

PRIVATE HEARING

ON PAPERS

Professional Conduct Committee Review Hearing

24 November 2023

Name: SMART, Amy Ellen
Registration number: 270108
Case number: CAS-199924-H6W5H9

General Dental Council: Instructed by IHLPS

Registrant: Unrepresented

Fitness to practise: Impaired by reason of misconduct, conviction and health
Outcome: Suspension extended (with a review)
Duration: 12 months

Committee members: Emily Knapp (Chair, dentist member)
Tanya Viehoff (Dental Care Professional member)
Liz Avital (Lay member)

Legal adviser: Barrie Searle

Committee Secretary: Sara Page

1. At this hearing the Committee made a determination that includes some private information. That information shall be omitted from any public version of this determination and the document marked to show where private material is removed.

2. This is a hearing before the Professional Conduct Committee pursuant to section 27C of the '*Dentists Act 1984 (as amended)*' ('the Act'). Members of the Committee, as well as the Legal Adviser and the Committee Secretary, are participating via Microsoft Teams in line with the General Dental Council's (GDC) current practice of holding hearings remotely.
3. Neither party was present at today's hearing, following a request for the review of the substantive order to be conducted on the papers. The hearing was conducted remotely via Microsoft Teams in line with current General Dental Council (GDC) practice.
4. 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 Ms Smart and any representatives for either party. The Committee accepted the advice of the Legal Adviser on these matters.

Application for the hearing to be held partly in private

5. In its written submissions, the GDC made an application under Rule 53 of the '*General Dental Council (Fitness to Practise) Rules Order of Council 2006*' ('the Rules') that this hearing be held partly in private since the matters under consideration refer to Ms Smart's health.
6. The Committee bore in mind that, as a starting point, hearings should be conducted in public session. However, due to the nature of the matters in this case, and having regard to the information before it, the Committee was satisfied that the personal interests of Ms Smart outweighed the public interest in this case.
7. The Committee was satisfied that the hearing should be held in private when discussing matters relating to Ms Smart's health. It therefore acceded to the GDC's application.

Decision on service of Notice of Hearing

8. The Committee was informed at the start of this hearing that Ms Smart was neither present nor represented at today's hearing.
9. In her absence, the Committee first considered whether the Notice of Hearing ('the Notice') had been served on Ms Smart in accordance with Rules 31 and 65 of the '*General Dental Council (Fitness to Practise) Rules Order of Council 2006*' ('the Rules').
10. The Committee had regard to the indexed hearing bundle of 78 pages, which contained a copy of the Notice, dated 10 October 2023. The Notice was sent to Ms Smart's registered address by Special Delivery on 10 October 2023, in accordance with Section 50A of the '*Dentists Act 1984*' ('the Act') and via email on the same date.
11. The Committee was satisfied that the Notice contained proper and correct information relating to today's hearing. This included the time, date and that it is being conducted remotely via Microsoft Teams, as well as notification that the Committee has the power to proceed with the hearing in Ms Smart's absence.
12. Whilst it is not a requirement of the Rules, the Committee had sight of an extract from the Royal Mail 'Track and Trace' service which showed the item was delivered to Ms Smart's registered address on 11 October 2023. It was signed for against the printed name of 'SMART'.
13. In light of the information available, the Committee was satisfied that Ms Smart has been served with proper notification of this hearing, at least 28 days before its commencement, in accordance with the Rules.

Decision on whether to proceed in the absence of Ms Smart and on the papers

14. The Committee next considered whether to exercise its discretion to proceed with the review in the absence of Ms Smart and any representative for either party. The Committee was mindful that its decision to proceed in the absence of Ms Smart must be handled with the utmost care and caution. The Legal Adviser reminded the Committee of the requirement to be fair to both parties, as well as considering the public interest in the expeditious disposal of this case.
15. The Committee referred to a telephone note from 1 November 2023 between Ms Smart and the GDC's legal team. The telephone note stated, "Call from Registrant in relation to email sent today [PRIVATE]. The Registrant informed me that the matters had 'not been on [her] mind' [PRIVATE]. The Registrant stated that she was not refusing to engage [PRIVATE]."
16. The Committee noted that this review was originally listed as an oral review, but as Ms Smart notified the GDC, following receipt of the Notice, that she was not in a position to engage at the moment, the decision was made by the GDC to conduct this review on the papers.
17. The Committee bore in mind that today's hearing has been arranged as the current order is due to expire on 5 December 2023, less than two weeks from today's review. The Committee was satisfied that Ms Smart is aware of today's review and has voluntarily absented herself from today's hearing. It noted that no application for an adjournment had been made by Ms Smart and there was information before the Committee that adjourning would not secure her attendance because of her current personal circumstances.
18. In all these circumstances, the Committee determined that it was fair and in the public interest to proceed with the hearing in the absence of Ms Smart and any representatives for either party in order to ensure the current suspension order is reviewed before its expiry.

