

Section 29 Case Meeting

19 October 2023

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



Spilisiwe Zivurawa (NMC)

Members present

Alan Clamp (in the Chair), Chief Executive, Professional Standards Authority
Christine Braithwaite, Director of Standards and Policy, Professional Standards Authority
Juliet Oliver, Board Member, Professional Standards Authority

In attendance

David Hopkins, Counsel, 39 Essex Street Chambers

Observers

Rachael Culverhouse-Wilson, Lead Lawyer, Professional Standards Authority
Kate Fawcett, Senior Scrutiny Officer, Professional Standards Authority
Rachael Martin, Scrutiny Team Coordinator, Professional Standards Authority
Kate Fawcett, Senior Scrutiny Officer, Professional Standards Authority
Simon Wiklund, Head of Legal, 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 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 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 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 23 October 2023.

6. The relevant decision

6.1 The relevant decision is the Determination of the Panel following a hearing which concluded on 18 August 2023.

7. Documents before the meeting

7.1 The following documents were available to the Members:

- Determination of the Panel dated 18 August 2023
- The PSA's Detailed Case Review
- Transcripts of the hearing dated 5-9, 13-15 and 16 December 2022 and 14-18 August 2023
- Counsel's Note dated 24 October 2023
- Case Examiners' Master Bundle
- Exhibits
- The NMC's Sanctions Guidance
- 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 NMC to the PSA's Notification of s.29 Meeting.

8. Background, Panel hearing and decision

8.1 The inquiry into the Registrant's fitness to practise arose following a whistleblower raising concerns in 2021. The whistleblower was a Healthcare Assistant who was working in the mental health ward alongside the Registrant.

8.2 The concerns resulted in the Registrant being suspended pending the investigation. The concerns investigated were that the Registrant had fostered and maintained a culture of disrespect to patients; that she had discouraged staff from documenting and reporting concerns; that she demonstrated threatening and intimidating behaviour towards staff; that she led staff in blocking resident access to the communal lounge area; that she obstructed staff to admit personal care interventions and routine general observations; instructed staff to falsify documentation and finally that the Registrant had slept while on duty and encouraged other members of staff to do the same.

8.3 Following the investigation, the Registrant was dismissed in March 2021 and her employer referred the concerns to the NMC.

8.4 The NMC brought several charges and sub charges. The charges found proved by the Panel and to amount to misconduct were not the most serious charges considered by the Panel which included dishonesty and the physical abuse of patients.

8.5 Additionally, the charges based on bullying other healthcare professionals were not upheld. The Panel imposed a COP order for 18-months.

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 apparent inconsistency in considering the period over which the misconduct occurred as being both an aggravating and mitigating factor was not explained. The Members agreed that this was a flaw in the Panel's reasoning.

9.3 The Members agreed that the Panel did not fully grapple with the matter of attitudinal issues and the Registrant's abuse of power. The Members did not have any clarity that the Panel took these factors into account when determining sanction and that conditions would meet both the public confidence and public protection objectives.

9.4 The Members agreed that this is an obvious case where public confidence is not addressed by the sanction. The Panel failed to draw out that a mental health nurse was depriving a patient of their liberty without authorisation. Had the Panel considered this, it is likely a suspension at the top end would have been warranted.

- 9.5 The Members agreed that deprivation of liberty and abuse of power were not expressly addressed by the Panel.
- 9.6 The Members agreed that the Panel failed to give sufficient reasons for not finding the allegation that the Registrant slept on duty and persuaded staff to also sleep on duty to amount to misconduct.
- 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 and to maintain public confidence.

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 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 Relevant Court.



Alan Clamp (Chair)

21/11/23

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 Committee of the NMC
The Registrant	Spilisiwe Zivurawa
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 18 August 2023
The Court	The High Court of Justice of England and Wales
The SG	Regulator’s Sanctions Guidance