

CLAIM NO: CO/1748/2019

IN THE HIGH COURT OF JUSTICE

ADMINISTRATIVE COURT, QUEEN'S BENCH DIVISION

BETWEEN

PROFESSIONAL STANDARDS AUTHORITY FOR HEALTH AND SOCIAL CARE
Appellant

and



(1) NURSING AND MIDWIFERY COUNCIL

(2) MS MARCIA BLACKSTOCK

Respondents

CONSENT ORDER

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 either 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 having found on 25 May 2018 that the fitness to practise of the Second Respondent was impaired by reason of misconduct and having decided to impose a caution order for a period of three years on the Second Respondent ('the first decision')

AND UPON the Appellant having lodged an appeal on 30 July 2018 against the first decision pursuant to Section 29 of the National Health Service Reform and Health Care Professions Act 2002 ('the first appeal')

AND UPON the First Respondent and the Second Respondent having conceded the first appeal and accepted that the first decision 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

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Approved
[Signature]
18/10/2019

AND UPON the Court ordering on 26 September 2018 that the first decision be quashed and substituted with an order directing the Registrar of the First Respondent to impose a suspension order for six months to be reviewed by a panel of the Fitness to Practise Committee before its expiry; such review to take into account the grounds of the first appeal, which grounds were accepted by the Respondents

AND UPON a panel of the Fitness to Practise Committee of the First Respondent having found on 8 March 2019 at a review of the suspension order, without taking into account the grounds of the first appeal, that the Second Respondent's fitness to practise was not impaired ('the second decision')

AND UPON the Appellant having lodged an appeal on 30 April 2019 against the second decision pursuant to Section 29 of the National Health Service Reform and Health Care Professions Act 2002 ('the second appeal'), the grounds of which are set out in Schedule 1 to this Order

AND UPON the First Respondent and the Second Respondent conceding on the grounds of the appeal set out in Schedule 1 that there had been a failure to comply with the order of 26 September 2018.

BY CONSENT

IT IS ORDERED THAT:

PURSUANT TO SECTION 29 OF THE NATIONAL HEALTH SERVICE REFORM AND HEALTH CARE PROFESSIONS ACT 2002 AND SECTION 37 OF THE SENIOR COURTS ACT 1981:

1. The second appeal be allowed and the second decision that the Second Respondent's fitness to practise is no longer impaired be quashed.
2. The second decision be substituted with a decision that the Second Respondent's fitness to practise is the subject of a finding of impairment on the basis agreed in the 26 September 2018 order. This finding requires review.
3. The matter be remitted for a review by a panel of the Fitness to Practise Committee as soon as is reasonably practicable; for that panel to determine if the Second Respondent's fitness to practise is impaired either on the basis agreed in the 26 September 2018 order or otherwise and at which review there will be a persuasive burden on the Second Respondent to demonstrate to the panel's satisfaction that her fitness to practise is no longer impaired. If the panel finds that the Second Respondent's fitness to practise is impaired it will have the power to take any of the steps set out in Article 29(5) of the Nursing and Midwifery Order 2001.
4. The reviewing panel's consideration of the Second Respondent's fitness to practise shall not be limited to the time subsequent to this order; the Second Respondent is entitled to rely on evidence accumulated since the original finding of impairment on 25 May 2018, subject only to the restrictions of relevance and fairness.

5. Without limiting in any way the exercise of the powers of the reviewing panel of the Fitness to Practise Committee, the reviewing panel is directed specifically to consider the documents listed in Schedule 2 to this Order.
6. The First Respondent will put the matters listed in Schedule 2 to this Order before the panel which hears the review pursuant to (3) above.
7. The First Respondent shall pay the Appellant's reasonable costs of this appeal to be assessed if not agreed.
8. The First Respondent shall pay costs to the Second Respondent in the sum of £500 only.
9. There be no other order as to costs.

We consent to an order on the terms above.

Dated this 17 day of October 2019

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Ms Marcia Blackstock

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The First Respondent

The Second Respondent

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NMC

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By the Court

Schedule 1

1. The Appellant appealed against the second decision on the grounds that decision was not sufficient to protect the public.
2. The five grounds of appeal were that the panel:
 - i. failed to have regard to the grounds of the first appeal;
 - ii. placed reliance on the findings of the previous committee which was inappropriate and wrong given the first appeal;
 - iii. failed to have regard to relevant factors, including guidance issued by the First Respondent in relation to sanction;
 - iv. by reasons of grounds i, ii and/or iii above failed to properly discharge its functions as a reviewing panel;
 - v. failed to provide adequate reasons for its determination.

Schedule 2

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

1. A copy of this Order including Schedules 1 & 2.
2. A copy of the Appellant's Grounds of Appeal in the second appeal
3. A copy of the Order of Mrs Justice Cockerill dated 26 September 2018 and consent order signed by all parties as filed.
4. A copy of the decision letter dated 1 June 2018 notifying the Second Respondent of the outcome of her substantive fitness to practise hearing.
5. The relevant passages of the First Respondent's sanctions guidance and the guidance it has issued in relation to impairment and/or dishonesty.
6. The transcript of the original hearing of this matter with the panel's decisions on impairment and sanction redacted.
7. The bundle that was before the panel at the original hearing of this matter.
8. The bundle that was before the panel at the review hearing with any references to the impairment and sanction decisions of the original panel redacted.

9. The First Respondent's guidance to panels conducting substantive order review hearings.
10. The Appellant's Grounds of Appeal in the previous appeal.

By the Court