Background

19. This hearing was convened to review the current suspension order, which is due to expire on 5 December 2023.
20. This is the first review of a substantive order initially imposed by the Professional Conduct Committee ('the PCC') in November 2022.
21. At the initial substantive hearing, the PCC found Ms Smart's fitness to practise impaired on the grounds of her conviction, misconduct, and her adverse health. The PCC's findings can be summarised as follows:

"In all the circumstances, the Committee considered that there is a risk of repetition associated with the matter of Ms Smart's conviction. It therefore determined that a finding of impairment is necessary for the protection of the public.

The Committee also determined that, given the nature and seriousness of Ms Smart's conviction, a finding of impairment is also in the wider public interest, to maintain public confidence in the dental profession and to declare and uphold proper professional standards. The Committee considered Ms Smart's duty under Standard 9.1 to ensure that her conduct, both at work and in her personal life, justifies patients' trust in her and the public's trust in the dental profession.

...

The Committee next considered whether Ms Smart's fitness to practise is currently impaired by reason of her misconduct. In doing so, it took into account that it received no

evidence from Ms Smart as to her insight into her lack of cooperation or any evidence of reflection or remediation.

The Committee further took into account that the concerns raised about Ms Smart's engagement with the GDC appear to be ongoing. It noted that her limited and sporadic engagement continued up until just before this hearing. The Committee considered the manner of Ms Smart's engagement with the GDC to be representative of a pattern of behaviour that has become a feature in this case and is indicative of a risk of recurrence. The Committee therefore determined that a finding of impairment is necessary for the protection of the public. It considered the issue of public protection to be engaged in relation to Ms Smart's misconduct, given the important purpose of the required forms and the health assessment. Ms Smart failed to cooperate with her regulatory body in respect of matters that are designed to provide protection to the public.

The Committee further determined that a finding of impairment is in the wider public interest, in view of Ms Smart's serious breach of fundamental GDC Standards.

...

[PRIVATE], the Committee determined that a finding of impairment is necessary for the protection of the public.

The Committee also determined that such a finding is in the wider public interest. It considered that allowing Ms Smart to continue in unrestricted practice under the current circumstances would undermine public confidence in the dental profession."

22. The PCC directed that Ms Smart's registration be subject to suspension for a period of 12 months with a review, stating:

"...the Committee determined that the appropriate and proportionate sanction, for the protection of the public and the wider public interest, is a suspension order for a period of 12 months. In deciding on the maximum 12-month period, the Committee took into account the gravity of its findings, and the absence of any evidence of insight or remediation. It also considered that 12 months would afford Ms Smart the opportunity to engage meaningfully with the GDC's fitness to practise process. **[IN PRIVATE]**.

...This Committee considered that the Committee reviewing Ms Smart's case may find it helpful to receive the following:

- Evidence of her meaningful engagement and cooperation with the GDC.
- Evidence of her insight into all the aspects of this case.
- **[IN PRIVATE]**

Submissions

23. In its written submissions, the GDC provided the following update since the imposition of the order:

"In respect of compliance with the suspension order, the Council has not received any information to suggest the Registrant has been working in breach of her suspension.

[PRIVATE]

[PRIVATE]

The Registrant has not provided any information in respect of the other recommendations of the Committee, including demonstrating insight into her conviction and misconduct.”

