 2015 you failed to have appropriate indemnity and/or insurance in place.

And that your fitness to practise is impaired by reason of your misconduct.”

Ms Downie was not present and was not represented. On 24 May 2016 the Chairman announced the findings of fact to the Counsel for the GDC:

“Miss Scarborough,

You are representing the General Dental Council (GDC) at today’s hearing. Ms Downie is neither present nor represented at today’s hearing.

Service of Notice of Hearing

In Ms Downie’s absence, the Committee first considered whether notice of this hearing had been served in accordance with Rules 13 and 65 of the *General Dental Council (GDC) (Fitness to Practise) Rules Order of Council 2006* (the rules). The Committee considered your submissions and accepted the advice of the Legal Adviser.

The Committee received a copy of the notification of hearing, dated 18 April 2016, which was sent to Ms Downie’s registered home address, by way of Royal Mail Track and Trace. The Committee was satisfied that the letter, sent to the address, contained proper notification of today’s hearing, including its time, date and location, as well as notification that the Committee has the power to proceed with the hearing in Ms Downie’s absence.

The Committee was satisfied that the notice of this hearing was served on Ms Downie in compliance with the rules.

Decision on Proceeding in the absence of Ms Downie

The Committee then went on to consider whether to exercise its discretion under Rule 54 to proceed with the hearing in Ms Downie’s absence. The Committee considered your submissions, on behalf of the GDC, and accepted the advice of the Legal Adviser. The Committee was mindful that proceeding with the hearing in Ms Downie’s absence was a discretion that must be handled with the utmost care and caution.

You submitted that the public interest was in the expeditious hearing of the case and that in addition to fairness to the Registrant, the Committee should also consider fairness to the GDC and to witnesses who, if the matter was postponed, would encounter difficulties in attending in the future.

Further, the Committee had regard to the evidence of the GDC’s attempts to contact Ms Downie by email on the 21 April 2016 and 17 May 2016, in which Counsel had asked whether MMWF Partnership solicitors were still instructed by Ms Downie. GDC also contacted MMFW Partnership by telephone and email to ask whether they are still representing Ms Downie in this matter. The committee also noted an email from Ms Downie’s representatives dated 29 April 2016 where they indicate that they have met with her. It also noted a further conversation dated the 18 May 2016 between the GDC and Ms Downie’s representatives indicating that they had come “off the record” and therefore no longer represented Ms Downie.

The Committee considered that Ms Downie is aware of today’s hearing and that she has not engaged recently with her former representatives nor the GDC. The Committee noted that Ms Downie has not made an application to adjourn this hearing and it was satisfied that there is no reason to believe that an adjournment would result in Ms Downie’s attendance at the hearing on a future date. In these circumstances, the Committee has concluded that Ms Downie has chosen to voluntarily absent herself from this hearing.

The Committee accepted the primary need to be fair to Ms Downie and also accepted the public interest in an expeditious disposal of this hearing. The Committee has determined to proceed in Ms Downie’s absence.

The Evidence

The committee had written evidence and that included a transcript of an email sent by Ms Downie to the GDC on the 1 July 2015 and written statements from Patient A and Witness 1, the GDC employee. It also heard oral evidence, via telephone link, from Patient A.

The Committee found Patient A to be a plausible witness. Under questioning she was calm and gave considered answers, making clear where she could and could not remember details. The Committee considered her recollections and perceptions to be honestly held, and found her evidence very helpful. The Committee found that Patient A was mainly consistent in her oral testimony. However, Patient A did accept when she mixed up the details, and was varying on certain aspects of the testimony.

Findings of Fact

The Committee has taken into account all the evidence presented to it. It considered your submissions on behalf of the GDC and has accepted the advice of the Legal Adviser. In accordance with that advice it has considered each head of charge separately.

The Committee has reminded itself that the burden of proof lies with the GDC and that Ms Downie is not required to disprove any of the charges. Further as the standard of proof is the Civil Standard, the Committee notes that the GDC must satisfy the Committee, on the balance of probabilities, that each individual head and sub-head of charge is proved.

