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Case No: CO/1078/2019

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25/10/2019

Before :

MR JUSTICE PUSHPINDER SAINI

- -

Between :

PROFESSIONAL STANDARDS AUTHORITY FOR HEALTH AND SOCIAL CARE	**Claimant**
- and -	
(1) HEALTH AND CARE PROFESSIONS COUNCIL	**Defendant**
(2) CHRISTOPHER WOOD	

- -
- -

Alexis Hearnden (instructed by **Weightmans**) Appellant
Victoria Butler-Cole QC (instructed by **BDB Pitmans**) for the First Respondent
Wendy Hewitt (instructed by **Brabners**) for the Second Respondent

Hearing dates: 22nd October 2019

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Approved Judgment

MR JUSTICE PUSHPINDER SAINI :

This judgment is divided into 10 sections as follows:

I. Overview

1. This is an appeal brought by the Professional Standards Authority for Health and Social Care ("the Appellant") under section 29 of the National Health Service Reform and Health Care Professions Act 2002 ("the 2002 Act"). The appeal is against a decision of the First Respondent's Conduct and Competence Committee ("the Committee") made on 9 January 2019 ("the Decision").

2. By the Decision, the Committee imposed a six-month suspension (with review to follow suspension) upon the Second Respondent ("Mr. Wood"), a registered paramedic. Mr. Wood has served his period of suspension. Following a successful review on 5 July 2019, the Committee determined that Mr. Wood's fitness to practise was not currently impaired, and he was restored to the register with effect from 6 August 2019.

3. The Appellant has referred this case to the High Court on the grounds that there were serious procedural irregularities in the proceedings before the Committee. Although the Appellant advances a number of Grounds of Appeal, the overarching complaint is that the First Respondent failed to bring the real *substance* of Mr. Wood's claimed misconduct to the attention of the Committee hearing the case below. As to this substance, the Appellant says that the misconduct was of a sexually predatory nature and was undertaken in relation to a highly vulnerable patient, a young woman (known as "Patient A") at a time when Mr. Wood was attending upon her at home to provide emergency clinical care. The failure to put the substance before the Committee may have led, it is argued by the Appellant, to a decision on sanction which one could not be satisfied was sufficient for public protection.

4. The First Respondent has accepted that there were serious procedural irregularities in respect of its prosecution of Mr. Wood and accordingly it does not contest the appeal. By letter dated 18 June 2019, the First Respondent informed the Appellant of its position and enclosed a draft consent order ("the Consent Order") which provided that the decision of the Conduct and Competence Committee of 9 January 2019 be quashed and the case be remitted for redetermination, following the obtaining of expert evidence. The Consent Order contains a detailed agreed Schedule of what

should occur at the fresh determination and is based essentially on the Appellant's Grounds of Appeal and in substance accepts them as properly made-out.

5. However, the registrant Mr. Wood (as is fully his right), does not consent to the appeal being allowed (nor indeed does he formally oppose it). He has helpfully advanced clear and persuasive submissions through Counsel which challenge the Appellant's case in this appeal while seeking to adopt what he says is a "neutral" position. In reality, this is an opposition to the appeal and I have been greatly assisted by the submissions, as well as those of the Appellant and First Respondent.

6. Mr. Wood correctly and fairly observes through Counsel that he has engaged fully throughout the First Respondent's fitness to practise process. He also refers to the fact that he was described by the Committee as someone who made early and full admissions. He says his evidence, remediation and reflective work, show remorse and impressive insight. He has, he argues, answered everything asked of him by his regulator.

7. Unsurprisingly, Mr. Wood complains that having participated fully in the fitness to practise process, having been the subject of an order of suspension from the register for six months (at significant personal cost), and participated in a review hearing which found that his fitness to practise is no longer impaired, he now finds himself responding to this appeal and potentially facing the process again. And all because of the alleged shortcomings of the First Respondent. I have considerable sympathy with Mr. Wood's position.

8. I accept that this is the unfortunate position Mr. Wood finds himself in and it is largely as a result of the First Respondent's claimed failings. Those points do not however absolve me from dealing with the appeal on its merits. Parliament has determined such an appeal lies and insofar as there is a form of "double jeopardy" complaint, that is inherent in the regulatory regime. I refer in this regard to the observations of Lord Phillips MR in Ruscillo v Council for Regulation of Healthcare Professionals [2004] EWCA Civ 1356 at para. [42].

9. Further, it would not be appropriate for me to simply make the Consent Order agreed between the Appellant and the First Respondent and I will address each of the Grounds fully and the submissions of each party. I will then make my own decision on the appeal.

10. Before turning to the issues in this appeal, I should record the fact that the shape of the appeal has changed during the hearing in important and material respects. That indicates that it would have been unwise for the Court, insofar as there is any such practice, to make a consent order on terms agreed between the Appellant and First Respondent without the agreement of a registrant. The hearing has in my view been both necessary and helpful.

