



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

AC-2023-LON-003555

LONDON

AC-2023-LON-003555

Mr Justice Lavender  
17 September 2024

BETWEEN:

THE PROFESSIONAL STANDARDS AUTHORITY  
FOR HEALTH AND SOCIAL CARE

Appellant

- and -

(1) HEALTH AND CARE PROFESSIONS COUNCIL  
(2) SPOMENKO LONCAR

Respondents

---

ORDER BY CONSENT

---

**UPON** the Appellant and First and Second Respondents 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** no 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 Radiographer on the register established and maintained by the First Respondent ('the Register')

**AND UPON** the Conduct and Competence Panel of the First Respondent's Fitness to Practise Adjudication Service ("the Panel") having decided that the fitness to practise of

the Second Respondent was impaired by reason of misconduct and imposed a twenty four month conditions of practice order with review ('the Decision')

**AND UPON** the Appellant having lodged an appeal on 28 November 2023 against the Decision 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 the schedule

**AND UPON** Butcher J ordering on 6 June 2024, inter alia, as follows:

"1. The Second Respondent shall by 14th June 2024 indicate to the Court whether:

(1) He agrees the terms of the Consent Order agreed by the Appellant and the First Respondent; or

(2) He intends to oppose the Appeal; or

(3) He does not agree to the terms of the Consent Order but he does not intend to take part."

**AND UPON** the Second Respondent indicating, in an email from his wife sent on 16 June 2024 that he has left the United Kingdom for good, that he does not intend to take part in the appeal and that he is content for the court to "do whatever you want", which the court treats as a form of consent to this order

**IT IS ORDERED THAT:-**

1. The appeal is allowed.

2. The Decision is quashed and substituted with an order that the Second Respondent be suspended from the Register for a period of twelve months with a review taking place before the end of the period of suspension.
3. The First Respondent is to pay the Appellant's reasonable costs of the appeal, to be assessed if not agreed.

### **Schedule – statement of reasons**

1. Ground 1: The Panel's stated reasons for imposing conditions were irrational:

a. The Panel said that attitudinal concerns "should not make it impossible" for the Second Respondent to remedy the misconduct "if he chooses to". However, (i) there was no evidence that the Second Respondent intended to undertake any remedial action, and (ii) there was no realistic prospect of meaningful remediation in the absence of insight.

b. The Panel acknowledged that it could not be completely confident that the Second Respondent would comply with conditions. It gave three reasons for imposing conditions despite concerns about the Second Respondent's attitude and risk of non-compliance. Those reasons were irrelevant to and/or did not materially mitigate the identified concerns:

i. The fact that some colleagues did not notice the inappropriate behaviour did not support a conclusion that the Second Respondent would comply with conditions or remediate the misconduct. The misconduct was not a "one off". On the facts found proved, the Second Respondent was guilty of multiple inappropriate acts in the period that he was employed by Alliance Medical ("AML").

ii. The lack of concern about the Second Respondent's clinical competence was irrelevant. This case was not about clinical competence.

iii. The fact that the proven misconduct occurred during a limited number of shifts over a period of 14 days does not mitigate the attitudinal

concerns. The Panel rightly found, as an aggravating factor, that there was a pattern of unacceptable behaviour. The misconduct started shortly after the Second Respondent commenced employment with AML and continued until he was suspended. There was no evidence before the Panel of practice since the index events.

c. The Panel stated that there was some information which suggested that the Second Respondent's non-engagement may have been because he was unwell. However, there was no evidence as to the nature or extent of any ill health or its impact on the Second Respondent's ability to engage.

2. Ground 2: The Panel's conclusion that it would be possible to formulate appropriate conditions, and that the Second Respondent would not pose a risk of harm by being in restricted practice, was wrong:

a. These conclusions were inconsistent with the Panel's finding that it could not be completely confident that the Second Respondent would comply with conditions;

b. Moreover, even if the Second Respondent did comply with the conditions (notification and supervision requirements), the Panel could not be confident that these conditions would prevent repetition of the proven misconduct because: (i) the conditions did not address the underlying attitudinal concern; (ii) much of the misconduct occurred when the Second Respondent was under supervision of a training lead/mentor; (iii) the misconduct included active defiance of instructions of the training lead/mentor; and (iv) some of the misconduct (social media posts) occurred outside work;

c. The conditions imposed by the Panel (direct supervision until the workplace supervisor was satisfied that the Second Respondent was compliant with specified requirements) inappropriately delegated assessment of whether the Second Respondent had remediated the misconduct and was safe to practise without direct supervision by the workplace supervisor.

3. Ground 3: The Panel departed from the relevant sanctions guidance without cogent reason: The First Respondent's Sanctions Guidance gave a clear steer against conditions. Whilst the Panel cited the relevant part of the guidance, it did

not acknowledge, or provide any reasons for, its departure from that steer. The departure could not reasonably be justified.

4. Ground 4: The Panel failed to consider and/or address whether conditions would be sufficient to maintain public confidence and/or uphold professional standards:

The misconduct included multiple acts that were liable to bring the profession into disrepute and undermine professional standards. The Panel found that the Second Respondent's fitness to practise was impaired on public interest grounds. However, it failed to consider or address whether conditions would be adequate to meet these concerns in the absence of any insight, remorse or remediation.

5. Ground 5: The way that the case was prosecuted by the First Respondent and/or determined by the Panel meant that some of the most serious aspects of the misconduct were not considered or addressed:

a. In finding allegation 4(a) not proved, the Panel erred in adopting an overly narrow interpretation of the stem of the allegation. Alternatively, if the Panel was right to adopt a narrow interpretation: (i) it erred in failing to offer the First Respondent an opportunity to amend and/or (ii) the First Respondent (as prosecutor) erred in failing to charge this aspect of the misconduct appropriately. The gravamen of allegation 4(a) lay in the lack of respect and open misogyny shown towards Colleague 4, as well as the stated unwillingness to follow instructions. All these matters should have been addressed in the allegation and/or determination.

b. The First Respondent and the Panel also erred in their approach to allegation 3(c). The Second Respondent's open use of vulgar insulting language to describe patients showed a worrying lack of respect for those patients. The First Respondent erred in charging this matter under a stem that concerned only conduct towards colleagues. The Panel erred in adopting an overly narrow approach to this allegation (not considering the wider concerns) and/or failing to invite the First Respondent to amend it.

**BY THE COURT  
17/09/2024**