

# Section 29 Case Meeting

3 July 2024

16-18, New Bridge St, Blackfriars, London, EC4V 6AG



## **[REDACTED] (General Medical Council)**

### ***Members present***

Alan Clamp (in the Chair), Chief Executive, Professional Standards Authority  
Rachael Culverhouse-Wilson, Lead Lawyer, Professional Standards Authority  
David Martin, Appointments and Concerns Officer, Professional Standards Authority

### ***Legal Advisor in attendance***

David Bradly KC 39 Essex Chambers

### ***Observers in attendance***

Simon Wiklund, Head of Legal, Professional Standards Authority  
Nirosha Thilagarajan, Lawyer, Professional Standards Authority  
Meenakshi Arora, Accreditation Officer, Professional Standards Authority  
Georgina Tait, Senior Scrutiny Officer, Professional Standards Authority

## **1. Definitions**

- 1.1 In this meeting note, standard abbreviations have been used. Definitions of the standard abbreviations used by the PSA, together with any abbreviations used specifically for this case are set out in the table at Annex A.

## **2. Purpose of this note**

- 2.1 This meeting note records a summary of the Members' consideration of the relevant decision about the Registrant made by the Regulator's Panel, and the PSA's decision whether or not to refer the case to the Relevant Court under Section 29 of the Act.

## **3. The PSA's powers of referral under Section 29 of the Act**

- 3.1 The PSA may refer a case to the Relevant Court if it considers that a relevant decision (a finding, a penalty or both) is not sufficient for the protection of the public.
- 3.2 Consideration of whether a decision is sufficient for the protection of the public involves consideration of whether it is sufficient:
  - to protect the health, safety and well-being of the public
  - to maintain public confidence in the profession concerned, and

- to maintain proper professional standards and conduct for members of that profession.

3.3 This will also involve consideration of whether the Panel's Determination was one that a disciplinary tribunal, having regard to the relevant facts and to the object of the disciplinary proceedings, could not reasonably have reached; or was otherwise manifestly inappropriate having regard to the safety of the public and the reputation of the profession (applying *Ruscillo*<sup>1</sup>).

#### **4. Conflicts of interest**

4.1 The Members did not have any conflicts of interest.

#### **5. Jurisdiction**

5.1 The Legal Advisor confirmed that the PSA had jurisdiction to consider the case under Section 29 of the Act. Any referral in this case would be to the High Court of Justice of England and Wales and the statutory time limit for an appeal would expire on 11 July 2024.

#### **6. The relevant decision**

6.1 The relevant decision is the Determination of the Panel following a hearing which concluded on 17 May 2024.

#### **7. Documents before the meeting**

7.1 The following documents were available to the Members:

- Determination of the panel
- The PSA's Detailed Case Review
- Transcripts of the hearing
- Case Examiners' decision
- Hearing bundles
- Counsel's Note dated 2 July 2024
- The PSA's Section 29 Case Meeting Manual

#### **8. Background, Panel hearing and Determination**

8.1 On 21 August 2020, the Registrant was referred to the GMC while under investigation by the [REDACTED].

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<sup>1</sup> CRHP v Ruscillo [2004] EWCA Civ 1356

- 8.2 At the time of the incident, the Registrant was working as a [REDACTED]  
[REDACTED]. The Registrant has held various positions since the date of the incident and is currently a [REDACTED].
- 8.3 It was alleged that on 1 June 2020, the Registrant had met up with [REDACTED] (whom he had met on a dating app, [REDACTED]) during which time [REDACTED].
- 8.4 Ms A has provided a statement to the GMC and maintains that she was orally raped by the Registrant.
- 8.5 In September 2021 [REDACTED] was charged with one count of [REDACTED]. Following the criminal trial at [REDACTED], the Registrant was acquitted by the jury on all charges on 26 September 2022.
- 8.6 On 29 August 2023, the Case Examiners made a decision under Rule 8 of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), to refer the allegation to the MPT for them to arrange for a determination by an MPT.
- 8.7 On 11 October 2023 a GMC Assistant Registrar ("AR") reviewed [REDACTED] case and determined that the matter should be referred back to the case examiners for consideration under Rule 28 of the Fitness to Practise Rules 2004, to withdraw the Registrant's case ("the AR referral") given the Registrant's acquittal in Court.
- 8.8 A GMC Case Examiner considered the withdrawal request following the AR referral and, on 19 December 2023, the Case Examiner determined that the Registrant's referral to a MPT hearing should not be cancelled.
- 8.9 A MPT hearing took place between 13 – 17 May 2024. The Registrant was present and represented.
- 8.10 The Registrant's representative submitted that the hearing should be stayed on the basis that it would not be possible to give the Registrant a fair trial, citing the case of Maxwell, R v Maxwell [2010] UKSC 48. In that case, the court stated that it is well-established that a court has the power to stay proceedings in two categories: (i) where it will be impossible to give the accused a fair trial, and (ii) where it offends the court's sense of justice and propriety to be asked to try the case in the particular circumstances of the case. This stay application was based on the second category.
- 8.11 The Registrant's representative also cited concerns with the GMC failing to provide them with relevant information within a timely manner.
- 8.12 The Panel considered the evidence before them and considered that this was an exceptional case where it would amount to an abuse of process to continue proceedings based on the unfairness to the Registrant and [REDACTED] acquittal at Court.

