

Section 29 Case Meeting

31 August 2021

157-197 Buckingham Palace Road, London SW1W 9SP



Members present

Alan Clamp (in the Chair), Chief Executive, Professional Standards Authority
Mark Stobbs, Director of Scrutiny & Quality, Professional Standards Authority
Graham Mockler, Assistant Director of Scrutiny & Quality, Professional Standards Authority

In attendance

David Bradly, Counsel, 39 Essex Street Chambers

Observers

Colette Higham, Senior Scrutiny Officer, Professional Standards Authority
Michael Hannah, Scrutiny Officer, Professional Standards Authority
Rachael Martin, Team Coordinator, Professional Standards Authority

This meeting was held virtually in light of the current pandemic.

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 3 September 2021.

6. The relevant decision

6.1 The relevant decision is the Determination of the Panel following a hearing which concluded on 29 June 2021.

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 29 June 2021
- The Authority's Detailed Case Review
- Transcripts of the hearing dated 21 – 29 June 2021
- Counsel's Note dated 31 August 2021
- Hearing Bundle
- Hearing Exhibits Log
- ICP Bundle
- Outcome Email to Registrant
- Signed ICP Decision
- The HCPC's Indicative Sanctions Guidance

¹ CRHP v Ruscillo [2004] EWCA Civ 1356

- 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 HCPC to the Authority's Notification of s.29 Meeting.

8. Background

8.1 The Registrant, a registered [REDACTED] made a self-referral to the HCPC following his suspension from his role on 28 March 2019 due to his behaviour towards Colleague 1, an Emergency Care Technician also based at his place of work. Colleague 1 was known to the Registrant; [REDACTED].

8.2 The Panel found that during February and March 2019 the Registrant had made offensive and demeaning comments in the workplace regarding Colleague 1's size including that she had a "fat arse", was putting on weight, needed to lose weight and needed bigger trousers and, indeed, had brought and/or attempted to give her bigger trousers. The panel found that there was no case to answer in respect of two further offensive comments.

8.3 The Panel found that the proven matters amounted to misconduct and found that the Registrant's fitness to practise was impaired on both personal and public components and determined that a conditions of practice order be imposed for a period of 12 months with a review hearing to be held.

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:

What this conduct really was?

9.3 The Members noted that the conduct involved was directed at a single individual, who, as well as being a colleague, was known personally to the Registrant and occurred over a period of 14 days.

9.4 The Members considered the extent of the conduct. A fortnight was a long time for such offensive behaviour, which was considerably more than 'banter', particularly since colleagues were telling the Registrant to stop and were ignored. The Members were concerned about whether this implied a poor attitude generally which might extend to patients who were overweight. The Members were also concerned by the Registrant's failure to accept from colleagues' comments that he was going too far, that what he was doing was bullying and his failure to recognise how upsetting it was for Colleague 1. The Members felt that this added to the seriousness of the conduct.

9.5 The Members were, however, mindful that a fortnight within a 17-year career was not representative of the registrant's general behaviour did not represent the most serious misconduct and that the Panel had recognised the seriousness of the conduct and made a finding of impairment.

Lack of insight

- 9.6 The Members considered the Panel's approach to the question of the Registrant's insight.
- 9.7 The Members noted that the Panel had expressed significant concerns about the Registrant's insight when considering impairment, noting that he had defended his comments by asserting a right to "free speech". And that he had shown no insight into the serious impact of his behaviour on Colleague 1. However, this contrasted with its approach at sanction stage where it had identified some insight, that he had taken a couple of courses over the few days following the Panel's decision on the facts and that he had apologised to Colleague 1 where this was not the case.
- 9.8 The Members considered that the Panel had not adequately explained its reasoning for its change of approach at sanction stage.

What risk does the Registrant pose and does the sanction imposed meet the risk?

- 9.9 The Members considered the terms of the conditions imposed and the extent to which those conditions were capable of protecting the public interest by addressing any risk the Registrant continued to pose.
- 9.10 The Members considered whether the Registrant did indeed pose a risk because of his lack of insight and his victimisation of colleague 1. A significant period of time had elapsed since the misconduct occurred and the Registrant had not practised since. Prior to the misconduct he had an unblemished career of 17 years.
- 9.11 While the Panel had not ruled out a risk of repetition at the impairment stage, the Members noted that there was no suggestion that any similar conduct has been directed at patients. There was little evidence to suggest that the risk to patients or of him picking on another colleague were real. Moreover, the conditions required the Registrant to be supervised within his place of work.
- 9.12 While it appeared that many of the Panel's findings might suggest that suspension was an appropriate sanction, the Panel noted that the conditions imposed were significant. They removed the Registrant from the individual concerned, required him to reflect on his conduct and imposed a supervision requirement. The Members were satisfied that the risk of repetition was covered by the conditions imposed and provided a structure in which insight could be developed and would be reviewed.

Conclusion on insufficiency for public protection


- 9.13 While the Members were concerned that there was a disconnect between the finding of impairment and the Panel's discussions on sanction, they considered that the Panel had taken the conduct seriously and imposed relevant and restrictive conditions which would be reviewed. In all the circumstances, therefore, the Members concluded that the conditions were 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 Authority's power under Section 29 to refer the case to the relevant court.

11. Learning points

- 11.1 The Members agreed that the learning points set out at Appendix C should be communicated to the Regulator.



Alan Clamp (Chair)

27/09/21

Dated

12. Annex A – Definitions

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

The Authority	The Professional Standards Authority for Health and Social Care
The Panel	A Conduct and Competence Panel of the Health & Care Professions Council
The Registrant	[REDACTED]
The Regulator	Health & Care Professions Council
HCPC	Health & Care Professions Council
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 29 June 2021
The Court	The High Court of Justice of England and Wales
The SG	Regulator’s Sanctions Policy