

HEARING HEARD IN PUBLIC

TOY, Victoria Louise

Registration No: 172325

PROFESSIONAL CONDUCT COMMITTEE

FEBRUARY 2019

Outcome: Erased with immediate suspension

Victoria Louise TOY, a dental nurse, Qual- National Certificate NEBDN 2001, was summoned to appear before the Professional Conduct Committee on 28 February 2019 for an inquiry into the following charge:

Charge (as amended on 28 February 2019)

“That being registered as a dental care professional Victoria Louise Toy’s (172325) fitness to practise is impaired by reason of misconduct and/or conviction.

In that:

1. On 17 November 2017, you were convicted at Bournemouth Crown Court of three counts of theft by employee contrary to s 1 of the Theft Act 1968.
2. Withdrawn
3. Withdrawn
4. Withdrawn”

Ms Toy was not present and was not represented. On 28 February 2019 the Chairman announced the findings of fact to the Counsel for the GDC:

“This is a Professional Conduct Committee hearing in respect of Ms Victoria Toy. Ms Toy is neither present nor represented at these proceedings. Ms Sally Denholm represents the General Dental Council (GDC).

At the outset, Ms Denholm made an application under Rule 54 of the *GDC (Fitness to Practise) Rules Order of Council 2006* (the Rules), to proceed with the hearing notwithstanding Ms Toy’s absence. The Committee took into account Ms Denholm’s submissions in respect of the application and the supporting documentation provided. It accepted the advice of the Legal Adviser.

Decision on service of the notification of hearing

The Committee first considered whether notice of the hearing had been served on Ms Toy in accordance with Rules 13 and 65 of the Rules. It received a bundle of documents containing a copy of the Notification of Hearing letter, dated 24 January 2019 and a Royal Mail ‘Track and Trace’ receipt confirming that the letter was sent to Ms Toy’s registered address by Special Delivery. A copy of the letter was also sent to her by email.

The Committee was satisfied that the letter contained proper notification of today's hearing, including its time, date and venue, as well as notification that the Committee had the power to proceed with the hearing in Ms Toy's absence. The Committee took into account that there is no requirement within the Rules for the GDC to prove receipt of the Notification of Hearing letter. However, it noted from the 'Track and Trace' receipt that the letter was delivered and signed for on 25 January 2019. On the basis of the information provided, the Committee was satisfied that notice of the hearing had been served on Ms Toy in accordance with the Rules.

Decision on whether to proceed with the hearing in the absence of Ms Toy

The Committee next considered whether to exercise its discretion under Rule 54 of the Rules to proceed with the hearing in the absence of Ms Toy. 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 highlighted in the cases of *R v Jones [2003] 1 AC 1HL* and *General Medical Council v Adeogba [2016] EWCA Civ 162*. It remained mindful of the need to be fair to Ms Toy and to the GDC, and it had regard to the public interest in considering Ms Toy's case expeditiously.

The Committee had regard to an email from Ms Toy dated 24 January 2019 which stated that she would be unable to attend the hearing. The GDC had offered the alternative of attending via Skype or telephone but Ms Toy had not responded. In the circumstances, the Committee was satisfied that Ms Toy had voluntarily absented herself. There has been no request from her for an adjournment and the Committee received no information to indicate that an adjournment would secure her attendance on a future date. Taking all of this into account, the Committee determined that it was fair and in the public interest to proceed with the hearing notwithstanding Ms Toy's absence.

The GDC's Rule 18 application to withdraw heads of charge 2, 3 and 4

Ms Denholm made an application under Rule 18 of the Rules to amend the charge. She applied to withdraw heads of charge 2, 3 and 4 in their entirety as well as the allegation of misconduct. These are the allegations that relate to the issue of Ms Toy's indemnity insurance.

The Committee was mindful of its duty to consider the public interest and made enquiries as to why charges which had been included in the notice of hearing were now not to be pursued by the GDC. The Committee asked Ms Denholm to provide information as to the reasons for this and whether the registrant had been informed.

Ms Denholm stated that Ms Toy has been made aware that an application would be made to withdraw these charges. Ms Denholm informed the Committee that the witness who spoke to the allegations has withdrawn and in all the circumstances, the GDC would no longer be pursuing the allegations relating to the issue of indemnity insurance.

Following advice from the Legal Adviser, the Committee acceded to Ms Denholm's application. The Committee took into account the nature of all the proposals and the reasons behind them. Having had regard to the merits of the case and to the fairness of the proceedings, the Committee was satisfied that there were proper reasons for the withdrawals, and they could be made without prejudice to Ms Toy.

