

Section 29 Case Meeting

8 February 2023

157-197 Buckingham Palace Road, London SW1W 9SP



Paul Rees Deacon

Members present

Marcus Longley (in the Chair), Board Member, Professional Standards Authority
Kisha Punchihewa, Senior Solicitor, Head of Legal, Professional Standards Authority
Remi Gberbo, Lawyer, Professional Standards Authority

In attendance

Alexis Hearnden, Counsel, 39 Essex Chambers

Observers

Rebecca Senior- Carroll, Lawyer, Professional Standards Authority
Collette Higham, Scrutiny Officer, Professional Standards Authority
Georgina Devoy, Senior Scrutiny Officer, Professional Standards Authority

This meeting took place virtually via Teams

1. Definitions

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

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

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.

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.

3.1 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

The Members did not have any conflicts of interest. The Chair queried whether the meeting was quorate, given that the checklist in front of him suggested otherwise. The Members considered advice from Counsel who was satisfied that the meeting was quorate, and that the Members present were all relevant decision makers as per her copy of the Chair Checklist. Having investigated the matter further following the meeting, it appears the Chair had been provided with an outdated copy of the relevant Checklist.

5. Jurisdiction

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 13 February 2023.

6. The relevant decision

The relevant decision is the Determination of the Panel following a hearing which concluded on 20 December 2022.

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

7. Documents before the meeting

The following documents were available to the Members:

- Determination of the panel dated 20 December 2022
- The Authority's Detailed Case Review
- Transcripts of the hearing
- Counsel's Note dated 7 February 2023
- The HCPC's Code

¹ CRHP v Ruscillo [2004] EWCA Civ 1356

- The HCPC's Indicative Sanctions Guidance
- The Authority's Section 29 Case Meeting Manual
- HCPC response dated 7 February 2023

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. The Members considered the response prior to the meeting, having received legal advice.

8. Background

The Registrant was employed as a Community Podiatrist at Aneurin Bevan University Health Board at the relevant time, having worked at the Board since 10 January 2020.

On 26 June 2020, a domestic incident took place between the Registrant and Person 1, who the Registrant had been in a relationship with since August 2019. On 27 June 2020, the Registrant was arrested for assault and released on conditional bail, pending further enquiries. On 24 August 2020, the Registrant pleaded guilty and was convicted at Cardiff Magistrates Court of Assault by beating contrary to section 39 of the Criminal Justice Act 1988.

The Registrant received by way of sentence a Community Order, a Restraining Order, an Unpaid Work requirement, a Programme Requirement and a Rehabilitation Requirement. He was also ordered to pay compensation of £200, a victim surcharge of £95, and Prosecution costs of £85.

On 26 June 2020, the HCPC was notified of this conviction by South Wales Police. On 23 November 2020, the HCPC contacted the Registrant about the reported conviction and the Registrant disclosed the conviction to his line manager on that same date. A disciplinary investigation was conducted by the Board which resulted in the Registrant's dismissal. As part of the disciplinary investigation on 15 December 2020, the Registrant was asked whether he had completed his two-year renewal and professional declaration. He stated that he had completed his renewal, and that he had explained what had happened to the HCPC.

The panel considered impairment on the basis of misconduct and conviction. This was comprised of the conviction for Assault by beating and an allegation that the Registrant had not informed the HCPC of the conviction in a timely manner and that his actions had been dishonest. At the hearing, the Registrant admitted the conviction but denied the allegation of misconduct maintaining that he had not made a false declaration during the HCPC registration renewal.

At the commencement of the hearing, the HCPC applied to adduce additional evidence that the registrant had not informed the HCPC of his conviction for five months, but this application was declined by the panel.

The HCPC made no submissions regarding the misconduct allegations and the panel upheld a Case to Answer submission at the conclusion of the HCPC's case. The panel determined that the Registrant's fitness to practise was not currently impaired by reason of the conviction.

9. Applying Section 29 of the 2002 Act

The Members considered all the documents before them and received legal advice.

The Members discussed the following concerns about the decision:

Was the outcome undermined by a serious procedural irregularity?

The Members first considered the evidence obtained by the HCPC and put before the panel at the commencement of the proceedings. It was noted that the evidence matrix setting out the basis on which the HCPC was seeking to prove the allegations, referred to a witness statement of the HCPC's Registration Manager in which it was confirmed that the Registrant had not disclosed his conviction when he renewed his registration on 13 June 2020.

The Members had concerns that the HCPC had not understood the case it was required to investigate and evidence had been gathered on an incorrect basis and without adequate care. The Members considered that a basic check of the certificate of conviction would have established that the Registrant having been convicted of the offence on 24 August 2020 could not possibly have made this declaration when he renewed his registration. The HCPC's error in this regard meant that the investigation and gathering of evidence was undertaken erroneously.

