

Section 29 Case Meeting

20 August 2018

157-197 Buckingham Palace Road, London SW1W 9SP



Ikhbal Hussain

Members present

Harry Cayton (in the Chair), Board Member, Professional Standards Authority
Mark Stobbs, Director of Scrutiny and Quality, Professional Standards Authority

In attendance

David Bradly of counsel, 39 Essex Chambers

1. Introduction

1.1 This was a reconvened case meeting called urgently to consider new evidence in the case. Kisha Punchihewa was unable to be present.

2. Purpose of this note

2.1 This note sets out the decision of the Members following reconsideration of the decision taken on 13 August 2018. not to refer the case to the court under Section 29 of the Act.

3. Documents before the meeting

3.1 The following documents were available to the Members:

- The decision of HHJ David Cook dated 31 October 2017 in the case of Dhaliwal v Hussain (1) and Bachada (2)

4. Background

4.1 Following the original decision not to refer the case to the High Court, the Authority had received from the General Dental Council a copy of the decision of HHJ David Cook. This decision had not been put before the GDC Panel. The Members had to consider whether this was sufficient to require them to change their decision in respect of whether or not to refer the case to the High Court.

4.2 The decision concerned a dispute between the Registrant and another dentist to whom he had sold a practice in 2007. The hearing took place in September 2017 and the judge had found that the registrant was evasive and had given responses that were 'implausible and untrue'.

5. Applying Section 29 of the 2002 Act

- 5.1 The Members considered the decision and received legal advice.
- 5.2 The Members noted that the Panel had not had the decision of HHJ David Cook before it. They also noted that the Panel had proceeded on the basis that there was no evidence of dishonest conduct since the Registrant had originally been erased and had taken account of evidence suggesting that the Registrant had remediated his dishonesty. The Members recalled their concerns about the nature of that evidence.
- 5.3 The Members considered that, had the Panel been aware of the comments of HHJ David Cook, it might have significantly affected its view, given that those comments were in respect of evidence given by the Registrant in September 2017, nine months before the Restoration Hearing. As such, the failure to provide the Panel with that evidence amounted to a serious procedure irregularity.

6. Conclusion on insufficiency for public protection

- 6.1 In the light of this, the Members concluded that the decision to restore the Registrant was insufficient to protect the public.

7. Referral to court

- 7.1 Having concluded that the panel's Determination was insufficient for public protection, the Members moved on to consider whether they should exercise the Authority's discretion to refer this case to the relevant court.
- 7.2 In considering the exercise of the Authority's discretion, the Members received legal advice as to the prospects of success and took into account the need to use the Authority's resources proportionately and in the public interest.
- 7.3 The Members were satisfied that the decision should be referred to the High Court of Justice of England and Wales.

Harry Cayton

30 October 18

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Harry Cayton (Chair)

Dated