Background

Ms Toy was employed as a Practice Manager at the Teeth on the Heath Dental Practice between 2012 and 2016. Ms Toy was responsible for the running of the practice along with the business owner. In 2015 the business owner was signed off sick and Ms Toy was left in charge. The business owner came back to work in 2016 and noticed that there were 115 cheques on which her signature had been forged. The matter was reported to the police and Ms Toy admitted that between 2 July 2015 and 5 May 2016, she had stolen a total of £60,452.39. Ms Toy was convicted on 17 November 2017 at Bournemouth Crown Court of 3 counts of Theft by employee. She was sentenced to 20 months imprisonment and given a £100 victim surcharge.

The Committee has taken into account all the evidence presented to it. It heard submissions from Ms Denholm. It has accepted the advice of the Legal Adviser.

The burden of proving the facts alleged is on the GDC and the standard of proof is the civil standard which is “on the balance of probabilities”.

The Committee’s findings in relation to each charge and head of charge are as follows:

1.	<p>On 17 November 2017, you were convicted at Bournemouth Crown Court of three counts of theft by employee contrary to s.1 of the Theft Act 1968.</p> <p>Found Proved</p> <p>The Committee received the Certificate of Conviction, which states that Ms Toy was convicted on 17 November 2017 at Bournemouth Crown Court of three counts of theft by employee contrary to s.1 of the Theft Act 1968. She was sentenced to 20 months imprisonment and received a £100 victim surcharge. The Committee noted an email from Ms Toy dated 19 December 2018 in which she admitted this charge.</p> <p>The Committee accepted Ms Toy’s admission and found this charge proved.</p>
2.	Withdrawn
3.	Withdrawn
4.	Withdrawn

We move to Stage Two.”

On 28 February 2019 the Chairman announced the determination as follows:

“In her submissions Ms Denholm addressed the Committee on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the GDC as a regulatory body. She invited the Committee to take into account all of the circumstances of this case, including the impact that this type of offending can have on the public as well as the public interest.

Ms Denholm addressed the Committee on the matter of impairment and sanction. Ms Denholm submitted that Ms Toy’s fitness to practise is impaired by reason of her conviction. She also submitted that given the circumstances of this case, the need to protect the public

and the inherent public interest, the only appropriate sanction is that of erasure. She referred the Committee to the *'Guidance for the Practice Committees'* as published by the GDC.

The Committee fully considered all the evidence in this case as well as the submissions made by Ms Denholm. It accepted the advice of the Legal Adviser. The Legal Adviser referred the Committee to the case of Council for the Regulation of Healthcare Professionals v (1) General Dental Council (2) Alexander Fleischmann [2005] EWHC 87 (Admin) and the general principle that, where a registrant had been convicted of a serious criminal offence, they should not be permitted to resume practice until they had satisfactorily completed their sentence.

Impairment

The Committee proceeded to consider if, as a result of her conviction, Ms Toy's fitness to practise is currently impaired.

The Committee considered that Ms Toy's actions breached the standards of the profession as set in the *Standards for the Dental Team (September 2013)*:

Principle 9:

Patients expect:

- That all members of the dental team will maintain appropriate personal and professional behaviour.
- That they can trust and have confidence in you as a dental professional.
- That they can trust and have confidence in the dental profession.

The Committee noted that this case does not involve patients and there were no findings involving the provision of clinical care. Ms Toy had been convicted of a serious offence of dishonesty. It considered Ms Toy's actions in forging over 115 cheques and stealing more than £60,000 over a ten-month period were serious breaches of fundamental tenets of the profession and brought the profession into disrepute.

Dental professionals occupy a position of privilege and trust in society and must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession. Ms Toy's actions were extremely serious, and the Committee was not satisfied that she has demonstrated full insight into her actions. Ms Toy has not apologised for her actions nor for bringing the dental profession into disrepute. The Committee considers that her demonstration of remorse appears to be primarily relating to the impact of these matters on her with no consideration of the impact it had on her employer, who at the time was vulnerable due to ill health. The Committee noted that some significant part of the money she took included payments from her employer's critical cover which her insurers were paying.

The Committee determined that the criminal offences for which Ms Toy was convicted are serious. The Committee noted the sentencing judge's comments *"These were particularly mean offences, at a time when your employer was very ill and you were trusted with looking after her interests. The moment she was gone, you started repeatedly stealing money from her account, particularly at a time when you knew that financial stability, because she had had to give up work, would be an important element in her recovery and care. You repeatedly took advantage of her. That is why the offence is so mean..."*

The Committee considered that given all of the information before it, Ms Toy's actions are so serious as to bring the profession into disrepute and undermine the public's confidence in the profession. It would also impact negatively on the ability of the regulator to reinforce standards of conduct and behaviour within the profession if a finding of impairment were not made.