24. In respect of impairment, the GDC submitted that it is evident from the expert evidence, that Ms Smart’s fitness to practise remains impaired [PRIVATE]. The public protection and public interest concerns therefore remain in relation to impairment by reason of health. As Ms Smart has not engaged with the GDC’s proceedings to the extent of demonstrating insight and remediation and therefore a finding of impairment on the grounds of conviction and misconduct remains. For the reasons, the GDC submitted that Ms Smart’s fitness to practise remains impaired by reason of her misconduct, conviction and health.
25. In respect of sanction, the GDC submitted that an order of conditions remains wholly inappropriate in this matter in the absence of meaningful engagement from Ms Smart. [PRIVATE]. The GDC has no evidence to suggest that, should the Committee impose an order of conditions, Ms Smart would comply with those conditions or engage with the GDC. As such, it is the GDC’s submission that an order of conditions would not be workable and would not serve to protect the public or act in the public interest. Therefore, the GDC submitted that it would be appropriate and proportionate to extend the order of suspension for a further period of 12 months.
26. Ms Smart has not provided any written submissions for the Committee to consider at today’s review.

Decision on review

27. The Committee considered whether Ms Smart’s fitness to practise remains impaired. In reaching its decision on the issue of impairment, the Committee exercised its own independent judgement. It bore in mind that its duty is to consider the public interest, which includes the protection of the public, the maintenance of public confidence in the profession and the declaring and upholding of proper standards of conduct and behaviour.
28. The Committee heard and accepted the advice of the Legal Adviser.
29. In deciding whether Ms Smart’s fitness to practise remains impaired, the Committee considered whether Ms Smart had addressed the concerns of the initial PCC.
30. [PRIVATE].
31. [PRIVATE].
32. In addition, as there has been no meaningful engagement with the GDC since the imposition of the suspension order demonstrating any remorse, insight or remediation, the Committee determined that there remains a risk of repetition of Ms Smart’s misconduct and of the behaviour that led to her conviction.
33. Therefore, her fitness to practise remains impaired on the ground of public protection. In light of the concerns highlighted regarding risk of repetition and harm to the public, the Committee also determined that public interest is still engaged at this time.
34. As a result of all the above, the Committee concluded that Ms Smart’s fitness to practise remains impaired on the ground of public protection and in the wider public interest by reason of her conviction, misconduct, and adverse health.
35. The Committee had regard to the ‘*Guidance for the Practice Committees, including Indicative Sanctions Guidance*’ (Revised May 2019). The Committee considered what, if any, sanction

to impose in this case. The Committee was aware of the range of sanctions available to it and that it must consider the sanctions in order from the least serious.

36. The Committee was aware that it should have regard to the principle of proportionality, balancing the public interest against Ms Smart'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.
37. The Committee was satisfied, having identified the risks to both public protection and the public interest, that any order to terminate the order, or to impose an order that did not restrict Ms Smart's practice, would be wholly inappropriate.
38. In its consideration of suitability of conditional registration, the Committee did not consider there to be any workable conditions that would adequately address the nature of the concerns, particularly in light of Ms Smart's lack of engagement and failure to demonstrate any insight, remorse or remediation. Ms Smart has confirmed that whilst she is not refusing to engage, she considers that she is unable to at this time due to her personal circumstances. [PRIVATE]. As a result, the Committee concluded that, even if there were conditions that could be formulated, they would not be workable or enforceable.
39. Whilst the Committee acknowledged Ms Smart's assertion that she is now working in a field outside of dentistry, without the necessary restrictions, it would be open to her to return to dental nursing at any time and this must be appropriately managed in the circumstances. The Committee therefore determined that a further period of suspension for a period of 12 months, with a review, is the only appropriate sanction at this time. It was satisfied that this would provide Ms Smart with an opportunity to engage with the GDC and demonstrate meaningful insight into and evidence of remediation of her misconduct and conviction and the ongoing risks identified by the Committee.
40. [PRIVATE].
41. The order will be reviewed before its expiry. At the review hearing, the Committee may revoke the order, it may confirm the order, or it may replace the order with another order.
42. The Committee would encourage Ms Smart to engage with the GDC and wished to remind her that any reviewing Committee would be assisted by:
 - Evidence of her meaningful engagement and cooperation with the GDC.
 - Evidence of her insight into all the aspects of this case.
 - [PRIVATE].
43. This will be confirmed to Ms Smart in writing.
44. That concludes this hearing.