

Case No: CO/5008/2019

**IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
The Honourable Mr Justice Linden**

BETWEEN:

PROFESSIONAL STANDARDS AUTHORITY FOR HEALTH AND SOCIAL CARE
Appellant



and

(1) HEALTH AND CARE PROFESSIONS COUNCIL
(2) STEPHEN MULLENDER-LOCK

Respondents

ORDER

UPON the parties having agreed these terms and the statement of reasons as set out in Schedule 1

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

AND UPON a panel of the Conduct and Competence Committee ("CCC") of the First Respondent having found on 16 October 2019 that the fitness to practice of the Second Respondent was impaired by reason of misconduct and having decided to impose a caution order for a period of two years on the Second Respondent

AND UPON the Appellant having lodged an appeal on 20 December 2019 against the First Respondent's decision pursuant to Section 29 of the National Health Service Reform and Health Care Professions Act 2002

AND UPON the First Respondent and Second Respondent having conceded the appeal and accepted that the First Respondent's decision of 16 October 2019 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

AND UPON responsibility for the regulation of social workers having been transferred from the First Respondent to Social Work England on 2 December 2019 and Social Work England having confirmed to the Appellant that it is willing to comply with the terms of the Order.

BY CONSENT

IT IS ORDERED THAT:

- 1 The appeal be allowed.
- 2 The two year caution order imposed on the Second Respondent by the decision of the CCC on 16 October 2019 be quashed and substituted with a period of suspension for a duration of twelve months from 8 October 2020, with a review hearing to be listed shortly before the expiry of the suspension.
- 3 At the review hearing there will be a persuasive burden on the Second Respondent to demonstrate to the panel's satisfaction that his fitness to practise is no longer impaired. If the Social Work England panel that will conduct the review hearing finds that the Second Respondent's fitness to practise is impaired it will have the power to take any of the steps set out in paragraph 12(3) or paragraph 13 of Schedule 2 of the Social Workers Regulations 2018.
- 4 Without limiting in any way the exercise of its powers, the reviewing panel is directed to specifically consider the documents and matters set out in Schedules 2 and 3 to this order.
- 5 The First Respondent shall pay the Appellant's reasonable costs of the appeal, to be subject to detailed assessment if not agreed.
- 6 The hearing of the appeal on Tuesday 1 December 2020 is vacated

Dated this 30th day of November 2020

Mr Justice Linden



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SCHEDULE 1

- 1 The Second Respondent is a registered Social Worker.
- 2 In a decision on 16 October 2019 in fitness to practise proceedings, a panel of the First Respondent's CCC determined that the Second Respondent's fitness to practise was impaired by reason of misconduct and imposed a two year caution (the **Decision**).
- 3 The Appellant appealed the Decision on the basis that the Decision was not sufficient to protect the public and on the following grounds:

Ground A:

There was a failure to charge dishonesty in relation to the Registrant's comments at the 12 August 2011 Fact Finding meeting

- a. *The HCPC failed to include a charge that the Registrant had been dishonest in seeking to conceal his relationship with Mother A in his answers at the 12 August 2011 fact finding meeting.*
- b. *The HCPC had obtained cogent evidence of the Registrant's dishonesty, contained within his self-referral letter received on 21 May 2013. This evidence should have been before the panel in support of this charge.*
- c. *The failure to include such a charge was a serious procedural irregularity and caused and/or contributed to the Panel failing to consider all the relevant deficiencies in the Registrant's practice, and to properly consider evidence in relation to remediation and insight.*

Ground B

The Panel erred in finding that Mother A and/or Mother B were not particularly vulnerable

- a. *The Panel erred in their assessment of the level of vulnerability of both Mothers. Both Mothers required the care of East Anglia Children's Hospices ('EACH') due to having very seriously ill young children. There is an inherent, high level of vulnerability of parents in this situation.*
- b. *It was accepted evidence that Mother A had mental health issues around the time the relationship with the Registrant commenced. No challenge was made to the description of her as a "highly vulnerable service user".*
- c. *Mother B described herself as being "very vulnerable" at the time the relationship commenced. Her vulnerabilities were clear by the nature the 'informal counselling' that was being provided by the Registrant. The relationship also commenced at a time when Mother B's marriage had broken down, due in part to Father B's debilitating condition.*

- d. *The Panel's assessment that neither Mother was "particularly vulnerable" because they were unable to take care of themselves or protect themselves from serious harm or exploitation is flawed. Mother A was suffering from mental health problems. This is a specific factor identified within the HCPC Sanction Policy. Further, the relationship with Mother B began at a time of "intense emotional pain" for her. Her vulnerability at this time was plainly heightened, and her ability to protect herself from emotional harm significantly reduced.*

Ground C

The Panel erred in its finding that the behaviour was not of a predatory nature

- a. *Having failed to properly assess the vulnerabilities of Mother A and Mother B, the Panel failed to properly consider that the Registrant used his position as a social worker, in the knowledge that both women were vulnerable, to cultivate a relationship. Both relationships began as a result of the Registrant's contact with the Mothers, directly through his employment as a social worker. In respect of Mother B, he provided inappropriate informal counselling, which then led to a sexual relationship. The Registrant took advantage of the vulnerabilities of these women for his own sexual gain.*

