

Section 29 Case Meeting

18 December 2020

157-197 Buckingham Palace Road, London SW1W 9SP



Nazim Hussain ALI

Members present (via MS Teams)

Alan Clamp (in the Chair), Chief Executive, Professional Standards Authority
Mark Stobbs, Director of Scrutiny & Quality, Professional Standards Authority
Simon Wiklund, Head of Legal, Professional Standards Authority

In attendance (via MS Teams)

Fenella Morris QC, 39 Essex Chambers, Legal Advisor

Observers (via MS Teams)

Siobhan Carson, Senior Scrutiny Officer, Professional Standards Authority
Seun Fagbohun, Data Administrator, Professional Standards Authority
Briony Alcraft, Scrutiny Co-ordinator, Professional Standards Authority

1. Definitions

- 1.1 In this meeting note, standard abbreviations have been used. Definitions of the standard abbreviations used by the Authority, 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 Authority's decision whether or not to refer the case to the court under Section 29 of the Act.

3. The Authority's powers of referral under Section 29 of the Act

- 3.1 The Authority 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 decision 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*¹).

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 Authority 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 31 December 2020.

6. The relevant decision

6.1 The relevant decision is the Determination of the Panel following a hearing which concluded on 5 November 2020.

6.2 The Panel's Determination which includes the charges and findings is set out at Annex B.

7. Documents before the meeting

7.1 The following documents were available to the Members:

- Determination of the Panel dated 5 November 2020
- The Authority's Detailed Case Review
- Transcripts of the hearing dated 26 October 2020 to 5 November 2020
- GPhC's Bundle
- Registrant's Bundle
- YouTube video of the rally
- Submissions and evidence provided to the GPhC Panel in the course of the hearing
- Correspondence from various individuals and bodies, including on behalf of the Campaign Against Anti-Semitism
- The Authority's Section 29 Case Meeting Manual.

7.2 The Members and the Legal Advisor were provided with a copy of a response from the GPhC to the Authority's Notification of s.29 Meeting.

¹ CRHP v Ruscillo [2004] EWCA Civ 1356

8. Background

- 8.1 The Registrant is a pharmacist, who, at the time of the events, was the managing partner of a pharmacy in London.
- 8.2 The allegations in this case arise from the Registrant's conduct during the annual Al Quds rally in Central London in support of Palestinian rights, which took place on 18 June 2017, and in which the Registrant has been an active participant for a number of years, leading the rally through the use of a loudhailer. Although the Registrant was not acting in his professional capacity during the rally, he was identified as a pharmacist by means of social media.
- 8.3 The Registrant made a number of comments whilst leading the rally through London, which led to the charges heard on 5 December 2020 by the GPHC's Fitness to Practise Committee. The Panel found that he made the following offensive comments, or words to the same effect:
- a. *"It's in their genes. The Zionists are here to occupy Regent Street. It's in their genes, it's in their genetic code.*
 - b. *European alleged Jews. Remember brothers and sisters, Zionists are not Jews.*
 - c. *Any Zionist, any Jew coming into your centre supporting Israel, any Jew coming into your centre who is a Zionist. Any Jew coming in to your centre who is a member for the Board of Deputies, is not a Rabbi, he's an imposter.*
 - d. *They are responsible for the murder of the people in Grenfell. The Zionist supporters of the Tory party."*
- 8.4 The Registrant admitted that his statements were offensive but denied that they were anti-Semitic, as was alleged by the GPhC. The Panel did not find that the comments were anti-Semitic.
- 8.5 The Panel found the Registrant's comments amounted to serious misconduct and that his fitness to practise was impaired. It imposed a warning on his registration.

9. Applying Section 29 of the 2002 Act

- 9.1 The Members considered all the documents before them and received legal advice.
- 9.2 The Members discussed the following concerns about the decision:

Freedom of Speech

- 9.3 The Members first discussed the extent to which they ought to consider the Registrant's right to free speech and the fact that this took place outside the professional context. The Members noted that it is well established that professionals are expected to maintain high standards of behaviour outside their professional lives, and that any form of prejudice and/or offensive behaviour would reflect on a Registrant's character, and would not be acceptable for any registered healthcare professional, particularly one who has

daily contact with members of the public. The Members therefore concluded that the Registrant's profession is relevant and that it was wholly appropriate for the GPhC to take this view.

Under-prosecution

- 9.4 The Members first discussed some further statements shown by the video of the march as being made by the Registrant. These included:

A procession is being led by the real Jews, who are with us here, from the Neturei Karta movement ...

...

... their Zionist Rabbis, who are an affront to Judaism. They do not represent real Jewry. The Jews are represented on our side, with our Rabbis here. These are the true Jews.

...

This Rabbi has been accused of not being a Jew. That is antisemitism. Denying Jewry to people is antisemitism.

- 9.5 The Members considered the first two statements to be of a similar nature to those at (c) in the charges, and considered that the GPhC should have considered bringing charges in relation to them. It was not clear to the Members why they had not. Moreover, the last statement could be said to be significant because it might be said to tend to suggest that the Registrant knew that denying that someone was a Jewish person was anti-Semitic, but nevertheless he proceeded to do that himself. Therefore, there was a greater need to bring a related charge. The Members noted, however, that the Panel had seen the video and was aware of these additional statements. While the Panel did not appear to have questioned the Registrant about the statements or in respect of the third statement, the Members concluded that it may be arguable that the Panel impliedly took them into account.
- 9.6 The Members concluded that although the charging was poor and there were additional matters which could have been raised, the charges were generally representative of the range and seriousness of the Registrant's statements, and all the information appears to have been before the Panel. They considered that it may be difficult for the Authority to argue that a failure to bring additional charges necessarily had a material impact in the outcome of the case and therefore that there was under-prosecution in this case. The Members did consider that the lack of charges identified may have contributed to a possible error in approach in the Panel's failure to consider whether the Registrant's statements cumulatively were anti-Semitic.

