



CLAIM NO: CO/5163/2014

*LM*  
25/2/15

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

THE PROFESSIONAL STANDARDS AUTHORITY  
FOR HEALTH AND SOCIAL CARE

Appellant

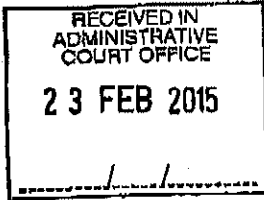
and

(1) NURSING AND MIDWIFERY COUNCIL

First Respondent

(2) MR OLANIYI AYINDE OYELAMI

Second Respondent



**CONSENT ORDER**

UPON the parties having agreed to the terms of this Order and to the terms set out in the attached Schedules

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 the First and Second Respondents conceding that the decision of its Conduct and Competence Committee ("CCC") dated 1 – 4 September 2014, which is the decision under appeal, was unduly lenient within the meaning of Section 29 of the National Health Service Reform and Health Care Professions Act 2002

AND UPON it being agreed that, by reason of rule 14(4) of the Nursing and Midwifery Council (Education, Registration and Registration Appeals) Rules 2014, upon this case being remitted to the Conduct and Competence Committee of the First Respondent the Second Respondent's registration shall not lapse

AND UPON the Second Respondent undertaking not to practise as a nurse or to work or provide services in any employment, occupation or activity which requires registration as a nurse pending the consideration of the imposition of an Interim Order by a Panel of the First Respondent, such Panel to be convened by the First Respondent as soon as possible

**IT IS ORDERED BY CONSENT THAT:**

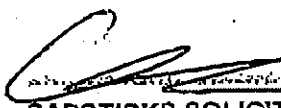
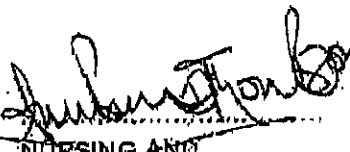

1. The Appeal is allowed on the basis set out in Schedule 1.
2. The Panel's decision as to impairment of fitness to practise and sanction is quashed.

*By the Court*

- 3. The First Respondent's case against the Second Respondent is to be remitted to a differently constituted Panel of the First Respondent's CCC for reconsideration of the issues of impairment of fitness to practise and sanction at a substantive hearing.
- 4. At the remitted hearing the documents before the First Respondent's CCC shall include those listed in Schedule 2.
- 5. The First Respondent is to pay the Appellant's reasonable costs of the Appeal, to be assessed if not agreed.
- 6. The hearing of this Appeal listed on 26 February 2015 be vacated.

WE CONSENT TO AN ORDER IN THE ABOVE TERMS

Dated this day of 2015

		
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*By the Court*

## SCHEDULE 1

1. The Second Respondent is a registered nurse. On 1-4 September 2014, the CCC of the First Respondent found that the Second Respondent's fitness to practise was impaired by reason of his misconduct and imposed a six month suspension order on the Second Respondent's registration.
2. The Appellant appealed the Decision on the grounds that it was unduly lenient within the meaning of section 29 of the National Health Service Reform and Health Care Professions Act 2002, and/or that there was a serious procedural irregularity in the proceedings. A summary of the Appellant's Grounds of Appeal is as follows:

Ground 1 - The Panel erred in its approach to the first head of charge (failure to administer CPR)

In that the Registrant's misconduct, on proper analysis, constituted a series of related acts all underscored by the same attitudinal problem. The Panel erred in separating the clinical failings from the other misconduct, thereby excluding consideration of this aspect of the case from the determination of sanction. The Panel failed to consider or address the Registrant's attitude and insight in relation to head of charge 1 and made no mention of the wider public interest.

Ground 2 - The Panel failed to give adequate weight to the Registrant's lack of insight and/or made inconsistent findings in respect of insight

In that the Panel erred in its approach to the registrant's lack of insight and failed to properly consider whether there were any deep seated attitudinal problems fundamentally incompatible with continued registration and/or the risk of repetition.

Ground 3 - The Panel failed to consider and/or apply relevant case law on dishonesty and insight

The Panel erred in failing to consider and/or apply well known case law in relation to dishonesty (see in particular, *Atkinson v GMC* [2009] 3636 (Admin) at [13]; see also *Parkinson v NMC* [2010] EWHC 1898 (Admin)).

Ground 4 - The Panel selectively considered and/or applied the Indicative Sanctions Guidance

*By the Court*

The Panel erred in selectively considering and/or applying the Indicative Sanctions Guidance. Whilst the Panel considered and set out extracts from paragraph 71 of the Guidance, it failed to mention other material paragraphs (see, in particular, paragraphs 71.5, 74.1, 74.3, 75.6, 75.7, 76).

Ground 5 - The Panel failed to give adequate weight to the public interest

The Panel failed to give any, or any adequate weight to the public interest in ensuring compliance with, and respect for, orders of regulatory panels, and, in particular, how confidence in the system of regulation can be maintained where registrants deliberately breach disciplinary orders.

Ground 6 - The Panel failed to give adequate reasons for its decision.

Further or alternatively, the Panel failed to give adequate reasons for its decision. In relation to matters of personal mitigation, these should be considered with reference to the relevant case law (see in particular *Bolton v Law Society* [1994] 1 WLR 512).

3. The First Respondent concedes the Appeal on each of the Grounds, save that it is not conceded that the case was under-prosecuted.
4. The Second Respondent concedes the appeal on the basis of remittal for a re-hearing.
5. The parties have agreed that the original CCC's decision on Impairment of fitness to practise and sanction be quashed and the matter be remitted to a differently constituted panel of the First Respondent's CCC for reconsideration of the issues of impairment of fitness to practise and sanction.

*By the Court*

**SCHEDULE 2**

1. The Bundle before the First Respondent's CCC on 1 – 4 September 2014.
2. The Determination of the First Respondent's CCC on 1 – 4 September 2014, up to and including its determination on misconduct.
3. The transcript of the CCC on 1-4 September 2014, up to and including its determination on misconduct.
4. This Consent Order.
5. The Indicative Sanctions Guidance and, in particular, the relevant sections referred to in the Grounds of Appeal.

*By the Court*