

Claim No: CO/489/2019

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

BETWEEN:

TIMOTHY BREMAN OBE (DHCT)

PROFESSIONAL STANDARDS AUTHORITY FOR HEALTH AND SOCIAL CARE

Appellant



and

(1) HEALTH AND CARE PROFESSIONS COUNCIL
(2) DEBORAH JOHNSON

Respondents

CONSENT ORDER

UPON the parties having agreed these terms and the statement of reasons as set out in the Schedule

AND UPON neither party being either a child or 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 be allowed and the decision of the First Respondent's Conduct and Competence Committee (the CCC) on 29 November 2018 imposing a caution order of three years on the Second Respondent be quashed.
2. The matter be remitted to a panel of the CCC for redetermination:
 - 2.1 on the basis of a revised allegation; and
 - 2.2 with the CCC's decisions in relation to FTP42777 dated 21 April 2017, 20 October 2017, 26 October 2018 and 28 February 2019 being considered by that panel before determining any sanction.

3 In formulating the revised allegation, the First Respondent shall include, in substance, all of the particulars identified by the Appellant in Ground 1 of the Notice of Appeal, provided that, having regard to the available evidence in respect of each of those particulars, the First Respondent is satisfied that there is a realistic prospect that it will be able to prove the facts alleged and, in consequence, that a determination will be made that the Second Respondent's fitness to practise is impaired.

4 The First Respondent shall pay the Appellant's reasonable costs of the appeal, to be subject to detailed assessment if not agreed.

We consent to an order on the above terms.

Dated this 9th day of May 2019

Fieldfisher
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Fieldfisher
5th Floor
Free Trade Exchange
37 Peter Street
Manchester
M2 5GB

Ref: HB3/65066.00032
Solicitors for the Appellant

Deborah Johnson
.....
Ms Deborah Johnson
8 Reynard Close
Hutton Cranswick
East Yorkshire
YO25 9PG

Second Respondent

Timothy Beaman
16/5/2019
BDB Pitmans LLP
.....
BDB Pitmans LLP
50 Broadway
London
SW1H 0BL

Ref: HEF/RJL/096763.0151
Solicitors for the First Respondent

By the Court

SCHEDULE

- 1 The Second Respondent is a registered Social Worker.
- 2 In a decision on 21 April 2017 in fitness to practise proceedings FTP42777, the CCC determined that the Second Respondent's fitness to practise was currently impaired and imposed a six month suspension order. At the first review hearing on 20 October 2017, a further 12 month suspension was imposed. At the second review hearing on 28 October 2018, a further four month suspension was imposed. At the third review on 28 February 2019, a further 12 month suspension was imposed.
- 3 In a decision on 29 November 2018 in separate fitness to practise proceedings FTP58459, the CCC determined that the Second Respondent's fitness to practise was currently impaired and imposed a three year caution (the Decision).
- 4 The Appellant appealed the Decision on the following grounds:

Ground 1 - The decision of the CCC to impose a Caution Order upon the Second Respondent (for a period of 3 years) arose from a serious procedural irregularity, in that the First Respondent, while in possession of evidence to this effect, failed to allege that:-

(a) the Second Respondent had been dishonest in completing 10 applications for employment to the East Riding of Yorkshire Council, over the period 5th May 2015 to 17th April 2016, in addition to the 3 described in particular 1 to the Allegation;

(b) the Second Respondent had been dishonest when interviewed by her employer East Riding of Yorkshire Council on 15th August 2017, by stating that:-
 - (i) she had not declared her full disciplinary history in her application forms because she had been told not to do so, as those proceedings were ongoing;*
 - (ii) her disciplinary history with Hull City Council related to three or four mileage claims, when it related to 6;*
 - (iii) the proceedings brought by the First Respondent into her dishonest mileage claims had been suspended for 6 months because at the hearing in January 2017 the panel's computer had crashed while the documentation was being typed (but that she had been told she was not to practice as a social worker in the meantime);*
 - (iv) she did not recall explaining her absence from work when attending the First Respondent's hearing into her dishonest mileage claims in January 2017 by saying that she was accompanying a friend who had been charged with making dishonest mileage claims;*
 - (v) that she had been open and honest during the interview;*
(c) that the Second Respondent had been dishonest to her regulator the First Respondent, in:-
 - (i) at the hearing of the First Respondent's proceedings into her dishonest mileage claims, causing or permitting the Conduct & Competence Committee to understand that she was not in employment;*
 - (ii) in her letter to the First Respondent dated 25th August 2017, describing a single dishonest job application form and stating that in interview by her employer on 15th August 2017 she had disclosed all aspects of the First Respondent's proceedings against her and her subsequent suspension.*

Ground 2 - Had the CCC determined that the Second Respondent had been dishonest in all of any of the respects described in Ground 1 above it could, alternatively may, not have:-

(a) accepted the Second Respondent's evidence that 'since her dismissal [by Hull City Council] she had made over fifty job applications, with over twenty to East Riding of Yorkshire Council, and [in] all but three of those job applications [she] had provided full details of [her] dismissal from [her] previous employment';

(b) made the findings it did that:-

- (i) the Second Respondent's dishonest mileage claims, her dishonest job application forms and her dishonest explanation for her attendance at the hearing of the proceedings brought against her by the First Respondent in January 2017 were 'out of character' and that 'there was no deep seated underlying attitudinal problem with dishonesty on the part of the Second Respondent';
- (ii) the risk of the Second Respondent acting dishonestly again in the future was low;

(c) determined that a Caution Order was sufficient to protect the public interest.

Ground 3 - The decision of the CCC to impose a Caution Order upon the Second Respondent (for a period of 3 years) arose from a further serious procedural irregularity, in that the First Respondent had not, prior to the Committee hearing submissions upon and retiring to consider the issue of sanction, provided the Committee with the determinations of the CCC made on 21st April 2017, 20th October 2017 and 26th October 2018.

Ground 4 - Without the determinations identified in Ground 3 above the Conduct and Competence Committee was unable to determine the sanction which was required to meet the public interest.

Ground 5 - Had the CCC been able to consider the determinations identified in Ground 3 above it:-

(a) would have seen (inter alia):-

- (i) the Second Respondent's history in full;
- (ii) that on 21st April 2017 the Committee had imposed a Suspension Order of 6 months to give the Second Respondent the opportunity to demonstrate to the next panel that she has reflected on her conduct and developed insight;
- (iii) that, rather than reflecting upon her conduct, the Second Respondent instead continued to behave dishonestly, as described in Ground 1 at (b) and (c) above.

(b) could, alternatively may, not have determined that a Caution Order was sufficient to protect the public interest.

- 5 The First Respondent accepts that the Decision was not sufficient for the protection of the public, within the meaning of s.29(4) of the National Health Service Reform and Health Care Professions Act 2002.

By the Court