

# Virtual Section 29 Case Meeting

11 February 2022

157-197 Buckingham Palace Road, London SW1W 9SP



## Hannah Austin

### *Members present*

Alan Clamp (in the Chair), Chief Executive, Professional Standards Authority  
Mark Stobbs, Director of Scrutiny & Quality, Professional Standards Authority  
Michael Hannah, Senior Scrutiny Officer, Professional Standards Authority

### *In attendance*

Christine O'Neill, Legal Advisor, Brodies Solicitors  
Douglas Waddell, Solicitor, Brodies Solicitors

### *Observers*

Rebecca Moore, Senior Scrutiny Officer, Professional Standards Authority  
Jane Carey, Director of Corporate Services, Professional Standards Authority  
Briony Alcraft, Scrutiny Team Co-ordinator, Professional Standards Authority

## 1. Definitions

- 1.1 In this meeting note, standard abbreviations have been used. Definitions of the standard abbreviations used by the Authority, together with any abbreviations used specifically for this case are set out in the table at Annex A.

## 2. Purpose of this note

- 2.1 This meeting note records a summary of the Members' consideration of the relevant decision about the Registrant made by the regulator's panel, and the Authority's decision whether or not to refer the case to the court under Section 29 of the Act.

## 3. The Authority's powers of referral under Section 29 of the Act

- 3.1 The Authority may refer a case to the relevant court if it considers that a relevant decision (a finding, a penalty or both) is not sufficient for the protection of the public.
- 3.2 Consideration of whether a decision is sufficient for the protection of the public involves consideration of whether it is sufficient:
- to protect the health, safety and well-being of the public
  - to maintain public confidence in the profession concerned, and

- to maintain proper professional standards and conduct for members of that profession.

3.3 This will also involve consideration of whether the panel's decision was one that a disciplinary tribunal, having regard to the relevant facts and to the object of the disciplinary proceedings, could not reasonably have reached; or was otherwise manifestly inappropriate having regard to the safety of the public and the reputation of the profession (applying *Ruscillo*<sup>1</sup>).

#### **4. Conflicts of interest**

4.1 The Members did not have any conflicts of interest.

#### **5. Jurisdiction**

5.1 The Legal Advisor confirmed that the Authority had jurisdiction to consider the case under Section 29 of the Act. Any referral in this case would be to the Court of Session and the statutory time limit for an appeal would expire on 18 February 2022.

#### **6. The relevant decision**

6.1 The relevant decision is the Determination of the Panel following a hearing which concluded on 15 December 2021.

6.2 The Panel's Determination which includes the charges and findings is set out at Annex B.

#### **7. Documents before the meeting**

7.1 The following documents were available to the Members:

- Determination of the panel dated 15 December 2021
- The Authority's Detailed Case Review
- Transcripts of the hearing dated 6 to 15 December 2021
- Legal report by Brodies LLP dated 10 February 2022
- GMC and Registrant's hearing bundle
- GMC Case Examiners' Decision
- The GMC MPTS Sanctions Guidance
- The Authority's Section 29 Case Meeting Manual

7.2 The Members and the Legal Advisor were provided with a copy of a response from the GMC to the Authority's Notification of s.29 Meeting. The Members

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<sup>1</sup> CRHP v Ruscillo [2004] EWCA Civ 1356

considered the response having received legal advice and after they reached a conclusion on the sufficiency on the outcome.

