



AC-2023-LON-000319

AC-2024-LON-000319

IN THE HIGH COURT OF JUSTICE

KING'S BENCH DIVISION

ADMINISTRATIVE COURT

BETWEEN:

THE PROFESSIONAL STANDARDS AUTHORITY  
FOR HEALTH AND SOCIAL CARE

Appellant

- and -

(1) THE HEALTH AND CARE PROFESSIONS COUNCIL

(2) MARK BOYLE

Respondents

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ORDER BY CONSENT

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**UPON** the parties having agreed to the terms of this Order, in particular that it is just and convenient for the Court to make the Order set out below

**AND UPON** neither party being a child or protected party and the appeal not being an appeal from a decision of the Court of Protection

**AND UPON** the Second Respondent being a Paramedic on the register established and maintained by the First Respondent.

**AND UPON** the Conduct and Competence Panel ("the Panel") of the First Respondent having decided on 1 December 2023 that the fitness to practise of the Second Respondent was not impaired ("the Impairment decision").

**AND UPON** the Appellant having lodged an appeal on 25 January 2024 against the decision of the Panel pursuant to Section 29 of the National Health Service Reform and Health Care Professions Act 2002 (as amended)

**AND UPON** the Respondents accepting that the Panel ought to have found the Second Respondent's fitness to practise to have been impaired

**AND UPON** the Second Respondent providing the parties with further evidence during the course of these proceedings demonstrating that he had sufficiently developed insight in relation to the Panel's finding of sexually motivated misconduct

**BY CONSENT IT IS ORDERED THAT:-**

1. The appeal is allowed.
2. The Impairment Decision is quashed and substituted with a finding of impairment and a caution order of 2 years from the date of this order.
3. The First Respondent is to pay the Appellant's reasonable costs in the agreed amount of £5,993.44.
4. There be no order as to costs as between the Appellant and Second Respondent.

Dated: 20 June 2024

Approved by Elizabeth Cooke

Judge of the Upper Tribunal (Lands Chamber),

02/07/2024

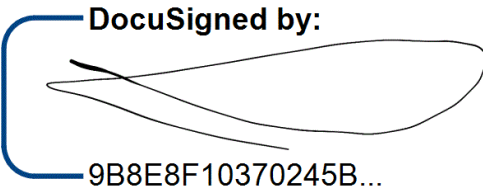
BY THE COURT

Signed 

Browne Jacobson LLP for and behalf of the Appellant

Signed 

Blake Morgan LLP for and behalf of the First Respondent

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Second Respondent

### **Schedule 1 – statement of reasons**

1. The charges before the Panel were as follows:

*“1. On 16 April 2018, you did not maintain accurate records in that you took a Student 1’s Practice Assessment Document (PAD) to review and you backdated made retrospective entries on the action plan section for the following dates, without marking them as retrospective and/or when these action plan(s) had not been discussed at the time or at all:*

*a) 10 January 2018;*

*b) On or around January 2018; and*

*c) On or around February 2018.*

2. *Between 16 October 2017 and 31 July 2018, you displayed unprofessional behaviour towards Student 1, in that you made unprofessional comments to Student 1 regarding Student 3 and/or other students you had previously mentored.*

3. *Between 01 May 2018 and 09 July 2018, you sent inappropriate and/or unprofessional messages to Student 2 via Facebook Messenger, specifically:*

*a) On or around 15 May 2018 you said “Just because you are pretty and funny doesn’t mean you can just get away with giving me shit and not expect me to hate you a little” or words to that effect;*

b) *On or around 15 May 2018 you*

*i) said “You love me really”;*

*ii) joined in with Student 2’s joke that she would love you asked if you could sign her paper work, in that you replied “We will see. Depends if you admit you love me really or not ha ha”*

