

Privy Council Appeal No. 19 of 1975

Peter Ziderman - - - - - *Appellant*

v.

The General Dental Council - - - - - *Respondent*

FROM

**THE DISCIPLINARY COMMITTEE OF THE
GENERAL DENTAL COUNCIL**

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 8TH DECEMBER 1975

Present at the Hearing :

LORD DIPLOCK

LORD KILBRANDON

LORD RUSSELL OF KILLOWEN

[Delivered by LORD DIPLOCK]

The appellant is a registered Dentist. On 31st December 1974 he was convicted at the Marlborough Street Magistrates' Court on a charge of theft, viz. shop-lifting. He had stolen a tie and a car leather, worth £3·40, at Selfridges on the previous day. To this offence he pleaded guilty. He was fined £250 and ordered to pay £50 costs.

This was not his first conviction for an offence of dishonesty. In July 1970 he had been convicted of ten offences of obtaining money by false pretences from the Executive Council of the National Health Service committed over a period ending in January 1969. On the occasion of that conviction he had asked for sixty-two other similar offences to be taken into consideration. Those convictions had been the subject of disciplinary proceedings before the Disciplinary Committee of the General Dental Council as a result of which his name was erased from the Register on 12th June 1971. In November 1972 his name was restored to the Register.

Disciplinary proceedings were brought against him in respect of the shop-lifting conviction of 31st December 1974. They were heard by the Disciplinary Committee of the General Dental Council on 14th May 1975 who again ordered that his name be erased from the Dentists' Register. From that order he now appeals to this Board.

The relevant provisions of the Dentists Act 1957 under which the order was made are:—

- “ 25. (1) A registered dentist who either before or after registration—
 (a) has been convicted either in Her Majesty’s dominions or elsewhere of an offence which, if committed in England, would be a felony or misdemeanour

shall be liable to have his name erased from the register.

- (2) A person’s name shall not be erased under this section—
 (a) on account of conviction for an offence which does not, either from the trivial nature of the offence or from the circumstances under which it was committed, disqualify a person from practising dentistry

The only ground upon which this appeal is brought is that the Legal Assessor gave to the Disciplinary Committee advice as to the effect of s.25 (2) (a) that was wrong in law.

It was contended on behalf of the appellant that, upon the true construction of s.25 (2) (a):

- (I) it was the duty of the Disciplinary Committee first to consider whether the offence of shop-lifting for which he had been convicted on 31st December 1974 was one which, either because of its trivial nature or because of the circumstances under which it was committed, fell within a category of offences which did not show him to be the kind of person who was unfitted to continue in practice as a member of the dental profession; and
- (II) in considering whether the offence fell within this category the Committee were not entitled to take into consideration his previous convictions for offences of dishonesty committed in the period prior to February 1969. If they were satisfied that the offence of which he had been convicted on 31st December 1974 did not fall into this category, then, but only then, were they entitled to take into consideration those previous convictions in deciding whether or not to impose the penalty of erasing the appellant’s name from the Register.

The Legal Assessor did not advise the Committee to this effect. Indeed the only indication of the advice that he gave which is to be found in the transcript of the proceedings suggests that he advised them to the contrary. He is reported as saying: “ I propose to advise the Committee, if I am asked, that they are entitled to take into account the previous history but, of course, similarity of the offences is very important ”.

Their Lordships do not doubt that before the Disciplinary Committee decide to erase the name of a dentist from the Register on the ground that he has been convicted of a criminal offence they must be satisfied that the offence which he committed was one that showed him to be unfitted to continue in practice as a member of the dental profession. The Disciplinary Committee have no power to reprimand a dentist or to suspend him from practice temporarily. The only order they have power to make is for the erasure of his name from the Register; and this prevents him from continuing to practise his profession. The purpose of disciplinary proceedings against a dentist who has been convicted of a criminal offence by a court of law is not to punish him a second time for the same offence but to protect the public who may come to him as patients and to maintain the high standards and good reputation of an honourable profession. So, quite apart from the presence in the Dentists Act 1957 of s.25 (2) (a), it would be the duty of the Disciplinary Committee, before deciding to inflict the only and draconian penalty which lies within their

power, to satisfy themselves that the offence of which the dentist had been convicted was of so grave a character as to show that he was unfitted to continue to practise his profession.

