



EXTRA DIVISION, INNER HOUSE, COURT OF SESSION

[2018] CSIH 55
XA94/17

Lady Paton
Lord Drummond Young
Lord Glennie

SUPPLEMENTARY OPINION OF THE COURT

delivered by LADY PATON

in the appeal

by

JACQUELINE DALY

Appellant

against

THE NURSING AND MIDWIFERY COUNCIL

Respondents

Appellant: Party

Respondents: P Reid; Nursing and Midwifery Council

22 August 2018

No substitute sanction to be imposed

[1] Following upon the issuing of the court's opinion on 26 July 2018, the respondents submitted a note referring to Rule 24 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004. In terms of that rule, the Fitness to Practise Committee approach matters in three stages:

1. Is there misconduct?

2. If there is misconduct, is fitness to practise impaired?
3. If fitness to practise is impaired, what, if any sanction should be imposed?

If the second question were to be answered in the negative, no sanction could be imposed.

An alternative situation might arise if a court were to conclude that there had been misconduct which impaired fitness to practise, but the failings were slight and there were mitigatory circumstances. In such a situation it would be appropriate for the court to quash any suspension order (such as the order imposed by the committee in the present case), but the substitute condition sought to be imposed by this court would not be one which the committee could competently have imposed. A different type of condition comprising, for example, supervision and monitoring of the appellant's work for a period, would be competent and appropriate.

[2] We take this opportunity to clarify the court's view that what remains of the misconduct in this case did not impair the appellant's fitness to practise. That being so, we shall simply quash the suspension order without substituting any alternative sanction.