11. It seems to me that an independent consideration of the Grounds of Appeal by a Court should generally always be undertaken before a judge accedes to the terms of a consent order under which the decision of a regulatory quasi-judicial tribunal is set aside and the registrant has either not responded or puts forward arguments which challenge the appeal.

II. The Facts

12. Neither before me nor during the proceedings below was there any real dispute of fact as to the events. Specifically, the evidence of Patient A was not (save in one respect concerning what appears below as the "pdf issue": para. [15] below) challenged and she did not give oral evidence. I will set out the substance of the factual material including such references to the witness statements as are necessary to address the Grounds of Appeal.

13. Mr. Wood is a registered lead paramedic who qualified in 2014. He was referred to the Committee as a result of concerns raised by the South West Ambulance Service NHS Foundation Trust ("the Trust").

14. On 7 May 2017, Mr. Wood acted as the lead paramedic in attending an emergency call (with a colleague) at Patient A's address. They attended because Patient A had by accident cut herself in the kitchen and summoned emergency help using a "life line button" (a device which permits medically vulnerable persons to summon rapid assistance).

15. On Mr. Wood's attendance upon her, Patient A recalled giving him a pdf document detailing her medical history (which she said she gives to any paramedic attending given her complicated medical history). The pdf document listed Patient A's medical conditions which included: Hypermobility Syndrome with Chronic Widespread Pelvic Pain, ME/CFS, Juvenile Disc Disease, Severe Depression, High Anxiety, Fibromyalgia, Slipped Disc, Non-Epileptic Attack Disorder (NEAD), Functional Paroxysmal Dystonia, Functional Neurological Disorder (FND).

16. The pdf document also included instructions in the event of a seizure and provided information about her split personality disorder which involves the emergence of the child-like [person] X. In her own words, Patient A explains: "…basically, my brain shuts down and [person X] pops out for a visit. The longest she's been "out" for is an hour. I have NO idea what is said or done when Nicole is out. This is the only time I am not conscious…".

17. There can be no dispute that Patient A is a highly vulnerable person and that fact would be obvious to anyone considering the contents of the pdf. Mr. Wood gave evidence before the Committee that he was not given the pdf by Patient A. I will return to this matter below.

18. Returning to the events at Patient A's home on 7 May 2017, Mr. Wood reviewed Patient A's history and took some observations. Her heart rate was found to be elevated and he therefore proposed an ECG, to which she consented. He elected to do a 12 point ECG (involving pads on the chest and torso and requiring Patient A to get undressed) rather than a 3 point ECG (which would not have required such undressing). Mr. Wood put the ECG pads on Patient A's chest and he was described in her statement by Patient A as having been "flirty". I should record that Mr. Wood accepted, in cross-examination before the Committee, that "within the context of how the talking was going during the consultation then I agree there probably was flirty comments being made". Mr. Wood also asked Patient A various questions concerning

her periods, personal relationships and contraception. He says that these were medically justified questions and clinically indicated in the circumstances. This is also a matter of some importance which concerns one of the Appellant's Grounds which I address below.

19. At some point during the consultation the conversation involved Mr. Wood showing Patient A the First Respondent's website on his mobile phone and telling her about professionals who had been struck off for having relationships with patients.

20. Within 10-15 minutes of leaving Patient A's address, Mr. Wood texted Patient A. She had not provided him with her number. When first interviewed by the Trust Mr. Wood had said he found it on Facebook, but he later stated that he had memorised it when she provided it.

21. The text messages are in the evidence before me. Without addressing them in detail, it would be fair to say that from the outset those text messages were flirtatious and Mr. Wood specifically asked Patient A to keep the contact a secret: "Can you keep a secret?"... "How secret can you keep it". The messages before me spanned the period 7 May 2017 to 16 June 2017. The contents are in certain respects distressing and I will need to summarise some of the material below. The distressing nature of the texts would be heightened if Mr. Wood knew of Patient A's vulnerability.

22. When interviewed by his employer, Mr. Wood suggested that he had initially felt compelled to contact Patient A to share some of the insights gained from supporting an ex-partner who had chronic pain but he conceded in cross-examination before the Committee that nothing in the initial contact or subsequent messages suggested that this was in fact his intention.

23. The text on the first day included the following explanation for the contact "Being honest, thought it could be fun lol...you seemed cheeky...I might have been more forward if I were on the car lol". Some of the messages were overtly sexual "...would it be unprofessional to say I liked your boobs"; and some included a suggestion that things might have progressed further if Mr. Wood had not been attending with another paramedic: "definitely could have had some fun if it were me on my own lol".

24. The messages involved persistent efforts on the part of Mr. Wood to orchestrate a meeting with Patient A for sex. Patient A's messages included reference to her Chronic Fatigue Syndrome (CFS), her carer, being "high as a kite" and her limited sexual experience including the fact the she felt unable to talk about her first sexual encounter. In her witness statement she gives evidence that she was subject to a serious sexual assault when she was a minor.

