

COUNCIL FOR HEALTHCARE REGULATORY EXCELLENCE

CASE MEETING OF COUNCIL MEMBERS

ON 10 OCTOBER 2005

AT 11 THE STRAND, LONDON WC2

**RE: THOMAS MOLEFE AND THE DECISION OF THE PROFESSIONAL
CONDUCT COMMITTEE OF THE NURSING AND MIDWIFERY COUNCIL
ON 21 SEPTEMBER 2005**

PRESENT: Jane Wesson (in the Chair)
Sheelagh Hillan (Regulatory Member)
Sally Williams (Lay Member)

IN ATTENDANCE: Sandy Forrest (Director)
Michael Andrews (Fitness to Practise Manager)
Briony Mills (Fitness to Practise Officer)
Christine O'Neill (Legal Advisor, Brodies)
Len Murray (Baker & McKenzie, present for other case)
Cecelia Fletcher (Baker & McKenzie, present for other
case)
Ruth Tomlinson (Observer, Baker & McKenzie legal
Secondee)

Documents

1. The following documents were before the meeting:
 - (a) Determination of the Professional Conduct Committee.
 - (b) Transcript of the hearing of the Professional Conduct Committee on 19-20 September 2005.
 - (c) Exhibits before the Professional Conduct Committee.
 - (d) The Nursing and Midwifery Council's Indicative Sanctions Guidance.
 - (e) Lawyer's Report by Brodies LLP prepared 6 October 2005.
 - (f) Section 29 Process and Guidelines (November 2004).
 - (g) Section 29 Case Meeting Manual.

Conflicts of interest

2. The Chair informed the meeting that the members had no apparent conflicts of interest and no conflicts were registered.

Matters noted by the meeting

The Professional Conduct Committee's Decision

3. Thomas Molefe, a nurse employed on a "bank basis" by Argus Care Group which operates in the north-east of Scotland, worked for Argus in two care homes, Culter House Care Home and Torry Care Home (the "Care Homes"). Mr Molefe appeared before the Professional Conduct Committee (the "PCC") of the Nursing and Midwifery Council (the "NMC") on 19 – 20 September 2005 in relation to a charge of professional misconduct.
4. Mr Molefe faced nine separate charges under the old 1993 rules. These charges were categorised under the following headings: failures to take charge in a situation where a patient had fallen; failures relating to administering and dispensing medication; failure to attend appropriately to a dying patient; failing to attend to a dressing for two hours and changing a dressing using a non-sterile procedure. Six of the charges were admitted by Mr Molefe and the remaining three were not found proved. As regards the six charges that were admitted, the PCC found that these did not reach the threshold required to establish professional misconduct.

Jurisdiction

5. The purpose of the meeting was to decide whether to exercise the statutory discretion to refer the PCC's decision, in respect of Mr Molefe, to the High Court under section 29 of the NHS Reform and Health Care Professions Act 2002 (the "Act").
6. The meeting was advised that since this was a Scottish case, there was an issue of jurisdiction in relation to whether an acquittal of professional misconduct by a committee was a "relevant decision" within section 29. If this had been an English case then there would be no issue of jurisdiction following the Ruscillo judgment. The meeting was advised that the jurisdiction in Scotland should not be any different to that in England; and that judgments of the English courts are very persuasive, although the Scottish courts are not bound by decisions of the English courts. The legal adviser stated that she would be surprised if the Scottish courts took a different jurisdictional view to that taken by the English courts.
7. The members of the meeting acknowledged the risk of jurisdiction issues.

Members' consideration

8. The transcript of Mr Molefe's hearing was difficult to follow and Mr Molefe was asked by the PCC to clarify a number of points. Due to this lack of clarity and that the members did not have the benefit of hearing Mr Molefe, the members considered that they had to defer to a large extent to the PCC in their findings. The PCC had the benefit of hearing from Mr Molefe first hand.

9. The meeting discussed that it was surprising and unusual that despite the six admissions by Mr Molefe the PCC still found that his actions did not amount to professional misconduct. The meeting noted that since the PCC did not seem to question the honesty of Mr Molefe, they were further inclined to give deference to the PCC. Again, the meeting did not consider it appropriate to go behind this as the PCC heard Mr Molefe's evidence. The meeting also considered whether the PCC was sympathetic towards Mr Molefe because he was unrepresented at the hearing. The PCC may therefore have taken an understanding approach towards the apparent confusion at the hearing.
10. The meeting went on to discuss whether the management issues within the organisation where Mr Molefe was working were relevant to the outcome of the case. The meeting noted an undercurrent within the case of organisational failings, and considered whether this was part of the reason why the PCC came to its decision.
11. The meeting then went on to consider specific matters of the case.
12. In relation to charge 1, the meeting considered why the care assistant who was present on the night of the alleged fall by Miss A, and who called Mrs McLeod was not called to give evidence.
13. In relation to charge 6, the meeting considered that the audit of the medication was badly organised and, as such, this part of the evidence was not entirely clear. The members discussed whether the Care Homes would have a system of pharmaceutical audits/unannounced visits and noted that there is no evidence of this.
14. The meeting noted that there were instances where the PCC may have given Mr Molefe too much of the benefit of the doubt, specifically on the charges in relation to the lateness in delivering medication. The transcript revealed that Mr Molefe could not really remember this lateness and the members were surprised, therefore, that the PCC was satisfied by Mr Molefe's explanation.
15. In relation to charge 4, the meeting considered the issue of whether the changing of the dressing took place using a "clean" or a "sterile" procedure and noted that since Mr Molefe was not using gloves or an apron, he was not even using a "clean" procedure. The members noted that the PCC did not even consider this point and further noted that it might well be necessary to finger a combi-derm patch before applying it (an issue raised connected to the charge).
16. The members felt there was a lack of clear evidence on some of the charges and the PCC may have had to defer at points to Mr Molefe's version of events as there was no clear contrary evidence. Specifically, the PCC had tried to test Mr Molefe's view against their records in relation to charge 8, but Mrs McLeod, the manager at Cutler House Care Home,

appeared to be on annual leave on the day in question. As such the documentation could not be used to question Mr Molefe.

17. However, the meeting's overall view was that the matters noted above did not raise public protection issues directly relating to Mr Molefe's conduct or suggest the decision was unduly lenient to an extent that would satisfy the section 29 criteria.

Conclusion

18. The meeting concluded that:

- (a) It had jurisdiction under section 29(4) of the Act to consider whether or not to refer the case to the Court of Session.
- (b) Based on the matters above, and on the basis of the evidence before the PCC, the meeting concluded the section 29 criteria had not been fulfilled and the case should not be referred to the Court of Session.

Signed:.....

Jane Wesson (Chair)

Date:.....