

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

CO/4064/2014

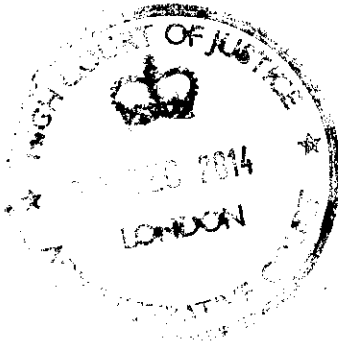
BETWEEN:-

THE PROFESSIONAL STANDARDS AUTHORITY  
FOR HEALTH AND SOCIAL CARE

-and-

(1) THE NURSING AND MIDWIFERY COUNCIL  
(2) MS MARIATU MAIMUNA DUMBUYA BANGURA

Appellant  
Respondent



---

CONSENT ORDER

---

UPON the First and Second Respondents conceding this appeal on the grounds set out in schedule 1 that the sanction imposed by a panel of the First Respondent's Conduct and Competence Committee on 25 June 2014, was unduly lenient within the meaning of section 29 of the National Health Service Reform and Health Care Professions Act 2002;

AND UPON the Parties agreeing to the remittal of the Second Respondent's case to a freshly constituted panel of the First Respondent's Conduct and Competence Committee for determination of sanction.

AND UPON the Parties not being either a child or a protected party and the Appeal not being an appeal from a decision of the Court of Protection

BY CONSENT IT IS ORDERED THAT:

1. The appeal is allowed.
2. The sanction decision of the Conduct and Competence Committee of the First Respondent, made on 25 June 2014, to impose upon the Second Respondent a four year Caution Order is quashed.
3. The question of the sanction to be imposed in this case shall be remitted, within 2 months of the date of this Order, to a freshly constituted panel of the First Respondent's Conduct and Competence Committee ("the Panel") for determination.
4. At the hearing on sanction referred to in paragraph 3 above, the Panel shall have placed before it:

- a. A copy of this Consent Order, schedule 1 of which refers to the Grounds on which this Appeal is brought by the Appellant and the extent to which these Grounds are conceded by the first and Second Respondents;
  - b. The documents listed in schedule 2;
  - c. A note, in the terms set out in schedule 3, setting out the considerations the Panel is invited to take into account when considering the question of sanction
5. The First Respondent to pay the Appellant's costs of this appeal up to 31<sup>st</sup> October 2014; such costs being assessed if not agreed; the Second Respondent to pay the Appellant's costs of this appeal from 1 November 2014 to the date of this Order such costs being assessed if not agreed.
6. The appeal hearing listed to be heard on 4 December 2014 is vacated.

**WE, THE UNDERSIGNED, CONSENT TO AN ORDER IN THE ABOVE TERMS**

Weightmans  
 SIMON TURNER, ASSOCIATE  
 Weightmans LLP, for and on behalf of the Appellant

3/12/14  
 Date

Kristian Garsed  
 Kristian Garsed, Senior Lawyer and in-house Counsel,  
 for and on behalf of the First Respondent

03.12.14  
 Date

Bangura  
 The Second Respondent  
 Ms MARIATU MAIMUNA DUMBUYA BANGURA

3/12/14  
 Date

Approved: Ferdinand T. Andrews  
 3<sup>rd</sup> December 2014

[Signature]

### Schedule 1

The Second Respondent is a nurse registered with the First Respondent. On 25 June 2014, the Conduct and Competence Committee (the Committee) determined that the Second Respondent's fitness to practise was impaired and imposed a Caution Order for a period of four years.

The Appellant referred the decision of the Committee to the High Court of Justice in England and Wales and this Appeal is conceded by both Respondents as follows:

1. The Committee's finding of remorse and insight on the part of the Second Respondent was perverse;
2. The Committee failed to have regard to relevant factors;
3. The Committee gave weight to irrelevant factors and/or disproportionate weight to factors of limited relevance;
4. The Committee failed to provide sufficient reasons.

The First and Second Respondents did not agree with Ground 1 of the Appellant's Appeal that there had been under-prosecution by the First Respondent by failure to allege certain matters against the Second Respondent. In light of the concessions at 1-4 above and the agreed resolution of this matter by way of remittal for reconsideration of sanction, this aspect of the Appellant's appeal is not pursued.

The Parties have agreed that the decision on sanction of a four year Caution Order be quashed and the question of sanction be remitted, within 2 months of the date of this Order, to a freshly constituted panel of the First Respondent's Conduct and Competence Committee.

### Schedule 2

- a. Complete (both public and private) transcript of the Conduct and Competence Committee substantive hearing on 25 June 2014 (with the submissions and decision on sanction redacted).
- b. Decision letter from the Conduct and Competence substantive hearing on 25 June 2014 (with all reference to the submissions and decision on sanction redacted);
- c. Complete copy of the documentation placed before the Conduct and Competence Committee panel at the substantive hearing on 25 June 2014;
- d. The Appellant's Grounds of Appeal and the Appellant's Skeleton Argument (with redaction of all references to undercharging);
- e. A briefing note to the panel in the terms set out in schedule 3 of this agreed order explaining the circumstances by which the decision of the 25 June 2014 Conduct and Competence Committee was quashed and remittal agreed.

### Schedule 3

Set out below is the agreed wording of the briefing note to be placed before the panel of the First Respondent's Conduct and Competence Committee on remittal of this case, explaining the considerations which led to the decision of the 25 June 2014 Conduct and Competence Committee being quashed and the agreed remittal:

Following a challenge by the Professional Standards Authority (PSA) pursuant to s29 of the National Health Service Reform and Health Care Professions Act 2002 which was conceded by the Respondents as set out at schedule 1 of this Order, it was agreed between the PSA, the NMC and Ms Mariatu Maimuna Dumbuya Bangura (the Registrant) that the decision of the Conduct and Competence Committee (the Committee) originally seized of the matter, to impose a four year caution order, should be quashed and the question of sanction remitted to a freshly constituted panel of the Conduct and Competence Committee for determination.

This case is being placed before you for determination of sanction. As well as the Order, you have before you the transcripts of the findings of the Committee, and the Authority's redacted Grounds of Appeal and Skeleton Argument. Schedule 1 of this Order sets out the basis on which the Appeal was conceded by the Registrant and the NMC.

The above was agreed in light of submissions by the PSA to the effect that:

1. The Committee's finding of remorse and insight on the part of the Registrant was perverse, in that, it was inconsistent with the CCC's earlier finding that the Registrant had been inconsistent and unreliable in the evidence she gave to the Panel and her complete denial in relation to the allegations relating to Patient B, allegations found proved against her;
2. The CCC failed to have regard to relevant factors, in that, the CCC failed to have any or any adequate regard to:
  - a. the inherent seriousness of allegations of two instances of wrongful restraint;
  - b. the inherent seriousness of allegations of attempts to conceal the wrongful restraint of vulnerable elderly patients;
  - c. the ongoing risk posed to the public by a Registrant who did not admit to such serious wrong-doing;
  - d. the NMC's guidance in relation to the care of vulnerable patients, and;
  - e. the lack of insight shown by the Registrant.
3. The CCC gave weight to irrelevant factors and/or disproportionate weight to factors of limited relevance, in that, the CCC found there was no actual harm to the patients when the use of restraints is, in itself, harmful and it treated as mitigation the absence of a hospital policy or procedure document for the use of restraints when it should have been obvious that the use of unauthorised and improvised restraint is wrong;
4. The CCC failed to provide sufficient reasons as to why the sanction of a caution rather than suspension or striking off was adequate.

This case is now placed before this Panel for consideration of sanction in the usual way.