25. The fact of this texting came to light when another paramedic with the South West Ambulance Service attended Patient A's home on 17 June 2017. Patient A was experiencing a non-epileptic seizure and demonstrated evidence of a split personality disorder on the lines I have set out above. After the seizure, Patient A showed this paramedic the messages on her phone from Mr. Wood and the paramedic reported the matter to his line manager.

26. In consequence, Mr. Wood was suspended on 19 June 2017 and subject to a disciplinary investigation which culminated in his dismissal for gross misconduct. I

will need to set out some aspects of what occurred during this disciplinary process because they are relevant to the regulatory proceedings.

27. The first disciplinary interview with his employer took place on 29 June 2017 and during that interview Mr. Wood described Patient A as "quite flirty and forward" and said that he was under a significant degree of stress at work and home.

28. In the internal disciplinary hearing which took place on 21 August 2017 it was put to Mr. Wood that Patient A was vulnerable and that he had asked her unwarranted questions (about her periods, contraception, and whether she had a partner) as part of the process of grooming her, which he denied. It seems to me that he appeared (implicitly at least) to accept that he had spoken with Patient A during the consultation about someone being struck off by the HCPC, but he denied being aware of Patient A's full history or the extent of her vulnerability. Mr. Wood said that he could "absolutely see how it looks". When asked about the suggestion that Patient A should keep a secret he accepted that "somewhere in my head I knew I shouldn't be doing it" and agreed that by asking Patient A to keep it a secret it might be suggested that he was grooming her.

29. In the course of the First Respondent's investigations, Mr. Wood sought legal advice and written representations were made on his behalf by a solicitor.

30. When the matter came before the Committee Mr. Wood acted in person (as a consequence of financial constraints). He admitted the factual allegations and misconduct (I will set these out in full below) but he denied current impairment. He gave evidence to the Committee and was cross-examined. The Committee also heard evidence from his partner (also a paramedic). Patient A did not give oral evidence, having provided a statement. It appears that she had declined to attend to give oral evidence, wanting to put these matters behind her. She had also provided medical evidence that she was not in a position to attend the hearing (even with special measures).

31. Before the Committee Mr. Wood justified his decision to use the 12 rather than 3 point lead ECG on the basis that the 12 point lead would give a better picture of any cardiac causes for Patient A's raised heartbeat. Having considered the evidence, it seems to me that it was not put to him (expressly at least) that this had been clinically unnecessary or that it had been motivated by a (sexual) desire to see Patient A undressed. As I set out below, subsequent expert evidence (received by the First Respondent just before the hearing before me) suggests that the use of the 12 lead ECG was medically justified.

32. As to the printed pdf document setting out Patient A's medical history, Mr. Wood denied ever having seen that document. He gave evidence that he was aware of Patient A's seizures and chronic pain. He was asked questions by the Committee about his earlier statement (in the Trust's proceedings) that he "remembered reading" that Patient A had a history of seizures. He could not explain where he had read it but denied that was on Patient A's pdf. In support of his position he pointed to the fact that he had gone to look for Patient A's medication in a drawer, which he said he would not have needed to do if he had the pdf which included a list of medication.

33. Mr. Wood gave oral evidence to the Committee as to his difficult personal circumstances at the material time: a new role, new responsibilities, relationship difficulties, a house renovation, and ambitious CPD/addition courses. The week prior to meeting Patient A he had attended his GP to report concerns in relation to stress and anxiety. I should note that Mr. Wood gave a great deal of oral evidence as to the steps which he had taken since the interactions with Patient A to learn about mindfulness, wellness, boundaries and a need for work/life balance. Using his own words, Mr. Wood told the Committee that he had lacked "moral courage" to stop what he was doing at the time but had now put in place "protective factors" to prevent this one-off event happening again.

34. As to future risk, a Committee member (Mr Redmond) put the following point to Mr. Wood: if he were called out to an emergency and the patient turned out to be a young, attractive and vulnerable woman, how would he make sure there was no repeat of the situation with Patient A? Mr.Wood said that first he would not self-disclose, i.e. talk about his own personal situation as a way of building trust; he would be more mindful of professional lines; would not use his mobile phone at work; and would do a holistic assessment to better judge the patient. Mr Redmond complimented Mr. Wood's reflective piece but noted that it was missing any consideration of the impact upon Patient A – a vulnerable patient with mental health issues. Mr. Wood's answer was that "I don't really know why I didn't go into that detail here. The impact that I've had on Patient A is obviously a huge one".

III. The Allegations and the Determination

35. In the context of the issues in this appeal, it is important to identify the relatively narrow focus of the written allegations made against Mr. Wood.