The Members noted that the HCPC, having been denied the application to adduce additional evidence had offered no evidence in relation to the allegation and a subsequent submission of no case to answer was upheld.

The Members considered the available evidence and noted that in addition to the extracts from the Registrant's registration records, the Registrant's witness statement did concede that he had not reported his conviction in a timely manner. It was noted that it had been open to the HCPC to call the Registration Manager from whom it had obtained a witness statement to give evidence in person to clarify the evidence in her witness statement and explain the entries on registration records. The Members took the view that although it may have been difficult to establish the allegation of dishonesty, there was some evidence which ought to have been tested.

The Members were of the view that the decision to abandon the allegation and make no submissions in relation to what was a serious charge was premature.

The Members went on to consider the Panel's approach in determining whether to accede to the HCPC's application to adduce additional evidence and noted with concern that the Panel did not appear to have considered the possibility of adjourning the proceedings to address any concerns regarding potential prejudice arising by the HCPC adducing additional evidence as articulated by the Registrant's representative. The Members noted that at no time was Counsel for the Registrant asked to explain how a short adjournment would prejudice the Registrant.

The Members noted that the Legal Assessor had advised the Panel to consider whether any potential prejudice could be overcome by a short adjournment and had reminded the panel of the overarching objective of public protection. The Members considered that although the Legal Assessor's advice had properly directed the panel to consider the need to ensure fairness and potential prejudice, had failed to balance

this against the public interest in ensuring the effective inquiry into allegations of serious misconduct.

The Members considered that the panel appeared to have been preoccupied with the length of time it had taken for the case to progress to a final hearing and had lost sight of the importance of discharging its function as a panel of inquiry. Given that the HCPC's case presenter had indicated that a brief witness statement was in the process of being prepared, a short adjournment should have been directed.

The Members were of the view that there had been significant failings in the HCPC's investigation and presentation of the case, the consequence of which was that the Registrant's fitness to practise had not been properly inquired into.

The HCPC's failure to ensure that evidence in its possession was properly adduced represented a serious procedural error which had been compounded by the Panel's failure to allow additional the evidence to be adduced and failing to adjourn the proceedings.

The Panel had failed to discharge its obligations as a panel of inquiry in accordance with the overarching objective and the Members concluded that as such, the outcome in this case had been undermined by a series of serious procedural irregularities

The finding of no impairment

The Members were not satisfied that the panel had fully considered the seriousness of the Registrant's actions which led to the conviction. The Members noted the evidence that as part of the assault the Registrant had slapped Person A 30-40 times, grabbed her around the throat and banged her head on the floor and bent her fingers back. The Members considered that had the panel properly evaluated the seriousness of the assault it could not have reasonably concluded that a fully informed member of the public would consider the finding of no impairment to be acceptable.

The Members were concerned that the panel had focussed on the personal component, noting the Registrant's insight and remorse, but failed to properly address the impact of the Registrant's actions on the maintenance of standards of conduct and public confidence in the profession.

The Members agreed that the panel was under a duty to provide with clarity an explanation as to how it had reached its decision and how they had satisfied their overarching objective.

The Members could not understand how the panel had reached the decision it had and were concerned that they had minimised the gravity of the offence in completely mischaracterising the seriousness of the behaviour leading to the conviction. The Panel appeared to have lost sight of what it meant to be a regulated professional and need for the regulatory process to reflect the unacceptability of behaviour such as that leading to the Registrant's conviction.

The Members agreed that it was unclear as to why the panel came to the conclusions they did and that their failure to properly explain its findings was a significant flaw.

The Members concluded that the finding of no impairment was insufficient to maintain standards of conduct in the profession and insufficient to maintain public confidence in the profession.

Conclusion on insufficiency for public protection

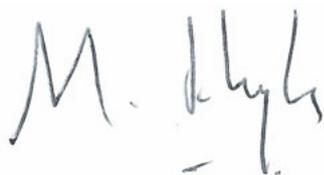
The Members concluded that outcome in this case was undermined by serious procedural irregularity and the panel's decision not to find current impairment was insufficient for public protection.

10. Referral to court

Having concluded that the panel's Determination that the Registrant's fitness to practise was not impaired 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.

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.

Taking into account the considerations, as above, 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.



Marcus Longley (Chair)

27/02/23

Dated

11. Annex A – Definitions

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 Committee of the HCPC
The Registrant	Paul Rees Deacon
The Regulator	Health and Care Professions Council
Regulator's abbreviation	HCPC
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 20 December 2022
The Court	The High Court of Justice of England and Wales
The Code	Regulator's Code of Practise
The ISG]	Regulator's Indicative Sanctions Guidance