

Section 29 Case Meeting

5 September 2024

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



[REDACTED] (HCPC)

Members present

Graham Mockler, Director of Regulation and Accreditation (in the Chair), Professional Standards Authority

David Martin, Concerns & Appointments Officer, Professional Standards Authority

Marcus Longley, Board Member, Professional Standards Authority

Legal Advisor in attendance

Alexis Hearnden, Counsel 39 Essex Street Chambers

Observers in attendance

Rachael Culverhouse-Wilson, Head of Legal, Professional Standards Authority

Rachael Martin, Scrutiny Team Coordinator, Professional Standards Authority

Rosie McEwan, WES, Professional Standards Authority

Rafael Morales-Joannou, WES, Professional Standards Authority

Imogen Peroni, HR & Governance Administrator, Professional Standards Authority

Tanisha Zaman, WES, 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*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 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 the statutory time limit for an appeal would expire on 19 September 2024.

6. The relevant decision

6.1 The relevant decision is the Determination of the Panel following a hearing which concluded on 26 July 2024.

7. Documents before the meeting

7.1 The following documents were available to the Members:

- Determination of the Panel dated 26 July 2024
- The PSA's Detailed Case Review
- Transcripts of the hearing dated 22 July – 26 July 2024
- Counsel's Note dated 3 September 2024
- Final hearing bundle
- Registrant bundle
- ICP bundle
- The HCPC's Indicative Sanctions
- The PSA's Section 29 Case Meeting Manual

¹ CRHP v Ruscillo [2004] EWCA Civ 1356

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

8. Background, Panel hearing and Determination

8.1 At the material time the Registrant was working as a locum [REDACTED].

8.2 On 30 July 2020, concerns were raised about the Registrant's alleged conduct towards Patient A. Patient A who was elderly and had a diagnosis of dementia, attended the Department for a CT scan. It was alleged that, in the course of his attendance, the Registrant swore at Patient A and slapped him on the head.

8.3 On 6 August 2020, the Trust made a referral to the HCPC in respect of the incident, and, on the same date, the Registrant made a self-referral to the HCPC about the same incident.

8.4 The matter was also reported to the police and the Registrant was interviewed, but ultimately no criminal proceedings were brought.

8.5 A Panel of the HCPTS found that the Registrant had slapped Patient A approximately three times on the head and called him a "bastard". The Panel did not find proved an allegation that the Registrant said "Don't fucking nip me" or words to that effect.

8.6 The proven allegations were found to amount to misconduct and the Panel found the Registrant not impaired and consequently did not go on to consider sanction.

9. Consideration and application of Section 29 of Act

9.1 The Members considered all the documents before them and the legal advice received from the legal advisor in detail.

9.2 The Members were satisfied that the Panel was not wrong to conclude that the risk of repetition was negligible. The Panel also clearly gave consideration to Patient A's vulnerability. In terms of whether proper consideration was given to why the Registrant acted as she did, the Members were satisfied that this was discussed by the Panel and the fundamental inappropriateness of what the Registrant did was acknowledged by the Panel. The Members considered that the Panel's findings in terms of the risk of repetition were not sufficiently clear in terms of reasons but overall the decision was within the bounds of reasonableness.

9.3 The Members considered that the Panel failed to give proper consideration to the fact that the Registrant had advanced a factual account of a therapeutic tap which it had rejected, instead preferring the evidence that she had slapped the patient. While elements of the Panel's consideration on this point were considered to be inadequate in terms of reasons, it did not cause the Members serious concerns in terms of the Panel's conclusions.

9.4 The Members considered whether the Panel was wrong to conclude that a finding of impairment was not necessary on the grounds of public interest and whether they gave adequate reasons to explain their finding. The Members

concluded that the Panel did not adequately explain their conclusions on this, particularly given their earlier findings and the SG guidance. Although the Members could follow how the Panel came to this finding based on their earlier assessment of insight and remediation, the Panel's explanation was lacking and inadequate. The Members also considered there to be insufficient evidence to satisfy the Panel that a finding of impairment was not warranted on public interest grounds.

- 9.5 The Members were concerned that the Panel placed too much weight on mitigation when considering impairment on the grounds of public interest and failed to adequately explain how this was relevant in terms of assessing the public interest.
- 9.6 The Members concluded that the Panel was wrong to find no impairment on public interest grounds. The reasoning at this stage of the proceedings was lacking in detail and there was a disjunction between the Panel's findings of fact and their findings at impairment. The Members struggled to see how given the seriousness of the misconduct, which was exacerbated by the Registrant's conduct in deflecting blame, led to a finding of not impaired on public interest grounds.

10. Referral to court

- 10.1 Having concluded that the Panel's Determination was not sufficient in terms of the public interest, the Members moved on to consider whether they should exercise the PSA's discretion to refer this case to the Relevant Court.
- 10.2 In considering the exercise of the PSA's discretion, the Members received legal advice as to the prospects of success and took into account the need to use the PSA's resources proportionately and in the public interest.
- 10.3 While the Members were concerned that a finding of impairment was not made on public interest grounds, the Members considered that this was a finely balanced decision. The Panel's reasoning in relation to their findings on public interest were lacking in detail and their findings and conclusions that this was serious misconduct were not followed through to impairment. There was, however, a reasonable level of mitigation in terms of remediation, insight and remorse. The Members had agreed with the Panel's finding that the Registrant was not impaired on public protection grounds and therefore the Members' concerns related a finely balanced decision on public interest grounds.
- 10.4 Taking into account those considerations, along with advice on the prospects of success, the Members agreed that the PSA should not exercise its power under Section 29 and refer this case to the High Court of Justice of England and Wales.

11. Learning points

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



Graham Mockler (Chair)

23 September 2024

Dated

12. Annex A – Definitions

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

The PSA	The Professional Standards Authority for Health and Social Care
The Panel	A Conduct and Competence Panel of the Health & Care Professions Tribunal Service
The Registrant	[REDACTED]
The Regulator	Health and Care Professions Council
HCPTS	Health and Care Professions Tribunal Service
HCPC	Health and Care Professions Council
The Act	The National Health Service Reform and Health Care Professions Act 2002 as amended
The Members	The PSA as constituted for this Section 29 case meeting
The Determination	The Determination of the Panel sitting on 26 July 2024
The Court	The High Court of Justice of England and Wales
The SG	Regulator’s Indicative Sanctions Guidance in force at sanction stage