

*Order approved  
Martin Spencer J.  
30.4.18*

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



CO/5631/2017

BETWEEN:-

THE PROFESSIONAL STANDARDS AUTHORITY  
FOR HEALTH AND SOCIAL CARE

Appellant

-and-

(1) THE NURSING AND MIDWIFERY COUNCIL  
(2) MR MAXWELL NYAMUKAPA

Respondents

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CONSENT ORDER

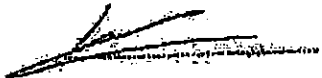
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UPON the First and Second Respondents conceding this appeal on the grounds set out in schedule 1 that the decisions made by the panel of the First Respondent's Fitness to Practise Committee ("FTPC") between 2 and 10 October 2017 were insufficient to protect the public within the meaning of section 29 of the National Health Service Reform and Health Care Professions Act 2002;

BY CONSENT IT IS ORDERED THAT:

1. The following decisions of the FTPC are quashed:
  - a. The finding of no case to answer in relation to charge 5
  - b. The factual findings of the panel in relation to charge 1.1 and 1.2
  - c. The finding of no misconduct
  - d. The finding of no current impairment
2. Charges 1.1, 1.2 and charge 5, and, if any facts are found proved in respect of those or any amended charges, misconduct and impairment, are remitted for reconsideration by a differently constituted panel of the First Respondent.

3. The First Respondent is to instruct a suitably qualified expert to provide a report and give evidence before the panel in relation to charge 5.
4. The First Respondent shall consider whether to instruct an independent expert to provide a report and give evidence before the panel in relation to charge 1.
5. The First Respondent upon receipt of any such evidence set out in points 3 - 4 above, may amend the wording or structure of charge 1 and/or charge 5.
6. The First Respondent shall conduct a risk assessment and if appropriate list a hearing to consider whether or not an interim order should be imposed. Such risk assessment to be carried out within 7 days of the date of this decision.
7. The First Respondent to pay the Appellant's reasonable costs of this appeal to be assessed if not agreed.



Helen Elcock  
Nursing and Midwifery Council  
26/04/2010



Maxwell Moulton



Weightmans LLP on  
behalf of Appellant

*By the Court*

Schedule 1

The appeal is conceded as follows:

1. The finding of the FTPC that there was no case to answer in relation to charge 5 was wrong in that sufficient evidence had been presented such that the panel could find the facts proved, and was the subject of a serious procedural irregularity in that the panel, having identified that expert evidence would have assisted them in their determination, failed to require such evidence to be obtained.
2. The finding of the FTPC that charge 1.1 be found proved on the basis of a hit but not a punch, and that charge 1.2 be found not proved, arose out of a serious procedural irregularity in that:
  - a. The FTPC failed to focus on and determine what action on the part of the Second Respondent caused the injuries to Patient S
  - b. The FTPC failed to approach the subject matter of the charges in a way sufficient for proper assessment of charge 1.2 by failing first to consider the injuries caused; then the mechanism by which they were caused; and finally the force involved.
  - c. The failures above mean that the FTPC could not, and did not, adequately assess the level of force used and determine whether or not it was excessive.