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

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| Charges 1-5 | <ol style="list-style-type: none"> 1. <i>On or around 26 November 2014 you wrote "Thanks for texting about whitening, I do the same system as the dentist but I only charge £150 (they charge at least £300)" in a text message to Patient A.</i> 2. <i>On or around 27 November 2014 you took impressions of Patient A's mouth/teeth without a prescription from a dentist or a Clinical Dental Technician (CDT).</i> 3. <i>Between 27 November 2014 and 4 December 2014 you obtained a bleaching/whitening tray for Patient A without a prescription from a dentist.</i> 4. <i>On or around 4 December 2014 you provided a tooth whitening kit to Patient A.</i> 5. <i>On or around 4 December 2014 you demonstrated and/or provided instructions on the tooth whitening process to Patient A.</i> <p>Found proved</p> <p>The Committee finds the facts alleged at heads of charge 1-5 proved.</p> <p>The Committee heard oral evidence from patient A, saw text evidence</p> |
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| | <p>between Ms Downie and Patient A and read an email to the GDC from Ms Downie dated the 1st July 2015 in which Ms Downie accepted each of the following:</p> <ul style="list-style-type: none"> a) That on or around the 26 November 2014 sent a text to patient A “thanks for texting about whitening, I do the same system as the dentist and I only charge £150 (they charge at least £300)”; b) Ms Downie on or around 27 November 2014 took impressions of Patient A’s teeth without a prescription from either a dentist or a clinical dental technician; c) That Ms Downie between 27 November 2014 and 4 December 2014 obtained bleaching/ whitening tray for patient A and did not have a prescription from a dentist; d) That Ms Downie on or around 4 December provided a teeth whitening kit to Patient A; and, e) That on or around 4 December 2014, Ms Downie demonstrated and or provided instructions on the tooth whitening process to patient A. |
| <p>6.</p> | <p><i>Your actions in relation to paragraphs 1 and/or 2 and/or 3 and/or 4 and/or 5 were:</i></p> <ul style="list-style-type: none"> a) <i>beyond your scope of practice;</i> b) <i>financially motivated.</i> <p>Found proved</p> <p>The Committee finds the facts alleged at head of charge 6(a) proved as a matter of fact.</p> <p>The Committee noted Ms Downie’s email on 1 July 2015 in which she stated “I do accept that I did work outwith the scope of my practice and I understand the need for the GDC to respond to this.”</p> <p>The Committee finds the facts alleged at head of charge 6(b) proved as a matter of fact.</p> <p>Ms Downie stated in her email on 1 July 2015 that “my decision to do it for her was a financial one which I accept is not justifiable.”</p> |
| <p>7.</p> | <p><i>On 29 January 2015 you communicated inappropriately with Patient A during a phone call in that you shouted "don't say I have fucking took your money and left you with faulty goods" or words to that effect.</i></p> <p>Found proved</p> <p>The Committee received both the written statement and heard oral evidence from Patient A regarding the telephone conversation on 29 January 2015. Whilst there was some confusion on her part concerning the ending of the call, she was clear on the behaviour and the language used in the call. It received no direct information about the call from Ms Downie.</p> |

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| | The Committee decided on the balance of probabilities that Ms Downie communicated inappropriately with Patient A by shouting and using inappropriate language when speaking to a patient. |
| 8. | <p><i>Between 26 November 2014 and 29 January 2015 you failed to have appropriate indemnity and/or insurance in place.</i></p> <p>Found proved</p> <p>The Committee finds the facts alleged at head of charge 8 proved as a matter of fact.</p> <p>The Committee received extensive evidence in written form from Ms Downie including her email dated 1 July 2015 in which she confirmed that she didn't have any indemnity insurance during this period.</p> |

We move to Stage Two.”

