Hearing held in public

Summary

Name: SMITH, Kerry [Registration no: 134702]
Type of case: Interim Orders Committee (Initial)
Outcome: Interim Suspension
Duration: 12 Months
Date: 30 March 2022
Case number: CAS-200199

The role of the Interim Orders Committee (IOC) is to undertake a risk assessment based on the information before it. Its role is to assess the nature and substance of any risk to the public in all the circumstances of the case and to consider whether it is necessary for the protection of the public, is otherwise in the public interest, or is in the registrant’s own interests to impose an interim order on their registration. It is not the role of the IOC to make findings of fact in relation to any charge. That is the role of a differently constituted committee at a later stage in the process.

Miss Smith,

This is an Interim Orders Committee (IOC) hearing of your case. The hearing is being conducted remotely by Microsoft Teams video-link in line with the current practice of the General Dental Council (GDC).

You are representing yourself. The Case Presenter for the GDC is Mr Sam Thomas, Counsel.

The purpose of this hearing has been for the Committee to consider an application made by the GDC for the imposition of an interim order on your registration. The Committee has had to determine whether, in the light of the information before it, an interim order is necessary for the protection of the public, is otherwise in the public interest, or is in your own interests.

Background and summary of the allegations

Your case was referred to the IOC by the GDC’s Registrar on 11 March 2022. This was following your self-referral of information to the GDC which raised concerns about your fitness to practise as a dental care professional.

In an email dated 8 March 2022, you informed the GDC that you had been charged with the offence of embezzlement in December 2020, and that you appeared in court in March 2021 and in February 2022. You stated that you were due to appear in court for sentencing on 17 March 2022. You provided the GDC with documentation given to you by Police Scotland about the criminal proceedings. That police information was dated 16 December 2020.

In a further email to the GDC dated 17 March 2022, you stated regarding your sentence that you received 300 hours community service, a fine and a tag for 4 months.
Application for an interim order and summary of the submissions made

Mr Thomas acknowledged your self-referral to the GDC. However, he highlighted that as a GDC registrant, you were required in accordance with the GDC’s professional standards, to disclose to the GDC the criminal investigation against you, at the time that you were charged with the offence. He told the Committee that this should have been in December 2020, upon your receipt of the information from Police Scotland. Mr Thomas stated that you were two years late in notifying the GDC, having only done so on 8 March 2022. He told the Committee that in due course the GDC would seek to obtain a copy of the certificate of conviction.

Mr Thomas stated that he recognised that this Committee is not a fact-finding panel. He submitted, however, that in the particular circumstances of this case, it is known from your correspondence with the GDC that you have been convicted of a criminal offence of dishonesty, namely embezzlement, and that you have been sentenced for that crime. Mr Thomas said that he noted that you received a substantial community order of 300 hours, as well as a fine and a 4-month curfew.

Mr Thomas referred to the statutory grounds on which the Committee could impose an interim order on your registration. It was his submission that the imposition of an interim order was certainly in the wider public interest. He stated that it was inherent in your offence of embezzlement that there was an element of dishonesty. He stated that an informed member of the public would be shocked and dismayed if an interim order was not imposed in the circumstances of a dishonest practitioner who had been convicted of embezzlement, sentenced to a substantial community order, and who had not been entirely open and upfront with their regulatory body.

Mr Thomas also submitted that there was an inherent danger in a dishonest practitioner being around patients, but acknowledged that no clinical concerns have been raised in this case. He accepted that on the current limited information, any risk to the public may be difficult to assess.

Mr Thomas confirmed that it was not suggested by the GDC that an interim order would be in your own interests.

In terms of the type of order, Mr Thomas applied for the imposition of an interim order of suspension on your registration. He submitted that this was the only appropriate and proportionate order in the circumstances. He stated that the GDC could not be confident that interim conditions would be workable, as it had concerns about transparency, given that you did not provide the GDC with any information regarding the criminal matters until 8 March 2022; 9 days before you were due to be sentenced. Mr Thomas stated that as the GDC had only recently been notified, an interim order of suspension for a period of 18 months was sought, to allow sufficient time for investigation.

You told the Committee of the circumstances that led to your criminal offence. You explained about your difficult personal situation at the time which, you said, involved your having joint Power of Attorney for a relative. You stated that your relative had told you to “use the money for whatever is needed”, which you said you did, and that you did not believe at the time that you were doing anything wrong.

You also told the Committee that you did not realise that you were required to inform the GDC that you had been charged with a criminal offence. You stated that it was when you informed your employer of the criminal matters, in February 2022, that you received advice about contacting the GDC through your employer’s indemnity provider.

