

IN THE HIGH COURT OF JUSTICE

KING'S BENCH DIVISION
ADMINISTRATIVE COURT

AC-2024-LON-003107



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BETWEEN

THE PROFESSIONAL STANDARDS AUTHORITY
FOR HEALTH AND SOCIAL CARE

Appellant

-and-

(1) THE GENERAL MEDICAL COUNCIL

(2) DR KAUSIK RAY

Respondents

ORDER BY CONSENT

UPON the parties having agreed to the terms of this Order, in particular that it is just and convenient for the Court to make the Order set out below

AND UPON neither party being a child or protected party and the appeal not being an appeal from a decision of the Court of Protection

AND UPON the Second Respondent being a doctor on the register established and maintained by the First Respondent.

AND UPON a Medical Practitioners Tribunal of the Medical Practitioners Tribunal Service of the First Respondent ("the Tribunal") having found on 12 July 2024 that the Second Respondent's fitness to practise was not impaired by reason of his misconduct ("the Decision")

AND UPON the Appellant having lodged an appeal on 16 September 2024 against the Decision pursuant to Section 29 of the National Health Service Reform and Health Care Professions Act 2002 (as amended) ("the 2002 Act")

AND UPON the First and Second Respondents conceding that the appeal should be allowed for the reasons set out in Schedule 1

BY CONSENT IT IS ORDERED THAT:-

1. The appeal is allowed.
2. The Decision is quashed and substituted with a finding that the Second Respondent's fitness to practise is currently impaired by reason of his misconduct.
3. The matter is remitted to a differently constituted Medical Practitioners Tribunal of the Medical Practitioners Tribunal Service of the First Respondent for consideration as to sanction in accordance with the directions set out in Schedule 2.
4. The First Respondent is to pay the Appellant's reasonable costs of the appeal subject to detailed assessment in default of agreement.
5. No other order as to costs.

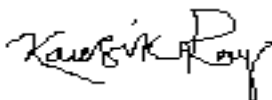


Hill Dickinson LLP

On behalf of the Appellant



On behalf of the First
Respondent



The Second Respondent

Dated:

Approved by Tinkler (DHCJ), Simon

28/11/2024

Schedule 1

- 1 On 29 June 2022, in the Crown Court at Lewes, the Second Respondent was sentenced to a community supervision order for a period of two years, under which he was required to undertake 100 hours of unpaid work and made subject to a restraining order. As a consequence of that sentence, the Second Respondent was convicted of an offence in Schedule 3 to the Sexual Offences Act 2003 (“the 2003 Act”) and therefore became, pursuant to s 80 of the 2003 Act, subject to the notification requirements contained in Part 2 of the 2003 Act (the “Notification Requirements”) for a period of five years.
- 2 **Ground 1:** Tribunal erred in its application of the First Respondent’s Sanctions Guidance and consequently was wrong to conclude that:
 - 2.1 the Second Respondent’s fitness to practise is not impaired; and
 - 2.2 it should not direct that, as from the expiry of the suspension, the Second Respondent’s registration be subject to requirements, pursuant to s 35D(5)(c) of the Medical Act 1983 (“the 1983 Act”).
- 3 **Ground 2:** Alternatively, the Decision was unjust because of a serious procedural or other irregularity in that the Tribunal failed to give adequate reasons for its departure from the Sanctions Guidance.

Relevant guidance

- 4 The First Respondent’s Sanctions Guidance (the “SG”) provides:

“151 Any doctor who has been convicted of, or has received a caution for, a sexual offence listed in Schedule 3 to the Sexual Offences Act 2003 must notify the police (register) under section 80 of the Sexual Offences Act 2003 and may need to undertake a programme of rehabilitation or treatment. [...] These offences seriously undermine patients’ and the public’s trust and confidence in the medical profession [...].

[...]

154 [...] **The Council of the [First Respondent] has made it clear that no doctor registered as a sex offender should have unrestricted registration.** The tribunal will therefore need to make sure that, in cases where it imposes a period of suspension or conditions, the case is reviewed before the end of this period to consider whether a further period is appropriate.

155 To protect the public, the tribunal should consider whether any conditions it imposes should stipulate no contact with any patients while the doctor is registered as a sex offender. (Doctors may of course be registered as sex offenders following other sexual offences not related to child sex abuse materials.)

[...]

159 If the tribunal has doubts about whether a doctor who no longer needs to register as a sex offender should resume unrestricted practice, it should not grant the doctor unrestricted registration.”

(Emphasis added.)

Reasons in support of the Grounds

5 As a result of the failures summarised above and as further set out below, the Decision is not sufficient for the protection of the public within the meaning of ss 29(4) and 29(4A) of the 2002 Act. The Appellant thus brings the present appeal.

Ground 1: The Tribunal erred in its application of the SG

6 Paragraphs 151–159 of the SG were relevant to the Decision since, as the Tribunal had noted, the Second Respondent was under “a requirement to register with the police for five years”.

- 7 The SG provides an authoritative steer. When that steer, in particular paragraph 154 (“no doctor registered as a sex offender should have unrestricted registration”), is properly applied to the facts of the case as found by the Tribunal:
- 7.1 the only finding reasonably open on impairment was that the Second Respondent’s fitness to practise is impaired; and
- 7.2 the least serious sanction reasonably open to the Tribunal under s 35D(5) of the 1983 Act was to direct that, as from the expiry of the suspension, the Second Respondent’s registration be subject to requirements.
- 8 The Tribunal misdirected itself by failing to have regard to paragraphs 151–159 of the SG and, as a consequence of that misdirection, erred by not making the findings referred to in paragraph 7 above.

Ground 2: Alternatively, the Tribunal failed to give adequate reasons for its departure from the SG

- 9 In the alternative, the Decision was unjust because of a serious procedural or other irregularity in that the Tribunal failed to give adequate reasons for departing from the SG.
- 10 When a tribunal decides – as in an appropriate case it may – to depart from the SG’s steer, it has to give clear and case-specific reasons for doing so. Paragraphs 151–159 of the SG make plain that no doctor who is subject to the Notification Requirements, such as the Second Respondent, should have unrestricted registration. The Tribunal gave no reasons whatsoever for departing from that guidance and, due to the absence of such reasons, the court cannot be satisfied that the Decision is just.

Schedule 2 – directions

1. The proceedings brought by the First Respondent against the Second Respondent to be remitted to a differently constituted Medical Practitioners Tribunal of the Medical Practitioners Tribunal Service of the First Respondent as soon as reasonably practicable.
2. The First Respondent to place before that Tribunal:
 - a. A copy of the Decision of 12 July 2024 with paragraphs 21 and 24-36 redacted;
 - b. A copy of this consent order and accompanying schedules;
 - c. Any other evidence which the First or Second Respondent wishes to place before the tribunal, subject to the requirements of fairness and relevance.
3. That Tribunal is to consider the SG and in particular paragraphs 151 – 159.