Section 29 Case Meeting

23 May 2023

16-18, New Bridge St, Blackfriars, London, EC4V 6AG

Darren Lee Kellett (GPhC)

Members present
Alan Clamp (in the Chair), Chief Executive, Professional Standards Authority
David Martin, Concerns & Appointments Officer, Professional Standards Authority
Graham Mockler, Director of Regulation and Accreditation, Professional Standards Authority

In attendance
Rachel Sullivan, Counsel, 39 Essex Street Chambers

Observers
Remi Gberbo, Lawyer, Professional Standards Authority
Rachael Martin, Scrutiny Team Coordinator, Professional Standards Authority
Christopher Pawluczyk, Senior Scrutiny Officer, Professional Standards Authority
Simon Wiklund, Head of Legal, Professional Standards Authority

This meeting was held remotely.

1. Definitions

1.1 In this meeting note, standard abbreviations have been used. Definitions of the standard abbreviations used by the PSA, together with any abbreviations used specifically for this case are set out in the table at Annex A.

2. Purpose of this note

2.1 This meeting note records a summary of the Members' consideration of the relevant decision about the Registrant made by the regulator's panel, and the PSA's decision whether or not to refer the case to the court under Section 29 of the Act.

3. The PSA's powers of referral under Section 29 of the Act

3.1 The PSA may refer a case to the relevant court if it considers that a relevant decision (a finding, a penalty or both) is not sufficient for the protection of the public.

3.2 Consideration of whether a decision is sufficient for the protection of the public involves consideration of whether it is sufficient:

- to protect the health, safety and well-being of the public

- to maintain public confidence in the profession concerned, and
- to maintain proper professional standards and conduct for members of that profession.

3.3 This will also involve consideration of whether the panel's decision was one that a disciplinary tribunal, having regard to the relevant facts and to the object of the disciplinary proceedings, could not reasonably have reached; or was otherwise manifestly inappropriate having regard to the safety of the public and the reputation of the profession (applying *Ruscillo*[1]).

4. Conflicts of interest

4.1 The Members did not have any conflicts of interest.

5. Jurisdiction

5.1 The Legal Advisor confirmed that the PSA had jurisdiction to consider the case under Section 29 of the Act. Any referral in this case would be to the High Court of Justice of England and Wales and the statutory time limit for an appeal would expire on 26 May 2023.

6. The relevant decision

6.1 The relevant decision is the Determination of the Panel following a hearing which concluded on 21 March 2023.

7. Documents before the meeting

7.1 The following documents were available to the Members:

- Determination of the panel dated 21 March 2023
- The PSA's Detailed Case Review
- Transcripts of the hearing dated 20-21 March 2023
- Exhibits
- The GPhC's Sanctions Guidance
- The PSA's Section 29 Case Meeting Manual

7.2 The Members and the Legal Advisor were provided with a copy of a response from the GPhC to the PSA's Notification of s.29 Meeting.

[1] CRHP v Ruscillo [2004] EWCA Civ 1356

8. Background

8.1 On 12 May 2022, the Registrant was convicted on four counts of supplying a controlled Class C Drug contrary to s4(1) of the Misuse of Drugs Act 1971. The offences occurred between 2 January 2014 and 20 April 2016 and involved large quantities of diazepam, zopiclone, zolpidem and nitrazepam. The conviction arose following investigations into the Registrant's wholesale distribution practices by the Medicines and Healthcare products Regulatory Agency ('MHRA') which commenced in 2016.

8.2 The Registrant had held a Wholesale Distributors Authorisation (Human) Licence WDA(H) since 2003. During his renewed application for a WDA(H) in 2010, the Registrant applied for a number of narcotic and/or psychotropic drugs, including those listed on the indictment to be included on the licence. In error, the MHRA added the controlled drugs notwithstanding that he did not hold and had not applied for a Home Office Controlled Drugs Licence (HOCDL).

8.3 Following an Inspection on 1 May 2013, the Registrant was notified that controlled drugs were a category of medicine on the licence and the necessary approvals needed to be obtained from the Home Office before controlled drugs could be wholesaled. The Registrant responded to this stating that 'there were no plans to wholesale any controlled drugs' although he continued to wholesale class C controlled drugs.

8.4 Following another inspection in March 2015 the Registrant was sent a report confirming among other matters that he did not hold the correct licences to wholesale-controlled drugs. The Registrant responded stating 'As we have no Home Office Schedules to wholesale these products, then none will be stocked.' His wholesale trading continued until 2016.

8.5 The Registrant pleaded guilty to four counts and was sentenced on each count to 24 months imprisonment suspended for a period of 12 months and ordered to pay a victim surcharge of £100.

8.6 The Fitness to Practise Committee found the Registrant's fitness to practise impaired by reason of conviction and directed a suspension order for 12 months with a review hearing to be held.

9. Applying Section 29 of the 2002 Act

9.1 The Members considered all the documents before them and received legal advice.

9.2 The Members discussed the following concerns about the decision:

Procedural irregularity

Undercharging

9.3 The Members identified two areas of potential undercharging. Firstly, Members considered whether the extent of the concerns regarding the Registrant's fitness to practise were advanced by the GPhC.