On 24 May 2016 the Chairman announced the determination as follows:

“Ms Scarborough,

Background

The findings against Ms Downie, most of which she had in fact accepted in an email dated 1 July 2015 to the GDC, relate to her taking impressions and supplying a tooth whitening kit to Patient A in November and December 2014 which was beyond the GDC Scope of Practice for Dental Nurses and at a time when Ms Downie did not have Professional Indemnity Insurance. A further matter that was found proved, that Ms Downie had denied, was speaking inappropriately to Patient A on the 29 January 2015. The Committee heard and accepted the evidence of Patient A and considered all of the documentary evidence before it, including correspondence from Ms Downie.

The Committee has taken into account the submissions made by you on behalf of the General Dental Council (GDC) and has accepted the advice of the Legal Adviser. In its deliberations the Committee has had regard to the GDC's *Guidance for the Practice Committees, including Indicative Sanctions Guidance* (October 2015).

The Committee has exercised its own independent judgment on these matters.

Misconduct

The Committee has considered whether the facts found proved amount to misconduct.

The Committee has had regard to the submissions made by you. You made submission to the Committee regarding the definition of misconduct which is a serious falling short of the standards expected of a dental professional.

The Committee has had regard to the following paragraphs of the “Standards for Dental Professionals” (2013) which it considered that Ms Downie has breached:

- 1.1 Listen to your patients.
- 1.2 Treat every patient with dignity and respect.
- 1.7 Put patients' interests before your own or those of any colleague, business or organisation.

- 1.8 Have appropriate arrangements in place for patients to seek compensation.
- 7.2 Work within your knowledge, skills, professional competence and abilities.
- 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 found that Ms Downie had acted outside of her Scope of Practice in that she had taken impressions, supplied a tooth whitening kit to Patient A and had advised her how to use it. This was without any involvement of a dental professional who was able to properly do this. The Committee found that these actions took place whilst Ms Downie was not working in a dental practice and had no indemnity insurance in place. The reason that Ms Downie agreed to provide the tooth whitening kit was for financial gain for herself. Furthermore, the Committee found when Patient A complained about the ineffectual nature of the tooth whitening kit, Ms Downie became abusive and swore at her over the telephone.

The Committee found that the facts found proved did amount to serious misconduct.

Current Impairment

The Committee next considered whether the misconduct it had found meant that Ms Downie was currently impaired.

You submitted to the Committee that it should take into account the judgment of Cox J. in the case of Grant v NMC [2011] EWHC 927 (Admin) which adopted the reasoning of Dame Janet Smith in her Fifth Shipman report. You submitted that Ms Downie had placed Patient A at risk of harm and that in providing a tooth whitening kit she had undermined the reputation and breached fundamental tenets of the profession. You also submitted that whilst Ms Downie had shown some insight into her failings, she had not acknowledged at all her abusive behaviour towards Patient A.

The Committee has borne in mind that its duty is 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.

The Committee found that in acting beyond the scope of Ms Downie's practice in taking an impression, supplying and assisting the fitting of the tooth whitening kit for financial gain, she had placed Patient A at risk of unwarranted harm. The Committee also found that in acting beyond the scope of her practice for financial gain she had also damaged the reputation of the profession. Placing patients first is a fundamental tenet of the profession which Ms Downie disregarded both when taking an impression and supplying the tooth whitening kit for personal gain which was beyond her Scope of Practice, and also in the abusive way that she spoke to Patient A on the 29 January 2015. The Committee did not consider that Ms Downie had sufficient insight into her misconduct and there was a risk that she would repeat it in the future. The Committee therefore found that Ms Downie is currently impaired.

Sanction

The Committee next considered what sanction, if any, to impose on Ms Downie's registration. It recognises that the purpose of a sanction is not to be punitive, although it may have that effect, but to protect patients and the wider public interest. The Committee has taken into account the GDC's "Guidance for the Professional Conduct Committee, including Indicative Sanctions Guidance" (October 2015). It has applied the principle of proportionality, balancing the public interest with her own interests.

You submitted that Ms Downie's misconduct was so serious that the Committee should erase her from the Register.

The Committee considered that the misconduct in this case was too serious to either conclude the case without any further order or else with a reprimand.