c) *On 24 May 2018 you said “Oh that’s a problem when you’re a fitty”;*

d) *On 14 June 2018, you said:*

*i) “Did notice you had make up on, which I don’t normally notice”;*

*ii) that you would come to visit Student 2 at her part-time workplace.*

e) *On 15 June 2018, you said “Gorgeous ain’t ya”*

f) *On 15 June 2018, you said “Aww get Macc come stay with me lol”;*

g) *On 16 June 2018, you said:*

*i) “Need a hug? Would that help”;*

*ii) when Student 2 said that a hug would “not really” help, you said, “Not even a little / I’m good at them”;*

h) *On or around 02 July 2018, you sent messages saying said:*

*i) “You’d miss me really”;*

*ii) “Hey lovely”;*

*i) On 09 July 2018, you said “Looking good in your pic”*

*4. On or around 15 April 2015, you breached patient confidentiality and the information obtained when attending to Patient B during an emergency call for personal reasons, in that you obtained Person A’s name, who is Patient B’s relative, and contacted her on social media.*

*5. On or around 15 April 2015, you acted in an unprofessional manner towards Person A, in that you sent a Facebook message to Person A:*

*a) when she was the relative of a patient you had attended to during an emergency call;*

*b) about an hour after attending to Patient B during an emergency call.*

*6. On or around 15 April 2015, you acted in an unprofessional manner whilst attending to Patient B, in that you:*

*a) played 'sword fight' with your paperwork during the emergency call;*

*b) interrupted Person A and/or her mother on several occasions whilst at the hospital;*

*c) acted in an over-friendly manner towards Person A.*

*7. Your actions set out in particulars 3-5 were sexually motivated.*

*8. Your actions set out in particular 1 were dishonest.*

*9. The matters set out in particulars 1-8 constitute misconduct.*

*10. By reason of your misconduct, your fitness to practise is impaired.*

2. The Appellant appealed against the decision on the grounds that the decision was not sufficient to protect the public for the following reasons:

Ground 1: The Panel's decision on impairment was wrong in that the Panel:

(a) failed to properly consider Mr Boyle's level of insight;

1. The findings of the Panel in relation to Mr Boyle's misconduct and impairment are expressed, in material part, in striking and starkly contrasting terms. In relation to misconduct the Panel determined that the "*Registrant had pursued contact with Student 1 and Person A over social media which was sexually motivated. In Person A's case the Panel found that the Registrant had used confidential information to contact her. In both instances the Registrant had seriously overstepped professional boundaries.*"

2. In relation to impairment, however, the Panel found that the Registrant had "*had a long time to reflect on his behaviour*". The panel "*took into account the fact that the Registrant had admitted the factual circumstances of the allegation throughout.*" The Panel found the Registrant to be "*genuinely remorseful about what he had done*" and noted that he had "*undergone a substantial amount of carefully selected training*".

3. The findings by the Panel were reached in spite of the fact that the Registrant changed his mind in relation to accepting that his conduct was sexually motivated and denied this during the hearing, and the Panel recorded the same. The Panel found that when describing the messages sent to Student F via Facebook that the Registrant had "*difficulties articulating what his intent was*" even though he denied sexual motivation. Indeed, the Panel documented that the Registrant 'strenuously' denied that the messages were sexually motivated, despite acknowledging that they were flirtatious.
4. The registrant accepted that he crossed professional boundaries but was found by the panel to have "*strenuously denied that his actions were ever dishonest or sexually motivated*" explaining that the messages were "*merely flirtatious but not borne out of any romantic interest.*" The denial and difficulty articulating intent came despite the fact that the Registrant undertook multiple training courses in relation to appropriate professional behaviour and suggests that the Registrant remained unclear about what constituted sexually motivated behaviour, and what didn't.
5. In relation to its determination on insight the Panel's findings that the "*Registrant had insight into the type of behaviour it was*" and had "*shown a high degree of insight*" do not appear to have been properly considered. There is no indication that the Panel reflected upon the inconsistencies in the Registrant's evidence in relation to the reasons for sending various messages via social media in its findings on insight. The decision on insight was reached without the Panel bringing the real burden or substance of the Registrant's conduct into its analysis.