## 9. Consideration and application of Section 29 of Act

- 9.1 The Members considered the documents before them and the legal advice received from the legal advisor in detail.
- 9.2 The Members considered whether the Panel were entitled to conclude that it was not fair to continue with the hearing and whether it was reasonable for the Panel to agree to the Stay of Proceedings.
- 9.3 The Members noted this matter was referred to a Case Examiner who determined that it should proceed to a MPT hearing. At some point shortly after the Case Examiners decision, the GMC sought legal advice, which suggested that the realistic prospect test could not be met and that these facts could not be found proved on the civil standard of proof.
- 9.4 An Assistant Registrar referred the case back to the Case Examiners under Rule 28 to be reconsidered to determine whether the matter should be withdrawn. On 19 December 2023, the Case Examiners declined to accede to the Rule 28 referral and determined their opinion remained the same – refer to a panel of the MPT. The Members were concerned that there appeared to be a lack of any proper reasons provided by the Case Examiners as to why the case should proceed to a hearing, given what appeared to be strong legal advice to the contrary, or consideration of the advice which had been disclosed to them.
- 9.5 The Members were referred to the case of R -v- Maxwell [2010] UKSC 48, which states “*the court has the power to stay proceedings in two categories of case, namely ... where it offends the court’ sense of justice and propriety to be asked to try the accused in the particular circumstances of the case.*” The Members were also referred to the cases of Bawa Garba -v- General Medical Council & Others [2018] EWCA Civ 1879, Ashraf -v- GDC [2014] EWHC 2618 (Admin), CRHCP -v- GMC & Saluja [2006] EWHC 2784 (Admin) and GMC -v- Jagjivan & PSA [2017] EWHC 1247 \*Admin).
- 9.6 They noted that the allegations in this case were the exact same allegations brought in the Criminal Court and that the evidence before the Panel would be the same evidence that was seen in Court. There was no difference in the case before the Criminal Court and that before the panel. The Members noted that public confidence in respect of the allegations against the Registrant had been arguably addressed by the Criminal Trial and that such matters in a disciplinary setting in these circumstances might be akin to a “second bite of the cherry”, whilst also considering the balancing of the public interest and integrity of the disciplinary/regulatory process.
- 9.7 The Members concluded that the decision of the Panel to stay proceedings was not unreasonable or wrong in the particular circumstances of this case, although the Members had concerns about some of the reasons given by the Panel and their decision could have been clearer.
- 9.8 Further discussion was had in relation to concerns relating to the GMC failing to disclose to the Registrant and his representative relevant advices, however the Members did not consider this to be significant given that, albeit late in proceedings, such advices were provided.

9.9 The Members were concerned with the Panel's lack of clear reasoning, nevertheless, for the reasons set out above they concluded that the decision was one which was open to the panel to make and was not manifestly inappropriate. In all the circumstances, therefore, it was not insufficient for public protection.

**10. Referral to court**

10.1 Having concluded that the Panel's Determination was not insufficient for public protection, the Members were not required to consider whether they should exercise the PSA's power under Section 29 to refer the case to the relevant court.

**11. Learning points**

11.1 Although there were some concerns about the decision, the Members did not consider that it was necessary to provide learning points in this case.



**Alan Clamp (Chair)**

**18 July 2024**

**Dated**

**12. Annex A – Definitions**

12.1 In this note the following definitions and abbreviations will apply:

<b>The PSA</b>	The Professional Standards Authority for Health and Social Care
<b>The Panel</b>	Medical Practitioners Tribunal Service (MPTS)
<b>The Registrant</b>	[REDACTED]
<b>The Regulator</b>	General Medical Council
<b>Regulator's abbreviation</b>	GMC

<b>The Act</b>	The National Health Service Reform and Health Care Professions Act 2002 as amended
<b>The Members</b>	The PSA as constituted for this Section 29 case meeting
<b>The Determination</b>	The Determination of the Panel sitting on 17 May 2024
<b>The Court</b>	The High Court of Justice of England and Wales
<b>The Code</b>	Regulator's Code of Practice
<b>The SG</b>	Regulator's Sanctions Guidance