The Committee next considered the imposition of an order of conditions. The Committee understands from previous correspondence that Ms Downie is not working as a Dental Nurse and does not intend to do so. The Committee did not therefore consider that it could frame conditions that would be workable.

The Committee next went on to consider the imposition of an order of suspension. The Committee considered that the misconduct in this case is serious. It amounts to working outside Ms Downie's Scope of Practice for financial gain. Whilst Ms Downie has shown some insight into her misconduct, her insight is incomplete.

Ms Downie has not shown any remorse or insight for the abusive way in which she spoke to Patient A on the 29 January 2015.

However, all of the misconduct in this case relates to a single set of circumstances relating to one patient.

The Committee did not consider that these circumstances demonstrated a deep-seated attitudinal problem on the part of Ms Downie. Therefore, whilst the Committee thought that removal from the Register was required, in this case it did not think that such removal needed to be permanent. The Committee therefore determined to suspend Ms Downie from the Register. The Committee concluded that Ms Downie should be suspended for 12 months to give her an opportunity to reflect on her misconduct.

The Committee ordered that there should be a review of the order before the 12 months has expired."

Decision on immediate order

"Ms Scarborough: Having directed that Ms Downie's registration be suspended, the Committee has considered whether to impose an order for immediate suspension in accordance with Section 36(U) of the Dentists Act 1984.

You, on behalf of the General Dental Council (GDC), have submitted that such an order is necessary in the light of the Committee's findings.

In all the circumstances, the Committee is satisfied that it is necessary for the protection of the public, is otherwise in the public interest and is in Ms Downie's own interests to impose an order for immediate suspension on her registration. The Committee has concluded that Ms Downie poses an ongoing risk to the public in view of the serious nature of working outside the Scope of Practice. The Committee has therefore decided that it would be inconsistent to allow Ms Downie the opportunity to continue to practise during the intervening appeal period.

The effect of the foregoing determination and this immediate order is that Ms Downie's registration will be suspended from the date on which notice of this decision is deemed served upon her. Unless Ms Downie exercises her right of appeal, her registration will be suspended for a period of 12 months. Should Ms Downie exercise her right of appeal, this immediate order for suspension will remain in place until the resolution of any appeal.

The Committee hereby revoke the interim order currently in place.

That concludes this case.”

At a review hearing on 8 June 2017 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. The Committee determined that it was fair and appropriate to proceed on the papers.

Purpose of hearing

The purpose of today’s hearing is to review a substantive direction of suspension imposed on Miss Downie’s registration for a period of 12 months by the PCC on 24 May 2016. The hearing is being held in accordance with section 36Q (1) of the Dentists Act 1984 (as amended) (‘the Act’). The substantive suspension came into effect on 24 June 2016 and is due to expire on 23 June 2017.

Service

The Committee first considered whether service has been properly effected.

In its written representations to the Committee the GDC has submitted that Miss Downie has been properly notified of today’s hearing in accordance with Rule 28 of the General Dental Council (Fitness to Practise) Rules 2006 (‘the Rules’). The Committee noted that a notice of hearing was sent to Miss Downie’s registered address on 26 April 2017 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 the notice was delivered on the afternoon of 2 May 2017 and was signed for by ‘A Downie’. The Committee also noted that a copy of the notice of hearing was also sent to Miss Downie by email on 26 April 2017.

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 had 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 Downie 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 noted that, in addition to sending proper notice of today’s proceedings, the GDC has also sought to contact Miss Downie by email and telephone to establish whether she would be in attendance at this hearing.

The GDC submitted that all reasonable efforts have been made to inform Miss Downie of today’s proceedings. The GDC further submitted that an adjournment would not be likely to secure Miss Downie’s attendance, given her history of non-engagement and the absence of any request for an adjournment. The GDC has also emphasised the need to review the suspension before it expires.