## **8. Background**

- 8.1 In November 2017 the Registrant was referred to the GMC by her employer following an internal investigation in relation to dishonesty with her employer colleagues between 14 June 2016 and 1 December 2016 relating to her completion and submission of work during an attachment. In May 2019, a Fitness to Practise Panel of the MPTS considered these allegations and suspended the Registrant's registration for a six month period. The Registrant was notified of this by letter dated 30 May 2019.
- 8.2 The allegations against the Registrant were that, following the May 2019 hearing, on 2 July 2019, she telephoned the MPTS and told an employee that she had appealed the decision of the MPTS. She stated that the Court of Session had confirmed that no reference number could be provided until the appeal had been processed, but that she would receive a reference number by the end of the week. Subsequently, when responding to requests to provide her reference number, she sent an email to the MPTS on 12 July 2019, which stated 'my apologies for the delay, I will chase this up with my legal representative today and get back to you as quickly as possible'. The MPTS Panel decided this was dishonest because the Registrant knew that she had received an email on 2 July 2019 from an employee of the Court of Session advising her that her appeal had not been accepted, and she had not lodged any further appeal documentation with the Court.
- 8.3 It was further alleged that she continued to work as a Specialty Training Registrar in public health medicine during the period between 2 July 2019 and 8 August 2019 when she knew that she had not lodged a valid appeal against her suspension and that the sanction would have been effective from 2 July 2019.
- 8.4 The Registrant made admissions in relation to the 2 July 2019 contact with the MPTS but she did not admit she had been dishonest.
- 8.5 The Panel found all the remaining facts proved and that they amounted to serious professional misconduct. It imposed a suspension for a 12 month period with an immediate order.
- 8.6 The suspension order imposed by the May 2019 panel was reviewed twice and extended. It was not until May 2020 that a reviewing panel decided that the original misconduct and dishonesty, from 2016, had been remediated to the extent that it could revoke the suspension. Allegations of dishonesty in respect of the July 2019 conduct were not dealt with by the May 2020 reviewing panel.

## **9. Applying Section 29 of the 2002 Act**

- 9.1 The Members considered all the documents before them and received legal advice.
- 9.2 The Members discussed the following concerns about the decision:

***Did the Panel err in its approach to insight?***

- 9.3 The Panel had considered that the Registrant had the capacity to develop insight and had placed considerable weight on the findings of the May 2020 reviewing panel. However, the Members noted that she had not shown any insight into her conduct in the current case and that the concerns identified by the present panel were very similar to those identified by the 2019 panel.
- 9.4 The Members considered that actually, the evidence pointed to her insight having diminished by the time of the current hearing. They noted her claims that she had not been dishonest, but instead had handled the situation badly, in a way which was incompetent and chaotic, but they felt there was nothing to suggest she would not act in the same way again, especially if put under pressure, noting that the Panel had stated that “when under stress, she resorts to untruths to ‘buy time’ and delay the inevitable without foreseeing the potential consequences.”
- 9.5 The Members further considered that the Registrant’s lack of remediation was compounded by her having been through the Fitness to Practise process relatively recently in relation to similar concerns. The Members were not convinced she has shown that she can deal with future stressful situations without being dishonest.
- 9.6 The Members were concerned that the Panel has placed weight on the Registrant’s potential for insight. They considered that the Panel had erred in finding that the Registrant was capable of showing insight purely because she had done so at a previous hearing. The Members felt strongly that it was the Registrant’s response to this latest set of allegations and hearing that the Panel should have had in mind.

***Did the Tribunal give adequate consideration to the objective seriousness of the misconduct and fundamental incompatibility?***

- 9.7 The Members considered the nature of the Registrant’s lies, noting her fitness to practise history and that her previous conduct in 2016 concerned allegations of dishonesty towards her employer. They considered that the Registrant’s July 2019 conduct was of a different magnitude because it involved dishonesty towards a professional regulatory body as well as her employer. It also involved misrepresenting what had been said to her by Court officials, in addition to her working as a doctor during a period when her practice was suspended, as a result of that dishonesty.
- 9.8 The Members considered that the Panel failed to have proper regard to the enhanced seriousness of the registrant’s dishonesty as compared to the previous finding of dishonesty made against her by the May 2019 Tribunal. While arguably the series of actions between May 2019 and August 2019 might be considered to be part of the same series of events, the fact that, after the three hearings, she had finally been thought to have insight, the failure to provide this to the present hearing suggested that erasure was the appropriate sanction.

- 9.9 Further, in considering sanction, the Panel did not appear to pay due regard to aggravating features such as the Registrant's fabrication to the Court staff, which they considered to constitute a blatant disregard for the principles set out in GMP, and that this, coupled with the repeated dishonesty and practising whilst suspended, amounted to an attitudinal problem which was fundamentally incompatible with being a doctor.
- 9.10 The Members concluded that, having found partial insight and a 'real' risk of repetition at impairment stage, the decision of the Panel to impose a suspension was surprising and that the Panel failed to provide sufficient reasons for why erasure would be a disproportionate sanction.