Error of approach

- 9.7 The Members next discussed the approach the Panel took to the question of whether or not the statements made by the Registrant were anti-Semitic.
- 9.8 The Members noted that The GPhC had advanced its case on the basis that the Committee should apply the definition of anti-Semitism provided by the

International Holocaust Remembrance Alliance (“IHRA”), despite this not being a universally accepted view, and also that the question of whether the statements were anti-Semitic should be judged objectively by any ordinary reasonable person, but not one with any particular characteristic i.e. one who is Jewish.

- 9.9 The Members agreed that an objective test was appropriate. However, they were concerned to note that, having correctly directed itself, the Panel then relied upon subjective material, namely the Registrant’s evidence, as to what he intended by the comments, in deciding whether they were anti-Semitic. The Members considered the Registrant’s intentions were irrelevant, and noted further that he was unable to explain the meaning of the expression “European alleged Jews”.
- 9.10 Further, the Members noted that there was a failure by the Panel to access/refer to any additional guidance on the meaning of the word ‘Zionist’ such as that set out in the Judicial College’s Equal Treatment Bench Book, which states
- “For the purpose of criminal or disciplinary investigations, use of the words “Zionist” or “Zio” in an accusatory or abusive context should be considered inflammatory and potentially anti-Semitic.”*
- 9.11 The Members considered this may have assisted the Panel in considering the nature of the Registrant’s comments and that the GPhC or the legal assessor ought to have brought it to the Panel’s attention.
- 9.12 They considered that had this guidance been available to the Panel, in addition to relying on the objective test, it is very possible that the Panel might have reached a different conclusion as to whether or not the Registrant’s statements were anti-Semitic.
- 9.13 The Members therefore concluded that using a subjective element in considering whether the comments were anti-Semitic was a serious flaw in the Panel’s decision-making process, and that the Panel had been wrong to have regard to the Registrant’s assertion that he wasn’t intending to be anti-Semitic.
- 9.14 The Members considered that the flawed approach was exacerbated by the Panel considering each comment individually and did not include their relationship to each other or their cumulative impact when determining whether they were anti-Semitic. Had the Panel approached the matter correctly, it might have reached a different conclusion on that charge. Therefore, it was arguable that this was also a serious procedural irregularity.

Was the sanction sufficient to protect the public

- 9.15 The Members discussed whether, because of the error of approach, the Panel imposed a sanction that was not sufficient to protect the public, particularly having regard to the need to maintain public confidence in the profession and declare and uphold standards of proper professional practice.
- 9.16 They noted that the Panel found the Registrant’s fitness to practise not impaired on the personal aspect, because he apologised, provided positive testimonials,

and showed some insight. It also found there was no risk of repetition and that he had done all he could reasonably do in terms of remediation. The impairment decision did not address antisemitism because that charge had not been found proved. This made it difficult to assess whether the Panel's decision would have been different, had it taken the proper approach to the charge.

- 9.17 The Members, however, considered that applying the correct approach and finding anti-Semitism made out, the Registrant's denials of anti-Semitism would have been relevant to the issues of insight or remediation and any risk of repetition. This would also have been relevant to the sanction decision, particularly whether a non-restrictive outcome was sufficient to protect the public,
- 9.18 The Members concluded that due to the serious error of approach in relation to anti-Semitism when determining facts, the Panel's subsequent decisions on impairment and sanction had not addressed anti-Semitism and the Panel may well have come to different decisions on impairment and consequently on sanction.

Conclusion on insufficiency for public protection

- 9.19 In light of their concerns, the Members concluded that the Panel's error of approach was a serious procedural irregularity which meant the Members were unable to determine whether the outcome of the case was insufficient to protect the public.²

10. Referral to court

- 10.1 Having concluded that it was not possible to determine whether the outcome of the case was insufficient for public protection, the Members moved on to consider whether they should exercise the Authority's discretion to refer this case to the relevant court.
- 10.2 In considering the exercise of the Authority's discretion, the Members received legal advice as to the prospects of success and took into account the need to use the Authority's resources proportionately and in the public interest.
- 10.3 Taking into account those considerations, along with advice on the prospects of success, the Members agreed that the Authority should exercise its power under Section 29 and refer this case to the High Court of Justice of England and Wales.



Alan Clamp (Chair)

10/11/21

Dated

² *Ruscillo* at [72]

11. Annex A – Definitions

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

The Authority	The Professional Standards Authority for Health and Social Care
The Panel	A Fitness to Practise Committee of the GPhC
The Registrant	Nazim Hussain Ali
The Regulator	General Pharmaceutical Council
Regulator's abbreviation	GPhC
The Act	The National Health Service Reform and Health Care Professions Act 2002 as amended
The Members	The Authority as constituted for this Section 29 case meeting
The Determination	The Determination of the Panel sitting on 5 November 2020
The Court	The High Court of Justice of England and Wales