Section 29 Case Meeting

11 February 2021

157-197 Buckingham Palace Road, London SW1W 9SP

professional standards authority

[redacted]

Members present
Alan Clamp (in the Chair), Chief Executive, Professional Standards Authority
Mark Stobbs, Director of Scrutiny and Quality, Professional Standards Authority
Graham Mockler, Assistant director of Scrutiny and Quality (performance), Professional Standards Authority

In attendance
Alexis Hearnden, Counsel, 39 Essex Chambers

Observers
Rebecca Senior, Lawyer, Professional Standards Authority
Colette Higham, Senior Scrutiny Officer, Professional Standards Authority
Cristina Gomez, HR and Governance Administrator, Professional Standards Authority
Georgina Devoy, Senior Scrutiny Officer, Professional Standards Authority

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 19 February 2021.

6. The relevant decision

6.1 The relevant decision is the Determination of the Panel following a hearing which concluded on 16 December 2021.

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
- Counsel's Note dated 10 February 2021
- The HCPC's Code
- The HCPC's Indicative Sanctions Guidance
- The Authority's Section 29 Case Meeting Manual

7.2 The Members and the Legal Advisor were provided with two responses from the HCPC to the Authority's Notification of s.29 Meeting. The Members considered the response having received legal advice at the start of the meeting.

[1] CRHP v Ruscillo [2004] EWCA Civ 1356

8. Background

8.1 The Registrant had worked at [redacted] since September 2015 as a Band 5 Paramedic with [redacted] Accident and Emergency Team.

8.2 On 1 December 2017 he was called to attend Patient A in a rapid response vehicle ('RRV'), which is a car as opposed to an ambulance. The Registrant attended alone. Patient A was a 41-year-old woman who was experiencing right sided numbness and pain who was at home with her mother and young daughter.

8.3 On arriving at the address, the Registrant examined Patient A in her daughters' bedroom, alone, and conducted an ECG. The HCPC alleged that a chaperone was not offered/recorded pursuant to the SWAS Lone Working Policy, yet the panel accepted Patient A's evidence that a chaperone was offered and refused, finding only that the offer of a chaperone was not recorded as required.

8.4 An ECG was performed whilst Patient A was completely topless. It is alleged that Patient A asked the Registrant whether she should remove her bra with the Registrant then responding 'yeah why not'.

8.5 Patient A was then given intravenous morphine. Patient A was taken to hospital by the Registrant in the RRV shortly after receiving the morphine. It was found that on this journey the Registrant disclosed details of his personal life which breached professional boundaries. There was some dispute as to the content of the conversation, though it was accepted that the Registrant spoke about his marital life and Patient A had disclosed that her ex-husband worked for [redacted], having possibly worked with the Registrant in the past. In her evidence Patient A stated that the Registrant had told her that his wife had left him which she felt was 'beyond chit chat' leaving her feeling uncomfortable.

8.6 On arriving at the hospital, the Registrant asked for Patient A's phone number so he could check in and see how she was doing later on. The Registrant also returned to Patient A in hospital with a chocolate bar her had bought at a garage.

8.7 A series of text messages (six in total) were then sent by the Registrant between 1 – 7 December 2017, some of which Patient A responded to. In the messages the Registrant refers to Patient A as 'sweet' and 'beautiful' and signs off each message aside from the last with an 'x' or 'xx'

8.8 Patient A later spoke to her ex-husband about the conversations she had had with the Registrant, which prompted him to report the matter to the HCPC.

8.9 The HCPC characterised the behaviour as a breach of professional boundaries and did not allege sexual motivation. The case was put on the basis that the Registrant was seeking a friendship with Patient A and abused his professional position in doing so.

8.10 The Registrant made admissions to most of the allegations and gave evidence at the hearing. The panel found all but one of the allegations proved and most of them to amount to misconduct.

8.11 The Registrant also supplied a detailed reflective piece, evidence of learning on the topic of professional boundaries and a number of references. In light of this and the Registrant's oral evidence, the panel concluded that the risk of repetition was low and did not find impairment on the personal component, finding impairment on public interest grounds only.

8.12 A two-year caution 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:

Should a charge of sexual motivation have been included? And if it was would it have made a difference to sanction?

9.3 The Members agreed that sexual misconduct should have been charged by the HCPC and were troubled by the Panel's failure to query why such a charge was not brought before them.

9.4 The Members noted that the Registrant's course of conduct was not such that would be expected of a Paramedic and could be viewed as wanting to pursue more than a friendship with Patient A. They noted the Registrant had allowed Patient A to be exposed from the waist up for longer than was necessary, noted the context of the text messages that were sent and were of an overfamiliar nature, including inviting the Patient for a drink and signing his text messages of with a 'x'.

9.5 The Members did however note that the content of the text messages was not sexually explicit, but that an inference of a sexual interest was possible.

9.6 The Members then discussed the response received from the HCPC dealing with the question of why sexual motivation was not charged.

9.7 The Members noted that the HCPC appeared to agree that a charge of sexual misconduct should have been brought. However, a further response indicated that its lawyers did consider charging sexual motivation but did not consider that there was 'overwhelming' evidence to support such a charge and were satisfied that the conduct could be charged as misconduct.

9.8 The Members considered that, while the evidence that the registrant's actions were sexually motivated was not 'overwhelming', this did not mean that it still should not have been charged.

9.9 Having agreed that a charge of sexual motivation should have been included in the charges, the Members then went on to consider whether having found such a charge proved would have made a material difference to the sanction imposed.

9.10 The Members noted that, if sexual motivation had been found proved would, it would have increased the seriousness of the conduct and potentially made a caution order an inappropriate sanction to properly address the public interest. It

was not clear how the Registrant would have responded to the point and how the Panel would have assessed insight and remediation.

9.11 However, the Members noted that if proved, the essential conduct was at the lower end of the scale and was not predatory in nature. It noted that the patient had reflected that she might have been sending "the wrong signals". The Members further noted that the Panel had found there to be a low risk of repetition based on the evidence given by the Registrant, his insight and the relevant courses he had attended regarding professional boundaries.

9.12 On balance, and because of the seriousness of the allegation, the Members considered that the failure to allege sexual motivation was a serious procedural irregularity and, therefore, they could not tell whether or not the decision was sufficient to protect the public.

Conclusion on insufficiency for public protection

9.13 The Members concluded that the HCPC's failure to charge sexual misconduct as well as the Panel's failure to query why a charge of sexual motivation was not brought before them was, on balance, insufficient for public protection. This was a finely balanced decision, given the quality of the evidence and the Registrant's remediation and insight.

10. Referral to court

10.1 Having concluded that the panel's Determination was insufficient for public protection, the Members moved on to consider whether they should exercise the Authority's discretion to refer this case to the relevant court.

10.2 In considering the exercise of the Authority's discretion, the Members received legal advice as to the prospects of success and took into account the need to use the Authority's resources proportionately and in the public interest.

10.3 Taking into account those considerations, the relevant mitigating factors in the case, including, low risk of repetition, relevant courses the Registrant had attended on crossing boundaries as well as his reflective statement, along with advice on the prospects of success, the Members agreed that the Authority should not exercise its power under Section 29 and refer this case to the High Court of Justice of England and Wales.

11. Learning points

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

A. Clamp

16 February 2021

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Alan Clamp (Chair) **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 Conduct and Competence Panel of the HCPC
The Registrant	[redacted]
The Regulator	Health and Care Professions Council
Regulator's abbreviation	HCPC
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] 2020
The Court	The High Court of Justice of England and Wales
The Code	Regulator's Code of Practise
The SG	Regulator's Sanctions Guidance