

ON PAPERS**Interim Order Committee
Review Hearing****20 February 2024****Name:** JOHNSON-SMITH, Philip**Registration number:** 283887**Case number:** CAS-197399-R5K5N7

General Dental Council: Represented by Rochelle Williams, IHLPs**Registrant:** Represented by The Medical Defence Union

Outcome: Interim suspension confirmed**Duration:** For the remainder of the period of the High Court Extension

Committee members: Rhona Stevens (Dentist member, Chair)
Lynn Chalinder (Dental Care Professional member)
Anita Clay (Lay member)**Legal adviser:** Jenny Appleton**Committee Secretary:** Andrew Keeling

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.

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.

1. This was an Interim Orders Committee (IOC) review hearing in respect of an interim order currently in place on Mr Johnson-Smith's registration. The hearing was conducted remotely on Microsoft Teams.
2. Neither party was present today, following a request for the review of the interim order to be conducted on the papers.
3. The Committee first considered the issues of service and whether to proceed with the hearing on the papers in the absence of Mr Johnson-Smith and any representatives for either party. The Committee accepted the advice of the Legal Adviser on both of these matters.

Decision on Service

4. The Committee considered whether notice of the hearing had been served on Mr Johnson-Smith in accordance with Rules 35 and 65 of the *GDC (Fitness to Practise) Rules Order of Council 2006* ('the Rules') and Section 50A of the *Dentists Act 1984 (as amended)* ('the Act').
5. The Committee received from the General Dental Council (GDC) an indexed hearing bundle which contained a copy of the Notice of Hearing, dated 24 January 2024 ('the notice'). The notice was sent to Mr Johnson-Smith's registered address by Special Delivery. The Committee took into account that there is no requirement within the Rules for the GDC to prove delivery of the notice, only that it was sent. However, it noted from the Royal Mail 'Track and Trace' receipt, also provided in the bundle, that the notice was delivered on 25 January 2024. A copy of the notice was sent to Mr Johnson-Smith by first class post and to him and his legal representatives by email on 24 January 2024.
6. The Committee was satisfied that the notice contained proper notification of today's hearing, including its date and time, as well as confirmation that the hearing would be held remotely. Mr Johnson-Smith was also notified that the Committee had the power to proceed with the hearing in his absence.
7. On the basis of all the information provided, the Committee was satisfied that notice of the hearing had been served on Mr Johnson-Smith in accordance with the Rules and the Act. The Committee was also satisfied that the period of notice given was reasonable in all the circumstances.

Decision on Proceeding in the Absence of the Registrant and On the Papers

8. The Committee next considered whether to exercise its discretion under Rule 54 to proceed with the hearing in the absence of Mr Johnson-Smith, 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 [2003] 1 AC 1HL* and as explained in the cases of *General Medical Council v Adeogba* and *General Medical Council v Visvardis [2016] EWCA Civ 162*.
9. The Committee remained mindful of the need to be fair to both Mr Johnson-Smith and the GDC, considering the public interest in the expeditious review of the interim order.
10. The Committee noted the email dated 29 January 2024 from Mr Johnson-Smith's legal representatives, in which they stated that Mr Johnson-Smith was in agreement that the review hearing should take place on the papers. There is no application for an adjournment from Mr Johnson-Smith. In these circumstances, the Committee was satisfied that Mr Johnson-Smith had voluntarily absented himself from the hearing. Accordingly, the Committee was satisfied that it was fair and in the public interest to proceed with the hearing in the absence of Mr Johnson-Smith and on the papers.

Private and Public Determination

11. The Committee noted the GDC's application, made in their written submissions, for today's hearing to be held in private when matters relating to Mr Johnson-Smith's health are considered. In the absence of either party, the Committee's review of the interim order on Mr Johnson-Smith's registration was conducted on the basis of the papers in the absence of any public observers. Nevertheless, in light of some of the information before it, which relates to Mr Johnson-Smith's health, and following advice from the Legal Adviser, the Committee had regard to its power under Rule 53 of the Rules. It decided that it would produce a private and public version of its determination.

Background

12. This was the sixth review of the interim order of suspension, first imposed on Mr Johnson-Smith's registration on 9 June 2021 for a period of 18 months. The order was considered to be necessary for the protection of the public and was otherwise in the public interest.