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 Downie’s absence. The Committee

was particularly mindful of the imminent expiry of the extant suspension order on 23 June 2017. There is a clear public interest in ensuring that the suspension order is reviewed before its expiry. The Committee considered that Miss Downie has voluntarily absented herself from today's hearing and that an adjournment would serve no useful purpose, as it would be unlikely to secure her attendance. Miss Downie has also not requested an adjournment of today's hearing, and her last communication with the GDC in relation to this case was prior to the previous hearing. The Committee noted the extensive efforts that the GDC has made to inform Ms Downie of this hearing and to establish whether she would attend.

Existing order

In May 2016 the PCC held a hearing to consider allegations about Miss Downie's conduct. Miss Downie was not present at the hearing and was not represented in her absence. The allegations which Miss Downie faced, and which the Committee subsequently found proved, related to her offering tooth whitening to a patient, taking impressions of the patient's mouth without a prescription, obtaining a tooth whitening kit without a prescription and then providing the kit to the patient with instructions on how to use it. The previous Committee found that this conduct was financially motivated and was outside Miss Downie's scope of practice as a dental nurse. It was also found that Miss Downie had spoken inappropriately to the patient in question and had failed to hold appropriate indemnity insurance at the time of the incidents.

On 24 May 2016 the Committee determined that the facts that it had found proved amounted to misconduct, that Miss Downie's fitness to practise was impaired as a result, and that her name should be suspended from the register for dental care professionals (DCPs) for a period of 12 months, with a review hearing to take place prior to the expiry of the suspension. The Committee noted that, notwithstanding the admissions that Miss Downie made to the majority of the facts that it later found proved, Miss Downie lacked sufficient insight into her actions and that there was a risk of repetition of the behaviour which had placed the patient at the risk of harm. The Committee considered that the suspension should last for 12 months 'to give [Miss Downie] the opportunity to reflect on her misconduct'.

The substantive suspension order came into effect on 24 June 2016 following the period in which Miss Downie could make an appeal. No such appeal was made. The Committee also made an immediate order of suspension to cover the appeal period.

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. 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 Downie's fitness to practise remains impaired. It notes that Miss Downie has provided no information whatsoever about any steps that she may have taken to remediate the misconduct that was previously found or to develop and demonstrate insight into her actions. Indeed, Miss Downie has made no contact at all with the GDC after providing written representations to the previous PCC. The Committee further notes that there is no other information available from any other sources to suggest that she

has reflected upon and remedied any of the issues which led to the previous Committee's findings of facts, misconduct and impairment. The Committee has therefore concluded that the same risks to patient safety and to public trust and confidence in the profession persist, and that accordingly Miss Downie's fitness to practise remains impaired.

Sanction

The Committee next 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, particularly given the absence of information about Miss Downie's current circumstances or any suggestion that she would engage and comply with any such conditions.

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 to impose. This is because of the serious failings identified, the risk of harm to the public and to trust and confidence in the profession, and the fact that there is no evidence of any change in circumstances. In particular there is no indication that Miss Downie has developed insight and undertaken remediation in respect of the matters that gave rise to the previous finding of impairment. A further period of suspension is required 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 Downie's registration be suspended for a further period of 12 months. This period of time is required to allow Miss Downie to demonstrate insight into and remediation of the matters that have precipitated these proceedings, and is commensurate with the serious nature of this case and the attendant risks to public safety and public confidence.

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 23 June 2017. The Committee has further determined that the further suspension should be reviewed prior to its expiry.

Without in any way wishing to bind or direct the next reviewing Committee, the Committee notes that, at the next hearing, it would be open to the Committee to direct that Miss Downie's suspension be made indefinite.

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:

- Evidence of continuing professional development (CPD)
- A reflective piece relating to the matters that have culminated in the findings of impairment
- Appropriate references and recommendations

That concludes this case for today."

At a review hearing on 7 June 2018 the Chair announced the determination as follows:

“This is a resumed hearing of the Professional Conduct Committee (PCC) in respect of the case of Miss Ashley Downie, held in accordance with section 36Q of the Dentists Act 1984 (as amended) (the Act).

Neither party is present at today’s hearing. A request was made by the General Dental Council (GDC) for the review of the suspension order on Miss Downie’s registration to be conducted on the papers.

