

Section 29 Case Meeting

13 November 2023

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



██████████ (NMC)

Members present

Alan Clamp (in the Chair), Chief Executive, Professional Standards Authority
Graham Mockler, Director of Regulation & Accreditation, Professional Standards Authority
Juliet Oliver, Board Member, Professional Standards Authority

Legal Advisor in attendance

David Mitchell, Counsel, 39 Essex Street Chambers

Observers in attendance

Rachael Culverhouse-Wilson, Lead Lawyer, Professional Standards Authority
Kate Fawcett, Senior Scrutiny Officer, Professional Standards Authority
Rachael Martin, Scrutiny Team Coordinator, 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 Wales and the statutory time limit for an appeal would expire on 17 November 2023.

6. The relevant decision

6.1 The relevant decision is the Determination of the Panel following a hearing which concluded on 13 September 2023.

7. Documents before the meeting

7.1 The following documents were available to the Members:

- Determination of the Panel dated 13 September 2023
- The PSA's Detailed Case Review
- Transcripts of the hearing dated 3-9 January 2023, 15-16 June 2023, 19 June 2023 and 13 September 2023
- Counsel's Note dated 10 November 2023
- Exhibits
- CE Masters bundle
- The NMC's Indicative Sanctions Guidance
- The PSA's Section 29 Case Meeting Manual

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

¹ CRHP v Ruscillo [2004] EWCA Civ 1356

considered the response having received legal advice and after they reached a conclusion on the sufficiency on the outcome.

8. Background, Panel hearing and Determination

- 8.1 At the material time the Registrant was employed as a registered nurse by the [REDACTED] and nursing on a ward which provides private treatment to patients suffering from alcohol and drug addictions and general psychiatric conditions. [REDACTED] was seven weeks into her probation period when the alleged conduct occurred.
- 8.2 The allegations concern an incident on [REDACTED] during which the Registrant was approached by Witness 3 for support when they were dealing with a patient who was self-harming, having cut her wrists and neck with a razor. It is alleged that the Registrant on support being requested from Witness 3, left Witness 3 to deal with the incident themselves and once she had left, Witness 3 felt that she did not know what to do and had to press her alarm to seek assistance from the other nurses on duty.
- 8.3 It was also alleged that on 10 January 2020 the Registrant made a drug error by giving Patient B, a patient suffering with alcohol addiction and who had just been admitted onto the Ward, their prescribed medication outside of the prescribed time. She failed to report this error the Deputy Ward Manager.
- 8.4 Following this drug administration error, it was alleged that the Registrant approached the Ward Doctor, Witness 4, and asked them to write a new medications' chart (MAR). The Registrant is also alleged to have sent Witness 3 to the Ward Doctor to have the prescription chart rewritten and asked that the medication be written as statdoses, or for the whole medication chart to be rewritten. This was alleged as dishonest.
- 8.5 Following the incidents, the Registrant's employer made a referral to the NMC. The Panel found all the allegations proved and imposed a 12-month suspension with a review.

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 found the Registrant's conduct during the hearing very concerning. The Registrant's blaming of other witnesses and [REDACTED] disingenuous submissions and denials were often counteracted with further inconsistent explanations. There was a continuing course of conduct by the Registrant to conceal and cover-up. And the Registrant's behaviour at the hearing should have been treated as an aggravating factor at the sanction stage.
- 9.3 The Members considered that the Panel's decision to give the Registrant credit for good character an odd decision and without logic, particularly given the facts that were found proved and Registrant's behaviour during the hearing. The Members considered it wrong for the Panel to have considered good character a mitigating factor especially in the absence of sufficient insight.

- 9.4 The Members were concerned by Panel's lack of explanation in not finding the Registrant's attitudinal issues deep-seated. The Panel's assessment of insight was generous given the Registrant's lack of understanding and awareness of [REDACTED] misconduct.
- 9.5 The Members considered the Panel's findings and reasons were unsupported by the SG and sanction imposed. The criteria for imposing a suspension were not met in this case and it was not a rational outcome on the basis of the evidence before the Panel and the Registrant's conduct at the hearing. The Panel also gave no reasons as to why removal was disproportionate in this case.
- 9.6 The Members concluded that the Panel's decision to impose a 12-month suspension was insufficient for public protection. Although there was some insight and engagement with the process by the Registrant, this was counterbalanced by the noted risk of repetition. Furthermore, the Panel's finding that the attitudinal issues were not deep-seated was offset by the vulnerability of the patients, the Registrant's poor conduct at the hearing and ongoing dishonesty. The Panel also over emphasised the mitigating factors and under emphasised aggravating factors and provided a lack of clear reasons for imposing suspension over removal.

10. Referral to court

- 10.1 Having concluded that the Panel's Determination was not sufficient for public protection, 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 Taking into account those considerations, along with advice on the prospects of success, the Members agreed that the PSA should exercise its power under Section 29 and refer this case to the High Court of Justice of England and Wales.



Alan Clamp (Chair)

23/11/23

Dated

11. Annex A – Definitions

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

The PSA	The Professional Standards Authority for Health and Social Care
The Panel	A Fitness to Practise Panel of the Nursing & Midwifery Council
The Registrant	[REDACTED]
The Regulator	Nursing & Midwifery Council
NMC	Nursing & Midwifery 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 13 September 2023
The Court	The High Court of Justice of England
The SG	Regulator’s Indicative Sanctions Guidance