



2631/2015

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

Claim No. CO/2631/2015

THE PROFESSIONAL STANDARDS AUTHORITY
FOR HEALTH AND SOCIAL CARE

Appellant

-and-



THE NURSING AND MIDWIFERY COUNCIL

First Respondent

MRS EUNICE FABIYI

Second Respondent

Approved
[Signature]
1.10.2015

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 a child or a protected party, and the appeal not being an appeal from the Court of Protection;

AND UPON reading the statement of matters relied upon by the parties in support of the Consent Order attached at Schedule 1,

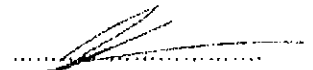
AND UPON the First Respondent conceding that the decision of its Conduct and Competence Committee ("CCC") panel dated 29 April 2015, in which the panel declined to review the Conditions of Practice Order ("the CPO") imposed on the Second Respondent by a CCC panel on 29 May 2014, was unduly lenient and/or a decision that should not have been made within the meaning of Section 29 of the National Health Service Reform and Health Care Professions Act 2002 ("the 2002 Act");

AND UPON the First Respondent undertaking to convene a panel of the CCC to review the CPO imposed upon the Second Respondent within two months of the date of this Order;

IT IS ORDERED BY CONSENT THAT:

1. The appeal is allowed;
2. The decision dated 29 April 2015 is quashed;
3. Pursuant to s.29(8)(d) of the 2002 Act, the matter is remitted to the First Respondent's CCC to review the CPO and it is directed that the CPO shall be treated for the purposes of that hearing as being extant.
4. Pursuant to s.37 of the Senior Courts Act 1982, the Second Respondent shall, pending the review of the CPO, be prohibited from working as a nurse or midwife except in accordance with the terms of the CPO.
5. The documents before the First Respondent's CCC on review of the CPO shall include those listed in Schedule 2.
6. The First Respondent is to pay the Appellant's reasonable costs of the appeal, to be subject to detailed assessment if not agreed.
7. The hearing of this appeal listed for 25 November 2015 be vacated.

SIGNED



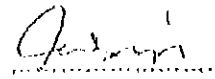
DATE

14/9/2015

CAPSTICKS SOLICITORS
1 ST GEORGE'S ROAD
LONDON SW19 4DR

SOLICITORS FOR THE APPELLANT

SIGNED



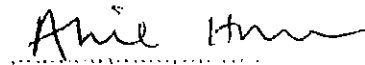
DATE

09/09/2015

MRS EUNICE FABIYI
4 TURNBURY CLOSE
THAMESMEAD
LONDON
SE28 8QP

SECOND RESPONDENT

SIGNED



DATE

15/9/2015

NURSING AND MIDWIFERY COUNCIL
1 KEMBLE STREET
LONDON
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FIRST RESPONDENT

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By the Court

Schedule 1

**STATEMENT OF MATTERS RELIED UPON BY THE PARTIES
IN SUPPORT OF CONSENT ORDER ATTACHING THE GROUNDS OF APPEAL**

1. The Appellant has appealed against the decision of a panel of the First Respondent's Conduct and Conduct Committee ("CCC") ("the second review panel") dated 29 April 2015, in which it declined to review the 12 month Conditions of Practice Order ("CPO") imposed on the Second Respondent by a CCC panel ("the first review panel") at a review hearing on 29 May 2014.
2. The Grounds of Appeal (a copy of which is attached to this consent order) sets out the legislative framework governing each of the review hearings and describes the background to the 12 month suspension order ("the substantive order") originally imposed on the Second Respondent by a CCC panel on 5 June 2013. Reviews of substantive orders are governed by Article 30 NMO 2001, the text of which is set out at paragraph 7 of the Grounds of Appeal.
3. It is conceded by the First Respondent that the second review panel misdirected itself by declining to review the 12 month CPO imposed by the first review panel. The first review panel was entitled to make the order it made, pursuant to its powers under Articles 30(1) and (2) of the Nursing and Midwifery Order 2001 ("NMO 2001"). Accordingly, the second panel misdirected itself in declining to review the 12 month CPO imposed by the first panel. In the alternative, the second panel misdirected itself in holding that the first panel's decision was void and thereby incapable of review, rather than directing itself that any perceived irregularities in the first panel's approach were capable of remedy and that the second panel's function was to carry out a statutory review of the 12 month CPO imposed by the first panel, in the interests of public protection and the public interest.
4. The parties therefore consent to the remedy sought by the Appellant; namely that the second review decision be quashed by Order of the Court and that a direction be given that the First

Respondent convene a new review panel to carry out a statutory review (pursuant to Article 30 NMO 2001) ("the New Review Panel"). The Court is further asked to: (a) direct, pursuant to s.29(8)(d) of the National Health Service Reform and Health Care Professions Act 2002, that the 12 month CPO which was in place at the time that the second review panel declined to carry out a review, be treated by the New Review Panel as though it is extant and (b) order, pursuant to s37 of the Senior Courts Act 1982 and pending the review of the CPO, that the Second Respondent is prohibited from practising as a midwife except in accordance with the terms of the CPO. (See *PSA v NMC and Jozi* [2015] EWHC 764 for an application of this principle by Singh J in relation to the making of an interim order pending remission of a case before a CCC panel).

Schedule 2

1. The First Respondent's Indicative Sanctions Guidance to Panels ("the ISG"), with particular reference to paragraphs 52-56 on Review Hearings
2. Any evidence that is relevant to the key considerations set out in the ISG at paragraph 53
3. This Consent Order including Schedule 1 and the Appellant's Grounds of Appeal
4. The Determination of the CCC on 5 June 2013
5. The Determination of the CCC on 29 May 2014