

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

BETWEEN:



AC-2022-LON-000940

THE PROFESSIONAL STANDARDS AUTHORITY
FOR HEALTH AND SOCIAL CARE

Appellant

- and -

(1) THE NURSING AND MIDWIFERY COUNCIL
(2) ANDREA BURDON

Respondents

ORDER BY CONSENT

UPON the parties having agreed to the terms of this Order, in particular that it is just and convenient for the Court to make the Order set out below;

AND UPON neither party being a child or protected party and the appeal not being an appeal from a decision of the Court of Protection.

AND UPON the Second Respondent being a Band 5 registered mental health nurse on the register established and maintained by the First Respondent.

AND UPON the First Respondent's Fitness to Practise Committee ("the Committee") having found on 11 November 2022 that the Second Respondent's fitness to practise was currently impaired and that she should be suspended for a period of 12 months ("the Decision").

AND UPON the Appellant having lodged an appeal on 16 January 2023 against the decision of the Nursing and Midwifery Council's Fitness to Practise Committee pursuant to Section 29 of the National Health Service Reform and Health Care Professions Act 2002 (as amended).

AND UPON the First Respondent conceding that the appeal should be allowed on the basis of the reasons set out in Schedule 1.

AND UPON the Second Respondent not engaging with the Appellant in connection with these proceedings and informing the First Respondent that she wanted no further contact from them.

BY CONSENT IT IS ORDERED THAT:-

1. The appeal is allowed.
2. The Committee's decision in relation to sanction is quashed.
3. The Second Respondent's case is remitted to a differently constituted panel to re-determine sanction which, in doing so, must take into account the matters set out in Schedule 1 and any additional evidence upon which the First and/or Second Respondents wish to rely, subject to that evidence being admissible in the usual way.
4. The First Respondent must place before the Committee on remittal copies of this Consent Order and the attached Schedule of Reasons.
5. The First Respondent is to pay the Appellant's reasonable costs in the sum of £5,300.24.
6. The Second Respondent has permission to apply to the Court to vary or discharge the order within 28 days of the order and upon giving 14 days' notice to the parties.

We consent to an Order in the above terms

Browne J. Lee

Browne Jacobson, Solicitors for the Appellant

Dated: 16 November 2023

Ref: 045833.00085



Peter Boyce, Head of Case Presentation & Appeals (Solicitor)

Nursing and Midwifery Council, Solicitors for the First Respondent

Dated: 14 November 2023

Ref: 079269

Schedule 1 – Statement of Reasons

The Appellant and First Respondent agree that the Committee's decision is not sufficient for the protection of the public and it is not sufficient to maintain public confidence in the nursing profession and to maintain proper professional standards and conduct for members of that profession, within the meaning of section 29(4A) of the Act, on the following grounds:

- i) The Committee erred in its assessment of impairment by failing to consider, adequately, or at all, whether the Second Respondent's misconduct indicated attitudinal problems;
- ii) The Committee failed to consider attitudinal problems in their decision on sanction;
- iii) The Committee erred in failing to consider that the Second Respondent had twice expressed a desire not to work as a nurse again in its consideration of sanction; and
- iv) The Committee failed to recognise that the Second Respondent's insight had diminished since the local investigation.

Deputy High Court Judge David Pievsky KC on 08/12/2023

BY THE COURT