

Consent order approved
Sir Duncan Ouseley sitting as a High Court Judge
Date: 7th October 2022



CO/1051/2022

IN THE HIGH COURT OF JUSTICE
KING'S ~~#####~~ BENCH DIVISION
ADMINISTRATIVE COURT
BETWEEN:

THE PROFESSIONAL STANDARDS AUTHORITY
FOR HEALTH AND SOCIAL CARE

Appellant

- and -

(1) THE NURSING AND MIDWIFERY COUNCIL
(2) VIOLET YVONNE HORSFORD

Respondents

~~#####~~ ORDER BY CONSENT

UPON the parties having agreed to the terms of this Order, in particular that it is just and convenient for the Court to make the Order set out below

AND UPON neither party being a child or protected party and the appeal not being an appeal from a decision of the Court of Protection

AND UPON the Second Respondent being a nurse on the register established and maintained by the First Respondent under Article 5 of the Nursing and Midwifery Order 2001 ('the register')

AND UPON a panel of the Fitness to Practise Committee of the First Respondent ("the Committee") having found on 27 January 2022 that the Second Respondent's fitness to practise is not currently impaired ("the decision")

AND UPON the Appellant having lodged an appeal on 24 March 2022 against the decision of the Committee pursuant to Section 29 of the National Health Service Reform and Health Care Professions Act 2002

AND UPON the First and Second Respondent conceding for the reasons set out in Schedule 1 that the decision of the Committee was not sufficient for the protection of 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 appeal is allowed.
2. The decision of the Committee is quashed.
3. The Second Respondent's case is remitted to a differently constituted panel of the Committee to re-determine the allegation of impaired fitness to practise (the Allegation) in accordance with the following directions:
4. The First Respondent shall reconsider whether to call evidence in respect of particulars 1(a) and (e), 2(a) to (d), 3(a) and (d) to (g) to the Allegation;
 - a. In reconsidering the matters mentioned in paragraph 4, the First Respondent must make further enquiries in relation to Residents A and C to determine their capacity and ability to attend a hearing (whether in person or remotely) before the Committee on remittal;
 - b. If the First Respondent determines that Residents A and C are incapable or otherwise unable to give oral evidence, it must explain to the Committee the reasons for this determination; and,
 - c. In any event, the First Respondent must provide the Committee with a bundle that includes evidence from Residents A and Resident C and apply to the Committee for those statements to be admitted into evidence.

5. The First Respondent must make all reasonable efforts to secure the attendance (including by video-link) of Ms 2 and Ms 4 at any remitted hearing
6. The First Respondent is to pay the Appellant's reasonable costs of the appeal, subject to detailed assessment in default of agreement.
7. No other order as to costs.

We consent to an order on the terms above

Dated this 6th day of September 2022

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Solicitors for the Appellant

The First Respondent

The Second Respondent




Hannah Smith



Schedule 1

1. The First Respondent was wrong to call no evidence in respect of particulars 1(a) and (e), 2(a) to (d), 3(a) and (d) to (g) to the Allegation when:
 - a) the First Respondent was in possession of evidence which was capable of supporting findings that the Second Respondent had acted in the manner alleged in the particulars and could have put that evidence before the Committee;
 - b) none of the circumstances described in the First Respondent's Guidance Offering No Evidence dated 29th November 2021 as justifying calling no evidence in support of the particulars were met;
 - c) the conduct described in the particulars identified in this Ground of Appeal amounted to the physical and verbal abuse of a vulnerable resident of a nursing home (Resident A) by the Second Respondent, a registered nurse, and the public interest required a full inquiry into that conduct and its significance for the Second Respondent's fitness to practise as a nurse.