36. In full, the allegations were as follows:

> "During the course of your employment as a Paramedic, you:
>
> 1. On or around 07 May 2017, following an attendance on Person A in a professional capacity, obtained Person A's telephone number.
>
> 2. You breached professional boundaries in that you contacted Person A in text and/or social media messages:
>
> a. between around 7 May 2017 and 30 May 2017;
>
> b. on or around 16 June 2017.
>
> 3. The messages described at 2a included:
>
> a. messages of an explicit and/or sexual nature

b. messages in which you offered and/or planned to meet with Person A;

c. messages in which you offered and/or planned to engage in sexual activity with Person A.

4. The matters described in paragraphs 1 and 2 were sexually motivated.

5. The matters set out in paragraphs 1-3 constitute misconduct.

6. By reasons of you misconduct your fitness to practise is impaired."

37. Although this foreshadows some of the arguments I address below, it will be immediately apparent to the reader that the First Respondent decided to ignore the events at the consultation and to narrowly focus on two matters alone: the obtaining of a telephone number from Patient A, and then sending inappropriate text messages.

38. Mr. Wood admitted each of the allegations save that he did not accept he was currently impaired just that he was impaired at the time of his actions.

39. In the Decision dated 10 January 2019, the Committee found: -

- **a.** The admitted facts proven, in particular that Mr. Wood breached professional boundaries in that he contacted Patient A via text/social media messages, and that those messages included messages of a sexual nature and attempts to arrange to meet up to engage in sexual relations.
- **b.** That the facts admitted and found proved amounted to a serious departure from the standards expected of a paramedic and constituted misconduct.
- **c.** Mr. Wood abused a vulnerable patient for his own sexual gratification.
- **d.** The fact that Mr. Wood abused a vulnerable service user for his own sexual gratification made a finding of impairment necessary, both in order to protect the public as well as to maintain public confidence in the profession.
- **e.** Mr. Wood's insight was "impressive in some regards" but it was lacking in that he did not appear to have given thought to the impact of his misconduct upon Patient A and had "approached remediation in a linear way; demonstrating no empathy for his victim".
- **f.** His fitness to practise was impaired by reason of his misconduct as a result of significant ongoing risk of repetition i.e. on public protection grounds and the public interest.
- **g.** Conditions would not adequately mark the seriousness of the misconduct in this case but striking off would be disproportionate having regard to Mr. Wood's early and full admissions, his engagement with the process and his remorse and impressive insight in some respects.
- **h.** A suspension order for a period of six months, with review, would protect the public and mark the seriousness of the matter.

40. As referred to above, the suspension and review are now complete and Mr. Wood is again registered. I will return to those post-Decision facts in my Conclusion at para. [91] below.

IV. The Statutory Framework and Case Law

41. The Appellant is a body corporate established pursuant to section 25(1) of the 2002 Act. Under section 25(2) of the 2002 Act, its general functions are: (a) to promote the interests of patients and other members of the public in relation to the performance of their functions by various regulatory bodies and by their committees and officers; (b) to promote best practice in the performance of those functions; (c) to formulate principles relating to good professional self-regulation and to encourage regulatory bodies to conform to them; and (d) to promote co-operation between regulatory bodies.

42. The over-arching object of the Appellant in exercising its functions is protection of the public and this was the reason for creation of the appellant: see the judgment of Lord Phillips MR (at paragraph 60) in Council for the Regulation of Health Care Professionals v General Medical Council and Ruscillo and Council for the Regulation of Health Care Professionals v Nursing and Midwifery Council and Truscott [2005] EWCA Civ 1356; [2005] 1 WLR 717.

43. The regulatory bodies within the Appellant's oversight include the First Respondent: see section 25(3) of the 2002 Act. The Appellant in carrying out its statutory functions under the 2002 Act is entirely funded by the regulatory bodies it oversees, which in turn are funded by members of the regulated health and care professions.

44. It is common ground that the Decision was a "relevant decision" within the meaning of section 29(1)(j) of the 2002 Act.

45. Pursuant to section 29(4), the Authority may refer a case to the High Court where it considers that:

> "the decision is not sufficient (whether as to a finding or a penalty or both) for the protection of the public.

46. Section 29(4A) provides:

> "Consideration of whether a decision is sufficient for the protection of the public involves consideration of whether it is sufficient—
>
> (a) to protect the health, safety and well-being of the public;
>
> (b) to maintain public confidence in the profession concerned; and
>
> (c) to maintain proper professional standards and conduct for members of that profession".

47. Where a case is referred to the High Court, it is to be treated as an appeal (s.29(7)) and under section 29(8), the Court may:

> "(a) dismiss the appeal,
>
> (b) allow the appeal and quash the relevant decision,
>
> (c) substitute for the relevant decision any other decision which could have been made by the committee or other person concerned, or
>
> (d) remit the case to the committee or other person concerned to dispose of the case in accordance with the directions of the court,
>
> and may make such order as to costs… as it thinks fit".

