

Section 29 Case Meeting

1 November 2022

157-197 Buckingham Palace Road, London SW1W 9SP



Members present

Marcus Longley (in the Chair), Board Member, Professional Standards Authority
Mark Stobbs, Directory of Scrutiny and Quality, Professional Standards Authority
Rebecca Senior-Carroll, Lawyer, Professional Standards Authority

In attendance

Fiona Patterson of Counsel 39 Essex Chambers

Observers

Rebecca Moore, Scrutiny Officer, Professional Standards Authority
Simon Wiklund, Head of Legal, Senior Solicitor, Professional Standards Authority
Georgina Devoy, Senior Scrutiny Officer, Professional Standards Authority

1. Definitions

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

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

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.

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.

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

The Members did not have any conflicts of interest.

5. Jurisdiction

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 4 November 2022.

6. The relevant decision

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

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

7. Documents before the meeting

The following documents were available to the Members:

- Determination of the panel dated [REDACTED]
- The Authority's Detailed Case Review
- Transcripts of the hearing
- Counsel's Note dated 31 October 2022
- The GMC's Code
- The GMC's Sanctions Guidance
- The Authority's Section 29 Case Meeting Manual

8. Background

The Registrant worked as a locum consultant in general surgery.

¹ CRHP v Ruscillo [2004] EWCA Civ 1356

On 3 October 2020, the Registrant made a self-referral to the GMC in respect of an allegation of assault made by a patient ('Patient A'). Patient A alleged that, on 16 August 2020, [REDACTED] hit her on the side of her face. Patient A called the Police following the incident, and the Registrant was interviewed under caution.

The patient had undergone abdominal surgery, performed by the Registrant, during the night of 15 August 2020 for injuries which she had sustained in a road traffic accident. Before the surgery, the patient had been very distressed, not only by her injuries, but also that she was in hospital. After the surgery, she was extremely agitated. Patient A had a drain into her abdominal wound, various tubes and cannulas in her arm and a catheter and wanted to leave the hospital. A nurse and a junior surgeon tried to reason with her unsuccessfully. The Registrant was asked to see Patient A to try to calm her down. In trying to do so the Registrant was alleged to have struck Patient A's face.

An internal investigation into the incident was carried out by the Trust, which resulted in the Registrant's dismissal for gross misconduct. The Registrant later appealed and the decision was revoked, yet he was not reinstated to the role.

The Registrant pleaded not guilty on 23 March 2021 to the charge of assault by beating. He was subsequently found guilty and convicted of assault by beating contrary to Section 39 of the Criminal Justice Act 1988 at Cumbria Magistrates Court on 18 June 2021. The Registrant was sentenced to an 18-month Community Order, which included unpaid work for 160 hours, a compensation payment of £200 and a payment of £400 costs to the Crown Prosecution Service.

The Registrant attended the MPTS hearing on [REDACTED] with representation and admitted the conviction allegation. The Panel found his fitness to practise was impaired on public interest grounds only having found the risk of repetition to be low. The Panel found his actions were not fundamentally incompatible with continued registration. The Panel imposed suspension for six months with a review and an interim suspension order was also imposed.

9. Applying Section 29 of the 2002 Act

The Members considered all the documents before them and received legal advice.

The Members discussed the following concerns about the decision:

The MPTS failed to address whether the Registrant had deliberately struck the patient's face or had done so recklessly

The Members were concerned that the circumstances surrounding the offence were not clear from the determination or the evidence. It was also not clear whether the Registrant was convicted on the basis that his actions were reckless or deliberate. The Members discussed that both could give rise to different concerns and have different outcomes in regulatory proceedings. The Members considered that a deliberate strike to the face was arguably more serious and gave rise to questions of fundamental compatibility with being a doctor.

The Members noted that the Registrant maintained that he had not struck the patient deliberately. His evidence was that he had been trying to calm the patient down and was becoming increasingly aware that she could potentially remove some of her tubes

which would risk her safety. His evidence was that in trying to hold her hand and stop her pulling out the tubes he caught her face.

However, the Members noted the witness statement of the Nurse who was in the room at the time and had called the Registrant in to try to calm the Patient down. The Nurse had maintained that the Registrant's actions appeared to be deliberate. The Members noted that the Nurse was not called to give evidence at the hearing and considered that this evidence may have been useful in establishing context.

Further, the Members noted that it had also not clear from the Magistrates Court documents, whether the Registrant was convicted on the basis that his actions were deliberate or reckless. The Members accepted however that it was open to the Panel to draw an inference that the offence was committed with reckless intent.

The Members agreed that it was incumbent on the Panel, in particular the Legally Qualified Chair, to explain the legal framework for assault by beating and explain that the offence could have been committed recklessly. The Members considered that the Panel should have identified the basis for the conviction, as deliberately striking a Patient as opposed to doing so recklessly give rise to different questions and considerations.

The Members concluded that the Panel had failed to sufficiently inquire into the circumstances of the conviction. However, the Members accepted that it was open to the Panel to infer that the assault was committed recklessly. In light of this, the Members considered that further inquiry as to the circumstances of the conviction was unlikely to have made a difference to the outcome.

The reasons provided in relation to the sanction of suspension were inadequate.

The Members considered that the reasons given by the Panel were unclear and muddled. The Members were concerned that on the face of it, members of the public may consider a conviction for hitting a patient to be fundamentally incompatible with continued registration. The Members considered that the Panel had failed to adequately address this question. The Members took the view that an explanation was needed to reassure the public and maintain public confidence in the profession.

In particular, the Members were concerned that the Panel had failed to provide sufficient reasons in relation to the mitigating factors identified. The Members did not disagree that there was significant mitigation in this case. The mitigation included a psychiatric assessment, numerous positive references and testimonials as well as the Registrant's compelling evidence. Yet the determination was lacking reasons as to why each of these factors lent themselves to a suspension order as opposed to erasure.

The Members were satisfied that the Panel had all the relevant evidence before it, but the sanction decision did not fully reflect this. Therefore, the Members were concerned that the determination did not provide the public with a full account of why a suspension order was imposed as opposed to erasure.

The Members agreed that whilst the reasons provided were unsatisfactory, that the sanction of suspension, in light of the mitigation, was not unreasonable.

Conclusion on insufficiency for public protection

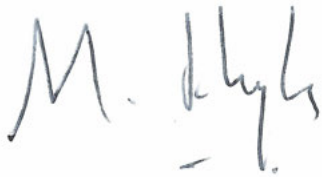
The Members had concerns that the Panel had not established the background circumstances surrounding the conviction. The Members were also concerned that the Panel had not provided sufficient reasons as to why erasure was not appropriate when, at first glance, a conviction for assaulting a patient would appear fundamentally incompatible with continued registration. Nevertheless, for the reasons set out above the Members concluded that the decision was not one which no reasonable Panel could have made given there was significant mitigation and factoring in deference to the Panel who had the opportunity to question the Registrant. In all the circumstances, therefore, the Members concluded it was not insufficient for public protection.

10. Referral to court

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

The Members agreed that the learning points set out at Appendix C should be communicated to the Regulator.



15 November 2022

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Marcus Longley (Chair)

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Dated

12. Annex A – Definitions

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 Panel of the GMC
The Registrant	[REDACTED]
The Regulator	General Medical Council
Regulator's abbreviation	GMC
MPTS	Medical Practitioners Tribunal Service
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 [REDACTED]
The Court	The High Court of Justice of England and Wales
The Code	GMC's Code of Practise
The SG	Regulator's Sanctions Guidance in force at sanction stage