S.25 (2) (a) does no more than to state expressly and in negative form the obverse of the positive duty of the Committee that is implicit in the nature of their disciplinary jurisdiction and the consequences of the only penalty that they have power to impose. The retention of s.25 (2) (a) in the Dentists Act 1957 (a consolidation Act) is due to the survival of a clause in similar terms which had its historical origin in s.13 of the Dentists Act 1878. It there appeared as a proviso to a general provision which made erasure the mandatory penalty for conviction of a criminal offence and gave to the General Council of Medical Education and Registration of the United Kingdom no discretion to refrain from imposing it. The reference to "the trivial nature" of the offence and "the circumstances under which it was committed" is wide enough to cover, with one exception, all those matters, which the Disciplinary Committee ought to take into consideration in deciding whether his committing the offence justified the conclusion that the dentist was unfitted to continue in practice as a member of the dental profession. The one exception is his conduct after the conviction. This may show that he has so rehabilitated himself by the time the Disciplinary Committee pronounces sentence that he has ceased to be unfitted to continue in practice as a dentist. It may be that under the Dentists Act 1878 this was strictly not a matter which the General Council could take into consideration in deciding whether or not to erase the name of a convicted dentist from the Register; but once the body exercising disciplinary functions was granted a discretion as to whether or not to impose the penalty in each individual case (as it was by the Dentists Act 1921), this matter too may be a relevant consideration. This justifies the current practice of the Disciplinary Committee, in appropriate cases, of postponing sentence for a period during which the dentist has an opportunity to show that he has rehabilitated himself.

Convictions previous to that on which the charge before the Disciplinary Committee is based do not fall within the category of subsequent conduct. In their Lordships' view the previous convictions of a person charged with an offence are relevant matters to be taken into account by a sentencing tribunal in assessing the gravity of the offence with which he is charged. They are thus relevant in determining whether or not it is an offence of too trivial a nature to justify the infliction of a particular penalty, particularly where that penalty is severe. Justice requires that the gravity of an offence should be reflected in the severity of the sentence imposed; and as is manifest not only from the universal sentencing practice of judges but also from statutory provisions limiting the severity of penalties that may be imposed upon first offenders, the national sense of what constitutes justice in the field of sentencing recognises that an offence which is committed by a person who has offended before is graver than a similar offence committed by a person who is offending for the first time. Indeed in Scotland, to which the Dentists Act 1957 also applies, an indictment contains a final paragraph (not disclosed to the jury) setting out the previous convictions of the accused as constituting an "aggravation" of the offence with which he is charged.

The weight to be attached to previous convictions in assessing the gravity (or the trivial nature) of the offence charged is a matter for the tribunal charged with the duty of determining what the penalty shall be. No doubt previous convictions for technical offences which involve no moral turpitude will be given little weight in the assessment of the appropriate penalty for an offence which does. The weight to be attached to previous convictions for offences which do involve some moral turpitude, such

as dishonesty, will no doubt vary with their similarity or otherwise to the offence charged and with the interval of time that has elapsed since they were committed. But questions of weight are not questions of law on which the Legal Assessor to the Disciplinary Committee is required or entitled to advise them. They are left to the collective good judgment of the members of the Disciplinary Committee in whom the sentencing function is vested by the Dentists Act 1957.

In their Lordships' view there was no need for the Legal Assessor to give to the Disciplinary Committee any elaborate advice upon their legal duty in exercising their sentencing power in the instant case; and, in particular, he would have been wrong had he advised them as a matter of law that they were not entitled to take into account the appellant's previous convictions for offences of dishonesty in determining whether the offence of shoplifting, which he had committed and which was the subject of the charge before them, was in all the circumstances so grave as to justify the conclusion that the appellant was unfitted to continue in practice as a member of the dental profession. What weight was to be attached to those previous convictions was a question for the members of the Disciplinary Committee themselves—not for their Legal Assessor.

For these reasons their Lordships will humbly advise Her Majesty that this appeal should be dismissed.



In the Privy Council

PETER ZIDERMAN

v.

THE GENERAL DENTAL COUNCIL

DELIVERED BY
LORD DIPLOCK