48. In Ruscillo (cited above) the Court of Appeal held that the criteria to be applied by the Court in deciding whether to allow an appeal are the same as those applied by the Authority in determining whether the decision was unduly lenient:

> "73.... The test of undue leniency in this context must, we think, involve considering whether, having regard to the material facts, the decision reached had due regard for the safety of the public and the reputation of the profession...
>
> 76.... We consider that the test of whether a penalty is unduly lenient in the context of section 29 is whether it is one which a reasonable tribunal having regard to the relevant facts and to the object of the disciplinary proceedings could reasonably have imposed.
>
> 77....In any particular case under section 29 the issue is likely to be whether the disciplinary tribunal reached a decision that is manifestly inappropriate having regard to the practitioner's conduct and interests of the public".

49. The Court should also allow an appeal where there has been serious procedural or other irregularity (including undercharging), such that it is not possible to determine whether the underlying decision as to sanction was unduly lenient or not (See Ruscillo at [72] and [79] – [81]).

50. The Court may allow an appeal where there has been serious procedural or other irregularity such that it is not possible to determine whether the decision as to sanction was unduly lenient or not (Ruscillo at [79] – [83]). This may include:

    a. So called 'under prosecution' - where, if the case had been properly charged and the charge found proved, the penalty would or may have been unduly

lenient (see, for example, CRHCP v (1) NMC (2) Kingdom [2007] EWHC 1806 (Admin)); and

b. Failure to provide adequate reasons for a decision (CRHP v (1) GDC (2) Marshall [2006] EWHC 1870 (Admin) at [31] – [32]).

51. I respectfully adopt Lang J's description of the two relevant questions where 'under prosecution' is alleged:

a. On the evidence, applying its own rules, should the regulator have included further allegations in the charge; and

b. If so, did the failure to include those allegations in the charge mean that the Court is unable to determine whether the sanction was unduly lenient or not?

(PSA v (1) GCC (2) Briggs [2014] EWIC 2190 (Admin) at [21])

52. A decision may be flawed by a procedural irregularity where the regulator:

> "…fail[s] to bring the full gravity of the situation to the attention of the panel at all. In that sense, it can be said that the full charges that should have been brought in this case were never brought and the case went off on a fundamentally misconceived footing…"

(per Singh J in PSA v Jozi [2015] EWHC 764 (Admin) para.[21]).

53. This Court, on appeal, will afford considerable deference to the statutory role and expertise of the Committee: see GMC v Meadow [2006] EWCA Civ 1390:

> "197. On an appeal from a determination by the GMC, acting formerly and in this case through the FPP, or now under the new statutory regime, whatever label is given to the section 40 test, it is plain from the authorities that the court must have in mind and give such weight *as is appropriate in the circumstances* to the following factors.
>
> i. The body from whom the appeal lies is a specialist tribunal whose understanding of what the medical profession expects of its members in matters of medical practice deserve respect.
> ii. The tribunal had the benefit, which the court normally does not, of hearing and seeing the witnesses on both sides.
> iii. The questions of primary and secondary fact and the overall value judgment to be made by the tribunal, especially the last, are akin to jury questions to which there may reasonably be different answers".

54. In addition to Meadow, reference was made on behalf of Mr. Wood to Bawa-Garba v. General Medical Council [2018] EWCA Civ 1879 as being material to the principles an appeal court should apply to the decisions of a specialist tribunal:

> "[60] The decision of the Tribunal…. was an evaluative decision based on many factors, a type of decision sometimes referred to as "a multi-factorial decision". This type of decision, a mixture of fact and law, has been described as "a kind of jury question" about which reasonable people may reasonably disagree. … It has been repeatedly stated in cases at the highest level that there is limited scope for an appellate court to overturn such a decision.
>
> [67] That general caution applies with particular force in the case of a specialist adjudicative body, such as the Tribunal in the present case, which (depending on the matter in issue) usually has greater experience in the field in which it operates than the courts. .. An appeal court should only interfere with such an evaluative decision if (1) there was an error of principle in carrying out the evaluation, or (2) for any other reason, the evaluation was wrong, that is to say it was an evaluative decision which fell outside the bounds of what the adjudicative body could properly and reasonably decide."

55. There is however an important rider or qualification to the need for deference to the Committee. Such deference is afforded only where all the material evidence has been put before an expert decision maker. Where it has not been, that decision 'will inevitably need to be reassessed': Elizabeth Laing J at [47] in PSA v NMC & X [2018] EWHC 70 (Admin).

56. Finally, an important matter in the present appeal is the question of motivation. The reasons why a person acts in a particular way, or their motivation for acting are significant in evaluating (a) the true seriousness of their behaviour and (b) what the appropriate sanction should be – including making a decision as to whether this is really a problem that can be rectified by further education, or whether there is a deep-seated attitudinal problem, and therefore whether the public interest would demand a period of suspension. I refer in this regard to the decision of Andrews J in PSA v NMC & MacLeod [2014] EWHC 4354 (Admin) at [49] - [51].

