

AC-2023-LON-001213



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IN THE HIGH COURT OF JUSTICE
CO/1400/2023
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) DAVID LEE

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 Practitioner Psychologist 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 8 February 2023 that the Second Respondent should be suspended for a period of 9 months ("the Decision").

AND UPON the Appellant having lodged an appeal on 14 April 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, subject to paragraph 4
3. The Second Respondent's case is remitted to a differently constituted panel of the First Respondent ("new panel") for rehearing on the basis that the charges be amended to include an allegation that the Second Respondent's actions towards Service User C were sexually motivated.
4. The written and oral evidence of the witnesses called on behalf of the First Respondent is retained, such that the new panel may have regard to that evidence without the witnesses needing to be recalled.
5. The First Respondent is to pay the Appellant's reasonable costs of £7,440.20.

We the parties consent to an Order in the above terms

Browne Jacobson

Browne Jacobson, Solicitors for the Appellant

Dated: 15 September 2023

Ref: 045833.00096

BM LLP

Blake Morgan LLP, Solicitors for the First Respondent

Dated: 20/9/2023

Ref: 613481-481

DL

David Lee, Second Respondent

Dated: 14/9/2023.

Schedule 1 – Statement of Reasons

The Appellant and First Respondent agree that the decision of the Panel was not sufficient for the protection of the public based on the grounds listed below. The Second Respondent takes a neutral position in relation to the grounds listed below:

- i) The Panel fell into serious procedural error in failing to amend the charge to include an allegation that the Second Respondent's actions towards Service User C were sexually motivated.
- ii) The Panel failed to apply the First Respondent's Sanctions Policy in respect of:
 - (a) Proportionality; (b) Predatory behaviour; and (c) Sexual misconduct; and
 - (d) Striking off orders.
- iii) The Panel failed to reach a decision and provide reasons regarding the causation of, and motivation for, the Second Respondent's misconduct.
- iv) The Panel's decision on sanction was otherwise wrong by reason of its failure to identify and apply the risk of repetition it had found as an aggravating factor.

APPROVED BY RORY DUNLOP KC

BY THE COURT