You stated that you have your community service coming up, which will involve working in a care home. You stated that you are still employed in your job, and that if you could continue working, you would be able to pay off the fine. You told the Committee that you are required
to pay £300 per month for three years. You said that you wanted to “get things sorted” and give back as much as you can. You apologised for what has occurred.

The Committee’s decision on an interim order

The Committee considered all the information presented to it. It took account of the submissions made by Mr Thomas on behalf of the GDC, and your submissions. The Committee accepted the advice of the Legal Adviser.

In reaching its decision on an interim order, the Committee remained mindful that its task is not to find facts, but to conduct an assessment of risk based on the information before it. In all its considerations, the Committee applied the principle of proportionality, balancing the public interest with your own interests. It had regard to the ‘Interim orders guidance for decision makers – Interim Orders Committee (October 2016)’.

The Committee first considered whether the imposition of an interim order on your registration is necessary for the protection of the public. Whilst it took into account that there is no formal certificate of conviction before it today, it noted that you have admitted that you were convicted of embezzlement, and that your sentence is ongoing.

The Committee noted that the offence of which you have been convicted is a serious one which, by its nature, involved an element of dishonesty. The Committee considered that dishonesty in a dental practitioner is an issue that could impact adversely on patients and the public. However, it took into account that the information received from you in relation to the particular circumstances of your offence, which appeared to involve your actions outside of the workplace, and in a very specific family situation. The Committee also noted your submission that you have worked for your current employer for over 20 years, since 1998. Taking all the information into account, the Committee was not satisfied that there would be a real risk of harm to the public if you were permitted to continue to practise without restriction. The Committee therefore determined that an interim order is not necessary for the protection of the public.

The Committee next considered whether an interim order on your registration is required in the wider public interest. It took into account that the bar is set high for the imposition of an interim order on wider public interest grounds alone. The Committee considered, however, that in this case, that high threshold has been met. The information provided to the Committee indicates that you have recently been convicted of a serious criminal offence, which involved a serious breach of trust, and that you are currently serving a sentence for that crime. This sentence appears to include a substantial financial fine. The Committee considered that on this information alone, an interim order would be required to uphold the wider public interest, in particular the public’s perception of the dental profession. The Committee further took into account the concerns raised about your alleged failure to promptly inform the GDC about the criminal proceedings in accordance with your obligations under the GDC’s professional standards. You also told the Committee that you did not inform your employer of the matter until February of this year, when you were due in court. In all the circumstances, the Committee considered that a reasonable and informed member of the public would be shocked and dismayed if an interim order were not imposed on your registration pending full investigation by the GDC.

The Committee was satisfied that there was no information before it to suggest that an interim order would be in your own interests.

The Committee considered the type of interim order to impose on your registration. In considering whether an interim order of conditions would be appropriate and proportionate, the Committee took into account its assessment that there is no material risk of harm to the public from the matters in this case. It therefore considered whether an interim order of conditions would be adequate to address the identified risk to the wider public interest. The
Committee concluded that, given the nature and seriousness of your criminal conviction, and that you are currently serving a sentence involving a curfew, a fine and community service, interim conditional registration would not be sufficient to maintain public confidence in the dental profession.

Accordingly, the Committee determined to impose an interim order of suspension on your registration. The Committee took into account the potential consequences for you of the interim suspension of your registration. This included the possible impact on your being able to repay your fine. However, the Committee was satisfied, in view of the gravity of your conviction, that its duty to uphold the wider public interest outweighed your own interests.

The interim order of suspension is to be imposed for a period of 12 months. In deciding on the 12-month period, the Committee took into account that the GDC’s investigation is in its relatively early stages. However, it also took into account that this case concerns primarily the issue of your conviction, with no clinical or expert matters to be dealt with. The Committee was satisfied that a 12-month term is proportionate in these circumstances.

**Review of the interim order**

Unless there has been a material change of circumstances, a Committee will review the interim order on the papers at an administrative meeting within the next six months. That Committee will be invited by the GDC to confirm the order and you will be asked whether there are any written submissions to be put before the Committee on your behalf. You will then be notified of the outcome in writing following the decision of the Committee.

Alternatively, you are entitled to have the interim order reviewed at a hearing. This means that you will be able to attend and make representations, send a representative on your behalf or submit written representations about whether the order continues to be required. You must inform the GDC if you would like the interim order to be reviewed at a hearing.

Even if you do not request a hearing, where there has been a material change of circumstances that might mean that the order should be revoked or replaced, a Committee will review the order at a hearing to which you will be invited to attend.

That concludes this determination.