



AC-2023-LON-000752
CO/611/2023

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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) PAUL REES DEACON

Respondents

ORDER BY CONSENT

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 podiatrist/chiropractor on the register established and maintained by the First Respondent.

AND UPON the First Respondent's Conduct and Competence Panel ("the Panel") having found on 20 December 2022 that the fitness to practise of the Second Respondent was not impaired by reason of his conviction of Common Assault and/or misconduct ('the decision')

AND UPON the Appellant having lodged an appeal on 10 February 2023 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 First and Second Respondent conceding that the appeal should be allowed on the basis of the reasons set out in schedule 1.

BY CONSENT IT IS ORDERED THAT:-

1. The appeal is allowed.
2. The decision is quashed in so far as it relates to the findings concerning allegations 2 and 3, and the finding of no impairment.
3. The decision is substituted with the following findings:
 - a. Allegations 2, 3 and 4 are found proved.
 - b. The Second Respondent's fitness to practise is found to be impaired on the grounds of his conviction and misconduct, in order to uphold public confidence in the profession and to declare and uphold proper standards of conduct and behaviour.
4. A caution order is placed upon the Second Respondent's practice for a period of 6 months.
5. The First Respondent is to pay the Appellant's reasonable costs of £7,310.20 of the appeal.

Dated: 16 October 2023

Signed :

Browne Jacobson

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Browne Jacobson LLP
For and on behalf of the Appellant

Signed:

Blake Morgan

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Blake Morgan LLP
For and on behalf of the First Respondent

Signed:

Thompsons Solicitors

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Thompsons Solicitors LLP
For and on behalf of the Second Respondent

BY THE COURT

Schedule 1 – statement of reasons

1. On 24 August 2020, the Second Respondent pleaded guilty and was convicted at Cardiff Magistrates Court of assault by beating contrary to section 39 of the Criminal Justice Act 1988. A community order was made with an unpaid work requirement, programme requirement and a rehabilitation requirement along with a restraining order, a victim surcharge and costs. The Second Respondent did not contact the First Respondent to disclose the charge or conviction; he admitted the conviction during a telephone call when he was contacted by the First Respondent on 23 November 2020.
2. The Allegations before the Panel were as follows:

As a registered Chiropodist (CH33037) your fitness to practice is impaired by reason of conviction and/or misconduct. In that:

1. *On 24 August 2020 you were convicted at Cardiff Magistrates Court of assaulting Person A by beating.*
 2. *You did not inform the HCPC in a timely manner that you had been convicted of the offence at particular 1 above.*
 3. *Your conduct in relation to particular 2 above was dishonest*
 4. *The matters set out in particulars 2 and 3 above constitute misconduct.*
 5. *By reason of your conviction and/or misconduct your fitness to practice is impaired.*
3. Allegation 1 was evidenced by the certificate of conviction and was admitted. Allegations 2 and 3 were denied.
4. No positive case was advanced by the First Respondent in relation to Allegations 2 and 3, and the Panel found that there was no case to answer on those Allegations. The case proceeded on the basis of the conviction only, and the Panel found that the Second Respondent's fitness to Practise was not impaired.
5. The Appellant appealed against the decision on the grounds that the decision was not sufficient to protection the public for the following reasons:
- (1) It was a serious procedural irregularity for the First Respondent to have failed to provide the Health and Care Professions Panel with clear evidence that the Second Respondent had failed to disclose his conviction to the First Respondent prior to 23 November 2020.
 - (2) The Health and Care Professions Panel erred in refusing to admit late evidence and/or it was a serious procedural irregularity to find that any prejudice occasioned by the admission of late evidence could not be adequately mitigated.
 - (3) It was wrong and/or a serious procedural irregularity for the First Respondent to decline to advance a positive case on allegations 2 and 3 in reliance upon the evidence that was before the Panel and/or it was wrong of the Panel to conclude that the evidence was available was so limited and unsatisfactory that it would be unable to find allegation 2 or 3 proved.
 - (4) The Health and Care Professions Panel's approach to the case failed to have adequate regard to the overarching objective. The Panel failed to discharge its duty to undertake an effective inquiry into the Second Respondent's fitness to practice.
 - (5) The Panel erred in finding no impairment in that:
 - i. It failed to grapple with the seriousness of the conviction and the offending behaviour;
 - ii. The Panel failed to adequately address the importance of maintaining standards and upholding public confidence in the profession;

- iii. The Panel wrongly found that the need to uphold proper professional standards and public confidence in the profession had *“already been met by the Registrant’s completion of his sentence”*
- (6) Alternatively, the Panel failed to give adequate reason for its decision that a finding of impairment was not required given the Second Respondent’s serious conviction. The Panel failed to discharge its duty to ensure that the public can understand why the decision was reached; can be reassured that healthcare professionals on whom they must depend are well and fairly regulated; can know that the overarching obligation professionals have to deserve the trust the public places in them, and to discharge their professional duties with the interests and safety of patients uppermost, has a secure foundation.
- 6. The First Respondent concedes the appeal on Grounds 1-4.
 - 7. The Second Respondent consents to the making of this order.
 - 8. The parties have agreed that the Decision should be quashed and that a Caution Order is placed upon the Second Respondent for a period of 6 months.