(b) failed to properly apply the Guidance:

22. The Panel did not consider the HCPC's guidance. The HCPTS Practice Note on Fitness to Practice Impairment of November 2023 states as follows:

*"the test of impairment is expressed in the present sense; that fitness to practice "is impaired."*

23. The Panel is thus tasked to take a view about the registrant's current fitness to practice by taking account of the way in which the registrant has acted, or failed to act in the past, and looking forward whether they think that the registrant's ability to practice safely is compromised.

24. In considering allegations panels must address the critically important public policy issues of protecting service users; declaring and upholding proper standards of behaviour; and maintaining public confidence in the profession concerned. In determining fitness to practise allegations Panels must take account of the personal component. The HCPC's guidance in relation to the

personal component states that *“there are some cases, including those involving serious attitudinal or behavioural issues, which may be more difficult to remediate or where public confidence in the profession requires a finding of impairment to be made”*.

25. This is a case where *“public confidence in the profession requires a finding of impairment to be made”*. That is because it involved an individual acting in his capacity as an educator as he was responsible for the education of Student B to whom he was found to have made sexually motivated comments over a three month period. This was in circumstances where the Registrant himself recognised that there was a *“power imbalance”*. The panel failed to consider that this was a case with the type of *“attitudinal or behavioural issues”*, issues that took place in the context of an educator-student relationship, that required a finding of impairment.
  26. The Panel also failed to take into account the sanctions guidance in relation to the public component. The HCPC guidance states as follows: *“Panels must consider the three elements of the public component. The first element of the public component - the need to protect service users - overlaps with the personal component. A registrant who has insight and is unlikely to repeat past acts or omissions may not present an ongoing/ future risk to service users. [...]”*
  27. The panel did not appear to consider that there were relevant power imbalances between the registrant, Student A and Person A (who was the granddaughter of a service user) or the fact that the misconduct involved two people over a period of time. Both facts would have been relevant to the questions of the likelihood of repeating past acts. Further, the issue of *who* the Registrant committed the sexually motivated acts to was not considered, that these were service users - a patient’s granddaughter, and a student.
- c. The Panel took an erroneous approach to impairment.
28. The Panel’s approach to impairment was wrong. The Panel, in determining whether there had been impairment should consider whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.
  29. The circumstance of this case involves multiple instances of sexual misconduct over a three year period, aggravated by a breach of confidentiality and power dynamics. HCPC should have taken into account the particular circumstances of the conduct as well as the Registrant’s actions since disciplinary proceedings had commenced and found that conduct of the type exhibited by Mr Boyle should have had regulatory consequences.



**Ground 2: The panel did not give adequate reasons for its finding that the registrant was not impaired, and nothing short of a finding of impairment would have been sufficient to maintain public confidence in the profession, as well as proper professional standards and conduct for members of the profession in any event.**

30. The Panel should have given reasons for its finding that the Registrant's position in relation to sexual misconduct was a mistake, and for not taking into account inconsistencies in relation to the Registrant's level of insight. The Panel simply stated:

*"The Panel took into account the fact that the Registrant had admitted the factual circumstances of the allegation throughout. The Registrant had always accepted that his conduct crossed professional boundaries and fell below the professional standards required. He had initially accepted his conduct in relation to particular 3 was sexually motivated but had changed his mind at the start of the hearing following a discussion with the Legal Assessor and Case Presenter. The Panel felt that this was a misunderstanding."*

31. The Panel did not give reasons for not considering the conflict between the Registrant's denial of sexual misconduct, alongside his acceptance that he was "attracted to" Student 2 and this was "evident from the messages exchanged via Facebook Messenger" and that this was "inappropriate given his position of seniority".
32. Nor did the Panel give reasons for the view taken that the Registrant "had admitted the factual circumstances of the allegation throughout" despite the fact that the Panel also found that it could not accept the Registrant's assertion that he "sent the message to check how Person A's grandmother was" and were left with the "inescapable conclusion that it was sent to illicit [sic] contact from Person A which could lead to a future sexual relationship".
33. The HCPC had a duty to ensure that the public can understand why certain decisions have been reached, and the reasons give in the HCPC's decision in relation to the findings around insight and subsequent decision on impairment are not clear, substantial or specific.