

# Section 29 Case Meeting

11 June 2024

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



## ██████████ (GPhC)

### *Members present*

Alan Clamp (in the Chair), Chief Executive, Professional Standards Authority

Christine Braithwaite, Director of Standards and Policy, Professional Standards Authority

David Martin, Concerns and Complaints Officer, Professional Standards Authority

### *Legal Advisor in attendance*

Nicola Kohn of counsel 39 Essex Chambers

### *Observers in attendance*

Georgina Tait, Senior Scrutiny Officer, Professional Standards Authority

Rachael Martin, Team Co-ordinator, Professional Standards Authority

Chris Pawluczyk, Scrutiny Officer, Professional Standards Authority

Nirosha Thilagarajan, Lawyer, Professional Standards Authority

This meeting was conducted virtually via Microsoft Teams

## 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 Relevant 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 Determination 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*<sup>1</sup>).

#### **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 19 June 2024.

#### **6. The relevant decision**

6.1 The relevant decision is the Determination of the Panel following a hearing which concluded on 25 April 2024.

#### **7. Documents before the meeting**

7.1 The following documents were available to the Members:

- Determination of the panel
- The PSA's Detailed Case Review
- Transcripts of the hearing
- Counsel's Note dated 7 June 2024
- The GPhC's Code - in force at the time of the incident]
- The GPhC's Indicative 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 Section 29 Meeting. The Members considered the response having received legal advice and after they reached a conclusion on the sufficiency on the outcome.

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<sup>1</sup> CRHP v Ruscillo [2004] EWCA Civ 1356

## **8. Background, Panel hearing and Determination**

- 8.1 The Registrant was employed as a locum Responsible Pharmacist at Boots, [REDACTED].
- 8.2 On 2 December 2021, Witness A was a dispenser who was working with the Registrant on the evening shift which ended at midnight. The Registrant and Witness A had not worked together previously. They did not know each other. The Pharmacy closed at 8pm but there was a hatch for serving patients out of hours. There were other staff working at the store until about 10pm. After that time and until the end of the shift, the Registrant and Witness A were the only people in the store.
- 8.3 According to Witness A, at about 9pm the Registrant instigated a change of conversation to a topic of a more personal nature. The Registrant referred, amongst other things, to his sexual relationship with his wife. Witness A's evidence was that the Registrant asked her whether she was still intimate with her partner; Witness A responded that she was.
- 8.4 The Registrant then showed Witness A a photograph on his mobile phone, of his bare torso, taken some time earlier when he used to exercise in a gym. Witness A's evidence was that the Registrant also told her about his "manhood" and how he was good in bed and that he had to be careful because sometimes he could sit on his penis. According to Witness A, the Registrant went on to refer to his ability to "make a girl climax" and he referred again to his sexual relationship with his wife.
- 8.5 Witness A stated that the conversations made her feel uncomfortable and raised a concern to her manager. The incident was raised by Witness A as a safeguarding issue rather than a personal complaint.
- 8.6 The matter was then referred to the GPhC. The charges related to the Registrant's inappropriate sexually related conduct towards Witness A.
- 8.7 The Registrant denied the charges but accepted that a conversation took place and that he showed Witness A a bodybuilding photograph on his phone which was also on Facebook. His evidence was that the conversations were two-way.
- 8.8 The Panel found all but one charge not proved - 1.2. "I know how to make a girl climax and know what I am doing with my wife, but she doesn't like it and calls me a pervert"
- 8.9 The Panel went on to consider whether the charges found proved amounted to misconduct but concluded that they did not, noting that the conduct was not "seriously reprehensible" and that it did not give rise to a risk of harm to patients, the public or even the wider public interest.
- 8.10 The Panel concluded that formal advice should be given to the Registrant.
- 8.11 The advice will not be published on the register.

## **9. Consideration and application of Section 29 of Act**

- 9.1 The Members considered all the documents before them and the legal advice received from the legal advisor in detail.

- 9.2 The Members primarily considered the finding of no misconduct in relation to the charges found proved.
- 9.3 There were concerns that the Panel may well have erred in putting too much weight on witness A and her reactions to the Registrant's comments. The Panel found that there was not a serious breach of standard 6 because there was consensus between the parties. The Panel made assumptions about Witness A's reaction that assumed that all victims or recipients of such behaviour react in the same way.
- 9.4 The Members were concerned that the Panel had sought to minimise the Registrant's conduct on the basis that Witness A was "a person of robust character who would undoubtedly have stopped the conversation if she wanted to do so".
- 9.5 The Members considered that the conduct did not necessarily need to have a significant impact on the person directly involved to undermine professional standards and public confidence in the profession.
- 9.6 The Members were concerned with the Panel's approach to the weight placed on Witness A's reactions, nevertheless, for the reasons set out above they 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 GPhC.



14 June 2024

Alan Clamp (Chair)

Dated

## 12. Annex A – Definitions

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

<b>The PSA</b>	The Professional Standards Authority for Health and Social Care
<b>The Panel</b>	A Fitness to Practise Committee of the GPhC
<b>The Registrant</b>	[REDACTED]
<b>The Regulator</b>	General Pharmaceutical Council
<b>Regulator's abbreviation</b>	GPhC
<b>The Act</b>	The National Health Service Reform and Health Care Professions Act 2002 as amended
<b>The Members</b>	The PSA as constituted for this Section 29 case meeting
<b>The Determination</b>	The Determination of the Panel sitting on 22 April 2024
<b>The Court</b>	The High Court of Justice of England and Wales
<b>The Code</b>	Regulator's Code of Practice
<b>The SG</b>	Regulator's Sanctions Guidance