V. Grounds 1 and 2: the substance of the misconduct and the failure to put allegations regarding the consultation itself.

57. As I raised with Counsel for the Appellant during the hearing, it seemed to me that Grounds 1 and 2 were making essentially the same point in that Ground 1 was a general complaint and Ground 2 was the particularisation of that complaint. The substance of Ground 1 may be summarised as follows. It is argued that although the

Committee referred to Patient A's vulnerability in its decision and imposed a suspension with a review (clearly a serious sanction), the way in which the case was presented never properly explored the underlying possibility that Mr. Wood pursued Patient A (in a predatory manner) precisely *because of* her vulnerability. It is said that this predatory dimension to his conduct – and the associated attitudinal problems and future risk such motivations posed - were not explored and specific allegations were not put to him for admission or denial. As such, the case went off on a fundamentally misconceived footing.

58. Related to this argument (under Ground 2) the complaint made by the Appellant is that limiting the charges to the text messages only resulted in significant under-charging. While Mr. Wood admitted the plain facts of the text messages, admitted sexual motivation and admitted misconduct, he was not required to admit or deny whether, for example, he knew at or during the consultation that Patient A was vulnerable. Nor was it put to him that he had behaved inappropriately or in a sexually motivated manner *during* the consultation at Patient A's home and after he became aware of her vulnerability having read her pdf document. Reference is made by the Appellant to Patient A's evidence that she had provided Mr. Wood with a copy of the pdf. Mr. Wood denied receiving the pdf. However, argues the Appellant, at his employer's disciplinary hearing on 21 August 2017, Mr. Wood accepted that he had "read" that she had stress seizures and became a second person when attending her in her home. That raises a factual issue which should have been resolved by the Committee.

59. Mr. Wood responded to Grounds 1 and 2 together. It was persuasively argued on his behalf that because the Committee had received and read the full trial bundle, and the statement of Patient A, the full extent of Mr. Wood's behaviour was known to the Committee and explored in some detail. It is further argued that the evidence before the Committee was not confined to the text messages alone, and the Committee undoubtedly had regard to Mr. Wood's conduct as a whole in determining sanction.

60. In respect of whether Mr. Wood had been given Patient A's pdf printout of medical information, it is argued that the topic was also explored in some detail. It is said that the Committee was addressed by the Case Presenter in his submissions in a way which invited the Committee to consider this issue, and gave it the opportunity to adjudicate on it. Counsel for Mr. Wood also argued that were the matter to be remitted, a new panel would be faced with a non-attendance by Patient A and therefore no oral evidence to contradict Mr. Wood's account that he did not receive the pdf.

61. Overall, it is said that given the extent of the information before the Committee, it is likely that it did have the opportunity to assess the full gravity of the case and imposed the sanction it did having taken all the facts into account. Counsel for Mr. Wood also relies on the fact that he attended Patient A as the lead paramedic of a two-person crew. From the available evidence, no concerns about inappropriate behaviour or examinations which were not clinically indicated were raised by his colleague.

62. Having considered the submissions and the primary evidential materials before the Committee, in my judgment both Grounds 1 and 2 are made out.

63. My detailed reasons are set out below but the main point is a simple one: this was never a case which should have been confined to the text messages and events after the attendance on Patient A. The drawing of a line between the events at the consultation and the post-consultation events was in my judgment a significant error. The prosecutor essentially missed the main point. Had that point been made and established on the evidence one cannot say that the ultimate sanction would have been a 6 month suspension.

64. Where a patient is particularly vulnerable, there is a greater duty on the healthcare professional to safeguard the patient. There was a real issue as to whether Mr. Wood knew about Patient A's vulnerability (both because of what she said and the potential receipt of the pdf). Using a professional position to pursue a sexual or improper emotional relationship with a vulnerable patient is an aggravating factor that increases the gravity of the concern and is likely to require more serious action against a healthcare practitioner.

65. In my judgment, there was a clear evidential basis to put charges before the panel to the effect that Mr. Wood took the opportunity to behave inappropriately towards Patient A – a vulnerable female patient – both during and after the consultation. The evidence suggest that he repeatedly texted her (applying some pressure) with a view to furthering his own sexual gratification but the panel needed to consider the consultation which was part of a connected series of events.

66. Although Patient A did not wish to give evidence, the narrow way in which the case was charged meant that the accuracy of Patient A's recollection in relation to the pdf was not strictly relevant. The Committee did not have to adjudicate upon contested facts (e.g. whether or not Mr. Wood had been given the pdf print out of Patient A's medical information).