In the absence of both parties, the Committee first considered the issues of service and whether to proceed with the hearing in the absence of Miss Downie and any representatives for either party. The Committee accepted the advice of the Legal Adviser on these matters.

Decision on service of the Notification of Hearing

The Committee considered whether notice of the hearing had been served on Miss Downie in accordance with Rules 28 and 65 of the *General Dental Council (Fitness to Practise) Rules Order of Council 2006* (the Rules). It received a bundle of documents containing a copy of the Notification of Hearing letter, dated 4 May 2018. It also received a Royal Mail ‘Track and Trace’ receipt confirming that the letter was sent to Miss Downie’s registered address by Special Delivery. The Committee noted that delivery of the letter was attempted on 5 May 2018 and a “while you were out card” was left. It took into account, however, that there is no requirement within the Rules for the GDC to prove receipt of the letter, only that it was sent. The Committee also took into account that a copy of the letter was sent to Miss Downie by email.

The Committee was satisfied that the Notification of Hearing letter, dated 4 May 2018, contained proper notification of today’s review hearing, including its time, date and venue, as well as notification that the Committee had the power to proceed with the hearing in Miss Downie’s absence. On the basis of the information provided, the Committee was satisfied that notice of the hearing had been served on Miss Downie in accordance with the Rules.

Decision on proceeding with the hearing in the absence of Miss Downie and on the papers

The Committee next considered whether to exercise its discretion under Rule 54 of the Rules to proceed with the hearing in the absence of Miss Downie and any representative for either party. It approached this issue with the utmost care and caution. The Committee took into account the factors to be considered in reaching its decision as set out in the case of *R v Jones [2002] UKHL 5*. It remained mindful of the need to be fair to both Miss Downie and the GDC, and it had regard to the public interest in the expeditious review of the suspension order in place on Miss Downie’s registration. The Committee took into account that the current order is due to expire on 23 June 2018.

The Committee considered that the GDC had made all reasonable efforts to notify Miss Downie and it was satisfied that she is aware of today’s hearing. It noted that Miss Downie was asked in the Notification of Hearing letter to contact the GDC by 14 May 2018, if she considered there was any reason that the hearing should not proceed on the papers. The information before the Committee indicates that Miss Downie did not respond to the GDC until after the deadline. In an email dated 29 May 2018, Miss Downie stated that “*I am no longer working in the dental profession and have not done so since early 2015. I have no intention of returning to a career in the dental sector in the future...*”

The Committee noted that, despite this very recent communication, Miss Downie did not indicate that she wished to attend the hearing. Taking this into account, together with her comments about not returning to dental practice, the Committee decided that Miss Downie had voluntarily absented herself from today's proceedings. It noted that she did not request an adjournment and it concluded that an adjournment would serve no meaningful purpose in the circumstances. The Committee received no information to suggest that an adjournment would secure Miss Downie's attendance on a future date.

The Committee also took into account the written submissions of the GDC provided in respect of today's review, dated 5 June 2018, in which they invited the Committee to conduct the resumed hearing on the basis of the papers provided to it.

In all the circumstances, the Committee determined that it was fair and in the public interest to proceed with the hearing in the absence of Miss Downie and any representatives for either party.

Background to Miss Downie's case

Miss Downie's case was first considered by a PCC at a hearing in May 2016. That Committee considered and found proved allegations about Miss Downie's conduct. The findings related to Miss Downie offering tooth whitening to a patient, taking impressions of the patient's mouth without a prescription, obtaining a tooth whitening kit without a prescription and then providing the kit to the patient with instructions on how to use it. The Committee in 2016 found that Miss Downie's conduct was financially motivated and was outside her scope of practice as a dental nurse. It was also found that Miss Downie had spoken inappropriately to the patient in question and had failed to hold appropriate indemnity insurance at the time of the incidents.

That Committee determined that the facts found proved against Miss Downie amounted to misconduct and that her fitness to practise was impaired by reason of her misconduct. It considered that, notwithstanding the written admissions that Miss Downie had made to the majority of the facts that it later found proved, she lacked sufficient insight into her actions. It decided that there was a risk of repetition of the behaviour which had placed the patient at risk of harm. It also considered that in acting beyond the scope of her practice for financial gain, Miss Downie had damaged the reputation of the dental profession.

