

IN THE HIGH COURT OF JUSTICE

CO/5154/2018

QUEEN'S BENCH DIVISION

ADMINISTRATIVE COURT

Master Gidder

BETWEEN:-

THE PROFESSIONAL STANDARDS AUTHORITY
FOR HEALTH AND SOCIAL CARE

Appellant

-and-



(1) THE NURSING AND MIDWIFERY COUNCIL
(2) GEMMA ELIZABETH CREAMER

Respondents



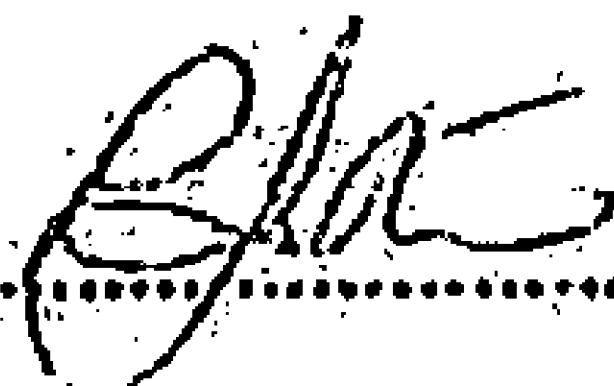
CONSENT ORDER

UPON the First and Second Respondents conceding this appeal on the grounds set out in schedule 1 that the decisions made by the panel of the First Respondent's Fitness to Practise Committee ("FTPC") on 12 October 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 following decisions of the FTPC are quashed:
 - a. The finding that there were no current public protection concerns
 - b. The finding that the risk of repetition was low
 - c. The decision to impose as a sanction a suspension order for seven weeks without a review
2. For the reasons set out in schedule 1 of this Order, the sanction decision referred to in paragraph 1 above is substituted with a sanction of a 6 month suspension order with a review hearing to take place before the suspension order expires.

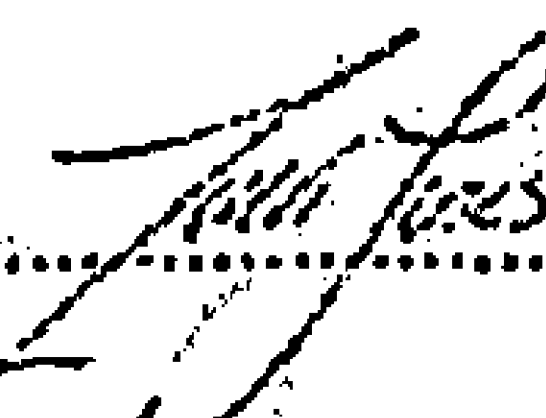
3. Without limiting in any way the normal exercise of the reviewing panel of the FTPC's powers, at the review hearing referred to in paragraph 2 above, the panel considering the case is directed to specifically consider whether there are any ongoing public protection concerns and is to be provided with the documents set out in schedule 2 of this Order.
4. The First Respondent is to pay the Appellant's reasonable costs of this appeal to be assessed if not agreed.

Signed.....
Browne Jacobson on behalf of Appellant

Dated.....11/3/19

Signed.....
1st Respondent: the Nursing and Midwifery Council

Dated.....8/3/19

Signed.....
Royal College of Nursing on behalf of the 2nd Respondent

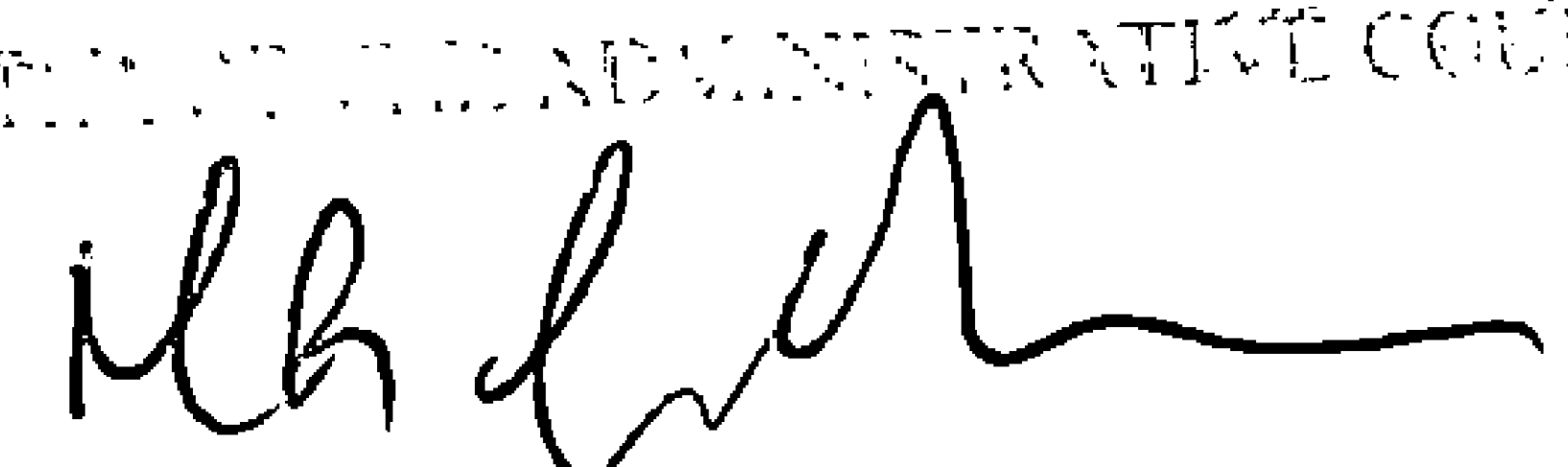
Dated.....12/3/19

ADMINISTRATIVE COURT OFFICE

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12 APR 2019

By the Court

MR GIDDEN
MAYOR OF THE ADMINISTRATIVE COURT


Schedule 1

The appeal is conceded on the following basis:

1. The findings of the FTPC in relation to the risk of repetition, the absence of any ongoing public protection concerns and the sanction imposed were the subject of serious procedural irregularities in that:
 - i) The FTPC were not provided with all of the relevant evidence they needed to properly decide the issues in the case;
 - ii) The FTPC erred in not requiring the First Respondent to provide them with additional evidence including the full sentencing remarks from the Crown Court, expert medical evidence on causation and the pre-sentencing report which had been available to the Crown Court;
 - iii) The First Respondent erred in putting its case to the FTPC solely on the basis of the impact on public confidence and the need to reflect the decision in the case of CHRE v GDC & Fleischmann [2001] EWHC 87 (Admin) without having obtained or reviewed the evidence referred to in paragraph 1. ii) above.
2. The impact of the serious procedural irregularities is that the FTPC were not in a position to properly determine whether or not there were any ongoing public protection concerns and if a suspension order without a review was sufficient to protect the public as well as reflecting the wider public interest concerns.
3. The parties agree that it is just and convenient for the Court to substitute a sanction of 6 months suspension with a review rather than remit the case for reconsideration by the FTPC and that the public will remain protected by the imposition of such a suspension order until the review takes place.

Schedule 2

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

1. A copy of this order
2. The decision letter of the FTPC notifying the Second Respondent of the outcome
3. The full transcript of the sentencing remarks from the sentencing hearing at Guildford Crown Court on 23 October 2017
4. The written basis of plea
5. The pre-sentence report prepared for the Crown Court sentencing hearing
6. The expert reports prepared for the Crown Court proceedings
7. Any previous responses submitted by the Second Respondent to the First Respondent on the substance of the allegations

By the Court