67. Instead of giving evidence about what happened at the consultation and why he chose to contact Patient A knowing of her vulnerability, Mr. Wood gave overarching evidence about stress factors in his life and subsequent efforts to educate himself generally. He never really explained *why* or *how* the pressures which he cited led him to pursue *this* patient. Mr. Wood's evidence on remediation and insight did not answer the point - why would it take "moral courage" or "protective factors" (which he said he would now deploy in future) to avoid exploiting a future vulnerable patient? In my judgment, these answers seem to miss the point and do not provide reassurance.

68. In conclusion, and putting matters more technically, in my judgment limiting the charges to the text messages only resulted in significant under-charging. The charges should have covered the consultation including whether, for example, he knew at or during the consultation that Patient A was vulnerable and whether he had behaved inappropriately and/or in a sexually motivated manner *during* the consultation at Patient A's home and after he became explicitly aware of her vulnerability having read her pdf document.

69. Further, making admitted "flirty" comments and telling Patient A about professionals sanctioned for having relationships with patients revealed potential misconduct which was wrongly not the subject of charges. The significance of these points is obvious: first, such actions represented potential misconduct in their own right and also

undermined the credibility of Mr. Wood's early account of his reason for texting Patient A, namely that he had been motivated to support Patient A to manage her chronic pain.

70. Grounds 1 and 2 succeed.

VI. Ground 3: Mr. Wood's failure to give an honest account at the outset

71. The essential complaint under this ground is that the First Respondent should have alleged that Mr. Wood had failed to give a truthful and accurate account to his employers when confronted with the fact of his contacts with Patient A.

72. In response, Mr. Wood says that the facts of what he told his employer are not disputed and the Committee had this evidence before it, and had the opportunity to assess both his culpability in that regard, and his levels of insight sometime after the event. It is said that Professional Conduct Committees are well-accustomed to receiving evidence of a registrant's conduct during disciplinary proceedings before their employer and are best placed to take into account a registrant's untruths at an earlier stage. In this case, it is argued, the Committee plainly had regard to Mr. Wood's lack of candour with his employer and would have taken that into account in the determination reached.

73. I consider that this Ground of Appeal is made out. Before turning to the facts, I should identify the relevant principle. In my judgment, the way in which a healthcare professional reacts to the discovery of their misconduct is an important part of an assessment of their attitude, their insight into the wrongdoing and effects on a victim, and the sanction necessary in the public interest. A person who gives a false or misleading account of actions and events when first confronted with allegations of wrongdoing is highly likely to be a person who does not understand the importance of his professional responsibilities. It is more than a matter of honesty and integrity. A lack of candour might, depending on the circumstances, call into the question the fitness of the individual to hold a position of trust and responsibility.

74. Turning to the evidence, it is clear in my judgment that the account initially given by Mr. Wood to his employer sought to minimise the nature of his contact with Patient A and place the responsibility on her as the instigator of communications.

75. For example, in an interview on 29 June 2017 he made the following comments:

a. 'On 25th May we agreed to end it' and 'on 2 June she sent me a message which I ignored and then a week last Friday I sent a generic reply back';
b. 'she was usually the first one to text'; 'I was never the first to text';
c. His motivation to text was 'mainly to give support', 'it was my motive in the first place for giving support to show 'you're not alone'', 'mainly for reassurance';
d. 'A few times when she was asking me to come over I kept trying to find excuses or not replying';
e. 'It was always a kind of banal – how are you etc';

f. 'I think she was [the one driving the communication] but I can't blame her, I look back at a few and there are a few where I don't reply and she asks if she has done something to upset me. Every day she would start the conversation and I would reply out of kindness and politeness'.

76. I have set out some more detail of the actual text exchanges above. It is in my view difficult to characterise Mr. Wood's full text messages (with their sexually explicit content seeking to encourage Patient A to meet him for sex) as supportive, driven by a desire to be polite, or intended to dodge Patient A's advances. That is not credible upon review of the messages. Instead of acknowledging the fact that he had deliberately over-stepped professional boundaries when first confronted, Mr. Wood seems to have sought to excuse his conduct by giving a misleading account of the messages and effectively blaming Patient A.

77. In his first written account Mr. Wood said:

g. That the messages were 'mostly friendly chat, but occasionally suggestive and flirting messages';
h. 'The patient would usually instigate the conversation';
i. 'I realized the content of the messages was inappropriate and so withdrew that sort of talk to a platonic approach';
j. 'When the patient invited me to return to hers several times I made excuses as I felt uncomfortable';
k. 'Throughout this whole period I was unaware of much of her history, only knowing she had chronic pain and fatigue and this made it difficult for her to get around the house. I never considered her to be a vulnerable adult'.

78. In my judgment, the unrealistic account which Mr. Wood gave was relevant to an assessment of aggravating factors, to assessment of future risk, and to assessment of the steps required to protect the public interest. Without charges directed to the misleading account he gave, the Committee was in my view deprived of the ability to properly undertake its function. Indeed, the position was in fact worse because the Committee were led into giving Mr. Wood credit for his claimed "early" admissions to the Trust. He had in fact not made early admissions to the Trust but given misleading answers. The nature and effect of such actions were in my view essential matters for the Committee to consider in assessing his conduct.