***Public protection and upholding public confidence***

- 9.11 The Members considered whether, having found impairment on public interest grounds alone, the Panel then gave sufficient consideration to the need to uphold public confidence and professional standards in imposing suspension in a case involving repeated dishonesty and lack of insight.
- 9.12 In their consideration of this, they took account of the fact that the Panel did not appear to have engaged appropriately with the SG and the factors set out for erasure, for example, that it could be appropriate even where the doctor does not present a risk to patient safety, but where this action is necessary to maintain public confidence in the profession. The Members therefore considered that the Panel had not taken public confidence sufficiently into account.
- 9.13 They also considered the fact that the registrant was not practising in a patient facing role at the time of the events and that there was no direct risk of harm to the public. However, they considered this to be tangential in this case bearing in mind the features of the original case against the registrant in lying about something she should have done. The Members considered that it was therefore happenstance that there has been no patient harm, and that her dishonest conduct did have a bearing on patient safety in addition to upholding professional standards. The Members considered this was especially so given the evidence that this is the behaviour she resorts to when faced with stressful situations, and that practising as a doctor is inherently stressful.
- 9.14 The Members therefore considered that there was also a basis for a finding of impairment on public protection grounds to have been made.

***Under-prosecution***

- 9.15 The Members discussed an initial concern raised by the Authority regarding under-prosecution by the GMC. However, on reflection, and in considering the GMC's response to this issue, the Members concluded that this was not a matter to be pursued.

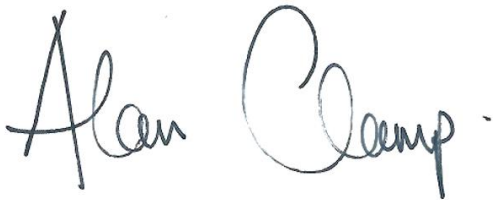
***Conclusion on insufficiency for public protection***

- 9.16 The Members concluded that the panel's decision to impose a suspension was insufficient for public protection in the following respects.
- 9.17 The Registrant showed no insight at the hearing under consideration, nor evidence of remediation, and the Panel made a flawed decision to rely on the

previous Panel's findings in relation to insight, in addition to placing more weight on the public interest aspects of the case over public protection, and failed to pay due regard to the factors set out for erasure in the SG.

**10. Referral to court**

- 10.1 Having concluded that the panel's Determination was insufficient for public protection, the Members moved on to consider whether they should exercise the Authority's discretion to refer this case to the relevant court.
- 10.2 In considering the exercise of the Authority's discretion, the Members received legal advice as to the prospects of success and took into account the need to use the Authority's resources proportionately and in the public interest.
- 10.3 Taking into account those considerations, along with advice on the prospects of success, the Members agreed that the Authority should exercise its power under Section 29 and refer this case to the Court of Session.

A handwritten signature in black ink that reads "Alan Clamp". The signature is written in a cursive, flowing style.

**Alan Clamp (Chair)**

**23/02/22**

**Dated**

## 11. Annex A – Definitions

11.1 In this note the following definitions and abbreviations will apply:

<b>The Authority</b>	The Professional Standards Authority for Health and Social Care
<b>The Panel</b>	A Medical Practitioner’s Tribunal Service
<b>The Registrant</b>	Hannah Austin
<b>The Regulator</b>	The General Medical Council
<b>Regulator’s abbreviation</b>	GMC
<b>The Act</b>	The National Health Service Reform and Health Care Professions Act 2002 as amended
<b>The Members</b>	The Authority as constituted for this Section 29 case meeting
<b>The Determination</b>	The Determination of the Panel sitting on 15 December 2021
<b>The Court</b>	Court of Session
<b>GMP</b>	The GMC’s Guidance – Good Medical Practice
<b>The SG</b>	Regulator’s Indicative Sanctions Guidance in force at sanction stage