

Section 29 Case Meeting

29 September 2022

157-197 Buckingham Palace Road, London SW1W 9SP



Members present

Alan Clamp (in the Chair), Chief Executive, Professional Standards Authority
Jane Carey, Director of Corporate Services, Professional Standards Authority
Graham Mockler, Assistant Director Scrutiny & Quality, Professional Standards Authority

In attendance

Andrew Deakin, Counsel, 39 Essex Street Chambers

Observers

Rachael Martin, Scrutiny Team Coordinator, Professional Standards Authority
Kisha Punchihewa, 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 Authority, 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 Authority's decision whether or not to refer the case to the court under Section 29 of the Act.

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

3.1 The Authority 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 Authority 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 3 October 2022.

6. The relevant decision

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

6.2 The Panel's Determination which includes the charges and findings is set out at Annex B.

7. Documents before the meeting

7.1 The following documents were available to the Members:

- Determination of the panel dated [REDACTED]
- The Authority's Detailed Case Review
- Transcripts of the hearing dated [REDACTED]
- Counsel's Note dated 27 September
- Case examiner masters
- Exhibits
- The NMC's Sanctions Guidance
- The Authority's Section 29 Case Meeting Manual

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

¹ CRHP v Ruscillo [2004] EWCA Civ 1356

considered the response having received legal advice and after they reached a conclusion on the sufficiency on the outcome.

8. Background

- 8.1 At the material time the Registrant was employed as a Clinical Nurse Manager at [REDACTED] (the Trust).
- 8.2 On [REDACTED], the NMC received a referral in relation to the Registrant whilst she was working at the Trust. It was alleged that on [REDACTED], the Registrant was given £1000 in cash by Patient A's relative, Person A, as a donation for the [REDACTED] (the Ward). Patient A had been a patient on the Ward for around three months. Person A intended that the donation be used for the benefit of Ward Staff. The Registrant accepted the donation and gave Person A a typed receipt.
- 8.3 The Registrant did not disclose the donation (or that she had kept the donation) to any of her senior staff or, it appears, other nurses on the ward. The first time that the Registrant disclosed the donation was on [REDACTED] during an investigation into the missing funds. This was not however at the first time of asking. It was also alleged that the Registrant did not follow the Trust's fraud and anti-bribery policy.
- 8.4 The Registrant resigned and subsequently obtained a new role at [REDACTED] Trust. The NMC alleged that she worked whilst suspended by an interim order having been suspended by the NMC in connection with the misappropriation of the donation.
- 8.5 The Registrant was not present or represented at the NMC hearing. The Panel found the allegations proved that the Registrant had acted dishonestly in that she had intended to retain some or all the money for herself and misrepresented to Colleague A where she had told the relatives of Patient A to take the donation. Furthermore, she had told Colleague A that she did not have the money when she did. The Panel also found proved an allegation that the Registrant practised as a Nurse while suspended. However, allegations that the Registrant failed to follow the NHS Trust's anti-bribery policy were not found proved.
- 8.6 In its decision on impairment, the Panel concluded that that the Registrant's conduct was a one-off and opportunistic – there was no clinical concern and patient safety issues were not raised. The Panel specifically noted that the statement of Person A implied that her family had not suffered any harm. The Panel concluded that there was no requirement for a finding of impairment on the grounds of public protection.
- 8.7 A 12-month suspension with a review was imposed.

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:

Possible under prosecution

- 9.3 The Members considered whether there had been a procedural irregularity. Specifically, whether there had been a failure to bring further allegations of dishonesty in relation to the Registrant's failure to declare that the Trust had commenced disciplinary action when applying for a position with another Trust. The evidence seemed to suggest that the Registrant failed to declare this in her application form or at interview. In her application form the Registrant cited her reason for leaving her previous post as "family in [REDACTED]"
- 9.4 The Members considered whether this further incident of dishonesty had been fully addressed by the NMC and whether the Registrant had acted dishonestly when applying for the position at another Trust. The Members thought that the Registrant's omission could be interpreted as misleading and potentially as dishonest. When asked why she did not disclose this information, the Registrant claimed that there wasn't anywhere on the application form to write the details and that she expected the information to be passed from one Trust to another.
- 9.5 The Members considered that there was no evidence in the papers before the Panel that would assist in assessing the veracity of the account given by the Registrant. The Members noted that the NMC Case Examiners did note this omission by the Registrant, but it appears that as this was not set out as a regulatory concern nor was not properly considered either by the Case Examiners or the NMC when forming allegations and preparing the case for final hearing.
- 9.6 The Members considered that the Registrant's omission was relevant to the Panel's consideration of whether her dishonesty was deep-seated and problematic. Furthermore, had the incident formed part of the allegations and subsequently been found proved it could have impacted on elements of the Panel's consideration in terms of mitigating and aggravating factors. Consequently, the finding of this being a single instance and no evidence of repetition would not have been relevant and arguably strike off would have been mandated.
- 9.7 The Members were minded however, that the Registrant had not been dismissed by the Trust and had left before any investigation could conclude. In the circumstances, the Members considered it subjective in terms of whether the Registrant would have been expected to disclose that the Trust had commenced an investigation given that there had been no conclusion in terms of their findings.
- 9.8 The Members were referred to the NMC's charging guidance and were minded that any undercharging would need to be considered serious and there must be no ambiguity.
- 9.9 The Members considered that it would not have been unreasonable for the NMC to have included further allegations of dishonesty regarding the Registrant's omission when applying for a position with another Trust. However, given that there was some ambiguity regarding the expectations of what the Registrant should have been expected to disclose, the Members could understand why this incident did not form part of the allegations in this case. Therefore, since the evidence was not sufficiently compelling, the Members

were not satisfied that this further incident demonstrated a serious enough omission by the Registrant to have been included in the allegations.

Sanction

- 9.10 The Members considered whether the decision to impose a 12-month suspension with a review was reasonable on the basis of the Panel's consideration of the mitigating and aggravating factors and in particular the Registrant's insight.
- 9.11 The Members were minded that the Registrant demonstrated very little insight. Her limited insight regarding the implications of dishonesty in a wider context were of concern to the Members. The Members also noted that in the decision the Panel were mindful that dishonesty can be remediated in certain circumstances but noted that it had no information before it on the Registrant's current circumstances, reflection or evidence of insight or remorse. It concluded that there was insufficient insight to suggest that such dishonest conduct would not be repeated in the future. The Members considered this a reasonable conclusion given the evidence.
- 9.12 The Members were concerned to note that the Panel had given mitigating weight to the Registrant not being present or represented at the hearing. Furthermore, they considered the mitigating factors identified by the Panel were numerous but weak. The decision to include the Registrant's admission to taking the money at the Trust interview as mitigation, despite an aggravating factor also being that she took two weeks to disclose that she had the money, was considered confusing to the Members as one act counteracts the other.
- 9.13 In terms of the Registrant's insight the Members felt that there was no evidence to indicate that her insight was emerging or likely to progress over the course of the suspension. The Members considered whether this factor was sufficient in pushing the case towards a strike off but were also minded that the review provided reassurance. At the review hearing the Registrant would be required to demonstrate sufficient insight and remediation before being allowed to practise unrestricted.
- 9.14 The Members concluded that the 12-month suspension with a review was a serious sanction which addressed the serious misconduct found proved by the Panel. The Members could see how the Panel reached the conclusions it did and there is no suggestion that the Panel erred in applying the Sanctions Guidance or in its approach in considering sanction.

Conclusion on insufficiency for public protection

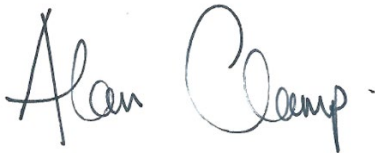
- 9.15 The Members had some doubts as to the mitigating and aggravating factors identified by the Panel and were concerned by the Registrant's lack of insight and absence of any suggestion that this would develop during her suspension. Nevertheless, they considered the 12-month suspension with review a serious sanction and were not satisfied that a strike off was the only appropriate sanction 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 Authority's power under Section 29 to refer the case to the relevant court.

11. Learning points

11.1 The Members did not consider that any specific learning points arose out of the case.

A handwritten signature in black ink that reads "Alan Clamp". The signature is written in a cursive style with a small flourish at the end.

Alan Clamp (Chair)

07/11/22

Dated

12. Annex A – Definitions

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

The Authority	The Professional Standards Authority for Health and Social Care
The Panel	A Fitness to Practise Committee of the NMC
The Registrant	████████████████████
The Regulator	Nursing & Midwifery Council
NMC	Nursing & Midwifery Council
The Act	The National Health Service Reform and Health Care Professions Act 2002 as amended
The Members	The Authority as constituted for this Section 29 case meeting
The Determination	The Determination of the Panel sitting on ██████████
The Court	The High Court of Justice of England and Wales
The SG	Regulator’s Indicative Sanctions Guidance