

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

Case: AC-2023-LON-003772 May 2024



AC-2023-LON-003772

BETWEEN:

**THE PROFESSIONAL STANDARDS AUTHORITY
FOR HEALTH AND SOCIAL CARE**

Appellant

- and -

**(1) THE NURSING AND MIDWIFERY COUNCIL
(2) MS DAMILOLA AKINKUGBE**

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 none of the parties 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 ('the Committee') of the First Respondent having found on 13 October 2023 that the fitness to practise of the Second Respondent was impaired by reason of misconduct, and having decided to impose a 12-month conditions of practice order with review upon the Second Respondent ('the decision')

AND UPON the Appellant having lodged an appeal on 18 December 2023 against the decision pursuant to Section 29 of the National Health Service Reform and Health Care Professions Act 2002

AND UPON the First and Second Respondents conceding the appeal and agreeing that the appeal should be allowed on the basis of the reasons set out in Schedule 1

BY CONSENT IT IS ORDERED THAT:-

1. The appeal is allowed.
2. The decision of the First Respondent's Fitness to Practise Committee to impose a 12-month conditions of practice order with review upon the Second Respondent is quashed and substituted with a six-month suspension order to be reviewed before expiry by the First Respondent's Fitness to Practise Committee.
3. The First Respondent is to pay the Appellant's reasonable costs of the appeal, subject to detailed assessment in default of agreement.



Hill Dickinson LLP

On behalf of the Appellant



Nursing and Midwifery Council

On behalf of the First Respondent

Akinkugbe

Damilola Akinkugbe

The Second Respondent



The Hon. Mr Justice Choudhury

2 May 2024

Schedule 1 – Statement of Reasons

The decision of the Committee at sanction stage was wrong for the following reasons:-

- a. the Committee failed to properly consider the seriousness of the Second Respondent's misconduct; the findings of the Committee in relation to the Second Respondent's misconduct and impairment are expressed, in material part, in striking and stark terms. Those findings included that the Second Respondent failed "*to intervene during the assault*" leaving Patient A "*exposed to an unwarranted risk of harm*" and that the "*failure to record and report [the assault] left other patients at risk of similar behaviour*". The Committee found that the Second Respondent's misconduct was "*deplorable*" and "*extremely serious*".

In relation to its determination on sanction, however, the Committee failed to bring the real burden or substance of what had gone wrong in the case into its analysis on sanction. There is no indication that the Committee considered the proven dishonesty on the part of the Second Respondent, proven against her denials, adequately or at all when deciding upon sanction.

- b. the Committee failed to properly apply the First Respondent's Sanction Guidance ('the Guidance'); the Committee did not expressly consider, as it was required to do by the Guidance, whether the conditions imposed would be sufficient to protect the public, having regard to the reasons why it had decided that the Second Respondent was not currently fit to practise and any aggravating or mitigating features.

Nor did the Committee properly consider the next most serious sanction or explain why such a sanction was not considered to be necessary. The Committee simply stated that it was "*of the view that to impose a suspension order or a striking-off order would be wholly disproportionate*". The Committee did not give any reasons for its view that such an order would be "*wholly disproportionate*", despite the fact that the Guidance states "*simply saying that*

it would be disproportionate isn't enough."

Despite the fact the Second Respondent was found to be directly responsible for exposing a patient to harm through non-intervention in and non-reporting of a case of abuse, and the Committee having found that her insight remained limited, the Committee failed to properly apply the Guidance by:

- i. not considering the seriousness of this conduct in deciding that the appropriate and proportionate sanction was that of a conditions of practice order, and
 - ii. not considering the appropriateness or proportionality of a suspension.
- c. The Committee took an erroneous approach to aggravating and mitigating factors:
- i. The Committee did not identify its previous finding that the Second Respondent's insight remained limited as an aggravating factor. This was relevant to the Committee's consideration of the likelihood of the Second Respondent's conduct being remediated when subject to conditions; an assessment the Committee was required to undertake before deciding that a conditions of practice order (as opposed to a suspension order) was the appropriate sanction in this case;
 - ii. The Committee wrongly identified as a mitigating factor that the Second Respondent "*witnessed a relatively short and one-off incident in a challenging environment*"; the description of her having simply 'witnessed' the incident is a material mischaracterisation of her conduct and inconsistent with the fact, as found proved, that she had failed to take any measure to intervene to protect Patient A and thus prevent the abuse from continuing;
 - iii. The Committee wrongly gave credit for the completion of an incident report promptly that did mention physical intervention,

despite the fact that the incident report did not correctly identify the assault.