The Committee concluded that a reasonable and informed member of the public, fully aware of these serious findings, would lose confidence in the profession and the dental regulator if a finding of impairment were not made in the circumstances of this case.

Having regard to all of this the Committee has concluded that Ms Toy's fitness to practise is currently impaired by reason of her conviction.

Sanction

The Committee next considered what sanction, if any, to impose on Ms Toy's registration. It recognises that the purpose of a sanction is not to be punitive, although it may have that effect. The Committee took into account the GDC's "Guidance for the Practice Committees, including Indicative Sanctions Guidance" (October 2016). It applied the principle of proportionality, balancing the public interest with Ms Toy's own interests. The Committee considered that the principles set out in the case of Fleischmann apply, as Ms Toy has not completed her 20-month prison sentence.

The Committee considered the mitigating and aggravating factors in this case. It took account of Ms Toy's previous good character; there was no actual harm or risk of harm to patients. The Committee had regard to the sentencing judge's view that the risk of reoffending was low. However, the Committee noted Ms Toy's insight is limited and insufficient; her conduct was significant and premeditated and breached the trust the public place in dental professionals. It concluded that she does not have full insight into her behaviour and the impact on those involved. The Committee noted that the behaviour that led to the conviction was not isolated, occurred over a protracted period of time, it was dishonest and was for financial gain. It also involved breach of trust and had a harmful impact on her employer who was vulnerable at the time due to ill health.

In the light of the findings against Ms Toy the Committee determined that it would be wholly inappropriate to conclude this case without taking any action or with a reprimand, as this would not address the risk to the public and would not satisfy the public interest given the nature of her conviction and the dishonesty.

The Committee then considered whether a conditions of practice order may be imposed on Ms Toy's registration. It determined that conditions would not address the Committee's concerns about her lack of insight nor would it be sufficient to mark the seriousness of her departure from acceptable standards of behaviour. The Committee determined that it would not be possible to formulate appropriate, workable and verifiable conditions which would address the conduct at the heart of the conviction. Further, conditions would not satisfy the public interest.

The Committee considered whether suspension would be appropriate in this case. The Committee was of the view that Ms Toy's offending behaviour was premeditated and involved a fundamental breach of the position of trust which her employer had placed her. The Committee considered that the serious, repeated and dishonest nature of the conviction is such that it would not be appropriate or proportionate to impose a period of suspension. Ms Toy received a 20-month prison sentence which demonstrates the gravity of the offence.

for which she was convicted. Ms Toy had placed personal concerns over what was expected of her as a registered dental care professional. The Committee is of the view that Ms Toy's actions were a serious departure from the standards expected of registered professionals and would be considered as deplorable behaviour by fellow professionals. The Committee concluded that in the circumstances of this case it would be wholly inadequate to suspend Ms Toy's registration.

The Committee concluded that the nature of Ms Toy's conviction was such that any outcome short of erasure would not satisfy the public interest in declaring and upholding proper standards of conduct and in maintaining the reputation of the profession and the GDC as its regulator.

Whilst the Committee recognised that to direct that Ms Toy's name be erased from the register is a serious matter, it considered that in the circumstances of this case there is no other means of maintaining public confidence in the profession. Ms Toy's behaviour is fundamentally incompatible with ongoing registration with the GDC and the only proportionate sanction is that of erasure.

The Committee considered that this order is necessary to protect the public, to maintain public confidence in the profession, and to send to the public and the profession a clear message about the standard of conduct required of a registered dental care practitioner.

The Committee now invites submissions from Ms Denholm as to whether Ms Toy's registration should be suspended immediately.

Decision on immediate order

In deciding whether to impose an immediate order on Ms Toy's registration, the Committee took account of the submissions made by Ms Denholm and it accepted the advice of the Legal Adviser.

The Committee has determined that it is in the public interest to impose an order suspending Ms Toy's registration immediately. It considered that, given the gravity of the matters found against Ms Toy, immediate action is required to protect public confidence in the dental profession.

The effect of the foregoing determination and this order is that Ms Toy's registration is suspended immediately to cover the appeal period. If Ms Toy does not appeal, the substantive direction for erasure, as already announced, will take effect 28 days from the date when notice is deemed to have been served upon her.

Should Ms Toy exercise her right of appeal, this immediate order for suspension will remain in place until the resolution of any appeal.

That concludes this hearing."