Ground D

The Panel erred in its assessment of the seriousness of the misconduct

- a. *In its determination on sanction, the Panel failed to identify material aggravating factors, including:*
- i. *The Registrant failed to disclose his relationship with Mother A after having been given a final written warning in relation to this;*
 - ii. *The Registrant had been dishonest about his relationship with Mother A at the 12 August 2011 fact finding meeting;*
 - iii. *The Registrant's relationship with Mother A had prevented her and her family from feeling able to obtain care and support from EACH;*
 - iv. *The Registrant's conduct occurred over a sustained period of time. He embarked on relationships with Mother B four years after commencing a relationship with Mother A, having been warned in August 2011 that such a relationship was inappropriate;*
 - v. *The Registrant had provided support directly to Mother B at EACH; and*
 - vi. *The Registrant apparently showed no real insight into the nature of his misconduct until attending the professional boundaries course in December 2018.*
- b. *The Panel further erred in placing undue weight on mitigating factors including:*

- i. *The Registrant's good character, when he had in fact been dishonest in the 12 August 2011 fact finding meeting;*
- ii. *The evidence of remediation, in light of the dishonesty, abuse of professional position and vulnerability of the Mothers, which meant that this factor was of less relevance;*
- iii. *The evidence in support of insight, when the Registrant had previously suggested an understanding of the inappropriateness of such relationships at the 12 August 2011 fact finding meeting, yet continued that relationship and had a further relationship; and*
- iv. *The testimonials, which included statements to the effect that the Registrant had maintained professional boundaries during his employment, during a period where the Registrant was having an inappropriate relationship with Mother B.*

Ground E

The Panel erred in (i) finding that the Registrant's mitigation was "exceptional"; and/or (ii) failing to provide any reasoning for this

- a. *Whilst the Registrant had provided a variety of evidence in mitigation, there was nothing to mark this out as "exceptional". Further, the Panel did not provide any explanation for why they found this to be exceptional, or how this mitigation weighed against the aggravating factors.*

Ground F

The Panel erred in failing to apply and/or have adequate regard to the Sanctions Policy

- a. *The Panel further erred in failing properly to consider and/or apply the HCPC's Sanctions Policy. The Panel found that a caution order was appropriate even though they found that the issue was not "isolated, limited or relatively minor in nature". This is one of the requirements for a caution being appropriate. Accordingly, the factual findings did not support the imposition of this order.*
- b. *On proper assessment, the misconduct as the Panel had found, had fallen "seriously below" the standard required. There was plainly a level of repetition, and the misconduct occurred over a significant period. Further, as the Panel had found, "significant distress" had been caused to Mother A, Mother B, and Father B, all of whom were vulnerable.*
- c. *The Panel failed to have any, or any proper regard to the factors relevant to when a suspension order might be appropriate, or note that all of these factors appeared to have been met in this case.*
- d. *The Panel further erred in failing to explain on what basis they found that a suspension would be disproportionate.*

Ground G:

The Panel failed to have sufficient regard to the importance of maintaining the reputation of the profession and/or public confidence in the profession or failed to give adequate reasons as to how this requirement was fulfilled

- a. *The Panel failed to have sufficient regard to the importance of maintaining the reputation of the profession and/or public confidence in the profession in that it did not address the significance of a social worker, whose work had involved supporting the vulnerable children, often at the end of their lives, and their families, repeatedly ignoring professional boundaries. Such families are particularly vulnerable. The public must be given confidence in the profession whose role it is to support them.*
- b. *Alternatively, the Panel failed to give adequate reasons as to why the sanction it imposed was sufficient to fulfil this function.*

4 The First Respondent and the Second Respondent accept that:

- a. the Second Respondent stated in his self-referral letter of 21 May 2013 that at the disciplinary finding meeting on 12 August, he *'was not honest about my relationship with the ex-service user's mother'*.
- b. the Second Respondent said in his evidence to the CCC that Mother A was a "vulnerable" service user, and was vulnerable at the time of his relationship with her.
- c. the Second Respondent said in his evidence to the CCC that Mother B was a "vulnerable" service user, and was vulnerable at the time of his relationship with her.

5 The First Respondent accepts that the panel of the CCC did not properly consider the question of the vulnerability of Mothers A and B and / or the Second Respondent's dishonesty, and the appeal is conceded on this basis.

6 The First Respondent and the Second Respondent accept that the Decision was not sufficient for the protection of the public and agree that the caution should be substituted with a one year suspension.

7 Pursuant to Regulation 22 of the Children and Social Work Act 2017 (Transitional and Savings Provisions) (Social Workers) Regulations 2019 Social Work England will be responsible for the review.

SCHEDULE 2

The documents to be placed before the reviewing panel shall include, but are not limited to, the following:

1 A copy of this order including Schedules 1 & 2.

- 2 A copy of the Decision.
- 3 The relevant passages of the First Respondent's sanctions guidance and the guidance it has issued in relation to impairment and/or dishonesty.
- 4 The transcript of the original hearing of this matter with the panel's decision on sanction redacted.
- 5 The bundle that was before the panel at the original hearing of this matter.
- 6 The Second Respondent's self-referral letter dated 21 May 2013.
- 7 The First Respondent's guidance to panel conducting substantive order review hearings.
- 8 The Email exchanges between the parties and the Court in relation to the draft Consent Order dated between 25 and 30 November 2020.

SCHEDULE 3

The reviewing panel shall address the points on dishonesty and vulnerability as described at Schedule 1 paragraph 4.

