

# Section 29 Case Meeting

24 November 2023

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



[REDACTED] (GPHC)

## *Members present*

Alan Clamp (in the Chair), Chief Executive, Professional Standards Authority  
Marcus Longley, Board Member, Professional Standards Authority  
Christine Braithwaite, Director of Standards & Policy, Professional Standards Authority

## *Legal Advisor in attendance*

Fenella Morris KC, Legal Advisor, 39 Essex Chambers  
David Hopkins, Barrister, 39 Essex Chambers

## *Observers in attendance*

Caroline Corby, Chair, Professional Standards Authority  
Matthew Alderton, Solicitor, Browne Jacobson  
Polly Rossetti, Policy Adviser, Professional Standards Authority  
Steve Wright, Policy Manager, Professional Standards Authority  
Christopher Pawluczyk, Scrutiny Officer, Professional Standards Authority  
Simon Wiklund, Head of Legal, Professional Standards Authority  
Ana Cojocaru, Finance Administrator, Professional Standards Authority  
Briony Alcraft, Scrutiny Co-ordinator, Professional Standards Authority

## **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 proceed with the appeal already lodged by the PSA on 25 October 2023 in the High Court of Justice of England and Wales under Section 29 of the Act. This was a decision taken under the PSA's Statutory Deadline Decision-making procedure.

## **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.

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

- 6.1 The relevant decision is the Determination of the Panel following a hearing which concluded on [REDACTED].

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

- 7.1 The following documents were available to the Members:
- Determination of the panel dated [REDACTED]
  - Determination of the panel dated [REDACTED]
  - Transcripts of the hearing dated [REDACTED]
  - Counsel's Note dated 20 October 2023
  - Legal Note for case meeting dated 24 November 2023
  - Decision Makers Guidance
  - GPhC Bundle, Registrant's Bundle, Case Examiners' Report
  - Relevant Judgments - R (Pitt) v General Pharmaceutical Council [2017] EWHC 809 (Admin), Professional Standards Authority v General

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

Pharmaceutical Council & Ali [2021] EWHC 1692 (Admin), and Lambert-Simpson v Health and Care Professions Council [2023] EWHC 481 (Admin)

- The GPhC's Standards, May 2017
- GPhC Good decision making: Fitness to practise hearings and sanctions guidance, March 2017
- The PSA's grounds of appeal, dated 25 Oct 2023
- The GPhC's Respondent's Notice in response to the PSA's appeal.

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

8.1 The Registrant is a [REDACTED] registered with the GPhC.

8.2 A panel of the GPhC, considering the case for a second time following a successful appeal by the PSA against a GPhC panel's previous decision to [REDACTED], decided that [REDACTED] had [REDACTED] (having found at the substantive hearing that the [REDACTED]). It also found that these and two [REDACTED]. The Committee found [REDACTED] guilty of misconduct, and that his fitness to practise was impaired in relation to the upholding of standards and public confidence in the profession. It decided to [REDACTED].

8.3 The PSA appealed this decision under its statutory deadline decision making procedure on the basis that the warning is insufficient where:

- the Registrant had made [REDACTED]
- the panel wrongly dismissed the option of imposing conditions of practice on the Registrant
- the panel failed to give sufficient reasons for its decision, in particular it failed to grapple with:
  - i. how and why public confidence in the profession was affected by the Registrant [REDACTED] and therefore [REDACTED]
  - ii. what sanction would be required to restore and/or ensure public confidence in the profession.”

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

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

### ***The findings that two comments were not anti-semitic***

9.2 The Members discussed an issue that did not form part of the PSA's appeal – whether the factual findings of the Panel [REDACTED]

[REDACTED] were arguably wrong. They considered whether, had these allegations been proven, this would have made a material difference to the outcome of the case.

- 9.3 The Members considered the Registrant's [REDACTED]. [REDACTED] Therefore, they concluded that it was not necessary to challenge the Panel's findings [REDACTED] and therefore the question of adding this as an additional ground of appeal did not arise.

#### *Decision on sanction*

- 9.4 The Members next discussed the Panel's decision on sanction. They noted that the same sanction had been imposed in the first decision ([REDACTED] had been proved) as had been imposed the Panel in this decision following remittal (where the Registrant was found to have [REDACTED]).
- 9.5 The Members considered that the Panel's reasons for the sanction decision were inadequate and that it was not possible for members of the public to understand how a warning is a proportionate response to the findings of fact or how this addresses the impact of the Registrant's conduct on public confidence in the profession.
- 9.6 The Members further considered that the Panel had wrongly excluded a Conditions of Practice Order as being in appropriate in its determination. The Members considered that it could have been beneficial to require the Registrant [REDACTED]. The Members were concerned about the completeness of the Registrant's insight in circumstances where the registrant had denied [REDACTED] and the weight given by the Panel to its finding that the [REDACTED].
- 9.7 The Members concluded that, having made such serious findings of fact, the Panel's decision to impose a [REDACTED] that did not specifically address [REDACTED] did not allow for the Registrant's insight to be reviewed, had failed to uphold and declare standards and maintain public confidence in the profession and was insufficient for public protection.

#### **10. Confirming the referral to court**

- 10.1 Having concluded that the Panel's Determination was not sufficient for public protection, the Members moved on to consider whether or not to confirm the Section 29 referral to the High Court already made under the statutory deadline procedure.
- 10.2 Taking into account the advice of the legal advisor the Members agreed that the PSA should continue to exercise its power under Section 29 and confirmed the decision to appeal.

Handwritten signature of Alan Clamp in black ink.

**Alan Clamp (Chair)**

**07/12/23**

**Dated**

**11. Annex A – Definitions**

11.1 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>	The General Pharmaceutical Council
<b>Regulator’s abbreviation</b>	The 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 31 August 2023
<b>The Court</b>	The High Court of Justice of England and Wales