13. The background information that went before the initial IOC, which Mr Johnson-Smith attended, was as follows:

“The Registrar has referred the following concerns from the Postgraduate Dental Dean at Health Education England (“the Informant”) by way of a letter dated 12 May 2021 (“the Letter”). The Informant explained in the letter that you had joined the register on 1 July 2019, after graduating from Newcastle Dental School and having spent 8 years as an undergraduate over a 9-year period. [IN PRIVATE: Text omitted.]

The Informant also commented in the letter that you were working under supervision, and due to significant concerns reported over the course of the training period, you have had all clinical facing contact with patients (including remote triage) suspended since 29 April 2021. Furthermore, the Informant raised concerns about your technical skills, communication with colleagues, communication with patients and response to feedback.”

14. The interim order was reviewed by the IOC on 14 December 2021, 7 June 2022 and 14 November 2022. The interim suspension was confirmed on each occasion on the same grounds as determined at the initial hearing.
15. On 23 November 2022 the High Court extended the interim order by a further period of 12 months.
16. The interim order was subsequently reviewed by the IOC on 31 January 2023, and the interim suspension was confirmed on the same grounds as previously.
17. On 24 May 2023, the GDC obtained a Clinical Advisor Report, which concluded that in relation to the specific clinical issues raised by the informant, the care provided by the Registrant between 1 September 2019 and 31 March 2021 was significantly below the level of professional practice reasonably expected.
18. The interim order was most recently reviewed by the IOC on 14 July 2023, and the interim suspension was confirmed on the same grounds.
19. On 5 December 2023, the High Court extended the interim order by a further period of 12 months. The order is now due to expire on 13 December 2024.

Submissions

20. In its written submissions, the GDC stated that there has been no material change in circumstances following the previous review hearing in July 2023 that would

necessitate an amendment to the current interim order of suspension. [IN PRIVATE – Text omitted.] The GDC also submitted that it has referred allegations in respect of Mr Johnson-Smith's misconduct, deficient professional performance and health to the GDC's Case Examiners. The GDC submitted, therefore, that an interim order of suspension remains necessary for the protection of the public and the public interest.

21. No written submissions were received from or on behalf of Mr Johnson-Smith.

Committee's Decision on Interim Order

22. In comprehensively reviewing the order, the Committee had regard to all the documentary information provided to it. It also took account of the written submissions from the GDC and had regard to the GDC's *Guidance for the Interim Orders Committee (December 2023)*. The Committee heard and accepted the advice of the Legal Adviser.

23. The Committee noted that there has been no material change in circumstances since the previous review hearing to undermine the necessity for an interim order on Mr Johnson-Smith's registration. [IN PRIVATE – Text omitted.] The Committee also noted that the GDC's investigation was ongoing into allegations of misconduct, deficient professional performance and health.

24. The Committee therefore determined that an interim order remained necessary for the protection of the public and was otherwise in the public interest for the same reasons as set out at the initial and review hearings.

25. The Committee next considered whether interim conditions could be formulated that would adequately protect patients and address the public interest concerns. However, it determined that owing to the nature and seriousness of the clinical concerns in this case, conditions would not be workable or appropriate.

26. Accordingly, the Committee has determined to continue the interim order of suspension for the remainder of the term of the order.

Review of the Order

27. Unless there has been a material change of circumstances, the Committee will review the interim order on the papers at an administrative meeting within the next six months. The Committee will be invited by the GDC to confirm the order and Mr Johnson-Smith will be asked whether he wishes to put any written submissions before the Committee. Mr Johnson-Smith will be notified of the outcome in writing following the decision of the Committee.

28. Alternatively, Mr Johnson-Smith is entitled to have the interim order reviewed at a hearing. This means that he will be able to attend and make representations, send a representative on his behalf or submit written representations about whether the order continues to be necessary. Mr Johnson-Smith must inform the GDC if he would like the interim order to be reviewed at a hearing. Even if Mr Johnson-Smith does not request a hearing, where there has been a material change of circumstances that might mean that the order should be revoked or replaced, the Committee will review the order at a hearing to which Mr Johnson-Smith will be invited to attend.
29. That concludes this determination.