9.4 The content of the hearing bundle for the Interim Orders hearing of 6 January 2017 confirmed that the GPhC had in its possession a letter from the MHRA to the Registrant setting out concerns following an inspection carried out on 21 January 2016. That inspection raised concerns regarding the Registrant supplying drugs without appropriate authority to do so and other competency concerns. There was also evidence that the Registrant made dishonest representations following the inspections to the inspector.

9.5 The Members were surprised at the decision not to progress these matters by the GPhC as a separate allegation of impairment.

9.6 The Members considered that the failure to advance this matter as a further allegation was an error and had misconduct been considered in addition to the conviction this would have expanded the scope of the Panel's consideration on public interest. The Members also considered that these further concerns undermined some of the mitigating factors and Panel's conclusions that the Registrant had an otherwise unblemished work history.

9.7 The Members noted that the GPhC response to the PSA's notification letter indicated that they considered the Registrant's criminal conviction to surpass the MHRA investigation. The Members were inclined to agree that this was a serious offence, and the matters of undercharging on this issue were unlikely to have made any difference to the outcome in this case.

9.8 The Members were therefore not satisfied that this was a material or serious failure that would have likely made any difference to the final sanction.

9.9 Secondly, the Members considered whether an allegation of dishonesty should have been advanced in relation to the Registrant's evidence during the criminal proceedings. An application for a stay of proceedings was rejected by the Judge who noted that the Registrant knew full well that he needed a Home Office licence to sell the drugs and was fully aware that what he was doing was wrong.

9.10 The Members considered that an additional charge relating to this would not have added to the seriousness of the allegations beyond the conviction, but that at sanction it should have been identified as an aggravating feature of the case.

Integrity

9.11 The Members noted the Panel's conclusion that the Registrant had not shown a lack of integrity since the timeframe covered by the convictions.

9.12 The Members were minded that the Registrant did demonstrate a lack of integrity because of his inconsistent accounts during the criminal proceedings. While he may not have demonstrated a lack of integrity since being convicted, this is not necessarily a full demonstration of someone's integrity. The Members considered this a benevolent view of integrity by the Panel.

9.13 Dishonesty was identified as an aggravating factor and considered at the sanction stage which added to the Members' difficulty in understanding how the Panel concluded that the Registrant had not shown a lack of integrity.

9.14 There was a failure by the Panel to thoroughly deal with dishonesty in this case and while the fact that no actual harm was caused because of the offending

conduct was identified as mitigation, the issue of potential harm does not appear to have been fully addressed.

Sanction

9.15 The Members considered whether the decision to impose a suspension order was appropriate.

9.16 The Panel identified the Registrant's unblemished work history as mitigation. The Members considered whether this was accurate given the Registrant's misconduct in 2009 and his untruthful statements made during the criminal proceedings.

9.17 The Panel's view that removal would have been a more likely outcome had the matter come before a Panel at an earlier date, appeared to mirror the decision-making of the Judge in terms of the impact that the lapse of time has had on the proceedings. The Panel indicated that it did not diminish the seriousness of the Registrant's behaviour, but the Members were concerned that the Panel may have placed too much weight on this.

9.18 The Panel appeared to have a confused approach to the difference between a suspension and removal given their comments that removal would have prevented the registrant from reapplying to the register for at least five years. The Members considered the Panel appeared to misdirect itself by placing too much focus on the impact removal would have on the Registrant.

9.19 The Members concluded that while the conviction was serious enough to warrant removal, the Panel were entitled to take into account the lapse of time and evidence of safe practice since the offence occurred. This was material to the case and the decision to suspend the Registrant was not outside of what the Panel could have reasonably decided based on its findings.

Conclusion on insufficiency for public protection

9.20 The Members were concerned that the Registrant's conviction involved fundamental aspects of the role of pharmacy concerning the safe recording, control and distribution of drugs.

9.21 However, the concerns identified were not considered sufficient to mean the sanction imposed was wrong in this case. The Members concluded that the decision was not one which no reasonable Panel could have made. In all the circumstances, therefore, it was not insufficient for public protection.

10. Referral to court

10.1 Having concluded that the panel's Determination was not insufficient for public protection, the Members were not required to consider whether they should exercise the PSA's power under Section 29 to refer the case to the relevant court.

11. Learning points

11.1 The Members agreed that the learning points set out at Appendix B should be communicated to the Regulator.

12/06/23

Alan Clamp (Chair) **Dated**

12. Annex A – Definitions

12.1 In this note the following definitions and abbreviations will apply:

The PSA	The Professional Standards Authority for Health and Social Care
The Panel	A Fitness to Practise Committee of the GPhC
The Registrant	Darren Lee Kellett
The Regulator	General Pharmaceutical Council
GPhC	General Pharmaceutical Council
The Act	The National Health Service Reform and Health Care Professions Act 2002 as amended
The Members	The PSA as constituted for this Section 29 case meeting
The Determination	The Determination of the Panel sitting on 21 March 2023
The Court	The High Court of Justice of England and Wales
The MHRA	The Medicines and Healthcare products Regulatory Agency