

Section 29 Case Meeting

29 September 2023

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



Samuel Thomas Haward (NMC)

Members present

Juliet Oliver (in the Chair), Board Member, Professional Standards Authority
Jane Carey, Director of Corporate Services, Professional Standards Authority
David Martin, Concerns and Appointments Officer, Professional Standards Authority

Legal Advisor in attendance

Dennis Hamill, Counsel, The Bar Library, Belfast

Observers in attendance

Rachael Martin, Scrutiny Team Coordinator, Professional Standards Authority
Michael May, Partner, Edwards and Co. Solicitors
Imogen Peroni, HR & Governance Administrator, Professional Standards Authority

1. Definition

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 power 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 relevant decision is not 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 Northern Ireland and the statutory time limit for an appeal would expire on 5 October 2023.

6. The relevant decision

6.1 The relevant decision is the Determination of the Panel following a hearing which concluded on 31 July 2023.

7. Documents before the meeting

7.1 The following documents were available to the Members:

- Determination of the Panel dated 31 July 2023
- The Authority's Detailed Case Review
- Transcripts of the hearing dated 17-31 July 2023
- Counsel's Note dated September 2023
- Exhibits
- Case Examiner Exhibits
- The NMC's Sanctions Guidance
- 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 NMC to the Authority's Notification of s.29 Meeting.

¹ CRHP v Ruscillo [2004] EWCA Civ 1356

8. Background, panel hearing and decision

- 8.1 The Registrant was employed as a Registered Mental Health Nurse at a brain injuries rehabilitation unit at the time of the incident.
- 8.2 The Registrant admitted to the allegation that he, on 10 November 2017, was convicted of committing an act/series of acts with intent to pervert the course of public justice at Swindon Crown Court. The conviction arose following an incident that occurred at the Unit during a night shift on 17 September 2015. The Registrant also admitted to the allegation that he did not respond appropriately and/or provide CPR to Patient A as required.
- 8.3 The case before the NMC Panel was heard alongside that of Registrant B, a Bank Nurse also involved in the incident. Registrant B was convicted of the same offence as the Registrant.
- 8.4 The incident involved Patient A, who required checks to be carried out on him every 15 minutes. Registrant B carried out a check on Patient A at 9:15pm and noted that he was in the room and was alive.
- 8.5 The Registrant arrived at approximately 9:45pm, when he was informed by a support worker that she had found Patient A hanging in his room. The Registrant attended the room and saw Patient A hanging from a ligature around his neck. He did not immediately commence CPR but went to the office where he dialled 999. The 999 call was subsequently taken over by Registrant B. During the call, Registrant B was asked if CPR had commenced, and she replied that it had not.
- 8.6 Paramedics attended, but were unable to resuscitate Patient A. Both registrants and the support worker all told the police that CPR attempts on Patient A had been commenced as soon as Patient A was found. The police were suspicious of this account, given the conflict with what Registrant B had said during the 999 call.
- 8.7 The police launched an investigation, and the Registrant, Registrant B, and the support worker all gave statements to the police confirming that CPR attempts on Patient A had been commenced as soon as Patient A was found. A few days after her initial interview on 22 February 2016 in which Registrant B had given an untruthful account, she contacted the police through her solicitor asking to be re-interviewed. In a second interview on 25 February 2016, she stated that her previous account was not true and that she had lied at the Registrant's behest. She stated that the Registrant feared the consequences for him and his family, were it to be discovered that he had not immediately attempted to resuscitate Patient A.
- 8.8 Both registrants were charged with perverting the course of justice.
- 8.9 Following a not guilty plea, and trial by jury, the Registrant was convicted at Swindon Crown Court on 20 February 2020. He was sentenced on 21 July 2020 to 21 months' imprisonment, suspended for 24 months, with 270 hours of unpaid work.
- 8.10 The Panel found that the Registrant's fitness to practise was impaired by reason of his conviction and misconduct. It imposed a nine-month suspension order, with review considering this to be proportionate in the circumstances. It did not

consider his misconduct to be fundamentally incompatible with remaining on the register but noted that full insight had not been shown.

9. Consideration and application of Section 29 of the 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 agreed that the Panel’s approach to identifying and weighing the aggravating and mitigating factors at the sanction stage was wrong.
- 9.3 The Members agreed that the Registrant’s misconduct and conviction raised the issue of fundamental incompatibility with continuing registration as a nurse and the Panel had simply stated a conclusion without providing reasons.
- 9.4 The Members agreed that the Registrant’s misconduct and behaviour which resulted in his conviction raised the issue of deep-seated attitudinal failings which were not sufficiently addressed in the Panel’s decision to impose suspension.
- 9.5 The Members agreed that the Panel’s decision did not demonstrate application of the SG or give any reasons for departure from it.
- 9.6 The Members agreed that the Panel did not treat the Registrant’s misconduct and behaviour leading to the conviction seriously enough in imposing suspension given its own findings that there was a risk of repetition and limited insight.
- 9.7 Based on their assessment of all the relevant information, the Members concluded that the outcome of the Panel’s Determination was not sufficient for the protection of the public.

10. Referral to court

- 10.1 Having concluded that the Panel’s Determination was not sufficient for the protection of the public, the Members then considered whether to exercise the 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 Authority’s resources proportionately and in the public interest.
- 10.3 Taking into account those considerations, the Members agreed that the PSA should exercise its power under Section 29 and refer this case to the Relevant Court.

Juliet Oliver

10 November 2023

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Juliet Oliver (Chair)

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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 NMC
The Registrant	Samuel Thomas Haward
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 31 July 2023
The Relevant Court	The High Court of Justice of Northern Ireland
The SG	Regulator's Indicative Sanctions Guidance