79. Ground 3 succeeds.

VII. Ground 4: failure to obtain expert evidence

80. This Ground was not pursued by the Appellant by reason of developments just before the hearing before me. However, in fairness to Mr. Wood I should explain the original complaint. As indicated above, there was an issue as to whether Mr. Wood should have used a 12 lead ECG or 3 lead ECG and whether the questions he asked of Patient A concerning her periods and contraception were clinically justified.

81. The evidence before me shows that Mr. Simmonds, the practitioner member of the Committee, asked Mr. Wood about his decision to use the 12 rather than 3 lead ECG (which Mr. Wood confirmed was available). He was also asked by Mr. Redmond (a lay member) whether by using a 12 lead ECG he was able to see Patient A's breasts. He gave evidence that he could not remember seeing them but accepted that he had made a comment later via text about them. He also accepted that use of the 12-lead ECG would necessitate exposure of Patient A's breasts, while use of the 3-lead ECG would not. The Trust's investigation considered whether or not it was appropriate to conduct an ECG, however it did not address whether a 12 rather than 3 point lead ECG was clinically necessary.

82. It was originally said by the Appellant that the Committee was plainly interested in the use of the 12 lead rather than the 3 point lead ECG. However, it had no expert evidence on the point as to whether or not that decision had been clinical justified, or whether it was more likely to have formed part of a pattern of inappropriate conduct designed to solicit a sexual relationship or sexual gratification.

83. However, on the evening before the hearing of this appeal, the First Respondent received a draft report from an experienced consultant paramedic which confirmed that both the 12 lead ECG and the personal questions asked of Patient A were clinically justified steps. Accordingly, the Appellant no longer pursues this ground on the appeal.

VIII. Ground 5: insight

84. This Ground raises a short point. The Appellant argues that the aspects of the Decision concerning "insight" arose from a serious procedural irregularity or failure to adequately consider the full nature and gravity of the misconduct. It is said that the Committee's findings in relation to insight plainly played a central part in its Decision. However, there was no evidence on which the Committee could reasonably be satisfied that Mr. Wood had any real insight into the most serious aspects of his behaviour, namely the predatory nature of his conduct towards a vulnerable patient.

85. I reject this Ground. It is true that there was no consideration given by the Committee as to whether Mr. Wood had real insight into the most serious aspects of his behaviour. But that was because those serious aspects (predatory behaviour towards a vulnerable patient) did not form part of the case put to the Committee and that in itself is a matter which has led to me allowing this appeal. The Committee cannot be criticised under this ground.

86. Ground 5 fails.

VIII. Ground 6: failure to give reasons

87. The Appellant argues that the Committee erred in failing to provide adequate reasons for the Decision. It is said that it failed to explain, given its observation that Mr. Wood had "completely overlooked the impact of his behaviour upon Patient A", why it concluded that Mr. Wood's name could remain on the register without threatening public confidence in the profession. It is also argued that the Committee's decision at the sanction stage provided no reference to or explanation of its consideration of, and conclusions in relation to, aggravating and mitigating factors.

88. In response, Mr. Wood reminds me that the adequacy of the Committee's reasons are a matter for the Court's judgment. He accepts that there is a well-established obligation on panels such as the Conduct and Competence Committee to provide adequate reasons for their decisions. Reference is made to Wall LJ's observations in Robert Phipps v General Medical Council [2006] EWCA Civ 397. It is said that the reasons were sufficient.

89. In my judgment, and even bearing in mind the limited nature of the case put before the Committee, the short reasons of the Committee do not adequately explain why it concluded that Mr. Wood's name could remain on the register without threatening public confidence in the profession. I have also concluded that the Committee's decision at the sanction stage provided inadequate explanation of its conclusions in relation to the aggravating and mitigating factors.

90. Even if one limits the substance of the case to the text messages, the nature and extent of the evidence in relation to those messages suggest to me that further and more elaborate reasons were required from the Committee to explain why it imposed a 6 month suspension. Ground 6 succeeds.

IX. Conclusion

91. For completeness, I should record that Mr. Wood relied upon the fact that on 5 July 2019 the First Respondent decided at his review that he could return to the register on expiry of his 6 month suspension. I do not regard that decision as relevant because it was based on an assessment of Mr. Wood's progress in addressing the matters which led to the Committee's original decision (a decision based principally upon the text messages). The true extent of Mr. Wood's potential misconduct in the form argued before me was not before the First Respondent when undertaking the review.

92. I will allow the appeal and remit the matter for consideration by a fresh Committee of the First Respondent. As to the terms of that remission, the terms of the Consent Order originally agreed between the Appellant and First Respondent will require some modification to reflect my judgment.