

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) AMY MORRIS

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 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 28 October 2021 that the charges brought against the Second Respondent to be proven but that this did not constitute misconduct and,

consequently, the Second Respondent's fitness to practise was not impaired ('the decision')

AND UPON the Appellant having lodged an appeal on 23 December 2021 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 Respondent's Assistant Registrar having decided on 24 May 2022 that the decision made by the First Respondent's Case Examiners not to refer an allegation of dishonesty to the Committee was materially flawed and, therefore, that such an allegation should be referred to the Committee pursuant to Rule 7A of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004

AND UPON the First and Second Respondent conceding 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 on the basis set out in Schedule 1 to this order

BY CONSENT IT IS ORDERED THAT:-

1. The appeal is allowed on Ground 1 as set out in Schedule 1 to this order.
2. The decision of the Committee is quashed.
3. The Second Respondent's case is remitted to a differently constituted panel of the Committee to re-determine misconduct in accordance with the matters set out in Schedule 1 and any additional evidence upon which the First and/or Second Respondents wish to rely, subject to that evidence being admissible in the usual way. For the avoidance of any doubt, the Respondent's case is to be heard by the same panel who will consider the allegation of dishonesty.
4. The First Respondent is to pay the Appellant's reasonable costs of the appeal, subject to detailed assessment in default of agreement.

Schedule 1

The Appellant appealed against the decision on the basis that the decision was not sufficient for the protection of the public. Ground one of the Appeal was that the Committee erred in finding that the Second Respondent's actions did not constitute "misconduct". The finding was prefaced on the Committee's conclusion that whilst her actions in respect of the reference "demonstrated a lack of care" they "were not sufficiently serious to meet the relatively high threshold for misconduct."

However, that conclusion was inconsistent with their findings that the reference was "inappropriate" and "misleading" and acknowledgment of "the vital importance of accurate, independent and reliable references in any nursing recruitment process and, thereafter, safeguarding of patients and the public" and that "Colleague A was seeking employment at the Child & Adolescent Mental Health Services ("CAMHS") unit in Hillview Hospital where the patients would be young and therefore especially vulnerable." Those findings indicated that the Second Respondent's actions were in themselves "serious" and potentially placed a vulnerable cohort of patients at risk. Consequently, the characterisation of the Second Respondent's actions as "a single negligent act" which "[did] not fall significantly below the standards expected of a registered nurse" was irrational and the ensuing conclusion that Second Respondent's actions did not constitute "misconduct" was flawed.

Had the Committee recognised the gravity of the Second Respondent's actions and found that the Second Respondent's actions constituted "misconduct," it is likely that it would have concluded that a further finding that her fitness to practise (nursing) was impaired was necessary to protect the public and in the public interest. The Committee would then have considered whether to impose a sanction or restriction on the Second Respondent's registration, pursuant to Article 29.

Mr Justice Saini

15 June 2022

SERVED ON 20/06/2022

BY THE COURT