2. In making its application to be permitted to call no evidence in support of particulars 1(a) and (e), 2(a) to (d), 3(a) and (d) to (f) to the Allegation the First Respondent:
 - a) failed to draw the Committee's attention to rule 24(6) of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004;
 - b) failed to draw the Committee's attention to the legal framework for applications by the First Respondent to offer no evidence described in the case law, in particular in *Professional Standards for Health and Social Care - v- Nursing & Midwifery Council and X* [2018] EWHC 70 (Admin);
 - c) failed to draw the Committee's attention to the First Respondent's Guidance Offering No Evidence dated 29th November 2021;

- d) failed to adhere to the requirements (designed to ensure that the Committee is able to make an informed decision on the application) of its Guidance *Offering No Evidence* dated 29th November 2021;
 - e) informed the Committee that the two witnesses whose evidence supported the particulars (Residents A and C) 'have a number of impairments' and 'cannot attend the hearing' without providing any evidence in support of those statements and without any explanation as to either what those impairments may have been or how any impairment from which either or both of them did suffer might render them incapable of attending the hearing (which was a remote hearing) and giving evidence;
 - f) provided the Committee with a bundle for the hearing in which the Index and copies of the witness statements had already been redacted so as to remove the evidence of, or references to the evidence of, Resident A (the subject of the Second Respondent's alleged misconduct) and Resident C (a witness to that alleged misconduct);
 - g) failed to remind the Committee of the need to have regard to the over-arching objective in Article 3(4) and (4A) of the Nursing and Midwifery Order 20021;
 - h) failed to apply to the Committee for the admission of the written statements of Residents A and C into evidence.
3. The legal advice upon which the Committee proceeded to make its decision to accede to the application that the First Respondent be permitted to call no evidence in respect of particulars 1(a) and (e), 2(a) to (d), 3(a) and (d) to (f) to the Allegation:
- a) failed to draw the Committee's attention to rule 24(6) of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004;
 - b) failed to draw the Committee's attention to the legal framework for applications by the First Respondent to offer no evidence described in the

case law, in particular in *Professional Standards for Health and Social Care - v- Nursing & Midwifery Council and X* [2018] EWHC 70 (Admin);

- c) failed to draw the Committee's attention to the First Respondent's Guidance *Offering No Evidence* dated 29th November 2021;
 - d) failed to draw the Committee's attention to the factors which the Committee needed to consider in considering the application, including the over-arching objective in Article 3(4) and (4A) of the Nursing and Midwifery Order 2001;
 - e) failed to address the failures on the part of the First Respondent described in the sub-paragraphs of Ground of Appeal 2 above;
 - f) failed to alert the Committee to its power to admit the written statements of Residents A and C into evidence;
 - g) failed to remind the Committee of its duty to ensure for itself that the case was properly presented and that relevant evidence was placed before it, so that Second Respondent's conduct was subjected to proper inquiry.
4. The Committee was wrong to accede to the First Respondent's application to call no evidence in respect of particulars 1(a) and (e), 2(a) to (d), 3(a) and (d) to (f) to the Allegation when:-
- a) the Committee was under a duty to ensure that the case was properly presented and that relevant evidence was placed before it;
 - b) the Committee had made no inquiry of the First Respondent as to:-
 - (i) the basis upon which it was said that Residents A and C were unable to attend the (remote) hearing and to give evidence;
 - (ii) the evidence or even the nature of the evidence upon the basis of which the Case Examiners had referred these particulars to the Committee for its consideration;

- (iii) the factors which the Committee needed to consider in considering the application, including the over-arching objective in Article 3(4) and (4A) of the Nursing and Midwifery Order 2001;
 - c) the Committee had made no inquiry of the First Respondent as to its power to admit the written statements of Residents A and C into evidence.
5. The Committee failed to give adequate reasons for its decision to accede to the application that the First Respondent be permitted to call no evidence in respect of particulars 1(a) and (e), 2(a) to (d), 3(a) and (d) to (f) to the Allegation.
6. In respect of the First Respondent's application to the Committee for the admission of the written statements of Ms 2 and Ms 4 into evidence:-
- a) the application was necessitated only by the First Respondent's failure to maintain accurate contact details for the two witnesses;
 - b) the application could not include reference to the evidence of Residents A and C by reason of the fact that the First Respondent had wrongly applied not to call that evidence and the Committee had wrongly acceded to that application;
 - c) the Committee was wrong to refuse to hear the application and to refuse to admit the written statement of Ms 2 when it had not required the First Respondent to take steps to contact Ms 2 and Ms 4.

In the circumstances described in Grounds of Appeal 1 to 4 above, with or without the circumstances described in Ground of Appeal 6, the Committee was in no position to undertake an adequate inquiry into the Second Respondent's conduct towards Resident A and the extent to which that conduct impairs her fitness to practise as a nurse.

Approved by Sir Duncan Ouseley

10/10/2022

BY THE COURT

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