The Committee in 2016 directed that Miss Downie's name be suspended from the Register for Dental Care Professionals for a period of 12 months, with a review hearing to take place prior to the expiry of that period. That Committee also imposed an immediate order of suspension. It considered that the 12-month period would give Miss Downie the opportunity to reflect on her misconduct.

A resumed hearing in respect of Miss Downie's case took place in June 2017. That Committee determined that her fitness to practise remained impaired. It noted that Miss Downie had provided no information whatsoever about any steps that she may have taken to remediate the misconduct that was previously found or to develop and demonstrate insight into her actions. Indeed, it was noted that Miss Downie has made no contact at all with the GDC after providing written representations to the previous PCC. The Committee in 2017 further noted that there was no other information available from any other sources to suggest that Miss Downie had reflected upon and remedied any of the issues which led to the previous Committee's findings of facts, misconduct and impairment. The Committee in 2017 therefore concluded that the same risks to patient safety and to public trust and confidence in the profession persisted.

In view of the identified risk to patients and to the wider public interest, as well as the absence of any evidence of remediation, the Committee in 2017 extended the period of suspension on Miss Downie's registration by 12 months. It directed a further review of her case shortly before the end of the extended period of suspension. That Committee considered that a 12-month period was required *"to allow Miss Downie to demonstrate insight into and remediation of the matters that have precipitated these proceedings, and is commensurate with the serious nature of this case and the attendant risks to public safety and public confidence."* It also considered that the next reviewing Committee might find it helpful to have sight of the following:

- "Evidence of continuing professional development (CPD)
- A reflective piece relating to the matters that have culminated in the findings of impairment
- Appropriate references and recommendations"

Today's review

This has been the second review of Miss Downie's case before the PCC. In comprehensively reviewing her case today, the Committee considered all the evidence before it. It accepted the advice of the Legal Adviser.

The documentation before the Committee comprised:

- An indexed PCC review bundle of 41 pages;
- An indexed PCC review addendum bundle of 5 pages, which included the email from Miss Downie, dated 29 May 2018; and
- The written submissions of the GDC, dated 5 June 2018.

In their written submissions, the GDC stated that Miss Downie's email of 29 May 2018 is the first communication she had made to the GDC since before the original PCC hearing in May 2016. It was the GDC's submission that, whilst Miss Downie has demonstrated some insight into her actions, there is no evidence of CPD or remediation. Further, Miss Downie has not worked within the dental profession for over three years. The GDC submitted that there is insufficient evidence to demonstrate that Miss Downie's fitness to practise is no longer impaired and, as such, there remains a risk to patient safety and public trust and confidence in the profession. In respect of sanction, the GDC submitted that it is unlikely that anything will be gained by a further extension of Miss Downie's current suspension order. They therefore submitted that it is appropriate and proportionate for her registration to be indefinitely suspended. The GDC highlighted that Miss Downie was made aware in the Notification of Hearing letter, dated 4 May 2018, that indefinite suspension was an option available to the Committee at this resumed hearing.

As already noted, in her email of 29 May 2018, Miss Downie stated that she is no longer working in the dental profession and has not done so since early 2015. She stated that *"As a result, I do not have any relevant CPD or recommendations to submit."* Miss Downie goes on to state that, *"In terms of reflection, I have had much time to consider how my actions impacted upon the patient and I am genuinely remorseful for the upset I caused her. I also realise that working outwith my remit and without insurance was both irresponsible and dangerous...I have learned a lot in the process."* Miss Downie further stated *"I accept the previous decision to suspend me from the register and as I have no intention of returning to the dental profession therefore I accept no longer being registered with the GDC."*

Decision on impairment

In reaching its decision on whether Miss Downie's fitness to practise remains impaired, the Committee exercised its own independent judgement. It had regard to the over-arching objective of the GDC, which involves: the protection, promotion and maintenance of the health, safety and well-being of the public; the promotion and maintenance of public confidence in the dental profession; and the promotion and maintenance of proper professional standards and conduct for the members of the dental profession.

