



J. Cutts
20-2-2019

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

CO/4119/2018



BEFORE MRS. JUSTICE CUTTS
BETWEEN:

THE PROFESSIONAL STANDARDS AUTHORITY FOR HEALTH AND SOCIAL CARE

Appellant

-and-

(1) THE NURSING AND MIDWIFERY COUNCIL

First Respondent

(2) VERONICA ALI

Second Respondent



CONSENT ORDER

UPON the First and Second Respondents conceding this appeal on the basis set out in Schedules 1 to 3 that the decisions, as referred to below, made by the panel of the First Respondent's Fitness to Practise Committee ("FTPC") on 13-15 August 2018 were insufficient to protect 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 decision of the FTPC to impose the sanction of a 9-month suspension without review, is quashed.
2. For the reasons set out at Schedule 1 to this Order, the sanction decision referred to at paragraph 1 above is substituted with the sanction of a 9-month suspension with a review, to be undertaken on or before 17 May 2019, being the date that suspension will otherwise expire.
3. The consideration of the case to be undertaken by a freshly constituted FTPC at review shall include the issues set out at Schedule 2 to this Order and the documentation to be placed before that reviewing FTPC shall include those documents listed at Schedule 3 to this Order.
4. The First Respondent is to pay the Appellant's reasonable costs of this appeal to be assessed if not agreed

SIGNED

[Signature]
Weightmans LLP on behalf of the Appellant

DATED

13 February 2019



SIGNED

[Signature]
1st Respondent, the Nursing & Midwifery Council

DATED

14 February 2019



SIGNED

[Signature]
Royal College of Nursing on behalf of the 2nd Respondent

DATED

13 February 2019

SCHEDULE 1

The appeal is conceded on the following basis:

1. The FTPC determined there was impairment on the wider public interest grounds (the need to uphold standards and maintain public confidence). However, for the reasons set out below, the FTPC erred in its approach to the consideration of impairment on public protection grounds:-
 - (i) The Panel erred in holding that the Registrant had sufficient insight into her misconduct and/or that the risk of repetition was low;
 - (ii) The Panel failed to consider and/or address the significance of the Registrant's ongoing factual denials and her conduct during the Trust investigations;
 - (iii) The Panel placed inappropriate reliance on the Registrant's reflective statement and oral evidence, given at stage 1 of proceedings, as evidence of insight into her sexual misconduct, when that sexual misconduct was being denied at the time she wrote the statement and gave her oral evidence;
 - (iv) There was no evidence before the Panel of any insight into, apologies for, or reflections on, the sexual misconduct allegations that were denied and found proved.

2. It is further conceded that the FTPC's overall decision on sanction failed to reflect the full nature and gravity of the misconduct. The FTPC failed, in particular, at the sanction stage to have any regard to the aggravating factors listed at points (v) and (vi) below, and failed to have adequate regard to the aggravating factors (listed at points (i) to (iv) below:
 - (i) The Registrant instigated the relationship and accessed the patient's personal confidential information in order to do so;

- (ii) The Registrant knew that the patient was emotionally and psychologically vulnerable;
 - (iii) The duration of the relationship and the fact the Registrant continued to be involved in the patient's care throughout;
 - (iv) The Registrant's conduct during the Trust investigation and her inconsistent and evasive evidence before the FTPC including her resistance to answering questions regarding the patient; (such failings being mischaracterised or materially under-stated by the Panel at sanction stage in its list of aggravating factors);
 - (v) The patient had to go through the ordeal of giving evidence about highly personal matters;
 - (vi) The fact that the apology referred to by the Panel in its determination was given at a time when the Registrant was denying the most serious allegations and cannot, therefore, have been a genuine expression of remorse or regret in respect of those matters.
3. Consequent upon paragraphs 1 and 2 above, it is conceded that the sanction imposed by the FTPC of a 9 month suspension, was insufficient to protect the public, and should be substituted by the sanction of a 9-month suspension with review. It is further conceded that any reviewing committee considering the question of whether, at the time of that review, there is current impairment, shall, (i) when considering the previous FTPC's findings, have regard to the fact the previous FTPC erred in its approach to the question of whether the registrant's fitness to practise was impaired on public protection grounds, as set out at Schedule 1 paragraphs (i) to (iv) above, and shall (ii) undertake full consideration of whether, at the time of the review hearing, there is current impairment on public protection and/or public interest grounds.
4. The terms of the agreed Order are consequent upon the above concessions.

SCHEDULE 2

It is agreed that, without limiting in any way the normal exercise of the reviewing FTPC's powers, the issues it shall carefully consider at review, bearing in mind the overarching objective set out at Articles 3(4) and 3(4A) of the Nursing and Midwifery Order 2001, will include, but are not limited to, the following:-

- (i) whether all the concerns raised in the original findings have been sufficiently addressed;
- (ii) whether, at the time of the review, there is evidence before it that the registrant has reflected upon the matters found proved against her (in particular the sexual misconduct) and has insight in relation to them in accordance with the First Respondent's guidance on demonstrating insight,
- (iii) public protection and the risk of repetition.
- (iv) whether sufficient steps have been taken by the registrant during the period of her suspension to maintain, by way of relevant CPD, her knowledge and skills.

SCHEDULE 3

It is agreed that the documents to be placed before the reviewing FTPC shall include, but are not limited to, the following:-

- (i) Complete (both public and private) transcript of the FTPC proceedings held on 29 January 2018 to 2 February 2018; 23 to 27 April 2018 and 13 to 15 August 2018.
- (ii) Decision letter of the FTPC notifying the registrant of the outcome.
- (iii) Complete copy of the documentation placed before the FTPC.
- (iv) The sealed copy of this Consent Order with Schedules 1-3.



Dated 20 February 2019

By the Court