



CO/1532/2022

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
BETWEEN:

THE PROFESSIONAL STANDARDS AUTHORITY
FOR HEALTH AND SOCIAL CARE

Appellant

- and -

(1) THE NURSING AND MIDWIFERY COUNCIL
(2) REYNALDO ESTOQUE

Respondents

ORDER BY CONSENT

Before Dexter Dias QC,
sitting as a Deputy High Court Judge
18 July 2022

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 nurse on the register established and maintained by the First Respondent under Article 5 of the Nursing and Midwifery Order 2001 ('the register')

AND UPON a panel of the Fitness to Practise Committee of the First Respondent (“the Committee”) having found on 21 February 2022 that the charge brought against the Second Respondent was proven by way of his admission

AND UPON the Committee deciding that the Second Respondent’s fitness to practise was impaired by reason of his conviction on public interest grounds only, and that he be made subject to a conditions of practice order lasting 16 months (‘the decision’)

AND UPON the Appellant having lodged an appeal on 29 April 2022 against the decision of the Committee pursuant to Section 29 of the National Health Service Reform and Health Care Professions Act 2002

AND UPON the First and Second Respondent conceding for the reasons set out in Schedule 1 that the decision of the Committee was not sufficient for the protection of the public within the meaning of Section 29 of the National Health Service Reform and Health Care Professions Act 2002

BY CONSENT IT IS ORDERED THAT:-

1. The appeal is allowed.
2. The decision of the Committee is quashed and substituted with a finding that the Second Respondent’s fitness to practise is impaired on both public interest and public protection grounds, and that he be made subject to a 12 month suspension order to be reviewed before its expiry pursuant to Article 30 of the Nursing and Midwifery Order 2001.
3. The First Respondent will place a copy of this Order and the Appellant’s Grounds of Appeal before the panel which hears the review pursuant to (2) above.
4. The First Respondent is to pay the Appellant’s reasonable costs of the appeal, subject to detailed assessment in default of agreement.
5. No other order as to costs.

Schedule 1

1. The Appellant appealed against the decision on the basis that the decision was not sufficient for the protection of the public.

2. The 8 grounds of appeal were:
 - a. The Committee erred in finding no impairment on public protection grounds;
 - b. The Committee's assessment of the Registrant's conduct was wrong in relation to the inherent seriousness of that conduct and its impact on the complainant;
 - c. The Committee misunderstood the Magistrate's sentencing remarks and the significance of the sentence imposed;
 - d. The Committee failed to follow the NMC's Sanctions Guidance and/or departed from it without good reason;
 - e. The Committee's assessment of the impact of the criminal sentence on the reputation of the profession was wrong and/or the Committee departed from *Fleischmann* principles without good reason;
 - f. The Committee's assessment of matters of personal mitigation was wrong in that those matters were of limited relevance to the need to declare and uphold standards and maintain public confidence in the profession;
 - g. The conditions of practice order was not an appropriate sanction to address public interest concerns in this case;
 - h. The Committee failed to give adequate reasons for its decision.

BY THE COURT