

Section 29 Case Meeting

16 October 2020

157-197 Buckingham Palace Road, London SW1W 9SP



Members present

Alan Clamp (in the Chair), Chief Executive, Professional Standards Authority
Mark Stobbs, Director of Scrutiny & Quality, Professional Standards Authority
Graham Mockler, Assistant Director of Scrutiny & Quality (Performance), Professional Standards Authority

In attendance

David Bradly, Legal Advisor, 39 Essex Chambers

Observers

Briony Alcraft, Scrutiny Team Co-ordinator, Professional Standards Authority
Colette Higham, Senior Scrutiny Officer, Professional Standards Authority
Kisha Punchihewa, Lawyer, Professional Standards Authority

1. Definitions

- 1.1 In this meeting note, standard abbreviations have been used. Definitions of the standard abbreviations used by the Authority, together with any abbreviations used specifically for this case are set out in the table at Annex A.

2. Purpose of this note

- 2.1 This meeting note records a summary of the Members' consideration of the relevant decision about the Registrant made by the regulator's panel, and the Authority's decision whether or not to refer the case to the court under Section 29 of the Act.

3. The Authority's powers of referral under Section 29 of the Act

- 3.1 The Authority may refer a case to the relevant court if it considers that a relevant decision (a finding, a penalty or both) is not sufficient for the protection of the public.
- 3.2 Consideration of whether a decision is sufficient for the protection of the public involves consideration of whether it is sufficient:
- to protect the health, safety and well-being of the public
 - to maintain public confidence in the profession concerned, and

- to maintain proper professional standards and conduct for members of that profession.

3.3 This will also involve consideration of whether the panel's decision was one that a disciplinary tribunal, having regard to the relevant facts and to the object of the disciplinary proceedings, could not reasonably have reached; or was otherwise manifestly inappropriate having regard to the safety of the public and the reputation of the profession (applying *Ruscillo*¹).

4. Conflicts of interest

4.1 The Members did not have any conflicts of interest.

5. Jurisdiction

5.1 The Legal Advisor confirmed that the Authority had jurisdiction to consider the case under Section 29 of the Act. Any referral in this case would be to the High Court of Justice of England and Wales and the statutory time limit for an appeal would expire on 22 October 2020.

6. The relevant decision

6.1 The relevant decision is the Determination of the Panel following a hearing which concluded on [REDACTED].

6.2 The Panel's Determination which includes the charges and findings is set out at Annex B.

7. Documents before the meeting

7.1 The following documents were available to the Members:

- Determination of the panel dated [REDACTED]
- The Authority's Detailed Case Review
- Transcripts of the hearing dated [REDACTED]
- Counsel's Note dated 15th October 2020
- Restoration Hearing Bundle
- GPhC Combined Statement of Case and Skeleton Argument
- GPhC Guidance - Restoration to the register: Guidance for applicants and committees
- The Authority's Section 29 Case Meeting Manual

¹ CRHP v Ruscillo [2004] EWCA Civ 1356

8. Background

- 8.1 The Applicant was removed from the GPhC register in July 2014 following his convictions for three counts of theft totalling £422,568 and failing to declare earnings to HMRC of £37,555.20. The thefts occurred over a six-year period whilst the Applicant was working as the [REDACTED]. The Applicant committed the theft by ordering medication direct from [REDACTED] supplier which was then sold on to unassuming pharmacists and, in the case of £15,000 worth of blood pressure monitors, the public, via Ebay. Fraudulent invoices were created in order to conceal the theft which continued for years undetected. The Applicant was ultimately caught loading prescription medications into his car by a [REDACTED] investigator and admitted theft.
- 8.2 The Applicant pleaded guilty to the offences outlined above and was sentenced to a total of 40 months imprisonment in [REDACTED].
- 8.3 The Applicant applied for restoration to the GPhC Register in [REDACTED] and was restored by the Fitness to Practise Committee at a hearing on [REDACTED].

9. Applying Section 29 of the 2002 Act

- 9.1 The Members considered all the documents before them and received legal advice.
- 9.2 The Members discussed the following concerns about the decision:

The Panel's approach

- 9.3 The Members discussed the Panel's approach to the application for restoration and that it appeared to focus exclusively on the Applicant's remediation and insight without carrying out an adequate balancing exercise of the second and third limbs of the overarching objective as is required under the approach laid down by the Court of Appeal in *Chandra*². The Members felt that in restoring the Applicant, the panel failed to show it had given sufficient consideration to whether the maintenance of public confidence and professional standards could be properly promoted given the nature and seriousness of the Applicant's offending and level of deception.
- 9.4 Further, the Members considered that the legal advice given to the Panel did not make reference to *Chandra*, though conceded that the advice given was not inconsistent with the principles, and that the GPhC skeleton argument did outline the correct legal test.
- 9.5 The Members, however, took into account the Applicant's extensive insight and remediation, the large sum he has since repaid, his charity work and the CPD he has undertaken, and concluded that this is highly relevant and that it is appropriate for a panel to consider each case on its own merits. The Members therefore concluded that although the Panel's approach was lacking and that a more reasoned determination was required in order for it to be clear that the Panel had given due consideration to the overarching objective, the decision

² GMC -v- Chandra [2018] EWCA Civ 1898

was not entirely outside the realm of reasonable decisions and did not entirely fail to uphold public confidence.

Was the misconduct so serious that permanent erasure was required?

- 9.6 The Members went on to discuss the difficult question of what would be considered by the public to be a proportionate period of time off the Register before public confidence could be restored in a case involving such serious findings of dishonesty. They took into account the decision of the MPTS in restoring Dr Chandra and the not dissimilar set of reasons that panel produced, and although concluding that the case in hand is more serious than that of Chandra, they could not conclude that after completing a substantial custodial sentence, extensive remediation and six years since removal from the Register, the Panel's decision to restore the Applicant was unreasonable or that this was a case so serious that restoration should be entirely ruled out. The Members considered this decision was strengthened by the fact that the Applicant's employer appears willing to give him his job back. Further, the Members did not consider the applicant's mitigation would be any stronger after a further period off the Register. They, however, concluded that this was a borderline decision and that it would have been equally reasonable for the panel to refuse the application.

Conclusion on insufficiency for public protection

- 9.7 The Members were concerned with the panel's approach to adequately considering the overarching objective and its lack of reasoning as to how restoration would ensure that proper standards could be maintained and public confidence in the profession would not be damaged. Nevertheless, for the reasons set out above they concluded that the decision was not one which no reasonable Panel could have made. In all the circumstances, therefore, it was not insufficient for public protection.

10. Referral to court

- 10.1 Having concluded that the panel's Determination was not insufficient for public protection, the Members were not required to consider whether they should exercise the Authority's power under Section 29 to refer the case to the relevant court.

11. Learning points

- 11.1 The Members agreed that the learning points set out at Appendix C should be communicated to the Regulator.



Alan Clamp (Chair)

09/12/20

Dated

12. Annex A – Definitions

12.1 In this note the following definitions and abbreviations will apply:

The Authority	The Professional Standards Authority for Health and Social Care
The Panel	A Fitness to Practise Committee of the GPhC
The Registrant	[REDACTED]
The Regulator	General Pharmaceutical Council
Regulator's abbreviation	GPhC
The Act	The National Health Service Reform and Health Care Professions Act 2002 as amended
The Members	The Authority as constituted for this Section 29 case meeting
The Determination	The Determination of the Panel sitting on [REDACTED]
The Court	The High Court of Justice of England and Wales
The Guidance	Restoration to the register: Guidance for applicants and committees