The Committee reviewed the circumstances in which Miss Downie's fitness to practise was found to be impaired in May 2016. It noted from her email of 29 May 2018 that she does demonstrate some insight into the concerns that were raised. However, it took into account that there is no evidence before it of any steps she has taken to address her past failings and facilitate her return to practice. Indeed, the Committee noted that Miss Downie has stated that she has no intention of continuing in the dental profession. Therefore, she has not provided any evidence of relevant CPD or recommendations, as she was advised to do by the previous Committees.

The matters found proved by the Committee in May 2016 were serious. They included findings that Miss Downie had breached fundamental tenets of the profession, namely that she worked outside the scope of her practice for financial gain, spoke inappropriately to a patient and had failed to hold appropriate indemnity insurance. In the absence of any evidence to demonstrate that Miss Downie has sufficiently remedied her misconduct, which was serious, this Committee concluded that the risk to the public and the wider public interest, as identified by the Committees in May 2016 and June 2017, remains.

Accordingly, the Committee has determined that Miss Downie's fitness to practise continues to be impaired by reason of her misconduct.

Decision on sanction

The Committee considered what action, if any, to take in respect of Miss Downie's registration. It had regard to its powers under Section 36Q(1) of the Act, which sets out the options available to it. The Committee also had regard to the '*Guidance for the Practice Committees including Indicative Sanctions Guidance (effective from October 2016)*'. It took into account that the purpose of any action taken is not to be punitive, although it may have that effect, but to protect patients and the wider public interest. It applied the principle of proportionality, balancing the public interest with Miss Downie's own interests. The Committee considered its options in ascending order.

In the absence of any evidence to indicate that the serious concerns raised in 2016 have been sufficiently addressed by Miss Downie, the Committee determined that it would be wholly inappropriate to terminate the current suspension order or to allow it to lapse.

The Committee considered whether to impose a period of conditional registration. It concluded however, that conditions would not be workable or proportionate in this case. Miss Downie has been clear that she does not intend to return to dental practice. In the light of this, there is no evidence before the Committee to indicate any willingness to comply with any conditions that could be formulated. The Committee also took into account the serious nature of the findings made in 2016 and the absence of any evidence of remediation. Taking all of these factors into account, it decided that conditional registration would not serve to protect the public, nor would such an outcome satisfy the wider public interest.

The Committee next considered whether to suspend Miss Downie's registration for a further specified period. In doing so, it took into account that an extension of the current suspension order would safeguard the public from any repetition of the kind of misconduct found by the Committee in 2016. However, Miss Downie has already served two years under a suspension order and the evidence is that she remains adamant that she no longer wishes to practise as a dental nurse. Consequently, she has not practised since early 2015. The Committee took into account the wider public interest and concluded that, in the circumstances, a further extension of the current suspension order would serve no meaningful purpose.

In reaching its conclusion, the Committee considered Miss Downie's interests and the potential consequences that an ongoing suspension may have for her. However, it decided that the public interest outweighs Miss Downie's own interests in this particular instance. Miss Downie has expressly stated that she no longer wishes to practise as a dental nurse and, as such, has provided no evidence of any remediation.

Accordingly, the Committee directs the indefinite suspension of Miss Downie's registration in accordance with section 36Q(1)(d) of the Act. In making this direction, the Committee was satisfied that the criteria for imposing an indefinite suspension are met. It noted that under section 36Q(4) of the Act, Miss Downie can seek a review of this Committee's decision to suspend her indefinitely from the Register providing a period of two years has elapsed since the direction took effect.

Unless Miss Downie exercises her right of appeal, her registration will be suspended indefinitely, 28 days from the date that notice of this direction is deemed to have been served upon her. In the event that she does exercise her right of appeal, the suspension order currently on her registration will remain in force until the resolution of the appeal.

That concludes this determination."